PEACE AND INSURANCE: RECOVERING THE UTOPIAN VISION OF INSURANCE IN ROYCE'S WAR AND INSURANCE

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We cannot predict all that it will yet accomplish; but we can already see that of all the business relations and of all the practical communities yet devised, the insurance relations and the insurance communities most tend to bring peace on earth, and to aid us towards the community of mankind.²

August 1914

"War and Insurance" was delivered as a lecture in Berkeley, on August 27, 1914 to the Philosophical Union of the University of California on the occasion of the 25th anniversary celebration of that organization. The lecture was to be the culmination of a series of lectures that Royce, then on the Harvard faculty, had been invited to give at Berkeley, but on the fateful day of August 14, 1914, with war fully joined in Europe, Royce set aside his carefully prepared lecture and hastily composed "War and Insurance."³

Royce proceeded to lay out a plan for an independent world body which would undertake to insure nations against a variety of natural and human disasters. Nations would, by transfer of assets to a mutual fund controlled by a highly professionalized international group of trustees, establish a global investment fund. The fund would in its initial stages indemnify member nations up to a certain amount against exigencies that while catastrophic for any particular nation could be absorbed by the wealth of a large group of nations (at least if it included the most powerful economies), including volcanoes, earthquakes, famines and the like. In time, as its procedures became more regularized and self confident, the


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2. ROYCE, supra note 1, at 64 (emphasis in original).

fund might venture to indemnify nations against losses created by international conflict itself.

Royce’s proposal drew a surprising amount of attention. For a time it drew its author back into the public eye as it was debated in the New York Times and other sites of public discourse. War and Insurance, brought out as a book by Macmillan sold well and was reviewed favorably although with lots of criticism. The plan was also considered by two Harvard Business school professors, H.B. Dow, and W. B. Medlicott. Dow advised Royce that a system of reinsurance might be the best way to implement the plan with each society having a national insurance company with which the international body might deal.⁴

Royce was far from alone among his generation in seeing in the practical workings of insurance, particularly in the social insurance form of workmen’s compensation, an almost magical solution to the problems of the modern world. He was unique however in bringing to this discourse about insurance an advanced sociological and philosophical perspective that saw insurance not as simply a god-like technology but as a process of government and human social organization. For those of us who have been interested in what a sociology of risk and insurance⁵ might yield us in purchase on our present, Royce’s proposal for what he called “mutual international insurance,” presents us a multifaceted bequest.

First, it gives us an ancestor and one of some importance in intellectual history. Despite being on the losing side of the culture war within academic philosophy, and being assessed relative to figures as daunting as Dewey and Pearce, Royce remains a major source of the only truly homegrown American contribution to modern philosophy, pragmatism and like the other pragmatists, the lines between philosophy and sociology are perforated and frequently crossed. War and Insurance makes a number of important claims about insurance quite consistent with the more recent work of both economists and sociologists of risk and insurance. Indeed, War and Insurance describes insurance as a form of government, something that has an important theme of contemporary scholarship.⁶

Second, Royce’s picture of insurance and government is drawn at a moment when the loss spreading capacity of insurance was still approaching the peak of political influence it reached after World War II.

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⁴ CLENDENNING, supra note 3, at 386.
⁶ See generally, RICHARD ERICSON ET AL., INSURANCE AS GOVERNANCE (Univ. of Toronto Press 2003).
Standing as we now seem to, in a period when loss spreading as a political strategy is in steep decline, War and Insurance offers us a counter balance to the pessimistic views on the social costs and benefits of loss spreading that are now in ascendance.

Third, Royce was imagining the furthest extensions of the insurance as loss spreading model in the face of the greatest self inflicted calamity that human kind had experienced up until then. Royce himself would not live to see the final tallies, but by his death in 1916 he had certainly learned of battles in which tens of thousands died in contest of meters of ground. The terrorism attack of September 11, 2001, poses a similar kind of challenge to the integrity of the global order and to the model of insurance as a system of security.

Last Stand in Berkeley

Royce had come to Berkeley, his alma mater and first academic job, for more than an opportunity to relax in the temperate Bay Area summer with former colleagues and students. His planned lectures were to be a public clarification of his main philosophical theses which had just recently culminated in the publication of his The Problem of Christianity, a book which Royce considered his masterpiece. Royce's brand of Hegelian idealism tinged with enough American populism to make him an occasional ally of Dewey, Pierce, and the pragmatists, had been one of the leading academic philosophical schools of the late 19th century in the United States. Although Royce may not have understood the situation in this way, in retrospect it is clear that his philosophical project was not so much defeated as superseded by the emerging analytic school that would dominate American academic philosophy at Harvard, and in most of American academia for the rest of the 20th century. His graduate seminars at Harvard were increasingly back-waters and his recent books received few serious reviews. His biographer describes the situation well:

Philosophy was already moving toward analytical climates too severe for metaphysics, and on the eve of World War I, the audiences for lectures on the Beloved Community were rapidly diminishing. Royce, who had once said that philosophies are kept alive by the critical attention they get, sensed that his was now dying, or already dead.8

8. CLENDENNING, supra note 3, at 359-60.
Royce had come back to Berkeley to offer a defense of his life’s work and rally what was left of his philosophical stature.9

Royce’s philosophy was a profoundly optimistic one, tinged with all the themes of progressive modernism, i.e., the inevitable evolution of reason, and human compassion, the strong confidence in the progress of history that seems so distant now in the post-modern world. Like his pragmatist contemporaries C.S. Pearce and John Dewey, Royce made the interpretive nexus of "the community" a central locus for reconciling the subject and object in epistemology, and the individual and the collective in ethics. But as the title of his last major work suggests, Royce was still very much a Christian,10 who could not but see the progress of divine spirit in the increasingly interdependence of the world community. Royce’s spirits must have risen at the prospects of outlining the main reasons for his optimism to a “hometown” crowd to whom he remained the great success story who had made it all the way from rural California to a named professorship at Harvard.

The course of events that summer could not have been worse for Royce. On June 28 Archduke Ferdinand was murdered in Sarajevo. On August 3, the Germans invaded Belgium and moved rapidly toward Paris. Royce’s prepared manuscript was titled, The Spirit of Community, the theme of which was that modern economic development, particularly the banking and insurance industries, was bringing into existence the basis for a harmonious world order. Now every newspaper in the world carried the negation of that thesis on its front page.

The outbreak of the war was emotionally devastating to Royce. As a philosopher whose primary influences had come from Germany12 he immediately faced the fact of the overwhelming anglophilia of the American academia. Eventually he came out publicly and loudly against Germany13 but for the first year of the war he maintained a pained silence. Fated to die before the war’s conclusion, we can be certain that like few

9. The existential importance of this may have been even more intense if he had any foreboding that in two years he would be dead. He had already suffered a stroke in February of 1912. See CLENDENNING, supra note 3, at 338.
10. See ROYCE, supra note 7.
11. Dewey had begun his career very much a Christian as well. Indeed the position of academic philosopher remained quite linked to religious instruction through the middle of the nineteenth century.
12. Royce took a Ph.D. at Johns Hopkins, the first American university to introduce that German degree and which was a major center of German intellectual culture.
13. After the sinking of the Lusitania on May 7, 1915, Royce felt that neutrality was no longer morally (or perhaps politically) viable, and he began an angry denunciation of Germany to his Harvard classes and in his public correspondence.
other Americans at this stage, Royce suffered the war as a dark plague on much that had been central to his intellectual life for half a century.

Delivered in the first anguished response to the war’s outbreak, *War and Insurance* took no side in the war except against its continuation. Royce was clearly sobered by the early violence of the fighting and the signs that both sides were committed to a long conflict if necessary. The lecture passed, in short order, over most of the foundations on which pre-war hopes for lasting peace had been based, including religion, science, and democracy. In one of the book’s most visionary passages, Royce imagines “some supernatural stranger, having an angel’s tongue, and bearing a flag of truce” appearing over the battlefields of Serbia and Belgium to read words taken from the Buddhist Dhammapada but which sound in almost any of the great religions: “Hatred does not cease by hatred; hatred ceases by love; this is an old rule.”14 The angel, in Royce vision, has no effect on the warring parties who quickly “return to the tasks wherein they find their honor and their duty.”15 But if religion was hopeless, Royce put no more stock in the two great pillars of the post-Enlightenment faith, science and democracy.

So, of themselves, neither cultivation, nor thoughtfulness, nor humane breadth of sympathies, nor the discoveries of science, nor the aspirations of the democracy, have been able to make wars cease on the earth.16

Indeed, Royce presciently suggested that democracy was itself one of the causes of contemporary wars and their savagery: “[m]odern wars may, as we now know, become more widespread, more democratic in spirit, more ideally self-righteous, than ever they were before.”17

The unfolding of the 20th century would confirm this much of Royce’s thesis. Both world wars and most of the major conflicts of the cold war were framed (often by both sides) as battles of liberation and or for democracy. Enemies are more frequently demonized as monstrous followers of an inhuman cause. Despite these insights about the propensity of modern societies toward conflict, the bulk of *War and Insurance* is an optimistic brief for the likely success of a new kind of loyalty, one now directed at the human race or some super-national portion of it. The war, Royce insisted, reflected much that was redemptive in modern conditions,

14. ROYCE, supra note 1, 16-17.
15. Id. at 17.
16. Id. at 9-10.
17. Id. at 10.
especially the capacity for loyalty to entities well beyond the immediate lived experience of community and into something more extended and abstracted. Royce was not prepared to view the war as a contradiction to his positive philosophy of world spirit. The war, in its own way, Royce argued, revealed the necessity and the possibility to achieve a new integration among nations. It was not a sign of mankind’s primitive nature. Indeed, Royce argued, modern war was ironically a product of modernity’s very own democratic spirit.

The mystery of war and of its fascination can be fathomed only in case we first observe that although, of old, wars were often due in a large part to the passions and ambitions of rulers and of the ruling classes of the warring peoples, modern wars, however much princes may take part in their beginnings, are, on the whole, waged by peoples, and are in part the expressions of the recently acquired power of an intelligent democracy.  

Royce also insisted that the hate filled rhetoric that filled the propaganda of both sides not be taken as indicating how distant civilization remained from the Christian principle of love for thy neighbor. Royce argued that the progress of civilization was in fact a dialectic of love against hate.

And so, for the warriors, and for us who now study the philosophy of war, the genuine problem relates not so much to the contrast between the love-relation and the hate-relation, as to the contrast between our relations to our individual neighbors, and our relations to our honor, or to our duty, or to our country, or to mankind, or to whatever community you may choose to consider.  

War was not a triumph of hate over love, but of some relations of love over other potential ones. If this war was more terrible than others, it was partially because the warring parties constituted national communities of loyalty as never before.

Dangerous Relations

Royce’s philosophy might best be thought of as a kind of speculative social theory, one that placed great weight on the nature of relationships. The most celebrated relationships in society consist of one on one
connections, which Royce described as "dyadic." These relationships, like those between husband and wife, master and servant, teacher and student, were among the most intense, noblest and most valuable relationships, but in Royce's analysis, they were also necessarily unstable, capable of shifting from love to hate and then back again. This was not only true of individuals but also of nations who often found themselves paired in intense relationships with specific partners who were alternatively trading partners and war enemies (i.e. France and Germany). Indeed, Royce views this dyadic quality of national relationships as a major explanation for war.

The deepest reason why war is so persistent is that the nations, thus far in history, are related chiefly in pairs, pairs of commercial rivals, pairs of borrowers and lenders, pairs of stronger and weaker nations, pairs of superiors and inferiors, pairs of plunderers who do not understand each the other, pairs of plotters, each of whom suspects his opponent. 20

Royce highlighted the words "thus far in history" to indicate that he was not dealing with universal laws but a pattern in history of some substance. Royce's model recognized the power of pairs to produce tremendous cultural progress and destruction but saw real progress as possible only through the development of agents acting not in but on pairs.

Royce's philosophy embraced a second kind of relationship, one often ignored or if recognized demeaned. These relationships, which Royce called "tryadic" linked an individual actor to a pair of other actors. Celebrating these tryadic relationships as sources of social peace and stability, Royce highlighted a figure little loved in popular culture but increasingly recognized by the emerging field of sociology, i.e., the agent. According to Royce, much of the progress toward social stability and order in contemporary societies had been achieved through the creation of agents capable of mediating such relations. The institution of law and of the judge was perhaps the earliest example of such a "triadic" structure, according to Royce.

The judicial community is the most ancient and familiar of the communities of interpretation. Upon the dignity and authority of judges and umpires the social world depends for the control and transformation of certain well-known consequences of the original sin of the dyadic relations. From social conditions, which, if uncontrolled,

20. Royce, supra note 1, at 39.
directly lead to elemental warfare, the judicial community actively leads the way to other social conditions which constitute peace.  

Modern civilization had produced two new institutions, which performed this function even more capably, banking, and insurance. Both involved agents who stood between structurally opposed individuals, investors and borrowers, risk takers and the victims or beneficiaries. Unlike the judicial community, which Royce saw as leaving the individuals largely unchanged, both banking and insurance tended toward the construction of larger and more comprehensive communities since they required expanding the pools of participants in order to mediate successfully. Of the two, insurance was clearly the more evolutionary in Royce’s view. While Banking created new structures of solidarity between parties it left them more or less intact in their other relations. Insurance was different with an almost inherent pressure to grow larger and more comprehensive.

Royce offered a theory of “triadic mediation,” which he claimed to derive from his late friend the logician Charles Peirce, and his theory of “interpretive communities” was part of his original planned lecture. The outbreak of the war led him to push forward an idea he described as preliminary and tentative and expressed in part "to attract the attention of some wiser minds than that of its author." If the principle of insurance had worked so well to bring about an integration of opposing forces in domestic society, and brought thereby progress toward harmony and strengthened community, why not apply the same principles to international relations.

Our present civilization depends, for all its most peaceful, worldly, and practical activities, upon these four distinct sorts of communities of interpretation. If you removed all four from our social order, then this our human world, precisely

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21. Id. at 57.
22. Id. at 50 n.1. In attempting to build a normative political philosophy from Peircean linguistics Royce traveled a path more recently developed by Jurgen Habermas. See JURGEN HABERNAS, THE THEORY OF COMMUNICATIVE ACTION: REASON AND THE RATIONALIZATION OF SOCIETY (Thomas McCarthy trans., 1984). The idea of tryadic relations also parallels Michel Foucault’s conception of government as “action on the action of others.” See Michel Foucault, Govevmentality, in ESSENTIAL WORKS OF FOUCAULT, 1954-1984, VOL. III POWER, at 201 (James D. Faubion ed., 2000).
23. ROYCE, supra note 1, at xi.
24. See id.
upon its most practical and constructive side, would degenerate into a vast aggregate of the dangerous communities which are pairs.

The concept of “community of interpretation” formed the central axis of Royce’s later philosophy, and its most profound intersection with the work of Charles Peirce. In his 1913 book, *The Problem of Christianity*, Royce argued that the most philosophically significant part of Christianity was its epistemology. By locating the redemptive locus of the divine in the existing human community on earth, Christianity pointed to the decisive role of communities in providing a ground for individual knowledge and ethical action. For Royce the organized church was only one instance of this power of community, which was also embodied in political unions like nations, and in organizational forms.

*A Sociology of Risk and Insurance*

The economic analysis that has come to dominate our view of insurance portrays insurance relationships as transforming subjects in a negative way by diminishing their incentives for precaution, a process known as moral hazard. Royce recognized the significance of moral hazard. In describing the difficulties inherent in allowing indemnification of war costs Royce states the problem of moral hazard almost precisely as a contemporary economist would:

[t]o insure an individual nation against any considerable portion of the losses and expenses which war might entail, the very success of the plan, up to that point, would tend to render individual nations careless, and so more disposed, if possible, than they otherwise would be, to engage in war. For the man whose house is insured may thereby be rendered less rather than more careful with regard to the risk of fire.

Compare Royce with Ken Abraham, a law professor and author of the leading economically oriented casebook on insurance law, who stated

25. *Id.* at 50 n.1.
26. Given as a series of lectures and then revised by Royce for publication all within several months of Royce recovering from a potentially devastating stroke. See CLENDENNING, supra note 3, at 370-74; ROYCE, *THE PROBLEM OF CHRISTIANITY*, supra note 7.
28. ROYCE, supra note 1, at xxix.
"[t]he term now refers more generally to the tendency of an insured party to exercise less care to avoid an insured loss than would be exercised if the loss were not insured." 29

Royce also understood the significance of what contemporary insurance calls "adverse selection" the danger that that voluntary insurance pools may come to consist primarily of higher cost subjects. Noting the problems of attracting nations to a novel idea like an international mutual insurance, Royce observes "that strong nations would be likely to prefer to insure themselves, while if only the weak nations joined in the international agreement, little would be accomplished."30

But while Royce appreciated the dangers of moral hazard and adverse selection, he also believed that insurance was capable of generating pro-social pressure that ultimately outweighed them. In this regard Royce, anticipated the interest of contemporary sociologists of risk and insurance in the ways insurance relationships also produce order, regulation, and collective improvements in precautions.

For Royce, the primary countervailing effect of insurance was as an interpretive community. Royce theorized that social order was generally supported by the interpretive intervention of third parties into relations between individuals. Royce was celebrating the new class of professionals that were expanding the traditional role of lawyers and clergy in forms like medicine, social work, and teaching, as well as private agency roles like banking and insurance. All of these "agents" work not just for clients, but also on the relationship of one party, the client, to a range of other parties. To Royce this triadic intervention into on going relationship produced a variety of social gains. The agent provides a perspective in which the two potentially contentious parties are both represented. In this regard, communities of interpretation tend toward conflict resolution.

But their most important effect, for Royce, is epistemological; communities of interpretation allow the differences between parties, and thus the nature of the parties themselves, to become intelligible. The task of the interpreter or agent is to represent each party to the other.

The remaining member of the community, whom I now call B, has, as his peculiar business in this community, the task of addressing C, and of explaining or interpreting to C what A's desire or business is, to the end that C may be brought into some definite sort of cooperation with A.31

30. ROYCE, supra note 1, at xxxiii.
31. Id. at 51.
Thus the agent brings the two parties together into "some kind of social unity,"\textsuperscript{32} which not only produces knowledge gains for the parties involved but offers to society a more stable and reliable unit for constructing a social order around.

Insurance operates to create a community of interpretation between risk taking parties and those who are exposed to the risks taken.

The insurer B estimates or interprets the \textit{insurable value} of the risk which A takes. For a consideration corresponding to this insurable value, B undertakes to make C not only A's possible beneficiary, but A's actual and reasonably secure beneficiary.\textsuperscript{33}

Thus the insurer produces knowledge about the risks of the parties, making visible what was only implicit in the relationship between risk takers and their beneficiaries. While other interpretive communities, like law and banking, operate to turn agonistic dyads into more stable triads, only insurance brings to into play an internal logic of growth based in its actuarial methods. Because of the statistical law of large numbers, the cost of insuring the risks of any party declines as larger number of experiences incorporated into the premium calculating system allows the scope of losses to be predicted more precisely. The relations between risk takers and those who suffer losses as a consequence, for example, can only be mediated by a larger community. "It brings men together in \textit{vaster and in more highly organized} and articulated groups than the banker's world knows. It leads to constantly new social expressions. It contributes to peace, to loyalty, to social unity, to active charity, as no other community of interpretation has ever done."\textsuperscript{34}

This benevolent cycle of information growth produces a countervailing force to the incentives of moral hazard and adverse selection. By producing a more and more precise picture of risk through the creation of broader risk pools, insurance creates not only new opportunities for insurers to better measure and price risk, but also to design mechanisms to contain it. Just as the transfer of risk may create incentives for the insurance customer to take fewer precautions, the knowledge produced by the risk insurance relationship creates opportunities for the insurer to channel knowledge back to the insured so as to make possible more effective risk precautions. This new knowledge does not just enter into

\textsuperscript{32} Id.

\textsuperscript{33} Id. at 63.

\textsuperscript{34} Id. at 64 (emphasis added).
existing calculations, rather, by bringing the truth of their own risk to the subject; insurance knowledge may help produce a new consciousness of responsibility.

Royce's recognition of the special capacity of insurance to produce more effective regulation of risk resonates with the insight of recent sociologists of risk and insurance. Carole Heimer has described the role insurance plays in regulating access to the most important kinds of public and private assets. "These days one must first acquire a surety bond before getting a loan to start a business, arrange for fire insurance before securing a mortgage to purchase a home, and offer proof of auto insurance to register a car or get a license to drive."

While this raises concerns about the consequences of discrimination in insurance (redlining) it suggests how critical a role insurance plays as an enabler, bringing its subjects into a condition in which other markets (in this case lenders) can establish their own relationships with the subjects; indeed relationships with far more palpable repercussions for consumers (own a home) then the contingencies indemnified by insurance. By providing an administrative apparatus capable of assigning financial responsibility and collecting it in affordable payments, insurance makes it possible for government to place mandates of responsibility on subjects that would otherwise be bitterly resisted. Insurance, from this perspective, can become a powerful if largely invisible form of regulation, setting conditions and obligations for participants in various markets and activities with no public debate formal law making.

Royce's claim that insurance "brings men together in vaster and in more highly organized and articulated groups than the banker's world knows" seems to recognize precisely the governmental capacity of insurance as its major contribution. While Royce saw this as driven by the greater levels of loyalty created by insurance compared to banking and other agency relationships, Heimer emphasizes the economic and political efficiency benefits to government of delegating regulatory tasks to insurance. Moreover, compared to recent studies, Royce appears idealistic in his conception of the insurance relationship not having taken into account the conflicts introduced by the existence of a competitive private market for insurance. In effect, Royce seems attuned to the narratives


36. ROYCE, supra note 1, at 64.

promoted by insurance marketing that depict insurers as primarily focused on helping customers recover from disaster rather than the narratives offered by insurers when they are rejecting claims. Royce also failed to anticipate the convergence of insurance with other kinds of financial agents. Banking has come to look a great deal like insurance in many of its roles. Consider the emergence of a secondary market in mortgages bundled together and sold like bonds, which is based on the presumably tighter integration of lenders and makes it possible to extend lending to a vaster group.

Royce's account of insurance relationships also resonates with what Deborah Stone calls the "moral opportunities" of insurance in contrast to its "moral hazards." Stone argues that insurance can also change the incentives of actors in ways that not only do not degrade precaution but foster it. Royce saw insurance as producing and intensifying the loyalty of subjects toward collective interests. When insurers covered ordinary domestic losses, they helped produce the growth of a social welfare mentality by making visible the interdependence of citizens and financing the mobilization of reconstruction services. Likewise, Royce hoped an international mutual fund would help build domestic institutions of social integration in those societies where they were lacking or lagging. The awarding of large sums of money to injured states would stimulate the creation of welfare institutions inside that nation to undertake direction of recovery spending. These institutions would begin to transform the relationship between subjects and government.

But, on the whole, any modern sovereign state would be inevitably much influenced by the prevailing public opinion of its own people with regard to the distribution of its insurance funds.

[A] system of international insurance, once established, would furnish an extremely simple mode—a wholly new sort of machinery—by means of which an

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38. See Tom Baker, Constructing the Insurance Relationship: Sales Stories, Claims Stories, and Insurance Contract Damages, 72 TEX. L. REV. 1395 (1994) (contrasting the dual nature of insurance as preying on insureds who are in need and as an overseer of those who are greedy and dishonest).


40. Id.
individual state might deal with its most intimate internal problems and issues.\textsuperscript{41}

In this respect, Royce anticipated the role the United States played through the Marshall plan in post-World War II reconstruction in Europe. The provision of millions of dollars in reconstruction funds has been widely credited with leading Western Europe to remain solidly committed to capitalism and liberal democracy during the Cold War.\textsuperscript{42}

Internationally such an insurance system could also function as a deterrent to the clearest case of human inflicted national disasters war. Aggressor nations would stand to forfeit any rights to the insurance coverage (and thus of their investment in the fund) by the international body, while it would be denied at least that portion of the wealth of the victimized state which was invested through the insurance body internationally. In time, Royce believed, such an institution would affirmatively work a transformation in the spirit of relations among nations.

For if the nations begin thus to coöperate, they will, for the first time, learn what that sort of honor is which is involved in keeping agreements such as the insurance business exemplifies. What is called national honor is at present altogether too much a matter of capricious, private, and often merely personal judgment, simply because the nations are not as yet self-conscious moral beings.\textsuperscript{43}

\textbf{Royce and Advanced Liberalism}

If Royce's analysis shares a lot with contemporary ideas in both the economics and sociology of risk and insurance, his confidence in the success of the insurance model of government stands in contrast to the dominant themes of contemporary domestic and international relations. Royce saw the advantage of "vaster and in more highly organized and articulated groups"\textsuperscript{44} while contemporary policy discourse in most post-industrial societies generally celebrates the advantage in smaller organs whose interrelationship is regulated by stochastic or market mechanisms rather than by organization and articulation. Royce saw the power produced by spreading loss and socializing risk across broader and broader

\begin{footnotesize}
\textsuperscript{41} Royce, \textit{supra} note 1, at xxxviii-xxxix.
\textsuperscript{42} The Marshall plan was launched by President Truman in 1948. Lewis L. Gould, \textit{The Modern American Presidency} 109 (2003).
\textsuperscript{43} Royce, \textit{supra} note 1, at xxxiv (emphasis in original).
\textsuperscript{44} Id. at 64.
\end{footnotesize}
masses of humanity, while neo-liberal thought calls upon its subjects to embrace risk and accept both responsibility and the rewards that come from control.\footnote{Tom Baker and I describe this shift more generally in EMBRACING RISK, supra note 5, at 3-4.}

Dead before the end of World War I, Royce never lived to see the insurance model reach the very highest levels of acceptance in the years after World War II when broad social insurance became a central tenant of liberal government in Europe and to an extent globally. In the years since the “welfare state” was established, its high costs and coexistence with persistent social problems helped to drain trust from insurance programs, especially in the 1970s when a steep global recession and a Middle Eastern oil crisis slowed the growth of the economy.

Since the 1970s insurance has experienced decline in political stature. This has been true of both public and private insurance. Fully public insurance systems, mainly aimed at the poor or elderly, have been defined as in or near crisis since then. Income assistance to parents in poverty ceased to exist as an entitlement in the “Welfare Reform Act of 1996. Medicare and social security continue to retain support but are seen as unreliable and inadequate. Private insurance of the pure risk spreading type, especially private health insurance and private pensions that guaranteed a certain level of income has come to be perceived as prone to overspending. Hybrids of public and private insurance, like workers compensation, have also come to be seen as highly defective in the dominant policy discourse of advanced societies.\footnote{McCluskey, supra note 37, at 680-81.} Today workers’ compensation is seen as prone to fraud and abuse and too expensive.\footnote{Id. at 873.} For Royce, workers compensation was the clearest paradigm of the virtues of insurance in solving social problems with minimum costs.

If more insurance makes people less interested in preventing loss, then the social cost of losses will go up along with spending on insurance. Since Royce recognized moral hazard, why did it not dampen his belief that vaster and vaster insurance groups were a benefit to social order and social solidarity? The key for Royce was the capacity of agency relations to constitute new bonds of loyalty and new pathways for knowing and acting on risk:

This cooperation, if it occurs at all, will bring A and C into some kind of social unity, such as will make them act as if they were, in a certain respect, one man. To bring
about...this cooperation of C with A, is the interpreter's main aim and interest, so far as he is indeed the interpreter of this community.\footnote{48}

In looking at banking and insurance (and agency relationships more generally), Royce saw a hermeneutic dimension where economists have come to see only silent incentives. Banking renders its subjects knowable; it interprets them:

This third person is that active interpreter of credits, that expert as to the safety of loans, who is known as a banker. The lender deposits with the banker. The banker accommodates the borrower. Or, if the borrower and the lender are that very dangerous pair consisting of persons known as a promoter and an investor, the banker may then appear as a broker, whose business it is to bring and to keep investors in profitable and fruitful touch with those who undertake or promote novel enterprises, for which they need capital.\footnote{49}

Royce was far more excited about the possibilities of insurance than of banking.\footnote{50} The power of insurance to reconcile individuals to a collective order began with the radicalness of the danger posed by relationships between risk takers and those injured:

Now the relation of A to C, the relation of the man who takes the risk, to the man who may win if A wins, but who will lose if A loses, is a dyadic relation. Like the other human social relations of pairs, it is dangerous. It daily embitters the relations of debtors and creditors. It daily makes some people penniless, and inspires others with hate. Its very danger makes it morbidly fascinating to those who have once learned to gamble. It fills the social order with fears and suspicions. It wrecks souls. And you cannot escape from the poison of this dangerous relation

\footnote{48} Royce, supra note 1, at 51-52.
\footnote{49} Id. at 58.
\footnote{50} Clendenning attributes Royce's almost "mystical" sense of insurance to his lifetime devotion to George Buchanan Coale, one of Baltimore's leading citizens during Royce's years of graduate study at Johns Hopkins. Coale included among his ancestors signers of the Declaration of Independence. In time he made a fortune in the insurance business as the founder of the Merchants Mutual Marine Insurance Co. Clendenning, supra note 3, at 71, 364.
by merely loving the man whose risks lead to losses which
you have to bear. Love seldom cures any such fool of his
folly, and the one who loves him suffers the more because
of the love.51

Insurance, exemplified for Royce by workmen's compensation which
was just then very much on the national agenda in the United States,52
enabled the objective condition of interdependency imposed upon
European and North American populations by the industrial economy to be
matched through new forms of solidarity tied to a legal commitment to
meeting the needs of those suffering the often arbitrary loses of industrial
life. Moreover, insurance, by making both the interdependence and the
needs visible, enabled a kind of practical intelligence among individuals to
expand and form the basis for loyalty to the political and social units whose
integration was itself made visible by insurance.

World War I itself might have been a warning to Royce. His central
claim in the Meaning of Christianity was that insurance and banking had
begun already to realize a unity of humanity long prophesied and
celebrated by religions. The enormous violence unleashed by the opening
clashes of the war stood in rebuke. In the lecture Royce strained to avoid
this conclusion. The passions of the war, he argued, were part and parcel
of the capacity of loyalty to wider human communities. The war itself,
Royce speculated, would drive the nations toward something like mutual
international insurance. The victorious states would, Royce accurately
predicted, demand a payment of compensation by the vanquished parties
for at least large parts of the process. This created a fund that might be
used to start a mutual insurance investment pool.

Aspects of Royce's vision of loyalty seem to have been fulfilled by
those institutions of the welfare state that still remain broadly popular,
including national health insurance in countries like France and the United
Kingdom, and Medicare and Social Security in the United States. These
mechanisms did work to unify the populations subjected to them, to
become a source of national pride and mutual solidarity. Their future is
very much open to debate but not the survival of some kind of largely
insurance based mechanism to address needs that have been traditionally
met by these institutions.

51. ROYCE, supra note 1, at 62.
52. It is not clear from the text whether Royce appreciated that workmen's compensation
had its origins in Germany but he surely would have appreciated the implicit demonstration
of international intelligence. See ROYCE, supra note 1, at xli-xlxi.
But if insurance has served to build loyalty to the state, its capacity to create international solidarity remains elusive. At the heart of Royce's international mutual insurance was his vision of trustees, an international group of financial experts governed by a strict set of laws enforced by them collectively, who would operate as a kind of international administrative agency to make and enforce the rules of the mutual fund. These "financially expert trustees" are the way "the community of mankind" becomes visible.\(^3\) Paraphrasing Lincoln, Royce depicted the board as visible representation of the unity of the international order:

[Lincoln] spoke of "government of the people, by the people, and for the people."

My thesis is that whenever insurance of the nations, by the nations, and for the nations begins, it will thenceforth never vanish from the earth, but will begin to make visible to us the holy city of the community of all mankind. \(^4\)

Does insurance fail to build global solidarity because it is mostly a private enterprise rather than a public union of nations? Or does the failure of insurance to build global solidarity, shared with most forms of public and private insurance today, bespeak the absence of the hermeneutic function that Royce found so strongly in the insurance idea? Royce wrote of the "coming social order of the insurer.\(^5\) Did we see that in the mid-Twentieth century social welfare states or has it yet to be realized?

\textbf{September 2001}

Royce's text is all the more interesting as a mirror for our present when we read it as a meditation on global violence and insecurity. Unlike World War II, which simmered for a year or more before breaking out into open conflict between nations, the state violence of August 1914 broke out with astounding speed. A Europe that had enjoyed several decades of rapidly integrating economies was suddenly and catastrophically enmeshed in unprecedented destruction and violence among former trading partners. Since September 11, 2001, the United States and much of the modernized world face a global confrontation with terrorism after a period in which the

\begin{footnotes}
\footnote{53. ROYCE, supra note 1, at 67.}
\footnote{54. Id. at 80.}
\footnote{55. Id. at 64.}
\end{footnotes}
possibilities of global peace and economic progress seemed incredibly promising.\textsuperscript{56}

The present moment is also one in which insurance has been raised as an issue. Royce had to project the image of insurance into the space of global war. Since the terrorism attacks of September 11, 2001, insurance has been an integral part of the discussion including the scope of coverage under the property insurance policies for the world trade center, the ability of global reinsurance firms to sustain the losses, the fairness of the compensation scheme for victims of the attack approved by Congress, and the degree of sharing to be enforced in terrorism insurance.

Although Royce died early in the war he was prescient in foreseeing the levying of massive financial demand against the defeated party as compensation for the damages of a war blamed totally on the defeated.\textsuperscript{57} Bankers, more than insurers, played a crucial role in reconstructing European nations after World War I.\textsuperscript{58} The political arrangements of that order proved catastrophically flawed however, leading in less than twenty years to a new a far more dangerous European, indeed global war. Only after that did insurance reach its highest influence as state policy, and even then mainly at the level of the nation state.

Royce believed that "the reconstitution of people into vaster and vaster communities is the only process that can ultimately lead to an age of peace."\textsuperscript{59} European societies in 1914 were just at the beginning of the curve of insurance. The limited amount of existing insurance meant that the large portions of the population remained to be brought within insurance system. Today influential opinion in most advanced economies feel that social investment in insurance is at or over its maximum sustainable level. Even if important aspects of the national insurance structures are unlikely to disappear, they do not offer much room for growth that could drive a new level of international unity.

The current war on terrorism bears comparisons in some ways with the global war whose outbreak Royce pondered on from Berkeley. As the philosopher Jurgen Habermas has noted:

The comparison [of September 11, 2001] is not to be drawn with Pearl Harbor but rather with the aftermath of

\begin{footnotesize}
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  \item In this case the terrorist attacks followed an intensified global recession that had already shaken some of the “irrational exuberance” that characterized the last years of the 20th century.
  \item ROYCE, supra note 1, at 79.
  \item See e.g., CHARLES S. MAIER, RECASTING BOURGEOIS EUROPE: STABILIZATION IN FRANCE, GERMANY, AND ITALY IN THE DECADE AFTER WORLD WAR I (1975).
  \item ROYCE, supra note 1.
\end{enumerate}
\end{footnotesize}
August, 1914. The outbreak of World War I signaled the end of a peaceful, and, in retrospect, somewhat unsuspecting era, unleashing an age of warfare, totalitarian oppression, mechanistic barbarism and bureaucratic mass murder.\(^{60}\)

Both moments seemed to introduce a new and threatening model of war itself. World War I saw the emergence of tanks, machine guns, and airplanes as instruments of the fighting. The war between the United States (and its allies) and Jihadist terrorism has introduced new tactics including using hijacked civil aircraft to destroy office buildings and suicide bombings of civilian soft targets like nightclubs and busses.

In both August 1914 and September 2001, mobilized complex and murky alliances existed which stand in contrast to the clearly defined blocks that arrayed themselves in World War II and the Cold War that followed. During the Cold War confrontation of two rival “super-powers”, the United States and the Soviet Union (and to some lesser degree China, the other Communist “super-power”), defined the logic of virtually every conflict on the globe, and many domestic struggles as well.\(^{61}\) The breakdown of this bi-polar order since 1989 has led to a paradox centered on the United States. As Jacques Derrida has pointed out “world order, in its relative and precarious stability, depends largely on the solidity and reliability, on the credit, of American power.”\(^{62}\) But that power is far less easy to wield without the stabilizing structure of the Cold-War confrontation itself.

World War I was far more compatible with Royce’s insurance based vision of peace. Its major protagonists were similar societies with closely matched economies and cultures. Indeed, Germany, France, and England were all industrial powers with extensive trade. They shared a commitment to domestic insurance. Indeed, the even more fearsome war that broke out in 1939 between these enemies was largely pitched as a battle between contending “insurance” societies whose battle was in some respects driven

\(^{60}\) Giovanna Borradori, Philosophy in a Time of Terror: Dialogues with Jurgen Habermas and Jacques Derrida (2003).

\(^{61}\) For example, competition for support in the newly independent countries of Africa and Asia helped to intensify the civil rights struggle of African Americans in the United States. See Mary Dudziak, Cold War Civil Rights: Race and the Image of American Democracy (2000).

\(^{62}\) Borradori, supra note 60, at 93 (emphasis in original).
by their obligation to achieve security for their respective populations. In contrast Jihadist terrorism fights for a wholly different model of the nation, one with its own vision of charity and solidarity that is quite different from the European insurance tradition that Royce embraced.

The very dominance of the United States in the post-Cold War order increases its attraction to terrorists who would seek to strike a decisive blow to that order, but at the same time it demonstrates the limits of the Cold War model of security. Cold War alliances operated as a kind of analogy to the mid-twentieth century rise of domestic political orders anchored in mass insurance. The nuclear weapons of the both the United States and the Soviet Union, operated as a kind of insurance policy for their client states and allies. The threat of "mutually assured destruction" in a kind of terrible inversion of Royce's mutual insurance fund provided a measure of global peace, but one contingent on the ready availability of the means of mass destruction rather than mass reconstruction.

In that respect, we might view the terrorist attack of September 11, 2001 as a kind of horrifying demonstration of reactive risk or moral hazard at a global level. Osama bin Laden and his terrorist organization, after all, were originally supported by the United States and its allies as part of the Cold War confrontation with the Soviet Union, which at that point had seized control of Afghanistan. Just as mass insurance seemed over time to reduce the security of western publics, weapons of mass destruction built to guarantee the security of great alliances now threaten to fall into the hands of terrorists who threaten all secular visions of world order.

If September 11 stands in a way for the limits of the old security order, both that of mass insurance and mass destruction, our future security may depend on intensifying the public discussion of both insurance and war. Just as Royce in 1914, looked to the molecular changes in the European nations who then found themselves in combat to discern a future structure of global security, we need to begin a discussion now of what kinds of social practices hint at new kinds of loyalties. Like Royce we need to confront risk in its contemporary forms, but those forms challenge the conventional loss spreading solutions of insurance. Today, standing on the other side of the great twentieth century expansion of insurance, we need to consider both how to get more out of twentieth century models of insurance, and simultaneously to look beyond for ways to manage risk.

63. Michel Foucault argued that this was the logic of wars in the twentieth century. See MICHEL FOUCAULT, VOL. I: AN INTRODUCTION TO THE HISTORY OF SEXUALITY, 137 (Robert Hurley trans. 1980).

64. See generally BORRADORI, supra note 60, at 92.
The path toward both objectives leads through greater attention to Royce's notion of insurance as a "community of interpretation." Toward the former we must ask how to enhance the hermeneutic function of insurance, i.e., its ability to define risks and articulate choices that responsible subjects must make. Royce was a good enough philosopher to detect that hermeneutic function within private insurance but not a good enough sociologist to confront the economic and organizational limits to that function. Toward the latter we must ask what other kinds of communities help us interpret risk. Here we can proceed by examining both new and old models of managing risk that are developing the fabric of contemporary societies but which depend on different forms of solidarity and different kind of knowledge production than the modern form of insurance including associations of workers, teams of mountaineers, and support groups of cancer patients.