

PERFECTING THE SYSTEM OF STATE REGULATION OF THE BUSINESS OF INSURANCE

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"State regulation" encompasses the philosophy of government in America. That philosophy is basic and essential to an understanding of the concept of "regulation of the business of insurance."

The "system" of "state regulation" cuts across traditional and fundamental constitutional rights with their federal and interstate implications. The "business of insurance" is an economic and social institution. Its impact upon commerce and industry and the individual security of our citizens is tremendous and vital.

"Perfecting" instrumentalities of government involves the process of making it work in the public interest. It involves the translation of legal rights and principles into the lives of people in accordance with the basic and underlying philosophy upon which our constitutions and the law are predicated.

"State regulation" is a governmental device. "It is a contrivance of human wisdom to provide for human wants."¹

Because the business of insurance by its very nature is impressed with a public trust, it is in the public interest that it be regulated and supervised by an agency responsible to the people—by civil government. The public trust concept of the business of insurance gives rise to "human wants."

The principle of individual and public morality embodied in the constitutional rights and guaranties of our states and

nation are provided for through the "human wisdom" of our government.

Edmund Burke put the proposition in these terms:

"Men have a right that these wants should be provided for by this wisdom. Among these wants is to be reckoned the want, out of civil society, of a sufficient restraint upon their passions. Society requires not only that the passions of individuals should be subjected, but that even in the mass and body, as well as in the individual, the inclinations of man should frequently be thwarted, their will controlled and their passions brought into subjection. This can be done only by a power out of themselves; and not in the exercise of its function, subject to that will and to those passions which it is its office to bridle and subdue. In this sense, the restraints on men as well as their liberties, are to be reckoned among their rights."²

Supervision and regulation of the business of insurance inevitably involves "restraints on men as well as their liberties." Patterns of operation and procedure and the degree of functional efficiency of the insurance regulatory agency thus tend to measure the freedom and constitutional rights of men and institutions.

To administer the law in the public interest it must have the courage and capacity to distinguish between the morally right and the expedient. It must recognize that liberty and freedom in democracy are the products of civilization and the reward of virtue. The protection

¹ Edmund Burke, *Reflections II*, pp. 332-333.

² Burke, *op. cit.*, pp. 332-333.

and preservation of civil society is for the advantage of man.

"If civil society be made for the advantage of man, all the advantages for which it is made become his right. It is an institution of beneficence; and law itself is only beneficence acting by rule. Men have a right to live by that rule; they have a right to do justice as between their fellows, whether their fellows are in public function or in ordinary occupation. They have a right to the fruits of their industry, and to the means of making their industry fruitful."³

The wisdom and virtue of this philosophy is basically the wisdom and virtue of the broad concepts of democracy in America. A triumph of that concept is the American economic system—the system of voluntary and free enterprise and competitive business. It is deeply rooted in the history and tradition of our nation. It is the force underlying the initiative—social, economic, and political—that has made this country what it is today.

The future and the morrow depend upon the truths inherent in the philosophy which represents the American way of life. Justice and equity, under the law, in a democracy, require that principles be made vital to the society they serve.

The administrative agency of government responsible for the preservation and protection of the public interest in the field of insurance must be effective and efficient. Because of the dynamic character of society and the economy, perfection of government is a constant, unremitting task. The nature of society is such that law and its administration frequently finds itself outstripped by social and economic progress.

The insurance industry, sensitive to public needs and wants, is essential to this country's economic prosperity and the social well-being of its people. If the business is to be regulated by a system of governmental agencies in the public inter-

³ Burke, *op. cit.*, p. 216.

est, they too must be responsive to public needs and wants.

Until the Southeastern Underwriters Case in 1944, the supervision of insurance was under the exclusive jurisdiction of the several states.⁴ Each company was regulated by the law of each state in which it was authorized to transact its business.

The same is true today, with one important difference. It is now settled that the Federal Government of the United States has the authority to regulate the business of insurance to the extent that it involves interstate commerce. For the present, at least, Congress has decided, by its enactment of the McCarran Act⁵ in 1945, that in general the obligation of regulating the business of insurance shall remain with the several states. The reasons underlying the determination of Congress that the primary responsibility for regulating insurance should be assumed by the states are valid. Congress declared that:

"Regulation . . . by the several states is in the public interest."⁶

The reasons are basic and fundamental to "our way of life." They are legal and soundly practical. They exist with equal force today.

The pattern of government embodied in the provisions of our constitutions—state and federal—establishes functional concepts for our guidance and direction and for the guidance and direction of posterity. Our great privilege, our sacred duty, our challenge, is to mould the functional aspects of government in the image and likeness of the principles which guarantee our chartered rights as a nation.

As citizens, as public officials, we must be—

⁴ United States v. Southeastern Underwriters Ass'n, 322 U.S., 533 (1944).

⁵ 59 Stat. 33, 15 U.S.C. 1011-1015.

⁶ 59 Stat. 33, 15 U.S.C. 1011-1015.

"animated by the sole desire to help restore, preserve and advance those great American principles and ideals of which we have been beneficiaries ourselves and are now trustees for future generations." 7

"If the national well-being is to be served, it is for us of this generation, as indeed for Americans of every generation, to assess the current strength of the pioneering spirit and appraise anew the incentives which alone can give it dynamic vitality." 8

In government the driving force for perfection calls for special dedicated qualities of conviction and citizenship. The rewards of virtue in government lack the practical motivating influences of the profit motive associated with success in commerce and industry. Competition in business necessitates constant improvement in methods, procedures, and products. The element of competition in government lacks the impelling practical consequences it possesses in the world of business.

The perfection of government is a product of public and private virtue. It rests upon a foundation of citizenship responsibility. It requires the courage of the commonplace, which is ever far greater than the courage of the crisis—and less spectacular and dramatic.

"Public virtue cannot exist in a nation without private, and public virtue is the only foundation of republics. There must be a positive passion for the public good, and public interest, honor, power, and glory, established in the minds of the people, or there can be no republican government, or any real liberty:" 9

"The might of virtue, the power of virtue" is vital to our integrity as a nation. It is essential to the perfection of government in a democracy. It is essential, therefore, that state by state the personnel of governmental agencies know and

understand the basis of our constitutional rights and liberties—that they translate them into the functions and procedures of their various offices.

Human nature being what it is, basic concepts of responsibility should be periodically reviewed and re-assessed.

In the field of regulation of the business of insurance, perfection of function and procedure can be sought through "Insurance Regulation Institutes" on a state-by-state or zone level.¹⁰ Study and analysis of purposes and objectives tends to perfect functional procedures. Under our system of regulation by the several states the checks and balances developed on a state-by-state basis could be made more efficient and effective in the public interest. In those areas where uniformity is desirable, methods of administration could be reviewed or analyzed for use on a nation-wide basis.

The insurance regulatory agency under our form of government is an administrative tribunal. The character of the responsibilities with which it is charged necessarily results in individual interpretation in many areas of its activity. It is desirable that the virtue of flexibility written in the law be preserved.

The National Association of Insurance Commissioners, through its activities, has been a most valuable balancing force in the supervision and regulation of the business of insurance. The work of the National Association would be effectively implemented and improved through the organization of insurance regulation institutes at the zone (eight states) level.¹¹

¹⁰ See Michigan Insurance Regulation Institute 1951, Alfred Best & Co.

¹¹ **ZONE I**

Massachusetts
Connecticut
Maine
New Hampshire
New Jersey
New York
Rhode Island
Vermont

ZONE II

North Carolina
Delaware
District of Columbia
Maryland
Ohio
Pennsylvania
South Carolina
Virginia

⁷ Douglas MacArthur, "Revitalizing a Nation," p. 13.

⁸ MacArthur, *op. cit.*, p. 39.

⁹ John Adams, April 16, 1776.

The development of programs and preparation of studies and theses might well be aided by The American Association of University Teachers of Insurance and other interested organizations. Colleges and universities, in the fulfillment of their purpose of educating citizens in our democracy, might well undertake to develop specific programs relating to regulation and supervision of the business of insurance. Because of the specialized training necessary in the various aspects of regulation of the business of insurance, coordination of colleges of law, business, mathematics, and the like would be desirable.

In perfecting the system of regulation, the American Bar Association might well undertake an analysis of the law of the several states. The Insurance Section of the American Bar Association, in conjunction with one or another of the legal foundations, could give invaluable assistance in the perfection of regulation of insurance.

What Justice Benjamin N. Cardozo had to say in connection with the restatement of the law applies with equal force to the law as it relates to insurance regulation:

“Certainty is lost if we view the law in shreds and patches, not steadily and whole with a sweep that reaches the horizon.

West Virginia	ZONE V
ZONE III	Colorado
Louisiana	Arkansas
Alabama	Kansas
Florida	Nebraska
Georgia	New Mexico
Kentucky	Oklahoma
Mississippi	Texas
Missouri	Wyoming
Puerto Rico	ZONE VI
Tennessee	Washington
ZONE IV	Alaska
North Dakota	Arizona
Illinois	California
Indiana	Hawaii
Iowa	Idaho
Michigan	Montana
Minnesota	Nevada
South Dakota	Oregon
Wisconsin	Utah

Often a spurious consistency is preserved by artificial and unreal distinctions. The idol is discredited, but he is honored with lip service, the rubrics of the ancient ritual. We must have the courage to unmask pretense if we are to reach a peace that will abide beyond the fleeting hour. The law's uncertainties are to be corrected, but so also are its deformities. Often they go together, and the remedy that cures the one will be found to cure the other. Restatement must include revision when the vestiges of organs, atrophied by disuse, will become centers of infection if left within the social body.”¹²

“Regulation of the business of insurance by the several states is in the public interest.”¹³

A system of regulation in the public interest involves coordination and a plan. It involves law and administrative functions and procedures which result in “effectiveness of state regulation in protecting the public.”¹⁴

Perfecting government and governmental functions is a test of the citizenship responsibility of us all. The teachers in the schools, lawyers, government officials and employees, religious leaders, journalists, the man on the street—all segments of society are part and parcel of our democracy.

Today, as two centuries ago, democracy is a revolutionary force. As a way of life, it comes alive in people who have learned to live together, governed by ideas and ideals running through the warp and woof of the tapestry that is America.

The future and the prosperity and the glory of our nation in the years beyond our vision depend upon the wisdom and virtue *we*, the citizens of America, exert and exercise today.

“The last result of wisdom stamps it true; he only earns his freedom and existence, who daily conquers them anew.”¹⁵

¹² Benjamin N. Cardozo, “The Growth of the Law,” pp. 18-19.

¹³ McCarran Act, *op. cit.*

¹⁴ Senator McCarran, *American Bar Journal*, July, 1948.

¹⁵ Goethe.