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WAR, INSURANCE AND SOME PROBLEMS OF COMMUNITY

Carol Weisbrod*

In *War and Insurance*, Josiah Royce deals with several kinds of community, two obviously and one implicitly. The first is the community of interpretation, the structure of the triad, which he adapted from Peirce and used in the *Problem of Christianity*. The second is the Beloved or Universal Community, towards which this suggestion for the practical advancement of peace was headed. The third is the shattered or wounded community, implicit in *War and Insurance* in the form of the international community, which is injured by the nation that fires the first shot. This paper discusses these three communities against the background of several other treatments of community in the work of Josiah Royce. *War and Insurance* (1914) is a product of the same thinking that produced the *Philosophy of Loyalty* (1908) and the *Problem of Christianity* (1913), and can be related to ideas presented in those works, as well as to material in the posthumous work, *The Hope of the Great Community* (1916).

* * *

By the end of his life, Josiah Royce had come to believe that the idea of community had dominated his work. In 1956, Joseph Blau suggested that the lasting contribution of Royce's work was his life long attempt to deal with community.¹ The work on loyalty, Blau suggested, was a transitional formulation of the problem of community, which Royce had raised in his earliest work. Towards the end of his life, Royce himself noted that:

I strongly feel that my deepest motives and problems have centered about the Idea of the Community, although this idea has only come gradually to my clear consciousness. This was what I was intensely feeling, in the days when my sisters and I looked across the Sacramento Valley, and wondered about the great world beyond our mountains.²

* I would like to thank Tom Baker, Carolyn Jones and Aviam Soifer for their assistance. I am also grateful to the participants in the Royce Project of the Connecticut Insurance Law Journal for their comments on a draft of this piece.

1. Joseph L. Blau, *Royce's Theory of Community*, THE J. OF PHILOSOPHY 92 (Feb. 2, 1956).

2. JOSIAH ROYCE, *THE HOPE OF THE GREAT COMMUNITY* 129 (Books for Libraries Press 1967) (1916).

It is a picture of loneliness, of children isolated and looking for something, rather than of children speaking from a secure embedded place. And it describes something that was, many thought, apparent in Royce throughout his life.

A. Communities

It seems that Josiah Royce wrote on community from the point of view of someone who was not a natural fit with the sense of harmony and unity with which "community" is often identified. In an early novel, he wrote sympathetically about the advantages of practicing a religion of which one was the only member.³ "There is a deep satisfaction in being the sole member of a religious sect."⁴ His character said: "[y]ou need not propagate the faith, you are relieved from all the rivalry of fellow-worshippers, you enjoy alone the sacred fountains."⁵ In his own voice, Josiah Royce noted that he had "always been, as in my childhood, a good deal of a nonconformist, and disposed to a certain rebellion."⁶ Royce was a Californian who made his career at Harvard, but was uncomfortable in the Harvard culture. He remained a "shy, strange, lonely figure, sometimes mistaken for a university janitor," his biographer writes.⁷

Royce's parents were 49ers who crossed the mountain in harsh and difficult conditions of the sort that resulted in the tragedy of the Donner party.⁸ The family had a connection to the Burned over District of upper New York State,⁹ an area of intense religious activity, which saw the growth of a great variety of religious sects. This was enough of an influence for his biographer to include a full description of the sectarian movements of that part of the country. Royce was raised on the Bible and on the *Book of Revelations*.¹⁰ As Oppenheimer notes, his writing is filled with biblical echoes and allusions.¹¹ Several commentators note that Royce generalized from his own experiences "to give a universal meaning to his

3. JOSIAH ROYCE, *THE FEUD OF OAKFIELD CREEK* 63 (Literature House 1970) (1887).

4. *Id.*

5. *Id.*

6. ROYCE, *THE HOPE OF THE GREAT COMMUNITY*, *supra* note 2, at 130.

7. JOHN CLENDENNING, *THE LIFE & THOUGHT OF JOSIAH ROYCE* (2d ed. Vanderbilt Univ. Press 1999).

8. *Id.* at 12.

9. *Id.* at 6. See generally WHITNEY CROSS, *THE BURNED-OVER DISTRICT* (Cornell Univ. Press 1950).

10. CLENDENNING, *THE LIFE & THOUGHT OF JOSIAH ROYCE*, *supra* note 7, at 9.

11. Frank M. Oppenheimer, *Introduction to JOSIAH ROYCE, SOURCES OF RELIGIOUS INSIGHT*, at xiv-xv (The Catholic Univ. of America Press 2001) (1912).

personal feelings.”¹²

What kinds of biographical experiences of community might he have drawn on? Those interested in community inevitably deal with two issues: the first, the definition of community; the second, the problem of sanctioning in the community, which is to say maintaining the definition of community. This concern is, of course, shared by religious and secular communities, and Royce had experience of both. But his childhood socialization is likely to have presented him most clearly with the pictures of religious sanctioning and discipline rather than of organic unities.

He was from a house without material resources and of limited culture. Late in his life he wrote that he was twenty years old before he saw a beautiful man made object.¹³ He died as a philosopher with international standing, today considered one of the group who stand for a classical period in American philosophy. The move from one status to the other was undertaken deliberately, and with awareness of the uncertainties involved. As a young man, he had an academic appointment in California, but was focused on getting out of California to the east. He wanted this to the point that he resigned his position to take a one year visitorship at Harvard with an uncertain future. He was, he said, prepared to take risks in a good cause.¹⁴

Thus far we see a man interested in community who himself experienced many, and even rose through many. But the point is not merely that Royce was interested in community or used communities as an aspect of an American upward mobility story, passing from one to another. More significant is that Royce insisted that the individual was nothing without the community. He had stressed the community in the early historical work on California: “[i]t is the State, the Social Order, that is divine. We are all but dust, save as this social order gives us life.”¹⁵ He

12. Many of these feelings had to do with loneliness and solitude. Clendenning notes “the locked doors and empty rooms” of his dreams. CLENDENNING, *THE LIFE & THOUGHT OF JOSIAH ROYCE*, *supra* note 7, at 274. See also John J. McDermott, *Josiah Royce's Philosophy of the Community: Danger of the Detached Individual*, in *AMERICAN PHILOSOPHY* 172 (Marcus G. Singer ed., 1985) (“The Philosophy of Loyalty is vintage Royce, being an attempt to justify personal experience as an anticipation of eternal meaning.”).

13. Letter from Josiah Royce to Richard Clark Cabot (June 25, 1912), in *THE LETTERS OF JOSIAH ROYCE*, at 577-78 (John Clendenning ed. The Univ. of Chicago Press 1970).

14. CLENDENNING, *THE LIFE & THOUGHT OF JOSIAH ROYCE*, *supra* note 7, at 109. In fact Clendenning suggests he had married a woman from the East Coast, and seems to have married a family as much as an individual. *Id.* at 83.

15. JOSIAH ROYCE, *CALIFORNIA* 501 (Heyday Books, Berkeley 2002) (1886). He is to the end a Californian, he says. But of course he left California and provided detailed instruction on how, in effect, to do what he did, to a nephew thinking about leaving

knew various social orders and not all of them were the state. But finally it was the community that mattered, and loyalty to a cause.

Clearly, Royce did not intend individual identifications with communities to be solid or fixed or monolithic. In general, Royce saw the cumulation of loyalties.¹⁶ In the *Philosophy of Loyalty*, he wrote: "[m]oreover, my loyalty will be a growing loyalty. Without giving up old loyalties I shall annex new ones. There will be evolution in my loyalty."¹⁷ But there is a major issue: since "fidelity and loyalty are indeed inseparable, the breaking of the once plighted faith is always a disloyal act . . ."¹⁸ This will be the case unless we discover that "the original undertaking involves one in disloyalty to the general cause of loyalty" and that this discovery requires the change.¹⁹

And of course some individuals were associated with evil causes and evil communities. It is clear in the *Philosophy of Loyalty* that an individual will make choices among loyalties. Even the dyad of the romantic couple – defined as loyalty only by saying that each in the couple is loyal to their union – will not necessarily be stable.²⁰ In the *Philosophy of Loyalty*, the suggestion is that one might have to move from loyalty to another, in the interest of a higher loyalty. Thus, it could be that there are higher and lower loyalties, "indeed, the once awakened and so far loyal member of the robber band would be bound by his newly discovered loyalty to humanity in general, to break his oath to the band."²¹

Along with the interest in community, there is in Royce an interest in the problem of exit from the community, or betrayal of the community, breaking of the community, shattering, wounding. One can see it from the early historical work on California, the early community in which he was

California. (The nephew apparently did not leave California. See ROYCE, THE LETTERS OF JOSIAH ROYCE, *supra* note 13, at 238-39). The identification of the State and the social order is not inevitable. Certainly Royce was working before the American identification of the National State and community which, for example, is said to characterize the New Deal.

16. Others also viewed individual identifications with communities as the cumulation of loyalties. See Carol Weisbrod, EMBLEMS OF PLURALISM 189-202 (2002).

17. JOSIAH ROYCE, THE PHILOSOPHY OF LOYALTY 63 (Vanderbilt Univ. Press 1995, 1908).

18. *Id.* at 97.

19. *Id.*

20. *Id.*

21. Even here, however, the former membership remains as a bond. "[H]e would still owe to his comrades of the former service a kind of fidelity which he would not have owed had he never been a member of the band. His duty to his former comrades would change through his new insight. But he could never ignore his former loyalty, and would never be absolved from the peculiar obligation to his former comrades, - the obligation to help them all to a higher service of humanity than they had so far attained." *Id.*

interested, through to the late discussions of atonement in the *Problem of Christianity*. In *California*, he had insisted that the community, the social order, the state, was divine, and that the individual alone was nothing significant at all.²² This is his position throughout his life. And the community would have to protect itself. One way the community protected itself was by expelling the unworthy member. John Clendenning, Royce's biographer, includes an account of Royce's reaction to the problem when a colleague was caught up in a scandal. In effect, he would have to be written out of the community, one "no longer worthy of the moral support" of his fellow workers.²³ Early in his career, in his work on *California*, Royce includes a reference to a man exiled from the train of the Donner party.²⁴ Sarah Royce, Josiah's mother, saw herself as "Hagar, expelled from [her] homeland."²⁵ Royce also saw himself as "expelled from the hearth."²⁶ The mechanism of expulsion for discipline was one with which he would have been raised.

But if expulsion was the disciplinary mechanism of the religious communities he must have known, it should not be thought that he was interested only in such communities. Royce was interested in many kinds of community, some religious, some what we would call firms, as when we see him describing business organizations. One scholar has considered his interest as connected to the community of children who studied at his mother's school.²⁷ He was concerned with the community of miners in *California*, and in the forms of justice administered in these miner's communities.²⁸

And communities can overlap and have different names.²⁹ A commercial firm can be a religious brotherhood. The beloved community can also be the universal community or perhaps even the invisible church.³⁰ The beloved community will be a community of interpretation.³¹

22. ROYCE, *CALIFORNIA*, *supra* note 15, at 501.

23. CLENDENNING, *THE LIFE & THOUGHT OF JOSIAH ROYCE*, *supra* note 7, at 318.

24. ROYCE, *CALIFORNIA*, *supra* note 15, at 43.

25. CLENDENNING, *THE LIFE & THOUGHT OF JOSIAH ROYCE*, *supra* note 7, at 13.

26. *Id.*

27. Frank M. Oppenheim, *Graced Communities: A Problem in Loving*, in *THEOLOGICAL STUDIES* 44, 604-24 (1983).

28. ROYCE, *CALIFORNIA*, *supra* note 15, at 279.

29. See discussion in John Smith, *Royce on Religion*, in *THE JOURNAL OF RELIGION* 261-66 (1950).

30. JOSIAH ROYCE, *THE PROBLEM OF CHRISTIANITY* 20 (The Univ. of Chicago Press 1968) (1918).

31. *Id.* It has been noted that Royce never fully developed the definitions between the different kinds of community he talked about. See Smith, *supra* note 29. John Smith wrote:

Royce's insistence on the importance of the social for individual understanding includes rejection of conventional separations between religious and secular problems. In the *Sources of Religious Insight*,³² he dealt with the issue of knowing the authenticity of a divine revelation by comparing the issue to a bank's knowing whether a check represented the authentic will or signature of its customer. In both cases, there had to be some sort of pre existing knowledge or experience. This was the 'vast presumption' on which the believer in revelation rested. And somehow one had to account for that knowledge.³³

The relationship of Roycean thinking to traditional Christianity is fairly clearly presented in the *Problem of Christianity*. He starts with the idea that: "for every estrangement that appears in the order of time, there somewhere is to be found . . . , the reconciling spiritual event" ³⁴ He repeats the idea: "for every wrong there will somewhere appear the corresponding remedy," and again "for every tragedy and distraction of individual existence the universal community will find the way -- how and when we know not, to provide the corresponding unity, the appropriate triumph."³⁵ He moves to the familiar formula: "[w]e are saved through and in the community. There is the victory which overcomes the world. There is the interpretation which reconciles. There is the doctrine which we teach"; and he concludes that: and "this doctrine, as we assert, is in agreement with what is vital in Christianity."³⁶ This doctrine was not, he conceded, what the apologists for Christianity ordinarily taught, but still he held to it.

Royce was particularly concerned with two maxims of Christianity

Royce, it must be made plain, was by no means clear himself on the meaning and precise relations between such expressions as "Beloved Community," "community of mankind," (which I take to have the same denotation as "great community") and "universal community." [I]t was only in Royce's last years, when the international situation was so tragic, that he used the expression "great community"; and it meant for him the community of those dedicated to the "interests of mankind," interests transcending national and indeed all boundaries. As such, "great community" meant an international human community largely ethical, social, and even commercial (but not *political*) in character. . . .

Id. at 262.

32. JOSIAH ROYCE, *SOURCES OF RELIGIOUS INSIGHT* 25 (The Catholic Univ. Press of America 2001) (1912).

33. *Id.* at 22-23.

34. ROYCE, *THE PROBLEM OF CHRISTIANITY*, *supra* note 30, at 388.

35. *Id.*

36. *Id.* at 404. But his conclusion was that one could "[l]ook forward to the human and visible triumph of no form of the Christian Church." *Id.*

which he thought had been, over time, greatly damaging to Christian civilization.³⁷ The first was that “[b]y no deed of his own, unaided by the supernatural consequences of the work of Christ, can the willful [sic.] sinner win forgiveness”; the second was that “[t]he penalty of unforgiven sin is the endless second death.”³⁸ He questions the “problem of christianity” as to the second death of the Book of Revelation: “what ethically tolerable meaning can a modern man attach to these words?”³⁹ Royce turns at this point in the discussion to the issue of reconciliation of the willful traitor to the shattered and wounded community.⁴⁰

Later in the same work, he deals with the issues of loyalty in a commercial firm, noting that the loyalty that a firm might demand, and its general quality, might in fact turn it into a kind of religious brotherhood.⁴¹ This was true even though at first glance a commercial firm would not seem to be a model of a religious organization. “A business firm would seem to be, in general, no model of a religious organization [sic.]. Yet it justly demands loyalty from its members and its servants.”⁴² Certainly, if the firm “lives and acts merely for gain, it is secular indeed.”⁴³ But there is another idea:

if its business is socially beneficent, if its cause is honourable [sic.], if its dealings are honest, if its treatment of its allies and rivals is such as makes for the confidence, the cordiality, and the stability of the whole commercial life of its community and (when its influence extends so far) of the world, if public spirit and true patriotism inspire its doings, if it is always ready on occasion to sacrifice gain for honour’s sake -- then there is no reason why it may not become and be a genuinely and fervently religious brotherhood.⁴⁴

Some of these questions are further developed in *War and Insurance*.

37. *Id.* at 151.

38. *Id.*

39. *Id.* at 152.

40. *Id.* at 175.

41. ROYCE, *THE SOURCES OF RELIGIOUS INSIGHT*, *supra* note 32, at 274-75.

42. *Id.* at 274.

43. *Id.*

44. *Id.* at 274-75.

B. The Communities of *War and Insurance*

In the *Philosophy of Loyalty*, a discussion of loyalties involved certain tensions and conflicts. Royce hoped that loyalties would be cumulative. Sometimes they couldn't be, then someone would move to higher loyalty. The idea in the *Philosophy of Loyalty* that the dyad is unstable becomes, in *War and Insurance*, the proposition that some of those dyads may in fact be dangerous. Moreover, we see in the *Philosophy of Loyalty* an anticipation of the method of *War and Insurance*, in which dyads are viewed in a way that turns them into triads. For example, the couple is not viewed only dyadically in terms of loyalty to each other. Rather, they are viewed as also loyal to something else, their union.⁴⁵ The triad is completed in another way when there is a child.⁴⁶ It is not simply a matter of describing a three part relationship as it exists in the natural or even conceptual order, as when we say that agency is defined as a three part relationship. In Royce, the three party relationship is constructed with more or less force out of materials which are not obviously triadic to begin with. As the couple could be expanded into a triadic structure, so also an individual could be, at certain times, seen as in triadic relation. A man reading an old letter and thinking about it is seen as a present self, interpreting a past self to a future self.⁴⁷ Royce saw the insurance solution as second best in international affairs. He would have preferred Kant's world federalism,⁴⁸ but he believed that this was unlikely to happen. But the second best solution was endorsed with enthusiasm.

War and Insurance is an essay with various pieces, some of which are not about insurance at all. The essay cited the Christian communitarian vision of insurance (using an article in the 11th ed. of Britannica, ending with "bear ye one another's burdens") but Royce's view of insurance seems in many ways quite idiosyncratic.⁴⁹

Royce had a powerful respect for insurance and its history. Clendenning notes that the insurance industry had for Royce some special, almost mystical significance. He suggests a connection to a "paternal aspect" of insurance, a substitute for the protective father that Royce had

45. ROYCE, THE PHILOSOPHY OF LOYALTY 11, *supra* note 17, at 11.

46. JOSIAH ROYCE, WAR AND INSURANCE 36-37 (1914).

47. ROYCE, THE PROBLEM OF CHRISTIANITY, *supra* note 30, at 287.

48. See KANT, *Perpetual Peace*, in POLITICAL WRITINGS (Hans Reiss ed., H.B. Nisbet trans., Cambridge Univ. Press 1991) (1970) Kant distinguished his idea from the idea of a world state. *Id.* at 102.

49. On bearing one another's burdens, see Carol Weisbrod, *Insurance and The Utopian Idea*, 6 CONN. INS. L. J. 381-422 (2000); Charlton Lewis, *Insurance*, in 11TH ed. of Encyclopedia Britannica, *quoted in* WAR AND INSURANCE xlvii-vii (1914).

missed as a child.⁵⁰ Then, there is the connection to the insurance executive George Coale.⁵¹ Wilson suggests an influence in Charles Peirce, and his references to life insurance.⁵² And there is the communitarian idea. But insurance is not for Royce finally about mutual aid. "The best workings of the insurance principle have been, on the whole, its indirect workings."⁵³ It has not only taught men, in manifold ways, both the best means and the wisdom of "bearing one another's burdens; but it has also established many indirect, and for that very reason all the more potent, types of social linkage, which the individual policy-holder or underwriter very seldom clearly and consciously estimates at their true value."⁵⁴ (The not-only-but-also construction appears in a discussion of international insurance in *Hope of the Great Community*.⁵⁵)

There is no discussion in Royce of the long colorful history of marine insurance, Lloyds of London, or ancient legal systems using insurance. Royce sees a modern institution.⁵⁶ Moreover, insurance is an institution presented entirely benignly, even spiritually, as an example of "sound and business like devotion."⁵⁷ The Armstrong inquiry of 1905 in New York⁵⁸ might have suggested some difficulties, but Royce is not concerned about this aspect of the "wonderful history of insurance." The words "business" and "business-like" are used positively.

Royce sees the company as a kind of neutral mediator (the "third" originally discussed by Charles Peirce) standing between the insured and the beneficiary. His discussion is odd in two ways. First, it assumes that there is always a beneficiary who is distinct from the insured. While this is the most common form of the life insurance contract, it is not always the form selected. Second, it assumes neutrality in the activities of the third,⁵⁹

50. Royce had a largely absent father. CLENDENNING, *THE LIFE & THOUGHT OF JOSIAH ROYCE*, *supra* note 7, at 16, 22.

51. CLENDENNING, *THE LIFE & THOUGHT OF JOSIAH ROYCE*, *supra* note 7, at 364.

52. R. JACKSON WILSON, *THE QUEST FOR COMMUNITY* 36 (Oxford Univ. Press 1968).

53. ROYCE, *THE HOPE OF THE GREAT COMMUNITY*, *supra* note 2, at 71-72.

54. *Id.* at 71-72, 74.

55. *Id.* at 71-72.

56. *Id.*

57. *Id.* at 73.

58. The Armstrong investigation of the life insurance industry in New York revealed significant abuses. See Vance, *Insurance*. See also, Buis & Anderson, *THE ARMSTRONG INVESTIGATION IN RETROSPECT*, 238 XI *Assoc. of Life Ins. Counsel Proceedings* (1952-53) stressing that "the abuses" disclosed are definitely of the past. Cf. defaulting bankers. Blau, *supra* note 5, at 96, refers to the "highly idealized" presentation of the banker's of the community. Would judges recognize the Roycean description of their roles in the triads?

ROYCE, *WAR AND INSURANCE*, *supra* note 46, at 57.

59. See ROYCE, *THE HOPE OF THE GREAT COMMUNITY*, *supra* note 2.

if not something even more altruistic. In the *Hope of the Great Community*, this third is presented this way: "[B]ut in each of these communities, one of the members has the essentially spiritual function or task of representing or interpreting the plans, or purposes, or ideas, of one of his two fellows to the other of these two in such wise that the member of the community whom I call the 'interpreter' works to the end that these three shall cooperate as if they were one, shall be so linked that they shall become members one of another, and that the community of the whole shall prosper and be preserved."⁶⁰

Royce's description of insurance as a community of interpretation was specific to him (and Royce was as interested as any academic in saying something new).⁶¹ But some aspects of the description resonate with more conventional treatments. One might compare the discussion of Nathan Isaacs, someone who counted among the realists but who taught in a business school. He sees, in 1934, a history that is different in at least one way from the one that Royce offered. For Isaacs, who had in 1921 written on the standardized contract, a significant part of the story was the overreaching of the industry that led to regulation by the state.

"Prior to the days of the standardized insurance contract," Isaacs wrote, "it was customary for the insurance companies to draw their own agreements with the aid of their attorneys and include exculpatory clauses that tended to relieve them of burdens and make the insurance of doubtful value to the insured in an emergency."⁶² He gave the example of "comparatively unimportant stipulations in the application," which were described as "warranties."⁶³ Thus, "the insurance company was . . . able to point to technical defenses that had little or nothing to do with the actual risk incurred."⁶⁴ And, "[e]ven where these defenses were not pressed to the limit," Isaacs noted, "they served as talking points of no little importance for the adjusters in their efforts to make the best possible settlement for the insurance company after a loss was incurred."⁶⁵

60. ROYCE, *THE HOPE OF THE GREAT COMMUNITY*, *supra* note 2, at 64.

61. *See, e.g.*, ROYCE, *THE LETTERS OF JOSIAH ROYCE*, *supra* note 13, at 26.

62. NATHAN ISAACS, *THE LAW IN BUSINESS PROBLEMS* 217 (The Macmillan Company, rev. ed. 1934).

63. *Id.*

64. *Id.*

65. *Id.* Isaacs writes, "[t]he contract of insurance is said to be one of the utmost good faith (*uberrimae fidei*). That is to say, the insurer is in such a position of disadvantage with regard to the property insured or the event described in the policy that the utmost good faith is required on the part of the person insured. It is reasonable also to impose on him a burden of proving that he is entitled to the insurance fund claimed." *Id.* at 218 (emphasis in the original). It is striking that Isaacs sees the obligation of good faith as one imposed on the

"Insurance creates something more than a contractual relation between the insurer and the insured."⁶⁶ Isaacs writes, "[i]n the case of life insurance, the prime object is to create an estate to be claimed eventually by some one other than the insured."⁶⁷ (Here is the "third" which Royce builds on to create his triad): "[h]ence, in these contracts more clearly than in others, the law has found it necessary to give a right and a standing in court to the beneficiary who is by the very nature of the case not one of the parties to the contract."⁶⁸ But as Isaacs notes, there can also be a third party in other insurance contracts. He states that, "[e]ven in the case of fire insurance or insurance against theft, the beneficiary or the partial beneficiary may be some one other than the purchaser of the insurance, namely, the mortgagee of the insured property."⁶⁹

It is worth noting that ordinary descriptions of insurance drew on different ideas of what insurance "is". Thus, some ideas stress the mutual aid or communitarian aspect of the insurance relationship. Here the true connection is between those in the community of shared risk. The company is a kind of facilitator; particularly clear in mutual insurance companies, and less true in profit making share selling structures. Another view sees the prime relationship as between the individual and the company. Here, the connection between policyholders disappears in a formal contract analysis. It is this contract relationship that is the background of the Nathan Isaacs comment.

Royce offers another version in *War and Insurance*. Like judges dealing with litigants, and banks dealing with borrowers and lenders, insurance is, for Royce, an example of a triad. This is strikingly different from the conventional legal view. It is made possible by a perspective in which the fact that many insurance contracts may have a beneficiary other than the insured (clearly in life insurance, but often, as Isaacs noted, in other sorts of insurance contracts); it is used as the way to describe a triadic relationship as in the nature of the insurance arrangement. This is true, as Royce argued in *Problem of Christianity*, because the one who most obviously may lose something is not the only one who may lose something. Thus, when insurance covers the loss, a third party always benefits. The view of insurance as involving only two parties, the insured and the insurer, is, in effect inadequately descriptive. There is always, in Royce's view, a

person insured. Present definitions talk about an obligation of good faith imposed on both parties.

66. *Id.* at 218.

67. *Id.*

68. *Id.*

69. *Id.*

triad, sometimes in effect an obvious articulated triad, sometimes an implicit triad.

Royce viewed insurance as part of the development of the sciences. "The growth of the natural sciences as well as of the technical industries of mankind also makes possible and comprehensive forms and grades of cooperation which men have never before known."⁷⁰

Royce assumes that his insurance mechanism will not deal with the morality or immorality of the nation which fires the first shot. Right or wrong, the nation which fires first will be dealt with, and the sanction is that the nation that starts the war will not receive the benefits of insurance.

Exit which is seen in the *Philosophy of Loyalty*, from the point of view of the individual who makes choices about Loyalty, becomes in the *Problem of Christianity* not a matter of the "inner life" of the individual, but rather a threat to the harmony, to the "purity of the unscarred love" of the community. It becomes treason. This treasonous act can be done by any individual and by nations. (Royce argues that the community is a kind of person⁷¹ - an idea that would be entirely familiar to lawyers.)⁷² Compared to language like this, it is the bloodlessness of the moral analysis in *War and Insurance* which is striking. The mechanism will ultimately result in peace as nations get used to the idea of the device. It is a practical move in the direction of the universal or beloved community, but a large issue unaddressed is the composition of the group of the insured. (Are some nations not eligible?) The *Hope of the Great Community* offers some limited guidance. "[T]he community of mankind will be international in the sense that it will ignore no rational and genuinely self-conscious nation."⁷³ And there it is left.

The Hope of the Great Community was in press at the time of Royce's death. It reflects his aspirational stance - a universal community of all mankind. This community goes by several names. *War and Insurance* argued that insurance was a way to achieve this community. "[O]f 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."⁷⁴ The issue was tested for Royce with the sinking of the *Lusitania*.

C. The Sectarian Community as the Default Position.

70. ROYCE, *THE HOPE OF THE GREAT COMMUNITY*, *supra* note 2, at 37-38.

71. ROYCE, *THE HOPE OF THE GREAT COMMUNITY*, *supra* note 2, at 122-23.

72. See AVIAM SOIFER, *LAW AND THE COMPANY WE KEEP* 71-75 (Harvard Univ. Press 1995).

73. ROYCE, *THE HOPE OF THE GREAT COMMUNITY*, *supra* note 2, at 52.

74. ROYCE, *WAR AND INSURANCE*, *supra* note 46, at 64 (emphasis omitted).

In 1915, a German submarine sunk the British passenger ship *Lusitania*. Twelve hundred people died, including 100 Americans.⁷⁵ Royce had attempted to maintain neutrality in the early period of the First World War, but the attack on the *Lusitania* cast the question of the morals of war in a different light.⁷⁶ Royce responded powerfully. "This," Oppenheim argues, "was *not* the mature Royce's usually gentle, even kindly and playful behavior towards the friends of humanity, but his moral response to one who preferred the interests of a bully nation to those of the whole human family of nations."⁷⁷

In his speech on the *Lusitania*, given in 1916, Royce dealt with the text: "[T]hey rest from their labour and their works do follow them."⁷⁸ *Revelation* 14:13 is commonly interpreted to mean that their works shall follow them into the great balancing, which is part of the final judgment. Royce does not however focus on this reading. Rather, he seems to give a modern, even secularist, tone to the line. Their works follow them because "our memory and our piety will not let go our hold upon what is best and dearest in the past"⁷⁹ Royce sees the works of the dead of the *Lusitania* as surviving them in our memory. In effect the text is read as saying that their works shall succeed them in us.⁸⁰

But if, in this way, the Royce of the *Lusitania* speech is moving away from a traditional reading of Revelation, there seems to be another way in which he retains a sense of the most terrible meanings of that text. "The German Prince is now the declared and proclaimed enemy of mankind."⁸¹ The language evokes the casting of Satan into the lake of fire. It is not clear what can be done to change this. Perhaps the reparations discussed in

75. Germany was at war with England, but not the United States.

76. A modern commentary describes the depravity which "necessitates the great white throne judgment of 20:11-15." "Here," Osborne writes, "is the answer to those who argue for universalism - depravity is an eternal force, and it demands an eternal punishment. The truth is: Hitler and Stalin will hate God more in a billion years than they did the day they died!" GRANT R. OSBORNE, *REVELATION* 39 (Baker Academic 2002).

77. FRANK M. OPPENHEIM, *ROYCE'S MATURE ETHICS* 42 (Univ. of Notre Dame Press 1993) (emphasis in original).

78. ROYCE, *Anniversary of the Sinking of the Lusitania*, in *THE HOPE OF THE GREAT COMMUNITY*, *supra* note 2, at 93.

79. *Id.* at 94.

80. The Jerusalem Bible translates: "Now they can rest forever after their work, since their good deeds go with them." The King James translation ... "and their works do follow them..." seems to be more ambiguous on faith and works in its syntax. This is apparently true generally. See GERALD HAMMOND, *English Translations of the Bible*, in *THE LITERARY GUIDE TO THE BIBLE* 647 (Robert Alter & Frank Kermode eds., 1987). Thanks to Pamela Sheingorn for helpful conversation on this point.

81. See discussion *infra*, at 119.

War and Insurance are a piece of that story, part of the idea of "minding ones manners" referred to in the *Lusitania* speech. But the possibility that the traitor will be unreconciled remains.⁸² A community, Royce had noted in 1913, could be as base and depraved as an individual.⁸³ It was, in this way, like a fallen angel. This is what Germany, which had given Royce so much, had become for him.

Horace Kallen's recollection of an encounter with Josiah Royce shortly before his death in 1916 is striking. Kallen wrote:

On a widened path between Emerson Hall and the Library stood a large black limousine around which I was trying to find my way when I saw Professor Royce, heading apparently for the limousine. His steps seemed hesitant and unnaturally short, all his movements suggested an uncertainty, a reluctance to make them. When I greeted him, his round blue eyes looked staring, and without recognition. It was a moment or two after I had spoken my name that he remembered who I was. And then he said in a voice somehow thinner, and more dissonant than I remembered: "You are on the side of humanity, aren't you?"

At first the query was entirely meaningless to me. Then I recalled what I had heard about Royce's speech on the sinking of the *Lusitania*, and I experienced great shock and hurt that this teacher of mine could ask me such a question at all. Much later, I came to think how ironical it was that a believer with a philosophic creed like Royce's should ask a question which excluded from humanity the one family of mankind upon the all-inclusive systems of whose thinkers and artists the believer himself so amply relied . . .⁸⁴

Kallen's use of the idea of expulsion is notable, evoking as it does the sanction of a community. His rhetoric does this even more strongly. "However sacrificially he lived up to his engagements in his personal and professional relations," Kallen wrote, "suffering them, struggling for their nourishment and upkeep, at the sinking of the *Lusitania* he came to a limit.

82. ROYCE, *Anniversary of the Sinking of the Lusitania*, in THE HOPE OF THE GREAT COMMUNITY, *supra* note 79.

83. ROYCE, THE PROBLEM OF CHRISTIANITY, *supra* note 30, at 123.

84. The episode is included in the Clendenning biography. CLENDENNING, THE LIFE & THOUGHT OF JOSIAH ROYCE, *supra* note 7, at 378-79.

There was an evil which nothing in his experience, certainly nothing in his philosophy, could reconcile him to, an evil *ad extirpandum*.⁸⁵ The language of extirpation, derived from the 13th century papal bull justifying torture of heretics, is Kallen's. But the thought is clearly that of Royce, invoking the sanctions of the religious community against those who are no longer worthy of association. The default community is not the family, for example, the home where, when you go there, they always have to take you in. Rather it seems to be the sectarian church in which expulsion is always a possibility, and the final judgment involves an ultimate expulsion. "When the Church came to develop its doctrines of the future life," Royce wrote, it also came developed "a well known group of opinions describing the endless penalty of sin The apocalypse imaginatively pictures this doom."⁸⁶ And then: "[i]n outlines, this group of opinions [Christian Doctrine] is familiar even to all children who have learned anything of the faith of the fathers."⁸⁷ Royce was himself certainly such a child.⁸⁸

Royce expanded his view on the war in a late speech. He writes: On one view, "the present war is essentially a conflict between nations and between national ideals."⁸⁹ And then: "[t]he essence of this doctrine is, that just as the conflicting powers are nations, so the main moral concern ought to be expressed in hopes that this or that nation will obtain a deserved success."⁹⁰ By contrast, his view is that "the present war is a conflict more conscious, more explicit, and for that very reason more dangerous than any we have ever had before, a conflict between the community of mankind and the particular interests of individual nations."⁹¹ It follows that "no nation engaged in this war is, or can be, right in its cause, except in so far as it is explicitly aiming towards the triumph of the community of mankind."⁹² Royce prefers universalism and his sectarianism is forced on him. He would prefer the community of the whole, of all mankind, but it is

85. Horace M. Kallen, *Remarks on Royce's Philosophy*, 53 J. OF PHILOSOPHY 131, 138 (1956).

86. *Id.* at 100. Royce remembered Apocalypse as the first independent reading he did. The book did not give him clear ideas; he said. *Autobiographical Sketch Hope of the Great Community*, 124. But it might have left clear pictures.

87. *Id.*

88. CLENDENNING, *THE LIFE & THOUGHT OF JOSIAH ROYCE*, *supra* note 7, at 8 and 277 (on the father as a mystically inclined Evangelical Christian). Speaking of these last speeches, Clendenning writes: "[a]t last he was the true son of his father." *Id.*

89. ROYCE, *THE HOPE OF THE GREAT COMMUNITY*, *supra* note 2, at 31.

90. *Id.*

91. *Id.*

92. *Id.*

not here. The wounding of the universal community results for him in a sectarian group.

Kallen discusses the relation between Royce's response to the *Lusitania* and his general philosophy. "It seems to me," Kallen wrote, "that Royce's reaction to the sinking of the *Lusitania* underlines what I believe to have been the role of his philosophy in his personal history. It became a very skillfully elaborated, highly refined tune whistled in life's dark for encouragement, for comfort, for companionship, on a road of existence that might otherwise have been even lonelier and more anxious."⁹³

Among those who died on the *Lusitania* were Royce's own students. They were his dead, Royce said, and his pain is evident in his private and public statements. "The German Prince is now the declared and proclaimed enemy of mankind." Royce insisted:

[D]eclared to be such not by any "lies" of his enemies, or by any "envious" comments of other people, but by his own quite deliberate choice to carry on war by the merciless destruction of innocent, non-combatant passengers. The single deed is indeed only a comparatively petty event when compared with the stupendous crimes which fill this war. But the sinking of the *Lusitania* has the advantage of being a deed which not only cannot be denied, but which has been proudly proclaimed as expressing the appeal that Germany now makes to all humanity. About that appeal I am not neutral. I know that that appeal expresses utter contempt for everything which makes the common life of humanity tolerable or possible.⁹⁴

The German Prince was the enemy of mankind and had to be dealt with in an appropriate manner. That manner, following the forms of the sectarian community, would involve some sort of exclusion, followed possibly -- but only possibly -- by atonement and reinstatement. And it meant that the party of mankind might not, finally, include all of mankind. The contrast to a 1912 discussion of the Crusaders is clear. In *The Sources of Religious Insight*, (1912) Royce defined the invisible church as "the community of all who have sought for salvation through loyalty."⁹⁵ It might include people who were in some respects not conventionally good.

93. Kallen, *supra* note 86, at 139.

94. ROYCE, *THE LETTERS OF JOSIAH ROYCE*, *supra* note 13, at 630.

95. ROYCE, *SOURCES OF RELIGIOUS INSIGHT*, *supra* note 15, at 280.

The Crusaders, he notes, were religious but they were also robbers and murderers. "I know not" he wrote, "what degrees of greedy blindness are consistent with an actual membership in the invisible church . . ."⁹⁶ Royce was interested here in "loyal life according to their lights."⁹⁷ By the time of the *Lusitania* he apparently knew more.

But Kallen is not altogether persuasive when he says, that the *Lusitania* was evil beyond Royce's understanding. Royce had always been concerned with evil. In *The Problem of Job*⁹⁸ he had dealt with evil, and characteristically included examples from the political and the personal spheres. "Witness Armenia," Royce said, referring also to innocent children born with hereditary diseases.⁹⁹ Personal, political, family and international interests are all used as immediate illustrations. Evil, sorrow, and tragedy are pervasive, and one of the tragedies, in effect, is that some people must be excommunicated from the universal brotherhood. In the *Problem of Christianity*, the person who leaves is seen as a traitor who then comes back, makes atonement, and is reconciled. The discussion of atonement is individual. Presumably atonement relates to nations also. But it seems that it is not always possible.

Royce took *War and Insurance* seriously as a workable proposal. Questions remain about the practicality of the idea. First, if all the nations are somehow to end up in the insurance or reinsurance plan, (and, incidentally, what nations are in Kant's federation? Kant insists that he is talking about a scheme built on the continuing existence of nations) how do we determine who is a nation? Does Royce's universalism include those who are not peace loving or freedom loving or Christian? He seems to distinguish only between strong and weak nations. (Other ideas continue to be evident.) One recalls the Christian/Muslim issue in the EU currently. Further, Royce assumes conventional acts of war committed by nation states. This assumption may also be seen to have many difficulties. (Is insurance better on this issue? Is everyone insurable?) "Who started the war" is viewed as a technical question. This may not be altogether true, however. One might compare this discussion:

When I was a child, I saw a movie in which the Soviet Union blew up the Alaska pipeline. The bombing was in response to a U.S. grain embargo that had led to

96. *Id.* at 284.

97. *Id.* at 285.

98. See generally JOSIAH ROYCE, *The Problem of Job*, in STUDIES OF GOOD & EVIL 1, 1-28 (D. Appleton & Co. 1898).

99. *Id.*

widespread starvation in the Soviet Union. The president telephoned the premier to denounce him for the bombing. The premier responded that the president had fired the first shot. Amazed, the president said, "You mean to say that when we decide not to give you our grain, you think that gives you the right to bomb our pipeline?" The premier responded, "It's not your grain. It's the world's grain."¹⁰⁰

Schmidt's account offers two radically different perceptions on this "simple factual question" of who fired the first shot.

Horace Kallen's explanation of the position taken by Royce on the *Lusitania* saw it as an inevitable compromise of the sort that philosophers of a particularly absolutist variety may have to make. The suggestion here is that it shows Royce reverting to the definitions of community with which he was familiar from childhood, in which the community maintains its purity and its boundaries by expelling those who cannot maintain the standards of membership.

Royce was a member of a number of communities. His family of origin, his marital family, extended family, his professional community of Philosophers and the Harvard community at large. He was a Californian, and an American. And then there were other communities, and other phases of community. The communities of interpretation, and the community of mankind, the Universal community. But perhaps we can end by noting that his reaction to the *Lusitania* was personal. Despite his insistence on the meaningless of human life in the absence of community, in the end he spoke not as a representative or as a member but as an individual. Royce concluded a letter on the *Lusitania* with what may have been a formulaic disclaimer. "Of course, I need not tell you that a Harvard professor speaks only for himself, and commits none of his colleagues to anything that chances to be on his mind or on his tongue."¹⁰¹ But formulaic or not, there is something in the relationship expressed between the individual and the community which deserves attention.

Royce's work on community remains of interest. It has been rediscovered by some interested in community. And so there is something poignant in the explicit recognition that he spoke as an individual. And even more in his acknowledgment that this individual who spoke was not fixed certain and determinable. On the contrary, the individual was fluid, contested and uncertain. Your self, Royce said, is "a history, a drama, a

100. DAVID SCHMIDT & ROBERT E. GOODIN, *SOCIAL WELFARE & INDIVIDUAL RESPONSIBILITY* XV (1998).

101. ROYCE, *THE HOPE OF THE GREAT COMMUNITY*, *supra* note 2, at 59.

life quest.”¹⁰² Speaking in 1915, Royce used an anecdote about Schopenhauer walking in the park, approached by an official who asked “Sir, who are you?” And Schopenhauer answered: “I wish you would tell me. That’s exactly what I am trying to find out.”¹⁰³ So, too, Royce, as Clendenning suggests.

But Royce tried in the end to live in the world and to respond to problems in the world, to do something to help bring about the situation he saw as a goal, and simultaneously to create a bridge between his mental life and his active life. *War and Insurance*, a description of one of the possible forms of international activity which would, while business-like in its methods, make “visible to us the holy city of the community of all mankind,”¹⁰⁴ was a significant piece of that process.

102. *Id.*

103. CLENDENNING, *THE LIFE & THOUGHT OF JOSIAH ROYCE*, *supra* note 7, at 392.

104. JOSIAH ROYCE, *WAR AND INSURANCE*, *supra* note 46, at 80.

