



Volume 16

1962

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Recommended Citation

Hector J. Aicardi Cerruti, *The State as Underwriter*, 16 Sw L.J. 608 (1962)
<https://scholar.smu.edu/smulr/vol16/iss4/3>

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THE STATE AS UNDERWRITER†

by

Héctor J. Cerruti Aicardi*

URUGUAY is one of the few countries in the world which offers the state as an underwriter. In a special intervention of public power into the private sphere of the insurance business, the Republic of Uruguay in 1911 created the State Insurance Bank. It is the purpose of this paper to explain and better describe the reason and necessity for this intervention and its doctrinarian importance.

I. THE OBJECTIVE OF THE STATE

Over the past many years there has been a preoccupation of specialists in the areas of constitutional and administrative law to determine the final purpose of the state. Holtzendorff,¹ for example, believed that the main object of the state was the formation of the concept of institutions. In opposition to such theories which assign the state only one purpose, *i.e.*, public welfare, as the strictly juridical or the moral mission, there are those theorists who think that the state has gradually found more and more purposes to satisfy and that it would be more correct to speak of the objectives of the state rather than of its purpose.² This aspect of the extension of the objectives of the state was mentioned by Aristotle, who said: "The State although coming to life by life itself, exists in order to favor a 'good life.' Nowadays the State is carrying out activities in order to preserve its own existence and in order to make the existence of its citizens more secure, healthier, and more beautiful."³

More recently, Raneletti⁴ was of the opinion that the purpose of the state is to assure the defense of its country, the protection of the interests of its citizens, and the maintenance of internal order, peace,

† This article is taken from a paper delivered by Dr. Cerruti Aicardi to the First International Congress of Insurance Law of the International Association for Insurance Law in Rome during April of 1962. The *Southwestern Law Journal* is indebted to Robert G. Storey, President of the Southwestern Legal Foundation, for securing the paper and making its publication possible. The views expressed herein are solely those of the author and do not necessarily reflect the opinions of the *Journal* or of the Southern Methodist University School of Law.

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¹ Holtzendorff *Principios de Política*, bk. III (Spanish transl. Madrid 1888).

² Kranenburg, *Teoría Política* 69 (Spanish transl. Mexico 1941).

³ Quoted in Kranenburg, *op. cit. supra* note 2, at 70.

⁴ Raneletti, *Istituzioni di Diritto Pubblico* 98 (Milano 1953).

and respect of the law. In this manner the state assures its citizens of their liberty and property rights with a peaceful co-existence and cooperation in social life. According to Raneletti, the state by providing high principles of justice and social solidarity makes possible the physical, economical, and spiritual elevation of all classes of the people. When faced with the deficiencies of free individual initiative, the state is available as a force of propulsion to help in the integration of private activity and to substitute eventually for that initiative. That substitution is essential in order to provide the necessary external conditions for the development of private activity and for the progressive elevation of national life.

Finally, the most modern Italian point of view is that of Falzone.⁵ His philosophy divides the obligations of the state between the public and private sectors. With respect to the latter, the only obligations which may be designated as private are those which the state is able to contract *privatorum more* within the development of the so-called private activities.

II. THE THEORY BEHIND THE STATE INSURANCE BANK

With the above understanding of the objective which the state must accomplish in modern society, the government of the Uruguayan Republic, by its President Don José Batlle y Ordóñez, proposed the creation of the State Insurance Bank in 1911. Its operations began on March 1, 1912. The preamble of the enacting legislation gave as the reasons for the project:

The collective interest each day more variable and at the same time more powerful and dominating has imposed on the State the direct intervention in all those services, performed by a controlled or monopoly system. The terms "Competition" and "Monopoly" have lost their former significance. Neither is competition always beneficial, nor are monopolies always to be condemned. Popular instinct and men of thinking do not now reject the latter essentially. Every case constitutes a new problem and usually with its own characteristics to be analyzed almost exclusively by its projections and practical consequences. The Modern State as the economical organization, as it is now-a-days, assumes without hesitation the production of certain services aiming at a more equitable distribution of national wealth.⁶

⁵ Falzone, *Le Obbligazioni dello Stato* 55 (Milano 1960).

⁶ It is not surprising to any statesman or lawyer of the world that the subject of doctrinarian political science has been modified today to include problems of political economics. That this has happened may be verified by the fact that the state has acquired the enormous control which it is enjoying today. The state gained this power not because philosophers and lawyers suddenly changed their minds regarding their views on the object and purposes of public power, but because the irresistible pressure of social needs in a world full of fear and contradictions broke all forms of ancient political structures and

Favored by these concepts, which are to be appraised in accordance with the time in which they were made, decentralized state services were then created in Uruguay in order to carry out the exploitation of additional industries such as petroleum, cement, electricity, and port administration as well as air service, railway transportation, and other enterprises already under state control.

In the insurance contract spheres, and, of course, limiting the commentaries to the ideas which in 1911 gave wording and spirit to the creation of the State Insurance Bank, there has been the saying that on many occasions the state monopoly of right does nothing more than replace advantageously for everyone the older private monopoly of fact. The private monopoly had actually only benefited some few physical or moral persons. Furthermore, the advantages of the private monopoly did not exist in countries of small populations and exclusively mercantile natures, since only a few persons were enriched by the benefits which normally accrued to the great mass of consumers for the efforts and sacrifices required of them.

The history of the insurance business in Uruguay has been both long and bitter. From the time of the Brazilian Land and Maritime Insurance Company in 1857⁷ until the ratification of the law of 1911, the struggle was a never ending one for control by the many private concerns.⁸ The activities of these companies furnished a good

destroyed all the traditional conceptions regarding government. In the words of Cruet as quoted by Berro, "While the lawmaker is sleeping upon the codes of Law, Society will not stop working." Berro, *El Estado y la Actividad Privada* 10 (2d ed. Montevideo 1949).

⁷ For reasons of brevity, the colonial antecedents are not discussed. For the colonial development, see Dotta, *Evolución Histórica del Seguro en el Uruguay*, in 4 Seguros, *Revista del Banco de Seguros del Estado*, No. 13-4, at 18.

⁸ In 1857, and continuing until the ratification in 1911, the following companies were in operation: La Tutelar-Compañía General Española de Seguros Mutuos sobre la Vida (1854); La Mutualidad (1854); Compañía Oriental de Seguros Marítimos (1854); El Porvenir de las Familias (1861); Compañía General de Seguros Mutuos La Unión Americana (1861); Compañía de Seguros Mutuos La Providencia (1868). About 1868 in Uruguay the following companies were functioning: La Unión Americana, Compañía Argentina de Seguros Marítimos, La Universal, La Bienhechora del Plata, La Garantía, and El Porvenir de las Familias.

In 1872, the North British and Mercantile Company began to work, and one year afterwards the Commercial Union Assurance Company; in 1876, the Queen, and the London and Lancashire; in 1882, the La Comercial; in 1885, the Hamburg-Magdeburger; in 1886, the Royal Insurance, joining the Queen, already mentioned, and the Lancashire in 1908.

About 1886, there appeared the Mannheim, the Lion Fire Insurance Company, La Plata, and the Union Italiana, the North German Insurance Company of Hamburg, La Equitativa, the Standard Life Assurance Company (1892), in 1897 the Guardian Assurance Company, and in the same year the Compañía de Seguros L'Union and the Northern. In the same year La Baloise, Alliance Assurance, Confiance, the London Assurance, La Transatlántica and La Italia were working. In 1899, the Sun Insurance Office, Ltd. began its activities. In 1897, the important organization of the Uruguay Local Committee of Fire Insurance Companies registered, and it is still functioning in conjunction with the State Insurance Bank.

Also starting operations in the years before 1911 were La Uruguayana Compañía Nacional de Seguros, La Franco Argentina, the Allianca da Bahia, La Industrial del Uruguay, the Scottish Union and National, La Argentina, Law Union and Crown, Nord Deutsche, La

reason for the intervention proposed in the argument of the executive, especially since the great majority of the companies were foreign. In regard to these foreign companies, the executive's message of 1911 read:

Furthermore, one cannot contemplate with indifference the annual extraction of important sums of money in concept of insurance. We have to defend our wealth, as all countries defend theirs, some of them going so far as to require in the concrete case of insurance, the deposit of 50 percent of the premiums in public banks, in the case of foreign companies, or 25 percent in the case of national ones; and other countries, such as France, impose an initial deposit and the investment according to the law, not only of the reserves of the insurance operations to be realized in the future, but also of all those still running.

With respect to the foreign companies, it is noteworthy to mention that in Uruguay at present there are functioning in perfect harmony with the law of 1911 and with the activities of the State Insurance Bank, eighteen national and foreign companies.

III. STATUS AND OPERATION OF THE BANK

The project as first proposed by the executive established a monopoly of right in favor of the State Insurance Bank covering fire, sea, agricultural, and livestock risks; but the law as ratified in December of 1911 reduced this monopoly to the risks of fire, life, and occupational accidents. These were amplified by a law in 1926 to cover all kinds of risks. The executive, respecting the right of property of the portfolios in possession of the existing companies, disposed that the Bank should acquire such portfolios by paying reasonable indemnity.

Starting from its birth and continuing up to the present time, the State Insurance Bank has proceeded like a monopolist with respect to the risks of motor cars, workman's compensation (the latter becoming compulsory by the law of 1961), glass risks, and rural risks in general. On the other hand it has proceeded in free competition with the companies functioning in 1911 with respect to the remaining risks, *i.e.*, marine, life, and fire. Therefore, the limitation established by the law of 1911 is operating in two directions. First, no new companies are allowed to establish themselves in operation; and second, as to the companies which existed in 1911, they are permitted to underwrite only those risks which they were assuming at

Aseguradora del Plata, Cordoba, Union Marine, La Fonciere, British and Foreign Marine Insurance Company, New Zealand Insurance Company, La Mutua, La Previsora Uruguay, La Positiva, La Providencia, Union Assurance Society Company, and the Liverpool and London and Globe Insurance Company.

that date. By this two-fold limitation, the situation of Uruguay is somewhat unique. The state is acting as an underwriter, first, in the character of a monopolist in some cases, and second, in free competition with private activities in others. Although this hybrid system of state intervention has not been adopted generally throughout the world, it is to be recognized that the spirit and limitations by which the statesmen of 1911 fixed the activities of state insurance, in the economical as well as the jurisdictional sense, have not affected the reputable private interests.

The idea most criticized in the doctrine of the state as an underwriter is that of the word "monopoly." "Monopoly" is a word of Greek origin having the general meaning of "exclusive commerce or traffic."⁹ However, the monopoly granted to the Uruguayan State Insurance Bank is to be considered as being among the mixed monopolies, because it is neither an administrative nor a financial one. Mixed monopolies normally are designed with the dual purposes of obtaining income for the state and of improving public services. Over the fifty years of insurance activities, under the conditions mentioned above, the Bank has carried out these ideas which served as its base. That is, it has returned to society the earnings obtained, loyally competed with the private companies, and assumed under its exclusive charge those risks notorious for their manifested unprofitableness throughout the world, *i.e.*, motor car risks and workman's compensation. Furthermore, the state in regard to its workman's compensation program has established the "Assistance Unity" in Montevideo, which is a model in its class, being endowed with the most efficient professional staff and the most modern equipment for assistance and rehabilitation.

At the present time the Bank is operating in almost every field of underwriting.¹⁰ If there is a request for coverage on a risk that is not

⁹ Cermesoni, *El Monopolio del Seguro por el Estado* 23 (Buenos Aires 1912); see also Berthelemy, *Traite Elementaire de Droit Administratif* (11th ed. Paris 1926); Burdeau, *Traite de Science Politique* T. IV, at 143 (Paris 1952); De Courcy, *De l'Assurance par l'Etat* (Paris 1894); Lambert, *Le Monopole des Assurances* (Paris 1910); Levassort, *Le Monopole des Assurances* (Paris 1910); Payen, *Les Monopoles* (Paris 1920); Sayagues Laso, *Tratado de Derecho Administrativo* 80 (Montevideo 1953); Da Cunha, *El Seguro y el Estado*, in *Seguros*, *Revista Mensual Chilena para las Americas* Nos. 227-28, at 4719 (Santiago de Chile); Epple, *El Monopolio del Seguro por el Estado*, in *Revista de Derecho, Jurisprudencia y Administracion* T. 26, at 123 (Montevideo).

¹⁰ At present the Bank is operating the following risks: fire (common and riots); workman's compensation and professional diseases (collective) (death, temporary, and permanent incapacity); individual and aircraft accidents (death, temporary, and permanent incapacity); life (by more than ten plans, amongst them the most modern ones covering compensation for currency devaluation); motor cars and cars moved by animals; marine and hull risks and land transport of goods; rural (hail, life of animals of pedigree, and railway transport from the farms); glass, burglary, theft and other accident risks, including fidelity guarantee; aircraft and various legal liability risks.

carried by the Bank, the assumption of that risk is nevertheless taken because of the Bank's vast reinsurance organization and agreements with carriers throughout the entire world.

The growth of the Bank is reflected by its present strong financial position. Latest balance sheet figures reflect a capital of 14 million pesos and reserves of more than 200 million pesos. For the period ending December 31, 1960, the income from premiums reached 142 million pesos. Of this, premiums from indemnities amounted to 56 million pesos and for life and annuities total premiums were 4 million pesos. Just from these revenues, the Bank has received a net benefit of 3 million pesos.

Before one can thoroughly appraise Uruguayan experience in the insurance business, a review must be taken of the investments in which the capital and reserves of the Bank have been placed. Concerning the form of the investments, the most affirmative argument is offered to those who consider the State Insurance Bank as the center of national wealth in the country. The funds are placed into important buildings distributed throughout the country, thereby enhancing the national wealth as well as creating employment. Investments have also been made in rural properties of great value; and above all, there have been direct annual contributions to the state, such as the acquisition of public bonds for 200 million pesos. In this manner the state as underwriter returns to the whole of the collectivity the benefits obtained by its activities.

IV. CONCLUSION

In summarizing the most positive aspects of the state as an underwriter, it may be affirmed without fear of contradiction that the State Insurance Bank has maintained control of the monopolies awarded it by law within constitutional limits. Indeed, humanity has been the balance by which the state has carried out the ideas of progress, social justice, and efficient democracy.¹¹

Critics of the monopolistic system doctrinally established fail in the presence of the Uruguayan example. These critics are maintaining and have maintained their position in the presence of other systems. However, the ideal harmony of labor in Uruguay between private and state activities provides no basis for arguments which advocate the abolition of this state intervention into private activities. Indeed, even if there are different methods of publicly exploiting insurance with or without state monopoly, in Uruguay one finds

¹¹ Berro, *El Estado y la Actividad Privada* 35 (Montevideo 1949).

an intermediate situation that, as noted, successfully refutes the disadvantages attributed to the state exploitation of insurance.

Through the use of the State Insurance Bank there is no delay or stifling routine; there is a modern policy of insurance. There are no overriding authorities, and the insured has all rights to defend himself by constitutional protection if the state as underwriter attempts directly or indirectly to violate his rights. With respect to the guarantee of payment in case of loss, if it were not enough that the Bank could fulfill its obligations from its reserve funds and its own capital, there is the responsibility of the state.¹²

In conclusion, it can be said by all those concerned that the operation of the State Insurance Bank has been most beneficial to all the citizens of Uruguay. Based upon the successful experiences and antecedents just explained, the following proposals are offered for consideration by other countries:

(1) that the state should intervene in the contracts of private insurance, especially in those of social insurance;

(2) that this intervention must respect the rights of private property and of acquired rights;

(3) that in the intervening state every citizen has a right to be heard before a judicial power or a court of administrative disputes whenever he considers his property affected or his rights damaged;

(4) that it is an aspiration that social security be administered in a manner of centralized systems, avoiding the multiplicity of services and, at times, their super-position;

(5) that compliance must be made with every hypothesis established by article 22 of the Rights of Man approved by the General Assembly of the United Nations.

¹² Couteaux, *Le Monopole des Assurances* 155, 255, 266, 268, 271, 272, 275 (Paris 1911). See the highly important contribution of Parizeau, *L'intervention de l'Etat dans l'Assurance au Canada*, in *Assurances*, years 19-20, Nos. 1-4 (Montreal 1952).

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