The contribution of insurance to British economic and social history and its relevance to the future : a very short survey[1]

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Insurance has played an important role in the development of British society and the British economy in the last two hundred years in particular, although the story goes back much further than that. I want to put into historical perspective what the insurance industry does now and, perhaps, to put the insurance industry's role in a more positive and optimistic light. This will, I hope, also put in perspective on what BILA itself does. The reputation of the insurance industry, while perhaps better in the public mind than that of our neighbours in banking, is still affected by a common view that insurers are rapacious and parasitic, and that sharp lawyers exist to help them evade liability to the needy. On the other hand, fraud by the insured against the insurer is often seen as a victimless crime. These two public views hide the fact that insurance, and so the law that governs it, lies at the very heart of the way in which society is itself governed and that is the result of more than two centuries of insurance helping to shape today's society.

This article can be no more than a dazzle and swoop through history to give examples of the ways in which insurance has been the mechanism by which British society has sought to organise itself, to spread and socialize risks that have befallen it: I also suggest ways in which insurance might be as much as a solution to social problems of the next century as it was in the last three.

Examples of Insurance in British economic and social history.

Let us start, with marine insurance. As we all know, this was not invented in London. It thrived in medieval Italy. One of the habits for which some marine underwriters in London in the later 20th century became notorious were apparently being practiced in 14th century Tuscany. Take this quotation from Francesco Datini, a celebrated and successful merchant of the Tuscan city of Prato, where he left all his fortune to the city's poor. The saying is from Datini's correspondence and is quoted in Iris Origo's biography of him: '*The Merchant of Prato'*.[2] Datini says:

> *"For when they insure, it is sweet to them to take the monies; but when disaster comes, it is otherwise and each man draws his rump back and strives not to pay".*

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1 This article is an adaptation of a lecture given to a colloquium to celebrate the 50th anniversary of the British Insurance Law Association, of which the author was President 2012-2014, on 15 May 2014. The author acknowledges the help of Greg Callus, barrister and (at the time) acting legal adviser to the Rt. Hon. The Lord Thomas CJ, in preparing the lecture. But the views (and any mistakes) in this article are those of the author alone.

2 Origo, Iris (1992) *The Merchant of Prato: Francesco Di Marco Datini: Daily Life in a Medieval Italian City* (Penguin).

However, by the end of the sixteenth century it is clear that marine insurance was well-established in the City of London, where “Assurers” entered into “Policies of Assurance” on ships and goods and “things adventured”. By then it seems that, as in medieval Italy, disputes on insurance cover had become common and were leading to litigation in the law courts. This had reached intolerable proportions and a way had to be found to deal with these disputes in a more business-like fashion. Thus in 1601 an Act of Parliament was passed called “An Act concerning Matters of Assurance used among Merchants”. Its purpose was to regulate disputes between “merchants” and “assurers” of ships. The preamble to the Act records that it has been “Time out of Mind an Usage amongst Merchants, both of this Realm and of foreign Nations, when they make any great Adventure to give some Consideration of Money to other Persons (which commonly are in no small Number) to have from them Assurance made of their Goods, Merchandizes, Ships and Things adventured or some Part thereof, at such Rates and in such Sort as the Parties Assurers and the Parties assured can agree, which Course of Dealing is commonly termed a Policy of Assurance”. In other words, by 1601 marine insurance was very well established here in the City of London and the rationale for it was officially recognised in the statute. Thus the preamble of the Act continued: “by Means of which Policies of Assurance it cometh to pass upon the Loss or perishing of any Ship, there follows not the undoing of any Man, but the Loss lighteth rather easily upon many than heavily upon few, and rather upon them that adventure not than those that do adventure, whereby all Merchants, especially of the younger Sort, are allured to venture more willingly and more freely”. The Act set up a “Commission” for the “hearing and determining of Causes arising and Policies of Assurance” that were concluded “within the office of Assurances within the City of London” and the Commissioners, Judges, Civil lawyers and “eight grave and discreet Merchants” were to hear disputes “without formalities of Pleadings or Proceedings”. Thus, even in the earliest days of the 17th century, the importance of marine insurance to a trading nation and the efficient disposal of any legal disputes arising was fully appreciated.[3]

It was not that much longer for insurance’s importance on the domestic front to be appreciated. An Englishman’s home is always said to be his castle, but it took the loss of over 13,000 such castles in the Great Fire of London before the need for home insurance was appreciated as being something too pressing to ignore. Whilst the fire saved the capital from the pestilence of the bubonic plague which had begun a year earlier, some 70,000 Londoners lost their homes.[4] Few householders could be traced for the purposes of compensation; it was an outright loss for most. Yet from the ashes of the wooden, Tudor-built capital arose the phoenix of the modern insurance industry.

The Great Fire famously began in Pudding Lane, and was vanquished at Pye Corner, leading contemporaneous moralists to ascribe the conflagration as punishment for the

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3 I am very grateful to Mr Harold Caplan CEng, MSc, FRAS, FCIArb, ACII for bringing my attention to the 1601 Act after I had given the lecture. It shows that the Victorians were not the first to think of having a specialist and less formal Commercial Court to resolve disputes between “merchants and traders”.

4 For a full account of the Great Fire of London, see Tinniswood, Adrian (2003) *By Permission of Heaven: The Story of the Great Fire of London* (Jonathan Cape) and also Jones, Bob (2012) *The Lost City of London* (Amberley Press)

sin of Gluttony[5]. But religion was, by the late 17th Century, losing ground to the English Enlightenment. A new generation of rationalists sought to explain social organisation, so as to re-shape it. Many did so by reference to a State of Nature marked by what John Locke in his *Second Treatise on Civil Government* referred to as ‘inconveniences’[6]. The natural world was marked by injustice and misfortune, and so the enlightened sought to describe society as being the means to mitigate its vagaries. For Locke and those who followed him, the very foundation of civilisation was a Social Contract, whereby parties exchanged their natural autonomy for the mutualised benefits of organisation and shared risk.

It was against this nascent view of society that in 1667, Sir Christopher Wren, architect of the new St. Paul’s Cathedral, included ‘the Insurance Office’ (which must have been the descendant of that referred to in the Elizabethan Act) as one of the public buildings to be erected in the post-Fire London. The ‘Insurance Office for Houses’ opened at the back of the Royal Exchange. It began by selling policies on 5,000 homes, and other companies quickly followed[7]. In 1696, at Tom’s Coffee House in St. Martin’s Lane, a company was founded with the snappy object of being ‘Contributors for Insuring Houses, Chamber or Rooms from Loss by Fire, by Amicable Contribution’. Better known by its later name of ‘Hand & Hand’, it was instrumental in founding the fire brigades that sought to minimise the losses that the mutual society faced.

In the 17th century London thrived as the adoptive home of marine insurance. This audience is, I am sure, too familiar with story of Lloyd’s Coffee House which opened in Tower Street in 1688. It too moved to the Royal Exchange in 1774. The efforts of jurists such as Lord Mansfield CJ to merge the *lex mercatoria* and the English common law bore fruit throughout the late 18th and 19th centuries, and so put London at the centre of maritime and insurance law. Some, however, such as Samuel Plimsoll, regarded marine insurance as a means by which ship owners could gamble with other people’s lives whilst ensuring that they themselves did not lose out. He said:

> *“The ability of ship owners to insure themselves against the risks they take not only with their property, but with other peoples’ lives, is itself the greatest threat to the safe operation of ships.”*[8]

But this “threat” was mitigated by action that began long before the statutory reforms that Plimsoll was instrumental in introducing. Lloyd’s Register, which became Lloyd’s Register of Shipping, had started in the same Lloyd’s Coffee House in 1760. Its aim was to make information available to both underwriters and charterers about the condition of ships seeking insurance and employment. This was the origin of the classification societies and the famous Lloyd’s notation “A1” which became a

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5 The inscription beneath the statue of the Golden Boy of Pye Corner reads: *“This Boy is in Memmory Put up for the late FIRE of LONDON Occasion'd by the Sin of Gluttony.”* [sic]

6 Locke, John (1690) *The Second Treatise on Government*. Section 13 of Chapter II ‘Of the State of Nature’: *“I easily grant that civil government is the proper remedy for the inconveniences of the state of nature, which must certainly be great…”*.

7 Sheppard, Francis (1971) *London 1808-1870: The Infernal Wren* (University of California Press), pp196-199.

8 Pagonis, Thomas (2009) *The Chartering Practice Handbook (5th edition)*, p82

catchphrase. Lloyd's Register had its genesis, not in the regulatory intervention of the State, which occurred a century later, but in the requirements of underwriters to understand the risk they were being asked to insure.[9]

A third branch of insurance – life insurance - sprang to life in the early years of the 18th century. The second Astronomer Royal, Edmond Halley, is now most famous for his 1706 prediction that the comet which can be seen in the Bayeux Tapestry would be viewable again in 1759 – Halley's comet. However, an equally significant contribution might well be his 1692 publication of the first mortality tables, which gave the sale of life annuities an actuarial basis for the first time.[10] Within 70 years, in 1762, the Society for Equitable Assurances on Lives and Survivorship had been established – now remembered (rather more notoriously) as 'Equitable Life'. The principles of constant premiums throughout the assured's life and the guarantee of a basic sum assured on death, made it wildly successful. Actuarial science had earned its spurs, and in turn this was to inspire a deeper interest in data collection and aggregation. Thus the first detailed demographically-weighted mortality estimates were possible as a result of the two Acts of Parliament of 1762 and 1767 for which the polymath Jonas Hanway tirelessly campaigned, requiring proper records by parishes of children under their care.[11] These types of study led to techniques which now underpin modern epidemiology and public health research.

Following that up for a moment to the 20th century, it will be recalled that it was the Lloyd's underwriter Cuthbert Heath, who, during the London smallpox epidemic of 1901, realized the quasi-religious peace of mind that insurance could bring.[12] The power of this peace of mind could be used to encourage risk limitation, and so he offered insurance against contracting the disease to any who would undergo vaccination. Not only was this commercially brilliant, but it did much to incentivise a practical solution which had wide-ranging social benefits, by making something individually advantageous. It can be argued that Cuthbert Heath was much more successful in persuading the mass of people to be vaccinated than the Act of Parliament that had required compulsory vaccination, which was very unpopular with the working-class and eventually had to be abandoned in 1898.[13]

Thus from fire-brigades, to classification of ships, to virus-tracking, three branches of insurance that grew from private initiative and without State encouragement wrought changes to various parts of the social order of Britain – and in the world. But I think that the claim for insurance can go further than that. The development of insurance has been an integral part of (and often a catalyst for) many of the landmarks of British *social* history. In short, I think it can be said that the British insurance industry has not simply been one that has catered for essentially private interests; rather it has been the mechanism – often the peculiarly-British mechanism – by which governments, unions and free-markets alike have sought to resolve the leading social problems of the day.

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[9] See Michael Palmer: *Lloyd's Register of Shipping* (online).

[10] Wakefield, Julie (2005) *Halley's Quest* (Joseph Henry Press), p121

[11] Pugh, John (1798) *Remarkable Occurrences in Life of Jonas Hanway, Esq.* (Cadell), p146

[12] Clarke, Malcolm (1997) *Policies and Perceptions of Insurance: An Introduction to Insurance Law* (Clarendon Press), pp35-36

[13] Halpern, Sydney (2004) *Lesser Harms : The Morality of Risk in Medical Research* (University of Chicago Press), pp25-28

The temptation in any discussion of social insurance is to turn to Beveridge, and the 1942 Report that set the scene for Britain's post-war settlement. But the role of insurance in attempts to alleviate social problems goes back much further. Those of you who have not yet read the October 2013 edition of the BILA journal should read Professor Philip Rawlings essay[14] which covers this in some detail. But for who have not or may not be able to read this illuminating article, let me give you a short *précis*.

It starts in the eighteenth century. At that time the "governing classes" were, even by the standards of today, obsessed with the physical and moral health of the poor. Hogarthian depictions of squalor and fecklessness now characterise the social ills of that age, and the moral disapprobation with which they were greeted. In fact crime, drunkenness and a resolute determination to be vagrant rather than to work led to draconian criminal sanctions. So 250 felonies were punishable by hanging and thousands were deported first to the American colonies and then Australia. The problem of the poor also caused a moral panic about the social cost of such villainy in the parishes, whose responsibility they were under the Poor Law Acts.

While the impoverished were second only to criminals, there was much more sympathy for the children of the poor, which manifested itself in philanthropic ventures both medical and educational: for example, Captain Coram's famous Foundling Hospital and the Christian Scientist charity schools. The 1801 murder by a Stepney muslin weaver called Jouvaux of his 15-year-old apprentice called Susannah Archer led to renewed judicial and public concern over the treatment of the youthful poor, and the following year saw the passage of the Health and Morals of Apprentices Act 1802, which was the first in a series of Parliamentary interventions to secure better living and working standards for those involved in industry leading to the Factory Acts and the Workmens' Compensation Acts.

The philosophy of nineteenth-century reform was founded on the belief that poverty and pauperism had to be treated much like disease, which would get worse unless treated. The misfortune of unemployment presented a risk of a descent into irregularity of employment and falling out of good working habits, leading to the pauper being a permanent dependent on the parish. The question was how to prevent it and to how to finance it.

The United Kingdom in the first three-quarters of the 19th century was the leading industrial and mercantile power. In general it practised a *laissez faire* economic model founded in Adam Smith, albeit tinged with the social-liberal Quakerism of its major industrialists like Cadbury and Rowntree. A Protestant work ethic predominated and individual responsibility for the salvation of the stomach as well as the soul were the tenets of the national faith. However, successive Governments were very content to permit insurance to assist in solving social problems. Noel Whiteside at the University of Warwick has written extensively about the peculiarly-British development of social insurance,[15] noting the tension that more authoritarian

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[14] Rawlings, Philip (BILA Journal Number 126, Oct. 2013) *"Without Feelings and Without Remorse?" Making Sense of Employers' Liability and Insurance in the Nineteenth Century*

[15] The following passages of this article draw heavily on Whiteside, Noel (2009) *Social Insurance in Britain 1900-1950: Frameworks of the Welfare State* published as *L'assurance sociale en Grande Bretagne : genèse de l'état providence* in M. Dreyfus (dir.) *Les assurances sociales en Europe* [Presses Universitaires de Rennes, 2009] pp.127-58

regimes were less engaged in social insurance than the liberal British Governments. The latter, however, sought intensively to supervise the 'market' for local mutual aid societies which were (with the exception of some heavy utilities) run by their subscribing members, independent of both government and of employers. Whiteside suggests that much of this supervision was geared towards limiting the State's liability for social programmes. This had to be strictly controlled to ensure stability in the public finances (run by HM Treasury) were of critical importance for as long as sterling was to remain the world's foremost trading currency. Treasury subsidies were a last resort, and by ensuring competition in the open market for mutual aid (private insurance against unemployment and sickness), successive HM governments were able to limit their own liabilities, although also seeking to disassociate 'friendly benefits' from funding of industrial action.

The fear of governments, especially during the time of the Chartist movement in the 1840s was that the increasing incidence of industrial injury and death could lead to widespread disaffection and worse. Thus partly driven by fear of more drastic consequences, the Factory Acts, and the first Fatal Accidents Act in 1846 saw a substantial political shift towards imposing on employers' a liability for the injuries and other harm suffered by their employees, including (despite the legal doctrine of "common employment") acts at the hands of colleagues for which the employer would be vicariously liable. Rawlings maintains that much of the legislation constituted compromises by employers to avoid yet more radical outcomes. The legislation culminated in the Employers' Liability Act 1880 and the Workman's Compensation Act 1897. The system sought to create incentives for greater concern about workers' safety, both on the part of employers and of the workers themselves, for accidents and injuries caused by machinery in the workplace.

Yet, for all the interminable conflicts thrown up during the passage of the 1880 Act, little advance thought appears to have been given to how the employers' liability would actually be met. The Employers' Liability Assurance Corporation ("ELAC") was the first and largest of the entrepreneurs to see the titanic opportunity afforded by the 1880 Act. Even the Long Depression of the last decades of the 19^{th} century could not thwart the creation of a national insurance industry which, it might be argued, assisted dramatic improvements in workers' safety by ensuring that employers who wished to be insured paid more attention to what was needed. In this way, it might be said, insurance helped the cause of workers' safety on land, just as classification societies helped in the safety of sailors in Britain's merchant fleet, then the largest in the world. (In 1914, 50% of the world's tonnage flew the Red Ensign).

But the Victorians could not disassociate poverty from moral disintegration. Idleness was a risk to morals as much as to efficiency. By the turn of the last century, the young Beveridge would echo the moralism of the age by making employment (and security against unemployment) a matter not only efficiency, but also of moral rectitude. He made a swingeing attack on irregularity:

> *"those who … come to be casual labourers are almost inevitably demoralised by their circumstances. Irregular work and earnings make for irregular habits; conditions of employment in which a man stands to fain or lose so little by his good or bad behaviour make for irresponsibility, laziness, insubordination … The line*

> *between independence and dependence, between the efficient and the unemployable, must be made clearer."*[16]

This was the liberal *credo* in full voice. Marxists of the day would recommend a society based on the aphorism *'From each according to his ability; to each according to his needs'.*[17] The liberal response was to emphasise individual responsibility, measured by actuaries, to require *'From each according to his risk profile; to each according to his genuine misfortune'*. The early British welfare state sought to shape behaviour by incentive and disincentive. Little surprise, then, that the insurance model was to be the foundation of the first shoots of a British welfare state.

The 1911 National Insurance Act marked the beginnings of the modern welfare state. Although it is always Lloyd George, then the Chancellor of the Exchequer, who gets the credit for it, in fact it was Asquith, when he was Chancellor of the Exchequer when Campbell-Bannerman was Prime Minister, who had first started the projects for both old age pensions and sickness and unemployment insurance. The National Health Insurance scheme introduced was modelled on the medical insurance, accident insurance and aged and invalidity insurance laws that the German Chancellor Bismarck had launched in the 1880s.[18] The British scheme ran from 1912 until 1948. Contributions were gathered from employee, employer and the State, and the 'misfortune' model of acute illness and sickness which had characterised much unemployment insurance previously was expanded to cover basic medical care and access to a GP. More than 40% of the population, covered by virtue of low earnings, were a part of the scheme by 1938. The National Health Insurance scheme was administered by friendly societies, trades unions and commercial insurers alike. Therefore there was significant competition for members. Door-to-door sales of insurance became common, and by the advent of the Second World War, it is estimated that there were two-and-a-half life insurance policies for each citizen, and that 80% were with one of the major insurers – the largest of which, the Prudential, had 29 million members.

After the Second World War, the Beveridge Report was to herald the what the *Daily Telegraph* called the consummation of Lloyd George's 1911 revolution, and the Archbishop of Canterbury, William Temple, was to say was *"the first time anyone had set out to embody the whole spirit of the Christian ethic in an Act of Parliament".*[19] Beveridge's 'Report of the Inter-Departmental Committee on Social

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16 As quoted in Whiteside, Noel (ibid).

17 Although popularised by Marx in his *Critique of the Gotha Programme*, the phrase pre-dates that book. It is first found in French - *"De chacun selon ses facultés, à chacun selon ses besoins"* - in *Plus de Girodins*, the 1851 work of French socialist Louis Blanc, who was a member of the Provisional Government in 1848. His task was to find means of implementing the right to work of the poor. The state system inaugurated was a failure and Blanc had to go into exile – in England: Jennings, Jeremy: *Revolution and the Republic* (Oxford 2011) pages 401-2.

18 In France the first national law on Sécurité Sociale was passed during the Third Republic in 1905. The law made it obligatory for towns to provide assistance for those over 70, the infirm and the incurably ill without resources. But it was up to each town to decide on the amount. In Cleremont-Ferrand it was fixed at 180 francs a year, or 0.5 francs a day; a very small sum: Gueslin, André: *Gens pauvres Pauvres gens* (Aubier, Paris 1998).

19 Beveridge, Janet (1954) *Beveridge and his Plan* (Hodder & Stoughton), p135

Insurance and Allied Services' was published in December 1942, and identified the 'five Giant Evils' of "Squalor, Ignorance, Want, Idleness, and Disease".

The introduction of the NHS under the National Health Service Act 1946 is still the most significant measure for which the Beveridge reforms are remembered. But the National Insurance Acts of 1946 and 1948 could be said to have been equally transformative: all persons of working age contributed to a system that for the first time insured the entire population. It offered Orphan's Allowances, Widow's Benefits, Death Grants, Unemployment Benefit, Sickness Benefit and Retirement Pensions. It was, and perhaps still is, the most ambitious use of insurance to cure social ills to date.

The modern world of insurance looks very different of course. Insurance is ubiquitous – building and contents insurance, employers' insurance, health and dental insurance, motor insurance, travel insurance and life insurance are ever-present reminders of society's anxiety to avoid the consequences of disasters which our own unaided resources would not allow us to mitigate. Improved data collection and sharing, not to mention increased fraud detection and prevention, have made insurance a profitable industry capable of selling peace of mind at ever-more-competitive prices. Some of this developed organically – travel insurance for example – while other parts were markets created by (or massively inflated by) statutory requirements to be insured, such as motor insurance. It is said that motor insurance is the one product offered by non-state entities that it is compulsory for all vehicle owners or drivers to buy and it is a criminal offence not to be covered by insurance when driving. I cannot think of any other product that is only offered by non-state entities that it is compulsory to buy!

The industry has, of course, changed out of all recognition in the last 50 years. Now is not the time to try and cover those changes. Perhaps one of the most significant is the introduction, in 1975, of policyholders' protection against insurers that become insolvent. That protection is not universal, however; it was of no help to those who took out pension policies with the ill-fated Equitable Life.

Continuing the Tradition in the Future.

What, then, for the future of British insurance law? By way of thought experiment, perhaps we should ask what role insurance still has in the social contract. Cass Sunstein's 2008 book 'Nudge',[20] written with Richard Thaler, brought to popular attention a form of libertarian paternalism designed at improving the choices that we make as consumers and citizens. It recommended avoiding heavy regulatory systems, and suggested instead making small amendments to encourage citizens to change behaviour principally of their own accord: moving to default pension payments, or opt-out systems for schemes which previously had been opt-in. The book was the toast of political types in Washington and London alike.

Whatever your views on 'Nudge', it captured much of what the insurance industry and the lawyers who support it have done for centuries: finding ways to encourage

20 Sunstein, Cass & Thaler, Richard (2008) *Nudge: Improving Decisions About Health, Wealth and Happiness* (Yale University Press)

certain forms of behaviour by correlating the risks of particular long-term consequences with the immediacy of short-term premium payments. This is as potent a device for improving today's society as it was in the reign of Queen Victoria or the time of Lloyd George. The real question is: which uncharted social evils might insurance might the capability to address, and what legal changes are required for that to happen?

What are the current equivalent of Beveridge's Five Great Evils? Obesity? Long-term Geriatric Care? Crime? Terrorism? Climate Change? To what extent could insurance act as a mechanism to reduce these? What are the instances of personal misfortune that could befall us, whose consequences insurance could ameliorate? Two of these – climate change and terrorism – concern areas in which insurance is already highly active. The risks associated with long-term care of the elderly are a modern inversion of the need for life insurance. Previously, the payout was required by dependents if you died. With life-expectancy rocketing, and the costs of long-term geriatric care exceeding what any society can afford through public funding alone, will we see adult children insuring themselves against their parents' longevity?

If we are to highlight the social problems that insurance is likely to be best-placed to resolve, I suggest that there are certain characteristics which would present themselves: first, a misfortune that could affect almost anyone. Secondly, a causal link (whether strong or weak) between personal choices and the misfortune. Thirdly, a reliable data model that would allow that risk to be accurately calculated based on individual risk factors. Fourthly, a state-backed mechanism to deal with that which is beyond any insurer to cover.

For an existing example of insurance dealing with social problems, we can take motor insurance. No matter how careful a driver we might be, any of us could be involved in a serious collision on the roads at any time. The consequences could be relatively minor or be catastrophic. There is clearly a causal relationship between choices and behaviour, such as an inclination to drive too fast, or a decision not to wear a seatbelt, or to drink too much. All those choices and the consequent behaviour will contribute to higher risk in terms of both the frequency and severity of accidents. All these features are measurable, and the risk is calculable by insurers. There is a mop-up system (the Motor Insurers' Bureau) to catch the remainder.

Viewed in these terms, marine insurance is little different. The quality of ships and crew are measurable, the routes and the weather and the nature of the cargo are (in general) knowable and known quantities and the risks are calculable. Choices are, to a certain extent, made by shipowners, charterers and shippers of goods on the condition of the ship, the route that is ordered and the type of cargo (eg whether "dangerous" or not and whether so to declare it). And insurance deals with liability, largely through H&M policies (collision liability) and the P&I Clubs. Behind the P&I cover lies the inter-club agreement, and there are international funds for catastrophic events like oil-spills.

Apply this then to the other "Social Ills" I identified above. Take obesity, which is now a social problem that has become an ever-increasing charge on the NHS's funds. Could the funding gap be met by insurance? Premiums would be paid on the basis of current body-mass index (positively correlating) with payout over particular thresholds to finance medical intervention (ranging from personal trainers to bariatric surgery). Some people might opt to pay lower insurance premiums and put the savings towards gym membership, or take the pay-out for a personal trainer (losing that no-claims bonus) knowing that the weight lost would lower premiums in the longer run. But by monetising the risks, and giving a present-day cost to future weight and the costs attributable to it, insurance could be a mechanism by which Britain ceases to be the fat man of Europe and, as in the nineteenth century, HM Treasury is able to reduce the risk of even more government spending.

No part of the legal world can be oblivious to the remarkable changes that have affected our legal professions in the last two years. Government has made the decision that the economic climate no longer permits legal aid to cover most civil and family litigation. Consequently, litigants are ever more likely to represent themselves, most frequently in the Family Court, or must spend their own money (frequently savings) on lawyers. But all litigation has a causative basis in behaviour and choice. By marrying, by having children, by buying or leasing houses, we affect the risk that we will be involved in civil litigation. By drinking or taking drugs we significantly increase the risk that we will be involved (whether as perpetrator or victim) in criminal processes. These are measurable indicia of future risks, which insurance has the capability of valuing as at the present day. As the State retreats from direct funding on the basis of need (the second half of the Marxist aphorism I quoted earlier), the liberal maxim I invented above should perhaps be repeated: “from each according to his risk profile, to each according to his misfortune”.

“Before the Event” (BTE) litigation insurance is an incredibly common feature of home and contents insurance policies. Ministry of Justice research in 2007 indicated that 59% of adults in this country have some form of BTE insurance, but most are unaware of that fact.[21] But if people are not aware of the insurance for which they are paying, then it cannot have the second, transformative effect of encouraging socially useful outcomes by improving behaviour. This is surely an area in which it is in the interests of both government and the insurance industry to make the public more aware of the benefits of insurance.

Conclusion

It is in all of our interests that voters, consumers and policy-makers alike recognise the massive boon that insurance and insurance law offers this country. Not only does it provide a significant tax base, employ many of our most talented minds, and provide a beacon for other British industries, but it also has had and retains a role in binding the social fabric of this nation. The role that insurance and its foundation in the common law have had in moulding British society in the past can, I suggest, still be powerful and appropriate tools for social reform today. At the opening of the London Olympics in 2012, “England’s green and pleasant land” was depicted and then its “dark, satanic mills”. The NHS was then shown as one of the means of deliverance from the social evils of disease and the consequences of poverty. The insurance industry and the common law were not featured, but perhaps they should have been! They can assist in the deliverance of this green and pleasant land from some of its great social evils. And the British Insurance Law Association has its part

[21] Ministry of Justice (July 2007) *The Market for 'BTE' Legal Expenses Insurance*

to play in this by provoking ideas and discussion. We must continue the work for the next 50 years.