# DOOYEWEERD'S THEORY OF PUBLIC JUSTICE

## A Critical Exposition

A thesis submitted in partial fulfilment of
the degree of Master of Philosophy

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When you come into the land which the Lord your God gives you and you possess it and dwell in it, and then say, 'I will set a king over me, like all the nations that are round about me'; you may indeed set as king over you him whom the Lord your God will choose.... Only he must not multiply horses for himself, or cause the people to return to Egypt in order to multiply horses since the Lord has said to you, 'You shall not go that way again.' And he shall not multiply wives for himself, lest his heart turn away; nor shall he greatly multiply for himself silver and gold.

And when he sits on the throne of his kingdom, he shall write for himself in a book a copy of this law...and it shall be with him, and he shall read it all the days of his life, that he may learn to fear the Lord his God, by keeping all the words of this law and these statutes, and doing them; that his heart may not be lifted up against his brethren, and that he may not turn aside from the commandment, either to the right or to the left; so that he may continue long in his kingdom, he and his children, in Israel (Deuteronomy 17:14-20).

## Notes on the text

The following abbreviations have been used in the text; all except the first two are publications by Dooyeweerd.

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| AJPS | American Journal of Political Science |
| ARS | Antirevolutionaire staatkunde |
| CIS | The Christian Idea of the State |
| CCS | "De strijd om het souvereiniteitsbegrip in de moderne rechts- en staatsleer" ("The Contest About the Concept of Sovereignty in Modern Jurisprudence and Political Science") |
| De crisis | De crisis in de humanistische staatsleer |
| NC | A New Critique of Theoretical Thought. I, II, III, etc. refer to volumes of this work. |
| PPR | Publiek- en Privaatrecht |
| PR | Philosophia Reformata |
| Roots | Roots of Western Culture |
| SL | "Sociology of Law and its Philosophical Foundations" (translation of "De verhouding tussen rechtsfilosofie en rechtssociologie") |
| SV | "De sociologische verhouding tussen recht en economie in het probleem van het zgn. 'economisch recht'" |
| V | Verkenningen |
| VB | Vernieuwing en bezinning |

Full references for these abbreviations and for citations in footnotes are given in the bibliography.

Translations from Dutch works are my own (with the exception of CCS where an abbreviated English translation has sometimes been used but for which no date or translator is indicated.

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# INTRODUCTION

> What is the state? One author claims to have collected one hundred and forty-five definitions. Seldom have men disagreed so markedly about a term. The confusion and variety of meanings is so vast that it is almost unbelievable that over the last twenty-five hundred years in which the question has recurringly been discussed in one form or another, some kind of uniformity has not been achieved....
>
> After the examination of the variety of meanings a critical mind might conclude that the word ought to be abandoned altogether. (David Easton)[1]

The belief that an understanding of the distinctive nature of the state is an essential precondition for any genuinely political theory has been widely undermined in recent decades as a result of the new turn in political theory taken by such as David Easton. Many political theorists no longer insist that there is any particular institution which, before all others, is characteristically political. Indeed the very identification of a distinctive political dimension of human life has become problematic in contemporary political theory.

Developments in practical political life appear to confirm the sceptical reflections of the theoreticians. This was the conclusion of one recent study of political economy in Britain and America:

> So great is the interpenetration between the 'public' and the 'private' sectors that this basic distinction--on which the political rhetoric and dialogue of modern times has rested--has ceased to be an operational way of understanding reality.[2]

Several prominent voices have been raised lamenting this practical and theoretical scepticism concerning the specific character of the political dimension and the parallel decomposition of any adequate notion of the state. The call for a rediscovery of the political dimension has been a common concern of, for example, several neoclassical political theorists such as Leo Stauss, Eric Voegelin, Hannah Arendt, and Dante Germino, and of other historically oriented theorists such as Sheldon Wolin.[3] Within the christian tradition, Jacques Maritain and A.P. d'Entrèves have developed significant Roman Catholic contributions to reflection on the nature of the state, and within the Protestant tradition both Karl Barth and Emil Brunner have devoted considerable attention to the same question.[4]

Another Protestant voice echoing concerns about the nature of the state has been that of Herman Dooyeweerd (1894-1977), a neocalvinist philosopher whose prolific writings are largely unknown outside the Netherlands.[5] Dooyeweerd has developed a theory of the state which stands as a substantial example of contemporary christian political thought. His theory is rooted in the conception of a universal cosmic order instituted by God which is foundational for all that exists, including the nature of the state.

Our intention in this study is to expound the main contours of his theory of the state and to present a critical analysis of some of its key components. Section I will open with a brief introduction to Dooyeweerd's historical and theological

background (Chapter 1), and proceed to an outline of the complex ontological framework underlying his thought (Chapter 2). This outline, though essential for an appreciation of his theory of the state, will of necessity be brief because of the range and intricacy of Dooyeweerd's systematic philosophy.[6] Section II will begin with a brief survey of his characterisation of the contemporary crisis in social and political philosophy which in his view made imperative an analysis of the normative structure of the state (Chapter 3). This will lead into a treatment of the foundation for his analysis of societal structures in general (Chapter 4), and to a discussion of the specifically pluralist cast of his social philosophy (Chapter 5).

Section III, the core of our study, will consist of a detailed assessment of his notion of the structure of the state. After treating his notion of the state as a distinctive structure (Chapter 6), we shall seek to elucidate the nature and relationship of what he regards as the two outstanding components of the structure of the state, namely, "power" (Chapter 7) and "justice" (Chapter 8). Many controversial aspects of his thought will be passed over without evaluative comment; critical attention will be focussed only on certain of its specific features. We shall argue that his accounts of both power and justice as components of the state require revision. Regarding the power of the state, we shall argue that his treatment is inconsistent with his understanding of the creation order; a similar criticism

will be developed regarding his characterisation of the notion of justice.

These discussions will lead us into the central question of our study, namely this: does Dooyeweerd's formulation of the distinctive structure of the state yield an adequate delimiting criterion for the scope of its authority in contrast to non-state societal structures? (Section IV). The crucial notion which constitutes this criterion is that of "public justice". This notion is intended to function as a boundary within which the state must remain in its diverse activities. After an explication of the basic meaning of public justice (Chapter 9) and an investigation of its concrete political application (Chapter 10), we shall conclude in Section V with some evaluative reflections on the notion.

## SECTION I: DOOYEWEERD AS CHRISTIAN PHILOSOPHER

### 1. Dooyeweerd's Roots in Neocalvinism

Dooyeweerd is the leading representative of what has come to be known as the Amsterdam School of christian philosophy. This school emerged in the early decades of this century out of the nineteenth-century tradition of Dutch neocalvinism. Calvinism in the Netherlands took quite a different turn in the nineteenth century compared to its development in other European countries and in North America. The essential difference can be grasped by noting its preoccupation with cultural life as a genuine expression of christian piety. It represents that stream known as "cultural calvinism".

Typically, the doctrine of predestination is taken to exemplify the calvinist ethos. This doctrine is not, however, its most characteristic feature. Rather, calvinism is notable for its emphasis on the confession of divine sovereignty.[7] In its soteriology this has come to expression especially in the doctrine of predestination. In Dutch calvinism however, it is the sovereignty of God over all areas of cultural endeavour which has received primary emphasis.[8]

The late nineteenth-century Dutch tradition of calvinism was characterised by an avowedly affirmative appreciation of the cultural enterprise in its broadest sense. Such an appreciation was inspired by a robust doctrine of creation and a recognition that all of creation's richly variegated possibilities for

development constituted arenas for obedient service of God the sovereign Creator. Eventually the deepest purpose of redemption and the ultimate goal of the kingdom of God came to be seen as the restoration of creation from its fallen condition, rather than its abolition followed by the introduction of an entirely new order of reality. Culture was thus seen as drawn into the orbit of divine salvation.[9]

On the basis of this understanding of the relation between creation and redemption, active involvement in all cultural activities--social, political, economic, educational, and so on--came to be viewed as quite normal manifestations of the christian life. Moreover, because of the further recognition that creation was profoundly affected by the fall and that culture was the arena for a perpetual struggle (an "antithesis") between God and the forces of evil, such activities were pursued with missionary zeal.

This christian cultural vision was propagated in particular by Abraham Kuyper (1837-1920), churchman, scholar, statesman and journalist. The neocalvinist constituency which grouped and solidified under his leadership in late nineteenth-century Holland began to engage in a wide variety of educational, political and labour pursuits, each attempting to operate on a distinctively christian foundation, explicitly challenging the liberal theological and political elite which had risen to dominance during the nineteenth century.[10]

Herman Dooyeweerd was born into a "Kuyperian" family and remained a critical representative of the Kuyperian cultural vision.[11] While Kuyper's efforts were spread across a broad cultural range, Dooyeweerd came to the view quite early in his development that the rejuvenation of Christianity in the context of modernity, especially in its social and cultural manifestations, required the development of a systematic christian philosophy. Such an enterprise had to be constructed upon a quite different conception of the relation between faith and philosophy than that characteristic of the Thomist tradition.[12] It also demanded a philosophical view of reality rooted in biblical revelation which could enter into critical confrontation with Greek, medieval and modern philosophical traditions. Dooyeweerd devoted his academic career to the realisation of this goal in cooperation with several other neocalvinist scholars, mostly associated with the Free University of Amsterdam. Among these D.H.T. Vollenhoven (1892-1978) was the most outstanding.

Although for most of his academic life Dooyeweerd was occupied with history of law and legal philosophy at the Free University (1926-1965), he extended his scholarly endeavours by attempting to construct a general philosophy which was intended to furnish the theoretical foundations for work in each of the special disciplines. As well as formulating a new relationship between faith and philosophy, Dooyeweerd developed a distinctive conception of the relation between philosophy and the special

sciences. In his view, philosophical presuppositions lay behind any definition of the territory of the various disciplines, established the relations between them and determined their overall theoretical directions. Consequently, the development of a christian political theory required the intermediary of a christian philosophical framework.

While political theory was not one of his primary professional occupations, his elaborate philosophy of societal structures contained an extensive treatment of the state; and his studies in legal theory led him into detailed investigations of public law. While Dooyeweerd's attempt to formulate a specifically christian political theory had features in common with other contemporary christian contributions, he distinguished his own enterprise from others by identifying it as part of a comprehensive task of the "inner reformation" of the sciences (I:176). He judged that almost all previous attempts at christian political theory had been built upon a "synthesis" of biblical religion with some variant of non-christian philosophy, whether Greek, medieval or modern. He believed such a synthesis consisted of an external conjunction of internally alien perspectives. His own aim was to develop a systematic philosophy which was internally integrated with biblical religion and which therefore could serve as the framework for scripturally directed scholarly work in the special sciences. The christian religion was not simply to serve as a "decorative superstructure" over an essentially non-christian science (De crisis:185).

His major philosophical work attempting to implement this encyclopaedic ambition was De Wijsbegeerte der Wetsidee[13] which is literally translated as "The Philosophy of the Law Idea" but which has generally been rendered into English as "The Philosophy of the Cosmonomic Idea". The English edition, considerably revised and extended, was published as A New Critique of Theoretical Thought.[14] This work contains his most detailed discussion of his theory of the state and will be the focus of our study.

The "law idea" is probably the most basic notion in Dooyeweerd's philosophy.[15] It is characteristic of the calvinist confession that creation is constituted by and subjected to an all-embracing, integrated diversity of divinely established laws or ordinances. For Kuyper and Dooyeweerd, the law order structures not only the realm of nature but also culture and society. This law order embodies distinct norms for each different societal structure or relationship. Such norms indicate the particular tasks which the various societal structures are to fulfil, calling them to conform to a specific shape.

It is on the basis of this view of the divine law order that Dooyeweerd attempts to construct a theory of the state and the scope of its authority. Central to this theory is the principle of "sphere sovereignty" (souvereiniteit in eigen kring, literally, "sovereignty in one's own sphere"), first intimated by the nineteenth-century Dutch calvinist Guillaume Groen van Prinsterer (1801-1876) and elaborated and extended by Abraham Kuyper, van Prinsterer's successor as leader of the neocalvinist

movement. The sphere sovereignty of a societal relationship is based upon the distinctive nature of its societal calling. Dooyeweerd conceives of modern society as characterised by a plurality of such societal relationships, each "sovereign" within its own "sphere" or domain. We shall explain the implications of this central principle in due course.

## 2. Outlines of a Neocalvinist Philosophical Framework[16]

### a. The Law-Subject Relation

As we indicated, for Dooyeweerd all of creaturely reality is governed by a divine order of law holding for every kind of phenomenon. The universal subjection of all things to divine law is the corollary of the biblical principle which is fundamental to the calvinist confession, namely the radical distinction between God and creation.

Two aspects of Dooyeweerd's conception of this "law-subject relation" should be noted. First, creatureliness presupposes subjection to law. Creatures are subjects; i.e., subject to the divine law of their being. Law is not viewed as a frustrating restriction on creaturely existence but rather as its enabling foundation. Subjection to law is thus the condition for meaningful existence. Without the determination and circumscription of the law, "the subject would sink away into chaos" (I:518). Second, while law establishes the necessary framework within which subjects exist, it cannot be conceived of as

separated from that which is subject to it. Law does not stand above reality but rather underlies and permeates reality. Although law is indeed trans-subjective, in the sense that it transcends and places conditioning limits upon subjective existence, it can only be experienced within subjective existence. Without subjective existence, law has no meaning (I:96). There is thus an "indissoluble correlation" between the two perspectives or "sides" from which reality can be viewed, its "law-side" and its "subject-side" (I:105; II:8).

b. The Dual Structure of Reality

The law order conditions subjective reality around two fundamental and interlocking axes, the "modal", (NC:II), and the "individual", (NC:III). The creation order displays a plurality of "modal aspects", of which Dooyeweerd identified fifteen: numerical, spatial, kinematic, physical, organic, psychic, logical, historical, lingual, social, economic, aesthetic, juridical, moral and confessional or pistical (from the Greek pistis, meaning faith). These aspects or "modalities" must be distinguished from individual things, events and relationships. The aspects are the ways or "modes" in which things, events and relationships concretely operate, or "function". Hence the terms "mode" or "modality". While the modal axis of the law order determines "how" all things, events and relationships function, the individual axis establishes "what" actually functions (I:3).[17]

The outstanding features of Dooyeweerd's modal theory are the following. Firstly, the modal aspects of reality are mutually irreducible (I:102). The way of being "physical" is fundamentally different from the way of being "logical" or "juridical". Dooyeweerd somewhat confusingly applied the term "sphere sovereignty" to refer to this mutual irreducibility, while also retaining the term's original Kuyperian meaning in which it denotes the qualitative distinctions between various societal relationships or structures.

Secondly, although irreducibly diverse, the modal aspects are reciprocally interconnected. The modes are not hermetically sealed off from one another; each mode comes to expression within the internal structure of all the others. There is an "intermodal coherence" binding all of them together in a unified diversity (I:3). Dooyeweerd describes this as the principle of "sphere universality". We shall explore the significance of this intermodal coherence presently.

Thirdly, Dooyeweerd makes a distinction within the modal law order between those modes which presuppose the mediation of human responsibility and those which are immediately effective irrespective of human mediation. He calls the former "normative" modes and refers to the latter simply as modal "laws". The fundamental point about the normative modes is that the norms which are rooted in them can only be implemented as a result of the responsible choices of active human subjects. They require human

historical response or "positivization", the results of which will vary widely throughout history and according to different levels of cultural development. The norm of justice, for example, is a divine summons to human obedience which will call for different concrete responses in different historical situations, and, unlike physical laws, is never automatically positivized. Thus, there always exists the possibility of a disobedient positivization of the norm. For Dooyeweerd then, a "norm" is not defined as "that which normally characterises human behaviour" (cf. I:439) but rather as "that to which human behaviour is intended to conform" (II:156, fn.).

Fourthly, while the results of the positivization of norms may be historically variable, the essential requirements of the norms are invariant, universally valid and thus transhistorical. Thus in seeking for the normative structures of the state, Dooyeweerd sees himself as investigating what is its invariant, divinely given intention for all times.

Fifthly, a feature of the modal aspects is their "order of succession" (II:107ff.). The modes do not exist in arbitrary juxtaposition but exhibit a sequential structure, a cumulative order from the numerical through to the pistical. Each mode builds upon the foundation of the preceding modes and is in turn the foundation for the following ones. The lower, or "earlier" modes "found" the higher, or "later" modes. This order is discovered empirically. For instance, biological

existence clearly presupposes physical existence. There can be physical things which display no biological traits, but biological phenomena can exist only on the basis of a physical foundation. The organic or "biotic" mode thus is "founded upon" the physical, rather than the reverse. The closer a mode is to the pistical, the more complex a foundation it displays.

But this ("foundational") order can also be viewed from the reverse ("transcendental") direction (II:181ff.). Just as physical existence is foundational for biological existence, so also biological existence "opens up" new possibilities for its physical substructure. Physicality is, as it were, "awakened" to higher and more complex kinds of operation as it is taken up into biological existence. Thus, for example, the physical functioning of a cell molecule is qualitatively different when it functions within a living cell, from when it serves as the substance of a piece of rock. Here, Dooyeweerd speaks of the "opening up" of the physical mode by the biotic.

A significant point to be noted here is that this foundational order of succession and the process of opening up of lower modes by higher ones applies equally in the "normative" modes. The normative modes, the logical and post-logical, also exhibit foundational and opening-up relationships. Thus, for instance, sociality presupposes language; juridical behaviour presupposes social behavior; and, very significantly, all the normative modes presuppose logicality (II:237ff.). Conversely, juridical or justice-related behaviour "awakens" economic activity to more

nuanced normative expressions. The economic or "frugal" allocation of scarce resources is thus opened up in the service of justice.[18]

Reality thus displays modal dimensions. It consists, however, of individual things, events and relationships whose structure is also governed by laws. These laws constitute the second axis in the dual structure of reality. They establish the "structures of individuality", or "individuality structures" of concrete things, events and relationships, determining the lawful shape to which each is called to conform. The structures of individuality are the basis for the distinct identity of concrete phenomena; and they form the ontic conditions for their continuing factual existence.

Rooted as they are in one and the same coherently integrated law order (I:29), the structures of individuality are intimately correlated with the modal aspects. Each individual thing, event or relationship displays each of the aspects in its concrete behaviour. In Dooyeweerd's terms, they "function" in each aspect. Thus, a concrete <u>thing</u> such as a chair can be counted (its numerical aspect), has extension (its spatial aspect), is someone's property (its juridical aspect), and so forth. An <u>event</u>, such as the act of purchase of the chair exhibits spatial functioning (it occurs at a certain place), economic functioning (the price of the chair), moral functioning (the mutual trust presupposed in the exchange), and so on. A <u>relationship</u> such as marriage involves sexuality (the psychic aspect), reproduction

(the biotic aspect), communication (the lingual aspect), and mutual rights and duties (the juridical aspect). Dooyeweerd argues that this pattern of multifunctionality is the case for everything in reality; all individual phenomena function in every modal aspect.

However, if this is indeed the case, it is clear that more is required in order to distinguish one concrete phenomenon from another. Dooyeweerd's theory of the modal aspects of reality accounts for common characteristics of all things, events and relationships; his theory of individuality structures accounts for their distinct characteristics.

While each thing, event or relationship functions simultaneously in each aspect, there will always be two aspects in particular which will appear to play an essential role in their specific identity, different from the identity of other things, events and relationships. In each concrete "structure of individuality", two of the modal functions present themselves in everyday experience as outstandingly different in making the thing what it is. Dooyeweerd refers to these two functions as the "qualifying" or "leading" function, and the "foundational" or "founding" function (III:53ff., 90ff.). While distinguishing two functions from all the other functions of a particular thing is the first stage in discovering its specific identity, the next essential stage is to distinguish between the two, detecting which "qualifies" and which "founds" the thing in question. The qualifying function, on the one hand, can be seen as

that function which exercises the role of "leadership" among the various functions, directing them in a structured way toward its specific destination (III:56). On the other hand, the foundational function furnishes the indispensable "support" making such a destination realisable. Thus for instance in a family, which according to Dooyeweerd is qualified by its moral function, moral nurture and love is to characterise all normed familial behaviour, while the biotically founded blood tie provides the unique basis upon which such morally qualified behaviour can take place (III:266ff.).

Dooyeweerd conceives of "power" and "justice" as representing the two outstanding components of that societal relationship known as the state. They correspond to its historical foundational function and its juridical qualifying function. (We shall present a further analysis of these two modal aspects in due course.) The state is based upon power, but it exists to serve justice. In the same fashion that the moral aspect of a family is to lead all its diverse activities, so the state's responsibility for justice is to govern all of its various operation. While it cannot dispense justice except on the basis of power, its calling to pursue justice places limits upon the manner in which it may wield that power. In this sense the state is to make power serviceable to the requirements of justice. Its juridical qualifying function is to open up its power to this end.

The entire constellation of modal functions of a thing, event or relationship, characterised especially by its qualifying and foundational functions, is termed its "structural principle". The structural principle of an individuality structure is the configuration of modal functions in which the qualifying and foundational functions play an outstanding role. A structure of individuality is governed by a certain structural principle which constitutes its identity.

It is not the case, however, that <u>every</u> discrete, factually existing individual thing, event or relationship is allotted its own unique structural principle in the divine law order. Rather, the structural principles establish various kinds or "types" of thing, event or relationship. Structures of individuality are always "typical" structures. Each thing belongs to a specific ontic "family" or "type". And the configuration of modal functions in any discrete individual thing, event or relationship will thus be displayed in other instantiations of the same type--a "family resemblance" will be discernible.

This concludes our brief survey of Dooyeweerd's philosophical framework. Further relevant features will be introduced as required by the context. Before moving into a discussion of his normative social and political philosophy, we shall briefly treat his characterisation of the crisis in reflection on the state which necessitated a radical reconstruction of political theory on the basis of this normative framework.

## SECTION II: DOOYEWEERD'S PHILOSOPHY OF SOCIETAL STRUCTURES

### 3. The Loss of a Notion of the State

As we have seen, the pivotal notion in Dooyeweerd's neo-calvinist worldview is that of the divine law order governing all of created reality. Human fulfilment, according to the calvinist vision, can only be arrived at by travelling along the tracks laid down in the divine order of the world. In Dooyeweerd's judgment, the humanistic worldview, increasingly influential in the culture of the West since the Renaissance, has reached a crisis point precisely because of its denial of a divine world order transcending creaturely human subjectivity. This crisis had come to expression in a specific manner in the development of modern political theory.[19] We shall describe only the broad outlines of Dooyeweerd's account.

According to Dooyeweerd, periodic crises in the theory of the state arise wherever a relativistic standpoint undermines a belief in an enduring structure of the state (III:381). One might have expected him to argue that political theory would be in a constant state of crisis insofar as it was not attuned to the divine law order for the state. But he draws a distinction between, on the one hand, misconceiving the content of the structural principle of the state, and, on the other, denying the very notion of any enduring structure of a normative character.

While critical of fundamental features of the political thought of Plato and Aristotle, Dooyeweerd expresses guarded

appreciation for a significant feature of their conceptions of the state, namely, their recognition of a "normative essence" of the state as the indispensable precondition for any empirical investigation of actual states. Although this essence is conceived of as "supratemporal" and "metaphysical" (whereas for Dooyeweerd it is created), he appreciates that Plato and Aristotle "remained free from the prejudice of a modern historicistic positivism that looks upon the body politic as a variable historical phenomenon, apart from any normative structural principle" (III:380). Thus while they may have misconceived the content of the normative structure of the state, they did not deny the very idea of such a normative structure. It is precisely such a denial that in Dooyeweerd's view has precipitated the periodic crises in the theory of the state, especially in the modern age.

Some crises can in fact be productive, insofar as they represent transitional stages leading to a new, more normative formation of political life. Dooyeweerd cites the example of Machiavelli's notion of the state which emerged from and broke through the decaying medieval political framework (III:381-2).[20] Other crises, however, can be highly destructive, such as the crisis precipitated by the "radical left-wing sophists" which developed in the wake of the decline of Athenian democracy (III: 381). The theoretical crisis in the modern humanistic theory of the state of his own time was for Dooyeweerd of an especially

destructive character.[21] Although catalysed by the crisis in practical political life after the first world war, the theoretical crisis could nevertheless be seen as the inevitable outcome of a long process of religious and philosophical decline.

Dooyeweerd claimed that the theory of the state in his time had reached an impasse. There was no possibility of resolving the impasse within the humanistic framework since this framework allowed no room for any notion of enduring normative structures for human life (III:380). In contrast to the political thought of Plato and Aristotle, modern political thought, influenced by positivism and historicism, conceived of the state as an "absolutely variable historical phenomenon" (III:380-1). This allegation is the core of Dooyeweerd's assessment of the contemporary crisis in the theory of the state to which he addressed himself. Contemporary political theory had culminated in the development "theories of the State without a State-idea". He describes the result of the crisis thus:

> There was no longer room for an invariable normative structural principle of the State. Richard Schmidt merely formulated the prevailing relativistic conception in his Algemeine Staatslehre when he wrote: 'Modern political theory emancipates itself from the speculative view, it leaves alone the metaphysical question about the idea of the State and restricts itself to the empirical world' (III:382).

Describing historicism as "the fatal illness of our times" (Roots:61), Dooyeweerd writes:

> Modern historicism...views culture in terms of unending historical development, rejecting all the constant creational structures [constante structuurmomenten] that make this development possible...it has no reliable standard for distinguishing reactionary and progressive tendencies in historical development. It faces the problems of the "new age" without principles, without criteria (Roots:65).

The historicist attitude toward the state was clearly articulated, for example, in the writings of Herman Heller. Heller, even though only a "moderate historicist", explicitly denied the possibility of discovering a transhistorical structure of the state. Heller's fear was of taking "the momentary state" to be the absolute standard for all states. Dooyeweerd quotes him thus:

> All political categories...are historically changeable, even the functions and certainly the structure of the present State. They in no way transcend history. All history is of unique occurrence in the irreversible direction of the stream. The structure of a body politic which is real within a particular basic structure of society, is therefore to be considered fundamentally impossible within another historical situation (III:390).

This denial aptly summarises the historicistic assumptions which Dooyeweerd is especially concerned to counter.

However, the further development of a positivistic orientation in the emerging discipline of sociology introduced an approach to social and political theory which contained even more radical consequences for the theory of the state than had historicism. The new sociology concurred with historicism in denying the existence of enduring normative structures for

societal life, but went beyond it in applying the natural scientific method to societal phenomena, seeking for laws which could causally explain the origin of such phenomena. Dooyeweerd writes:

> According to St. Simon and Comte, the body politic is only a secondary product of "civil society" in its economically qualified relationships. The "leading ideas" of societal life are by no means the natural law ideas of the classical and modern political theories, which had no inner coherence with the factual condition of society.... Nor can there be any truth in the classical conception of the State, with its military foundation, as an institution of the public interest. The truth is that civil property gives rise to class differences and class contrasts and that political authority always belongs to the ruling class (III:453).

The focus of attention in social science was thus turned away by positivism from any allegedly invariant metaphysical conception of the state, and instead attention was directed to empirical analyses of "society" conceived as a network of social forces of which the state was a "secondary product" (Roots:198). Dooyeweerd's critique of positivism ranges far more widely than the destructive consequences of positivism for political theory. But such consequences were of particular concern to him in his own political theory. The fundamental shift of focus due to positivism signified

> ...a fundamental break with both the classical liberal, natural-law distinction of state and society as well as the earlier identification of the two. The new science of sociology has indeed made a revolutionary discovery which fundamentally undermined both the idea of the state as a res publica--the

> institution which embodies the public interest--and the idea of civil law with its principles of freedom and equality...the focus of the new sociology was not on these ideas. Rather the class contrasts are the driving forces in the historical process of society--these seemed to be the positive social facts (Roots:198).

The consequences of these powerful historicistic and positivistic movements of thought were evident in a wide variety of contemporary political and social theorists, all of whom dispense with the notion of a transhistorical structure of the state and thus lose any adequate criterion for distinguishing the state from other societal structures. Dooyeweerd cites several illustrations. Ludwig Waldecker, for instance, denies that there is any qualitative difference between the state and all other organizations. Dooyeweerd quotes him thus:

> Neither the organizations with a particular purpose (e.g. a limited liability company), nor the autonomous political communities which are components of the state (e.g., a municipality, district and province), are different from the state in a qualitative sense, but only quantitatively and functionally (III:386).

As another example, Max Weber declared that, from a sociological viewpoint, a modern state is essentially the same as a large-scale economic business. Harold Laski regarded the state as comparable to a Miners' Federation (III:387) while Hans Kelsen viewed it as merely a "logical system of legal norms" (III:387). We might note that David Easton's proposal that even the word "state" be abandoned could be seen as the final outcome of this process of theoretical development (Cf. supra., p. 2).

Modern social and political theory was thus no longer able to accept the idea of an "immutable structural principle of the state".

> The shibboleth of a scientific political theory was declared to be the elimination of all normative evaluations. Thus the attempt was made to form an a-normative notion of the State on a merely historical and positivist sociological basis (III:384).

In the context of this crisis, Dooyeweerd sets himself the task of developing a post-positivistic, normative theory whose intention is "to disclose the internal structural principle of the body politic as it is found in the divine world-order" (III: 401). He ventured that

> ...there is nothing of which our time is so much in need with respect to the State and society as an insight into the constant transcendental structural principles of societal relationships (III:401-2).

We have traced the outlines of Dooyeweerd's critique of contemporary social and political theory. Our task now is to examine the foundations of his alternative.

## 4. Foundations of a Normative Social Theory

In important respects, the kind of critique of positivistic social science developed by Dooyeweerd, initially already in the 1930's, is now widely endorsed among social scientists. It is true that a considerable proportion of behavioristically oriented practitioners, the modern heirs of historicism and positivism, have not been convinced by repeated critiques of their position.[22]

But the crude positivism of the era within which Dooyeweerd began to formulate his alternative methodology of normative analysis is clearly over (although there is no consensus on what should replace it). Nevertheless his dissatisfaction with modern social and political theory merits consideration insofar as it illuminates his own position. In this context only an impressionistic survey, rather than a critical or comparative evaluation, will be presented.

His alternative method proceeded on the basis of what has come to be described as "transcendental-empirical analysis", directly related to his notion of the "law-subject relation". For Dooyeweerd, any adequate empirical investigation of changing societal behavior or institutions presupposes a grasp of the ordering structural frameworks--the structural principles--within which such phenomena function. The order of societal reality consists of an array of enduring structural principles which create the conditions of possibility without which no phenomena can exist. Unlike the noetically posited "values" of the neo-Kantian tradition (with which he extensively dialogued) which are seen as distinct from an intrinsically unordered societal reality, the normative ontic conditions which Dooyeweerd envisages are built into the fabric of this reality. They are ontic, not noetic structures. The problem is not to construct them, but to detect them.

As we saw, the law order established by God, of which the structural principles of societal relationships are a part, do not supervene upon created reality but rather hold within it.

The essential point in Dooyeweerd's methodology is that these underlying structural frameworks actually do manifest themselves in human experience with sufficient force that they can indeed be detected with a measure of accuracy. While they cannot be found in Scripture (although Dooyeweerd does occasionally cite Scripture as support for his judgments about the nature of some structural principles, e.g. the state), they are nevertheless divinely revealed in the creation order, an order which continually impinges upon human experience. A careful scripturally-directed "reading" of the "text" of creation will disclose their content. We shall see that the pressing claims of the law order for the state in its history make explicit the two essential components in its structural principle, which components are the focus of Dooyeweerd's investigation in his political theory.

The implication of this notion of the embeddedness of the law order within reality and its empirical manifestation in the course of history, is that the structural principle on the law-side of reality can only be grasped by reflection on the subjective functioning of real things, events, or relationships such as actual states. The divine law order establishes the conditions of possibility for all individual phenomena in nature (e.g. a tree), culture (e.g. a tool) and society (e.g. a family). In the realm of nature the structural principle of trees differs only from the structural principle of stones. We know that only through an empirical analysis of trees and stones. In Dooyeweerd's view, the situation of the social theorist is not fundamentally

different. He proceeds from the assumption that there are social realities, entities of some kind which can be observed. If he carefully investigates the multiplicity of social facts, he will encounter different social phenomena, typical behavior patterns, and persistent varieties of relationships. These differences are due to the typically different structural principles that make possible the social phenomena, behaviour patterns and relationships.

Thus, when the cultural anthropologist investigates family life in various cultures, an extremely wide variety of empirical data will be encountered. But the variety of facts does not eliminate the single notion of the family as an object of research. Dooyeweerd argues that the "notion of the family" is based upon our intuitive awareness of the enduring structural principle of the family. The structural principle leaves a great deal of room for variety, for different forms of family life, and for a broad zone of human freedom in implementing or positivizing it. But it nevertheless circumscribes this zone of free response. Any family will thus evidently differ in character from a herd, or a market relation, or a state.

It is the specific task of the <u>social philosopher</u> to investigate these enduring structural principles systematically. The <u>empirical sociologist</u>, by contrast, researches into their varying concrete manifestations (III:236). There ought to be a complementary relation of reciprocal dependence between the two. Dooyeweerd holds that all empirical sociological methods are determined

by philosophical presuppositions concerning the ultimate basis of social regularities. These presuppositions exercise a directing influence over the course of research. The empirical sociologist thus ought to be fully conscious of his own philosophical presuppositions even as he researches. But a philosophical investigation of the enduring structures of societal reality cannot be pursued independently of empirical sociology. The enduring structures which it is the task of the philosopher to disclose cannot be theoretically posited in an a priori manner. They are ontic but not epistemological a prioris. Thus they "must be traced in continuous confrontation with empirical social reality" (III:264). Acquiring insight into the structural principle of the state is the specific assignment of the political philosopher; and there will thus be a reciprocal dependence between political philosophy and empirical political science.

The distinction between the invariable structural principles of societal relationships and their variable factual expressions is thus the cornerstone of Dooyeweerd's "transcendental-empirical" method as applied to the social sciences.[23] He declares that

> ...the inner nature of a State, of a university, of a Church, of an industrial enterprise...cannot be identified with the variable and changing factual relationships in which their internal structural types are realized. The latter urge themselves upon man and cannot be transformed by him (III: 171).

Moreover, not all societal individuality structures are realized

or positivised at all times and in all places (III:170). The structural principles hold for reality as principles of possibility, irrespective of whether any particular concrete structure of that type has actually emerged in history. To argue that the latter have an enduring structure established by their structural principles only means that

> ...the inner nature of these types of societal relationships cannot be dependent on variable historical conditions of human society. That is to say, as soon as they are realized in a factual human society, they appear to be bound to their structural principles without which we could not have any social experience of them (III:171).

But in Dooyeweerd's view, it is precisely these enduring structural principles which have been overlooked in modern social theory.

> ...under the supremacy of the methodology of the natural sciences and under the supremacy of the historical attitude, sociology began to eliminate, as a matter of principle, all those constant structures of society, grounded in the order of creation, which in fact make possible our experience of variable social phenomena (Roots:207).

It is on the basis of this notion of transcendental ordering structural principles that Dooyeweerd advances his criticism of the normative/empirical dichotomy prevailing in contemporary social science. Employing a now familiar argument, he avers that societal relationships always presuppose norms without which they cannot even be recognised. It is clear that unless a social scientist can identify a certain reality he can in no way begin

to construct any generalisations concerning its empirical behaviour. Without some notion of its distinctive nature in contrast to other entities, it cannot even be identified as an object of social research.[24] Dooyeweerd makes a similar point in this way:

> If someone seeks to study the state from a sociological point of view, the question of what a state is cannot be eluded. Can one already call the primitive communities of sib, clan, or family "states"? Were the feudal realms and demenses in fact states?....Anyone who discusses monarchy, parliament, ministers, etc., is concerned with social realities which cannot be experiences as such unless one takes into account their <u>authority</u> or legal <u>competence</u>. However, authority and competence are <u>normative</u> states of affairs, which presuppose the validity of social norms (<u>Roots</u>:207-8).

Positivistic social science, however, cannot adequately distinguish different enduring types of societal relationship. For example, the failure to "penetrate behind the social forms to the internal structural principles positivized by them" (III:175) vitiated Max Weber's construction of an "ideal type" of state. Weber's historicistic standpoint only allowed him to take into account the social form of the <u>modern</u> state, thus excluding the possibility of discovering the universally valid, transhistorical structural principle of the state (III:176). Even Georges Gurvitch, who held that an adequate sociology of law required the development of a typology of distinct "frameworks of law", nevertheless constructs this typology only on the basis of the formation of social groups of a particular historical period.

He lacks any distinction between transhistorical structures of the various societal spheres, and the changing forms in which they are manifested (SL:3).

Having outlined the foundations of Dooyeweerd's normative social theory, we now briefly attempt to place him within the tradition of pluralist social philosophy.

## 5. Dooyeweerd as Social Pluralist

### a. Varieties of Pluralism

The concept of pluralism can be interpreted in a variety of ways. Robert Nisbet, for instance, has proposed a definition of social pluralism which embraces such unlikely bedfellows as Aristotle, Hegel, De Tocqueville, Durkheim and Kropotkin.[25] For the purposes of clarifying Dooyeweerd's place in the pluralist tradition, we propose a threefold distinction between different varieties of pluralism. They differ according to the specific societal phenomena which are, or ought to be, plural. First, one might refer to a "pluralistic" society to indicate the variety of religious perspectives freely represented within it. Thus, in contrast to the "monistic" medieval society which was uniformly christian, the modern period is, allegedly, characterized by religious toleration, as a result of which a multiplicity of competing religions, worldviews, and cultural lifestyles can peacefully coexist. Second, one might use the term to refer to a society in which social, economic and political power is widely dispersed. Liberal democracies are often held to be

pluralistic in this sense, since within them a wide variety of associations, interest groups and private organizations can flourish. Typically, this is held to furnish a context within which individual personality can develop and to establish a bulwark against the arbitrary exercise of state power. In this second sense, social pluralism is closely dependent upon the freedom of association.

Thirdly, the term can be used to point to the different types of groups, associations and institutions which ought to be granted free spheres of operation within a society. Thus a pluralistic society in this sense will be one in which familial, social, economic, cultural, religious and political groups have the opportunity to develop according to their own specific nature. In this sense we might speak of a qualitative pluralism.

The earliest modern representative of this third variety of pluralism was the seventeenth-century calvinist Johannes Althusius. Althusius developed a theory of "symbiotic life-communities", social groups and associations, each with their own qualitatively distinct internal nature and bearing its own specific sphere of authority. What makes Althusius distinctive is that these spheres of authority were seen as placing prior limits to the authority of state.

Two quite distinct traditions of modern qualitative pluralism are indebted to Althusius. The first is represented especially by the German social philosopher and legal historian Otto Gierke,

whose notion of the corporate personality of social groups influenced several early twentieth-century English pluralists such as F.W. Maitland and Harold Laski.[26] The second tradition influenced by Althusius is the Dutch neocalvinist tradition of which Kuyper and Dooyeweerd stand as leading representatives. According to Dooyeweerd, Althusius was the first to formulate the central principle of societal sphere sovereignty (III:663). We now turn to an explication of this principle.

b. The Principle of Societal Sphere Sovereignty

Societal sphere sovereignty is the main principle in Dooyeweerd's formulation of a normative, qualitative social pluralism. The ontological foundation for the principle is his theory of the individuality structures of societal relationships. The sphere sovereignty--i.e., the range of authority, rights and obligations--of a particular societal relationship proceeds from and is determined by the typical character of its enduring structural principle. This conception of a qualitative diversity of ontically different societal relationships is "ruled by the Biblical Idea of divine creation of all things after their proper nature" (III:171). Here Dooyeweerd is recalling the notion of creational "kinds" found in Genesis 1. He holds that each societal "kind" is assigned a distinctive task within the order of creation and is structured in a way appropriate to the fulfilment of that task. This sphere of responsibility is also equipped with a distinct domain of authority delegated directly by God.

> Sphere sovereignty guarantees each societal sphere an intrinsic nature and law of life. And with this guarantee it provides the basis for an original sphere of authority and competence derived not from the authority of any other sphere but from the sovereign authority of God (Roots:48).

In introducing the notions of authority and competence we have anticipated a discussion of the specifically juridical expression of the principle of sphere sovereignty. This juridical expression will be the focus of our assessment of Dooyeweerd's account of the scope of the state's authority.

Dooyeweerd's notion of a qualitative plurality of spheres of societal authority is closely related to the traditional calvinist conception of divinely instituted "offices", "callings" or "vocations". Although he rarely uses these terms, nor explicates their pregnant significance in any detail, a similar conception is undoubtedly a basic premise of his social and political theory.

One contemporary calvinist theologian explains it as follows:

> Man is placed in office. By virtue of creation he holds office. Being man means being an officer. Involved in this office is a basic threefold relationship: Man is servant of God, guardian of his fellowmen, and steward of creation. All human life has a built-in deep religious unity to it (which individualism violates). Life is fundamentally of one piece. We can therefore speak in the singular of man's central, integrally unified office. But we can also speak of the multi-dimensional character of life. Man's single office manifests itself concretely in a rich variety of offices (which collectivism

> violates).... Our offices are as many as our tasks, such as being marriage partners, parents, children, students, teachers, ministers, laborers, artists, scientists, journalists, and all the rest. Each of these offices is lodged in one or another societal institution, such as home, school, church, industry...and so forth. Such a social order, formed in obedient response to the creation order, is the normed context for fulfilling our callings in life.[27]

It is such an understanding of societal offices which undergirds Dooyeweerd's principle of societal sphere sovereignty. Each societal structure or relationship has a special mandate, a particular calling identifying the specific destination of its existence. This mandate defines the competence, responsibility and hence rights of the structure or relationship. Different types of societal structure have their own irreducible field of responsibility and are each endowed with an inviolable vocational jurisdiction which sets boundaries across which other structures may not trespass. This jurisdiction simultaneously creates a unique zone of accountability. Societal sphere sovereignty thus denotes the ontologically circumscribed orbit of responsibility, certainty, and obligation pertaining to a societal structure.

The notion of <u>coordination</u> is crucial to the principle of sphere sovereignty. God has "coordained" a variety of mandates to be implemented by humankind. As history progresses, these mandates can be more adequately fulfilled by a plurality of differentiated societal structures whose members are <u>directly</u> accountable to God, not <u>mediately</u> via another hierarchically

superior structure such as the church or the state. Societal structures are thus related to each other in a horizontally coordinate manner, not in a hierarchically subordinate manner.

In this sense, an "emancipatory motif" can be detected in the notion of sphere sovereignty.[28] (Dooyeweerd rarely employs the term emancipation however). Denying a societal structure the opportunity to realise its distinctive vocation is an anti-normative state of affairs calling for rectification. Dooyeweerd does not conclude from this that the <u>state</u> can or ought to be responsible for the complete emancipation of societal structures. Indeed, as we shall see, it is one of the main burdens of his political theory that the state's emancipatory capabilities are strictly limited.

c. The Notion of Enkapsis

So far we have dealt with Dooyeweerd's account of the independent identity of societal individuality structures. We have seen that this independent identity is the presupposition of his central principle of societal sphere sovereignty. A further significant feature of Dooyeweerd's social philosophy concerns his treatment of the intertwinements between these qualitatively distinct societal structures. He terms these intertwinements "enkaptic interlacements". Societal individuality structures should not be conceived of as isolated units capable of self-sufficient existence. Rather, they can only exist in a complex network of interconnections which decisively affect

their factual, historical formation. His theory of enkaptic interlacements is intended to account for these complex interrelationships. The theory of enkapsis is thus an essential corollary of the principle of sphere sovereignty.

Let us consider the following example. A civil marriage ceremony establishes a link between a marriage relationship and the state.[29] In conforming to the state's regulations, the marriage partners enable the state to fulfil its specific public-legal responsibilities for the protection of marriages and marriage partners. A civil ceremony is not, however, the defining feature of a marriage. Marriage is an ethically, not a legally qualified relationship. In a civil ceremony the state does not create the marriage but only registers it for the purpose of public law. At the same time the ceremony brings the marriage within the bounds of public law and thus limits the freedom of action of other persons towards the marriage (no one else can marry either partner) and of the partners towards each other (they may not arbitrarily divorce each other). Dooyeweerd refers to this state of affairs as an enkaptic interlacement between a marriage and the state. In this interlacement, the marriage retains its independent structure and internal freedom, while being limited by the public law of the state. The state regulates the marriage enkaptically (i.e. externally) while leaving its internal ethical structure intact. The marriage does not become a part of the structure of the state in the way that a province,

municipality or government department is a part. A province, for example, shares the same public-juridical qualifying function as the state of which it is a part, while the marriage retains its own ethical qualifying function. On the basis of this example we can now examine Dooyeweerd's conception in more detail.

The notion of an enkaptic relationship, like that of an individuality structure, has general ontological significance in Dooyeweerd's system. Enkaptic interweavings are a necessary feature of the existence of all structures of individuality. No structure can be seen as entirely self-sufficient, or "absolutised" (III:627). Dooyeweerd uses the term enkapsis to refer to the intertwinement of individuality structures of <u>different</u> qualification, e.g., a legally qualified state and our ethically qualified marriage. He clarifies the notion by distinguishing it sharply from the relationship of a structural <u>whole</u> to its various <u>parts</u>. Unlike the two <u>relata</u> in an enkaptic relationship, both a whole (or "individual totality") and its parts share the same structural principle.[31] A part is always and only a part <u>of a whole</u>, just as a province is part of a state. The part always stands in a relation of dependence upon the whole in which it plays the "part" assigned to it by the structural principle of the whole (III:638). A part has only a "relative autonomy": the degree of this autonomy is entirely dependent upon the needs of the whole in which it participates. The powers of a municipality are determined by the requirements of the state as

a whole. (We shall see that the contrast between the whole-part relationship characterising the position of a municipality or province vis á vis the state, and the enkaptic relationship characterising the bond between the state and non-state societal structures is of great importance in Dooyeweerd's notion of public justice.)

A part cannot exist without the whole in which it operates. In an enkaptic relation, by contrast, the two relata retain their possibility of independent existence. Their internal structural principles are not absorbed into one another. In spite of the external relationship obtaining between them, they maintain their sphere sovereignty (III:639). What then does an enkaptic relation consist of? In an enkaptic relation more is involved than the mere interconnection of two structures of individuality. This is why Dooyeweerd uses the terms "interlacement", "interweaving" or "intertwinement" to denote its peculiar character. Such a relation consists of the "encapsulation" of one individuality structure within the field of functioning of another. The "encapsulated" structure, although not subsumed by the encapsulating structure, is nevertheless made subservient to the latter. The encapsulated structure performs a specific function within the encapsulating structure. In the case of a civil marriage ceremony, the marriage performs the function of enabling the state to create a framework of public law. Dooyeweerd says that the marriage performs an "enkaptic function" within the

state. The state "binds" the marriage in the interests of public justice.

The concept of "binding" is employed frequently by Dooyeweerd in his treatment of the relation between the state and non-state societal structures. It implies a limitation on the range of independent activity of the encapsulated structure, but this limitation must strictly be of an external nature. The sphere sovereignty of the encapsulated structure ought to be fully respected in a genuine enkaptic interlacement.

d. Societal Categories

A final feature of Dooyeweerd's account of societal individuality structures requires brief mention. In addition to the distinctions between societal relationships made on the basis of their typical qualifying and founding function, Dooyeweerd introduces a further class of distinctions which he terms "transcendental societal categories" (III:176-191). Their purpose, he states, is to give a "systematic survey of the various structural types of societal relationships" (III:176). They supply a general classification of societal structures according to four pairs of categories. All societal structures can be grouped according to whether they are first, "communities" or "inter-individual or inter-communal relationships"; second, "organized" or "natural" communities; third, "differentiated" or "undifferentiated"; and fourth, "institutional" or "voluntary".

Communities and Interlinkages[32]

The core difference between "communities" and "inter-individual or inter-communal relationships"--which we will abbreviate as "interlinkages"--centres on the distinction between social unity and interrelational coordination. Dooyeweerd writes:

> By "community" I understand any more or less durable societal relationship which has the character of a whole joining its members into a social unity, irrespective of the degree of intensity of the communal bond.
>
> By inter-individual or inter-communal relationship I mean such in which individual persons or communities function in coordination without being united into a solidary whole. Such relationships may show the character of mutual neutrality, of approachment, free cooperation, or antagonism, competition or context (III:177).[33]

Since marriage, for example, is a community, competitive interaction between marriage partners which is characteristic of market relations, is structurally inappropriate. Such competitive interaction would violate the ethical solidarity which a marriage is intended to exhibit.

Although structurally irreducible, communities and interlinkages nevertheless presuppose one another: "...every communal relation has a counterpart in inter-communal or inter-individual relationships, and conversely" (III:178). Wherever intra-communal relationships exist, interlinkages will also be found.

What Dooyeweerd means by this is simply that wherever communal wholes such as families or business enterprises exist, there will also be relationships between such different communities (i.e.

inter-communal relationships) and relationships between individual members of such communities (i.e. inter-individual relationships). In such inter-communal relationships, the two distinct communal wholes do not merge into a single whole; and in such inter-individual relationships the two individual persons do not form a community.

Dooyeweerd draws an important implication from the correlation between communities and interlinkages. He argues that the full significance of the human person can never be exhausted either in his position as a member of a communal whole, or in his status as a discrete individual. This is the basis of his rejection of the twin poles of sociological individualism and sociological universalism (or collectivism) which have characterised two opposing trends throughout the history of western social thought. Both poles are guilty of violating the given structures of human society (III:183). The attempt to reject simultaneously both of these extremes has also been a common feature of other pluralist social philosophers. On the one hand, sociological individualism implies an absolutisation of inter-individual relationships. It seeks to

> ...construe society from its supposed "elements", i.e. from elementary interrelations between human individuals. From this standpoint the reality of communities...as societal unities is generally denied. The latter are considered only as fictitious unities resulting from a subjective synthesis of manifold inter-individual relations in human consciousness (III:182).

Individualism cannot accept that societal communities are governed by their own structural principles. Denying their ontic status, individualism is unable to account for our ordinary experience of communities as genuine wholes. "As soon as it is attempted to construe a community from elementary relations between individuals, the whole dissolves itself into a plurality of elements and its structural principle is lost sight of" (III: 183).

For Dooyeweerd, the embeddedness of the human person in a network of communal relationships is constitutive of human creatureliness (V:211). This fact has important juridical implications. He readily acknowledges that the recognition of the legal subjectivity of the individual person apart from his membership in any communal relations is the precondition for the emergence of individual civil rights and freedoms. But when individualism attempts to construct communal relationships out of atomistically conceived autonomous individuals, it

> ...forgets that the civil legal personality is only a specific component of the full legal subjectivity. This latter is equally constituted by the various internal legal relationships implied in the membership of various communities (III:280).

Like individualism, universalism is an arbitrary theoretical fiction, an "a priori philosophical construction" imposed against the impulses of ordinary experience. Sociological universalism absolutises communal relationships, conceiving of society as an all-embracing whole encompassing all specific societal relation-

ships as its parts (III:163). Although universalistic social theorists may conceive of a particular society or national community as the highest communal whole, its consistent outworking implies the assumption of an "all-inclusive temporal community of mankind" (III:167).[34]

In Dooyeweerd's estimation, universalism is much more dangerous than individualism, since "it is in principle a totalitarian ideology which implies a constant threat to human personality "(III:196). He argues that one should not be deceived by the superficial attraction of the organic metaphor often employed by universalist thinkers, with its suggestion of human unity and harmony, as opposed to the supposedly "mechanistic" cast of individualism (III:196).

> The truth is that the human I-ness transcends every temporal societal relationship and that it is therefore impossible to conceive of the human person in its totality as an "organic" member or "part" of a temporal societal whole (III:196).

Although Dooyeweerd engages in sharp criticism of the destructive consequences of individualism (III:595-6), it is clear that he conceives of universalism as presenting the greater threat in the twentieth century. We shall see that, especially regarding his view of contemporary developments in relations between state and industry, the danger of universalistic influences was one of his major concerns.

Natural and Organised Communities

The second category Dooyeweerd introduces distinguishes between those communities which have a foundational function in the historical aspect and those founded in the biotic aspect. The latter, denoted as "natural communities" include marriage, the nuclear family and the extended family, while the former, "organised communities", embrace a wide variety of typical structural features, and include states, churches, businesses, and voluntary associations of many kinds.

Natural communities are "founded in nature" (III:405), which means that they exist on the basis of possibilities given in nature rather than constructed by deliberate human shaping. By contrast the existence of organised communities presupposes this factor of human shaping. It is incorrect to conceive of human shaping, or organisation, as a "universal property" of all human communities, as do some social theorists. One political implication of this distinction is that it implies a rejection of "organicist" theories of the state according to which the state is viewed as evolving from a natural foundation, and seen as "a supra-individual being which historically develops from a natural community after the pattern of the growth of a natural organism" (III:406). Such a conception entirely overlooks the factor of human shaping, or "controlled formation", which, as we shall see, is Dooyeweerd's denotation of the core of the historical aspect. Dooyeweerd points to the factor of organisation which

guarantees the continuing identity of communities such as state, church, voluntary organisation and so on. The persistence of their cohesion as communities depends upon the continuation of human organisation.[35]

Differentiated and Undifferentiated Societal Relationships

Dooyeweerd's third societal category distinguishes societal relationships according to their level of historical development. The historical development of societal relationships is characterised by a process of "differentiation", consisting of the "free unfolding of the structures of individuality in human society" (III:261). In this process each typical structure comes into its own and realises its particular societal calling. In an undifferentiated culture, Dooyeweerd writes, the entire life of persons was "enclosed by the primitive, or undifferentiated bonds of kinship...tribe or folk, which possessed an exclusive and absolute religious sphere of power" (Roots:74). In this situation, the structural principles of the various societal relationships could not freely exhibit their own typical characteristics.

According to the "norm of historical development"[36] calling for a differentiation of these societal spheres, there gradually occurs a "branching out" of culture into the intrinsically different power spheres of science, art, the state, the church, industry, the school, voluntary organizations, etc..." (Roots:79). This norm of historical differentiation is rooted in the creation

order,

> God has created everything according to its own inner nature; and in the temporal order of genesis and development this inner nature must freely unfold itself. This holds good with regard to the structures of individuality, determining the inner nature of the different typical spheres of human society (III: 261).

These typical spheres come into their own as a result of new initiatives in human formative shaping, whereby the various (post-historical) qualifying functions of societal relationships acquire independent realisation (III:275). In this way, economically qualified business enterprises are organized; juridically qualified states emerge, and socially qualified associations of numerous kinds are formed.

The principle of sphere sovereignty and the correlative notion of enkapsis presuppose a differentiated society. With respect to the state, this means that no genuine state can exist in an undifferentiated society. Indeed, the emergence of genuine states is a touchstone for identifying the transition from an undifferentiated to a differentiated society.

Institutions and Voluntary Associations

The fourth categorial distinction divides "institutional communities", of which a person is a member for life, from those in which membership can voluntarily be entered into and relinquished. In the former category, Dooyeweerd places marriage, family, state and church. In the latter category are included a

multiplicity of organised communities such as business enterprises, labour unions, cultural societies and so forth. As we shall see, the distinction between institutional communities, in which membership is for life, and voluntary associational communities is basic to Dooyeweerd's notion of political sphere sovereignty.

In terms of these four categorial distinctions, Dooyeweerd characterises the state as a differentiated, organised institutional community. We should note that this is not a characterisation of its structural principle, but only locates it in terms of general societal classifications. Each of these classifications plays a role in his conception of the sphere sovereignty of the state. To gain insight into this structural principle we need to investigate Dooyeweerd's analysis of its two outstanding functional characteristics, namely, "power" and "justice".

## SECTION III: THE NORMATIVE STRUCTURE OF THE STATE

### 6. The State as a Structural Whole

As we have seen, any individuality structure--whether thing, event or relationship--exhibits all of the modal aspects of reality in its concrete existence. Each functions in all of the aspects simultaneously and coherently. This is true of all societal relationships, and the state is no exception. We shall explicate the meaning of the power foundation and the public-juridical qualification of the state in due course. First, however, we note the multifunctional character of the state as a structural societal whole.

The two outstanding components in the structure of the state, power and justice, cannot be abstracted from its other components. Each of these components contributes in its own way to the total structural identity of the state (Cf. III:467-508). Although power and justice are the outstanding features of the state, none of its other modally distinct functions are dispensible. Thus the state is far more than a relationship between power and justice. It is a structural whole which functions multimodally according to a structuring principle in which justice plays the leading role, and power the supporting role.

Thus, for instance, the state displays a <u>spatial</u> aspect. Space as a modal dimension is experienced in widely different contexts. In political life, space is encountered as territoriality which establishes boundaries of political jurisdiction

(III:499). The physical dimension of the state is its natural configuration of land, sea, climate and so forth, which together provide the environmental precondition for political life (III: 500). Dooyeweerd holds that the state functions socially in the various forms of social interaction between government and citizens, and between different organs and levels of government. This social dimension is displayed, for example, in public ceremonies, and in the honouring of national symbols, each of which contribute to the internal integration of political life (III: 485). In interstate relations, the social aspect is exhibited in forms of diplomatic courtesy (III:486). The aesthetic aspect, as a final example, is expressed in the (dis-)harmony characterising the relations between different branches of government, (the "balance of powers"), or between government and citizens (III:479-80).[37]

While each of the modal aspects of the state is indispensible in its structural principle, and therefore represents a necessary feature of its concrete functioning, two of these functions, the qualifying and founding functions, play an outstanding role within the whole constellation of modal functions. We have also seen that power (rooted in the historical aspect), and justice (rooted in the juridical aspect) represent, respectively, the state's founding and qualifying functions. Before entering into a detailed treatment of these two functions, we need to note a significant methodological principle on which Dooyeweerd

proceeds in his investigation of the structural principle of the state. We saw earlier that, according to his transcendental-empirical method, it is only possible to detect the enduring structural principle of an individuality structure "in continuous confrontation with empirical reality". So we would expect empirical evidence taken from the history of political life to feature prominently in Dooyeweerd's analysis. This is indeed the case, as we shall see.

In addition to this practical empirical evidence there is also the evidence of the history of theoretical reflection on political life. The structural principle of a particular societal relationship delimits what can actually be experienced in factual life; it also circumscribes the activity of theorising about this factual reality. The structural principle of the state, for example, creates a normative framework of which political theory must necessarily give account in some fashion, whether accurately or erroneously. Since theoretical reflection on the state or any societal relationship must ultimately be based upon empirical realisations of its enduring structural principle, then the shape of this normative structure must be reflected in the history of such reflection. Taking the entire history of western political thought in view, its central and recurring problematics can be seen as resulting from attempts to give account of the structural principle of the state.[38]

This is the background to Dooyeweerd's claim that there has been a persistent "dialectical basic problem" at the root of the

dominant traditions of political thought since the Greeks. For Dooyeweerd, a theoretical dialectic consists of an inescapable contradiction between two poles within a debate, which, given the underlying presuppositions of the debate, are both necessarily asserted. Although manifesting itself in widely differing historical, philosophical and religious contexts, the continuing problem in political theory concerns the coherent relationship between the two dominant factors in political experience, the need for power and the demand for a justly ordered society. This problem has been traditionally expressed in terms of the relationship between "might" and "right" (III:397). The problem is a dialectical one because "might" and "right", though both essential for the political order, are viewed as inherently in conflict with one another.[39] Nevertheless, in Dooyeweerd's view, the very presence of the two poles of the dialectic testifies to the fact that power and justice, or "might" and "right", are indeed the outstanding components in the state's abiding structure.

At times, both poles of the dialectic can be seen within one theory of the state, conjoined in unstable tension. Or again, political theories may emphasize one pole to the exclusion of the other, but in doing so they call forth their polar opposite, which is then theoretically developed in a dialectically exaggerated and onesided manner (III:397-8). For Dooyeweerd, however, a correct appreciation of the peculiar nature of the "might" of the state and its "right", and their full coherence in the

state's structural principle, should be the principal concern of a normative political theory.

The two poles were already recognised within Plato's theory of the state. This can be seen from his acknowledgment of two political classes within the polis, namely the philosophers, who rule according to the idea of justice, and the warriors, who represent the coercive power foundation of the state. Dooyeweerd comments that this combination "implicitly recognizes the two peculiar structural functions that will appear to be radical-typical for the State..." (III:381).

The "polar contrast" between "might" and "right" has also dominated modern humanistic political theory. In its early period, the absolutist and natural rights theories conflicted with each other. The "naturalistic theory of 'Staatsraison'" emphasizing the "might" pole, came into conflict with the "abstract natural-law" conception which was concerned to provide a normative foundation for the "right" of the state. And in the contemporary period, the "individualistic, democratic law-State" conception with its concern to secure a just basis for the state, has been pitted against the "universalistic, authoritarian power-State" theory, revealing again the "dialectical basic problem" (III:398). Nevertheless, in spite of the irreconcilable tension in humanistic political theory, the persistent appearance of both components testifies to the fact that both are essential in the enduring structure of the state.

Dooyeweerd lays great store by these pointers within the history of theoretical reflection on the state. Indeed, although supplemented by evidence from practical political developments, he takes them as decisive confirmation of his identification of the two radical functions of the state.

> In order to find the radical type of the state, the obvious method is for us to concentrate on those two functions in the structure of the body politic whose mutual relation proved to be the dialectical basic problem in the theories rooted in the immanence standpoint. We cannot possibly believe that in this dialectical basic problem the historical function of power and the juridical function would have been so constantly emphasized, if they really did not have the meaning of radical typical functions of the State...(III:411).[40]

Having discussed Dooyeweerd's general method of discovering the essential components of the structural principle of the state we are now ready to assess his detailed characterisation of these two components.

## 7. Power

### a. The Nature of Power

Power is the key component in the founding function of the state. Since Dooyeweerd's account of political power presupposes his conception of power as such, we must first briefly discuss this conception.

For Dooyeweerd, power is to be characterized as "historical power"; it is rooted in the historical aspect of reality. Dooyeweerd does not use "historical" in its usual sense. For him, the

"historical" way of being of a thing is not (what would normally be termed) its historicity or datedness.[41] Rather it is its "cultural" dimension. The cultural way of being of a thing refers to its deliberate human shaping or forming. Earlier we saw how the modal aspects are mutually irreducible. Dooyeweerd also posits that within each mode there is a kernel or core[42] at the heart of its structure. It is this core which primarily determines the irreducible character of the mode. For instance, the core of the physical mode is "energy", that of the psychic mode is "feeling", and that of the logical mode is "distinction". Dooyeweerd denotes the core of the historical or cultural mode variously as "command", "control", "mastery" or "free formative power" (II:195). With these terms he is referring to the distinctively human capacity to give shape to things, events or relationships according to a freely chosen plan; or, alternatively, to the human capacity to organize. Cultural formation is different from natural formation--as in glacial erosion or the construction of a spider's web--for three reasons. First, human freedom is always present in cultural formation; second, cultural formation can be exercised both over things and over persons (II:198); and, third, it is subject to normative limits. The wielder of culturally formative power has a "normative task and mission in the development of human civilisation either to guard or mould culture further, in subjection to the principles laid down by God" (II:248).

Dooyeweerd therefore rejects the view of those christian

theologians who, misled by the identification of power with brute force, conceive of power as intrinsically evil (Roots:66); and the view of those who regard power as having been introduced into the world only because of sin. Rather, rooted in the original creation, power

> ...implies a historical calling and task of formation for which the bearer of power is responsible and of which he must give account. Power may never be used for personal advantage, as if it were a private possession. Power is the great motor of cultural development. The decisive question concerns the direction in which power is applied (Roots: 67).[43]

This direction is determined, inter alia, by the normative structural principles of the societal relationships. These structural principles establish the channels through which formative power should be exercised, directing its use towards the realisation of the specific character of a particular societal relationship (II:244). Thus, while formative cultural power is a universal modal norm, its expression is always governed by the structural principle of the various societal relationships in which it is manifested (Cf. II:275).

This is an appropriate point to introduce a further notion in Dooyeweerd's modal theory, concerning the intersection of the two axes of the law structure of reality, the modal and the individual. As we indicated, modal aspects do not "exist" as do things, events and relationships. They are modes of existence, the ontic strata within which things, events and relationships

function. While the latter manifest all the modal dimensions, the actual expression of these dimensions differs according to the typical structure of thing, event or relationship in view. In the previous chapter we noted that while the spatial aspect is exhibited in all manner of contexts, it is experienced politically as "territory". It is also encountered economically, for instance, as the extent of a market. Dooyeweerd refers to the specific manner of expression of a modal aspect within different structures of individuality as the "individualisation" of the mode. Since such individuality structures belong to certain types, he thus also speaks of the "typical individualisation" of a mode, or to "modal types of individuality" (III:423).

The notion of modal individualisation is significant in his account of the qualitative difference between the state and non-political societal relationships. Specifically, it provides a way of distinguishing between the differences in the founding functions of various relationships. Dooyeweerd holds that the historical or cultural mode is individualised in typically different ways in each of the organised or historically founded communities. This is what Dooyeweerd intends. In an earlier context we noted that all organised communities are based in the historical modality of power. From the modal vantage point this means that the historical or cultural mode is individualised in the various organised communities. Formative power lies at the foundation of all of them, but in "typically" different structural constellations. Since formative power or organisation always

appears as the power of a corporation, of a church, or of a state, it will assume quite different characteristics according to the structural principles of a corporation, church or state.

We have seen that the factor of organisation distinguishes the state from all natural communities. This only identifies it in terms of general societal categories. We can further identify it according to the specific type of organisation upon which it is founded. Because "...the word 'organization' must derive all its structural meaning from the individuality structure of an organized community" (III:410), we have to look to the structural principle of the state to identify its characteristic form of organisation or power. Organisation or formative power is thus individualised in ways specific to each organised community. The very nature of the organisational foundation acquires a qualitatively different character according to the typical structure in which in appears. There will thus be radical differences between church organisation, business organisation and state organisation (III:411). The same could be said substituting the term "power" (III:413). As we shall see, Dooyeweerd insists that the uniqueness of the power of the state must be recognised if one is to avoid confusing the state with non-state societal relationships. Let me then turn to Dooyeweerd's conception of political power.

b. The Nature of Political Power

The identification of the historical or cultural aspect as that modal aspect within which the state is founded thus needs to be supplemented by an analysis of the specific type of organised power typical of the state. It is necessary to discover the specific "individuality type" displayed in the state's historical foundation. Dooyeweerd defines the founding function of the state as the "monopolistic organisation of the power of the sword over a particular cultural area within territorial boundaries" (III:414). He is referring to the exclusive control of the police and military apparatus by a single authorised agency within a specific geographical area, that is to say, a territorial monopoly of coercion.[44] In his view the establishment of such a monopoly of (potentially lethal) physical coercion[45] is the indispensible precondition for the emergence and continued existence of a territorially delimited political community. The territorial monopoly of physical coercion is the decisive conditio sine qua non for a genuine state. In this sense it performs a foundational function in the concrete life of the state.

We should continually bear in mind throughout the following discussion that a territorial monopoly of physical coercion can never be an end in itself. It is only the foundation of the state, not its destination. It is intended to make possible the formation of a public-legal community in which public justice is to serve as the guiding norm of all political activity.

We shall discuss the central notion of public justice in detail in due course, observing how the public character of the state's juridical qualification gives the state its unique character. But the notion of the state as a public office is present already at this stage in Dooyeweerd's discussion. Dooyeweerd argues that a genuine res publica[46] could not arise in the context of medieval feudalism because political power was regarded as a private possession.

> Government power could be traded in: [was een zaak in de handel] it was not a public office in the sense of a res publica. The sovereign lords could freely dispose of it. Once in the hands of private persons or corporations it had become their inviolable right. Hence medieval autonomy always implied the exercise of governmental power on one's own authority, which did not even change with the rise of the political estates. In this undifferentiated condition of society, in which notably the organised guilds covered all spheres of human life, a real state could not be developed (CCS:6).

The emergence of the state as a res publica as opposed to a res in commercio thus presupposed the dissolution of these undifferentiated political forms.

> Wherever a real State arose, its first concern was the destruction of the tribal and gentilitial political power or, if the latter had already disappeared, the struggle against the undifferentiated political power formations in which authoritative and private property relations were mixed with each other. Irrespective of its particular governmental form, the State-institution has always presented itself as a res publica, an institution of the public interest, in which political authority is considered a public office, not a private property. (III:412).[47]

Dooyeweerd cites the example of the success of the Carolingians in overcoming the feudal retrogression which occurred in the Frankish kingdom of the eighth century and earlier (II:252). In this case, a threat of foreign invasion and a domestic threat in the formation of a private cavalry by powerful Frankish seigneurs were simultaneously overcome by the compulsory incorporation of these private vassals into the Frankish army. This, in Dooyeweerd's judgment, stands as a paradigm of the normative monopolisation of the "power of the sword" over a territorial area.[48]

In this as in all other instances of the normative realisation of a genuine state, political power had to be brought under the exclusive jurisdiction of a single governmental agency in order that the government could render truly public service. There is thus a direct relation between the public character of the state and its foundation in a monopoly of coercion. The differentiation of the state as a distinct societal structure with its unique qualification as a public office could only take place within that territory. If the state were to fulfil its divine calling as a public office, the means of physical coercion wielded by competing power groups within a certain geographical area had to be wrested from them and transferred to a single political centre which henceforth carried the monopoly of governmental power. While the mere centralisation of political power is not a sufficient condition to guarantee the public character of the state's activities, (for monopolised power might be

employed for private benefit), it is clearly a necessary one. The notion of public service, or public office,[49] requires the promotion of the interests of all impartially within a certain territory rather than the partial concerns of a few. This can only be achieved where a single agency exercises ultimate responsibility for the adjudication of conflicts of interests. The exclusivity of this responsibility is required in order that a government can serve everyone inclusively within its allotted territory. As we shall see later, the notion of territorial inclusivity (our term), is crucial in Dooyeweerd's understanding of the justice responsibilities of the state. A genuine state can only exist where there is no preference for the interests of persons on the basis of their membership in a specific exclusive group or community.

The public character of the state, its inclusive responsibility for all within a territory, requires that it secure a monopoly of coercive power within this territory. The prejudicial promotion of private interests by means of governmental power in an undifferentiated situation could only be secured by means of privately exercised coercive power. Consequently, any body seeking to represent the interests of all within a territory, any genuine res publica, was required to match power with power and win exclusive control over the means of physical coercion.

We have seen then that for Dooyeweerd there is a direct

connection between the public character of the office of the state and its foundation in a territorial monopoly of physical coercion. Because the state is the only societal structure which has a public character, no other structure can be founded on such a coercive monopoly.

For Dooyeweerd, coercive monopoly is an invariant, divinely given structural feature of the organised power of the state. It is this feature which decisively distinguishes the organised power of the state from the organised power of any other community. No other community is founded on this specific type of power. The territorial monopoly of physical coercion is foundational only for the state.

It is important to note here that the "power of the Sword", although it is "historical", formative power, is nevertheless also a physical kind of power. The state has a territorial monopoly of the means of lethal <u>physical</u> coercion, not, for instance, psychological or moral influence or rational persuasion or economic leverage. Here we encounter an example of what Dooyeweerd describes as an "analogical moment". This notion now requires brief elucidation. An analogical moment or analogy is a specific instance of the intersection of two modal aspects within one of the functions of a concrete structural whole. We have seen that the core of a mode is the controlling centre which determines the specificity of its modal character. But, conceived in an abstract sense, a modal core is "surrounded" by

analogical moments, which Dooyeweerd distinguishes as "anticipations" or "retrocipations". An example of an anticipatory analogy is the phenomenon of "economy of thought" or "logical economy". In this phenomenon, the logical mode can be conceived of as "reaching upward" or "anticipating" the economic mode. In itself, economy of thought is not essentially economic in character, but logical. It is a manner of thinking in an economic or "frugal" way, of developing ideas with the least possible waste of mental effort. Within this example of logical functioning, evident especially in logical syllogisms, a certain economic "moment" is present.

"Physical power" is another example of an analogical moment. It is an instance of an "historical retrocipation", a "reaching down" of the historical mode, the core of which is formative power, to the physical mode. In Dooyeweerd's view, the state is able to bring about cultural formation because it has exclusive control of the means of physical coercion. Dooyeweerd does not, in fact, draw attention to this physical component in his account of the state's founding function, but it is clearly present. The state can form human social activities because it can, ultimately, force people physically to act or not to act in specific ways. However, although the actual instruments of military and police apparatus are in themselves physical, their organised employment by the state constitutes what Dooyeweerd calls historical power.

There are, nevertheless, many different forms of power, each of them representing a specific analogical moment in the historical aspect, whether anticipatory or retrocipatory: the emotional power of a rousing orator; the power of a lucid argument; the power of industrial capital or organised union labour; the power of faith, and so forth. This point must be kept in mind in the following discussion.

Anticipating the objection that, while a monopoly of coercive physical power may be a necessary condition for the existence and maintenance of a state, it is not a sufficient condition. Dooyeweerd acknowledges that there are indeed other forms of power which are also necessary for the state, such as the "moral convictions of the people", or sufficient economic means to assert its power (III:416).

> ...the typical foundational function in the structure of the State is not self-sufficient....
>
> ...in a way State-power is all-sided. For as regards its historical aspect, the State is not merely the organized power of the sword over a particular territory. If the State did not have at its disposal typical economical, moral, pisteutical and other forms of power, it would even be impossible to form a military organization (III:416).[50]

Yet, warning against the fundamental error of conceiving of all different forms of power as essentially equivalent components of the power foundation of the state, Dooyeweerd insists that the territorial monopoly of physical coercive power fulfils a peculiarly decisive role in the life of the state.

> None of the other forms of power is in itself typical of the State. The monopolistic organization of the power of the sword is the only typical form which is not found as a foundational function in any of the other differentiated societal structures. The other forms of power, insofar as they are really internal forms of State-power, are themselves only intelligible from the structural principle of the body politic, which implies a monopolistic military organization as its typical foundational function (III:416-7).[51]

We already encountered the important internal/external distinction in discussing Dooyeweerd's notion of enkaptic relationships. In essence, the word "internal" means, quite simply, "that which pertains to or derives from the structural principle of a thing, as it is characterised by a qualifying and founding function". The point Dooyeweerd seeks to establish in speaking of "internal forms of State-power" is that, although various forms of power are indispensible to the functioning of the state, as forms of state power they can only derive their political character from their subordinate relation to the structural principle of the state, in which the territorial monopoly of coercion is foundational. If this is the case, it constitutes evidence supporting his claim that a coercive monopoly is foundational.

An example of what Dooyeweerd means here is the economic power which the state acquires by means of taxation. Here, resources which are essentially of an economic kind are compulsorily secured by the state on the basis of its coercive sanction. No other societal structure has this capacity to compel the way in which certain originally private economic resources

are used. Thus the economic power of the state is to be understood not simply as economic power, but as political-economic power. It is economic power serving ends typical of the state, on the basis of means typical of the state. It is thus an internal form of state power.

By contrast, an example of a form of power external to the state would be the economic power of an independent business corporation (or of a private person). Such independent economic power could indeed play an important role as a source of political-economic power, perhaps by raising the general tax yield of a nation. But, insofar as such economic resources are harnassed for state purposes, they cross the boundary marking off the external from the internal functioning of the state and thus "necessarily assume the internal individuality structure of the latter" (III:417). That which is internal is so because it takes its functional "cue" from the structural principle of the state, in which coercive power is foundational.

The physically coercive character of the state thus distinguishes it decisively from all other societal relationships. The typically ecclesiastical power of the church, for instance, is "the power of the sword of the Divine Word" (III:536-9). Although the church, like the state, possesses other kinds of power, economic, juridical and so on, "the power of the Christian faith is the typically internally qualifying form of the organised power of the Church according to the ecclesiastical structural principle" (III:538).

A further contrast is that between the foundations of the state and political party. While both are historically founded communities, "...a political party is not founded in the power of the sword, as is the State..., but only in that of political *conviction*" (III:609-10). *While the qualifying function of a* political party is the moral solidarity binding the members together into a communal whole, this solidarity is founded upon the compelling force of shared political convictions, a force which accounts for its continuing identity. A political party can never legitimately exercise coercive measures to bind its members to party policy.

The distinctive foundational functions of church and state also come to expression in different kinds of authority they bear. Ecclesiastical authority is characterised as "service", while that of the state is "dominion" since it is reinforced by the threat of coercive sanction (III:544ff.). Political authority is characteristically coercive authority, he indicates. In contrast to authority within all non-political relationships, authority in the state is "governmental authority over subjects enforced by the strong arm" (III:435).

> ...the legal organization of the body politic, in its typical authoritative character, remains indissolubly founded in the historical organization of territorial military power. Apart from the latter, the internal public-legal order of the State cannot display that typical juridical character which distinguishes it from all kinds of private law (III:436).[52]

Dooyeweerd's case for the distinctiveness of the power foundation of the state rests ultimately on historical evidence:

> ...there never has existed a state whose internal structure was not, in the last analysis, based on organized armed power, at least claiming the ability to break any armed resistance on the part of private organizations within its territory (III:414) (our emphasis).

This is the decisive empirical historical conclusion which supplements the evidence supplied in his survey of the "dialectical basic problem" in political thought.

As we noted, the exercise of historical power is always to be seen as a normative task. This applies also with respect to political power. The typical historical foundation of the state is "a normative structural function, implying a task, a vocation which can be realized in a better or worse way" (III:414). The norm indicated here is nothing other than the effective achievement of a monopoly of coercive power over any challengers. We should note that, in speaking of the normative use of political power, Dooyeweerd is not referring to the fact that the founding function must remain subservient to the leading of the state's juridical function. And we should add also that he does not conceive of the state as having an a-normative "factual" power base which is set over against a normative juridical qualification,[53] for this would be to lapse back into the very "dialectical basic problem" which he is seeking to overcome. Rather, the power foundation of the state is governed by its own intrinsic norms. At this point he is indicating that the attempt to secure a

political power monopolization over a particular territory should succeed, as was the case with the Carolingians. If they had failed, a feudal order would have continued, and a genuine res publica could not have been formed.

Dooyeweerd is quite emphatic that the invariable component in the foundation of any genuine state is this coercive monopoly within a territory.

> In its transcendental character, this foundational function cannot be eliminated from the structure of the body politic which [first of all] makes all real variable life of the State...possible and is itself invariable, constant, in the cosmic order of time. No "idealistic" theory has been able to reason away this structural foundation of every real State. The "metaphysical essence" of the body politic could be sought in the "idea of justice", or in the idea of a perfect community...but the basic function of the historical power of the body politic could not be ignored consistently. This structural function is essential in every positive historical form in which the State has manifested itself in the course of time... (III:420).

This military organisation of power may in some cases have been undermined by rival military organisations within a state's territory; or a newly formed state may have established a coercive monopoly only in part of its claimed area of jurisdiction. But, Dooyeweerd argues, "all these really variable situations do not detract from the universal validity of the normative structural principle of the State, which implies the territorial monopolistic organization of military power as its typical foundational function" (III:420-1). Even if a revolution successfully

challenges this power, the first task of the victorious revolutionary government is to master the military apparatus, "either with sanguinary or with bloodless means" (III:421). The importance which Dooyeweerd attaches to the indispensability of military might for the existence of genuine states is striking. As a foundational function it assumes pride of place in the list of imperatives set before a state.

> Before all else the state ought to obey the historico-political norm to actualize and maintain the typical foundation of its legal existence as an independent power. If the state fails to protect this foundation it does not deserve independence. Thus Hegel's claim that a nation proves its right to exist in war and that history reveals a "higher justice" contained a moment of truth (Roots:88).

So far we have followed Dooyeweerd's discussion of the founding function of the state without a detailed consideration of the subservience of this function to the state's leading function. It is, however, impossible to give a full account of the founding function of any individuality structure without taking into account the entire structural principle (III:418). Now we turn to the intimate relationship, the "indissoluble coherence" between the two outstanding functions in the structure of the state.

The central point in this regard is that while political power always remains genuine power, it must always serve the juridical leading function of the state. Power never bears its own justification. Contra Hegel and other historicists,

"...historical might can never be identified with legal right" (Roots:89). Precisely because it is a founding function, the power of the state must necessarily serve some further destination than the mere establishment of a coercive monopoly. The achievement of a territorial monopoly of coercion is indeed a normative task in its own right, as we saw. But its normative character also consists in the fact that it is intended to make possible the pursuit of the state's leading juridical function. As we remarked earlier, the function of power in the state cannot be understood unless account is taken of that which it is supposed to found (III:419).

We can express the relation of subservience of the state's founding function to its juridical qualifying function by saying that political power "anticipates" justice. Power is "opened up" in the service of justice in the structure of the state. This is in essence what Dooyeweerd means when he states that "...the military organization of the State displays an opened, anticipatory structure that cannot be explained in terms of merely armed control" (III:422).

The power of the state must always remain in the service of the state's overriding responsibility for the establishment of a just legal order. Otherwise, it would "degenerate into an organized military gang of robbers" (III:434). But this subservience of the territorial monopoly of coercive power to the guiding norm of justice does not in any way eradicate the

intrinsic nature of this power as power. A function does not compromise its irreducible character when it "anticipates" or is "opened up" by another. The power of the state, even in its service of justice, is never transmuted into anything other than genuinely historical, formative power.[54] In this way Dooyeweerd attempts to hold together a recognition of the indispensibility of power in the state and a concern to harnass power under the reins of justice. That is, he seeks to overcome the "dialectical basic problem" in political theory by arguing for the intrinsic coherence of "might" and "right" in the normative structure of the state. There is, he insists, an "indissoluble, typical-internal structural coherence between 'right' and 'might' in the State..." (III:434).

c. Coercion and Creation

Until now we have attempted simply to clarify Dooyeweerd's account of the founding function of the state. We have examined its relation to the state as a <u>res publica</u>, the relation between the monopoly of physical coercive power and other forms of state power, the distinctiveness of political power in contrast to the power foundation of non-state societal structures, the invariable, normative character of the state's founding function, and the subservience of this foundation to the state's leading function. We now wish to discuss critically one central question in Dooyeweerd's account of the state's foundation, a question concerning his conception of the coercive character of political

power. In order to do this we must first investigate the question of the relation between Dooyeweerd's notion of the state's rootedness in the creation order, and the indispensability of the coercive factor in the state's power foundation. Our argument will be that it is inconsistent for Dooyeweerd to conceive of coercion as a necessary element in the structural principle of the state. The conclusion we shall draw from this is that it is not, after all, the coercive character of the state's power which distinguishes it from the power of non-state societal relationships. We shall then propose an alternative account of political power. First, we shall give an account of how Dooyeweerd sees the relation between coercion and creation.

Dooyeweerd relates his discussion of the founding function of the state to the traditional theological debate over whether the "power of the sword" held by the state was instituted at the beginning of creation or whether it was instituted on account of sin (om der zonde wil). This debate has important implications for our analysis. Dooyeweerd clearly opts for the latter alternative in the debate, one which is characteristic of many Reformed thinkers. "In Holy Scripture...the organized power of the sword...is emphatically related to man's fall," he avers, citing familiar biblical passages in support (Romans 13:1-5; I Peter 2:13; Revelation 13:10).

> ...from the Biblical point of view it cannot be seriously doubted that the power of the sword inherent in the office of government, in its structural coherence with the leading

> function of the State..., has been incorporated into the world order because of sin (III:423).

He immediately adds, however, that the institution of sword power is a structural norm which should not be confused with "the sinful subjective way in which the power of the sword is handled in a particular state." That is, the frequent abuse of coercion by states should never be taken as the structural norm for the way in which coercion ought to be employed. Nevertheless, coercion, for Dooyeweerd, is still a component of the divine structural principle of the state.

It is not just the "power of the sword" however, which is instituted because of sin, but the state as such. In Dooyeweerd's view, there are two societal relationships which have been ordained after the fall, state and church. While the church is an "institution of special grace," the state along with other non-ecclesiastical societal relationships, "belongs to the general temporal life of the world."

> The State is not the direct product of the original order of the creation, but owes its existence to common grace as "an institution ordained on account of sin." In its typical structure, the body politic has a general soteriological vocation for the preservation of temporal society in its differentiated condition (III:506).[55]

The state is thus not as such a fallen institution, still less intrinsically evil, but is rather a divine gift.

However, the issue is more complex. Dooyeweerd strenuously rejects the view (which he attributes to Karl Barth) that sin so

changes the original ordinances of creation such that now they are only ordinances for sinful life, accommodated to man's fallen condition, and therefore that the original creational ordinances are no longer knowable in their original intention. "Sin changed not the creational decrees but the direction of the human heart" (Roots:59).[56] Thus while the fall did make special institutions necessary (state and church), "even these special institutions of general and special grace are based upon the ordinances that God established in his creation order" (Roots:60; our emphasis). He elucidates this as follows:

> There is nothing in our creaturely world which could be cut off from God's creation order...government authority, in its typical founding in the power of the sword, can, on the biblical standpoint, have no other origin than God's sovereign creation will. But this does not at all exclude that its institution was "on account of sin." Human clothes are also not a "human creation" but were nothing other than a giving of form to what was given in creation. And nevertheless they acquire, on account of the fall, primarily the function of protecting human honour. When we thus propose that the institution of government is instituted "on account of sin," then this does not at all include a denial of its being grounded [zijn gegrond] in the creation order. The creation motive is absolutely all-embracing.... Even the positive power of sin is derived from the creation order (ARS:1954:184).[57]

Thus, while not original with creation, the state, as a coercively empowered institution is nevertheless grounded in original creational givens.

Dooyeweerd rejects the Thomistic conception according to

which governmental authority is grounded in the original order of nature while the "power of the sword" is necessary only on account of sin as a provision of "relative natural law" (III: 423-4; ARS:1954:184-5).He objects that

> ...in this manner the proper structural principle of the state, together with its internal nature is misconceived [miskend]. When one tries to do away with [wegdenkt] the monopolistic organization of sword power over a territorial area, the essential foundation of the state falls away from it, and one can no longer distinguish it in a reliable way from other societal spheres. Precisely for this reason we may not, when speaking of the internal nature of the state and government, push their institution "on account of sin" into the background as a secondary addition (ARS:1954: 185).

As an attempt to synthesise Christianity with the Aristotelian view of the state, the Thomistic conception "entailed the metaphysical levelling of the societal individuality structures..." (III:423-4).[58] His central burden is that, if the organised monopoly of coercion is removed as the essential feature of the state's founding function, then there is no adequate criterion by which to identify its structural distinctiveness in contrast to other societal relationships. What is at stake here for Dooyeweerd is not only the theological question of the relationship of creation and sin but, more so, the basic problem in political theory, namely, whether the state can be ontologically distinguished from all other societal structures.

d. The Nature of Political Power: an Alternative

Having outlined Dooyeweerd's conception of the relation between the coercive power of the state and the original creation order, we will now explain why we find it to be inadequate. In doing so, we will argue that the decisive factor in the foundation of the state is not the coercive sanction behind its power. Then we shall present an alternative view.

The immediate objection to Dooyeweerd's view is that it seems to introduce an obvious inconsistency into his theory of structural principles. These principles, like the modal laws, are supposed to be rooted in the cosmic order whose law structure was originally given with creation and was supposed to have been complete and enduring in spite of the fall. Why then does Dooyeweerd need to introduce the notion of "special institution"? It would seem quite compatible with his general theoretical framework for him to have argued, on the contrary, that while <u>power</u> as such may have been originally given in creation, "sword power" is only necessary "on account of sin." This is indeed what we wish to argue. One need not conclude that the employment of physical coercion is necessarily anti-normative. One could acknowledge that coercive power is necessary in order to enforce justice in a world in which at least some people violate the claims of justice, without thereby implying that coercion is original with creation. An important factor for Dooyeweerd appears to be his interpretation of the previously

cited biblical passages. It is not clear, however, that his interpretation is correct. While it is true that such passages do indeed imply a direct connection between the coercive power of the state and the restraint of sin, this does not necessarily imply anything about whether the state was or was not originally given with creation; the connection would exist in either case. Further, the references to the state being called to restrain evil (in Romans 13:1ff.) are coupled with references to its being called to promote good. No exegetical considerations exclude viewing the "power of the sword" as a necessary requirement for the post-fall positivization of an originally given structural principle of the state lacking the coercive component.[59] We may then distinguish between the creational foundation of the state in formative historical power, and the factual necessity for a coercive sanction if this power is to serve the ends of justice in a fallen world.

Eliminating coercion from the divine structural principle of the state conceived as given in the original creation, does not thereby imply, as we said, that coercion is prohibited to the state. Indeed, we wish to argue that the state's right to employ physical coercion in a fallen situation can be justified in terms of its original creational responsibility to pursue public justice. In an unfallen situation we might still envisage some form of agency authorised to foster just relationships between people by means of public regulation. This divinely given duty can be seen as conferring upon such an agency a right to

issue laws binding on everyone within a certain geographical area. In an unfallen situation, it is not easy to imagine what possible role the threat of physical coercion would play in ensuring conformity to public laws. The right to use physical coercion in case of disobedience would be redundant. In a fallen situation where unjust relationships arise the duty to foster public justice is not suspended. (In this sense we would agree with Dooyeweerd that the fall does not invalidate or change the original creational norms). But in order to fulfil this duty to promote public justice, the agency so authorised now has to coerce or threaten to coerce those people in danger of committing injustices. If such an agency hesitated to employ such coercion it would be failing in its duty. Thus the state in a fallen world may employ coercion on the basis of a right derived directly from its original creational mandate to uphold public justice, expressed in its structural principle.

The relationship between this structural principle and the necessity for coercion in a world where injustice frequently exists is thus directly related to the uniquely public character of the state. Only the state is charged with the task of dispensing justice for all and any within its domain. The power of the state must extend as far as its justice responsibilities. Consequently, the power of the state must be territorially universal power. But if the state has such inclusive responsibilities for the justice interests of all and any within its territory, then it must be able to prevent anyone from coercively

violating the justice interests of all and any. It must, in order to do this, secure exclusive control of the means of coercive compulsion within its territory. If it must look to the justice interests of everyone, then no one must be permitted to violate these interests. The state must, therefore, in a fallen situation, acquire a "monopolistic organization of the power of the sword over a particular cultural area within territorial boundaries" (III:414). In the light of this we can now see how, recognising the public character of the office of the state, Dooyeweerd was led to identify coercive monopoly as the distinguishing mark of the founding function of the state's structural principle. For it is indeed the case that the state alone can possess this coercive monopoly. What he did not do was to elicit the fact of the state's public character as the deeper and sufficient reason for the need for such a coercive monopoly.

With such an argument we can also show that the use of coercion, which in some cases will be necessary in order to enforce justice, must itself remain under normative constraints. For if coercion is to serve the advancement of justice, it must also be employed in just ways. The same creationally original norm of justice which justifies the use of coercion by the state in a fallen situation also circumscribed the boundaries of its legitimate employment. This is what Dooyeweerd is also trying to express in cautioning that the founding function of the state must always remain subservient to its leading function.

In the pursuit of justice, then, coercion is not to be viewed as a compromise of justice, but as its indispensable prerequisite wherever people obstruct justice in coercive ways. Dooyeweerd, however, does not appear to envisage the possibility that a state could legitimately wield coercive power in a normative manner without this power being seen as an essential component of its original structural principle.[60]

A parallel case could also be made with respect to all other societal relationships. In each of them, it is clear that the implementation of their structural principles in a post-fall situation calls for different kinds of actions than would have been expected without the distorting effect of the fall. Thus, for instance, parental discipline, which could be viewed as necessary even in the original creation, now also assumes a coercive character.

We have argued that it is theoretically consistent both to deny that coercion is an essential component of the originally given structural principle of the state and that, nevertheless, coercion is an indispensable feature of the factual existence of states in a world prone to injustice.

Further, with the same argument we can avoid the implication that provisions for dealing with injustice was established already in the original divine structure for political life, an implication which, we suggested earlier, seems to conflict with the notion of an originally good creation order.[61]

But can we now answer Dooyeweerd's primary objection that "when one tries to do away with the monopolistic organization of sword power over a territorial area, the essential foundation of the state falls away from it, and one can no longer distinguish it in a reliable way from other societal spheres"? (ARS:1954: 185). We should recall that we can already distinguish the state as a juridically qualified societal structure from all other radical types. In displaying a juridical leading function the state is already clearly distinguished from families, business enterprises, universities and so on. But, in Dooyeweerd's system, the radical typicality of a certain individuality structure is not exhaustive of its structural distinctiveness. For a radical type only consists of those individuality structures whose structural principle is qualified by the same modal aspect. It is not defined as embracing all individuality structures with the same leading function. Again we must recall the fundamental difference between abstracted modal aspects and the various modal functions of a concrete structural whole. Structures function within aspects, but those aspects are not its functions. To say that the state is juridically qualified is only to say that its leading function is found within the juridical mode, that it belongs to the radical type "juridically qualified societal structures."

For Dooyeweerd, radical typicality is only the most general level of structural differentiation among individuality

structures. Within one radical type are found structures with further structural specification. These, as we saw, he terms "genotypes" (III:93); and these are yet further specified into numerous "subtypes" (III:94). The state is a specific genotype within the radical type of juridically qualified structures. Its structural principle thus differs from those of any other juridically qualified societal relationship, for instance, the United Nations Organization (III:600-1).

The unique identity of the structural principle of the genotype "state" is expressed in all of its various concrete functions. Thus, the historical function of the state will differ from the historical function of any other structure. That is, the historical mode will be individualised in the state in a distinctive way. The genotype United Nations Organization is indeed founded in an historical organisation of power (III:600), but it lacks the defined territory, the coercive sanction and the compulsory governmental authority characteristic of the state (III:600-1). (Dooyeweerd, however, does not indicate what the specific type of historical power is characteristic of the UNO. He does state that its typical leading function is that of an "international public legal voluntary association" which clearly differs from the state's leading function.) Our point here has been to explain why Dooyeweerd insists that if the unique identity of the state cannot be detected in its founding function, then the state cannot be distinguished from all other societal

structures. His question is: if political power is no different from industrial power, on what basis can one tell a state from a business enterprise?

We have argued that physical coercion should not be regarded as a component of the structural principle of the state (this structural principle now conceived as given in the original creation order). We must now therefore attempt to reformulate Dooyeweerd's definition of the founding function of the state without reference to physical coercion. As we have seen, Dooyeweerd conceives of formative historical power as expressed in different ways according to the typical structure of the societal individuality structure in which it is present. In the state it is expressed as the territorial monopoly of physical coercion, in the church as the "power of the Word", in a political party as the "power of political conviction". We might suggest also that in a business enterprise formative power appears as the "power of organised human labour". In each case it is necessary to specify the type of power manifested, since the term power in itself has only a general modal sense.

In attempting to reformulate Dooyeweerd's definition of the foundation of the state we need to recall again precisely what role a founding function plays in the concrete functioning of a structural whole. We noted that Dooyeweerd identifies a founding function as that which in a characteristic way makes possible its existence as a distinct identity, as that which furnishes the

indispensable support allowing it to fulfil its specific vocation. For Dooyeweerd, the state can only fulfil this vocation as a public-legal community of government and citizens on the ultimate basis of a territorial monopoly of physically coercive power. Assuming now that the state's structural principle is original with creation, our question now amounts to this: in an unfallen situation, what would this ultimate basis of the state's power consist? What would serve as the characteristic resource enabling the state to fulfil its task of pursuing public justice by means of public law? We shall now argue that the ultimate basis of political power should be conceived of as the power of public trust.

We noted earlier that Dooyeweerd does recognise a wide variety of kinds of power each of which is essential to the state, but that only one of them is foundational. The state's economic power, for instance, is not foundational because it is ultimately based on coercive compulsion. Hence it is political-economic power, rather than, say, industrial-economic power. The same point applies in the case of the other forms of state power. For Dooyeweerd, only the territorial monopoly of physical coercion is foundational in the state.

In order to build our own alternative case, we now need to probe further into how physical coercion is supposed to be foundational for the state. It is clearly not the case that all states do in fact need to coerce most people physically in order

to enforce them to obey its laws. In many states, most people obey the laws of the state for reasons other than physical compulsion or even the threat of such compulsion. We endorse the following judgment of Emil Brunner:

> The justice of the State...increases its power, for as a rule that power is a moral rather than a physical fact. People do not normally obey the State because disobedience would be punished, but because they feel it is right to do so, quite apart, of course, from the mere force of habit. But where doubts about the justice of the State arise, its power is already undermined.... The State lives far more on its moral credit than is generally believed, and that means on the conviction of its lawfulness and legality.[62]

Brunner nevertheless agrees with Dooyeweerd that the ultimate foundation of the state is its monopoly of coercion. Its "moral power" is really only a supplementary factor. We, however, suggest that this "moral power" is in certain situations more or at least as decisive for the ability of the state to fulfil its responsibilities. In a situation where a significant proportion of people obey the state for reasons other than the threat of coercive sanction, then it is not clear that this sanction, even though it may be indispensable, is indeed <u>the</u> decisive kind of political power. The question of whether the threat of a coercive sanction is more decisive than the "moral power" of the state would seem to require varying historical and cultural responses. Clearly the means of physical coercion are far more significant for the state of Lebanon than for the state of Holland. Indeed it is precisely the Lebanese government's current lack of a

monopoly of coercion which is undermining its very ability to function as a state at all. If it would achieve such a monopoly, then the coercive sanction would indeed be a highly significant factor in popular obedience to the state. It would take a considerable length of time before the Lebanese state began to be able to depend more on its "moral power". By contrast, while the Dutch government does have a monopoly of coercive power, this is clearly a minor factor for most Dutch citizens in obeying the laws of the state.

Having made this point, we should note that the empirical question of whether coercion is more decisive than "moral power" in securing obedience to the state is not after all crucial for our argument, since in an unfallen situation the decisive source of state power would certainly be its "moral power". Hence, in conceiving of an original creational ordinance for the state, its essential foundation should be characterised not as the physical power of a monopoly of coercion, but rather as the "moral power" rooted in what we shall call public trust. The public trust we are referring to is essentially the acceptance of the state as a legitimate state worthy of obedience. This is what Brunner was referring to in the quotation above.

We are not arguing that the legitimacy of the state per se is the state's own foundation. Legitimacy as such is not a form of power. Rather we are proposing that it is the popular conviction that the state is a just and therefore legitimate state which

is a genuine form of power and which is the state's essential foundation. While Dooyeweerd argues that the exclusive control of the means of physical coercion is the ultimate basis of the state's power, we are arguing instead that this ultimate basis lies in the endorsement of the state by its citizens as the sole agency responsible for pursuing public justice within its territory. "Trust", like "legitimacy" is not, of course, an "historical" phenomenon, but rather moral or ethical, in Dooyeweerd's terms. But where an agency is entrusted with a specific responsibility then it is empowered to exercise control over those who have entrusted it to fulfil this responsibility. Public trust in this sense creates a power basis for the state. Just as, for Dooyeweerd, the physical power of the military and police enable the state to have a formative, shaping influence on human society within its territory, so we are arguing that public trust creates a moral form of formative power. According to its original creational structure, the state can be conceived as being enabled to engage in its specific task of fostering public justice on the basis of the power of public trust. We agree with Dooyeweerd that in fulfilling this task the state requires many different forms of power, physical, social, economic, and so on. The power of the state is indeed multifaceted. But the actual ability to employ these various forms of power ultimately rests upon the willingness of the citizens of a state to recognise the state as the legitimate wielder of these kinds of power.

The point is not that the legitimacy of the state is derived from popular recognition. We would argue that the legitimacy of the state is conditional upon its pursuit of justice: a just state is a legitimate state. Rather the point is that the power of the state is derived from the popular recognition of its legitimacy.

What we have proposed above is a way of conceiving the originally intended creational basis of political power. The question as to how far any actual state is able to depend on this basis of power is, as we noted earlier, an empirical question. We are not arguing that states can relax their commitment to maintain a monopoly of physical coercion within their territory. But by conceiving of the state as grounded in the original creation order, and being founded on the power of public trust, then the deliberate search to win such trust by doing justice becomes the most foundational imperative for a state, whereas for Dooyeweerd the most foundational imperative is the maintenance of a monopoly of coercion.

The question may still be raised, however, whether the "power of public trust" is, after all, peculiar to the state. Is it not the case that all societal structures presuppose the willing endorsement of their members in order to enable them to fulfill their various tasks? Employers surely require the trust of their workforce in order to manage their enterprises, just as parental power presupposes in large measure the trust of the

children if it is to be effective. Legitimacy, it would appear, is required within all societal structures.

Moreover, the "public" qualification of the notion of "trust" does not seem sufficient to distinguish the kind of power which political trust creates from the kind of power which familial trust creates. For the notion of public in this context really only specifies the scope of such power: what we need is to know why the power of trust is different within a state than within a family. The only ultimate difference appears to lie in the qualifying function of the structure in which the trust is expressed. That is, the difference between political trust and familial trust is that citizens trust their government to dispense public justice, while children trust their parents to provide parental love. Citizens entrust their governments to do different things from what children entrust their parents to do. It is the purpose of trust which is the basis of the difference between political and familial trust.

In our view, this satisfies Dooyeweerd's concern that political power should be distinguishable from all other typical kinds of power. Political power is distinct because it is based on a public trust that the state will pursue public justice. Having critically assessed Dooyeweerd's account of the founding function of the state, we are now ready to analyse his discussion of its leading juridical function.

## 8. Justice

### a. The Nature of Justice[63]

In Dooyeweerd's view, the norm of justice is rooted in an irreducible modal aspect of reality. Norms of justice occupy a unique place in the divine law order and must not be conflated with any other norms. Questions which concern issues of justice therefore must not, indeed cannot, be treated ultimately in terms of allegedly prior or ontically more comprehensive normative criteria. In other words, the juridical mode of being possesses its own modal sphere sovereignty.

Frequently, justice is conceived of as an ethical principle. However, the ethical or moral dimension of reality is, in Dooyeweerd's view, only <u>one</u> irreducible mode of being; it does not embrace all normative principles, but concerns only one specific kind, namely, those governing interpersonal relations of love (II:151ff.). Thus attempting to derive norms of justice from ethical principles amounts to a form of reductionism (II:140-163). The juridical aspect embodies distinct norms which can never be subsumed under, nor derived from, nor set aside in favour of the irreducible norms rooted in the other aspects.

As well as being irreducible, the various modal aspects are also universally valid. (Universal validity here is not to be confused with modal sphere universality, which only refers to the mutual coherence between the modes.) The norm of justice, alongside all other modal norms, pertains to everything that exists: it is creationally comprehensive. We are concerned

with the specifically societal and political expressions or individualisations of the juridical mode.

All societal relationships exhibit a domain of juridical functioning, which we shall also refer to as a domain of justice. Within the state, this domain also constitutes its overriding destination. In order adequately to treat the typical justice domains of the state and other societal structures, we first need to examine the irreducible core of justice which is displayed in all these various domains. We shall first explicate Dooyeweerd's account of this core, and then present a critical evaluation. In our view, Dooyeweerd lapses back into the same problem with his notion of the core of justice as he did with the notion of coercion.

It is not possible to give a conceptual definition of the core of a mode; this core can only be known intuitively (II: 129). But while it cannot be defined, it can still be denoted. Dooyeweerd proposes that the term "retribution" accurately denotes the intuitive meaning of justice as it is embodied in various languages. Retribution "designates the irreducible meaning-kernel of what is signified by the words...[dikē], jus, justice, recht, dritto, droit, etc." (II:131). The classical formulation of justice as suum cuique tribuere supports this view. It was "based upon an older cosmological conception of justice whose retributive meaning cannot be doubted" (II:132). Retribution can be further circumscribed as "an irreducible

mode of balancing and harmonizing individual and social interests ...in order to maintain a just balance by a just reaction" (II: 129); retributive justice "reacts against every ultra vires. It binds every legal power and subjective right to its limits" (II:134).[64]

Although retribution cannot be defined, its meaning can, like any modal core, be elucidated further with reference to the analogical moments surrounding it (II:135). In fact, in the circumscription of the core of the juridical mode above, Dooyeweerd already had to employ such analogical references. "Balance" is closely related to the economic mode, "harmonizing" to the aesthetic, and "proportionality" to the mathematical. Three of the analogical moments, each of a "retrocipatory" character, receive special mention in Dooyeweerd's account of the core of the juridical mode, the aesthetic, the economic and the social. Treating the first two together, Dooyeweerd describes their special foundational role in the juridical aspect thus:

> In its modal nature retributive meaning must express itself on its law-side in a well-balanced harmony of a multiplicity of interests, warding off any excessive actualizing of special concerns detrimental to others. The multiplicity of interests should be subjected to a balanced harmonizing process in the modal meaning of retribution (III:135).

The core of the aesthetic[65] mode is captured by the term "harmony" (II:128), while that of the economic[66] is denoted by the word "frugality" (II:128). Retribution, although a modal core, embodies both these analogical moments in its own internal

(retrocipatory) structure. The juridical mode therefore presupposes a harmonious balancing, and a frugal or non-excessive allocation of interests.

The foundedness of a mode upon earlier modes does not, as we have seen, vitiate its irreducible character. The juridical mode cannot be explained (away) in terms of, or ontically reduced to these various analogies. For example, the terms normally denoting retribution are not drawn from economic life. "Acquittance", or "mutual discharge of debt" are not essentially economic. While the Dutch words vergelding (retribution) and vergoeding (compensation) are indeed based upon the roots geld (money) and goed (good), both of which have an economic connotation (II:131), it is nevertheless the crucial implication of a "deserved reaction" in the idea of retribution which excludes a core economic meaning of the term. It is the notions of "desert" or "due" which are peculiar to the core of the juridical mode, clearly marking it off from the economic. Whereas a "price" has indeed an essentially economic sense, since it is set according to the criterion of what is frugal, "desert" or "debt" has the connotation of what is owed, of what can legitimately be claimed as of right. We might say that the difference between economic and juridical centres on the irreducibility of the notion of "propriety" to that of "parsimony".[67]

The aesthetic and economic analogies are intrinsically linked to the social analogy, which is "expressed in a strict

correlation between communal interests and those of inter-individual relationships in juridical intercourse" (II:135). Earlier we noted the necessary correlation between these two categories of societal relationship. In this context, Dooyeweerd is attempting to demonstrate how this "social" correlation comes to expression also within the internal structure of the juridical mode. In the process of harmonising various interests, both categories of societal relationship must be taken into account in seeking a just balance. What Dooyeweerd is drawing attention to here is that justice claims in a society are legitimately advanced by associations and communities and cannot all be ultimately derived from those of individuals (II:135-6). Societal relationships, whether communal or interindividual, can also be the bearers of juridically valid interests. The fact that justice consists in far more than rendering the proper due to discrete individuals is a basic presupposition of Dooyeweerd's notion of "juridical sphere sovereignty", which we shall discuss shortly.

The important implications of this social analogy become evident in Dooyeweerd's discussion of Aristotle's distinction between distributive and commutative justice. The characterisation of the core of justice as retribution does not lead him to reject these notions. In fact he identifies them as responses to real juridical states of affairs (although he is critical of the way in which Aristotle related them to societal life, cf.

III:212-4; II:135; PPR:52). Commutative justice, in Dooyeweerd's view, was Aristotle's way of accounting for what Dooyeweerd defines as the range of interindividual legal relationships, while distributive justice should be taken as Aristotle's attempt to take account of the complex of intracommunal law. Whereas commutative justice applies to relationships between separate individuals, distributive justice applies to relationships within communities (i.e. between members of the same community).

Recognising both types as responses of justice to normative juridical givens, Dooyeweerd therefore rejects the individualistic trend in the early humanistic doctrine of natural law (Grotius and Hobbes, for example), which in principle excluded distributive justice as a genuine form of justice. Representatives of this trend only acknowledged juridical relationships holding between private, contracting individuals, and denied the reality of juridical relationships holding within and between given communal structures (III:212). Individualism attempted to explain away communal juridical relationships as ultimately derived from contracts between individuals. For Dooyeweerd, however, distributive justice must be recognised as a genuine form of justice since it arises in the context of communal relationships which display their own sphere of juridical functioning.

The state, for example, is such a juridically functioning community. Distributive justice within the state, he writes, "requires a proportional distribution of public communal charges

and public communal benefits, in accordance with the bearing power and merits of the subjects" (III:445). The point is that the distribution is of a public communal character. This distributive, communal justice should also characterise the allocation of rights and obligations within an economic enterprise, a church community, a family, and so on.

We can summarise Dooyeweerd's understanding of justice thus: justice consists in effecting a harmoniously balanced complex of juridical relationships among a multiplicity of particular interests, whether individual or societal (communal or inter-individual or intercommunal). It calls for an integrating activity of a specific variety, one in which such special interests can fully realise their own juridical claims, but always without "excess".

Our critique of Dooyeweerd's notion of justice is not intended to question the content of this formulation, but to challenge its denotation by the term "retribution".[68]

b. Justice as "tribution"

We wish to argue that in denoting the core of justice as "retribution", Dooyeweerd faces an inconsistency similar to that we found with his notion of the coercive power of the state. The problem seems to be that the notion of retribution is an essentially negative notion, implying the correction of an abuse, the restoration of a violated order. In the case of all other modal cores, Dooyeweerd has posited an essentially positive,

prescriptive notion, rather than a negative, proscriptive one. While he does want to include cases of (re-)compensation or restitution, as well as cases of punishment, in the scope of retribution (II:130), both of these are primarily corrective responses to unjust states of affairs. Both are intended to "maintain the juridical balance by a just reaction..." (II:129; our emphasis). It seems then that, for Dooyeweerd, the juridical mode embodies a norm calling for a certain kind of reaction rather than for a certain kind of action. This is no doubt why its core is denoted as re-tribution.

It does not seem to us, however, that there is any obvious reason why actions promoting justice in a positive sense (such as an employer allocating fair wages on his own initiative) should be understood as essentially retributive actions. And a negative, reactive tone is not obviously connoted in the words Dooyeweerd cites as traditionally having denoted the irreducible core of justice (i.e. dikē, jus, justice, recht, dritto, etc.). Nor is this clearly the case in the classical conception of justice: suum cuique tribuere (NB, not retribuere).

Apart from these preliminary considerations, a more substantial reservation concerning justice as retribution is that it does not comport at all well with Dooyeweerd's belief in the original nature of the creation ordinances as intended for a sinless world. According to this belief, injustice, and with it the need for retribution, can only be consistently regarded

as evidence of a fallen creation. The implication that, as an original creation ordinance, retribution must have been built into the very fabric of the creation order seems quite inconsistent with his radical distinction between creation and the fall.

Dooyeweerd does make the point that it is incorrect to infer, from the imperfect manner of the human response to the ordinance of justice, that this ordinance is sinful in itself (II:133). But the real question is whether envisaging an originally given norm of re-tribution is compatible with his belief in the original goodness of creation. It seems to us that it is not. In this case, Dooyeweerd seems not to have taken into account the fact that order of creation calls for different human behaviour in a fallen situation than would have been necessary in an unfallen situation. Thus there can be human actions which are normative in a fallen situation which could never have been necessary in an unfallen creation. This was also the case in his treatment of the coercive power of the state. (In that case he attempted to avoid the inconsistency in his theory by utilising the traditional theological notion of the state as a special post-fall institution, a notion which we found implausible. In the case of retribution, however, he does not speak of it as a special modal ordinance, introduced on account of the fall). In this case he seems to have read back the existential necessity for retributive reactions in human life into the original creation order. Again, a phenomenon manifested on the "subject

side" of reality has been taken too quickly to disclose an ontic universal on the "law side". A potentially significant political implication of this is that, if the state's office is the pursuit of justice, then there would be a definite tendency to view the state's negative, corrective tasks as primary, to the detriment of its positive, constructive tasks. In reviewing Dooyeweerd's account of "public justice", we shall find that this is not the case, which provides further support for our argument.

These considerations lead us to the conclusion that Dooyeweerd's notion of retribution as the core of justice ought to be substituted by its positive stem, namely "tribution", a term proposed by Paul Tillich. Tribution seems to us more adequately to capture the core of what Dooyeweerd describes as the juridical mode, one which more readily can be seen as the deeper unity of its various specific forms. Tillich shares Dooyeweerd's concern to probe to the ontic kernel of justice. He writes:

> ...tributive or proportional justice,... appears as distributive, attributive, retributive justice, giving to everything proportionally to what it deserves, positively or negatively. It is a calculating justice, measuring the power of being of all things in terms of what shall be given to them or what shall be withheld from them. I have called this form of justice tributive because it decides about the tribute a thing or person ought to receive according to his special powers of being. Attributive justice attributes to beings what they are and can claim to be. Distributive justice gives to any being the proportion of goods which is due to him; retributive justice does the same, but in negative terms, in terms of deprivation of goods or active punishment.

> The latter consideration makes it clear that there is no essential difference between distributive and retributive justice. Both of them are proportional and can be measured in quantitative terms.[69]

Proceeding on the basis of this modification we are now led to ask whether Dooyeweerd also operates with a notion parallel to Tillich's "special powers of being" and according to which (re-) tribution is to be made. We suggest that it is precisely the doctrine of creational "kinds" which plays a similar role in Dooyeweerd's conception of justice. The Kuyperian term "life-law" (levenswet) can be seen as parallel to Tillich's notion of "special powers of being" (albeit from a radically different theological and philosophical perspective). Dooyeweerd employs other terms to convey the same notion of divinely ordained structural distinctiveness. For example, he refers to the "office" of the state (PPR:49), and to its "vocation" (III:414), using these terms in line with his Calvinist tradition, as we have seen.[70] Philosophically articulated in his theory of typical structures of individuality, these kinds represent divinely ordained orbits of justice.

It is indeed, as we saw, the notion of societal "kinds" or "offices" which is the foundation of his theory of societal sphere sovereignty and of his notion of "public justice". In its pursuit of public justice, the state ought to base its activity of harmonising various societal interests upon the sphere sovereignty of the different societal relationships (III:446).

(We shall enter into a detailed discussion of this statement at a later stage.) The principle of sphere sovereignty supplies a material content for what ought to be rendered or "tributed" to various societal relationships. We might say that justice consists primarily in paying such tribute to persons or structures as is necessary for the normative discharge of their divinely ordained offices.[71]

It is clearly on the basis of this kind of notion that Dooyeweerd posits the "juridical sphere sovereignty" of the various societal relationships. The uniqueness of the juridical dimension of each relationship is one (modal) expression of its own divinely delegated and thereby internally limited office. With respect to these societal offices, Dooyeweerd writes:

> ...the recognition of their inner sphere-sovereignty also within the modal juridical aspect...is simply the necessary conclusion from the biblical Christian view of the sovereignty of God, Whose order of creation also embraces the structural principles of the differentiated societal relationships, guaranteeing the inner proper nature of each of them (III:283).

It is these juridical spheres, furthermore, which erect the boundaries across which the state, in its own juridical functioning, is forbidden to cross. We now turn to any analysis of Dooyeweerd's notion of "juridical sphere sovereignty".

c. Domains of Justice

Dooyeweerd's theory of juridical sphere sovereignty is intended to give account of and safeguard the distinct character

of the juridical spheres or justice domains of each differentiated societal structure. In Dooyeweerd's view, each societal structure, whether state, church, family, business enterprise, has a responsibility to see that justice is done within its internal sphere of activity. The promotion of justice is by no means the sole prerogative of the state. Norms of justice apply in whatever societal structure people find themselves. In other words, the juridical mode has universal validity; no structure can be governed only according to, say, the norms of ethical love, or the "demands" of business. But the specific character of these different societal structures is also reflected in different requirements of justice. Justice may be a universally valid norm, but the content of its demands differ according to the nature of the various societal spheres.

We have already referred at several points to Docyeweerd's notion of the "typical individualisation" of a modal aspect as the specific manner in which a mode is displayed in the various functions of a structural type. Historical power has to be specified as political power, ecclesiastical power, industrial power, and so on. In the same way, justice must be specified according to its typical context.[72] The content of what is to be tributed to various members of a societal relationship depends on the normative structure of the relationship of which they are members. Thus, there are many different "domains of justice". The theory of juridical sphere sovereignty seeks to

take account of these different domains, distinguishing between (what Dooyeweerd refers to as) the "rights, duties and competencies" of one structure from those of another.

For example, the juridical dimension of a family expresses itself in the right relationship between parents and children, in the proper expression of parental authority, and in the various rights and duties of each member of the family. The theory of juridical sphere sovereignty is based on the view that there are definite structural differences between family justice, corporate justice, political justice, and so on. On this view, there are different rights belonging to a child within a family, a worker within an enterprise and a citizen within a state. A child, for instance, clearly cannot claim the right to vote within a family; and it would be quite inappropriate to expect an employer to display that quality of personal affection towards his employees which he should show to his children.

The actual content of the "rights, duties and competencies" of a particular societal relationship is given by its structural principle. We have seen that this structural principle is the basis of the sphere sovereignty of a structure. We should note here that juridical sphere sovereignty is only one modally specific instantiation of the general principle of sphere sovereignty. Sphere sovereignty, Dooyeweerd writes, is "a universal cosmological principle which only gets its special legal expression in the juridical aspect of reality" (CCS:51).[73] Just as

the structural principles establish the general ontic foundation for the identity of a societal relationship, so they also determine the scope of its juridical domain (SL:3). The inviolable domains of justice bounded by the principle of juridical sphere sovereignty supply the criteria for the material content which is to be "tributed" to each societal structure.[74]

For example, juridical sphere sovereignty establishes the boundaries around the various competencies found within societal structures (III:282). Employing the example of marriage, Dooyeweerd illustrates how its juridical sphere sovereignty places limits upon the competence or legal power of other societal spheres.

> ...the structural principle...determined its intrinsically typical jural sphere, which should be distinguished carefully from the spheres of civil law and ecclesiastical law.... All intrinsic juridical relations between husband and wife are, according to the normative structural principle of marriage, qualified in a typically moral way by the conjugal love-relation, which in turn is typically founded biotically. Hence the internal juridical rights and duties of the marriage partners in relation to each other can never, as civil rights...[are], be sanctioned by the compulsive legal power of the State (SL:12).

The violation of the rights of one societal structure by another constitutes an interference with its juridical sphere sovereignty. If the state tried to prevent parents from sending their children to the school of their choice, it would be overstepping the bounds of its competence, since (it could be argued) it belongs to the

competence of parents to choose what kind of education they wish for their children. Similarly, preventing a member of a particular structure from fulfilling his duties arising from membership in that structure represents another interference with juridical sphere sovereignty. Where a labour union, solely for reasons of improving its relative power position, made it impossible for a just government to govern, it would be obstructing the legitimate pursuit of a duty falling within the justice domain of the state.

Dooyeweerd develops the further argument that an action overreaching the typical juridical domain of one societal relationship loses its very juridical character. This is why "the recognition of the absolute power of a particular legislator [in any justice domain] would irrevocably deprive his power of any juridical meaning" (III:283; our emphasis). Violation of the boundaries of typical societal individuality structures thus leads to an invalidation of the juridical claim of the violator. Indeed, the (re-)tributive core of the juridical aspect itself is "incompatible with any absolute (and consequently juridically unlimited) power of a legislator" (III:283).

As we have seen, the two axes in the dual structure of reality are embedded in the same coherent law order. A neglect of the typical structures of individual entities leads to a violation of the specific character of the modal aspects as well. Because the two axes are tightly interlocked, it is not possible

to respond adequately to the modal norms rooted in the justice dimension of reality while ignoring the individualised norms for the plurality of typical ways in which justice is to be done in respective societal structures.

Dooyeweerd presents an elaborate illustration of his notion of juridical sphere sovereignty in the context of a juridical application of his theory of enkapsis (III:664-693). We already noted that an enkaptic relation consists of an interweaving of two individuality structures. Here we need to add that such interweavings give rise to what Dooyeweerd terms "pheno-typical variations" (although such variations arise also in non-enkaptic relations). These are variations in the factual societal forms of societal relationships which arise from their external relationships with other societal relationships. Thus, for example, a state (which is a "genotype") may exhibit particular characteristics arising from its close dependence on the independent economic power of a large corporation within its territory. While never becoming part of the corporation, such a state may be externally constrained in its operations by the economic performance of this corporation. (This is the kind of phenomenon that J.K. Galbraith is referring to in his notion of the "new industrial state".) Another example might be the extremely close relationship between the two structurally independent spheres of the Polish Catholic Church and the Solidarity labour movement. While both of these made their own internal decision, it is clear that

Solidarity could be characterised as a "Catholic labour organisation", in an unofficial sense. The qualifications "industrial" and "Catholic" in these two examples refer to what Dooyeweerd means by phenotypical variations. They do not indicate enduring features of the structural principles of the state and the labour organisation, but historically variable traits which reflect changing external circumstances. We are now concerned with the specifically juridical implications of this notion of phenotypical variations arising within enkaptic relations.

The problem which Dooyeweerd addresses by means of this notion is that of the "sources of law". He is particularly concerned to counter the legal positivist approach to the problem. In legal positivism all valid law finds its source in state organs, whether the legislature, the courts or the executive branch. Non-state rules of behaviour, as John Austin has argued, may be "morally" binding, but lack legal validity. Dooyeweerd counters this by stating that law finds its source in a great variety of societal structures, each of which has "sovereignty" to establish laws for its own members or participants. He observes, however, that certain legal provisions may have their formal origin in the legal organs of a particular societal structure and yet derive their material content from a legal sphere within a structure of a quite different qualification. For example, an ecclesiastical regulation may contain rules of either a civil-legal or even a public-legal nature, but this does not

mean that the church has the material competence to promulgate civil or public law (III:668). It only means that the church has incorporated (or "encapsulated") certain civil- or public-legal provisions, themselves originally created by the state, within its own legal provisions. In this sense the church is availing itself of the services of the state in performing its own juridical operations.

In Dooyeweerd's terms, the ecclesiastical form in which such civil- or public-legal provisions are found is an example of a phenotypical variation. He also refers to this form as its "genetic form", that is, the form in which it was actually positivised. But the genetic form of a law does not necessarily indicate the original sphere of competence of the societal relationship materially qualified to create such a law. Dooyeweerd thus distinguishes between formal origin and material competence; it is only the latter which is determined by the principle of juridical sphere sovereignty. The former is determined by the various enkaptic relationships into which these sovereign juridical spheres may enter.

The internal limits of material competence are thus delimited by the invariable structural principles of the various societal relationships possessing such competencies, not by the structural principles of the societal relationship whose juridical organs may have incorporated provisions of the former into their own legal provisions (III:665).

This theory is based upon Dooyeweerd's pluralistic theory of legal competence. Societal relationships exhibit a multiplicity of reciprocally irreducible spheres of legal competence, each authorised to create laws for its own structurally delimited domain of justice, and for no other (III:667-8). The question of the scope of these irreducible spheres of competence depends entirely on the internal structural principles of the relationships in view, and never on the juridical genetic form in which a certain law is actually positivised (III:669).

Further, a particular genetic form, i.e., the form in which a particular legal rule is positivised (say, the articles of association of a certain organisation), may be an "original" source of law in one sphere of competence (i.e. the internal sphere of the association) but a "derived" source of law within another (e.g. the sphere of civil law). But however closely different sources of law may be enkaptically intertwined in this way, "the original spheres of competence bind and limit each other" (III:669). Dooyeweerd summarises his conclusions regarding juridical sphere sovereignty as follows:

> All law displaying the typical individuality structure of a particular community of inter-individual or inter-communal relationship, in principle falls within the material-juridical sphere of competence of such a societal orbit, and is only formally connected (in its genetic form) with spheres of competence of other societal orbits (III:670; emphasis omitted).

Even in such intimate enkaptic intertwinements as those arising from a shared legal origin, the distinctiveness of the materially

delimited spheres of juridical competence is maintained.

It will be apparent that the above account of juridical sphere sovereignty is entirely incompatible with the doctrine according to which the state possesses the exclusive material competence to sanction all valid positive law, the doctrine of the final legal sovereignty of the state, originating with Bodin, and also presupposed in legal positivism. In Dooyeweerd's view, the state has a strictly limited sphere of competence. Its internal structural principle establishes a juridical boundary within the limits of which it must remain. We shall return to Dooyeweerd's analysis of Bodin's doctrine of sovereignty in due course. It is necessary first, however, to present an account of Dooyeweerd's notion of the juridical qualifying function of the state and its relation to the state's foundational function. We will be investigating the specific way in which the norm of justice is to find realisation in the structure and functions of the state. That is, we are dealing with Dooyeweerd's view of political justice.

d. The Public Character of Political Justice

Before commencing our analysis of the state's domain of justice we need to make a distinction which is fundamental to Dooyeweerd's theory of the state, but which he does not draw sufficiently clearly. Earlier we noted the general distinction between the internal functioning of a structure of individuality, determined by its structural principle, and its external, enkaptic

relationships with other individuality structures. Regarding the state, we must therefore distinguish its internal structural functions as an organised, juridically qualified communal whole, from its external enkaptic relationships with non-state societal relationships. At the beginning of Section III we cited some examples of the state's various functions, its territory (spatial), its natural environment (physical), the forms of interaction between government and citizens (social), and the harmony exhibited within it (aesthetic). These are all examples of the state's internal functions. At the present stage of our inquiry, we are still concerned with this internal functioning. Only later will we turn to the external enkaptic relationships between state and non-state societal relationships. Our focus now is on the internal public-juridical functioning of the state, its internal qualifying function.

The decisive distinction between the justice domain of the state and those of non-state societal structures is the public character of the state's justice responsibilities. Every societal structure exhibits a justice domain, but only the state is qualified as a public legal community (III:435). We shall shortly explicate further how the notion of public plays a fundamental role in this definition of the leading function of the state. First, however, we must discuss further Dooyeweerd's account of the relationship between the leading function and the founding function.

Earlier we saw how the public character of the state is fundamental in Dooyeweerd's account of the founding function of the state. As we have seen, he conceives of this public character as inseparably linked with the unique physically coercive basis of its power. This coercive basis is, for him, also necessarily reflected in the leading function of the state. Although generally defining the leading function simply as a "public-juridical" or "public-legal" (publiekrechtelijke) community, the assumption throughout is that the public-juridical competence of the state is distinctive because of its physically coercive base. Thus he characterises the state in one context as a "public-juridical coercive community" (III:536). We have already noted, moreover, his emphasis that the authority of the state is "governmental authority over subjects enforced by the strong arm" (III:435). We shall now make the case that the juridical sphere of the state can be adequately distinguished from the juridical spheres of all non-state structures in terms of its public embrace. Thus our substitution of the "power of public trust" as the founding function of the state does not undermine the unique nature of its leading function.

In many contexts, Dooyeweerd is quite clear that it is the public, rather than the coercive character of the state's domain of justice which is crucial for its structural uniqueness.

> The government may, in accordance with the state's inner law of life, never allow itself to be led by any other point of view than that of justice. But here is no talk

> of a private community of law as in the other societal relationships, but a public one, subject to the jural principle of the common good (CIS:42).

The state, then is a community of public justice, empowered to pursue its end by means of the creation of a just legal order. It is this public legal order, directed toward the establishment of public justice, which is the essential factor in constituting the state as an integrated whole.

The notion of integration occupies a central place in Dooyeweerd's account of the state. At the outset of his discussion of political integration he announces that he has arrived at "the most crucial point in our inquiry" (III:437). He seeks to give account of the "typical integrating character of the leading legal function in the structure of the State" (III:437). He is referring to the way in which the state integrates government and subjects into a concretely functioning public communal whole. Its unity as a communal whole is guaranteed by the internal integrating function of its public-juridical qualification. "The leading function in the structure of the State has proved to be a public-legal relationship uniting government, people and territory into a politico-juridical whole" (III:437). Its juridically qualified structural principle "implies the unique universality and totality of the internal legal community of the State, which is not found in any other societal structure" (III:437).

This "unique universality and totality" refers to the territorially inclusive embrace of its justice responsibilities and

its legal powers, i.e., its public character. No other societal structure has an internal membership whose scope is inclusive of all persons within a specific territory. The membership of the state is a public membership: it is both open to one and all and imposed upon one and all. That which is public pertains to any and all within a specific area. This meaning of the term has been succinctly stated by a nineteenth-century English writer as follows:

> Public, as opposed to private, is that which has no immediate relation to any specified person or persons, but may directly concern any member or members of the community, without distinction. Thus the acts of a magistrate, or a member of a legislative assembly, done by them in those capacities, are called public; the acts done by those same persons towards their families or friends, or in their dealings with strangers for their own peculiar purposes, are called private...[75]

This appears to be the meaning of public with which Dooyeweerd operates.

The state does indeed embrace all and any persons within a territory in its juridical integration. In this sense, Dooyeweerd writes, "the traditional universalistic theory of the State as the integral totality of all the other societal structures seems thus to be justified at least with regard to the legal organization of the body politic" (III:437). The final qualification in this statement is crucial. For the universalistic theory of the state was misconceived because it attempted to draw all juridical relationships in society within the scope of

the internal communal life of the state. Earlier we noted Dooyeweerd's distinction between whole-part relationships within an individuality structure, in which the component parts share the same leading function as the whole within which they operate, and enkaptic relationships of an external nature. On the basis of this distinction, Dooyeweerd warns that

> ...the individuality structures of the non-juridically qualified legal relationships can never assume the structural character of public-legal relationships inherent in the State. The relation between the typical universality of the internal public legal sphere of the State, and the [differently] qualified juridical sphere in non-political societal structures, cannot be conceived in the schema of the whole and its parts (III:437).

There is thus no contradiction between the universality, or the public embrace, of the state's juridical functioning, and the juridical sphere sovereignty of the non-state societal structures. The universal character of the state only implies its inclusive internal membership as a communal juridical whole; it does not imply that this community embraces all other differently qualified societal structures within itself. The universal public legal community of the state integrates all persons, but only insofar as they are <u>citizens</u>. It does not embrace them in their capacities as parents, workers, teachers, artists, and so on. A state embodies only a politically integrated citizenry. All the non-political "offices" which its citizens will also bear fall beyond its reach.

This is the basis for Dooyeweerd's notion of a "people" (volk). The public-legal integration of all citizens in a territorially delimited area is what constitutes a "people".

> ...every body politic organizes a people within a territory into a typical, legally qualified, public community. The State's people is indeed the typical totality of all the citizens irrespective of their family relations, their Church membership or their philosophical convictions, their trades or professions, class distinctions, or their social standing. The State constitutes a typical integrating political unity in spite of any differences or divisions which its people display in other societal relationships (III:438).[76]

Integration into a political community can take place therefore without subsuming the multiplicity of such societal structural diversities within the state.

The type of integration which ought to occur in a normative state is therefore not of a corporatist nature, in which the different societal units are integrated into single functionally based totality structures inclusively embracing all functionally similar units. Nor can the state itself become the totality structure embracing all societal structures within its territory. Rather it "transcends" all these structures.

> The integration of the citizens into the political unity of a people is in principle bound to the typical structure of the body politic, in which the leading function is that of a public legal community. This is an unparalleled, unique structural principle enabling the State to organize within its territory a truly universal legal communal bond transcending all non-juridically qualified legal societal relations (III:438).

It should be noted here that the competence of the state to create this unique bond does not arise from the fact that its membership will be numerically larger than any other structure. Nor, conversely, is the lack of competence on the part of non-state structures to create this bond due to their numerically inferior position. No other specifically qualified internal sphere of law, whether ecclesiastical, industrial, etc., is able to effect such a public juridical bond, "however large the number of the members" (III:438). The public character of the state's legal functioning therefore does not depend on the fact that it is responsible for a larger quantity of persons than any other structure. In principle, this might not even be the case, for instance, where all citizens of a state happened to be affiliates of the same church or employees in the same industrial enterprise. Rather its public embrace consists in the fact that it bears responsibility for the juridical interests of all and any persons or structures within its territory, irrespective of their other partial affiliations.[77]

We have thus tried to show how, in Dooyeweerd's account, the unique character of the justice dimension of the state can be demonstrated on the basis of its public or territorially inclusive character; and that this distinctive justice domain confers upon the state a unique sphere of legal competence. This unique sphere of competence is reflected in the specific type of law which the state is empowered to promulgate.

In classifying different types of law, Dooyeweerd introduces a distinction between jus commune and jus specificum. This distinction coincides with that of state law and non-state law. All state law, as the law of a res publica, is therefore public law, or jus commune, while all non-state law is governed by a specific, non-public juridical qualification, and is thus jus specificum. Within the category of jus commune, Dooyeweerd makes a further distinction between public communal law[78] (publiek verbandsrecht) and private civil law[79] (burgerlijk privaatrecht) (PPR:50). Skillen summarises the central difference between them thus:

> Private civil law is law which coordinates members of the state alongside one another ...apart from the structure of the state authority of rulers and subjects. Public state law, on the other hand, is law which binds members together in terms of the all-embracing wholeness of the state community within the relationship of rulers and subjects.[80]

The distinction between these two varieties of state law corresponds to the basic transcendental distinction introduced earlier, between communities and interlinkages. The internal communal law of the state finds its correlate in the civil law sphere of the state, which governs societal interlinkages. It is not necessary for our purposes to discuss further the various types of internal state law. What is important to note, however, is that these two main spheres of law are exhaustive of the state's legal competence. They embrace the entire material sphere of the political

domain of justice, and are delimited by the political application of the principle of juridical sphere sovereignty. It is on the basis of this conception of the strictly limited legal competence of the state that Dooyeweerd develops a sharp critique of all absolutist political theories.

Without boundaries to the competence of the state there can, in principle, be no alternative to an absolutist "power theory" of the state. In such a theory the state's power foundation is loosed from juridical restraint.

> In whatever shape the absolutist idea of the body politic is set forth, it does not recognise any intrinsic legal limits to the authority of the State. This idea implies an absorption of the entire juridical position of man by his position as citizen or as subject of the government (III:441).

Absolutism reduces the multicontextual jural functioning of the human person to a single context: his political subjection to the state. As we have seen, the citizenship of persons is only <u>one</u> type of juridical status, standing alongside other qualitatively different juridical positions in a relationship of coordinate equality.

At this point we encounter Dooyeweerd's critique of Jean Bodin's doctrine of the final legal sovereignty of the state. This doctrine replaces this coordinate relationship of legal spheres with a single relationship of subordination to the state. Bodin was legitimately reacting against an undifferentiated situation in which "every autonomous law-sphere that claimed an

original competence-sphere, at the same time claimed governmental power of its own, which turned against the idea of the res publica, as it did not recognize any limitation by the public interest" (CCS:7). However, Bodin's formulation of sovereignty was radically vitiated by his espousal of the final legal competence of the state.

> According to him the unity and indivisibility of sovereignty does not allow of any restriction of its mandate, either in power or in task or in time...the concept of sovereignty...implies--according to Bodin--the absolute and only original competence for the creation of law within the territory of the state. The legislative power as the first and most important consequence of sovereignty does not allow of any other original authority for the creation of law. The validity of custom is made absolutely dependent on direct or indirect recognition by statute law, and the same holds good, by implication, for all direct creation of laws in different spheres of life that are contained within the territory of the state. The monopoly in the domain of the creation of law...is here, as the natural outcome of sovereignty, proclaimed to be the essential characteristic of any state whatsoever (CCS: 4-5).

This essential feature of Bodin's doctrine was maintained in various forms for several centuries. The notion that sovereignty was a feature exclusively of the state profoundly influenced the framework within which modern political theory developed, both in its absolutist line as well as in its counterpole in liberalism. However radically different in other ways from absolutism, liberalism does not deny the exclusive sovereignty of the state, but only holds that it proceeds from the consent

of the individual members of the state, each "sovereigns" in their own right.

In whatever form the doctrine of sovereignty appeared, it "implied the denial of original, materially and juridically defined orbits of competence of the State and the other spheres of life" (CCS:50). In implying that all other types of law were mere derivatives of state law, it violated the central principle of juridical sphere sovereignty. There is thus an identification of universality and sovereignty in the history of the concept of sovereignty (III:394, note). It was precisely because of this understanding of the concept of sovereignty that Kuyper was, much earlier than Dooyeweerd, prompted to propose the principle of "sovereignty in one's own sphere".

Dooyeweerd elaborates this by arguing that the original material spheres of competence cannot be seen as delegated from the positive law of the state or any other juridical sphere. Any formulation of law presupposes the original competence of juridical power capable of positing it.

> This jural power can only be founded on and materially defined by the inner nature, by the structural principle of the social sphere within which it is executed, which principle is independent of any human discretion. As an original jural power--not derived from any other temporal sphere of life--it may be called sovereign (CCS:50).

There are, therefore, a multiplicity of legal sovereigns, each possessing an irreducible competence within its own sphere. "Juridical competency is essentially never absolute or exclusive.

It premises a number of original orbits of competency that are in jural relations of mutual circumscription and balance" (CCS: 52).

The exaggeration of the domain of state law presupposed in the absolutist theory of the state is implied in the pernicious notion of "Kompetenz-kompetenz".[81]

> If we cannot appeal to any law outside of the State, if the body politic has a so-called "Kompetenz-Kompetenz", i.e., a pseudo-juridical omnipotence, then the authority of the State has been theoretically deprived of any real legal meaning and has in principle been turned into juridically unlimited political power. Neither a theoretical subjection of this power to some general principles of natural law, nor a theoretical construction of a so-called legal self-restriction of the State-power, can undo the harm implied in the initial absolutization of the body politic, current since Bodin. But in the true idea of the law-State, the divine structural principle of the body politic limits the peculiar universality of the internal public law to a universality and sovereignty within its own sphere of competence (III:442).

This concludes our discussion of Dooyeweerd's account of the internal structure of the state, established by its structural principle. We have seen how the notion of public as "territorial inclusivity" is a sufficient component in the distinctiveness of the structure of the state, and that, while Dooyeweerd sees this public character as inseparably linked to a coercive power foundation, nevertheless it is the notion of "public" rather than "coercion" which appears to be the deeper basis of the distinction between state and non-state societal relationships. It is this notion which is crucial in identifying the

peculiar character of the justice domain of the state and in placing limits upon its legal competence. We are now ready to examine the notion of public justice as it is intended to guide the state in its intimate relationships with non-political structures.

## SECTION IV: PUBLIC JUSTICE

### 9. Public Justice: Its Basic Meaning

It is not easy to separate out clearly the various interlocking elements in Dooyeweerd's discussion of public justice. In his discussion, such notions as "public interest", sphere sovereignty, the internal function and the enkaptic relations in which the state is involved are frequently juxtaposed without adequate distinction. It is sometimes not clear, for instance, whether the notion of "public justice" is delimited by the principle of the "public interest" or vice versa. What follows then is an attempt to reconstruct these various elements assuming, where possible, an underlying consistency. First, we discuss in general terms Dooyeweerd's conception of the relationship between state and "society". Then we introduce the notion of "public tribution" utilising our earlier discussion of the core of the juridical mode. Third, we discuss Dooyeweerd's perspective on the principle of "public interest" attempting to elicit its relation to public justice. After that we turn to the notion of the "task" of the state and note its distinction from the competence of the state.

#### a. State and "society"

We should clarify at the outset of this treatment of our major theme that we are now dealing with the <u>external relations</u> between the state as a structural whole, and non-state societal

relationships (or persons acting in other capacities than as citizens). We have already alluded to the distinction between internal functioning and external relationships, suggesting that Dooyeweerd does not draw it sufficiently clearly. The distinction, however, is presupposed in any discussion of state and society which ascribes to the state a distinct identity: at this point we should elaborate on its significance.

In our view, the basic ambiguity on this point in Dooyeweerd's various discussions proceeds from a failure to distinguish the specific relationships obtaining between the different "offices" within the state, i.e. government and citizens, from relationships obtaining between the state as a whole and other societal wholes (or persons acting in non-political roles). For instance, there is a radical difference between the government's relationship to its citizens expressed in electoral legislation, and the state's relationship to a school expressed in compulsory curriculum standards. The first case is an example of a relationship within the community of the state, while the second is an example of a relationship between the state as a public legal community and the school as an educational community. Dooyeweerd does indeed recognise the difference between internal relations and external relations. But he misleadingly refers to some of the state's external relations as its modal aspects. In his exposition of the modal aspects of the state (III:467-508), Dooyeweerd cites illustrations both of (what we are now proposing

to call) the internal relations or functions of the state and its external relation to societal relationships with various specific qualifying functions. Thus the state's regulation of private economic structures is cited as an example of the internal economic functioning of the state (III:483). A correct example of this internal economic functioning would rather be the public domain of political economy, based upon the taxation system (III:481). In regulating the economy, the state as a communal whole relates enkaptically to economically qualified societal structures. But the state's enkaptic regulation of economically qualified private structures should not be confused with the internal economic functioning of the state itself. Instead of speaking here of the modal aspects of the state, Dooyeweerd would have been more consistent had he spoken of enkaptic relations with different qualifications of societal relationships to which the state relates externally. It is with the external relations of the state to non-state societal structures that we shall now be concerned. We have clarified the meaning of "external"; now it is necessary to define the notion of "society" implicit in Dooyeweerd's position.

A fundamental point here is that "society" is not an entity with its own structural principle; it is not a structural whole. In Dooyeweerd's conception "society" seems to be understood as an enkaptic intertwinement of all the communal relations and interlinkages within a geographically delimited territory, a

horizontal complex of structures integrated in a network of intimate, though external, relationships. This conception can be contrasted with that implied in sociological universalism. Universalistic theories conceive of "society" (or the "nation", or the "people") as a community in its own right, or often as an "organism" of which one societal structure, typically the state, is a "head". "Society" is thus conceived of as the communal whole of which the various societal structures are its dependent parts. On the other hand, the notion of society as an enkaptically integrated network of communal relations and interlinkages avoids the opposite pole of sociological individualism in which the intimate interlacements between persons and structures are reduced to the level of private interindividual relationships.

Of primary concern in this context are the implications of universalism and individualism for the place of the state in society. Society itself is a complex of enkaptic interweaving between structures of many kinds, for instance between school and families, labour union and political parties, business enterprises and universities, and so on. The state is not involved in all these enkaptic relationships. We are concerned only with those enkaptic relationships in which the state acts as the encapsulating structure. This is the problem of "state and society" seen in Dooyeweerd's terms. Both universalism and individualism, however, deny that this relationship is of an enkaptic character. In universalistic theories of the state

societal structures were viewed as parts dependent upon the state as the all inclusive whole. On the basis of a consistent universalistic theory, the state is in principle entitled to regulate all areas of any human activity or structure. Thus, since Aristotle conceived of the household as part of the political community, he concluded that the polis should regulate human procreation. Further, he proposed that the citizens of the state be divided into compulsory corporative occupational classes and that the government should regulate common meals in which all citizens had to participate (III:205). According to Dooyeweerd, in the first case the state is violating the internal marital rights of husband and wife and in the second the rights of the economically qualified structures: "parts" can never have rights against the whole. But in Dooyeweerd's notion of an enkaptic regulation of a non-political structure by the state, the distinctive rights of these structures are respected. In the first case, the rights of marriage partners to procreate freely falls beyond the scope of such regulation.

Individualistic theories of the state reduce the state to an association of privately contracting individuals. Whereas in universalism persons and structures are viewed as subordinate to the state, in individualism the state is viewed as an instrument of individual purposes. Its raison d'être is ultimately the legal regulation of private interindividual property relations. Dooyeweerd cites the state conception implied in classical liberal economic theory as an example.

> Non-political civil society...was exclusively considered from the economical viewpoint as a system of free market relations. But its foundation was private civil property, whose organized maintenance and protection was viewed as the chief aim of the political association of individuals. The State should not interfere with this 'civil society', unless to prevent the formation of monopolistic market positions, which disturb the natural economic laws (III:452).

The laisser-faire principle assumed in this conception leaves no room for a public juridical regulation of non-political societal structures except insofar as such regulation protects private property rights. Priority is thus accorded to such rights while the rights of communities are overlooked. The public-legal regulation of the individual property rights of an entrepreneur, perhaps by legislation curtailing pollution, is thus seen as undue interference with the internal sphere of the enterprise by the state. In Dooyeweerd's conception, however, such regulation consists not of an undue interference with sphere sovereignty but rather of a legitimate enkaptic "binding" of the enterprise by the state, on behalf of the rights of others to enjoy a clean environment. As such there is no violation of the internal sphere sovereignty of the enterprise. Only its external relations with persons and other structures are affected.

With the aid of the notion of enkaptic relations between state and "society", Dooyeweerd can thus chart a "third way" between the two extremes of universalism and individualism. In the light of this notion he is able to deny that the state has

any original competence in non-political societal spheres but at the same time to affirm that the state is in principle competent to regulate externally any non-political sphere insofar as its activities have public consequences. The various interests within a territory are to be "harmonized" writes Dooyeweerd, but, he adds, "only insofar as they are enkaptically interwoven with the requirements of the body politic as a whole" (III:416).

Having discussed Dooyeweerd's conception of the relationship between the state and society in general terms, we now move to an analysis of the central norm which ought in his view to govern this relationship, the norm of public justice.

b. Public "Tribution"

As we saw, the core of the juridical mode according to Dooyeweerd is "retribution", which we proposed should be revised as "tribution". On the basis of the principle of juridical sphere sovereignty, tribution in family relationships is thus qualitatively different from tribution in corporate relationships. But <u>public</u> tribution, which the state must promote, is of a unique character. Dooyeweerd characterises what we are referring to as public tribution thus:

> The internal political activity of the State should always be guided by the idea of public social justice. It requires the harmonizing of all the interests obtaining within a national territory, insofar as they are enkaptically interwoven with the requirements of the body politic as a whole. This harmonizing process should consist in weighing

> all the interests against each other in a retributive sense, based on a recognition of the sphere-sovereignty of the various societal relationships (III:445-6).[82]

Dooyeweerd does not elaborate extensively on the broader implications of this understanding of public justice for the concrete functioning of actual political communities. As Skillen has pointed out, Dooyeweerd's discussion of the state is largely confined to the level of abstract modal analysis.[83] Rarely does Dooyeweerd envisage its total structure as a communal whole with a distinct identity in relation to other societal wholes. Thus, what follows is an attempt not just to expound Dooyeweerd's meaning, but to develop further what we take to be the central thrust of what Dooyeweerd intends in describing the vocation of the state as the pursuit of public justice.

The notion of public justice is crucially interlocked with the principle of sphere sovereignty. Public justice, or public tribution, consists of a process of "harmonizing" the various juridical interests which are rooted in the juridical sphere sovereignty of the various societal relationships. Whereas private tribution within a particular societal relationship consists of a tributive harmonising of the various juridical interests falling within that relationship, public tribution is to consist of a tributive harmonising of all the external juridical interests within the entire territory of the state. The state is responsible for the external justice interests of all and any within its territorial domain.

The notion of "harmonizing", as we saw earlier, is stressed because of the immediate foundation of the juridical mode in the aesthetic. We argued, however, that the relation of the juridical mode to the economic is more illuminating of the nature of justice than its relation to the aesthetic mode. Since the core of the economic aspect is "frugality" we might propose that a term preferable to "harmonizing" would be "frugalizing", or "non-excessive balancing". We might then describe public justice as consisting not of the "retributive harmonizing" but of the frugalizing" of all the justice interests in the territory of the state. In other words, the state's calling to "render to each his due" would then involve conferring on each person and structure within its territory what was due to him or it, without any particular interest receiving an excessive satisfaction of its justice interests. That is not to say that the core of justice is to be redefined as frugality, but only to substitute, for Dooyeweerd's term "retributive harmonizing", a more illuminating one. In seeking to understand the nature of justice, its economic analogy appears to shed light on one of the important features of justice; that wherever justice is done there will also be an element of "frugality" evident; and when public justice is done, "frugal tribution" will be rendered to all within the territory of the state. In other words, the legitimate justice claims of all persons and structures within the state's territory will be satisfied insofar as they claim what is their due,

and insofar as their satisfaction does not infringe the legitimate justice claims of others. The state thus has to engage in a careful process of weighing justice interests against each other, ensuring that no particular interest receives more than its due, and none less.

The criterion of what stands as a legitimate justice claim, of what is indeed someone's due, is the nature of the various offices and callings represented by the various societal structures. All the different juridical interests within the state's territory are to be rendered their due in accordance with their respective offices, that is, in "recognition of the sphere-sovereignty of the various societal relationships". The state is to engage in a "harmonious" or "frugal" balancing of the respective juridical weight of each sphere against the other. The tributive balancing which is characteristic of juridical functioning within all spheres is also to take place between them, under the authoritative leadership of the state.

Public justice does not necessarily require an "equalising" of juridical interests, since these interests differ according to the specific character of the interest-possessing sphere. It does, however, require an <u>equitable</u> or <u>impartial</u> tribution of such justice interests. The principle of equity or impartiality is implied in the public character of the state's justice responsibilities. <u>Each</u> and <u>every</u> justice interest ought to receive that tribute which is its just due.

Where particular persons or structures are denied their legitimate rights, the state has the responsibility to act on their behalf. Injustices against persons in the labour market are a case in point. In the nineteenth century, injustices were being done to children by treating them on the same basis as adults in the labour market.[84] The legitimate claims arising from their "office" of being children were ignored. Similarly in the twentieth century injustice is being done in many cases to women who are, in effect, denied full status as persons on an equal basis with men in the labour market. Legislation to redress these injustices can be seen as the satisfaction by the state of the legitimate claims of specific types of persons.

Injustices against associations or structures also call for state action. The abolition of legal barriers to the formation of labour unions followed the recognition that unions were fulfiling a legitimate "calling" in representing the threatened interests of workers, a calling for which there was hitherto no legal space. Where, however, powerful unions act so as to make impossible the normative fulfilment of the calling of an entrepreneur, then the state must intervene to protect the latter.

We can see from the above example that public justice calls for the state to acknowledge the legitimate callings of various societal structures and persons, and to create the necessary legal protection for them to fulfil these callings. The state's

justice responsibilities are thus not for the internal domain of a societal structure. The state is not competent to fulfil the callings of all the different societal structures, but only to establish the external conditions in which these callings can be adequately pursued. One important responsibility of the state in this regard is that it must ensure that no structure overrides the legitimate field of functioning of any other. The state is to create a network of just interrelationships between the various societal structures and persons within its territory. Not only is the state itself to refrain from violating the sphere sovereignty of a given structure, it is to prevent any other societal structure from violating this sphere sovereignty.

We should note that the fulfilment of the justice responsibilities of the state should not be conceived of simply as the protection of the boundaries of the various societal spheres. In order to enable a particular societal structure to fulfil its calling it will often be necessary to guarantee access to resources required for such fulfilment of callings. At a most basic level, all persons require food, shelter, clothing, physical security, health care and education. Ensuring access to such basic resources is not a matter of policing boundaries, but of creating conditions for the fulfilment of (bounded) callings. Woldring has proposed that sphere sovereignty should not be conceived of primarily in its negative sense as a

restriction, but rather in its positive sense as a summons to responsibility.

> The idea of "sphere sovereignty"...does not in the first place concern the boundaries of the task of government, but the government's calling according to the structural principle of the state. Precisely in recognising the structural identity of societal relationships, the state is called to do everything to foster the possibilities for unfolding which are possessed by the participants of these structures.[85]

Drawing together the various elements in the foregoing elaboration of Dooyeweerd's notion of public justice, we could summarise its implications thus: public justice is the overriding normative principle which ought to guide the state in executing its responsibilities, which are to be fulfilled by means of public law, for the safeguarding of the necessary legal space for, promoting and defending the legitimate justice claims of, and ensuring access to adequate resources required by, all and any person or structure within the national territory, insofar as these arise from the normative responsibilities borne by each of them on account of their specific societal offices.

c. Public Justice and the Public Interest

Dooyeweerd's treatment of public justice is closely interconnected with his discussion of the traditional notion of salus publica, the "public interest" (publiek belang). The central burden of this discussion is that the principle of

public interest must be brought under the normative constraint of the criterion of public justice. Historically, the "public interest" has proved itself, in his view, a dangerously unstable political concept, employed to justify all kinds of intrusions into the rights and freedoms of persons and structures. "The slogan of the public interest was the instrument for the destruction of the most firmly established liberties because it lacked any juridical delimitation" (III:443).[87] For instance, Plato's educational policy violated the freedom of parents to decide on the nature of their children's education. This was the result of his universalistic conception of the state according to which the public realm was an all-embracing whole of which other societal relationships were mere parts (III:443).

To forestall such abuses, the principle must be interpreted in the framework of the enduring structural principle of the state, apart from which it can provide no defense against an arbitrary state (III:444). The principle must therefore be juridically circumscribed. "It can never warrant an encroachment upon the internal sphere-sovereignty of non-political societal relationships (III:438).

It must be stressed that "the public" is not to be seen as an interest-possessing entity in its own right. Dooyeweerd generally does not use the term "public" as a noun but as an adjective. The "public interest" should therefore be interpreted as "the interests of all and any within a certain territory".[88] Further, this understanding of the public interest

should be distinguished from a quantitative sense of the term in which the phrase might be interpreted to mean "the aggregation of private interests". With such an understanding, the task of the state could be reduced to the maximising of the sum total of private interests. But such a process of maximising would not necessarily guarantee that the distribution of interest satisfactions would be a just one. For the total sum of private interests might increase only if there were an inequitable distribution of justice interests. (This sort of notion seems to be behind the "trickle-down" theory of economic growth.) Rather, Dooyeweerd's notion of the public interest is better defined as "the juridical integration of private interests", that is, the legal establishment of just interrelations between various private justice interests.

We might observe here that, while the notion of an entity called "the public" possessing its own interests does not fit well with Dooyeweerd's conception, the notion that the state as a distinct community having its own specific interests and rights is quite compatible with it. We suggest that these interests are related to the internal modal functions of the state, consisting of such things as an adequate tax base (economic), an effective armed force (historical), a reasonably literate citizenry (logical) and so on. The state has rights to those resources required as necessary conditions for it to pursue its own distinctive office. While Dooyeweerd does

not speak of these "rights of the state", such a notion seems to be implied in his theory. The state, as promoter of public justice, has also to consider its own interests in its task of "harmonising" justice interests in its territory. (Here then we have an alternative way of interpreting the widely employed notion of the "national interest" or that of "la raison d'état".)

The juridical circumscription of the public interest does not merely surround the latter with a formal or procedural boundary. Rather, conceived juridically, the principle is "a material [i.e. substantive] legal principle of public communal law" (III:442). Dooyeweerd's insistence on the material character of the principle should be seen in the context of his debate with the formalist school of legal philosophy.[89] In the formalist view the legal limitation of the state's task was seen as essentially procedural. Conformity to specified formal legal requirements was believed to be a sufficient condition for the validity and legitimacy of state law, whatever its substantive content (III:431-2). Dooyeweerd insists, however, that substantive limitations, defined by the sphere sovereignty of non-state structures, are entrenched within the very notion of state law. Thus, a law attempting to protect the civil rights of a child finds its material limit in parental rights based on their ethically qualified office. Though passed through proper procedure, such a law would not be valid if it

violated such parental rights. Thus, just as state law is of a material character, as we saw, the principle of the public interest, when it functions as a principle of state law, also bears the same material character. It places non-arbitrary public juridical boundaries around the activities of the state.

> The salus publica...is a political integrating principle binding all the variable political maxims to a supra-arbitrary standard. It binds the entire activity of the State to the typical leading idea of public social justice in the territorial relations between government and subjects (III:445).[90]

c. The Task of the State

Dooyeweerd operates with a basic distinction between the enduring structure of the state and the variable task of the state. The structure of the state determines its nature and identity, establishing what it is essentially and invariably. The task of the state concerns rather the variable purposes and goals which it may pursue. These are determined not by its invariable structural principle but rather by the changing demands of the political circumstances of the time. The notions of public justice and public interest are implied in the universally valid structure of the state; they circumscribe its competence.[91] But the external task of the state cannot be given a universally valid circumscription. While the principle of the public interest is indeed universally valid, its "positive contents" depend upon "an intricate complex of variable socio-cultural conditions" (III:444).

> Externally the task of the State cannot be delimited in a universally valid way, because the body politic, as a real organized community, functions in all the aspects of temporal reality. In principle it is impossible even to exclude the State from the spheres of morality and faith. The State may promote the interests of science and the fine arts, education, public health, trade, agriculture and industry, popular morality, and so on. But every governmental interference with the life of the nation is subject to the inner vital law of the body politic, implied in its structural principle. This vital law delimits the State's task of integration according to the political criterion of the "public interest", bound to the sphere-sovereignty of the individuality structures of human society (III:445-6).[92]

Thus the universally valid circumscription of the competence of the state places a boundary around the scope of its task, whatever the contents of this task may be.

In the public interest the state may engage in a wide variety of specific activities. Indeed, the state may engage in anything which is necessary for supporting, rehabilitating or stimulating the internal life of the non-state societal relationships. We might list the following activities as falling within the range of the public interest: protecting the borders of the state, maintaining public safety, improving public health, securing adequate supplies of food and water, guarding freedom of speech and the press and religious liberty, and so forth. The content of the public interest will indeed vary historically according to numerous factors such as the level of cultural development of a society and the relative power

balance between different societal spheres. It will however, generally be readily identifiable insofar as the state has an adequate understanding of the distinctive responsibilities of non-political societal structures, so that in promoting the public interest it respects their right to fulfil such responsibilities (cf. note 87). Dooyeweerd is clear that, whatever the state may engage in on account of the public interest, the sphere sovereignty of the affected societal structures must be upheld.

The actual content of the task of the state, the "positive contents" of the public interest, cannot, however, be deduced from the invariable structural principle of the state. This structural principle does not prescribe any specific activities or purposes, but rather places limits upon the manner in which such activities are to be executed, limits based on juridical sphere sovereignty of non-state structures. The entire activity of the state is to be bound to the typical leading idea of public justice, but can never be derived from this idea. One could argue that it is in the public interest to extend polderlands, but it would be a strained argument which concluded that a state which failed to do this was thereby necessarily an unjust state. The norm of public justice can never be bound to the criterion of the fulfilment of specific activities. Indeed justice in any context can never be defined in terms of any of its specific manifestations. However, if, for example,

in subsidising certain polder construction corporations, undue preference were given to one over another (perhaps less politically powerful); or if such subsidies foreclosed the allocation of funds urgently needed for family welfare measures, then the invariable norm of public justice would have been overlooked.

This basic distinction between structure and task underlies Dooyeweerd's critique of so-called "theories of the purposes of the State" (III:425-433). Such theories err because they confuse the enduring structure of the state with its variable task or purposes. In classical liberal natural law theory, for instance, the purposes of the state were seen as strictly confined to the "organized protection of the 'innate absolute human rights' of all the citizens to freedom, property and life" (III: 426-7). For Dooyeweerd, such purposes, although crucial to the modern state, can never define the task of the state in a universally valid way.

Dooyeweerd warns in general against confusing the internal leading function of an individuality structure with the external purposes it may come to serve. While the "intrinsic destination" (the qualifying function) is an "essential factor of the internal structure" of a thing, its "external teleological relations, on the contrary, can only concern its reference to other beings.... Such ends lie outside the internal structure of the actual thing" (III:60). This universal principle must then be applied in a societal context.

> ...the leading or qualifying function of an organized community should not be misinterpreted as the end or ends that human beings try to reach in this relationship by means of their organized endeavours. This warning is especially to the point in the case of the typical leading function in the structure of the State (III:425).

Here, the internal/external distinction is coincident with the structure/purpose distinction. It is a basic principle of Dooyeweerd's political ontology that internal structure is the condicio sine qua non for external purposes.

> The question what concrete subjective purposes a body politic has to realize at different times and in different places presupposes the internal structure of the State as such.... A State cannot serve any 'purposes' if it does not exist as such. And it can have no real existence except within the cadre of its internal structural principle determining its essential character (III:433).

Thus the task and purposes of the state, as historically variable phenomena, can never in themselves define the invariable structure of the state. Whatever the state may have to do in concrete terms, the boundaries of its competence remain unchanged. These boundaries are established by the principle of juridical sphere sovereignty, which with respect to the state, binds it to the domain of public justice.

10. Public Justice: Its Concrete Application

a. The Relation of Church and State

On the basis of the principle of juridical sphere sovereignty Dooyeweerd recognises an internal sphere of ecclesiastical justice and law.

> True internal Church-law can only be such law that displays the individuality-structure of the ecclesiastical community. Its material meaning is indissolubly connected with the leading function of the Church as a community of faith and confession in the administration of the Word and the sacraments (III:555).

He rejects the view that the notion of law is intrinsically in conflict with the idea of a community based on faith, a view which assumes that all law is of the same variety as state law, that is, enforceable with coercive sanctions (III:554, 557). On account of the different radical qualifications of state and church, no church ought to submit to the public legal authority of the state in its internal domain of justice (III:544-5).

Yet while the church's juridical sphere cannot be conflated with that of the state, it still remains a truly juridical sphere. Indeed, this is the condition for its juridical sphere sovereignty.

> The internal ecclesiastical legal rules display the general modal meaning of retributive harmonizing of interests, inherent in every juridical norm, irrespective of its typical structure of individuality.... For the juridical sphere-sovereignty of the Church depends on this real juridical character of the ecclesiastical order in its contradistinction to the legal sphere of the State (III:556).

Included in the typical legal domain of the church are, for instance, its internal constitution, the competence of the various office bearers or the content of the confession. So long as its functioning in these areas does not encroach upon either the public order or the civil law of the state, they remain entirely within the domain of the church. Conflict between the legal spheres of church and state can arise only if either sphere attempts to overstep the boundaries of its competence. One can thus delineate the structural limits to the competence of the state, limits defined by the church's juridical sphere sovereignty; and one can delineate the acceptable scope of the state's intervention within what might appear to be exclusively church affairs, such scope defined by the state's juridical sphere sovereignty.

Regarding its limits in the sphere of the church, Dooyeweerd especially stresses the state's incompetence with respect to ecclesiastical confessions. Here we encounter his conception of a "Christian State" (III:500-8). Since the state functions internally in the aspect of faith, it is impossible for it to be religiously neutral (III:503). Although he recognises that many states are led by false faiths, he believes that it is possible for a state to be led by a genuinely christian faith, yet not subscribe to any ecclesiastical confession. A state can function christianly in the aspect of faith by acknowledging revelation of God for its internal structure, <u>within</u> this very

structure. "The political confession of faith in God's sovereignty over the life of the body politic has from the start been typical of a Christian view of the State"(III:503-4). It is in a political, not an ecclesiastical confession of faith that a state can function as a christian state. This political confession would in principle involve recognising God in the state's "public communal manifestations", such as parliamentary prayers, religious national anthems, or perhaps even a reference to God in its constitution. In this way the state ought to perform a "Christian political integrating function" in the faith life of the nation "so long as the public national opinion shows a Christian stamp" (III:505).

In these suggestions, Dooyeweerd is attempting to take account of the fact that the belief patterns of the citizenry also have an impact upon their political convictions. Although the state can never prescribe any specific belief as legally sanctioned, it must nevertheless ensure that such beliefs as are held, do not undermine the political order. (This view is, of course, unacceptable to those who would hold that connections between politics and religion are of no political consequence.)

While the state may and should be guided by a christian political confession, this does not at all imply that the state should officially recognise an ecclesiastical confession, or that it should grant public-legal status to any institutional church.

> The Christian State...ought to respect sphere-sovereignty also in its function of faith.
>
> This is even the first fruit of a truly Christian policy: that the sphere-sovereignty of the different societal structures ordained by God in His holy world-order is recognised and respected in all the spheres of life. The State should not strain its power to dominate the internal relations that have received their own specific vital law from God (III:505).

Thus, without self-contradiction, Dooyeweerd can claim that the distinguishing feature of a genuinely christian state is precisely its lack of an ecclesiastical confession.

Nevertheless, there are enkaptic interweavings between the internal domain of the law of the church and the civil law of the state. Referring to a case concerning a compulsory tax imposed on all members of the Dutch Reformed Church, Dooyeweerd acknowledges that baptism "really establishes a juridical bond of an internal ecclesiastical nature". Yet because baptism takes place without a person's consent at infancy, the church has no competence compulsorily to impose such a tax. Only the state has the power of compulsory taxation on account of its unique (coercive) public, territorially inclusive foundation. A person can leave the church, but not the state. The Dutch Reformed Church, in this case, transgressed onto the state's legal sphere. An appeal to a civil court against the tax, lodged by a person baptised by the church, but no longer wishing to remain a member, is thus quite legitimate (III:689-691). No violation of ecclesiastical sphere sovereignty would be involved if a civil judge decided in favour of the appellant.

An attempt on the part of the church to move beyond its own juridical sphere sovereignty would also be involved in the Roman Catholic conception that the legal regulation of all marriages belongs exclusively to the competence of the church. The church is indeed entirely within its rights in establishing its own regulations regarding marriages performed by the church. But these are necessarily restricted in application to the members of that church, since the church lacks the inclusive authority of the state. Apart from the fact that, in the church's view, marriage requires ecclesiastical sanction, marriage also fulfils non-ecclesiastical public roles and is thus rightly enkaptically interlaced with the state's sphere of civil law (III:555; cf. supra, p. 34-5).

b. Civil Law and the Rights of Communities

The enkaptic interlacement between the internal domain of church law and the domain of civil state law finds its parallel in all communal legal spheres. The requirements of civil law are binding also within these spheres.

> By means of this common private law [civil law] the body politic can bind in an enkaptical way any specific (non-juridically qualified) private law--to the principles of inter-individual justice, legal security and equity. But the internal spheres of these specific kinds of private law, qualified by the non-juridical leading function of the societal relationships to which they belong, remain exempt from the competence of the State (III:451).

In its enkaptical integrating function, the civil law of the state must respect the boundaries set by the juridical sphere sovereignty of the structures, while seeking to ensure that these spheres remain within their own competence and do not violate the civil rights of their members, or of non-members. Zylstra writes that civil law, in effecting this enkaptic integration of non-state law spheres, operates so that "such integrating jus specificum is provided with civil legal consequences on the condition that it does not run counter to compulsory civil legal or public prescriptions".[93]

Such an enkaptic integration is thus of an external, formal character, and does not encroach upon the internal material legal domain of non-state societal relationships. But this does not mean that civil law itself is only of a formal character. All law has material content embedded within it, as we have seen. This material content is determined by the structural principle of the societal relationship which creates it. But when called to adjudicate questions arising from within the internal legal sphere of a community, a civil judge must restrict himself to the formal question of whether a particular decision or rule has been made in accordance with its own articles of association. It is only when such decisions or rules affect a person's civil legal interests, their civil rights, that a civil judge may employ material criteria arising from within his typical legal sphere.

Dooyeweerd develops the example of an appeal lodged against an expulsion from a particular association, before a (Dutch) civil court (III:684-5). The claimant, while chairing a public meeting, had permitted an insulting expression to be used against the members of the association, and subsequently was expelled from it on the grounds of one of the society's articles of association, which prohibited members from endangering its reputation. The association tried to defend its exclusive competence in the matter of the expulsion, and argued that the civil judge was incompetent in the case. However, since the claimant did not request the court to reinstate his membership but only sought damages on grounds of alleged unlawfulness of the expulsion, the judge decided to hear the case. He concluded, that, after all, the expression concerned had indeed endangered the society's reputation on account of its insulting character, and so rejected the claim for damages.

The essential point in this example is that the basis of the judge's decision was not the formal ground of conformity to internal articles of association, but the material ground of the actual insulting character of the expression. The judge held that the latter fell within the court's civil legal competence since the members of the association had the ordinary civil right not to be insulted. This right was not dependent on their membership in the association, but rather on their status as independent legal subjects in the state. Consequently the decision of the judge was not made on the basis of the

association's typical internal communal law.

> A civil judge's sentence can do no more than pronounce the civil unlawfulness of the challenged decision of an internal organ of an organized community, and sentence it to pay damages....
>
> But within its original sphere of competence an organized community can never be compelled to accept a civil judge's decision which exceeds the boundaries of the civil legal sphere (III:685).

Had the judge come to the material conclusion that, in fact, the expression used was not insulting, he could still only have ruled in the plaintiff's favour on the basis of the criterion of unfair dismissal, which, as a material criterion of civil law, falls within the judge's own sphere of competence. The right to fair treatment in such cases is a civil right, applicable within any specific community.

The judge would have exceeded his competence, however, if he had decided that the claimant had acted in a way inconsistent with the specific purposes of the association. Taking the case of ecclesiastical law again, a civil judge should never decide, for example, whether an officer of the church actually was guilty of heresy, since the definition of the latter falls entirely within the juridical sphere sovereignty of the church. A civil judge should only decide whether or not, if the officer was (according to the church) dismissed on this ground, he had been dismissed fairly.

At this point we should observe that a degree of indeterminateness remains in Dooyeweerd's conception of boundaries of

juridical competence. How, we might ask, are we to decide whether a civil right has *in fact* been infringed? Suppose, for example, that a fair dismissal was, in civil law, taken to require a "full hearing". Suppose further that a particular church, because of its internally defined doctrine of ecclesiastical authority, operated with a highly secretive decision-making structure such that *no* defences were permitted in cases of dismissal, and therefore that the mere decree of the church authorities was deemed sufficient. Could a member of this church, dismissed for alleged heresy, appeal to a civil judge? Suppose further that in such a case, the church argued that, in its view, the dismissal was entirely fair and that *its* criterion of a "full hearing" had been met? For the moment, we shall leave the question of "indeterminateness" standing, returning to it at the conclusion of our study.

c. The Rights of Parents

There are also inviolable boundaries separating the civil law sphere of the state and the internal communal law of the family. In its legal sphere, the family is to operate under the guidance of its specific structure, qualified as it is as a "moral" community.

> The internal legal sphere of the family, to which the disciplinary competence of the parents is restricted, is in every respect irreducible to any other type. All the rights and legal duties of the members of this natural community show a typical moral qualification and biotic foundation which reflect the inner

> unity of the structural principle of the family bond (III:276).

Thus the authority of parents is "bound to a specific destination: the upbringing of the child under the guidance of parental love" (ARS:1954:187). Civil law is correct when it gives formal recognition to the typical internal communal authority of parents over children.

But this authority is limited by the civil rights of the child to adequate provision of food, necessary medical care and so forth. Where parents are guilty of sustained neglect of these reponsibilities, the state is quite within its bounds of competence to remove a child from the custody of its parents (III:276, 281). Sphere sovereignty here is thus not a matter of laisser-faire but of the proper exercise of parental authority for the child's well-being. Where this authority is seriously abused, and the state assumes responsibility for the child, no violation of the sphere sovereignty of the family is involved. Rather, the state is merely fulfilling its own specific responsibilities. While the state has no right of say in the domain of activity typical for the family, its own competence does intersect with that of the family.

(This holds good not only in the area of civil law, but also in the sphere of public communal state law. The state may, for instance, enforce compulsory education and military service on account of the fact that both are essential to its internal functioning; the first "because a modern citizenry

requires a certain level of elementary education"; the second "because the authority to regulate service flows immediately out of the inner structure of the state" [ARS:1954:186-7].)

What then are the precise limits of the state's civil-legal competence with regard to the family? Dooyeweerd holds that "civil law cannot give positive rules for the internal family structure of these competencies and duties.... Civil justice has to be content with external, abstract standards ..." (III:281). The civil-legal competence of the state, and also its public communal legal competence, finds its limit in the internal communal life of the family. Parental duties are by no means exhausted in meeting such external, abstract standards: "a man who carries out his civil-legal duty of providing sustenance of life, has not yet really fulfilled these obligations in the sense of the internal family law" (III:281). The child has a right to sustenance; but it also has a right to love, which implies far more than such basic minimum requirements. Here is where the state finds its limit: no state can force a parent to love its child. The "emancipation" of the child from a state of parental neglect can, at least as far as the state is concerned, only go as far as these basic minima.

We should note again in this example the same element of indeterminateness that we encountered in the previous case. How are we to decide when parental indifference becomes actual

neglect or abuse? How can emotional abuse or psychological intimidation be detected; and, if it could, to what degree would it fall under the provisions of civil law? Again, we shall return to these questions in due course.

d. State and Industry

An especially illuminating example of the concrete application of Dooyeweerd's notion of the limits of the legal competence of the state is found in his contribution to the debate over the public-legal organisation of industry in the Netherlands (publiekrechtelijke bedrijfsorganisatie: henceforth PBO). This debate preceded and followed the passing of the 1950 Industrial Organisation Act (Wet op de bedrijfsorganisatie). Dooyeweerd's writings on this represent his most extensive recent commentary on practical political issues and merit more detailed treatment than that given to our previous examples. We shall first introduce the historical background to the debate and outline the main provisions of the Act.[94] Then we shall identify the issues within the debate which Dooyeweerd regarded as central, and present an analysis of his position.

The joint influence of nineteenth and twentieth century neocalvinist and Roman Catholic social thought has created a traditional preference in Holland for the self-government of societal structures and groups. This preference for self-government is evident in industrial life. Whereas in nineteenth-century Britain, for instance, matters such as the

regulation of competition, working conditions, social insurance and so on, have been seen primarily as the responsibility of the state, in nineteenth and early twentieth century Holland, such matters came to be regarded as first of all belonging to the private sphere of industrial life. The intention was to avoid the excesses of an unregulated laisser-faire policy, not by direct state regulation but rather by stimulating the various participants in private industrial life to assume cooperative responsibility for their own internal affairs.

Initially this led to the widespread development of nation-wide collective bargaining agreements (collectieve arbeids-overeenkomsten) between national employers' and employees' organisations. In the 1920's the proposal that such forms of industrial regulation should be supervised by the state began to gain ground. In 1927 legislation was passed which was intended to supervise the development of these agreements. However, several permanent private organisations consisting of equal representation from employers and employees organisations emerged, assuming the direct responsibility for regulating such agreements in entire sectors or "branches" of industry (bedrijfstakken). Further, many cartel agreements between employers (ondernemersovereenkomsten), restricting competition for example, also emerged, representing another expression of industrial self-government.

In the 1930's, these private forms of industrial organisation began to attract public-legal regulation. In 1935, the

government acquired the power to make cartel agreements binding within an entire industrial sector, or to strike them down if against the public interest. And in 1937 this power was extended also to the provisions of collective bargaining agreements between employers and employees.

This process culminated in the passing of the 1950 Act. The Act instituted a new publicly recognised national body, the Social and Economic Council, consisting of equal representatives from employers and employees organisations, plus an equal proportion of independent experts. The Council had two main functions: first, it was to formulate advice for the government regarding its national socio-economic policies; second, to supervise the institution of a complex structure of industrial boards with certain regulatory powers. These were of two kinds. Some were horizontal, branch-wide industrial boards (bedrifsschappen); others were vertical, commodity-based boards (produktschappen). They were to be created where desired by the private industrial organisations, rather than imposed by the government.

The regulatory powers of the horizontal boards covered technical areas such as product quality, social areas such as collective wage agreements, social insurance, training, and some limited economic areas such as conditions of sale. The vertical boards, however, would be granted regulatory competence also in the broader economic areas of production, marketing and even price setting. The intention of such boards was to create

a framework of public law within which such social and economic affairs could be regulated while respecting the principle of competition in industrial life. Although the boards were not to be directly supervised by the government, their regulations were subject to government approval and could be struck down if, for instance, they impeded fair competition. This provision was included to prevent the boards from becoming merely publicly sanctioned protective cartels.

The main religious groups, Catholic, Calvinist, Liberal and Socialist, each took different positions on the PBO. The Catholics were generally in favour, regarding PBO as a healthy expression of their social philosophy, embodied for example in the 1931 Papal Encyclical Quadragesimo Anno. In their conception, the most natural manner of organising communal life was in functionally based corporations whose task it was to promote the common good, under the final supervision of the highest natural community, the state. According to the principle of subsidiary, which was a corollary of this view, the lower communities should be left as much room as practically possible in managing their own affairs, while the state ought to assume whatever necessary tasks they could not fulfil on their own. A crucial feature of this theory, in Dooyeweerd's view, is that the state is conceived of as the all-embracing whole of which the lower communities were parts. The state stood at the pinnacle of a hierarchical ladder of lower and higher communities.

By contrast, many Protestants gave only qualified approval to PBO. Although generally not opposed to the principle of industrial organisation behind it, they were concerned that it might undermine the independence of private industrial organisation. Least enthusiastic were the Liberals, who were concerned to protect the freedom of the individual enterprise from state interference. The Socialists however regarded PBO with favour, viewing it as a means whereby the state could more readily control industrial life in the interests of labour, while at the same time making possible a functional decentralisation of public authority to lower organs of the state.

Dooyeweerd's main concern in the debate was to safeguard industrial sphere sovereignty from the encroachment of the state. It was essential, in his view, to distinguish between the internal economically qualified juridical sphere of industry and the public-juridically qualified sphere of the state. In order to explain this concern in more detail, we first need to survey the main features of the PBO debate as he interpreted it.

Dooyeweerd distinguished two fundamental questions of principle in the debate (ARS:1952:99; VB:205-6). The one which is most germane to our study can be summarised thus: was the public-legal authority of the proposed regulatory boards for the various branches of industry to be conceived of as an extension of the intrinsic authority of the already existing

private industrial organisations, or as a delegation of the essentially public-legal authority of the state? In explaining why he held the latter view, we shall also encounter the second fundamental issue in the debate, namely: how was one to view the intrinsic nature of the private branch-wide industrial organisations, from a normative structural viewpoint?

Regarding the first issues, Dooyeweerd's basic objection was to the corporatist implications of conceiving of what, in his view, were essentially non-political societal relationships in private industrial life, as foundations for the public authority of the state. He detected these corporatist overtones in both the socialist notion of functional decentralisation and the Catholic whole-part conception of society. Moreover, this whole-part conception also lay behind the views of the movement for christian solidarism, which attracted support from both Catholic and Protestant quarters. For Dooyeweerd, the essential problem in both socialist and christian solidarist conceptions was that the radical distinction between the distinctly public character of the state and the essentially private character of industrial life was being clouded, and the sphere sovereignty of industrial life was consequently in danger of being undermined. (This issue is, of course, no Dutch peculiarity. It appears again in the recent trend in western democracies towards tripartism, an arrangement in which government, the corporate sector, and the trade unions are regarded

as joint bearers of public authority in directing national economic life.)

Let us now turn to Dooyeweerd's contribution to the debate. As with all distinct societal relationships, Dooyeweerd ascribes an independent sphere of internal freedom and legal competence to the industrial enterprise. This internal sphere of law is guided by its economic qualification. The individuality structure of an industrial enterprise is that of an economically qualified, voluntary, organised community. He defines its leading function thus:

> The independent economic entrepreneurial function is inseparably bound to the principle of independent risk and mutual competition. The entrepreneurial profit is the remuneration, perfectly justified in and of itself, for the special economic services which the entrepreneurial system offers to society (VB:201-2).[95]

Consistent with his analyses of the juridical competence of other spheres, Dooyeweerd holds that the internal juridical functioning of an enterprise ought to remain subservient to its economic qualifying function, characterised by entrepreneurial risk and competition. Should the state attempt to encroach upon this internal, economically qualified juridical sphere of the enterprise, it would usurp the entrepreneurial office.

However, upholding the sphere sovereignty of industry does not consist merely of shoring up a position of independence for the individual enterprise. Rather, Dooyeweerd is mainly concerned with the sphere sovereignty of "industrial life"

(bedrijfsleven) rather than that of the separate undertakings (individuele ondernemingen). Dooyeweerd uses "bedrijf" to refer to a complex of enterprises (EO:4). Thus a bedrijfstak is a complex of enterprises within the same branch of industry. He defines a bedrijfstak thus:

> According to its inner nature as a differentiated sphere of life, a branch of industry is an organization, qualified by the economic entrepreneurial function, of capital and labour in a complex of enterprises, which does not permit itself to be enclosed within the boundaries of the state (VB:201).

An entire branch of industry has a distinctly qualified structure of its own and thus bears its own sphere sovereignty, which ought to be protected against state interference.[96]

What is significant for our purposes is to note Dooyeweerd's characterisation of the structural nature of these branches of industry. Unlike an individual enterprise, a branch of industry does not exhibit a communal individuality structure, but rather that of an interlinkage. It is a societal coordination of enterprises, a network of intercommunal relationships between individual undertakings (VB:207). He rejects the view that a branch of industry is a community in its own right. However, the conception prevailing in christian solidarist circles was that a branch of industry was a "natural community" and was an autonomous but organic part of the national whole organised in the state (III:597). On the basis of this notion it was argued that a public-legal-political status adhered to

the permanent horizontal organisations within the branches of industry.

Dooyeweerd in fact welcomed the emergence of these horizontal organisations, regarding their integrating function as indispensable as modern society became increasingly differentiated (III:596). In his view, however, their purpose should be to promote the particular interests of the branch of industry which they represented and to safeguard its sphere sovereignty. To conceive of them as bearers of public authority was to misunderstand their internal structure. And as a network of coordinated intercommunal relationships the organisations emerging from a particular branch of industry could only regulate its shared interests on the basis of voluntary agreement (VB:207).

We now come to Dooyeweerd's position regarding the PBO. Dooyeweerd was not opposed in principle to the introduction of some measure of public legal industrial organisation (ARS: 1954:189); indeed he encouraged its extension (III:599). However, he coupled this encouragement with the following warning:

> By means of a public legal industrial organization, the State can only bind the industrial...relationships insofar as the latter are enkaptically interwoven with its own structure (III:599).

As we saw, the christian solidarists argued that the new organs emerging from within particular branches of industry could exercise public legal authority in their own right. They

represented "natural communities" which were parts of the state, rather than, in Dooyeweerd's view, independent individuality structures which could only be enkaptically bound by the state. The solidarists, with the socialists, held that public legal competence arose immediately from within industrial life itself. Dooyeweerd denies that this is the case; he also denies that the state may confer such competence upon intrinsically non-political structures (ARS:1954:189; VB:203, 205; III:598).

> A public legal organization of industrial life, as it was introduced in the Netherlands by the Public Industrial Organization Act of 1950, can as such never belong to the inner sphere-sovereignty of industry and agriculture as economically qualified sectors of the societal process of production. Within a State's territory any public legal authority exercised by organs composed of representatives of organizations of employers and trade unions, is derived from the legislators. A public legal organization means an organization of the industrial and agricultural branches which is typically qualified by the leading juridical function of the State. The organs of such an organization may have a delegated autonomy, whose limits are completely dependent on the public interest.... But any confusion of this autonomy with the inner sphere-sovereignty of the economically qualified private industrial and agricultural relations must lead either to a deformation of public legal authority, or to an absorption of free industrial and agricultural life by the political sphere of the State (III:598-9).

Here we encounter the crucial difference between the relative autonomy of a part within a whole, and the sphere sovereignty of a distinct individual whole. Autonomy could only be ascribed to a societal structure in which a whole-part relationship is

evident, such as a province or municipality as part of the state (VB:201), or a subsidiary as part of a larger corporation (VB:206). Such a part can never claim its own sphere sovereignty; the scope of its legitimate authority, moreover, is quite properly determined by the authoritative organs of the societal whole in which it is a part. Its competence is always derived, never original. No principial boundary can be set around municipal or provincial interests (EO:2). The degree of autonomy granted to an organ of PBO might eventually be whittled away as political circumstances required, just as was historically the case with Dutch municipal autonomy. It is the government's task to apportion such degrees of autonomy as is required by the public interest (VB:205; ARS:1952:106). In the light of these considerations, Dooyeweerd stressed that the government, in establishing the PBO, must take careful cognizance of the boundaries of industrial sphere sovereignty. For the "autonomy" of a PBO would in itself give no adequate safeguard against violation of such sphere sovereignty.

We now turn to one of Dooyeweerd's central objections to the specific PBO proposals. As we saw, PBO was envisaged as concerning itself with both social and economic affairs of industry. Dooyeweerd does not object to this in itself. All areas of societal life could in principle be enkaptically bound by the state in the public interest; and industrial life must be prepared to accept this also (VB:204). But while the state may

enkaptically bind certain aspects of industrial life by means of PBO, it has no original competence to form the internal, economically qualified law of industry (ARS:1954:180-1). When the horizontal organisation of a branch of industry is organised into a public-legal board, it assumes the public-juridical qualification of the state. Thus, a PBO can never be the bearer of industrial sphere sovereignty. The distinction between the sphere sovereignty of the private organs of a branch of industry and the relative autonomy of such organs once they have been organised under PBO is therefore crucial.

The next question is the extent to which public legal authority should be given to such originally private organs. At this point we meet a most significant difference between social and economic questions.

> In answering this question we must begin by making a sharp distinction between the so-called social and economic matters. The former do indeed have an internal industrial legal aspect, but the emphasis undoubtedly falls on the acquisition of a social legal position for labour by which labour can no longer be treated as a commodity, as a mere object of exploitation. The regulation of labour conditions for an entire branch of industry (e.g. vocational training and re-training, pension settlements, measures against unemployment initiated by industry, etc.) cannot be viewed as matters of internal industrial law. For internal industrial law as such is always qualified by the economic entrepreneurial vantage-point. As soon as the 'social' concerns of industrial life are made serviceable to the typical economic destination of industry, one would eliminate whatever has been achieved since the end of the last century in the area of

> the social elevation of labour and regress to the old liberal position (VB:212-13).

Social labour law must never be made dependent on the results of the individual enterprise, for this would be to place the hard won "social legal status" of the worker at risk.

The enterprise does have the freedom to choose, for example, whether or not to grant workers a share in profits, since these depend on the results of economic competition. But such decisions fall within the economically qualified function of the enterprise, and beyond the area of social labour law. The PBO ought not, therefore to decide on such specifically economic matters. To do so would be to violate industrial sphere sovereignty. But whereas internal industrial law, insofar as it concerns matters going beyond established minimum wages and working conditions, should serve the entrepreneurial qualification of the enterprise, all social law should be guided by the principle of "social justice" (sociale gerechtigheid).[97]

It is on account of this "social" juridical qualification that Dooyeweerd allows for regulation of social labour law by PBO. But he rejects the criticism that this implies a watertight separation between social and economic industrial affairs.

> ...ever since the development of collective labour contracts, labour law, as a special juridically qualified law with many bindings of partly civil-legal, partly public-legal nature, could become established as its own legal sphere. While formed within industrial life itself, it has nevertheless remained very closely intertwined with internal industrial law, as is the case in reverse.

> Wages, working conditions, etc., still remain in large measure connected with the prices of products, the volume of production, etc. in the branch of industry concerned, and also in the relation between branches of industry (ARS:1952:107).

Ultimately, it is the necessity for social labour law to be universally applicable across an industry--if it is to be effective--that calls forth the inclusive public authority of the state. Only when the social legal position of the worker is not left dependent on the economic performance of an individual enterprise is there any guarantee that public "social" justice will be rendered (VB:213). He states his final case thus:

> ...all law that is typically qualified by the economic entrepreneurial function falls principially within this sphere of competence; all law, on the contrary, that is typically qualified by the public-legal principle of the public interest, falls within the original sphere of competence of the Government, irrespective of whether this law was formed by the State legislature or rather by autonomous organs of a public-legal industrial organization (ARS:1952:117).[98]

This completes our discussion of some concrete applications of Dooyeweerd's notion of public justice as the delimiting norm for the activities of the state. We now conclude our study by asking to what extent it fulfills the role which Dooyeweerd assigns it.

## SECTION V: PUBLIC JUSTICE: A CONCLUDING EVALUATION

Our central concern throughout has been to investigate Dooyeweerd's contention that his notion of the distinctive structure of the state, embodying the guiding principle of public justice, yields a meaningful criterion whereby the activities of the state can be guided within acceptable boundaries. Dooyeweerd's theory is intended to set forth a delimiting principle within the boundaries of which the state must remain in all its concrete functioning. Our main concern in Sections III and IV has been to render a clear exposition of Dooyeweerd's meaning. We now briefly summarise our investigation and examine to what extent his attempt to develop such a criterion has been successful.

We saw in Section I how Dooyeweerd's view of the state and other societal relationships is rooted in his basic calvinist notion of a variety of creationally ordained "offices", divinely established, law-governed frameworks within which the multifaceted character of human creaturely responsibility is to be fulfilled. Dooyeweerd develops a philosophical elaboration of this notion in his theory of the individuality structures of things, events and relationships, and in terms of his theory of irreducible modal dimensions of reality. In Section II we presented an outline of the normative foundation for the social and political philosophy which Dooyeweerd constructs on the basis of this philosophical elaboration; and a brief examination of the crisis

in political thought which made such a foundation urgently necessary.

We argued, in Section III, that Dooyeweerd's conception of the normative structure of the state, built upon his general social philosophy of societal relationships, required revision, particularly regarding his notion of the power foundation of the state, and the denotation of the core of justice by which it is qualified. We also drew attention to what in our view was an important ambiguity regarding the internal functions and the external relation of the state, and attempted to clarify this distinction. Section IV was concerned to examine the implication of the structure of the state for its public justice responsibilities towards non-political societal relationships showing how the notion of public justice is intended to function as a boundary for the authority and activities of the state in society.

We were able to introduce reformulations of the central notion of power and justice without significantly affecting his accounts of the central principles of juridical sphere sovereignty and without undermining the more significant features of his characterisation of the guiding norm of public justice for the state's juridical sphere sovereignty. Our argument that the factually necessary element of coercion should not be seen as a component of its structural principle did not affect his account of the state as a public-juridically qualified community, nor his

account of public justice, since these notions do not rest crucially on the coercive nature of state power but rather on its public scope. We found also that replacing his denotation of the core of the juridical mode as retribution by the more embracing concept of tribution removed an important inconsistency surrounding his general understanding of creational structures. We might add here that it also comports more satisfactorily with his acceptance of a wide range of positive activities of the state called forth by the principle of the public interest.

In our view, the most fruitful aspect of Dooyeweerd's political thought is his notion of a plurality of qualitatively distinct domain or societal responsibilities, the principle of sphere sovereignty, and also its juridical expression, which points to the irreducible domains of justice within these societal relationships. His account of societal sphere sovereignty and its correlate, societal enkapsis, provides a framework by which the state can enter into active yet restrained relationships with the wide variety of organisations, institutions and communities in a modern differentiated society. While placing definite limits upon the state's legitimate field of operation, it avoids the pitfalls of exaggerating the acceptable independence of non-state societal relationships.

What proved to be of further significance in Dooyeweerd's attempt to delimit the scope of the state's activities was the distinction between the competence of the state, rooted in its

enduring internal structural principle, and the task of the state, the content of which is conditioned by variable historical contingencies. Our question has been whether his account of its competence is adequate in circumscribing its task.

In discussing some of Dooyeweerd's concrete applications of his theory of the scope of the state's competence, we noted several important questions which called for further elaboration. Common to each of them was a certain element of indeterminateness regarding the specific outworking of the notion of public justice as the delimiting norm for the activities of the state. We saw that the principle of the public interest calls for certain concrete activities, and also rules out others (namely those conferring disproportionate benefits or burdens on partial interests); and that the notion of public justice circumscribes the acceptable limits within which these activities may be engaged. We shall now probe further into the way in which this notion of public justice is supposed to establish a clear boundary around the state.

A certain decision or problem is not deemed to be an affair of the state merely on account of its being a <u>public</u> matter; not, that is, <u>simply</u> because anyone within a territory might in principle be affected by it. For there are many affairs which are public, in this sense, but which do not necessarily have anything to do with the state, such as trends in fashion or the development of technology or the growth of a church. While the ramifications of a particular issue must in principle affect anyone

within a territory, and thus be public, before the state may legitimately involve itself, this is but a necessary not a sufficient condition for such involvement.

A similar point applies with respect to the justice criterion. Many justice-related matters must be resolved within the internal sphere of the societal structure concerned. Indeed, it is a central burden of Dooyeweerd's theory of juridical sphere sovereignty to defend this general principle. Thus, a child has a just claim to parental affection, but the state would have transgressed its limited competence were it to pass legislation seeking to make this claim compulsory. (It would, further, be outside its powers of enforcement.)

Dooyeweerd's notion of public justice thus implies that many acts of private injustice which are likely to be perpetrated within non-state structures must pass unrectified by the state. It is not the responsibility of the state to require a full measure of justice in all spheres of life. The norm of public justice compels the state to tolerate private injustices. Thus, the "emancipatory motif" which we noted earlier, in Dooyeweerd's principle of the sphere sovereignty of societal relationships, does not therefore imply that the <u>state</u> is to be the agent of complete emancipation.

But now our attention is drawn to the following basic question: given that the state must be bound in all its dealings with non-political structures, to the delimiting notion of

public justice, has Dooyeweerd shown how we may ascertain in a reliable way whether any specific issue *is* indeed a matter of public justice? Has he made clear, for example, when parental indifference towards children crosses the threshold of private injustice and becomes a case of public injustice; or when the decisions of a corporation adversely affecting the interests of its employees (by making them redundant, reducing their wages, forcing them to relocate, etc.) constitute *public*, rather than private injustices?

Pursuing this second example, we saw earlier that Dooyeweerd proposed quite a specific distinction between the "social legal status" of workers and the intrinsically economic affairs internal to an enterprise. The former included such things as social security, safety regulations, minimum wage levels, and so on, but excluded, *inter alia*, the question of allocation of profits. In his view therefore, while it may be quite feasible economically for a corporation to allocate a larger proportion of its profits to its work force, the state is not competent to *compel* such an allocation of its economic surplus. However, Dooyeweerd recognises that *both* the possibility of profit sharing and the level of minimum wages in fact are closely related to intrinsically economic factors. In the case of the latter, it is clear that if an enterprise has a very low rate of productivity then it simply may not be able to pay established minimum wages. (Indeed, one of the main arguments against minimum wage legislation is that it is likely to create unemployment by forcing

inefficient enterprises to close down or reduce their work force.) State regulation of both of these matters thus clearly restricts the range of possibilities open to an entrepreneur. Our question now is why Dooyeweerd held that one should fall within the state's regulatory competence but not the other.

First, it is not obvious that one is necessarily an issue of justice while the other is not. In both cases, workers have legitimate claims for a certain kind of just treatment. Nor is it obvious, second, that the question of the "social legal" status of workers could neatly be distinguished from that of the internal economic domain of the firm according to the distinction between public and private. For, given Dooyeweerd's use of the term "public" ("that which in principle concerns anyone within a territory"), it is not clear that profit sharing must necessarily remain a private economic affair. Dooyeweerd argues that the possibility of profit sharing depends on the results of the individual enterprise, its rate of productivity, quantity of output, and so on. But then the ability of an enterprise to pay minimum wages is also dependent on the results of this individual enterprise. What Dooyeweerd is saying is that there should be a minimum level of wages which ought not to be left dependent on such variable economic results. The level of minimum wages is a justice issue which has a public dimension, since it concerns the "social legal status" of the worker. But if he is prepared to place this restriction on the range of entrepreneurial

activity, by what criterion does he refrain from arguing that this range should be even further restricted in the internal distribution of profits?

One argument that could be used to support his view would simply be that whereas the "social legal status" of the worker does qualify as a justice issue the internal distribution of profits does not. That is, it could be argued that while workers have a right to a minimum wage, they do not have a right to a share in profits. This might indeed be the case, given a situation where workers were being paid, not only the minimum wage, but also a just wage relative to other members of the business enterprise (e.g. management, shareholders). We are presupposing in the following discussion a situation in which just wages are not being paid, and therefore that the claim for a share of profits by the workers can be argued in terms of justice. Assuming this, our question concerns whether the state should act so as to rectify this injustice, that is, whether the issue also qualifies as an issue of <u>public</u> justice.

We need to begin by examining the character of minimum wage legislation. Minimum wage levels constitute, in effect, a fixed cost of which all entrepreneurs must take account in their business activities. As long as an enterprise exists it can be required to pay minimum wages, just as it can be required to make social insurance contributions, abide by pollution regulations, and so on. Such regulations and requirements all act as prior

limits on economic activity, collectively establishing a public-legal framework within which economic activity is to take place. They enkaptically "bind" enterprises to various requirements of public justice. Although the level of minimum wages may vary according to occupation, age, or regional criteria, and thus not necessarily be equal for all within a state's territory, such criteria can be made universally applicable (e.g. a single universal level for all electricians). Thus minimum wage legislation can readily be established by public (territorially universal) law. We shall now discuss whether or not this also applies in the case of profit sharing.

We should note firstly that Dooyeweerd rests his case against a public legal regulation of profit sharing on the fact that a political authority cannot, as a matter of economic fact, force an enterprise to make a profit. The state simply does not have the means at its disposal to arrange that profits are earned. The level of profit depends on the outcome of a multiplicity of economic decisions and various other circumstances which the state cannot possibly orchestrate towards a specific outcome. This crucial point does indeed have substantial implications for limiting the role of the state. For it excludes any regulation by the state which, for its effectiveness, necessarily presupposes the economic results of specific enterprises. For instance, a general government regulation of product price setting is clearly excluded (except in emergencies). The price of a product evidently

has to be set according to economic criteria such as the rate of productivity, the level of market demand, seasonal supply variations, and so on. Similarly, the state is not equipped to regulate technical production methods, except insofar as they have implications for worker safety, health, and so on. As we noted, it is the irreducibly economic character of economic decisions which leads Dooyeweerd to argue that they should be beyond the competence of any public body, whether central government or a decentralised organ such as a PBO. Here we concur with Dooyeweerd's application of the principle of sphere sovereignty. What we shall now argue is that his argument against public-legal regulation of profit sharing is, nevertheless, not conclusive. In doing so, we shall elicit further the notion that the state must confine itself to that which has a public dimension.

We must begin by recalling the basic distinction between a measure which is capable of <u>universal</u> application and one which favours (or penalises) only particular interests. Requiring particular enterprises or types of enterprises to share profits represents an example of discrimination and violates the principle of impartiality implied in the notion of "public". Public law must be territorially inclusive, that is, of universal applicability. A particularist approach to profit sharing involves imposing a burden on some interests within the territory of the state not imposed on others. Similarly, offering subsidies

to particular concerns but not to others in similar circumstances would constitute an example of particularism. So any profit sharing regulations by the state would have to be based on universal criteria.

We should now point out that a universally applicable profit sharing regulation would have to be based on a proportionate standard. In fact, no profit sharing scheme can be based on an absolute quantitative standard. To require all enterprises to distribute, say, £500 per year to each worker from corporate profits is simply to impose a fixed cost similar to minimum wages. Such a measure would therefore not be a <u>profit</u> sharing scheme at all. But a proportionate standard for profit sharing is conceivable, however. For instance, the state could require that all corporations over a certain size must distribute, say, 15% of any annual profits among its workforce. Such a provision would not represent a fixed cost, but rather a compulsory, proportionate internal transfer payment. Such a regulation would not necessarily violate the internal economic freedom of the enterprise. It would act as another prior limit within which economic activity would have to take place just as minimum wages acts as a prior limit. There is no reason why a figure of 15% could not be universally applied to all enterprises (say, all enterprises over a certain size, with regular profit margins of a certain amount or over, etc.).

Certain practical objections could be brought against such a proposal of course. It could be argued, for example, that

employers might use the regulation as a bargaining point in wage negotiations, to hold down or delay legitimate wage increases. Further, the actual financial benefits to workers would differ between enterprises. Workers in enterprises in profitable sectors of industry would benefit far more than workers in unprofitable sectors. It might thus be concluded on such grounds that such a measure would be practically unworkable. But Dooyeweerd premises his objection on the principle of sphere sovereignty. We have tried to argue that proportionate profit sharing measure no more constitutes a violation of industrial sphere sovereignty than does minimum wage legislation. In our view, the case of profit sharing is an example where Dooyeweerd too quickly draws a negative conclusion about the competence of the state from the notion of public justice which, on further reflection, appears unwarranted. However, we have not tried to show that the notion itself is unworkable. Indeed it appeared that the notion of public justice, coupled with the principle of sphere sovereignty which it presupposes, does furnish a clear criterion for distinguishing between legitimate and illegitimate state intervention.

In discussing now a second example of the application of the notion of public justice, we intend to focus on a case where this clarity appeared to be lacking. We noted earlier, in the cases of the rights of parents and the competence of a civil judge regarding ecclesiastical heresy, that an element of indeterminateness remained in judging whether a particular justice issue could

properly be seen as having a public dimension. In the case of the family, Dooyeweerd was prepared to justify removing an abused child from parental custody on grounds of neglect of the provision of physical sustenance, but that he was not prepared to countenance state intervention in the morally qualified internal sphere of parental discipline. On what basis, however, could he clearly distinguish between the private injustice of, say, unfair corporal punishment, and the public (civil) injustice of direct physical neglect?

Putting the question differently, we might ask how Dooyeweerd identifies at which point the scales of justice tip away from allowing the parents to exercise their legitimate right to discipline their children in favour of publicly protecting the children against the abuse of this parental right. In answering this question, we should note that in each case of state intervention that Dooyeweerd is willing to countenance, a judgment seems to be made regarding the urgency or the indispensability of the justice claim being threatened, for the continuing capacity for "office fulfillment" on the part of the claimant. While a child could survive tolerably well in the face of unfair parental corporal punishment (as many do), it clearly could not endure persistent physical neglect or abuse without suffering serious harm. And while workers might survive being paid unfair wages by their employers (as many do), their ability to fulfil their various offices of spouse, parent, worker, and so on, would be

instantly threatened if they received less than a subsistence wage. But it will be obvious that proposing such notions as "urgently necessary" or "indispensable for office fulfillment" as possible supplementary criteria for ascertaining whether the state should become involved, is still question-begging, since we now need to specify what is to be identified as "urgent" or "indispensable".

It appears that there is no invariable yardstick by which one could claim with complete certainty that the satisfaction of this particular justice interest definitely belonged within the competence of the state. There will always remain an unavoidable element of indeterminateness in the concrete application of the norm of public justice. But, as we noted earlier, it is precisely the character of a norm that its "positivization" will always require a historical judgment as to what course of action conforms to it most adequately. Indeed, Dooyeweerd repeatedly emphasises the dynamic character of the normative principles governing human activity.

The question of what actually ought to be acknowledged as sufficiently necessary for one's office fulfillment such that the state should undertake to secure it, depends crucially upon the particular cultural context within which such a judgment is made. This context will determine, for example, the availability of economic resources. Since it is possible for western industrialised states to ensure basic education for all who seek it (either by direct provision or by facilitating its provision by non-state

societal structures), it is thus legitimate today to deem this a matter of political responsibility, although it would not have been legitimate two centuries ago. The same applies to minimum wages, social security, or equal rights for women.

Since any historical judgment must take into account a multiplicity of contingent circumstances, the results of positivisation of (better: the human response to) the norm of public justice can never be deduced from the meaning of the norm. The norm of public justice is, as Dooyeweerd emphasises, a guiding norm but no blueprint for the political activity of the state (III:446). We have tried to illustrate how it can indeed function as a meaningful normative guide. The two criteria which must be met before the state can be deemed competent to perform or prevent a certain action or decision, the public criterion and the justice criterion, do indeed together constitute a significant test which can be applied to potential state activities. On the one hand, they exclude a considerable amount of existing state activity. The public criterion excludes anything which can be shown to confer benefits or impose burdens upon any person or structure within its territory which would not be given to another person or structure in the same circumstances. The justice criterion excludes anything which cannot be argued for in terms of that which is necessary for the fulfillment of various specific responsibilities which constitute the normative fabric of human societal life. But on the other hand, the two criteria call for

a good deal of activity which is not currently performed by many states. The public criterion calls for actions which rectify inequitable distributions of justice interests; and the justice criterion calls for actions necessary in order to provide the essential conditions for office fulfillment (while recognising that it is impossible to specify in advance what this will entail).

We have alluded earlier to the suggestion that Dooyeweerd's social and political philosophy embodies a motif of emancipation. Dooyeweerd does not see the state as the exclusive nor even the primary agent of such emancipation. But a pursuit of public justice as Dooyeweerd has articulated it would undoubtedly remove many obstacles to its realisation.

NOTES

[1]D. Easton, The Political System, 107-8.

[2]B.L.R. Smith (ed.), The New Political Economy, ix.

[3]H. Arendt, The Human Condition; D. Germino, Beyond Ideology; L. Strauss, What Is Political Philosophy?; E. Voegelin, The New Science of Politics; S. Wolin, Politics and Vision.

[4]J. Maritain, Man and the State; A.P. d'Entrèves, The Notion of the State; K. Barth, Community, State, and Church.

[5]The reasons for this include at least the following. First, the extreme complexity of his philosophical systematics, coupled with unfamiliarity of his terminology; second, the somewhat abrasive tone of his writing, which all too easily appears dismissive of opposing viewpoints; third, the distinctly continental character of his theorising, exhibiting a style which has never taken root in Anglo-Saxon circles; fourth, the fact that a good deal of his major writings remain available only in Dutch and that several of those appearing in English have been poorly translated; fifth, the explicitly religious character of his theoretical enterprise which no doubt strikes some as overly theological; and sixth, his preoccupation with normative theory to the detriment of empirical analysis.

[6]For further background to Dooyeweerd's thought see A.L. Conradie, The Neo-Calvinist Concept of Philosophy. A popular introduction is L. Kalsbeek, Contours of a Christian Philosophy. Also cf. B. Walsh and J. Chaplin, "Dooyeweerd's Contribution to a Christian Philosophical Paradigm", for a brief outline of Dooyeweerd's philosophy.

[7]I. Hexham, "Calvinism and Culture: A Historical Perspective"; R. Mouw, "Reforming Cultural Calvinism".

[8]R.H. Niebuhr, Christ and Culture. Niebuhr proposes a fivefold typology of standpoints manifested in various Christian traditions according to their understanding of the relationship between "Christ" and "culture", or, in other words, between redemption and creation. One standpoint sees Christ as the antithesis of culture (e.g. Tertullian); a second attempts to accommodate Christ to culture (e.g. Ritschl); a third places Christ above culture (e.g. the classical "nature/grace" framework of Aquinas); a fourth seeks to hold both Christ and culture together in paradoxical tension (e.g. Luther); the fifth standpoint views Christ as the transformer of culture (e.g. Calvin). Dutch neo-Calvinism clearly falls into the fifth category.

[9]Dooyeweerd describes this comprehensive confessional vision as the biblical "ground motive". A ground motive is a cohering ultimate vision of reality which guides the four major historico-cultural periods which have characterised western civilisation. They are: the Greek "form-matter motive", the medieval "nature-grace motive", the modern humanistic "nature-freedom motive" and the biblical motive of "creation-fall-redemption". (Cf. Roots:28-39). The notion of ground motives is a fundamental component of Dooyeweerd's analysis of the history of western culture and philosophy. He attempts to demonstrate how these motives have shaped all areas of theoretical reflection in western civilisation, including political theory. It is, however, outside the scope of our study to enter into a discussion of how ground motives have influenced various theories of the state.

[10]Such attempts included the founding of a christian school movement and of the Free University of Amsterdam; the launching of the first "mass" political party in Western Europe, known as the "Anti-Revolutionary Party" to indicate the radical opposition between its principles and those of the French Revolution (this has now merged with the Christian Democratic Party); the development of a christian trade union movement; and the publication of several christian newspapers and journals. Details of some of these developments can be found in D. Jellema, "Kuyper's Attack on Liberalism", and J. van der Kroef, "Abraham Kuyper and the Rise of Neo-Calvinism in the Netherlands". Separate organisations with roots in the neocalvinist tradition in the fields of politics, labour, journalism, broadcasting, still exist today, alongside parallel Roman Catholic, Liberal and Socialist ones.

[11]Further biographical information on Dooyeweerd can be found in B. Zylstra's "Introduction" to Kalsbeek, Contours.

[12]As early as 1925, Dooyeweerd wrote: "If we compare the Roman Catholic world and life view with the Calvinist one, we can hardly escape the impression that the Calvinist edifice is not yet completed, that various wings have been left unfinished, as though in a rough draft, that the great architectonic line has not been carried through consistently, but is in many places broken through by motifs drawn from the world view of others.... What we lack is a philosophical systematics which interweaves the fundamentals of the system through the embroidery of the whole like a colourful design giving to each component its character and specific style, and encompassing the whole in the synthesis of the great governing idea. This lacuna also becomes evident in our conception of political theory and politics. That conception presents the picture of a collection of adjacent and partially unrelated concepts, a complex of notions for the most part intuitively forged in the heat of battle and confused by foreign

admixtures from the storehouses of Scholasticism and German scholarship." Calvinisme en Natuurrecht (Amersfoort: 1925), p. 3. This quotation is taken from a draft translation of this article by A. Wolters. The article will be published in a collection of essays by A. Wolters entitled Studies in the Rise of Reformational Philosophy (forthcoming).

[13]Henceworth cited in the text as WdW.

[14]Henceforth cited in the text by volume number, I, II, or III, followed by page reference.

[15]See J. Kraay's "Successive Conceptions in the Development of the Christian Philosophy of Herman Dooyeweerd", for a detailed analysis of Dooyeweerd's philosophical development. Kraay detects three major conceptually distinct periods in Dooyeweerd's work. The central significance of the notion of law is present throughout, however, although with differing emphasis. See also J. van der Hoeven, "Meaning, Time and Law in Herman Dooyeweerd".

[16]This section is indebted especially to K. Zigterman, "Dooyeweerd's Theory of Individuality Structure as an Alternative to a Substance Position, especially that of Aristotle", M. Phil. thesis, Institute for Christian Studies, Toronto, 1977.

[17]Dooyeweerd expresses the distinction between these two axes in the dual structure of reality, between the "modal concept of function" and the "typical concept of a structure of individuality", in the following terms: "In every modal aspect we can distinguish: 1. a general functional coherence which holds in mutual correspondence the individual functions of things, events or social relationships within a specific modal law-sphere; this coherence exists independently of the typical differences between these things, events or social relationships which function within the same modal aspect; 2. the typical structural differences manifesting themselves within a modal aspect and which are only to be understood in terms of the structures of individuality of temporal reality in its integral inter-modal coherence" (I:552-3). The notion of a "typical" structure of individuality will be explained shortly (cf. p. 16).

[18]The general notion of a plurality of irreducible, successively related dimensions of reality is not by any means peculiar to Dooyeweerd. D. Jellema has compared Dooyeweerd's modal aspects with parallel conceptions in the phenomenologist Nicolai Hartmann, and with James Fieblemann (who acknowledges a debt to A.N. Whitehead). In Jellema's view, Dooyeweerd's philosophy is a "synthesis

of Calvinism and Phenomenology" (cf. "The Philosophy of Vollenhoven and Dooyeweerd").

Dante Germino's comment on Michael Oakeshott's Experience and its Modes (London:1933), could well stand as a lucid summary of Dooyeweerd's conception of modal aspects: "Oakeshott's principal theoretical achievement is a philosophical analysis of experience which seeks to rediscover the multidimensionality that had been denied to experience by the ideological and positivist reductionists.... According to Oakeshott, experience is a concrete whole within which it is possible to distinguish various "modes". The modes constitute "arrests" in experience...", Beyond Ideology, p. 132. According to Oakeshott, there are only four such modes: practice, science, history and poetry. (Fiebelmann posited eight, while for Dooyeweerd, there are fifteen.) The sentence immediately following indicates a significant difference between Oakeshott and Dooyeweerd. Germino writes that, according to Oakeshott, "only from the standpoint of philosophy, whose task is to identify each mode and define its relationship to the other worlds of experience, can we hope to see experience as a whole", p. 132. While for Dooyeweerd it is indeed the task of philosophy to detect the irreducibility and coherence of the various modal aspects of reality and thereby to acquire a view of experience as a whole, this is strictly a theoretical view of the whole. But this theoretical view of the whole presupposes the view of the whole seen from the standpoint of pretheoretical ordinary (or "naive") experience. The task of philosophy is to give a theoretical account of the integral wholeness encountered in pretheoretical experience (I:41ff.).

One of the most powerful recent arguments for the conception of irreducible dimensions of reality has been developed by Michael Polanyi in his notion of irreducible "levels of existence" each with their own "ordering principles". Cf. Knowing and Being (Chicago:1969), and Personal Knowledge (Chicago:1964).

[19]Dooyeweerd's primary critical interaction is with German, French and Dutch social, political and legal theorists writing in the nineteenth century and in the first four decades of the twentieth. He engaged in little substantial interaction with twentieth century Anglo-Saxon thinkers. The major elements of his critique of contemporary continental reflection on the state still merit eludication however.

[20]Sheldon Wolin presents a detailed analysis of the relation between political crises and major turning points in political theory in "Paradigms and Political Theories", in P. King and B.C. Parekh, eds., Politics and Experience.

[21]Dooyeweerd's major elaboration of this contemporary crisis is found in his De crisis in de humanistische staatsleer (1931).

[22]See for example, F. Matson, The Broken Image (N.Y.:1964); L. Strauss, "What is Political Philosophy"? in volume of the same title; Sheldon Wolin, "Political Theory as a Vocation"; E. Voegelin, The New Science of Politics. A lucid exposition of the movements seeking to go beyond mainstream behavioural social and political science, especially linguistic analysis, phenomenology and critical theory, is contained in R.J. Bernstein, The Restructuring of Social and Political Theory.

[23]At this point we encounter a problem in Dooyeweerd's thought, which arises in the context of his attempt to avoid the two extremes of classical metaphysics which conceive of the enduring order of reality as belonging to a supertemporal realm of eternal laws, and modern historicism which absorbs enduring structures into historical change. We have seen that he distinguishes clearly between the invariable structural principles and the variable factual manifestations of these principles. The former belong to the law side of reality, the latter to the subject side. But how are they related? In an attempt to overcome this dilemma, Dooyeweerd introduces the third notion of "societal forms" which are intended to serve as a bridge between the law side and the subject side within history itself. These societal forms, however, occupy an ambiguous position. It is not clear whether they belong to the law side or the subject side. Societal forms, he writes, are "the forms which the typical structural principles assume in the process of their positivization. As such they are not identical with the individual factual societal relationships, since they belong to the law-side of human societal life. But they are the necessary links between the structural principles and the factual transitory societal relationships subject to them. As products of human formation, and in contradistinction to the structural principles, they themselves have a certain temporal duration, which is distinct from that of the factual relationships presenting themselves within their positive social frame" (III:173-4).

It is not clear, however, that societal forms can both belong to the law-side and also be results of human positivization. Certainly, some "subjective" phenomena manifest a longer temporal duration than others. Political constitutions normally outlast administrative structures of government. Perhaps this is what Dooyeweerd is alluding to here. But neither of these can in his framework be consistently held to belong to the law side of reality. In our view, Dooyeweerd can avoid the extremes of metaphysics and historicism quite sufficiently by means of his notion of the "indissoluble correlation" between the two sides of reality, as a result of which law is embedded within creaturely reality while simultaneously conditioning it.

[24]See especially L. Strauss, "What is Political Philosophy?" Giovanni Sartori argues a similar case in his "Concept Misinformation in Comparative Politics". He shows, with respect to the use of quantitative methods in comparative politics, that the quantification of political phenomena necessarily presupposes their classification according to qualitative criteria. A numerical scale presupposes a nominal scale. J.H. Olthuis presents a parallel argument regarding the fact-value distinction in ethical theory in Facts, Values and Ethics, pp. 186ff. Paul Marshall examines the problem in connection with the use of mathematics in political science in "Mathematics and Politics".

[25]R. Nisbet, The Social Philosophers (St. Albans, Herts: 1974). He is able to include such a wide variety of thinkers within the single category of "pluralist" because his "elements of the plural community" are highly generalised, including "plurality", "autonomy", "decentralisation", "tradition" and "localism", pp. 389-392. However, he does recognise that a "plural community" will be characterised by a diversity of types of community. "The nature of man cannot be confined by any single value, expressed by any single kind of relationship", p. 390. He also identifies Althusius as the "true founder of the philosophy of the plural community", p. 401.

[26]Cf. B. Zylstra, From Pluralism to Collectivism, pp. 14-20.

[27]G. Spykman, "Toward a biblical view of human rights". The notion of a divinely ordained diversity of specific callings, vocations, or offices is already found in Calvin. "In order, therefore, that everyone should confine himself within his own bounds, let us learn that in the human race God has arranged our condition so that individuals are only endued with a certain measure of gifts, on which the distribution of offices depends. For as one ray of the sun does not illumine the whole world, but all combine their operations as it were in one; so God, so that he may retain men by a sacred and indissoluble bond in mutual society and good will, unites one to another by variously dispensing his gifts, and not raising any one up out of his measure by his entire perfection." Commentary on Exodus 18:13-27, quoted in G. Spykman, "Sphere-sovereignty in Calvin and the Calvinist Tradition", p. 197.

See also Calvin, "On Civil Government", Institutes of the Christian Religion, where he refers to the "office" of magistrates, describing them as "viceregents" of God, equipped with his "commission". He affirms: "Wherefore no doubt ought to be entertained by any person that civil magistracy is a calling not only holy and legitimate, but for the most sacred and honourable in human life." J.T. McNeill (ed.), Calvin: On God and Political Duty, 2nd ed., (N.Y.:1956), pp. 47-49.

F.S. Carney has identified the notion of a plurality of vocations as characteristic of early calvinist social thought (represented by, for example, Brutus, Beza, Hotman, Buchanan, Rutherford, and especially Althusius). He describes their understanding of associational law as "transcendent constitutionalism", a phrase which aptly characterises Dooyeweerd's conception of the divine law order for societal structures. Cf. F.S. Carney, "Associational Thought in Early Calvinism", in D.B. Robertson (ed.), Voluntary Associations (Richmond, Va.:1966), pp. 39-53.

[28]H.E.S. Woldring,"Calvinisme en sociologie: Dooyeweerd en zijn school", p. 159.

[29]Cf. B. Zylstra, From Pluralism to Collectivism, pp. 216-17.

[30]"A genuine enkaptic structural interlacement...presupposes that the structures of things, events, or those of societal relationships functioning in it, have an independent internal leading function and an internal structural principle of their own" (III:637).

[31]Dooyeweerd borrowed the term enkapsis from the anatomist Heidenhain who used it to denote the relationship between a living organism and its various organs, holding that the latter were not the dependent parts of the former but were rather "relatively autonomous individualities" (III:634). Dooyeweerd argues, however, that the relative autonomy of such organs is not sufficient to denote them as independent individualities, since an individuality structure is only independent if it possesses its own qualifying function. This is not the case with the organs of a living organism, he claims (III:637). His own usage thus significantly modifies Heidenhain's. Dooyeweerd warns also against confusing the parts of a whole with its various modal functions. Just like the whole within which it is found, a part functions in all the modal aspects (III:639).

[32]"Communal relationship" is a translation of the Dutch word gemeenschapsverhouding while "inter-individual and intercommunal relationships" (abbreviated as "interlinkages" following Kalsbeek, Contours, p. 260), is an attempt to capture the word maatschapsverhoudingen. Dooyeweerd notes the difficulty of adequately rendering these words into English. While maatschappij can sometimes be translated as "society", it would be misleading to translate maatschapsverhoudingen as "societal relationships". We shall use the latter English term to refer only to social groups, institutions, communities, etc., with their own structural principle. Sometimes we shall also use the term "societal

structure" to denote the same. However, we should note that, in Dooyeweerd's societal classifications, interlinkages will also exhibit structural principles of varying qualifications.

[33]Dooyeweerd is careful to warn against conceiving of a societal "whole" as if it had its own independent personal centre apart from the persons making up its membership (III:295-299). It is beyond our scope to discuss this intriguing aspect of his social philosophy, since it presupposes an understanding of his complex notion of the "subject-object" relation, which we have not dealt with.

[34]Dooyeweerd claims that sociological universalism seeks to account for the ultimate unity of mankind in terms of the temporal order itself, rather than in the "supratemporal" religious community of mankind which transcends all temporal societal relationships. In his view, no temporal human community can entirely absorb the creatureliness of an individual person. He argues that the ultimate unity of mankind is of "supratemporal" character. "From the Christian transcendence-standpoint the radical unity and meaning-totality of all temporal societal structures of individuality is only to be found in the central religious community of mankind in its creation, fall, and redemption by Jesus Christ. This starting point excludes in principle every universalistic sociological view, which seeks the unity and all-embracing totality of all types of societal relationships in a temporal community of mankind. Neither a nation, nor the Church in the sense of a temporal institution, nor the State, nor an international union of whatever typical character, can be the all-inclusive totality of human social life, because mankind in its spiritual root transcends the temporal order with its diversity of social structures" (III:169). Just as Dooyeweerd seeks to account for the ultimate unity of individual human functioning in terms of a "supra-temporal religious centre" or "heart" (III:783-4), so he attempts to account for the ultimate unity of humankind in terms of a supra-temporal religious community. We would argue that this resort to supra-temporality is unnecessary as an argument against sociological universalism. In order to reject universalism it is only necessary to deny that the human person is exhausted or most adequately fulfilled within any <u>single</u> societal relationship. Dooyeweerd can argue this adequately on grounds of the <u>plurality</u> of societal individuality structures. It is not necessary also to posit the existence of a "supra-temporal community of mankind". The notion of "supra-temporality" in Dooyeweerd has been critically discussed by H. Hart in "Problems of Time: An Essay". For a clarification and defense of Dooyeweerd's notion of a "supra-temporal community of mankind" see D.F.M. Strauss, "The Central Religious Community of Mankind". The most extensive treatment of the theme of supra-temporality in

Dooyeweerd is P. Steen, The Idea of Religious Transcendence in the Philosophy of Herman Dooyeweerd, Th.D. dissertation, Westminster Theological Seminary, 1970.

[35]H.E.S. Woldring, following K.J. Popma, has argued that since all societal structures and relationships presuppose the factor of human formation and can exist only on that basis, it is preferable to deem all of them as historically founded ("Venster op de samenleving", p. 231).

[36]Dooyeweerd does not view the divine law order simply from the viewpoint of its trans-historical constancy, but also includes within this same law order norms for dynamic, developmental dimension. Historical development is not supplemental to an invariable ontic order, but is constitutive of that order. Thus there are norms for historical development, themselves of an ontic character. Such norms are rooted in the historical mode of reality. They are the norms of individualisation, continuity, differentiation and integration (Roots, ch. 3). We only need to note the significance of the norm of differentiation. Dooyeweerd writes: "Historical development is nothing but the cultural aspect of the great process of becoming which must continue in all the aspects of temporal reality in order that the wealth of the creational structures be concretized in time. The process of becoming presupposes the creation; it is the working out of creation in time. Time itself is encompassed by the creation. The process of becoming, therefore, is not an independent, autonomous process that stands over against God's creation" (Roots: 79). He also recognises the effects of sin upon this process of cultural development (III:262).

[37]Zwart has noted that Dooyeweerd's account of the various modal aspects of the state appears to be somewhat forced ("De staatsleer van Herman Dooyeweerd", p. 137). This seems to be because of insufficient empirical analysis of actual states, a criticism which does not apply to his accounts of the founding and leading function of the state. An important possibility for the further development of Dooyeweerd's contribution to political theory should be noted here. Dooyeweerd's notion of the multimodal dimensions of the state does provide a theoretical basis for an "encyclopaedia of political science" according to which the proliferating subdisciplines in contemporary political science can be placed in a coherent context. Dooyeweerd, however, was primarily a legal, not a political, theorist, and so did not develop further this possibility. It seems possible, however, to identify the various subdisciplines within empirical political science--political geography, political ecology, biopolitics, political culture, political semantics, political economy, and so on--as investigations into the concrete modal dimensions of political life. Conceived in this way, these subdisciplines could be brought into a coherent

relationship to one another, on the basis of a philosophical understanding of the structure of the state.

[38]Here we might note a parallel with the judgment of Sheldon Wolin who, while recognising the lack of unanimity in the various political "visions" of western theorists, nevertheless observes a "continuity of preoccupations" and a "continual reappearance of certain problematics". Cf. Politics and Vision, p. 3.

[39]This dialectic is inescapable within what Dooyeweerd calls the "immanence standpoint". The word "immanent" for Dooyeweerd refers to that which is within creation. The "immanence standpoint" is thus one which takes its ultimate reference point to be something within rather than beyond creation. All theoretical reflection denying the transcendence of God and his law over creation, must necessarily seek an ultimate point of reference within the creation itself. Dooyeweerd holds that only by acknowledging God as the transcendent source of the ultimate unity of creaturely reality can theoretical reflection on any aspect of that reality give a coherent account of its diversity. Once this supra-creational reference point is lost sight of, and a surrogate sought within creation, then theoretical contradictions or "antinomies" will necessarily follow. Such an antinomy is expressed within the "dialectical basic problem" within political theory.

[40]A "radical type" is a class of individuality structures each qualified by the same modal aspect. Thus all ethically qualified societal relationships belong to the same radical type. Dooyeweerd also refers to both qualifying and founding functions as "radical typical functions" in structures qualified by the same aspect. He also introduces further differentiations within a radical type. Whereas both family and marriage are ethically qualified, they nevertheless have different structural principles. These further differentiations he denotes as "genotypes". The state is a "geno-type" within the radical type of juridically qualified societal structures.

[41]Dooyeweerd's main discussions of the historical aspect are contained in NC:II:192-298; In the Twilight of Western Thought, chapter 3 and 4; Roots, chapter 3; "The Criteria of Progressive and Reactionary Tendencies in History", Presidential Address to the Royal Dutch Academy of Sciences and Humanities, 1958; "Proceedings of the celebration of the 150th anniversary of the Royal Dutch Academy of Science, May 6-9", (Amsterdam: 1958), 213-228. Critical treatments of Dooyeweerd's notion of history can be found in E.W. Kennedy, "Herman Dooyeweerd on

History: An Attempt to Understand Him", Fides et Historia, Fall, 1973, 1-21; Dale van Kley in G.M. Marsden and F.C. Roberts, (eds.) A Christian View of History? (Grand Rapids: Eerdmans, 1975); N. Van Til, "Dooyeweerd's 'History' and the Historian", Pro Rege, Vol. II, No. 2, December, 1973, 7-15. What emerges from such discussions is, briefly, that Dooyeweerd attempts to pack far too much content into the notion of "historical", namely, what are normally referred to as "historicity", "culture", "technique", "organisation", and "power". We will not discuss the complication created by including the first of these, but we will be concerned with the latter two notions.

[42]Dooyeweerd's terms for this modal "core" are "meaning-nucleus", "nuclear moment", or "meaning kernel". He notes that it is impossible to define the meaning of a modal core. They cannot be conceptually delimited, but only intuitively grasped. "It is in the very nature of the modal nucleus that it cannot be defined, because every circumscription of its meaning must appeal to this central moment of the aspect-structure concerned. The modal meaning kernel itself can be grasped only in an immediate intuition and never apart from its structural context of analogies. But the term by which this meaning-kernel is designated must be able immediately to evoke this intuition of the ultimate irreducible nucleus of the modal aspect of experience concerned" (II:129).

[43]In this context Dooyeweerd means by "direction", religious direction. A true religious direction of power will manifest itself in the normative unfolding of specific societal structures. It is not possible to use power in a religiously disobedient way through the channel of anti-normative structures.

[44]The idea that the state is based upon a territorial monopoly of coercion is quite familiar within political theory. Some representative writers who hold this view are: A.D. Lindsay, The Modern Democratic State, pp. 197-8; E. Brunner, Justice and the Social Order, p. 175; J.R. Lucas, Democracy and Participation, pp. 58-9.

[45]The qualification "potentially lethal" is necessary because physical coercion itself is employed in many other contexts than the political. Parental authority often requires the use of mild forms of physical coercion. Similarly a security guard may have to use physical coercion in the protection of the property where he works. But only the state may use the extreme of lethal physical coercion. (This raises the question of whether security guards or private individuals ought to be permitted to carry firearms for defensive purposes. A consistent interpretation of the notion of a "monopoly of lethal physical coercion" would imply

that they should not.) In the following discussion, when we refer to the state's coercion or physical coercion, we are presupposing this ultimately lethal sanction.

[46]Dooyeweerd draws a clear distinction between the fact that any genuine body politic must, according to its structural principle, be a res publica, and the meaning of the adjective "republican", indicating a non-monarchical form of government (III:412). The latter is not a part of the enduring structural principle of the state but is only one factual response to it.

[47]This analysis is supported, by, for example, Gerhard Ritter in "Origins of the Modern State", pp. 13-25. Ritter writes: "In the feudal period the ruler did not distribute authority by assigning this or that function in public administration to this or that individual, the way the modern state appoints its officials. Instead, the sum total--or at any rate the greater part--of governmental authority for a given area was transferred to a particular feudatory...", pp. 17-18. Quentin Skinner confirms the same judgment. He identifies the monopoly of power and realisation of exclusive legal sovereignty as two of the main preconditions for the emergence of the modern state, which he defines as a "form of public power separate from both the ruler and the ruled, and constituting the supreme political authority within a certain defined territory". The crucial transition was from the idea of a ruler "maintaining his state" to the "more abstract idea that there is an independent political apparatus, that of the state, which the ruler may be said to have a duty to maintain". Foundations of Modern Political Thought, Vol. II, pp. 351-353.

[48]In Dooyeweerd's view, it is incorrect to identify either the medieval feudal kingdoms, or the ancient Asiatic empires, or the Merovingian empire as genuine states. "A kingdom like the Merovingian empire which was nothing but a res regia lacks the character of a real State.... The historicistic view, which levels out these radical differences and speaks of gentilitial, tribal and feudal "States", may not be called "empirical" since it ignores undeniable empirical states of affairs..." (III:412).

[49]Dooyeweerd writes: "Public-legal governmental authority is no longer a private source of revenue [inkomsten], but an office [ambt], performed in the service of the "public affairs" of a public-legal community which, with the power of the strong arm, unites everyone who is domiciled on this territory, into a legal community of government and subjects, irrespective of which private societal spheres, family, class, profession, or worship community one may belong to" (PPR:49).

[50]In a footnote Dooyeweerd adds: "These and other forms of power are anticipatory forms of historical power, enclosed by the modal structure of the historical law-sphere, and having no original economic, moral, or faith modality". That is, they are historical anticipations, representing forms of genuine formative power, but power based on resources or factors which themselves have a different modal qualification. Thus, economic power presupposes the existence of economically qualified societal activities. It is the power created by specifically economically qualified activity. Economic power itself is not "economic" in the core modal sense. This is what Dooyeweerd means when he says that these forms of power have no "original" economic, moral or faith modality. He clarifies this distinction further in a discussion of the juridical concept of "legal power" (II:68-71). Here he is using the term "legal power" not in the sense in which we referred to earlier, i.e., not as a specific form of (historical) formative power. Rather, by "legal power" he means "competence", which is a juridical notion meaning "the power to legislate".

[51]We should note here that Dooyeweerd's attempt to distinguish internal from external forms of power is no more than a rather elaborate exercise in definition. It presupposes that we have already tracked down the typical characteristics of the power of the state. In itself it does not offer any further argumentation for the fact that this typical power is based on coercive monopoly. The pattern of his argument at this point is negative and deductive. We want to know why, of all the internal functions of the state, one of them is accorded special significance, and Dooyeweerd has told us so far that this function is foundational in no other societal structure. This, of course, presupposes a good deal of empirical analysis of these other structures (which is supplied in other contexts). It also presupposes, however, a reliable method of identifying any function as foundational. To conclude that coercive monopoly is foundational in no other structure, Dooyeweerd must already have been able to discover the foundational function of such structures. If we discovered that, in such investigations, Dooyeweerd used the same, negative, deductive argument, then he would, of course, be trapped in circularity. He rescues himself from it by employing arguments from outside the circle, namely, empirical ones.

[52]The distinction must be stressed between the various analogical concepts in the historical mode, which we distinguished above as corresponding to different forms of power, and the different typical kinds of power such as political, ecclesiastical, and so on (II:70-1). The different forms of power possessed by the state are all forms of typically political power. For Dooyeweerd, all these forms of political power acquire their political character by being founded on one specific form of power, the

physically based power implied in the notion of a territorial monopoly of coercion. The specific type of any form of power is determined by the structural principle of the societal structure in which it is present. One can therefore distinguish between, say, the economic power of a church and the economic power of the state. The former is one form of ecclesiastical power, the latter one form of political power. Applying Dooyeweerd's conception, we can say that the economic power of the state is ultimately based on its ability to collect taxes compulsorily from all within a territory, while the economic power of a church is ultimately based on its "preaching of the Divine Word" which should evoke voluntary donations from the church's members.

[53]Skillen, The Development of Calvinistic Political Theory in the Netherlands, p. 405.

[54]Dooyeweerd poses this as a problem in the following terms: If "the historical function is apparently only a real structural one insofar as its meaning is opened and anticipatory", then this apparently excludes the original or nuclear character of this type of individuality". However, "if the foundational structural function has not an original type of individuality, its foundational character is thereby annihilated" (III:418). Put straightforwardly, if power has to serve some further end, in this case justice, can it still retain its irreducible character as power? This contradiction is, after all, only an apparent one, Dooyeweerd reassures us. For, although the organised monopoly of coercion, while foundational for the state, always functions in "anticipatory coherence" with the juridical leading function, it nevertheless retains its original core. It is not, after all, the modal core itself which anticipates, for then, by definition, it would be an anticipatory, not an original type of individuality. Rather, it is the foundational function which anticipates. The former is a specifically modal concept, the latter an individuality structural one. It is not modes that anticipate, but only functions of concrete things, events, or relationships.

[55]Dooyeweerd's distinction between "special grace" and "common grace" is indebted to the theology of Kuyper, which has been amply critiqued by S.U. Zuidema in "Common Grace and Christian Action in Abraham Kuyper", pp. 52-105. "Special grace" is that gracious intervention of God into his fallen creation which has a specifically redemptive purpose. "Common grace", by contrast, has a preservative function, maintaining the orders of creation in the interim between the fall and the final consummation of the kingdom in the end times. This distinction is, however, quite inconsistent with Dooyeweerd's formulation of the "biblical ground motive" in which the purpose of redemption is seen precisely as the restoration of the entire creation.

[56]Dooyeweerd writes: "Neither the structures of the various aspects of reality, nor the structures that determine the nature of concrete creatures, nor the divine principles which serve as norms for human action, were altered by the fall" (Roots:60).

[57]The analogy with clothing here is somewhat ambiguous, but the primary conclusion Dooyeweerd draws from it is that the primary function of a thing can be determined by the fall, while its structural principle could still have been given with creation (and thus not simply be an arbitrary creation of man). What this implies about clothing is not clear. If its primary function is indeed to protect human honour, are we then to understand that clothes are socially or ethically qualified? Or is this primary function a special external purpose to which clothes have been put on account of the fall? This may be so, but in this case, the analogy with the state breaks down, since Dooyeweerd denies that states are the result of human formation of what was originally given in creation, but rather are a result of formation of a special, later institution on account of sin.

[58]Dooyeweerd rejects the Aristotelian conception of the state as a form of universalism whereby non-state structures are conceived of as parts of the state as a whole, the all-embracing perfect community (III:202ff.). His reasons for doing so are clear, but it is not at all clear that the view according to which the power of the sword is a mere "secondary addition" to the state, that is, a post-fall phenomenon, necessarily has to be based on such an Aristotelian or Thomistic conception, as Dooyeweerd implies here.

[59]Cf. H. Ridderbos, Paul: An Outline of his Theology, pp. 322-3.

[60]It would be misleading to describe the coercive character of state power as a variable social form, however, as if in certain historical periods it was dispensable (although this might empirically be the case). But even if coercion did prove to be a universally necessary feature of the factual existence of all states, this would by no means imply that it should be seen as an internal component of its structural principle. It would, however, indicate the universality of human tendencies to violate justice.

[61]A further argument could be advanced that the state was given the right to use the ultimate sanction of physical coercion before the fall. Drawing an analogy with the ultimate threat of death given to Adam and Eve in the Garden of Eden (should they ignore God's command to obey him), it could be argued that the state

has also been given the right to use the ultimate sanction, a right which it would possess even before the fall. This argument does indeed avoid the implication that physical coercion was necessarily used before the fall (and in this sense is compatible with Dooyeweerd's notion of the original goodness of creation); and it also allows for an original creational ordinance for the state. However, in our view, it does not show how the right to use physical coercion would, in an unfallen situation, constitute a form of power. For in a situation where everyone would willingly obey the state anyway, this ultimate sanction would in effect be redundant. It would not be a formative factor in ensuring obedience to the laws of the state. In such a situation, everyone would as a matter of course obey the state because it was worthy of obedience and could be trusted to dispense justice.

[62]Brunner, Justice and the Social Order, p. 188. A similar case is made by J.R. Lucas in Democracy and Participation, pp. 61-5.

[63]A brief clarification of the use of the term "juridical" is in order at this point. In WdW, Dooyeweerd frequently employs two closely related words, juridisch, and rechtelijk. In the NC and other translated works, the first is normally (and properly) translated as "juridical" (or sometimes "jural"), while the second is translated as either "juridical" or "legal". While the English word "legal" is used to denote only positive law, the Dutch word "rechtelijk" can imply either positive law or the normative order of justice which positive law ought to reflect. Similarly, the Dutch word recht can be translated either as "law" or "right" or "justice". This is not generally the case with juridisch, however. It is not possible, therefore, to tell from the NC which term is used in parallel passages in WdW. In fact, this is not crucial for our own study, since we are not concerned primarily with Dooyeweerd's theory of law but with his theory of political justice. Where we quote Dooyeweerd as speaking, for example, of the public-legal order of the state, our attention will generally be upon the normative order of justice of which this legal order is to be an expression. We will employ the terms "justice-related" or "concerning the justice dimension" etc. as synonyms for "juridical" at some points. We can do this because Dooyeweerd conceives of the juridical mode (and its positive legal expression) as embodying ultimate norms of justice. For an elaboration of Dooyeweerd's meaning here, see H.J. van Eikema Hommes, "The Functions of Law and the Role of Legal Principles", PR (1974), 77-81. We should note, however, that the English word "justice" is the equivalent of the Dutch word gerechtigheid, which can denote either the ultimate norm of justice or the situation which is in harmony with the norm, "rightness".

[64]Dooyeweerd warns against various misinterpretations of retribution which would limit the universality of its validity. One warning is against a case of modal reductionism, which involves the conflation of two (or more) irreducible modal dimensions, in this case against a reduction of retribution to "instincts of revenge" (II:130). Such instincts are psychically qualified. There can indeed be "feelings of justice" but these are psychic analogies (II:134).

[65]"In its original meaning harmony always requires aesthetic unity in multiplicity on its law-side, in which the... [meden agan] (nothing to excess)...is of unassailable value" (II:128).

[66]"Its foundational...meaning is the sparing or frugal mode of administering scarce goods, implying an alternative choice of their destination with regard to the satisfaction of different human needs. The adjectives 'sparing' and 'frugal'...refer to our awareness that an excessive or wasteful satisfaction of a particular need at the expense of other more urgent needs is uneconomical" (II:66).

[67]There is a distinct ambiguity in Dooyeweerd's discussion of these two analogies. Calvin Seerveld has indicated that the aesthetic analogy adds little of consequence here. He argues that what Dooyeweerd attempts to explain in terms of the aesthetic analogy can quite adequately be accounted for in terms of the economic. See Seerveld's "Modal Aesthetics", in J. Kraay and A. Tol (eds.), Hearing and Doing: Philosophical Essays Dedicated to H. Evan Runner, (Toronto:1979), p. 290.

Dooyeweerd seems to have overlooked some suggestive clues that the juridical mode might after all be founded on the economic. While he recognises that the key Dutch terms vergelding and vergoeding have economically connotative stems, he correctly denies that these terms have a specifically economic meaning, while not acknowledging the possibility that the intimate etymological connection might have some ontic foundation. It might have been better for Dooyeweerd to have characterised the economic analogy in the juridical mode as: "the frugalising of various interests, warding off any excessive actualising of special concerns detrimental to others".

[68]Dooyeweerd did apparently recognise certain difficulties with the notion of retribution in one of his latest publications, "Die Philosophie der Gesetzesidee und ihre Bedeutung für die Rachts und Sozialphilosophie", Archiv für Rechts- und Sozialphilosophie, vol. 53 (1967), 1-20, and 465-513, cf. especially p. 474.

[69]P. Tillich, Love, Power and Justice, pp. 63-4.

[70]Brunner offers a similar proposal for defining the core meaning of justice in Justice and the Social Order, pp. 24, 83.

[71]This approach is indebted to B. Zylstra's "The Bible, Justice and the State", International Reformed Bulletin, 1972, and to P. Marshall's "Human Rights in Christian Perspective", Institute for Christian Studies, Toronto (1983). This formulation of the relationship between justice and office might be contrasted with various alternatives. J.R. Lucas has collated various lists of different proposed criteria for apportionment, which include the following: merit, performance, ability, work, desert, choice, productive contribution, rank, station, legal entitlement, agreements, need, common good, public interest, greater good of the greater number, etc. On Justice, (Oxford: 1980), 164-5. Each of these is intended to serve as a normative standard according to which various "tributes" are to be made. Each will also reflect the deeper perspectives of those who use them as ultimate criteria for justice.

[72]"A specific social reality of a merely juridical character does not exist. The 'juridical' or 'jural' is never more than a modal aspect of social reality, and this reality is given to us only in a great diversity of typical individuality structures" (SL:7). Cf. also I:553.

[73]We should raise the question here whether Dooyeweerd's term "sovereignty" is the most adequate way of denoting the irreducibility of the structures of individuality of human society. Traditionally, sovereignty has specifically political or legal connotations, while Dooyeweerd uses the term with a general sociological and with a universal reference. It might have been less misleading to have referred simply to the "irreducibility" of structures of individuality.

[74]A brief reference by A.M. Honoré to the "justice of special relations" appears to point in the direction of Dooyeweerd's notion of juridical sphere sovereignty. Honoré cites the example of the particular claims which members of a family have against each other on account of the "special relations" obtaining between them. For instance, it would be unfair for a father to disinherit his child even if the child was not in need. According to Honoré, this kind of justice is not a form of "social justice" because it "upholds not the claims of man as man but only of man as standing in a special relation to some particular fellow-man". "Social Justice" in R.S. Summers (ed.), Essays in Legal Philosophy

(Oxford:1970), 61-94. Revised version of "Social Justice", McGill Law Journal 78 (1962).

[75]Sir George Cornewall Lewis, Remarks on the Use and Abuse of Political Terms (1832), 232-4, quoted by Brian Barry in his "The Use and Abuse of 'The Public Interest'", in C.J. Friedrich (ed.), The Public Interest (NOMOS V), (N.Y.:1966), 195. Lewis remarks that, for example, a theatre is not public because it is in fact visited by every member of the community, but because it is open to all indifferently. The strictest definition of this sense of "public" is thus not "that which affects everyone", but rather "that which affects anyone". The notion of "inclusiveness" rather than "commonness" captures the essence of Dooyeweerd's conception of "public".

[76]In Dooyeweerd's view, the state is a communal whole which embraces people and government in an integrated unity. He denies that "the people" has an independent existence apart from the government, and vice versa (III:436). This is also related to his decidedly "cool" view of nationhood. In contrast to "romanticist" or "organicist" or "universalist" conceptions, he posits a "political" notion of nationhood: "A nation is not a natural community.... It is the result of a political formation which presupposes the differentiation and integration of human society. The typical character of a nationality has always been formed in the struggle for its internal political integration..." (III:470).

[77]"A church can only embrace members of a faith community, an industry only members of an industrial community, a political party only members of a party community, etc. etc., and the legal community which is maintained within the internal structure of all these bonds is always qualified by a meta-juridical structural function. They are regulated by specific, not by general or public law. Only the state is qualified as a territorial public legal community" (PPR:50).

[78]The sphere of public communal law embraces two sub-categories, namely, "organizational norms" regulating the structures, competencies and interrelations of the organs of government, and "behavioural norms", regulating the relationships between government and its subjects (III:439; PPR:50). In our view, these represent the state's internal sphere of juridical functioning. Justice is to be done within the internal structure of the state, in the internal power relations between government and citizens as the two components of the political community. Dooyeweerd pays little attention to this dimension of political life in NC. The problem concerns the "juridical forms of organization of governmental authority", that is, the different "constitutional forms"

which a state may display, varying between the poles of democracy and autocracy (III:477). The problem of autocracy versus democracy cannot be answered in terms of the enduring structural principle of the state. He is primarily concerned to develop a critique of absolutism and totalitarianism, rather than a critique of autocracy. Thus his preoccupation is not with the internal juridical relations between members of the political community but with the juridical relations between the political community and non-political societal structures.

[79]In modern European legal systems, following the Code de Napoleon, civil law has normally referred to the law by which the state protects the rights, freedoms and equalities of persons before the public law of the land, in the civil courts provided by the state.

[80]Skillen, The Development of Calvinistic Political Theory in the Netherlands, p. 422.

[81]"Kompetenz-Kompetenz" is a notion which was current in German jurisprudence in Dooyeweerd's time. It means simply the competence to determine the boundaries of one's own sphere of competence. (Cf. Roots:132.)

[82]The phrase "public social justice" appears in the parallel passage in WdW (III:401), as "publiek verbandsgerechtigheid", which should in fact be translated as "public communal justice". The related term "publiek verbandsrecht" is normally translated (correctly) as "public communal law" (e.g. WdW:III:395). The use of the term verband in both cases refers to the fact that the state is itself an organised community.

[83]Skillen, The Development of Calvinistic Political Theory in the Netherlands, p. 405.

[84]Skillen, "Land Rights, Stewardship, and Justice".

[85]Woldring, "Venster op de samenleving", p. 245.

[86]Dooyeweerd also employs the terms "algemeen belang" ("general interest" or "common interest") and "algemeen welzijn" ("general welfare") in some contexts. Although some political theorists distinguish between these various terms, Dooyeweerd seems to use them interchangeably.

[87]Dooyeweerd's charge that the principle of the public interest has proved itself capable of very different substantive interpretations is supported by, for example, G. Niemeyer, cf. "Public Interest and Private Utility", in C.J. Friedrich (ed.), The Public Interest. J.D. Dengerink has suggested that the term is meaningful only where there is an intuitive realisation of the limited responsibility of the state. Cf. T.A.Th. Spoelstra, "Wat verandert de staat?", Beweging, p. 82. Our own conclusions on the difficulty of rendering a precise definition of the concrete applications of the notion of public justice will also point towards the need for an element of intuitive judgment in identifying the limits of the authority of the state.

[88]In one context, however, Dooyeweerd does speak of a "public interest" as if it were the interests of a distinct entity. It occurs in the example of public health which we alluded to earlier. He writes that the government must "weigh the various private legal interests carefully against each other, and against 'the public interest', in a retributive sense" (III:446). Since this is the only example we have encountered of this kind, we suggest that it is a simple inconsistency.

[89]Dooyeweerd distinguishes three main phases in the history of modern political and legal theory. First, the "old liberal" or "classical natural-law" conception of Locke and Kant especially; second, the formalist school represented by e.g. F.J. Stahl; third, the school of "logicist formalism" exemplified particularly by Hans Kelsen (III:426-33). Concerning the formalist school Dooyeweerd writes: "...the idea of the law-State was...related to a public administrative legal order as a formal limit to which the magistrature would have to be bound in its administrative activities". For Dooyeweerd, however, public administrative law was material law embodying substantive, not just formal limits to the activities of the state (III:429-30).

[90]Just before this passage Dooyeweerd again introduces the notion of distributive justice. He writes: "In its qualifying juridical aspect the public interest implies the typical public legal measure of distributive justice which requires a proportional distribution of public communal charges and public communal benefits in accordance with the bearing power and merits of the subjects" (III:444-5). Elsewhere he states that the principle of distributive justice represents the "positive sense" of the notion of public interest, in contrast to the "negative sense" of the latter, which "subjects specific group interests to mius publicum and prevents the state from exceeding its original sphere of competence..." ("De Sociologische Verhouding...", 238).

[91]Dooyeweerd distinguishes between the juridical notion of the competence of the state (staatscompetentie) and the political notion of the task of the state (staatstaak) (PPR:45). This distinction is somewhat confusing since he also describes the principle of the public interest, which is supposed to delimit the competence of the state (cf. supra n. 81), as a political principle (III:445). Elsewhere, however, he calls the principle of the public interest a "material legal principle" (III:442). Apart from these confusions, the basic point of distinction seems to be between invariable structure and variable task.

[92]On the basis of the distinction between internal functions and external relations, we can now clarify and correct a key sentence in this statement on the task of the state quoted: "Externally the task of the State cannot be delimited in a universally valid way, because the body politic, as real organized community, functions in all the aspects of temporal reality (III:445, our emphasis). The fact that the state functions in all aspects of reality is not the real reason why its task cannot be delimited externally. The real reason is that the state relates to societal structures with leading functions in various modal aspects (e.g. economically qualified enterprises, ethically qualified families, and so on). Here we have a clear example of the confusion between the internal modal functions of the state, and its external relations to non-political societal structures.

The ambiguity regarding the internal functions/external relations distinction also appears in the contrast between "typical" and "atypical" functions of the state (ARS:1952:73). Referring to the public juridical qualification of the state, he writes: "...this internal criterion for the delimiting of the task of the government can only be of service insofar as this task falls within the internal sphere of the state community. But now the difficulty is precisely this, that the state also necessarily performs functions in human society, which indeed fall outside its original sphere of competence as a public legal community, but which cannot be separated from its task." He cites here as an illustration the purchase of goods necessary in the state's internal sphere of political economy (staatshuishouding). He no doubt has in mind here such activities as running a public transit system or a nationalised industry. He continues: "But in the performance of this task, the state no longer moves within its original internal sphere of competence, but enters upon the terrain of the economically qualified societal relationships. It cannot then apply its governmental authority here, especially not since it has to appeal to foreign industry. In other words, the essentially political question of the task of the state leads us to a critical application of the principle of sphere sovereignty precisely within the complicated intertwinements of the social life spheres. And then it immediately appears necessary to distinguish between

typical and atypical sides of the task of the state...the state's task also covers spheres which fall outside the typical nature of the state..." (ARS:1952:73).

Thus atypical functions fall outside the state's sphere of competence. If we interpret this to mean that the state's task includes things for which it has no competence, then A.C. de Ruiter's conclusion is correct. He writes: "The meaning of the distinction is that, while the typical tasks can be subjected to the (internal) delimiting criterion for governmental competence, the others cannot.... [E]xclusively reserving the delimiting norms for the government to the internal or typical functions of the state substantially decreases the de facto worth of these norms. (De Grenzen van de overheidstaak in de antirevolutionaire staatsleer, p. 117). De Ruiter rightly indicates here that Dooyeweerd implies that there are no universal norms for the state's atypical tasks, whether in the field of education, industry, and so forth.

Dooyeweerd's language here does support de Ruiter's conclusion. But throughout the NC Dooyeweerd is emphatic that all of the activities comprising the task of the state ought to be guided by the public juridical qualification of the state (III:445-6). The problem can be solved, we suggest, if we clearly distinguish between internal modal functions of the state, and the differently qualified societal relationships to which it relates in an external enkaptic way. The "typical" functions of the state would then refer to the former, while its "atypical" functions refer to the latter. Thus, in nationalising an industry, the state brings an originally economically qualified structure into the sphere of its internal sphere of political economy (a "typical" function); whereas in regulating collective bargaining agreements within private industry, it merely enkaptically "binds" a structure (an "atypical" function).

[93]Zylstra, From Pluralism to Collectivism, p. 219.

[94]This information has been gathered from G.J. Balkenstein, "The Netherlands Industrial Organization Act, 1950"; B.M. Telderstichting, De Publiekrechtelijk Bedrijfsorganisatie in Nederland, pp. 147-157; J.P. Windmuller, Labour Relations in the Netherlands, 68-78; 282-292.

[95]Dooyeweerd here defines the qualifying function of the enterprise exclusively from the perspective of the entrepreneur. There seems no reason, however, why an enterprise should not rather be qualified from the standpoint of the entire work community. In his definition of the political community, both government and subjects are embraced as its components, so it is not clear why he fails to do the same in this case.

[96]Dooyeweerd does not insist that the "centre of gravity" (zwaartepunt) of industrial sphere sovereignty necessarily resides in the individual enterprise. It may just as well be located in an entire branch of industry (ARS:1954:185). The principle of sphere sovereignty applies with equal force to any societal relationship with its own structural principle.

[97]Dooyeweerd has something else in mind here than "public justice" (publieke gerechtigheid) although he does not indicate how they may be related. Since he does elsewhere state that "social laws" (sociale wetten) such as social security, safety regulations, and so on, belong to the specific category of public administrative law, "social justice" in this context should be taken to mean the specifically administrative expression of public justice (PPR:58).

[98]In this debate, Dooyeweerd's main concern was to protect industry from the state. He was not so alert at the time to the opposite danger of the undue influence of the corporate sector on the state. For an analysis of contemporary developments in this direction, see R.J. Harrison, Pluralism and Corporatism; B. Goudzwaard, Capitalism and Progress; B.L.R. Smith (ed.), The New Political Economy; S. Griffioen, "Facing the New Corporatism".

BIBLIOGRAPHY

Works by Herman Dooyeweerd

Dooyeweerd, H. Calvinisme en natuurrecht. Amersfoort: Wijngen, 1925.

————. De crisis in de humanistische staatsleer. Amsterdam: Boekhandel W. ten Have, 1931.

————. De wijsbegeerte der wetsidee. 3 vols. Amsterdam: H.J. Paris, 1935-6.

————. De christelijk staatsidee. Rotterdam: Libertas, 1936. Trans. J. Kraay, The Christian Idea of the State. Nutley, New Jersey: Craig Press, 1975.

————. "Enkele opmerkingen inzake de 'richlijnen' betreffende een toekomstige bedrijfsorganisatie." 1944. Mimeograph.

————. "De sociologische verhouding tussen recht en economie in het probleem van het zgn. 'economisch recht'" in Opstellen op het gebied van het recht, staat en maatschappij, ed. A. Anema and P.A. Diepenhorst. Amsterdam: Bakker, 1949. 221-265.

————. "De strijd om het souvereiniteitsbegrip in de moderne rechts- en staatsleer." Amsterdam: H.J. Paris, 1950.

————. "Een Rooms-Katholieke visie op de Protestant-Christelijk denkbeelden inzake bedrijfsorganisatie en de recente discussie over de grenzen der overheidstaak." ARS, 1952, 65-79; 97-122.

————. A New Critique of Theoretical Thought. 4 vols. Amsterdam: H.J. Paris; Philadelphia: Presbyterian and Reformed Publishing Co., 1953-1958.

————. "Arbeidsrecht, intern bedrijfsrecht en de juridische grenzen der souvereiniteit in eigen kring." ARS, 1954. 177-191.

————. "The Criteria of Progressive and Reactionary Tendencies in History." Verslag van de plechtige viering van het honderdvijftigjarig bestaan der Koninklijke Nederlandse Akademie van Wetenschappen (Proceedings of the Formal Celebration of the 150th Anniversary of the Royal Netherlands Academy of Sciences and Letters). Amsterdam: North-Holland, 1958. English text, 213-338; French text, 139-154; Dutch text, 61-77.

———. Vernieuwing en bezinning om het reformatorisch grondmotief. ed. J.A. Oosterhof. Zutphen: J.B. van der Brink, 1959. (This volume consists of an edited collection of articles first appearing in the weekly Nieuw Nederland, 1944-48.) Trans. J. Kraay, ed. M. Vander Vennen and B. Zylstra. Roots of Western Culture. Toronto: Wedge, 1979.

———. In the Twilight of Western Thought. Philadelphia: Presbyterian and Reformed Publishing Co., 1960.

———. Publiek- en privaatrecht. Amsterdam: Uitgave Studentenraad, Vrije Universiteit, 1963. Collegediktaat.

———. "De verhouding tussen rechtsfilosofie en rechtssociologie" in Feestbundel aangeboden aan F. van Goethem. Leuven: 1964, 557-577. Trans. J. Kraay, "Sociology of Law and its Philosophical Foundations." Amsterdam: Filosofisch Instituut, Vrije Universiteit, 1972.

———. Verkenningen in de wijsbegeerte, de sociologie en de rechtsgeschiedenis. Amsterdam: Buiten en Schipperheijn, 1967.

Secondary Sources

Conradie, A.L. The Neo-Calvinist Concept of Philosophy: A Study in the Problem of Philosophic Communication. Natal: Natal University Press, 1960.

De Ruiter, A.C. De grenzen van de overheidstaak in de antirevolutionaire staatsleer. Kampen: J.H. Kok, 1961.

Dengerink, J.D. Critisch-historisch onderzoek naar de sociologische ontwikkeling van het beginsel der 'souvereiniteit in eigen kring' in de 19e en 20e eeuw. Kampen: J.H. Kok, 1948.

Groen, K. "Dooyeweerd over publiekrechtelijke bedrijfsorganisatie" in Rechtsgeleerde opstellen. Kampen: J.H. Kok, 1951.

Hart, H. "Problems of Time: An Essay" in The Idea of a Christian Philosophy. Toronto: Wedge, 1973. 30-42.

Hommes, H.J. van Eikema. Inleiding tot de wijsbegeerte van Herman Dooyeweerd. The Hague: Martinus Nijhoff, 1982.

Jellema, D. "The Philosophy of Vollenhoven and Dooyeweerd." Pt. II, "Dooyeweerd and Hartmann" in Calvin Forum, May, 1954, 192-4. Pt. III, "A New Synthesis-Philosophy" in Calvin Forum, Oct., 1954, 31-33.

Kalsbeek, L. Contours of a Christian Philosophy. eds. B. and J. Zylstra. Toronto: Wedge, 1975.

Kennedy, E.W. "Herman Dooyeweerd on History: an attempt to understand him" in Fides et Historia, Fall, 1973. 1-21.

Kraay, J. "Successive Conceptions in the Development of the Christian Philosophy of Herman Dooyeweerd." Pt. I, PR, 1979, 137-149; Pt. II, PR, 1980, 1-40.

Skillen, J.W. The Development of Calvinistic Political Theory in the Netherlands, with special reference to the thought of Herman Dooyeweerd. Ph.D. dissertation, Duke University, 1974.

————. "Herman Dooyeweerd's Contribution to the Philosophy of the Social Sciences," in Journal of the American Scientific Affiliation, 31 March 1979. 20-24.

Strauss, D.F.M. "The Central Religious Community of Mankind in the Philosophy of the Cosmonomic Idea." PR, 1972. 58-67.

Van der Hoeven, J. "In Memory of Herman Dooyeweerd: Meaning, Time and Law." PR, 1978. 130-144.

Van Kley, D.K. "Dooyeweerd as Historian" in A Christian View of History? ed. G.M. Marsden and F.C. Roberts. Grand Rapids: Eerdmans, 1975. 139-179.

Van Til, N. "Dooyeweerd's 'History' and the Historian," in Pro Rege, December, 1973. 7-15.

Walsh, B. and Chaplin, J. "Dooyeweerd's Contribution to a Christian Philosophical Paradigm." Crux, vol. XIX, no. 1, March, 1983. 8-22.

Woldring, H.E.S. "Het struktuurbegrip in de sociologie van H. Dooyeweerd: een systematische en kentheoretische uiteenzetting." Amsterdam: Filosofisch Instituut, Vrije Universiteit, 1971.

————. "Calvinisme en sociologie: Dooyeweerd en zijn school." Toen en thans. De sociale wetenschappen in de jaren dertig en nu. ed. F. Bovenkerk et al. Baarn: Ambo, 1978. 157-167.

————, and D.T. Kuiper. Reformatorische maatschappijkritiek. Kampen: J.H. Kok, 1980.

Zigterman, K. "Dooyeweerd's Theory of Individuality Structures as an Alternative to a Substance Position, especially that of Aristotle." M.Phil. thesis. Institute for Christian Studies, Toronto, 1977.

Zwart, J. "De staatsleer van Herman Dooyeweerd." PR, 1980. 109-139.

Other Works

Arendt, H. The Human Condition. Chicago: University of Chicago Press, 1958.

Arthurs, H.W. "Developing Industrial Citizenship: A Challenge for Canada's Second Century." Canadian Bar Review, Vol. XLV, 1967. 786-830.

Balkenstein, G.J. "The Netherlands Industrial Organization Act 1950." Univ. of Pennsylvania Law Review, Vol. 106, no. 4, February, 1958. 499-524.

Barth, K. Community, State and Church. New York: Anchor Books, Doubleday and Co., 1960.

Bernstein, R.J. The Restructuring of Social and Political Thought. Philadelphia: Univ. of Pennsylvania Press, 1978.

Brunner, E. Justice and the Social Order. Trans. M. Hottinger. London: Lutterworth Press, 1945.

Calvin, J. "On Civil Government." Institutes of the Christian Religion, in J.T. McNeill, ed., Calvin: On God and Political Duty. 2nd ed., rev. New York: Liberal Arts Press, Inc. 1956.

Carney, F.S. "Associational Thought in Early Calvinism," in Voluntary Associations, ed. D.B. Robertson. Richmond, Va: J. Knox, 1966. 39-53.

Easton, D. The Political System. 2nd ed. New York: Alfred A. Knopf, 1971.

D'Entrèves, A.P. The Notion of the State. Oxford: Oxford University Press, 1967.

Friedrich, C.J., ed. The Public Interest (NOMOS V). New York: Atherton Press, 1962. American Society for Political and Legal Philosophy.

Germino, D. Beyond Ideology: The Revival of Political Theory. New York: Harper and Row, 1967.

Goudzwaard, B. Capitalism and Progress. Trans. and ed. J. Van Nuis Zylstra. Toronto: Wedge, and Grand Rapids: Eerdmans, 1979.

Griffioen, S. "Facing the New Corporatism." Toronto: Christian Labour Association of Canada, 1981.

Harrison, R.J. Pluralism and Corporatism: The Political Evolution of Modern Democracies. London: George Allen and Unwin, 1980.

Hexham, I. "Calvinism and Culture: A Historical Perspective." Crux, Vol. XV, No. 4, December, 1979. 14-19.

Hommes, H.J. van Eikema. "The Function of Law and the Role of Legal Principles," PR, 1974. 77-81.

————. "The Limits of the Legal Competence of the State." PR, 1976. 9-23.

————. "The Material Idea of the Law-State." PR, 1978, 49-60.

————. Major Trends in the History of Legal Philosophy. Trans. P. Brouwer and J. Kraay. Amsterdam: North-Holland, 1979.

Honoré, A.M. "Social Justice," in Essays in Legal Philosophy, ed. R.S. Summers. Oxford: Basil Blackwell, 1970. 61-94. Rev. version of "Social Justice" in McGill Law Journal, 78, 1962.

Jellema, D. "Kuyper's Attack on Liberalism," in Review of Politics,19, 1957. 472-85.

Lindsay, A.D. The Modern Democratic State. New York: Oxford University Press, 1967.

Little, D. Religion, Order and Law. New York: Harper and Row, 1969.

Lucas, J.R. Democracy and Participation. Harmondsworth, Middlesex: Penguin, 1976.

————. On Justice. Oxford: Oxford University Press, 1980.

Matson, F.W. The Broken Image. New York: George Braziller, 1964.

Marshall, P. "Mathematics and Politics." PR, 1979. 113-136.

————. "Human Rights Theories in Christian Perspective." Inaugural Address, Toronto: Institute for Christian Studies, 1983.

Maritain, J. Man and the State. Chicago: University of Chicago Press, 1951.

Mouw, R.J. "Reforming Cultural Calvinism." Reformed Journal, March, 1981.

Nicholls, D. The Pluralist State. London: Macmillan, 1975.

Niebuhr, H.R. Christ and Culture. New York: Harper and Row, 1951.

Nisbet, R. The Social Philosophers. St. Albans, Herts.: Paladin, 1976.

Olthuis, J.H. Facts, Values and Ethics. Assen: Van Gorcum, 1969.

Parekh, B.C. "The Nature of Political Philosophy" in Politics and Experience, ed. P. King and B.C. Parekh. Cambridge: Cambridge University Press, 1968.

Popma, K.J. Venster op de wereld. Kampen: J.H. Kok, 1968.

Ridderbos, H. Paul: An Outline of His Theology. Trans. J.R. de Witt. Grand Rapids: Eerdmans, 1975.

Ritter, G. "Origins of the Modern State," in The Development of the Modern State. Ed. H. Lubasz. New York: Macmillan, 1964. 13-25.

Sartori, G. "Concept Misinformation in Comparative Politics." APSR, Vol. LXIV, No. 4. December, 1970. 1033-1053.

Seerveld, C. "Modal Aesthetics," in Hearing and Doing: Philosophical Essays Dedicated to H. Evan Runner. Ed. J. Kraay and A. Tol. Toronto: Wedge, 1979. 263-294.

Skillen, J.W.R. "Land Rights, Stewardship, and Justice." Concluding address given at the Association for Public Justice Education Fund's Fourth International Christian Political Conference, August 16, 1980.

Skinner, Q. Foundations of Modern Political Thought. 2 vols. Cambridge: Cambridge University Press, 1978.

Smith, B.L.R., ed. The New Political Economy: The Public Use of the Private Sector. London: Macmillan, 1975.

Spoelstra, T.A.Th. "Wat verandert de staat?" in Beweging, February, 1983. 10-13.

Spykman. G.J. "Sphere-Sovereignty in Calvin and the Calvinist Tradition," in Exploring the Heritage of John Calvin. Ed. D.E. Holwerda, Grand Rapids: Baker Book House, 1976. 163-208.

————. "Toward a Biblical View of Human Rights." RES (Reformed Ecumenical Synod) Theological Forum, December, 1979.

Strauss, D.F.M. "Philosophy and Sociology." PR, 1979. 150-182.

Strauss, L. What is Political Philosophy? Westport, Connecticut: Greenwood Press, 1973. Originally published in New York: Free Press, 1959.

Teldersstichting, B.M. De publiekrechtelijk bedrijfsorganisatie in Nederland. The Hague: Martinus Nijhoff, 1958.

Tillich, P. Love, Power and Justice. London: Oxford University Press, 1954.

Van der Kroef, J. "Abraham Kuyper and the Rise of Neo-Calvinism in the Netherlands." Church History, Vol. 17, 1948. 316-344.

Voegelin, E. The New Science of Politics. Chicago: University of Chicago Press, 1952.

Windmuller, J.P. Labour Relations in the Netherlands. Cornell: Cornell University Press, 1969.

Woldring, H.E.S. "Venster op de samenleving," in Het leven beschouwd: facetten van het werk van Prof. Dr. K.J. Popma. Kampen: J.H. Kok, 1974.

Wolin, S. Politics and Vision. Boston: Little, Brown and Co., 1960.

————."Paradigms and Political Theories" in Politics and Experience, ed. P. King and B.C. Parekh. Cambridge: Cambridge University Press, 1968.

————. "Political Theory as a Vocation." APSR, 63, 1969. 1062-1082.

Zuidema, S.U. "Common Grace and Christian Action in Abraham Kuyper in Communication and Confrontation, S.U. Zuidema. Toronto: Wedge, 1972. Originally published as "Gemene Gratie en Pro Rege bij Dr. Abraham Kuyper." ARS:1954:49-73.

Zylstra, B. From Pluralism to Collectivism: The Development of Harold Laski's Political Thought. Assen: Van Gorcum, 1970.

————. "The Bible, Justice, and the State" in International Reformed Bulletin, Fall, 1973, pp. 2-18.

————. "Using the Constitution to Defend Religious Rights" in Freedom and Faith: The Impact of Law on Religious Liberty. Westchester, Illinois: Grossway Books, 1982. 93-114.