THE STATUS OF SOCIAL INSURANCE IN THE PHILIPPINES

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INTRODUCTORY NOTE

Everyone who works for his living, whether in industry, commerce, or agriculture, faces the risk that his earnings will be cut off at a time when there is still urgent need for them. An individual may have grown too old to work; he may have been disabled by reason of injuries or sickness; he may have died without making adequate provision for the support of his family. One who works for wages or salary is confronted by the additional risk of involuntary unemployment.[1]

When earnings stop, some substitute is necessary, because individual savings alone are frequently not sufficient to fill the gap. Relatively few persons earn enough during their entire working lifetime to permit the accumulation of savings adequate for the years which follow retirement. If earnings are cut off prematurely and unexpectedly, particularly during the period when a worker is young and his family responsibilities are greatest, there may have been neither time nor opportunity to accumulate any savings. The usual recourse for families faced with necessities of finding income to substitute for the breadwinner's earnings is for the mother to leave her family or for the children to leave school and accept gainful employment, or for the family to turn to relatives, to friends or to charitable institutions.

It is the function of social insurance to cushion the blow caused by any such interruption, reduction or termination of earning power. The term signifies "insurance[2] participated in by the organized community against the various contingencies that cut off the worker's earning power and threaten him with economic disaster." [3] These contingencies are sickness (including maternity), accident, unemployment, invalidity, superannuation and premature death.

Social insurance is to be distinguished from *social security*,[4]

* LL.B., 1957.

1 The major hazards that beset a workingman are generally classified into: old age, unemployment, disability and death. Cf. PETERSON, F., SURVEY OF LABOR ECONOMICS 663 (1947 ed.).

2 "The modern social security concept is that it is feasible and proper to pool risks and average costs so that the burden of meeting common hazards shall be shared widely instead of falling exclusively on particular victims determined, largely, by the laws of chance." Morse, C., *Issues in Social Security*, 59 HARV. L. REV. 1338, 1340 (1946).

3 ARMSTRONG, B. N., INSURING THE ESSENTIALS 3 (1932).

4 The former term was coined by Premier Lloyd George of England, while the latter originated from the U.S. Social Security Act of 1935. Very little importance, however, if any, is attached to this distinction. The first term is frequently interchanged with the latter.

the latter being a broader term in that it embraces both social insurance and non-insurance social measures, such as public medical health, children's allowance and non-contributory pensions. It should likewise be differentiated from *commercial insurance,* which is primarily a profit-making scheme.[5]

This paper will deal with social insurance and its position as well as the extent of its operation in our present social structure. To fully understand its degree of development, the comparative approach has been chosen, and social insurance schemes of other countries are therefore treated whenever necessary. The major fields or risks of social insuranc have been divided into: *occupational hazards; non-occupational hazards; old age;* and *unemployment.*[5a]

I. GENESIS AND EVOLUTION

Social legislation has only gradually become recognized in the modern state as a proper and primary governmental function.

Three fundamental purposes of society which have followed one another chronologically as the paramount social ideals in given epochs are the ideals of *order, freedom, and security.*[6]

Plato set the pattern for thinking about order for centuries to come when he provided the striking analogy between the living organism and the body politic. As order is the outcome of the proper functioning of the parts of the body and mind, so in society, order comes about when each segment of society is doing what it ought to be doing.

But the human spirit will not long abide an order which is achieved through a denial of intrinsic human values.[7] The irresistible human clamor for freedom led, in the political realm, to the rise of modern liberal democracy; in the economic sphere, it led to *laissez faire* capitalism;[8] in religion, it produced the Protestant Reformation.

It was not long, however, before the order resting on freedom came under severe criticism. Obvious differences in mental and physical as well as financial endowments began to be reflected in the social organization under the industrial revolution. The brilliant, strong and rich unavoidably amassed not only wealth but political power.

Freedom as an ideal gradually gave way to the yearning for security. Security was translated to mean the maximum satisfaction

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[5] For more detailed differentiation, see GAGLIARDO, D., AMERICAN SOCIAL INSURANCE 8 *et seq.* (1949).

[5a] Notwithstanding the suppression of the original provisions of the Social Security Act of 1954 (Rep. Act No. 1161) on unemployment, the subject will, nevertheless, be treated in this paper for reasons which will appear in the latter part of the work.

[6] For extensive discussion, see STUMP, S. E., A DEMOCRATIC MANIFESTO (1954).

[7] Under this ideal, men were made subject to the absolute authority of rulers to achieve stability and peace.

[8] The prevailing belief was that each individual controls his destiny and that the desire for material well-being is the major incentive to industry and thrift.

of human wants. Under the ideal of freedom, the government had been an umpire; under the ideal of security, the government became an active participant in the economic realm under which human wants were to be maximized.

The movement for social security had its initial impetus in 1883 when Chancellor Bismarck inaugurated in Germany a social insurance program, ironically, for the purpose of staving off a growing trend toward socialism.[9] From Germany, the movement spread throughout continental Europe.[10]

It is in England, however, where social insurance has reached its most advanced stage of development. Following the Beveridge Report of 1942,[11] the National Insurance Act of 1946 has coordinated and extended the many different branches of social insurance into one comprehensive system. It covers benefits for sickness, unemployment, maternity and widowhood; retirement pensions; guardians' allowances; death grants. It covers everybody, employed persons as well as self-employers, housewives and other non-employed persons. It is supplemented by the National Insurance (Industrial Injuries) Act, 1946, which replaces the former system of workmen's compensation by a corresponding system of insurance against industrial accidents arising in the course of employment. There is also the National Health Service Act, 1946, which provides free medical and dental treatment for everybody. Between them, these laws embrace a comprehensive system of minimum grants, insuring everybody, regardless of personal and financial status, against the major vicissitudes of modern life, and providing a bare minimum of subsistence.[12]

In the United States, the development was slow and gradual. Compensation laws were at first opposed as unnecessary interference with the freedom of employer and employee. Old age pensions, it was believed, discouraged thrift and promoted indolence. The American characteristic of rugged individualism was mainly responsible for these objections.[13]

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[9] PETERSON, *op. cit. supra* note 1, at 32.

[10] Austria (1887); Norway (1894); Finland (1895); Denmark, France, Italy (1898); Spain (1900); Netherlands, Sweden (1901); Luxemburg (1902); Belgium, Russia (1903); Hungary (1907).

[11] Sir William Beveridge, *Special Insurance and Allied Services*, 1942.

[12] Friedmann, W. G., *Social Insurance and the Principles of Tort Liability*, 63 HARV. L. REV. 241 (1949).

[13] The traditional American attitude is illustrated by Pres. Cleveland's message in 1887 vetoing a bill providing for a distribution of seeds in the draught-stricken counties of TEXAS: "I can find no warrant for such an appropriation in the Constitution, and I do not believe that the power and duty of the Government ought to be extended to the relief of individual suffering which is in no manner properly related to the public service or benefit. A prevalent tendency to disregard the limited mission of this power and duty should, I think, be steadfastly resisted, to the end that the lesson should be constantly enforced that though the people support the government, the government should not support the people... Federal aid in such cases encourages the expectation of paternal care on the part of the government and weakens the sturdiness of our national character, while it prevents the indulgence among our people of that kindly sentiment and conduct which strengthens the bonds of a common brotherhood." RIESENFELD, S.A., MODERN SOCIAL LEGISLATION 3-4 (1950).

But the catastrophic world-wide depression of the early 1930's brought new insights into an old problem. Mr. Justice Cardozo so aptly stated:

> "Needs that were narrow or parochial a century ago may be interwoven in our way with the well-being of our nation. What is critical or urgent changes with the times. The purge of nation-wide calamity has taught us many lessons. Not the least is the solidarity of interests that may have seemed to be divided." [14]

Amidst the economic turbulence of the New Deal Era, the Social Security Act of 1935 came into being. It staggered during its first years from the barrage of relentless criticsm. The Act, its attackers stated, stifled initiative, incentive and thrift, increased bureaucracy, made people dependent on the government, and levied a cost on the producers of goods for the benefit of non-producers and thus retarded production.[15]

Actually, the first social insurance legislation in the Philippines was enacted on December 10, 1927, and took effect six months later on June 10, 1928. This was Act No. 3428,[16] more popularly known as the Workmen's Compensation Act. With the adoption of the Philippine Constitution and its vigorous labor policy,[17] and hand in hand with the emphasis on social justice[18] that marked President Quezon's administration, the Philippines could have then embarked on a more extensive social insurance program. Despite President Quezon's recognition[19] that social insurance was one of the "many and varied questions" involved in his social justice policy, practically nothing was accomplished along this line during the Commonwealth period. The course of the legislative stream was channelled along other fields of labor. Nonetheless, for government employees, the year 1937 was salutary. It saw the establishment of the Government Service In-

[14] Quoted in PETERSON, *op. cit. supra* note 1, at 666.

[15] For detailed discussion, see RIESENFELD, *op. cit. supra* note 13; PETERSON, *supra* note 1.

[16] As amended by Act No. 3812, Com. Act No. 210, Rep. Act No. 772, and Rep. Act No. 889.

[17] PHIL. CONST., Art. XIV, Sec. 6: "The state shall afford protection to labor, especially to working women and minors, and shall regulate the relations between landowner and tenant, and between labor and capital in industry and in agriculture. The state may provide for compulsory arbitration." Art. II, Sec. 5: "The promotion of social justice to insure the well-being and economic security of all the people should be the concern of the state."

[18] In his annual message to the National Assembly in 1938, Pres. Quezon stated: "We are earnestly concerned with social justice. Without a strict application of social justice to all elements of the community, general satisfaction of the people with their government is impossible to achieve. Here, in the just and equitable solution of social problems, is the real test of the efficiency of democracy to meet present-day conditions of society. Social justice involves many and varied questions, such as taxation, wages, land ownership, insurance against accidents, old age, etc. Almost alone, the masses have built the Commonwealth by their sacrifices... Now, we are fully prepared to act, and we must act at once if our people are to continue placing their confidence for the remedy of the social evils which embitter their life entirely in our hands." KURIHARA, LABOR IN THE PHILIPPINE ECONOMY 24, (1st ed.).

[19] *Ibid.*

surance System[20] which many considers as the equivalent of a charter of social security for thousands of public employees all over the Philippines.

World War II and the post war period brought about widespread demand for and advocacy of a universal and integrated social security program. The celebrated Beveridge Plan[21] in Great Britain and its various American counterparts[22] are expressions and crystallizations of a social service state or of a "welfare state"[23] as it has more recently been labeled, has indeed become one of the most pressing current issues.[24]

It was not until 1954, however, that the Philippines saw the necessity of establishing a system of social security, which, although not as comprehensive as those of Germany and England, could nevertheless serve as the nucleus for the development of a more integrated scheme of social insurance.[25] In the face of the warnings then given that the Philippines is not yet ready for a major social insurance program[26] and that in the present stage of Philippine economic develop-

[20] Com. Act No. 186, as amended by Rep. Act No. 660, Rep. Act No. 728 and Rep. Act No. 1573. In view of the importance of the subject, it will be discussed more extensively under a separate heading.

[21] *Supra* note 11.

[22] See Wagner-Murray-Dingell Bill, S. 1161, H.R. 2861, 78th Cong. 1st Session; for others, cf. RIESENFELD, *supra* note 113.

[23] Douglas, *The Human Welfare State*, 95 U. OF PA. L. REV. 597 (1949).

[24] RIESENFELD, *supra* note 13, at 4. Art. 22 of the Universal Declaration of Human Rights provides: "Every one as a member of society, has a right to social security and is entitled to the realization, through national effort and international cooperation and in accordance with the organization and resources of each state, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality." Art. 25: "(1) Every one has the right to a standard of living adequate for the well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control."

[25] It is to be noted that the Social Security Act of 1935 in the United States was originally narrowly applied to certain circumscribed hazards of certain classes of the population. Its coverage became more comprehensive only after the introduction of amendments in 1939 and in recent years, Cf. PETERSON, *supra* note 1, at 663 et seq. The social security system in the Philippines, as originally conceived, was to be established along the lines suggested by Dr. Maurice Stack, chief of the social security division, International Labor Organization, who was sent here by the ILO upon request of the department of labor to study and make recommendations with regard to a social security program. Dr. Stack believed that the Philippines was not yet ready for a major social insurance program. He recommended that the program should be restricted only to certain areas of the country. He suggested Manila as the "pilot area". Cf. Morabe, *"Social Security for Filipinos,"* The Sunday Times Magazine, Sept. 19, 1954. (As it now stands, our social security program envisages a more widespread area. See *infra*.)

[26] Among the reasons given was that there is a pronounced lack of statistical and other data, like trends in levels of employment, extent of unemployment, living costs, individual and family income, sickness, disability and death incidence, etc., which are essential for the establishment of a sound social security system. See explanatory note accompanying H. Bill No. 6047 (S. No. 625), now Rep. Act No. 1792 (June 21, 1957).

ment, such a program would place an undue burden on employers and workers alike, Congress enacted the Social Security Act of 1954.[27]

The vehement opposition of a large segment of public opinion, however, could not just be totally ignored. So much so that for a period of three years, the law in question lay dormant, while a violent controversy on its wisdom and efficacy made implementation difficult. In the meantime, Congress was taking a second look at its brain-child: new studies were initiated more seriously pursued this time; proposals from both labor and management kept pouring in. Then on June 21, 1957, an amendatory statute, Rep. Act No. 1792,[28] was enacted. There were actually few notable changes,[29] the main features of the Act of 1954 being retained. September 1st of the current year marked the start of operation of the Social Security System in this country.

II. OCCUPATIONAL HAZARDS

The Problem

Work has always been dangerous. Eolithic cave men and Paraoh's slaves, the road builders of imperial Rome, Queen Elizabeth's intrepid sailors — all paid with their life and limb for their day's sustenance and the wealth they created. But the mechanization of industry and its more recent 'chemicalization'[30] have increased the hazards of labor beyond all previous experience. Modern technology makes use of stupendous forces — steam, electricity, chemical agents, and the most powerful of all forces thus far discovered, ionizing radiation, that multiply human power and effectiveness a thousandfold when under control but are equally destructive when out of control. Even when controlled, they may cause serious injury through gradual and undramatic erosion of vitality or body damage.[31]

The following table will best illustrate the acuteness of the problem of industrial accidents in the Philippines. The figures represent only the accident cases registered with the Workmen's Compensation Commission; we have no exact idea as to the total number of accidents that have not been brought to its attention.

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[27] Rep. Act No. 1161 (June 18, 1954).

[28] See note 26.

[29] Unemployment was suppressed as one of the risks covered. The applicability of the Act was expanded to cover not only establishments with 200 or more employees, but also those employing 50, and thereafter following one year operation, 6 or more persons.

[30] Term borrowed from SOMERS, H. M., & SOMERS, A. R., WORKMEN'S COMPENCOMPENSATION 7 (1st ed. 1954).

[31] "The human organism is imperfectly adapted to its new mechanical-radiological environment. The titanic agencies of modern production are turned to account through a vast agglomeration of machinery which the individual workman can neither comprehend nor control, but to the movements of which his own must closely conform in rate, range and direction." Id, at 7. See also DOWNEY, E. H., WORKMEN'S COMPENSATION 6-8 (1st ed. 1924).

Table of Industrial Accidents [32]

YEAR	TOTAL ACCIDENT CASES	DEGREE OF INJURY	
		FATAL	NON-FATAL
1945	122	59	63
1946	883	243	640
1947	1,950	277	1,673
1948	2,986	340	2,646
1949	3,536	367	3,169
1950	3,406	325	3,081
1951	3,761	321	3,440
1952	4,160	317	3,843
1953	5,902	387	5,515
1954	6,914	479	6,435
1955	6,648	442	6,206

Emergence of Workmen's Compensation

Since the very beginning of the industrial revolution, one of the principal problems that have always plagued the minds of conscientious legislators is: how should the economic losses sustained by workers through occupational injuries or death be distributed? Out of the series of adjustments brought out to meet this social need evolved workmen's compensation.

At the start, social legislation was aimed only at the elimination of conditions which were directly injurious to health and safety.[33] But repressive legislations of this type could not prevent the mounting tide of industrial accidents and did not protect the victims against the dire economic consequences of their mishap.[34]

The German Empire was the first nation to approach the problem in a new way. The principle of workmen's compensation was first adopted on Prussian railroads in 1838. In 1884, a general compensation bill was introduced into the Reichstag, strongly supported by Bismarck, largely, it was believed, in the hope that it would undermine the growing strength of the socialists in Germany.[35] The German plan required employees to pay part of the costs and called for highly centralized administration. Its coverage was broad, compulsory, and it provided for non-profit mutual employers' insurance funds.[36] Within the next twenty-five years every European nation had enacted similar legislation.

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[32] These figures are taken from I QUARTERLY LABOR STATISTICS 13 (1956).

[33] An outstanding example is the English Factory Act of 1844, prescribing certain safety devices for dangerous machinery.

[34] RIESENFELD, *supra* note 13, at 128.

[35] Kaiser William I's promulgating proclamation runs: "The cure of social ills must be sought not exclusively in the repression of Social Democratic excesses, but simultaneously in the positive advancement of the welfare of the working classes." S. B. Fay, "Bismarck's Welfare State," 18 CURRENT HISTORY 1-7 (1950). Similar quotation appears also in TYLER, P., SOCIAL WELFARE IN THE UNITED STATES 86 (1955)

[36] SOMERS, *supra* note 30, at 30.

The British law, first enacted in 1897 and broadened through amendments in 1900 and 1906, embodied a different approach from the German and continental laws. The British plan was elective; administration was left to the courts; insurance was carried through private firms.[37] In 1946, a radical change in the English development took a new turn by the enactment of the National Insurance (Industrial Injuries) Act, which was passed to fit the protection against interruption of earnings caused by industrial accidents and diseases into the general system of social insurance blue-printed by the first Beveridge Report.[38]

In the United States, progress in workmen's compensation legislation was at first one of marked reluctance and vacillation.[39] The first major impetus to American legislative action came in 1908 when, under President Theodore Roosevelt's leadership, Congress enacted the first effective American compensation law, covering civil employees of the Federal government. Although limited in application and crude in construction, this act gave Federal leadership and prestige to the movement and stimulated more active interest in many states. The ice having been broken, the next year Montana passed the first state compulsory compensation act, applicable to workers of coal mining companies.[40] This precipitated a string of state legislations. In 1948, Mississippi closed the last gap in the web of state compensation legislation.

The Philippine law on workmen's compensation is embodied in Act No. 3428 which became law on December 10, 1927.[41] Prior to its passage, the worker's right to obtain indemnity for industrial injury and wage loss was based on the Employer's Liability Act[42] which had been passed on June 19, 1908. Under this Act, the worker's right

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[37] *Ibid.*

[38] RIESENFELD, *supra* note 13, at 128.

[39] The American Federation of Labor originally opposed workmen's compensation on the theory that more could be gained for workers by strengthening employers' liability laws. It reversed its position in 1909. See SOMERS, *supra* note 30, at 31. There were also some who doubted the constitutionality of compensation acts. Cf. Freund, *Constitutional Aspects of Employer's Liability Legislation*, 19 THE GREEN BAG 80 (1907).

[40] This was, however, declared unconstitutional in Cunningham v. Northwestern Improvement Co., 119 Pac. 554 (1911).

[41] This has been amended by Act No. 3812 (Dec. 8, 1930); Com. Act No. 210 (Nov. 20, 1936); Rep. Act No. 772 (June 20, 1952); and Rep. Act No. 889 (June 19, 1953). Our compensation law can stand comparison with those of other Asian countries. Cf. Burmese Workmen's Compensation Act of 1923 in THOMPSON, V., LABOR PROBLEMS IN SOUTH EAST ASIA 39 (1947); Indochina's Workmen's Compensation Law of 1934, id. at 197; Malaya's Workmen's Compensation Law of 1932 and Indonesia's Workmen's Compensation Act of 1939, Ibid.

[42] Act No. 1874. The law is still in effect with respect to small industries having a capital of less than ₱10,000 and is not hazardous or deleterious to employees. See Sec. 42, Workmen's Compensation Act.

to recovery depended on his proving the negligence of his employer.[43] It was soon apparent that its provisions were utterly inadequate to accord the workman and his family sufficient protection against losses resulting from work injuries. For one thing, administration of the law was entrusted to the courts. It is obvious that the economic odds are against a workman when it comes to shouldering the burden of a protracted and costly litigation. Moreover, the amount of recovery[44] to which an employee was entitled was greatly disproportionate to the cost of the suit he had first to bring before he could be allowed any award. Its inadequacy becomes apparent when we consider the following facts and figures: during the period 1909-1928, when the act was in full operation, prior to the effectivity of the Workmen's Compensation law, the meager total of ₱216,632 was awarded as indemnity in 3,926 cases.[45] This would give an average of ₱55.18 per case. It must be noted that a "case" for statistical purposes may have not only one but several victims. Moreover, a large percentage of the amount most probably went to the pockets of the attorneys of the claimants.

It was to remedy these glaring defects that the Workmen's Compensation Act came into being. It is the oldest social insurance law in the country, and for a time it existed as the only legislation of this type, which was general in coverage, [46] before our social insurance structure took a new turn by the enactment of the more comprehensive Social Security Act of 1954, as amended.

The compensation statute involved an entirely new economic and legal principle — liability without fault. It abandoned the moral and legal concept of individual fault as a basis for public policy. The cost of industrial accidents was to be socially allocated to the employer, not because of any presumption that he was responsible for every accident which affected the employees, but because industrial accidents were recognized as one of the inevitable hazards of modern industry. The costs were, therefore, a legitimate cost of production.

Theories of Workmen's Compensation

The basic principle of liability without regard to the fault of either party was elaborated and justified in a series of economic and

[43] The theory of tortious negligence on which employer's liability was based have been condemned by many writers as "antiquated by-products of the pre-industrial revolution era." Cf. SOMERS, *supra* note 30, at 22. "Accidents were not necessarily due to anyone's guilt but to the nature of modern industry characterized by complexity, mechanization, speed, and the use of toxic materials." *Ibid.* "Work injuries, in the main, are attributable to inherent hazards of industry... So much is this the case that each industrial employment comes to have a predictable total hazard.." DOWNEY, *supra* note 31, at 8-9.

[44] The maximum amount of damages for any injury except death is ₱2,000; in case of death, the total amount recoverable is a maximum of ₱2,500. See Sec. 3, Employer's Liability Act.

[45] MACARAIG, S. E., INTRODUCTION TO SOCIOLOGY 291 (1st ed. 1948).

[46] During the Commonwealth period, the National Assembly enacted Com. Act No. 186, establishing the Government Service Insurance System, but this was limited in coverage to public employees.

[47] See DOWNEY, *supra* note 31; SOMERS, *supra* note 30.

legal theories. The earliest and most prominent was the theory of "occupational risk" [48] which asserted that each industry should bear the costs of its own occupational risks, which costs should be included in the product price.[49] A later, and what Somers[50] considers a far more persuasive formulation, called the principle of "least social costs," maintained that justification for workmen's compensation was that it reduced to a minimum the economic loss resulting from industrial accidents.[51]

The two best known legal theories, as formulated by various court decisions, are those of "social compromise" and "status". The first holds that workmen's compensation represents a balanced set of sacrifices by and for the worker and the employer which could be legally enforced in the public interest.[52] The status theory is aptly stated in a decision of the United States Supreme Court:[52]

> "Workmen's compensation legislation rests upon the idea of status, not upon that of implied contract; that is, upon the conception that the injured workman is entitled to compensation for an injury sustained in the service of an industry to whose operations he contributes his work as the owner contributes his capital — the one for the sake of wages and the other for the sake of profits. The liability is based, not upon any act of omission by the employer, but upon the existence of the relationship

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[48] Discussed in SOMERS, *supra* note 30, at 28 et seq.

[49] This is best expressed in a colorful slogan ascribed to Lloyd George: "The cost of the product should bear the blood of the workingman." This idea of "trade risk" stemmed from the French doctrine of "risk professionaire" embodied in a bill introduced by Felix Faure in 1882 in the French Chamber of Deputies. See Sherman, *The Jurisprudence of the Workmen's Compensation Laws*, 63 U. PA. L. REV. 823, 385 (1915).

The doctrine was adopted by such famous sponsors of compensation legislation as Joseph Chamberlain and Theodore Roosevelt, and wholeheartedly indorsed by courts and text-writers. Cf. RIESENFELD, *supra* note 13, at 138. See also Walton, *Workmen's Compensation and the Theory of Professional Risk*, 11 COL. L. REV. 36 (1911); Laski, *The Basis of Vicarious Liability*, 26 YALE L.J. 105, 127 (1916); Honnold, *Theory of Workmen's Compensation*, 3 CORNELL L.Q. 264 (1918); DOWNEY, *supra* note 31.

"Under (the) Act injuries to workmen and employees are to be considered no longer as results of fault or negligence, but as the products of the industry in which the employee is concerned... The law substitutes for liability for negligence an entirely new conception; that is, that if the injury arises out of and the course of employment, under the doctrine of man's humanity to man, the cost of compensation must be one of the elements to be liquidated and balanced in the course of consumption. In other words, the theory of the law is that, if the industry produces an injury, the cost of that injury shall be included in the cost of the product of the industry." Murillo v. Mendoza, 66 Phil. 689, 699 (1938).

Labor economists have raised severe criticism against the doctrine because "on the one hand, it ignores the fact that compensation laws only equitably divide the social costs of work injuries between labor and industry, and on the other hand, it indulges into the overgeneralization that industry spreads all its share of the costs to the consumer." RIESENFELD, *supra* note 13, at 138. Cf. Witte, *The Theory of Workmen's Compensation*, 20 AM. LAB. LEG. REV. 411 (1930).

[50] *Supra* note 30, at 28.

[51] Witte, *supra* note 49, at 411 et seq.

[52] See Stertz v. Industrial Insurance Comm., 91 Wash. 588 (1916).

which the employee bears to the employment because of and in the course of which he has been injured."

There is a dearth of actual data as to the number of employees currently covered by the law. The office of the Workmen's Compensation Commission[54] estimates that there are around 40,000 establishments that come within the provision of the Act.[55]

Generally stated, the law extends to all industrial employees,[56] whether private or public.[57] There are, however, a number of exceptions. An injured employee may find himself excluded for a variety of reasons within two principal categories: (1) because his particular type of employment or employer may not be covered under the law, or (2) because his particular type of injury may not be compensable under the law.[58]

Excluded Employments and Employers: One type of employment that is excluded from the coverage of the law is that of the independent contractor.[59] This exception is based on the assumption

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[53] Cudahy Packing Co. v. Parramore, 44 S. Ct. Rep. 153 (1924).

[54] Acknowledgment is due to Deputy Commissioner Nieves Baens del Rosario, for extending the facilities of her office.

[55] As of the end of the fiscal year 1955-56, there were actually 20,400 establishments registered with the Commission. Data taken from the Annual Report, Workmen's Compensation Commission for the Fiscal Year 1955-56.

[56] Cf. Sec. 1, Workmen's Compensation Act. Sec. 39 provides: "...(d) 'Industrial employment' in case of private employers includes all employment or work at a trade, occupation or profession exercised by an employer for the purpose of gain, except domestic service."

As in other fields of social legislation, the definition of an employee is complex and has been the subject of a prodigious amount of litigation. Cf. SOMERS, *supra* note 30, at 38; LARSON, A., THE LAW OF WORKMEN'S COMPENSATION (1952).

[57] Sec. 3, Workmen's Compensation Act. For disability benefits of government employees under the GSIS, see Sec. 8, Rep. Act No. 660 (June 16, 1951), amending Sec. 11, Com. Act No. 186 (Nov. 14 1936).

[58] The classification is borrowed from SOMERS, *supra* note 30, at 39.

[59] "An independent contractor has been defined as one who exercises independent employment and contracts to do a piece of work according to his own methods and without being subject to control of his employer except as to the result of the work." Mansal v. P.P. Gocheco Lumber Co., G.R. No. L-8017 ,April 30, 1955.

"In determining where the right of control as to method of performance really lies — which is a crucial issue inasmuch as the absence of control forms a very strong basis for the inference that the person employed has an independent calling or business — courts should be particularly wary of contracts adroitly transforming ordinary employer-employee relationship through the simple device of simulating a transfer of the right of control to the employee, 'by injecting the contractual hypodermic needle', thus creating an apparent 'independent business or calling' situation. In such cases, especially where the right of control transferred by the employer could not possibly be exercised by him, or would not serve him any practical purpose, only a careful scrutiny of the fact set-up subtly concealed behind ingenious forms can obviate evasion from coverage." Laureta, J., *Survey of* 1955 *Cases in Labor Law*, 31 PHIL. L. J. 335 (1956), citing Wolfe, J. H., *Determination of Employer-Employee Relationship in Social Legislation*, 41 COL. L. REV. 1015, 1028 (1941).

that the independent contractor is himself in a position to spread losses.[60]

Another class of employees that is excluded by statute is the "casual worker". The exemption finds reasonable justification in the admitted difficulty of providing insurance coverage for occasional work. The law gives a negative definition of the term. A "purely casual" employment is one that is "not for the purposes of the occupation or business of the employer".[61]

The general exclusion of domestic servants and agricultural laborers was justified by the theory that these occupations were not hazardous.[62] However, with the growth of statistical evidence to the contrary, there is an indicative trend in other jurisdictions toward the correction of these omissions, especially in the case of farm labor.[63] With the advent of mechanized farming in a number of haciendas in the Philippines, there seem to be good reason for the application of the law to farm laborers working in agricultural establishments large enough to be able to afford compensation protection to its workers. As to domestic service, it is best that the status quo be maintained. The larger segment of those employing domestic help is not in a position to give compensation benefits.

Employees of charitable, religious and educational institutions are likewise exempted, on the principle that these are not operated for profit.[64] Since workmen's compensation is a form of social insurance, the principal consideration in imposing liability initially on the employer is his capacity "to pass on" such liability eventually to the public. It is therefore hard to understand why the law made profit[65] the criterion in the determination as to whether a certain employment is "industrial" and therefore within the scope of the Act. Certainly, there are a number of non-profit enterprises that are just

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[60] Smith, *Frolic and Detour*, 23 COL. L. REV. 444, 456 (1923).

[61] Sec. 39(b), Workmen's Compensation Act. "Whether the employment is casual or not is a question which must be determined 'with principal reference to the scope and purpose of the hiring rather than with sole regard to the duration or regularity of the service'." Calupitan v. Vda. e Hijos de Angel Jose, 40 O.G. 11th supp., 31 (1941). *See also* Cajes v. Phil. Mfg. Co., 40 O.G. 1251 (1941).

[62] SOMERS, *supra* note 30, at 46.

[63] In Ohio, Hawaii, and Puerto Rico, coverage is compulsory for agricultural employers on the same basis as for others. In other states, the laws cover mechanized or power operations especially in commercial farming. Britain, likewise, has compulsory coverage.

A few tentative steps towards coverage of domestics have also been taken. Connecticut and Ohio do not distinguish this occupation from others. In California, domestics working over 52 hours a week are covered. Britain still excludes family employees.

[64] U.S.T. Hospital Employees v. U.S.T. Hospital, G.R. No. L-6988, May 24, 1955; Quezon Institute v. Velasco, G.R. No. L-7742, Nov. 23, 1955.

[65] See Sec. 39(d), quoted in note 56, *supra*.

as capable of "passing on the liability" to the general public as those which are operated for gain.[66]

As to public employees,[67] those officials elected by popular vote and those receiving more than ₱4,800 annually are excluded.

Size of the firm as a basis for exclusion[68] is provided in Section 42, under which, establishments with capital of less than ten-thousand pesos and are not hazardous or deleterious to employees shall be governed by the Employer's Liability Act.[69]

The modern trend of legislation is to expand the scope and coverage of workmen's compensation. Some jurisdictions[70] now extend protection to employees of small industries. It is not advocated here, however, that the Workmen's Compensation Act be expanded to cover firms of small size. It is evident that its application will raise financial difficulties with establishments whose capital amounts to less than ten-thousand pesos. The retention of tortious negligence as a basis of employer's liability in such cases would therefore seem to be judicious, for the present, at least. The Industrial Liability Act, however, badly needs overhauling. For a law that was enacted almost half a century ago, its provisions are sadly out of line with the realities of present conditions. As intimated earlier, the protection that it seeks to extend to the worker is rendered illusory by the fact that a claimant had to bring first an action in court in order to enforce its provisions. By the time the case is finally decided, the employee-claimant shall have spent about as much as he will be allowed to re-

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[66] "...There is no convincing reason why a charitable institution or non-profit organization should not likewise bear the risk of work injuries of their employees incurred in the performance of their functions." Riesenfeld, S.A., *Forty Years of Workmen's Compensation*, 35 MINN. L. REV. 525, 531 (1951). Subject extensively discussed in Laureta, *supra* note 59, at 338 et seq.

[67] Sec. 39(e) provides: "'Public employment' signifies employment in the service of the National Government or the government of any province, municipality or other political subdivision of the Islands. It does not include employment as public officer elected by the popular vote nor person paid more than four-thousand eight-hundred pesos per annum." An elective public official may, however, be covered by the disability benefits of the GSIS. See Sec. 6, Rep. Act No. 1573 (June 16, 1956), amending Sec. 11, Com. Act No. 186 (Nov. 14, 1936). As to the scope of the GISIS, Sec. 2, Rep. Act No. 1573 amending Sec. 4, Com. Act No. 186 provides: "(a) Membership in the System shall be compulsory upon all regularly and permanently appointed employees, including judges of the Courts of First Instance and those whose tenure of office is fixed or limited by law, upon all teachers except only those who are substitutes; and upon all regular officers and enliste dmen of the Armed Forces of the Philippines. (b) Membership in the System *shall be optional* for any employee who is *not included in the next preceding subsection* or who is otherwise excluded from compulsory membership by the provisions of this Act..." (Italics supplied).

[68] Twenty-nine states in the United States cover firms that employ less than a specified number of workers. The majority draw the line at employers with less than 3 to 5.

[69] Act No. 1874 (June 19, 1908).

[70] The Ontario (Canada) System, e.g., which is considered by a number of writers as an ideal set-up covers all employees, without regard to size. The same is true in Great Britain as well as in 23 states of the United States.

cover. To remedy this defect, it is submitted that administration be taken from the courts and entrusted to the Workmen's Compensation Commission, where recovery would be more speedy and decidedly less costly. The Commission would thus be entrusted with the duty of enforcing the provisions of both the Workmen's Compensation Act and the Employer's Liability Law. Uniformity of procedure may, likewise, be attained.[71]

Excluded Injuries: The question of what is a compensable injury is answered by Section 2. It refers to (1) accidents arising out of[72] and in the course of employment;[73] or to (2) tuberculosis contracted or other illness directly caused by the employment, or aggravated by or the result of the nature of the employment. Injuries not falling within the above classification are excluded. Even when the disability is within the category, nevertheless, no compensation would be allowed if such injury is caused (1) by the voluntary intent of the employee to inflict such injury upon himself or another person; (2) by drunkenness on the part of the laborer who had the accident; and (3) by notorious negligence of the same.[74]

Benefits

Originally, benefits were generally limited to *cash* payments. Under its present stage of development, two other categories of compensation benefits have evolved: *medical* and *rehabilitative.*

Cash benefits vary in accordance with four categories of compensable injuries: temporary-total disability,[75] permanent-total disability,[76] permanent-partial disability,[77] and death.[78]

There seems to be a growing tendency to liberalize allowance of cash benefits. In 1952, the average per-case award was approximately ₱113; this has been increased in 1956 to ₱143.[79]

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71 Even when the case is contested, the Commission, with its system of referees and simplified procedure, has a decided advantage over any court. This point is supported by the following facts and figures with regards to its administration of the Workmen's Compensation Act: for the fiscal years 1954, 1955, and 1956, respectively 11,714, 14,573 and 15,615 cases were acted upon. Data taken from the Annual Report, Workmen's Compensation Commission for 1956.

72 "There is no all-inclusive definition of the words 'arising out of' and 'in the course of employment'." Weidenbach v. Miller, 55 N.W. 3d. 289 (1952). For detailed discussion of different interpretations of the phrase "arising out of", see 1 LARSON, LAW OF WORKMEN'S COMPENSATION (1952). For Philippine decisions on the point, cf. Afable v. Singer Sewing Machine Co., 58 Phil. 39 (1933); Murillo v. Mendoza, *supra* note 49; Hawaiian-Phil. Co. v. Workmen's Compensation Commission, G.R. No. L-8114, May 25, 1955.

73 Recent interpretations of the phrase are given in the cases of Afable v. Vda. de Loyola, G.R. No. L-7789, May 27, 1955, and Chaves v. Amen Trans. Co., G.R. No. L-7318, April 20, 1955.

74 Sec. 4, Workmen's Compensation Act.

75 Sec. 14, *id.*

76 Sec. 15, *id.*

77 Sec. 17, *id.*

78 Sec. 8, *id.*

79 This figure was arrived at by dividing cash benefit by the number of cases acted upon. Thus: (1952) ₱733,222 — 6,488; (1956) ₱2,242,668 — 15,615. Data furnished by the office of the Workmen's Compensation Commission.

The added benefit of medical attendance is provided in Section 13.[80] Without it, an injured worker would possibly use up all his compensation benefits for medical expenses and have none for the wage loss for which it was intended. Medical benefits amounted to ₱329,334 for the fiscal year 1955-56, representing 1/8 of the total compensation paid for that period.[81]

The third and most recent form of compensation benefit is *rehabilitation.* It is widely defined as "the restoration of the handicapped to the fullest physical, mental, social, vocational, and economic usefulness of which they are capable."[82] Many consider this type of benefit as the most progressive step in the development of workmen's compensation.[83] Benefit payments and medical care, however generous, can never fully compensate for the personal tragedy of functionless lives and the social waste of unutilized manpower. Almost from the very beginning, compensation officials realized that enlightened public policy must explore thoroughly means of salvaging the wasted lives and skills resulting from the annual toll of permanent occupation disabilities.[84]

It is unfortunate that our legislators have failed to grasp the importance of this aspect of workmen's compensation. Our law is practically silent on the point. A grudging concession is granted in Section 8 (e) in connection with the payment of death benefits: where the deceased worker had no legal dependents, the employer is to pay ₱1,000 to the Workmen's Compensation Fund; the Commissioner shall have direct control and supervision over such fund, which shall be spent for the rehabilitation of crippled men in industry. Section 52 provides that monies paid into the Workmen's Compensation Fund shall be made immediately available to defray the expenses for the enforcement of the Workmen's Compensation Act. A proviso in Section 55 states that the surplus amount of the Fund shall accrue to

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[80] As amended by Sec. 5, Act No. 3812, Sec. 3, Com. Act No. 210, and Sec. 10, Rep. Act No. 772. Emergency medical and dental treatment is provided by Rep. Act No. 1054 (June, 1954).

[81] In the United States, the importance of medical benefits appears to be more fully exploited. It represents 1/3 of total compensation. American employers have increasingly recognized that good medical care generally reduces the period for which indemnity payments need be paid, and often lessens the over-all cost of an injury. BLACK, S.B., FREE INSTITUTIONS AND THE QUEST FOR SECURITR 15 (1951).

[82] SOMERS, *supra* note 30, at 241, quoting Public Law 113 (78th Cong.).

[83] "Rehabilitation of the injured worker and his return to gainful employment should be the basic concept in an improved workmen's compensation system . . . Full utilization of our potential manpower is essential to the welfare and strength of the country at all times. The discarding of old workers is an economic extravagance detrimental to the welfare of our country, wholly aside from the personal effect on the worker and his family . . ." *Basic Principles for Rehabilitation of the Injured Worker,* IAIABC, Proceedings 1952, *U.S. Bur. of Labor Standards, Bull.* 167, p. 207.

"Rehabilitation is one of our greatest hopes in meeting a basic problem in conservation of human resources." SOMERS, *supra* note 30, at 266.

[84] *Id.,* at 236.

[85] Taken from the Annual Report, Workmen's Compensation Commission for the year 1956.

a fund for the rehabilitation of crippled men in industry. The inadequacy of the above provisions is readily seen from a consideration of the following facts and figures: for the fiscal year 1955-56, the number of rehabilitation cases taken up by the Workmen's Compensation Commission with employers (a) for free hospitalization — 10; (b) for prosthetic replacement of missing limbs — 23 (of these, only 10 were actually given); Number of cases given physical therapy treatment at clinic — 19. As to the provision of Section 55 to the effect that any surplus of the Workmen's Compensation Fund is to be spent for rehabilitation, one can easily see its inefficacy by a consideration of the fact that the Commission spends more than it earns.[86]

It would seem advisable then that a more vigorous approach to the matter of rehabilitation is in order. The advantages of rehabilitation in the social set-up can no longer be ignored. Our compensation law badly needs to be invigorated along this line.

Administration

The Workmen's Compensation Act is at present enforced by an administrative agency. The Workmen's Compensation Commission was created only on June 20, 1952[87] when Republic Act No. 772 took effect. Prior to this, all contested claims were to be decided by the courts. True, there was a Workmen's Compensation Division in the Bureau of Labor, empowered to enforce the Act and to act as referee in bringing about extrajudicial settlement of compensation claims, but if the employer failed to abide by the decision of the Division, the claimant had to file an original case in court. "Court administration of the Act was characterized by long and tedious litigations, which in the end was usually settled by paltry sums."[88]

Decisions of the Commission are appealable, nonetheless, to the Supreme Court.[89] So, in effect, administration of the Act is not completely taken away from judicial hands.

In this connection, the Ontario (Canada) System deserves mention. The Ontario Workmen's Compensation Act vests *exclusive* jurisdiction in a three-man Workmen's Compensation Board, whose decisions are final. This is the famous ban on court review which has attracted the attention of compensation administrators the world over.[90] The system has resulted in a virtual outlawing of litigation and contributed to notable promptness in settling claims. Its chief disadvantage, however, lies in the fact that the parties lack adequate

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[86] For the fiscal years 1953 to 1956, the cumulative income was ₱1,207,480 while the cumulative expenses were ₱1,486,863. *Ibid.*

[87] Actually, it was only on Sept. 1, 1953, upon the appointment of the Commissioner, Deputy Commissioner and other personnel, that the Commission started operation.

[88] See ANNUAL REPORT, Workmen's Compensation Commission for the Year 1956.

[89] Sec. 46, Workmen's Compensation Act.

[90] See SOMERS, *supra* note 30, at 314.

protection against arbitrary administrative decisions.[91] Yet one cannot deny that the Ontario System deserves closer study and observation. The absorption of this distinctive feature into our compensation set-up may prove convenient. Moreover, arbitrariness in the decisions of the Workmen's Compensation Commission, which is the chief objection against its adoption, may to a large extent, be obviated by allowing appeal, say, to the Secretary of Labor.[91a]

III. NON-OCCUPATIONAL HAZARDS

The Problem

Workmen's compensation protects the wage earner only against the incidents of those impairments of his health that are attributable to employment. But non-industrial accidents or diseases may threaten his standard of living in the same way. Temporary or permanent loss of earning power due to short-term disability resulting from diseases or to long-term disability resulting from invalidity, as well as oppressive costs of medical care, present very serious hazards in modern society.[92]

The welfare of the worker is tremendously affected by these risks; in the aggregate, the problem presented by sickness, disability and premature death due to natural causes or to non-industrial accident is much larger than the one occasioned by work accidents or occupational diseases.[93]

There is an inherent difficulty in securing complete and accurate data on the subject, both here and abroad. The early pioneers in the field of social legislation were, nonetheless, well aware of the fact that protection was needed against the hazards of non-industrial sickness and disability, and focussed their attention on them just as much as on the other principal threats (industrial accidents and diseases, old age, and unemployment).[94] To meet the pressing difficulties created by this social problem, a system of compensation providing money benefits when earnings are interrupted was invented.

Health insurance made its first appearance in Germany in 1883, and was the very first social insurance legislation in the world. From

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[91] This objection to the Ontario System has been squarely met in England under the National Insurance (Industrial Injuries) Act. Claims are initially processed at a local office of the Ministry of National Insurance. Appeal may be made tc a Local Appeal Tribunal, thence to the Industrial Injuries Commissioner, whose ruling is final. It will be noted that court intervention is entirely avoided. The appeals are taken to purely administrative tribunals.

[91a] A compelling reason in the Philippines for taking review of compensation cases away from the Supreme Court and transferring it to some administrative official or tribunal is the perennial overcrowded docket of our high court. See Paras R., *The Philippine Judiciary*, 33 PHIL. L. J. 824 (1953).

[92] REISENFELD, *supra* note 13, at 441. ". . . illness affecting any member of the family occasions expenditures which may unbalance the family budget, exhaust savings, and create a need for financial assistance from other sources." BURNS, E.M., THE AMERICAN SOCIAL SECURITY SYSTEM 1st ed. 1949).

[93] See studies made by MILLIS, H. A. & MONTGOMERY, R.E., LABOR'S RISK AND SOCIAL INSURANCE 235 (1938).

[94] See RIESENFELD, supra note 18, at 441.

Germany, the movement roots in other countries of Europe, and within the next half century a number of non-continental countries have, likewise, adopted the system.[95] It is surprising that the United States have failed to keep abreast with the other countries along this line of social insurance development.

The Philippine law on the point is principally embodied in the Social Security Act of 1954.[96] Prior to its enactment, maternity benefits were granted to working women and disability protection to government employees.[97] These laws together form our health insurance structure.

Coverage

Section 9 (a) [98] provides the scope of compulsory coverage of the Social Security System. The requirements are: as to employees, (1) they should be between the ages of 16 and 60, and (2) they shall have been at least six month in the service of the employer. As to employers, (1) they shall have been in operation for at least two years, and (2) they should have, at the time of admission, if admitted

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[95] Austria (1888); Czechoslovakia (1888); Yugoslavia (1888); Italy (1888); Poland (1889); Luxemberg (1901); Hungary (1907); Norway (1911); Britain (1911); Ireland (1911); Switzerland (1911); Rumania (1912); Netherlands (1913); USSR (1922); Japan (1922); Chile (1924); France (1928); Portugal (1933); Greece (1934); Canada (1935); Ecuador (1935); Peru (1936); Brazil (1936): MILLIS & MONTGOMERY, *supra* note 93, at 672.

[96] Rep. Act No. 1161 (June 18, 1954), as amended by Rep. Act No. 1792 (June 21, 1957).

[97] Rep. Act No. 679, Sec. 8 (April 15, 1952), as amended by Rep. Act No. 1131 (June 16, 1954) provides: "*Maternity protection.* — In any shop, factory, commercial, industrial, or agricultural establishment or other place of labor, the employer shall grant to any woman employed by him who may be pregnant, vacation with pay for six weeks prior to the expected date of delivery and for another eight weeks after normal delivery or miscarriage at the rate of not less than sixty per cent of her regular or average weekly wages . . ." As to government employees, see *supra* note 67.

[98] Rep. Act No. 1161 (June 18, 1954), as amended by Rep. Act No. 1792, Sec. 5 (June 21, 1957). Cf. also Rules I and II, Rules and Regulations, SSS. Under Rep. Act No. 1161, Sec. 8, the following are exempt from coverage: (1) agricultural labor; (2) domestic service; (3) purely casual employment; (4) service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under 21 years in the employ of his parents; (5) Service performed on an alien vessel by an employee if he is employed while such vessel is outside the Philippines; (6) service performed in the employ of the Philippine Government or an instrumentality or agency thereof; (7) service performed in the employ of a religious, charitable, scientific, literary or educational organization; (8) service performed in the employ of a school, college, or university by a student who is enrolled therein; (9) service performed in the employ of a foreign government or international organization, or their wholly owned instrumentality; (10) service performed as a student nurse in the employ of a hospital or nurses' training school, and service performed as an intern in the employ of a hospital by an individual who holds the degree of Doctor of Medicine; and (11) such other services performed by temporary employees which may be excluded by regulation of the Commission. Employees of bona fide independent contractors shall not be deemed employees of the employer engaging the services of said contractors.

for membership during the first year of the System's operation, at least fifty employees; if admitted thereafter, at least six employees.[99]

As of October 4, 1957, a total of 1,017 firms employing 226,590 persons registered for membership in the System.[100] In the following year of operation, when smaller establishments (those employing at least 6 workers) shall be included under compulsory coverage, an estimated total of 50,000 firms with 3.6 million employees are expected to be covered.

Benefits

Our insurance provisions against non-occupational hazards cover benefits for the following injuries or sickness: (1) death, (2) long-term disability, permanent or partial, and (3) short-term disability or sickness. The first two are covered by the following provision:

Short-term disability is provided as follows:

"Sec. 13. *Death and disability benefits.* — (a) Upon the covered employee's death or total and permanent disabilityl under such conditions as the Commission may define, before becoming eligible for retirement he or, in case of his death, his beneficiaries as recorded by his employer shall be entitled to a benefit equivalent to one-hundred *per centum* of the average monthly compensation he has received during the year multiplied by twelve, if he has been a member of the System for at least one year, or multiplied by six, if he has been a member of the System for less than one year: *Provided,* That in no case shall he be qualified to claim the benefits as herein provided if he has failed to pay his contributions for more than six months before his death or disability: *Provided, finally,* That if the death or disability should occur during such six-month period of grace, he shall be entitled to the corresponding benefits, but any such unpaid contributions shall be deducted from the amount of benefits payable hereunder. (As amended by Sec. 8, R.A. 1792).

"(b) If the disability is partial but permanent, the amount of benefit shall be such percentage of the benefit described in the preceding paragraph as the Commission may determine, with due regard to the degree of disability." [100a]

"Sec. 14. *Sickness benefit.* — (a) Under such rules and conditions as the Commission may prescribe, any covered employee under this Act who, after one year at least from the date of his coverage, on account of sickness or bodily injury is confined in a hospital, or elsewhere with the Commission's approval, shall, for each day of such confinement, be paid by his employer an allowance equivalent to twenty *per centum* of his daily rate of compensation, plus five *per centum* thereof for every dependent if he has any, but in no case shall the total amount of such daily allowance exceed six pesos, or sixty *per centum* of his daily rate of compensation, whichever is the smaller amount, nor paid for a period longer than ninety days in one calendar year: *Provided,* That he has paid the required premiums for at least six months immediately prior to his confinement: *Provided, further,* That the payment of such allowance shall begin only after the first seven days of confinement, except when such confinement

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[99] Prior to its amendment, the Act required, as to employees, a minimum age of 18; employers shall have been in operation for 3 years and must have at least 200 employees.

[100] Figures furnished by Mr. Sumcad, Social Security Commission.

[100a] For interpretation of total and partial permanent disabilities, see Rule VII, Rules and Regulations, SSS. (July 15, 1957).

is due to injury or to any acute disease; but in no case shall such payment begin before all leaves of absence with pay, if any, to the credit of the employee shall have been exhausted: *Provided, further,* That any contribution which may become due and payable by the covered employee to the System during his sickness shall be deducted in installments from such allowances, issuing to him the corresponding official receipt upon complete payment of such contribution: *Provided, finally,* That the total amount of the daily allowances paid to the covered employee under this section shall be deducted from the death or disability benefit provided in section thirteen if he dies or becomes totally or permanently disabled within five years from the date on which the last of such allowances became due and payable.

"(b) Seventy *per centum* of the daily benefits paid by an employer as provided in the preceding paragraph shall be reimbursed by the System to said employer upon receipt of satisfactory proof of such payment and of the legality thereof."

The form of benefits for this category of social insurance was originally limited to cash payments during temporary or extended lack of earning capacity. In advanced countries, like Great Britain,[101] a new form of benefit has arisen: *medical care insurance,* which assures the availability of medical services. Whether this type of health insurance should be adopted in this country or not, should be the subject of a separate and extensive study[102] of a number of factors and conditions.

IV. OLD AGE

The Problem

The average Filipino today has better chances of survival than his brothers had half a century ago. A boy born in 1902 was given only 17.9 years at most to live. In 1918, the average life span was 26.6 years. Our death rate continued to be cut down, so that by 1954, the average Filipino had a lifespan of 53 years.[103]

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101 The National Health Service Act, 1946, following the Beveridge Plan, provides free medical and dental treatment for everybody. Russia, the ultimate in state control, has the ultimate in state health insurance. Medical service is free for all. Doctors and dentists are assigned by the state and paid by the state. Benefits, however, are limited by the availability of facilities: e.g., a dentist for every 14,000 persons; in England, the proportion is 1:3,271 and in the U.S., 1:1,185. See TYLER, P., SOCIAL WELFARE IN THE UNITED STATES 88 et seq. (1955); Freidmann, *supra* note 12, at 242.

102 Note, for instance, the studies, investigations and discussions of legislative committees, writers, medical associations, etc. in the U.S., starting since the turn of the century. For literature on the subject, see FALK, SECURITY AGAINST SICKNESS (1936); MILLIS & MONTGOMERY, *supra* note 93, at 235 et seq.; EPSTEIN, A., INSECURITY: A CHALLENGE TO AMERICA; on defense of voluntary insurance as opposed to compulsory system, see BACHMANN & MERRIAM, THE ISSUE OF COMPULSORY HEALTH INSURANCE (1948); Holman & Cooley, *Voluntary Health Insurance in the United States,* 35 IOWA L. REV. 183 (1950).

103 Jacinto Carmelo P., *The Nation's Health,* PROGRESS '54, The Times-Mirror Annual Report, 40 (1954).

But despite the success of the medical profession in prolonging life expectancy, a time comes when working efficiency is impaired by age. Eyesight may become less keen, muscles lose their elasticity and strength, and a general decline in physical vigor takes place. There is much difference of opinion [104] as to the extent of which ability to work is cut down with advancing years, and there is, no doubt, great variation from individual to individual. But what is important is that employers, generally, give preference to young people to the prejudice of the aged. And not without reason. For in most cases, a particular type of employment may require a certain amount of speed, energy and skill, which can be found only in the young.

In 1948, the labor supply among 65 years or over was 711,842. Of these, only 201,321 were gainfully employed: approximately 4/5 earned their living from agriculture, forestry, hunting and fishing; only a handful (115) were employed in mining and quarrying.[105]

Evolution Of Old Age Insurance

Caring for the aged has been a problem of civilization since its early days. Until the Middle Ages, the security which the aged possessed was mostly derived from the Christian duty of filial respect and the charitable activities of the Church. But as the relentless forces of industrialism swept forward, it became inevitable that the responsibility of the individual must be supplanted by the affirmative responsibility of the state. The movement started in Europe, and soon England followed suit by the enactment of the celebrated Elizabethan Poor Laws. In the United States, old age insurance was inaugurated by the enactment of the Social Security Act of 1935. Originally narrow in coverage,[106] the Act was later expanded by the amendments of 1939, 1950 and 1954.[107]

Since early times,[108] the Filipinos have always regarded the caring for the aged as a filial obligation. As in the case of China and other oriental countries, family ties among us have always been close and strong. Even at present, our principal method of providing security for the aged is still through the relatives.

The earliest old age insurance legislations in the Philippines were those designed for the protection of government employees.[109] Presently, under the scheme of social insurance envisaged by the

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[104] See BURNS, E.M., THE AMERCIAN SOCIAL SECURITY SYSTEM, 8 (1949).

[105] Data taken from Bur. of Census & Statistics.

[106] See criticism of DOUGLAS, SOCIAL SECURITY IN THE UNITED STATES 383 *et seq.* (1938).

[107] BINING, A.C., THE RISE OF AMERICAN ECONOMIC LIFE 722

[108] I ZAIDE, G.F., PHILIPPINE POLITICAL AND CULTURAL HISTORY 52 (1949). For detailed discussion of Filipino family ties, see also V. BLAIR & ROBERTSON, THE PHILIPPINE ISLANDS 173 (1909); COLIN, F., LABOR EVANGELICA 65 (1902).

[109] A pension system was provided under Acts No. 1638, 3050 and 3173. This was abolished by the establishment of the GSIS under Com. Act No. 186, as amended, which provides for retirement benefits to public employees.

Social Security Act of 1954, old age or retirement benefits are extended to employees of private establishments.[110]

Coverage

This subject has already been treated, *supra*, in connection with the discussion on insurance against non-occupational hazards, where the coverage of the Philippine Social Security Act was explored.

Benefits

A covered employee is entitled to retire upon fulfillment of the following conditions: (1) that he is at least 60 years of age; and (2) that he has been a member of the System for at least two years.[111] Upon retirement, he shall receive a monthly pension for as long as he lives, but in no case for less than two years. If the annuitant dies before the lapse of two years, his beneficiary shall be paid in lump sum the balance of his retirement benefits corresponding to the unexpired portion of the guaranteed two-year period.[112]

The amount of retirement benefits is based on a computation of a pension credit for each year of membership equivalent to 1/2 of 1% of the employee's average monthly compensation during such year of membership.[113]

Retirement benefits of government employees are governed by the GSIS Law. [114] As of June 30, 1956, 182,063 members had retirement insurance. From June, 1952 to June, 1956, a total of ₱26,498,-907.45 has been paid in the form of retirement benefits.[115]

V. UNEMPLOYMENT

The Problem

Since early times,[116] the curse of unemployment has always been one of the biggest ills that plague the working people. The devastating effects of its recurrent visitations have repercussions on both social and economic structure of any country.

There is wide disagreement as to the number of unemployed workers in the country today. The latest unemployment figures have been variously estimated from one to two million. The Department of Labor[117] places the number of unemployed persons today at 1.279 million out of a total labor force of 8.586 million. A 1956 survey of

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110 Even before the passage of the Act in 1954, there were a number of private firms providing for old age benefits to their workers. E.g., Caltex (Philippines) Inc. and San Miguel Brewery.

111 Rep. Act No. 1161, Sec. 12 (c), as amended; Rule VI, par. 1, Rules and Regulations, SSS (July 15, 1957).

112 Rep. Act No. 1161, Sec. 12 (a), as amended; Rule VI, par. 2, Rules and Regulations, SSS (July 15, 1957).

113 *Ibid.*

114 Com. Act No. 186, as amended. See, particularly, Rep. Act No. 1573, Sec. 6 and 7 (June 16, 1956) which contain the latest amendments to the retirement provisions of said basic law.

115 Annual Report of the GSIS, Fiscal Year 1955-56.

116 "Unemployment is not a new problem, appearing only in the modern economic order. Before the industrial revolution, there were maladjustments due to a variety of causes: labor was neither as mobile nor as adaptable as at present; seasonal influences, as in the building trades, were very great." MILLIS & MONTGOMERY, *supra* note 93, at 1.

117 See speech of Sec. of Labor before Manila Lions Club, Aug. 26, 1956.

the Office of Statistical Coordination and Standards reported 1.182 million people as out of work and estimated the labor force to be 9.497 million. Since liberation, the number of unemployment fluctuates at 14% of the total working population.[118]

Emergence of Unemployment Insurance

The problem of unemployment is a complex dilemma that cannot be solved by unemployment insurance alone.[119] Social insurance is just one of the many and varied parts that form the remedial structure on which solution to unemployment lies.

Simply stated, unemployed persons may be classified into: (a) those who had work but is temporarily out of job; and (b) those who have not worked before and cannot find job. The survey of the Office of Statistical Coordination and Standards breaks down the number of unemployed into (a) those who worked before — 459,100; and (b) new workers — 723,350. It is with the first category that social insurance is concerned; for the function of unemployment insurance is to tide people over in short periods of unemployment. It is not directly concerned with new workers who cannot find employment.

Having thus delineated the objective of unemployment insurance, it is now easier to understand the nature and the reasons for the various legislations put up to provide security for workers against short-term unemployment.

The governments of most European countries have adopted one or the other of two systems of unemployment insurance. One of these is the "Ghent System", which was inaugurated in Belgium in 1901.[120] With variations in details, it has been adopted in several other countries.[121] The system is characterized by the granting of national and local subsidies out of the general revenues to such voluntary organizations, almost exclusively trade unions, as provide out-of-work benefits for their members in accordance with minimum standards established by the government.[122] Under this system, the employer gives no direct contribution; it is principally financed by the government and sometimes, partly, by the individual workers.

The other type — compulsory unemployment insurance — was

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118 For detailed unemployment tables, see I QUARTERLY LABOR STATISTICS 41 (1956); Santos, R.F., *Labor Problems*, PROGRESS '54, The Times-Mirror Annual Report, p. 44 (1954); Phil. Statistical Survey of Households, Office of Statistical Coordination and Standards (1956).

119 "Our problem is not a special case of unemployment the causes of which can easily be detected. The character of our employment problem is chronic and continuing because its causes are deeply rooted in our economic structure." Speech of Sec. of Labor, *supra* note 117. For more discussion on subject, see Estonactos, E., *The Unemployment Problem*, I QUARTERLY LABOR STATISTICS 13 (1956).

120 For accounts of the several arrangements, see COHEN, J.L., INSURANCE AGAINST UNEMPLOYMENT (1921); MILLIS & MONTGOMERY, *supra* note 93, at 122; EPSTEIN, *supra* note 102, Ch. 19. For more extensive discussion of the Belgian experience, see KISCHELL, C.A., UNEMPLOYMENT INSURANCE IN BELGIUM (1932).

121 Czechoslovakia, Denmark, Finland, France, Greece, Holland, Norway; Spain, Sweden, and some cantons of Switzerland. Cf. MILLIS & MONTGOMERY, *supra* note 93, at 122.

122 MILLIS & MONTGOMERY, *supra* note 93, at 122.

experimented first in Switzerland, where communal funds were established in Berne in 1893 and in St. Gall in 1895. It was soon adopted by Great Britain [123] and a host of other countries.[124]

Wisconsin enacted a compulsory unemployment insurance law in 1932 to go into effect July 1, 1933, but the effective date was postponed to July 1, 1934. This was the only unemployment insurance law in effect in the United States prior to the passage of the U.S. economic structure.

Social Security Act.[125] It was only in 1935, therefore, that unemployment insurance came to be a significant part of American socio-

The foregoing discussion serves to accentuate the utter lack of unemployment insurance in this country. While other jurisdictions had established this system as early as 1893, we still find ourselves in a state of vacillation whether to adopt this form of social insurance or not.

In 1954, unemployment protection was introduced into the Philippines with the enactment of Rep. Act No. 1161, otherwise known as the Social Security Act.[126] The amendment of 1957, however, did

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[123] National Insurance Act of 1911, superseded by the National Insurance Act of 1946, following the Beveridge proposals.

[124] Irish Free State (1911); Italy (1919); Austria (1920); Russia (1922); Queensland (1922); Poland (1924); Bulgaria (1925); Germany (1927); Canada (1935); Yugoslavia (1935).

[125] MOWBRAY, A.H., & BLANCHARD, R.H., INSURANCE: ITS THEORY AND PRACTICE IN THE UNITED STATES 492 (1955).

[126] Rep. Act No. 1161, Sec. 15, before its abrogation, then provided: "*Unemployment benefit.* — (a) Subject to the rules and regulations of the System, any employee covered under this Act who, after one year at least from the date of his coverage, becomes unemployed for any reason other than his misconduct, voluntary resignation without sufficient cause attributable to his employer, or an act of God, shall be entitled, for each day except holiday, to an allowance equivalent to twenty *per centum* of his daily rate of compensation, plus five *per centum* thereof for every dependent if he has any, but in no case shall the total amount of such daily allowance exceed six pesos, or fifty *per centum* of his daily rate of compensation, whichever is the smaller amount, nor be paid for a period longer than ninety days in one calendar year: *Provided*, That the covered exployee has worked for his employer and paid the required premiums during the preceding year for at least twenty-six weeks, of which four weeks must immediately precede his unemployment: *Provided, further*, That the payment of said allowances shall begin only after the first three weeks of unemployment, which period the Commission, however, may reduce to two weeks if the covered employee has dependents; but in no case shall such payment begin before all leaves of absence with pay, if any, to the credit of the employee shall have been exhausted: *Provided, further*, That payment of such allowances shall be suspended if his continued unemployment is due to his failure, without good cause, to apply for available suitable work, or to accept suitable work when offered to him: *Provided, further*, That the total amount of the daily allowances paid to covered employee under this section shall be deducted from the death or disability benefit provided in section thirteen if he dies or becomes totally and permanently disabled within five years from the date on which the last of such allowances becomes due and payable: *Provided, finally*, That no benefit shall be paid unless the unemployed claimant has registered at a public employment office or other approved agency and, upon investigation, the System is satisfied that he has complied with such rules and conditions as the Commission may have prescribed."

away with the risk of unemployment, leaving only the protection against disability, sickness, old age and death[127] The reason advanced for the abolition is the alleged lack of accurate statistical data on such subjects as trends in levels of employment, extent of unemployment, living costs, individual and family income.[127a] Recently, plans have been proposed to reinstate unemployment protection.

VI. THE GOVERNMENT SERVICE INSURANCE SYSTEM (GSIS)

Historical Note

The Government Service Insurance System was established upon the enactment of Com. Act No. 186 of November 14, 1936. It actually started operations six months later. Prior to the outbreak of the war, the achievements of the System were practically nil. It had only about four years of operation before it was abolished pursuant to Executive Order No. 72, dated July 31, 1942, issued by the Chairman of the Philippine Executive Commission. Upon restoration of the Commonwealth Government, the GSIS resumed operations on December 10, 1945.

Starting on a shoe-string eighteen years ago with an initial operating capital of ₱200,000, the GSIS has today grown into a multimillion establishment; it has been aptly described as "one of the biggest insurance firms in the country".[127b]

Coverage

Under Sec. 2 of Rep. Act No. 1573, the latest amendatory act to Com. Act No. 186, membership in the System shall be compulsory upon all regularly and permanently appointed employees,[128] including judges of the Courts of First Instance and those whose tenure of office is fixed or limited by law, upon all teachers except only those who are substitutes; and upon all regular officers and enlisted men of the Armed Forces of the Philippines.[129]

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[127] Cf. Rep. Act No. 1792, Sec. 1.

[127a] The American experience is worth citing at this instance. In the face of the nation-wide depression of the early 30's, the U.S. Congress adopted unemployment insurance as part of the scheme envisaged by the Social Security Act of 1935 to cope with the existing emergency. It was done, more or less, in a haphazard manner, devoid of the application of accurate actuarial principles. The approach has been empirical and experimental, rather than scientific, until it has developed into its present workable condition. Cf. MERRIAM, L., & SCHLOTTERBECK, K., THE COST AND FINANCING OF SOCIAL SECURITY 31 (1950).

[127b] *Editorial*, Daily Mirror, May 31, 1956.

[128] Rep. Act No. 660, Sec. 1 (June 16, 1951) amending Com. Act No. 186, Sec. 2 (Nov. 14, 1936) provides: " 'Employer' shall mean the National or a local government, an agency, board or corporation controlled or owned by the Government. 'Employee' shall mean any Filipino citizen in the service of said 'employer'."

[129] Sec. 2 (b) provides: "Membership in the System shall be optional for any employee who is not included in the next preceding subsection or who is otherwise excluded from compulsory membership by the provisions of this Act . . ."

Benefits

The System provides for three classes of benefits: death,[132] total and permanent disability,[133] and old age.[134] The hazards of unemployment, sickness or temporary disability, and permanent partial disability are not insured against. Under the Social Security Act, a private employee enjoys greater security than one employed by the Government. With respect to sickness or temporary disability and permanent-partial disability, privately employed workers are protected under the Social Security System.[135]

Liberalization and expansion of the benefits of the Government Service Insurance System would seem to be in order. Government insurance should, in the very least, cover the same risks as those enjoyed by private employees.

CONCLUSIONS

It would be ludicrous to advance the statement that the Philippines has a broad and comprehensive system of social insurance. This type of social program was only recently introduced into our socio-economic framework. While all the major countries of Europe and, particularly, Great Britain, have made great strides in the search for workable solutions to the problem of security for their peoples, we have just started laying the foundations for our own structure of social stability. True, we had workmen's compensation as far back as 1927. But in its original shape, the Workmen's Compensation Act was hardly recognizable as a form of social insurance. Benefits were low and limited to cash payments alone, and enforcement depended on bringing actions in courts which, at first, found it hard to break from long judicial habit of looking for fault as a basis of employer's liability. It was only after recent amendments[136] that our workmen's compensation law attained the cast and mold of true social insurance.

Our system of security for government employees is in a more advanced stage of development. Established eighteen years ago, its blessings have now been reaped by large numbers of people. Its present coverage exceeds a quarter of a million public servants, and every year the number of members keep increasing.[137] Its benefits, viewed

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130 Data furnished by the Actuary Division, GSIS.

131 See notes 117 and 118.

132 Sec. 1 and 5, Com. Act No. 186, as amended. Supplemental death benefits as well as accidental death and burial benefits are granted gratuitously. For the fiscal year 1956, the System paid out ₱1,348,276.63 as death benefits, and ₱31,080.00 for burial expenses. For the period 1937-1955, the total death benefits paid out amounted to ₱16,908,422.92. Annual Report of the GSIS. Fiscal Year 1955-56.

133 Com. Act No. 186, Sec. 11 (c), as amended. Disability benefits paid out during the last fiscal year amount to ₱156,707.73. *Ibid.*

134 Com. Act No. 186, Secs. 5, 11, and 12, as amended. Retirement benefits for the fiscal year 1955-56 total ₱6,646,967.70, or more than 4 times the total death benefits for the same year. See note 132.

135 Cf. Rep. Act No. 1161, Secs. 13 and 14, as amended.

136 Rep. Act No. 772 (June 20, 1952) and Rep. Act No. 889 (June 19, 1953).

137 In 1955, for instance, membership in the System was reported at the 230,000 mark. To date, it has reached more than 260,000, an increase of more than 10%. Data furnished by the Actuary Division, GSIS.

generally, are quite adequate, though, as intimated earlier, they can still stand more improvements.

The Social Security Act of 1954 and its recent amendment[138] closed the last gap in our social insurance network. By providing protection against the hazards of disability, sickness, old age and death, it embraces a wider field of insurance than any which ever existed before in the country.

This, notwithstanding, our whole scheme of social insurance, including workmen's compensation and the GSIS, could, as yet, hardly be considered a universal and integrated system. It is at most skeletal. There is still a long way to go before our social security set-up can stand comparison with the more advanced programs of Great Britain and the continental countries. The Social Security Act itself makes this express recognition in its declaration of policy:

> "It is hereby declared to be the policy of the Republic of the Philippines to develop, establish gradually, and perfect a social security system which shall be suitable to the needs of the people throughout the Philippines..."

For one thing, the whole area comprehended by our present social insurance plan does not embrace the bigger portion of our working population. Agricultural laborers and tenants, who account for 60% of our labor population,[139] have no form of security whatsoever against any of the major contingencies; and of those engaged in non-agricultural pursuits, a large segment is excluded from the scope of social insurance. Thus, self-employed individuals, like most professionals, and those employed in small industries[140] do not enjoy the benefits of the system.

For the present, there are no immediate prospects in this jurisdiction of expanding social insurance coverage so as to include farm labor. Considering the very low per capita income of our farmers, it can hardly be said that they can well afford to buy insurance protection for themselves, no matter how low their contribution to such a system may be.

Currently, a raging controversy is taking place with the Social Security Act as the focal point of the contention. The chief arguments against the Act may be summarized as follows:

1. That the Act is unconstitutional;
2. That the amount of benefits are negligible and disproportionate to the premiums paid by employees and employers to the System;
3. That before an employee could participate in the benefits, there are onerous conditions to be complied with;

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138 Rep. Act No. 1792 (June 21, 1957).

139 The 1956 survey of the Office of Statistical Coordination and Standards indicates that of the total employed population of 8.314 million, 5.047 million are engaged in agricultural employment, while 3.267 million follow non-agricultural pursuits.

140 The Workmen's Compensation Act excludes employees of firms with a capital of less than ₱10,000, and the Social Security Act does not propose to cover establishments with less than 6 employees.

4. That there is no adequate protection for an employee who is separated from service; and
5. That under its integration provisions, the Act deprives employees of the benefits of better private plans.[141]

The objection to the constitutionality of the Social Security Act on the ground that it is tantamount to impairment of the contract of employment is indefensible. The non-impairment clause should be read in the light of the other contents of the organic law, particularly the provisions that enjoin the state to afford protection to labor[142] and to promote social justice so as to insure the well-being and economic security of the people.[143]

The argument that the amount of benefits is not commensurate to the premiums paid is aptly illustrated in the following observations on the System's retirement benefits:[144]

> "Employee A, with a monthly salary of ¿400.00 is 30 years old at the time he was compelled to join the System. His monthly contribution will be 2-1/2% of his monthly salary, or ₱10.00 a month, while his employer will contribute 3-1/2%, or ₱14.00; thereby making a total contribution to the System of ₱24.00; so that in one year both employee and employer would have contributed to the System ₱288.00...
>
> "If A reaches the retirement age of 60 years, he shall have the option to retire, and shall be entitled to a life pension equivalent to 1/2 of 1% of his average monthly salary, multiplied by the number of years he has been a member of the System.
>
> "In our example, A has been a member of the System for 30 years; hence, he shall receive a monthly pension of ₱60.00 until he dies. Being already 60 years on the date of his retirement, his remaining life expectancy would likely not exceed 10 years more. Assuming that he dies at the age of 70 years, he would have therefore received from the System the total amount of ₱7,200.00 only.
>
> "Inasmuch as the total contributions of both A and his employer to the System for 30 years would amount to ₱8,640.00, then the System is bound to profit, at the expense of the employee in the sum of not less than ₱1,440.00. And if A should not be able to live up to 70 years from his date of retirement (which is very probable in most cases), then the System would still make a greater profit than the amount indicated above. Thus, if he continues to live only for two years from his date of retirement, dying at the age of 62 years, A would only receive from the System the sum of ¿1,440.00 out of a total investment of ₱8,640.00 of both employee and employer."

The foregoing expostulation seems to be based on the assumption that the whole amount of employer-employee contribution to the System, that is 6% of employee's salary, is used up to pay solely for protection against the risk of old age. The truth of the matter, however, is that, of the combined employer-employee contribution of 6%, only 2-1/2% goes for retirement insurance; the rest is apportioned

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141 Cf. Guevara, S., *The Social Security Law: An Appraisal*, 32 PHIL. L. J. 365 (1957); Leon O. Ty, "Social Security Controversy, Phil. Free Press, p 5, Sept. 21, 1957.

142 PHIL. CONST., Art. XIV, Sec. 6.

143 Art. II, Sec. 5, *id.*

144 Guevara, *op. cit., supra* note 141, at 370.

145 Data furnished by Actuary Division, Social Security Commission.

as follows: 2% covers death and disability risks, and 1-1/2% is allotted for sickness benefits.[145] Let us say, an employee becomes a member of the System at the age of 30, which is the age given in the above observations. At 35, he gets sick, and thus reap sickness benefits. Whatever amount is paid for this is charged, not to the whole 6% premium, but only to 1-1/2%. When he retires at 60, the pension is in like manner credited to the corresponding allotment of 2-1/2%. The objection runs true, however, where the employee, at the time of retirement, had never partaken of either sickness or disability benefits in at least one or more occasions.

The exception that a covered employee who is separated from service will practically lose his contribution holds water only where such employee has been a member of the System for less than 2 years. In such an event, the only alternative given to him is to continue paying the 6% monthly premiums representing his own as well as the employer's contribution.[146] Once an employee loses his job, it is argued successfully, how can he take advantage of this alternative, considering that he possibly will have no earnings and might not even be able to provide for his daily subsistence?[147]

If at the time of his separation from employment, however, the employee has been a member of the System for at least 2 years, the above objection loses weight. For in such eventuality, the employee is given the following additional alternatives, which are more or less ample:[148]

1. A refund of his 2-1/2% contribution plus interests of 3% compounded annually;
2. Adjustment of his membership to a paid-up life insurance plan;
3. Suspension of his membership until he reaches the age of 60, when he shall be eligible for retirement pension.

The remonstrance against the stiff conditions imposed by the Act on employees, as well as the apprehension concerning the integration provisions appear to be well-grounded.

Witness, for instance, the conditions precedent that an employee must comply before he can partake of sickness benefits:

1. That at the time of confinement, the employee has been a member of the System for at least one year;
2. That the place of his confinement is a licensed hospital or, if at home or elsewhere, the place is approved by the Commission;
3. That the employee has paid his premiums for at least six months immediately prior to confinement;
4. That payment of sickness benefits shall start only after the 7th day of confinement; and
5. That all sick leaves of absence with pay be first exhausted.[149]

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146 See Rule IX, Rules and Regulations, SSS (July 15, 1957).

147 Dean Ramon T. Oben quoted by Leon O. Ty, *op. cit.*, *supra* note 141.

148 Rule IX, Rules and Regulations, SSS (July 15, 1957).

149 Rep. Act No. 1161, Sec. 14 (a), as amended; Rule VIII, Rules and Regulations, SSS (July 15, 1957).

Before the inauguration of the Social Security System, there were 109 firms[150] providing ample security benefits to some 30,000 workers[151] under their own private plans. In a number of these establishments, the employer financed the project without asking for corresponding contribution from the employees. Under the Act, these private benefit plans are to be integrated with the System.

> "in such a way that where the employer's contribution to his private plan is more than three and a half *per centum*, he shall pay to the System only the three and a half *per centum* required in the Act and he shall continue his contributions to such private plan less the three and a half *per centum* contributed to the System so that the employer's total contributions to his private benefit plan and to the Social Security System shall be the same as his contribution to his private plan before the compulsory coverage." [152]

"In other words," Professor Guevara remonstrates, "shorn of its legal and literary verbiage, the law permits the employer who has an existing and better plan for his employees to modify and lessen the same so that his total contributions to his private plan and to the System would remain the same as before the compulsory coverage."[153]

On the other hand, the law likewise provides that "any benefits already earned by employees under private benefit plans existing at the time of the approval of this Act shall not be discontinued, reduced or otherwise impaired."[154]

Citing the above provision, the Social Security Commission, through its Chairman, Rodolfo P. Andal, advanced the opinion that integration will not reduce the benefits already earned by employees under their private plan.[155] Chairman Andal continues:

> "Instead of weakening private benefit plans, the SSS strengthens them. This is so because before the enactment of the Social Security Act, private plans did not have official cognizance by social legislation but were based purely on bilateral or unilateral agreements between employer and employee. So, instead of deprivation, there is recognition of rights."

In view of the ambiguity of the Act on the point, the real intent of the legislature is a matter for conjecture. It will take only a judicial interpretation to dispel the doubt and settle the controversy once and for all.

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150 E.g.: Manila Electric Co.; G. Araneta, Inc.; International Harvester, Inc.; Standard Vacuum Co., Inc.; Smith Bell Co.; University of Sto. Tomas Faculty Club.

151 Data furnished by Actuary Division, Social Security Commission.

152 Rep. Act No. 1161, Sec. 9, as amended.

153 Guevara, *supra* note 141, at 375.

154 Rep. Act No. 1161, Sec. 9, as amended.

155 Phil. Free Press, p. 5, Sept. 28, 1957.

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PHILIPPINE LAW JOURNAL

Published by the College of Law, University of the Philippines
Diliman, Quezon City

VOLUME 32 | SEPTEMBER, 1957 | NUMBER 4

The Editorial Staff and the College of Law publish contributions of interest and value to law students and the legal profession, but the views of the contributors to the columns of the PHILIPPINE LAW JOURNAL do not necessarily reflect those of the College of Law and the JOURNAL

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