

**Comparative Studies
in the History of Insurance Law**

**Studien zur vergleichenden Geschichte
des Versicherungsrechts**

Volume / Band 2

The Past, Present, and Future of Tontines

**A Seventeenth Century Financial Product
and the Development of Life Insurance**

Edited by

Phillip Hellwege



Duncker & Humblot · Berlin

PHILLIP HELLWEGE (ED.)

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Prof. Dr. Phillip Hellwege

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Preface

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Augsburg, July 2018

Phillip Hellwege

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A. A modern definition of tontines

A tontine may be described as a pooled life annuity.¹ Investors buy a predefined number of shares, paying the same purchase price for each share. The issuer in turn promises to pay interest each year on the total amount of raised capital – that is, the total sum of the purchase prices – as annuities to the investors. The characteristic feature of tontines is that the annuities of deceased investors are shared by surviving investors. The investors' heirs have no rights in the tontine. Thus, the total sum of annuities is, each year, divided between the surviving investors. The more investors that die, the higher the share of each surviving investor is, until the last surviving investor receives the total amount of annuities. With the death of the last survivor, the issuer's obligation to pay annuities terminates. Furthermore, the issuer has no obligation to repay the raised capital back to the investors: the capital is lost to the issuer.

To give a simple example: an issuer offers 100 shares, each at a cost of 100 Euro and promises to pay 5% interest per annum. The raised capital is 10,000 Euro. The annuities thus amount to 500 Euro per annum. As long as all 100 investors are alive, each of them will each year receive 5 Euro as annuity. When 50 investors have died, the 50 survivors will share the total annuities amount of 500 Euro: each surviving investor will receive 10 Euro as his or her annuity. When there are only 10 investors left, each will receive 50 Euro per annum. The last surviving investor will receive 500 Euro per annum – based on his or her original investment of 100 Euro.

A tontine can serve different functions. Investors can use it as a pension product: the longer an investor lives, the higher his or her chances are of outliving

¹ In detail see *Gallais-Hamonno* and *Rietsch*, 50, below.

the other investors and, correspondingly, the higher his or her chances are of receiving an increase in annuities. A tontine may also be used as a means to provide for close relatives: the investor and the annuitant do not need to be identical.² The issuer, for his part, may use a tontine as a tool to raise capital: once the last annuitant dies, the obligation to pay interest on the capital terminates and he has no obligation to repay the capital to the investors.

B. The practical importance of tontines

It is generally believed that the Italian Lorenzo Tonti (1602–1684) invented tontines and that he proposed them to Cardinal Mazarin (1602–1661) in 1653. However, Tonti's original plan of 1653 failed to be implemented. A Danish plan of the same year similarly failed to be implemented. It is generally thought that the first tontines in Europe were successfully launched in Holland: 1670 in Kampen and 1671 in Amsterdam and Groningen, with more to follow. France issued its first tontine in 1689, with England coming soon after in 1692. The first German tontine is said to have been issued in 1698. It is thought that tontines witnessed their apex in the 18th century. Nevertheless, the number of tontines mentioned in modern literature is small: it discusses a handful of tontines in France, England, Ireland, and Denmark. For Germany, modern literature usually refers to tontines in Bolzano (1737), Gotha (1752), Austria (1760), Nuremberg (1777 and 1783), Potsdam (1788), and a small number of tontines in Hamburg.³ It is only the Dutch literature that has identified a larger number of tontines for the 17th and 18th century.

German literature asserts that tontines were replaced by modern life insurance products in the early 19th century. Yet it seems that they resurged in the second half of the 19th century: U.S. life insurance companies offered tontine life insurance products on the European market, and these products were controversially discussed. As a consequence of the problems which these products generated, tontines were banned in many, but not all European countries. Furthermore, by the end of the 19th century it was generally thought that tontines were a form of gambling. In some European countries, tontines have nevertheless persisted, but only as a financial niche product. With the implementation of the Second European Life Insurance Directive of 1990,⁴ life insurance companies have again been allowed to offer tontine products in all Member States of the EU. Still, it seems that they have not regained any prominence.

² In detail see *Gallais-Hamonne* and *Rietsch*, 50 f., below.

³ In detail see *Hellwege*, 167, below.

⁴ Council Directive 90/619/EEC of 8 November 1990 on the coordination of laws, regulations and administrative provisions relating to direct life assurance, 29 Nov. 1990, 50–61.

C. Tontines and the history of life insurance

In conclusion, it seems that tontines are a purely historical phenomenon. And from an historical perspective, they seem to have been of only minor practical importance. Nevertheless, modern German-language literature stresses that tontines had a lasting impact on the development of life insurance. It is argued that ‘tontines ... helped spread the idea of insurance and made wider circles receptive for the idea of life insurance’ (‘Das Tontinenwesen ... hat den Versicherungsgedanken verbreitet und weite Kreise für die Lebensversicherung reif gemacht.’).⁵ Others add that tontines were forerunners of pension schemes⁶ and that they were important in further developing mortality tables and actuarial science.⁷ With respect to legal developments Hans-Martin Oberholzer claims:⁸

Dadurch, dass den Tontinen ... ein so grosser Erfolg beschieden war, sahen sich die Staaten schon früh gezwungen, gesetzgebungsmässig gegen die grössten Auswüchse vorzugehen und so das Fundament für unser heutiges Versicherungsrecht zu legen. Eine Folge dieser Versicherungsgesetzgebungen war die Herausbildung von vertrauenswürdigen Versicherungsanstalten.

Due to the fact that tontines ... were such a great success, national legislators felt impelled at an early stage to intervene with respect to their greatest defects. Thereby they laid the basis for today’s insurance law. A consequence of this insurance legislation was the creation of trustworthy insurance companies.

Or in the words of Gunter Kürble, who focuses more on the design of different insurance products rather than on their legal development:⁹

Der Weg zu einem funktionierenden Lebens- und Rentenversicherungsmarkt war die Krankengeschichte (Anamnese) der Tontine.

The path towards a functioning life and pension insurance market was the patient history (anamnesis) of the tontine.

And L. Gustav Du Pasquier summarizes:¹⁰

Die Tontinen haben in der Entwicklung des Versicherungswesens eine ausserordentlich wichtige Rolle gespielt.

⁵ *Heinrich Braun*, *Urkunden und Materialien zur Geschichte der Lebensversicherung und der Lebensversicherungstechnik* (1937), 100.

⁶ *Peter Koch* and *Wieland Weiss*, *Gabler. Versicherungslexikon*, vol. 3 (1996), 836.

⁷ *Peter Koch*, *Geschichte der Versicherungswissenschaft in Deutschland* (1998), 34–36.

⁸ *Hans-Martin Oberholzer*, *Zur Rechts- und Gründungsgeschichte der Privatversicherung* (1992), 91.

⁹ *Gunter Kürble*, *Der Exodus der amerikanischen Lebensversicherer aus Deutschland – die Tontine und die Vorgeschichte des Jahres 1894*, (1990) 79 *Zeitschrift für die gesamte Versicherungswissenschaft* 581–623, 598.

¹⁰ *L. Gustav Du Pasquier*, *Die Entwicklung der Tontinen bis auf die Gegenwart*, (1910) 46 *Zeitschrift für Schweizerische Statistik* 484–513, 484.