

INFORMES EN DERECHO

## Thoughts on State Action in Ecuador: The Sucre Insurance Co. Case

*Reflexiones sobre la acción del Estado en Ecuador:  
El caso de Seguros Sucre*

Pablo Carrión Carrión 

*Universidad Católica de Santiago de Guayaquil, Ecuador*

Rubén Méndez Reátegui 

*Universidad Autónoma de Chile, Chile*

**ABSTRACT** The role of the State in a country's economy is one of the issues that has been in constant debate for many years, especially for the "Latin American Spectrum". Certainly, it is a thematic axis that implies a constant conflict and apparently "irreconcilable" positions between the "left" or "right" factions. Although it appears that the macro-rules and models of legal-political governance in our countries are established through the constitutional block. However, there have been many instances where, unfortunately, this has not mattered much and has led Latin American countries to the prevalence of mercantilism (cronyism). This has had a significant impact on the development and growth of the population centers of our countries and has served as a space for the consolidation of numerous socio-structural issues such as corruption, also known as the "termite of the state", and the supremacy of private interests over public ones. In this order of ideas, this article shares some thoughts based on the Ecuadorian case, specifically the case of Seguros Sucre Co., through which and under the political criterion of strengthening free competition in the insurance market, it ended up "affecting" the consolidation of the Ecuadorian social state of law and justice as the government sustainable a social objective.

**KEYWORDS** Neoliberalism, constitution, group of interest, governance, rules of the game.

**RESUMEN** El rol del Estado en la economía de un país representa una temática en constante debate, sobre todo para el "espectro latinoamericano". Ciertamente, es un eje temático que supone un constante conflicto y posiciones aparentemente "irrecon-

ciliables” entre las facciones de “izquierda” y de “derecha”. Aunque en apariencia, las macrorreglas y los modelos para la gobernanza jurídico-política en nuestros países se establecen a través del bloque de constitucionalidad. Sin embargo, no han sido pocas las veces donde, lastimosamente, eso importa poco y ha supuesto la prevalencia del mercantilismo (amiguismo) a la latinoamericana. Esto ha tenido un impacto significativo en términos de desarrollo y crecimiento de los núcleos poblacionales de nuestros países y ha servido de espacio para la consolidación de numerosas problemáticas socioestructurales como la corrupción, también conocida como la “termita del Estado”, y la supremacía de los intereses privados sobre los públicos. En ese orden de ideas, este artículo plantea una reflexión a partir del caso ecuatoriano, en específico del caso *Seguros Sucre*, a través del cual —y bajo el criterio (político) aparente de fortalecer una libre competencia en el mercado de seguros— se benefició antijurídicamente a un “grupo de poder”, lo que supuso, finalmente, una afectación al Estado social de derecho y de justicia.

**PALABRAS CLAVE** Neoliberalismo, constitución, grupo de interés, gobernanza, reglas de juego.

## Introduction

One of the issues that has been constantly debated for many years is undoubtedly the role of the State in the economy of a country, with constant conflicts and irreconcilable positions between factions on the left or right, with mutual criticism of the measures adopted by a government depending on which group is in power (Bullard, 2003; Posner, 2013; Méndez and Sumar, 2020; Barcia and Cabrera 2022).

Unfortunately, it does not matter what is written in a constitutional text, which should be respected and executed by all those who govern or inhabit a country, especially considering that the text of the Magna Carta is considered a fundamental law.

The above is verified in the case of Ecuador, where Article 283 of the Constitution of the Republic of Ecuador, promulgated in 2008, also called Montecristi, promoted by progressive leftist thinking, states that

The economic system is social and solidary and is integrated through forms of economic organization, including the popular and shared economy, public and private enterprises, as well as small and medium enterprises and all forms of association that include the social and community economy.

And that little or nothing represents the said constitutional text, because the current government plan of neoliberal cut implements and executes actions contrary to what is established in the constitutional text, in line with an attitude that contemporary political science describes as spaces of manifestation of mercantilism or cronyism (Hodgson, 2019).

In this order of ideas, this article aims to share some thoughts on the Ecuadorian experience, specifically taking as an example the Sucre Insurance Co. case and some of the negative effects that this case has had on Ecuadorian society, generating a scenario of “termites of the state and the rule of law”<sup>1</sup> such as corruption and the prevalence of the private to the detriment of the public (general interest) could manifest themselves.

### **On Better Policies for Faster Recovery**

Since the 18th century, classical economists such as Smith, Ricardo, Say, Quesnay, Malthus and other great thinkers of the time have promoted the hypothetical situation of a free market where buyers and producers interact, exercising their freedom of choice (Stordeur, 2011), to demand or supply goods and services with almost no state intervention as a guarantee of the proper functioning of the market.

Then, as is well known, in capitalist and lower-regulated economies, individuals and firms interact with minimal intervention by the state, which hypothetically seeks to correct market failures based on “free competition” policies (Cooter and Ulen, 1997; Cooter and Gilbert, 2022). Thus, these capitalist and less regulated economies were a space that - apparently - proved to right-wing academics that it was not always necessary to enact government rules to function properly. In fact, this led to a “philosophical way of life” that prevailed until the beginning of the 20th century, when the magic of the “invisible hand” disappeared and caused one of the world’s greatest crises, beginning in the United States of America, known as the Great Depression of the 1930s.

In those years, after the collapse of the Wall Street stock market, the financial system collapsed with negative effects on the world economy, accompanied by high levels of unemployment with a significant loss in the value of the shares of the companies of the time, falls in price levels, reduction in trade and social upheaval due to the increase in poverty levels.

Faced with this reality, part of the heterodox economic doctrine argues that the classical economic theory (Sola, 2006) could not solve the economic and social disaster that affected many of the world’s economies until the appearance of the so-called

---

1. Then, following the World Justice Project, for this article, the definition of the Rule of Law is a system where four universal principles are upheld: 1) The government and its officials and agents as well as individuals and private entities are accountable under the law; 2) The laws are clear, publicized, stable, and just; are applied evenly; and protect fundamental rights, including the security of persons and property; 3) The process by which the laws are enacted, administered, and enforced is accessible, fair, and efficient; and 4) justice is delivered timely by competent, ethical, and independent representatives and neutrals who are of sufficient number, have adequate resources, and reflect the makeup of the communities they serve. See World Justice Project Rule of Law Index, 2015, available at <https://tipg.link/NMCP>.

father of macroeconomics, the British economist John Maynard Keynes, who, contrary to all the classical conceptions of the time, argued that markets do not always remain in equilibrium and adjust automatically by their mere existence and in free competition. Instead, in the face of these imbalances, governments must intervene by implementing and carrying out public policies that increase investment and public spending to promote an increase in the level of aggregate demand and thus achieve the economic recovery of the countries.

As we know, this opened a different and new debate, because the adoption of the above-mentioned measures by many countries led several of them out of the crisis, thus establishing the new role of the State not only as a rector of the economic system, but also as a director intervening in it to avoid failures and distortions in the market. These ideas were accentuated in the economic activities of nations until the so-called Keynesianism theory was built and established, often shared but also criticized by economic, political and social actors in different nations. Then, as extensively explained by Mazzucato (2022) and Noveck (2022) and in a 2.0 version, these “Keynesian inspired actions” showed that countries also need to better identify public issues related to economic and social issues to introduce better policies for a faster recovery in a way that is known and entrepreneurial and innovative state.

## **2.0 Keynesian Ideas for Public Policy?**

The importance of what we call Keynesian 2.0 ideas to save the world economies from the severe economic depression that existed in those years has already been made known. Then, the postulates of the so-called modern macroeconomics and the entrepreneurial and innovative state were also used by various governments to intervene in the economy with the implementation of counter-cyclical measures that allow the revitalization of the economy through expansionist policies of public investment through the construction of infrastructure such as roads, airports, hydroelectric plants, hospitals, schools, cultural theaters, sports fields, municipal police units, buildings for different state actions that require a large number of resources from state budgets that enter the financial flow of the system producing a large amount of financial flow of the system producing through the multiplier effect of money liquidity and profits in each of the transactions that are carried out by each economic actor involved in the same, whether they are companies, contractors, workers, suppliers, public servants, entrepreneurs, micro-entrepreneurs, among others.

However, these types of policies have been implemented not only in terms of investment but also in terms of public spending, implementing programs such as social care and protection, free school meals, vouchers for low-income people, care for women and family members, foster care, eradication of begging, care for the elderly, eradication of child labor, social housing programs and child development centers.

In the same way, these policies are incorporated into the work of government agencies, through the adoption and implementation of measures such as the cancellation of interest or debt in sectors such as agriculture or livestock, when crops have been lost or diseases have occurred. Similarly, the activation of lines of credit at low interest rates to encourage entrepreneurship and the creation of new productive units are not far behind, generating great expectations among the population and government agencies for the results that can be obtained. In addition, there are scholarship programs for young people who meet academic requirements and study in the world's most important universities, as well as economic incentives for outstanding athletes in various sports.

On the other hand, the implementation or maintenance of subsidies is another characteristic of this type of governmental action under the philosophy of a protective state on which the dynamism and impulse of the economy are generated, often leaving aside alliances and impulses with and for the private sector as a strategic ally of the state or for it to become the real engine of the economy in the medium and long term.

### **Public Adjustments to Achieve Economic Stability**

2.0 Keynesian measures have not only made known how the State can exercise its entrepreneurial and innovative role through strategic public investments, but also, at a dogmatic theoretical level, have taught with macroeconomic models how the State can reduce its action in the economic system or model carried out by a nation in such a way as to produce a decrease in its participation in the economic performance of a country.

This relates to measures to reduce non-strategic public investments in the construction of the basic infrastructure of a state, often with the proven justification of reorganizing public finances to reduce the so-called budget deficits. Not only these types of adjustments are established, but often in the social sphere with the denial of development opportunities for low-income people to health care, education, recreation, decent housing and incentives for enterprises necessary to alleviate the poverty situation of these social groups.

In practice, the previous extent of contractionary measures is usually accompanied by the signing of letters of intent with multilateral organizations such as the International Monetary Fund, which include a whole series of legal, fiscal and financial mechanisms aimed at making the necessary corrections to achieve order in public finances, the most important of which are

a) The reduction of public spending through various mechanisms, including the elimination of public service positions to reduce the mass of salaries that the Ecuadorian State must assume each month.

b) Adjustment of public sector salaries to those of the private sector, considering the basic salaries of the latter, since this is not done for managerial positions, but for operational ones.

c) Selling or eliminating assets in the hands of the public sector because they are considered a burden on public finances, a measure that has been used for several years in the history of countries.

d) The gradual reduction or elimination of subsidies on a nation's fuels at the level of different types of gasoline, diesel, and domestic gas, which generally leads to a series of social demands with serious consequences for the national patrimony and for the protesting population, which has even claimed lives.

e) Elimination or transformation of state entities considered by the current governments as inefficient, ineffective and duplicating functions.

f) Optimizing the resources invested in social programs, with a constant purge of beneficiaries.

g) Updating the tariffs for services provided to the country's users, which are usually on the rise.

h) Reforms of legal bodies to achieve independence of central banks, decisions and control in bank boards.

These decisions are permanent actions of the other wing of political thought, that is, the so-called conservative or right wing, when it is in power in a country.

It is important to point out that this set of actions is usually much admired by large national and transnational economic groups that look favorably upon the reduction of the State and its non-interventionism in the market, considering that it allows them to have a larger mass of potential customers to whom they can offer their goods and services, translating into profits the entry of their companies into the market niches left by the State. Thus, for example, in telecommunications, cement, sugar factories, postal and parcel delivery, banking and financial, electric and hydroelectric companies, among others, with thousands of clients that from one day to the next are taken care of by the private sector due to a concept of "free competition".

### **Is the Sucre Insurance Co case a lesson for how to understand free competition?**

A rather sui generis case that has occurred in recent years under the pretext of implementing contractionary policies and promoting free competition in an economy is the case of the former largest insurance company that Ecuador had for fourteen years until 2020, as was Seguros Sucre.

The sui generis letterhead used in this section of the document is done so because it is noteworthy that after the banker Guillermo Lasso Mendoza took office as President of the Republic on May 24, 2021, on June 15 of the same year, that is, after 22

days in office, he issued Executive Decree 82 ordering the members of the Board of Directors of the National Financial Corporation to order and initiate the voluntary liquidation of Seguros Sucre. It should be noted that until that time it was the largest insurance company in Ecuador. Seguros Sucre began its activity in the insurance business in 1944 through its English mentor, Harry Shepard, who put his knowledge at the service of the company with the help of the Royal Insurance Company Limited (hereinafter RICL), a company founded in 1845 in Liverpool with extensive experience in this field.

Between 1976 and 1984, the company was consolidated, capitalized and became an entity with autonomy from the lawyers who represented RICL in the country. Later, in 1985, fifty-one percent of its shares were acquired by the Grupo Financiero del Pacífico (hereinafter GFP).

Due to its growth, in 2005, GFP acquired 99.7% of the shares, becoming practically the absolute shareholder of the company, and later in 2011, it became part of the state-owned Corporación Financiera Nacional (hereinafter CFN), according to Resolution JB-2022-1973 of the Banking Board.

The rapid growth of the state-owned insurance company has had several detractors since 2009, when guidelines were issued for the direct contracting of insurance policies with Seguros Sucre. Obviously, among the critics were representatives of private insurance companies present in the national market, spokespersons of banks, and managers of business groups involved in the insurance industry, who, through the relevant media, generated a series of “news” about the actions of the public insurance company to demand the extinction of the public monopoly in the insurance market.

With this last part in mind, it is important to show how the Ecuadorian insurance market will look in 2020, one year before the liquidation of the state insurance company. For this purpose, we present the data table of the specialized website Rankings Latam in the study “Life and General Insurance Market in Ecuador Overview 2020”,<sup>2</sup> elaborated with the information published by the Superintendencia of Companies, Securities and Insurance of Ecuador, in which Seguros Sucre is observed as the market leader with a 16.9% share; however, it is important to note that the remaining 83.10% of the market is distributed among other companies providing the service.

It is also important to consider the amounts handled and the structure and composition of the net premiums from the same year of study, where the leadership of Seguros Sucre in terms of total net premiums written according to Rankings Latam 2020 can also be observed. The data disclosed, in addition to showing the leadership that the public insurer had until the year 2020, allows realizing that it did not cons-

---

2. Rankings Latam, *Life and General Insurance Market in Ecuador Overview, 2020*. Available at <https://tipg.link/NMCu>.

titute a monopoly in this field, as it was accused by its detractors, since it had only a 17% participation and with the existence of 30 insurers that made up this market at that time.

It is also important to consider the latest rating obtained by Bank Watch Ratings S.A. Risk Rating Agency as of December 2020, where it assigns AA-, where it was noted that:

The company is very solid, has a good track record and does not appear to have any significant financial weaknesses. Its overall risk profile, while low, is not as favorable as that of entities in the highest rating category; its financial strength implies a very high capacity to meet its policyholder and contractual obligations; and the impact of adverse business and economic changes is expected to be low.

The rating obtained was based on the analysis of some variables such as leadership in the industry analyzed above and with a participation that, although high in the market, does not in any way reflect that it has a monopoly in it. The life group, all the oil, fire and allied lines, as well as aviation, marked its positioning.

Similarly, the analysis of the profitability of the company in that year, in which it had to face the payment of 13 million dollars as a result of the COVID-19 pandemic, added to the constitution of the provision accounts for doubtful receivables of about 20 million dollars, and about 6 million dollars as a result of an impairment of investments, generated a negative result of about 8,700,000 dollars, which represents a perfectly manageable figure for an entity with equity of almost 87 million dollars, which in December 2019 generated a profit of almost 9 million dollars for the treasury.

The analysis of the capitalization levels, as well as of the contingencies and the control environment, contributed to the rating perspective as stable, taking into account that there will be no reduction in the liquidity levels, that there will be a continuous follow-up of the legal area regarding the existing litigations, and that the efforts to strengthen the corporate governance will be maintained, so that from the year 2022 the insurance company will generate profitability again. It is also important to point out that in its last rating before the liquidation process, the insurance company was also evaluated based on the following quantitative indicators that contributed to this result: reserve adequacy and catastrophe risk and reinsurance, investment risk and assets, capitalization and leverage, financial performance and earnings, among the most important.

It is also very important to emphasize that in this rating, the rating company has placed a “negative observation” exclusively due to the speculations and uncertainties that have already been generated in the year 2020 regarding the possible new government that would win the elections, considering that there is a second round of elections to be defined in April 2021 between left-wing positions represented by Econ. Andres Arauz and the banker Guillermo Lasso, representative of the right wing



in the country. Likewise, it is worth noting that this rating of the company was the same that it had obtained in previous years, such as 2015 and 2016, which reflects a stable activity in its operation in market performance.

In view of the above, it is technically necessary to point out the incomprehensible fact that, with the stroke of a pen, the liquidation of a state-owned company with assets of 457 million dollars, equity of almost 80 million dollars, a profit of between 6 and 10 million dollars per year and a significant market share of almost 17% was ordered. Under different conditions and assuming that it was a private company, the most logical thing for the owners would have been to sell it at a reasonable price, which did not happen in this case. It is also noteworthy that Executive Decree No. 82, by which the President of the Republic ordered the members of the CFN Board of Directors to voluntarily liquidate the state-owned insurance company, lacks the minimum or no motivation required for the present case, and the decision taken was based on criteria of institutional optimization and the definition of priorities to ensure efficiency and economy, leaving aside a whole series of technical criteria that existed until now.

### **Final Thoughts**

The shared thoughts are relevant for further research and open debate. Then, these thoughts also refer to the following question: Was the decision to liquidate Seguros Sucre Co. related to a political criterion of strengthening free competition in the insurance market, or to other types of interests? The answer to this question will undoubtedly be clarified in the short and medium term, also in criminal law, since a new government has been elected for Ecuadorians.

Furthermore, was the generation of profits for the general budget sufficient to justify the forced liquidation of a state-owned company in the market? The discussion will arise if we consider that sometimes it is more important to strengthen the capacity and regulatory power of the state. Therefore, in a scenario such as that of Sucre Insurance Co., was the government's decision to "guarantee free competition" the right one?

Certainly, these questions will also be part of a new in-depth analysis of how the client portfolio of the former state insurance company was distributed among the different private insurance companies that exist in the country and the generation of benefits for the Treasury.

Finally, from a social and juridical point of view, this article aimed to open a new debate for the academia related to what the Ecuadorian government should or had to do in a situation such as the Sucre Insurance Co. case, where different legal principles and thoughts crushed between them and potentially affected the social fabric.


## References


- BARCIA, Rodrigo and María Cabrera (2022). *Derecho y economía: Debates Contemporáneos*. Valencia: Tirant Lo Blanch.
- BULLARD, Alfredo (2003). *Derecho y economía. El análisis económico de las instituciones legales*. Lima: Palestra Editores.
- COOTER, Robert and Thomas Ulen (1997). *Derecho y economía*. México: Fondo de Cultura Económica.
- COOTER, Robert and Michael Gilbert (2022). *Public Law and Economics*. Oxford: Oxford University Press.
- HODGSON, Geoffrey (2019). “Capitalism, Cronyism, and Democracy”. *The Independent Review*, 23 (3): 345-355. Available at <http://www.jstor.org/stable/45129594>.
- MAZZUCATO, Mariana (2022). *El Estado emprendedor: La oposición público-privado y sus mitos*. Alcalá de Henares: Editorial Taurus.
- MÉNDEZ, Rubén and Óscar Sumar (2020). “Government by the Law’ versus the Rule of Law”. *Revista de Derecho Político*, 109: 373-400. DOI 10.5944/rdp.109.2020.29065.
- NOVECK, Beth Simone (2022). *Cómo resolver problemas públicos. Una guía práctica para arreglar al gobierno y cambiar al mundo*. Barcelona: Galaxia Gutenberg.
- POSNER, Richard (2013). *Análisis económico del derecho*. México: Fondo de Cultura Económica.
- SOLA, Juan (2006). “Metodología de la economía positiva, los límites de la predicción”. *Libertas*, 13 (45). Available at <https://encr.pw/7DBr4>.
- STORDEUR, Eduardo (2011). *Análisis económico del derecho. Una introducción*. Buenos Aires: Abeledo Perrot.

## Acknowledgements

This article is related to the project “Reforma y modernización del Estado 2022-2026”, which responds to the research line “Reforma y modernización del Estado” of the Claustro Doctoral en Derecho of the Universidad Autónoma de Chile. This international project is jointly organized with the Institute for Economic Analysis of Law (IAED) of the University of Palermo (Argentina). It is part of the active projects of the Research Group “Convergence between Law Economics, Theory of Economic Regulation, Theory of Social Regulation and Administrative Regulation” (Grupo Convergencia) of the Universidad Autónoma de Chile (Resolución de Vicerrectoría de Investigación y Doctorados 204/2023) and other highly recognized universities such as the Universidad Católica de Santiago de Guayaquil (UCSG).

## About the authors

PABLO CARRIÓN CARRIÓN is Professor of Law at the Universidad Católica de Santiago de Guayaquil. Economist and Lawyer from the Universidad Técnica Particular de Loja, Ecuador. Master in Economic Criminal Law from the UNIR of Spain. Administrative Academic Director of the Master in Administrative Law at the Technical University of Ambato. Teacher-Trainer at the Institute of Higher National Studies. His e-mail is [pablo.carrion01@cu.ucsg.edu.ec](mailto:pablo.carrion01@cu.ucsg.edu.ec).  <https://orcid.org/0000-0002-4208-1764>.

RUBÉN MENDEZ REATEGUI is a Full Professor of Law and Senior Researcher at the Instituto de Investigación en Derecho (IDD) and Director of CONVERGENCIA Research Group, Universidad Autónoma de Chile. He holds a Bachelor's Degree in Law and Political Science and Law from the Universidad Nacional Mayor de San Marcos, Perú. He also holds a Master's Degree in Applied Economics from the Universidad Nacional de Educación a Distancia (UNED), Spain; a Master's Degree in Institutional Framework and Economic Growth; a Master's Degree in Economics and Social Sciences from the Universidad Rey Juan Carlos, Spain; and a Master's Degree in Economic Analysis of Law and Public Policy from the Universidad de Salamanca, Spain. He received his Ph.D. in Law - JSD (Sobresaliente Cum Laude) from Universidad de Salamanca. He earned a Ph.D. in Economics from Macquarie University, Australia, and the Universidad Complutense de Madrid, and a Ph.D. in Law and Social Sciences (Sobresaliente Cum Laude) from the Universidad Rey Juan Carlos, Spain. He is a Post-doctor in Latin America in the Global Legal Order from the Colegio de América Sede Latinoamericana - Universidad Andina Simón Bolívar, Sede Ecuador. His email is [ruben.mendez@uautonoma.cl](mailto:ruben.mendez@uautonoma.cl).  <https://orcid.org/0000-0001-8702-5021>.

La *Revista de Derecho Económico* es un esfuerzo editorial de profesores del Departamento de Derecho Económico de la Universidad de Chile y de juristas externos que presentan ideas y reflexiones surgidas de sus investigaciones. La revista publica artículos sobre aspectos jurídicos relacionados con microeconomía, macroeconomía, políticas económicas, orden público económico, libre competencia, regulación de servicios públicos, derecho del consumidor, derecho bancario, derecho del mercado de valores, derecho tributario, contabilidad, comercio y finanzas internacionales, derecho del medioambiente y recursos naturales, derecho minero, derecho de aguas, derecho de la energía, derecho internacional económico, análisis económico del derecho y otras temáticas afines.

### EDITOR GENERAL

Jaime Gallegos Zúñiga

### COMITÉ EDITORIAL

José Manuel Almudí Cid, Universidad Complutense, España  
Luciane Klein Vieira, Universidade do Vale do Rio dos Sinos, Brasil  
Rodrigo Polanco Lazo, Universidad de Berna, Suiza

### COLABORADORES

José Ignacio Muñoz Pereira, Javiera Astudillo López, Andrés Urzúa Farías, Maximiliano Aguirre Contreras, Ignacio Badal Acuña, Andrea Barros Ovalle, David Becker Maldonado, Martín Castro Arduengo, Fernanda Reyes Hinrichsen y Sofía Toro Molina

### SITIO WEB

[revistaderechoeconomico.uchile.cl](http://revistaderechoeconomico.uchile.cl)

### CORREO ELECTRÓNICO

[jgallegos@derecho.uchile.cl](mailto:jgallegos@derecho.uchile.cl)

### LICENCIA DE ESTE ARTÍCULO

Creative Commons Atribución Compartir Igual 4.0 Internacional



La edición de textos, el diseño editorial  
y la conversión a formatos electrónicos de este artículo  
estuvieron a cargo de Tipografía  
([www.tipografica.io](http://www.tipografica.io)).