

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

**Studien zur vergleichenden Geschichte
des Versicherungsrechts**

Volume / Band 3

A History of Tontines in Germany

**From a multi-purpose financial product
to a single-purpose pension product**

By

Phillip Hellwege



Duncker & Humblot · Berlin

PHILLIP HELLWEGE

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Edited by / Herausgegeben von
Prof. Dr. Phillip Hellwege

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Phillip Hellwege

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A. Introduction

In 1653, Lorenzo Tonti (1602–1684), an Italian who lived in France, proposed to Cardinal Mazarin (1602–1661) a financial product which was later named after him: tontines.

I. A modern definition of tontines

Tonti's proposal can be described as a pooled life annuity scheme and modern literature defines tontines accordingly:¹

A tontine ... is a financial scheme under which a group of people invest in a closed fund. Each contract is based on the life of a person duly named ... At the end of each year, the interest on the principal (the annuities) is paid by the tontine issuer to the investors ... with surviving members sharing the annuities due to deceased members. Thus, surviving members enjoy an increase of their annual income ...

Accordingly, a number of investors (e.g. 100) each pay the same sum (e.g. 100 Euro) to the issuer. The issuer in turn promises to pay interest (e.g. 5% per annum) on the raised capital (10,000 Euro) as annuities in such a way that the total sum of annuities (500 Euro) is each year shared between the surviving annuitants. The heirs of deceased annuitants, thus, have no rights in the tontine. Rather, the rights of deceased annuitants accrue to the surviving annuitants. As long as all annuitants are still alive, each will receive the interest on his or her investment as annuities (5 Euro). The higher the number of annuitants of the pool who have died, the higher the share of each surviving annuitant, until the last surviving annuitant receives the total of all annuities (500 Euro per annum based on an original investment of 100 Euro). With the death of the last annuitant the issuer's obligation to pay annuities terminates, and the issuer is allowed to keep the raised capital. He does not have to repay the capital – neither to the investors nor to the annuitants nor to their heirs. The issuer's only obligation is to pay interest on the raised capital until the last surviving annuitant has died.

However, it has to be stressed right from the outset that this is a modern description of tontines. With a life annuity, the capital is lost to the issuer – in the sense that the issuer does not have to repay the capital – and the obligation to pay annuities terminates once the annuitant dies. Thus, if a tontine is described as a pooled life annuity, it follows that the capital in the tontine is similarly lost to the

¹ *Gallais-Hamonno and Rietsch, Financial Engineering, 50.*

issuer and that the obligation to pay annuities terminates once the last annuitant dies. Yet, as will be observed further below, the term tontine has in the past been used more loosely to denominate a number of different financial schemes. Many of them could indeed be described as pooled life annuity schemes. Others were annuity lotteries or even simple lotteries. Others were saving schemes, and with these the capital was not lost to the issuer, it instead being split between the surviving members after a fixed period of time. Finally, many schemes were some kind of a hybrid form falling between these different financial products.

Thus, a tontine could serve different functions. If it took the form of a pooled life annuity, the investor could utilize it as a pension product: the longer he or she lived, the higher were his or her chances to outlive the other annuitants and the higher were his or her chances to an increase in disbursed annuities. Alternatively the investor could utilize a tontine as a means to provide for dependants: the investor and the annuitant did not have to be the same person.² The investor could make his or her investment for the benefit of a spouse or children so that they would, with good fortune, receive an increasing pension. If the issuer was under no obligation to repay the capital, i.e. if the capital was lost to him, then he could use a tontine as a means to raise capital. By contrast, if a tontine was a saving scheme, the issuer could not use it as a means to raise capital as he had to repay the capital to the investors.

II. The occurrence of tontines in German-speaking territories

Tonti's original plan of 1653 to issue a tontine in France failed.³ It is generally thought that the first tontines were successfully issued in Dutch cities starting with the city of Kampen in 1670 and the cities of Amsterdam and Groningen in 1671, with France to follow in 1689 and England in 1692.⁴ Modern literature mentions that the Danish state unsuccessfully tried to issue a tontine as early as 1653 – the same year in which Tonti proposed his idea to Mazarin.⁵ It is claimed that the Dutch tontines can be attributed to Tonti: he had stayed in Amsterdam

² In detail see the text corresponding to n. 119, below.

³ *Rietsch and Gallais-Hamonno*, Lorenzo Tonti, 19 ff.

⁴ *Krünitz*, Encyclopädie LXXI (1796), 288; *Du Pasquier*, (1910) 46 *Zeitschrift für Schweizerische Statistik* 490, 497; *von Zedtwitz*, 140; *P. Koch*, Tontinengeschäft, 28; *Directie van de Algemeene Maatschappij van Levensverzekering en Lijfrente*, 264–281; *Laspeyres*, 250 f.; *Gelderblom and Jonker*, 90 f.; *Schöpfer*, 130; *Braun*, Geschichte, 64–66. On the developments in the Netherlands, France, and England see *Sirks*, 121 ff.; *Delbrel*, 109 ff.; *Macleod*, 143 ff.; *Gallais-Hamonno* and *Rietsch*, Financial Engineering, 49 ff.

⁵ *Du Pasquier*, (1910) 46 *Zeitschrift für Schweizerische Statistik* 491–493; *Braun*, Geschichte, 152 f., 222. *Falck* (1838), 618 n. 94, suggests that the tontine of 1653 was actually issued. On the developments in Scandinavia see *Sunnqvist*, 153 ff.

prior to the year of 1653.⁶ The Danish plan of 1653 was proposed by Poul Klingenberg (1615–1690). While modern literature claims that Tonti and Klingenberg had met in Amsterdam,⁷ Martin Sunnqvist convincingly argues that they only had indirect contact.⁸

According to modern literature, Germany saw its first tontine in 1698 in Prussia. Tontines reached their apex in the 18th century. Yet even for the 18th century, modern literature refers to only a small number of tontines, in total around ten. In the early 19th century they are said to have been replaced by modern life insurance products. It is argued that by the end of the 19th century the view was predominant that tontines were not an insurance transaction but a form of gambling. Modern German literature contends that life insurance companies were consequently prohibited from issuing tontines.⁹ With the implementation of the Second European Life Insurance Directive of 1990,¹⁰ the German *Versicherungsaufsichtsgesetz* (Insurance Regulation Act) of 1901 was adapted in 1994 and life insurance companies were again allowed to operate tontines.¹¹ Nevertheless, tontines have failed to again gain prominence in Germany.¹² Thus, in Germany tontines are looked upon as a purely historical phenomenon, and they rarely receive coverage in today's insurance law literature.¹³

III. Tontines and the history of life insurance

Thus, it seems as if the immediate practical importance of tontines was limited to the 18th century. Nevertheless, modern German-language literature stresses

⁶ See, however, the discussion of *Sirks* 125 f.; *Hellwege*, *Comparative Analysis*, 385 ff.

⁷ *Braun*, *Geschichte*, 64, 222.

⁸ *Sunnqvist*, 158 ff.

⁹ *P. Koch*, *Tontinengeschäft*, 29.

¹⁰ 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.

¹¹ *P. Koch*, *Tontinengeschäft*, 29; *Zetzsche*, 287; *Heidel*, 67.

¹² *Heiss* and *Mönnich*, in: *Münchener Kommentar zum VVG II*, Vor § 150 para. 17; *Wagner*, 654; *Lux*, 29; *Heidel*, 67.

¹³ See the short accounts in: *Heiss* and *Mönnich*, in: *Münchener Kommentar zum VVG II*, Vor § 150 paras. 4, 17; *P. Koch* and *Weiss*, 836; *von Fürstenwerth* and *Weiß*, 637; *Lux*, 29; *Schneider*, in: *Prölss/Martin*, *Vorbemerkung zu §§ 150–171* para. 13; *Winter*, in: *Bruck/Möller*, *Einf.* para. 112–114; *idem*, *Versicherungsaufsichtsrecht*, 449–451; *Schwintowski*, in: *Honsell*, *Berliner Kommentar*, *Vorbem.* §§ 159–178 para. 14; *Nebel*, in: *Honsell*, *Art. 101* para. 7; *Braumüller*, 62; *Kaulbach*, in: *idem*, § 1 para. 84; *Präve*, in: *Kölschbach*, *Prölss*, § 1 paras. 14–17; *R. Schmidt*, in: *idem*, *Prölss*, § 1 paras. 77–78; *Grote*, in: *Münchener Kommentar zum Versicherungsvertragsgesetz III*, *AufsichtsR* para. 188; *Ortmann* and *Rubin*, in: *Schwintowski* and *Brömmelmeyer*, *Vor § 150* para. 9.