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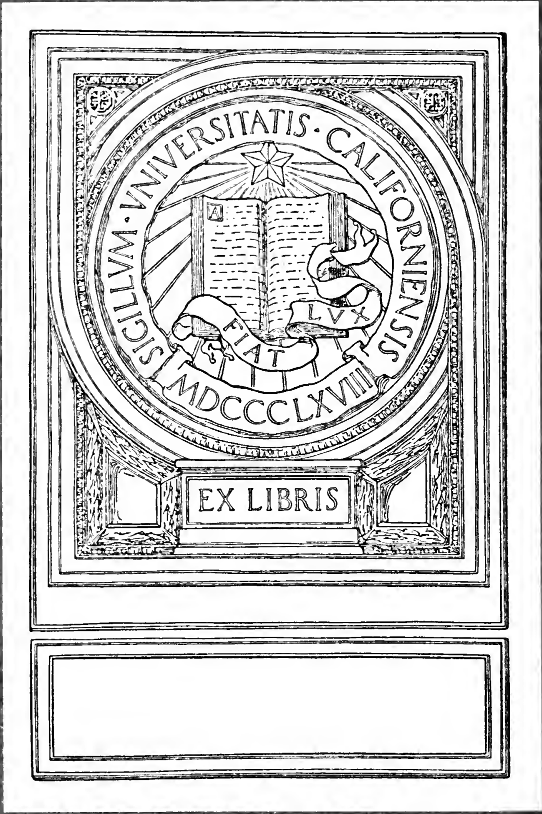
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The Practical Results of Workingmen's Insurance in Germany

BY

DR. FERDINAND FRIEDENSBURG

PRESIDENT OF THE SENATE

IN THE

Imperial Insurance Office (Retired) of Germany

Translated from the German by

LOUIS H. GRAY, Ph.D.

Compliments of

The Workman's Compensation Service and Information Bureau

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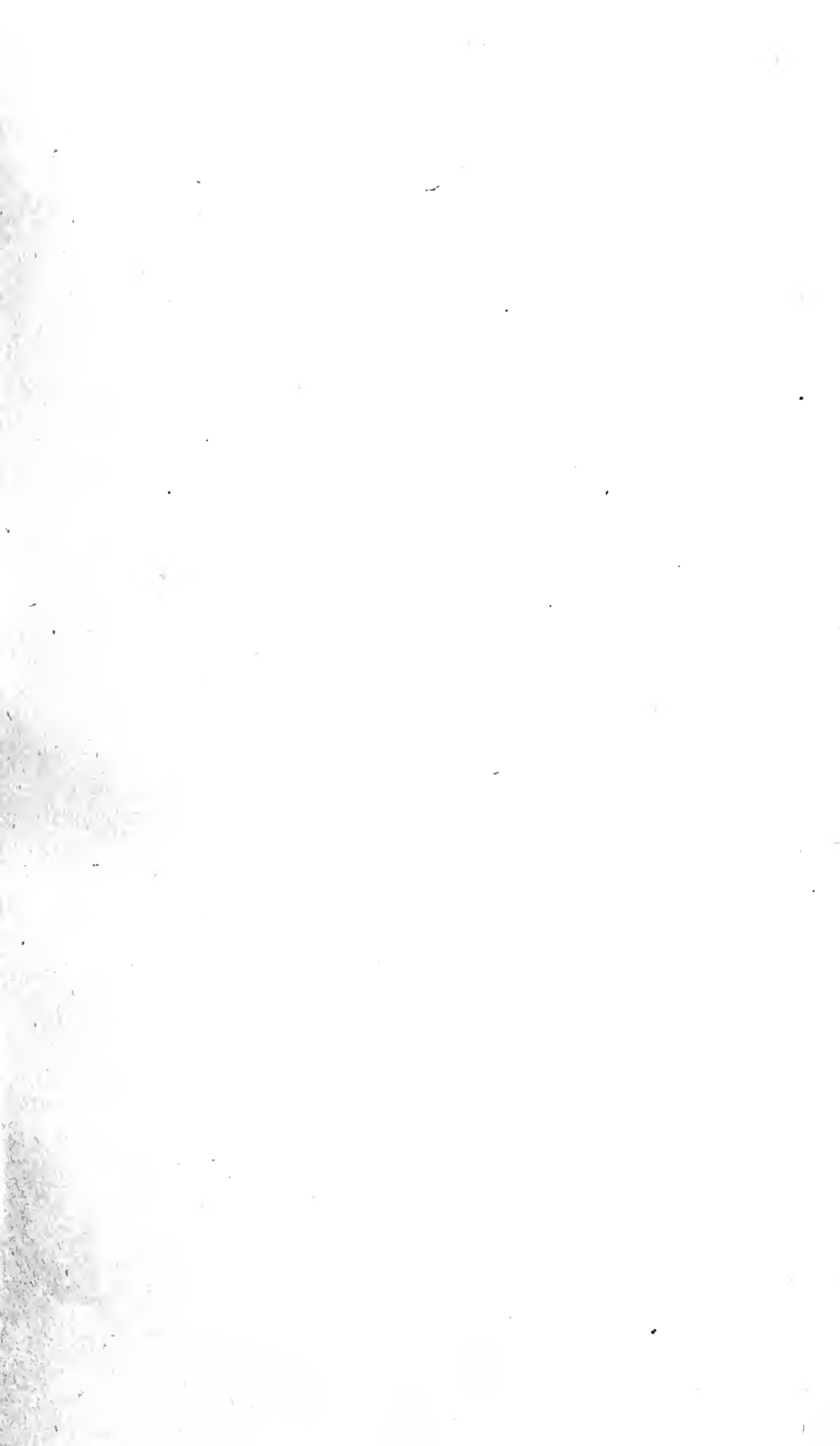

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UNIV. OF CALIFORNIA

October, Nineteen Hundred Eleven

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NOTE

Much has been written in praise of Germany's system of compensating workmen for accidents. The idea has generally been given that the working of the system was well nigh faultless, and that no evils had crept in to offset ever so slightly the benefits.

But, while wishing that Germany had indeed solved the problem, many have had a suspicion that larger claims were made for the system than were warranted. That this suspicion was well-founded is now proven by the publication by Dr. Ferdinand Friedensburg, who recently retired from the post of President of the Senate of the Imperial Insurance Office, after a service of over twenty years, of an article bearing the title *Die Praxis der deutschen Arbeiterversicherung* ("The Practical Results of Workingmen's Insurance in Germany"), and who criticizes the system severely in certain respects.

References to this article from *The New York Times* and *The Spectator* (London) are presented herewith.

In offering these, it is not intended to take a position antagonistic to workmen's compensation for accidents. We are heartily in favor of workmen's compensation. All that we mean to do is to point out the necessity of care, in adopting a system of workmen's compensation, that the workmen are not pauperized or exposed to the temptation to make fraudulent claims.

The Workmen's Compensation Service and Information Bureau.

October 19, 1911.

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AUTHOR'S PREFACE

The great demand for my monograph on "The Practical Results of Workingmen's Insurance in Germany," which first appeared in the *Zeitschrift für Politik* (Vol. IV, 1911, Parts 2–3), has led the publishers to issue a separate edition of it, thus affording me a welcome opportunity to broaden and to deepen my article in several places. This does not imply that I was obliged to cancel or to modify any of my statements, but the numerous criticisms with which I have been favored, both in printed, written, and verbal form, have shown me that here and there I was not sufficiently explicit, and was, accordingly, misunderstood; while I myself have judged other passages to need improvement in the new form which every work assumes in print, even for an experienced author. A special advantage was that, now for the first time, I could avail myself of the report, as comprehensive as it is profound, published by the Imperial Insurance Office in the third volume of its "Handbook" (the third edition of which has just appeared) under the title *Geschichte und Wirkungskreis des Reichs-Versicherungsamts.* I emphasize this fact with the greater pleasure since it renders nugatory the allegation that my monograph was written to attack or to weaken this most magnificent work. On the contrary, I am happy to find that this report itself recognizes that a large portion of my strictures are justified, and that it acknowledges the existence of many of the abuses of which I have complained. For this reason the points in which I agree with the Office now receive a special stress.

Apart from this official report, I have not, I regret to say, been able to glean much supplementary material from the criticisms of my article which have thus far been published. As to the foul invectives which have appeared in the Social Democratic press, I can not lower myself so far as to consider them, excepting as a welcome proof of the entire justice and the solid foundation of my charges.

REVIEW OF DR. FRIEDENSBURG'S BROCHURE IN "THE NEW YORK TIMES."

"WE have heard much of the beneficent working of the German laws for the insurance of working people from the cost of accident and illness. In theory it is a sound system, since it aims at the governmental regulation and protection of the insured from funds distributed according to accepted principles of insurance. It is thirty years since the system was established. A correspondent of *The Spectator* of London summarizes an important document throwing a good deal of light on the actual operation of the system. This is an article in the *Zeitschrift für Politik,* by Herr Ferdinand Friedensburg, who recently retired from the post of President of the Senate of the Imperial Insurance Office, after a service of twenty years. It is practically a series of charges of which these three are the most significant:

"The first is that the State insurance, specially designed to replace pauperism and charity, is itself merely pauperism under another form. The second charge is that it has fostered to an incredible extent the German evil of bureaucratic formalism. The third and the worst charge is that it has become a hotbed of fraud, and therefore a spreader of demoralizing practices and ways of thought.

"As to the first charge, he alleges that almost from the beginning it was found difficult to secure fair and honest adjudication of claims. The principle of giving the benefit of doubt to the claimant came into early operation, and the claims, under its insidious influence, multiplied in number and became less and less valid. 'The workmen began to come as beggars asking and expecting the insurance laws to be stretched in their favor.' The expenses of the system continued to grow as the force required increased.

"The number of officials in the Imperial Insurance Office has multiplied in tune with the ever-waxing burden of work, so that in the estimate year 1909-10 it had risen to sixty-three permanent members, in addition to the President, the two Directors, and ten assistants; while the number of judicial assessors has increased from four to no less than ninety-nine. In the provinces the best voluntary social workers have withdrawn in disgust, leaving the administration of the industrial insurance funds to become more and more professional and bureaucratic.

"Not only has the force increased, but under the pressure of the claimants it has become inefficient and wasteful, so that the

general costs, per insured, have increased 50 per cent. since Herr Friedensburg has been in the service, while the work of inspection and regulation undertaken by the Government has steadily deteriorated.

"Some of the incidents related by Herr Friedensburg will remind American readers of the history of our Pension Office and pension laws. New classes of 'parasitic lawyers' have sprung into activity, inventing and pressing claims, and neighborhood doctors, whose scruples will not permit them to sustain such claims, are boycotted and threatened with ruin. The ingenuity of the claims is often not so remarkable as their impudence. Agricultural laborers are especially kindly regarded. To get admitted to that class, one man claimed that he was chopping wood to heat fodder for cattle when his accident occurred. Another put in a claim even more remote and curious. He was by calling a coachman, and he alleged that at the time of his accident he was driving to church, 'to pray for rain for the crops.' If these ridiculous and false claims were simply made, exposed, passed on, and denied, the expense to the State would be extravagant. But a sufficiently large percentage of them are admitted and paid to make a most mischievous effect on the general morality. We know by sad experience how corrupting our pension system has become. The cause and principle of corruption in the German insurance system are essentially the same, and the field of operation is far wider as well as more permanent."—*The New York Times,* July 9, 1911.

REVIEW OF DR. FRIEDENSBURG'S BROCHURE IN "THE SPECTATOR" (LONDON).

"THIS remarkable brochure, which is a reprint of an essay from the last number of the *Zeitschrift für Politik,* was described briefly in a letter in *The Spectator* of June 17th; but both for its intrinsic interest as an expert's view of German social legislation and for its bearing upon British legislative proposals it deserves fuller treatment. The purpose of Privy Councillor Friedensburg is to expose the abuses of German State insurance as it has miscarried in practice, and not at all to express any opinion on its underlying principles. His indictment deals with a great many evils, and is extremely complicated and technical; but he explains at the beginning that all the evils arise from the one fact that the various State insurance systems have been administered in a spirit of charity which is flatly opposed to the intent of the original projectors. 'The legal character of the whole of our working-class insurance,' he says, 'has not been realized as a living fact; and that is the root of the whole evil.' By 'legal character' he means that the relations between workmen claimants on the one hand and the pension funds on the other were framed according to juristic conceptions. State employers and workingmen were all partners in a common enterprise, and their various rights and obligations were rigidly regulated. This intention was accentuated by the fact that the procedure established for settling pension and compensation disputes was borrowed in the main from the civil code. The conception of beneficence was explicitly excluded. The insured workingman was given specific rights, which he could enforce in the courts, but he could not claim more. If he did make such a claim the pension arbitrators and judges could no more allow it out of a spirit of indulgence than a judge in an ordinary civil court could decide against the evidence merely because the party in the wrong appealed to him for sympathy.

"That theory, says Dr. Friedensburg, has been ignored in practice. Charity crept in and corrupted the system at the beginning. The insurance judicature held that 'in granting pensions there is needed only a special, less convincing kind of proof.' Considerations, 'proper in a poor-law administrator but not in a judge,' governed their decisions. The State further made the mistake of propagandizing in a costly way for the new institution. 'With

full hands enormous sums were scattered in order to familiarize the people with the pension idea.' The insurance judges, including the supreme Imperial Insurance Office, began by treating the workmen, not as litigants to be handled impartially, but 'as ill-reared, fractious children, who could easiest be reformed through kindness.'

"'The workmen very soon got accustomed to bringing their complaints, doubts, and claims of all natures whatsoever to the Imperial Insurance Office, often without appealing to any intermediate instance. The number of these appeals grew from 304 in 1887 to 3,303 in 1909. . . . . Many documents teemed with insults, threats to appeal to the Emperor, to Bebel, to the *Vorwärts*. . . . . In this wise there develops an absolutely monstrous quantity of clerical work (*geradezu ungeheuerliche Vielschreiberei*).'

"Of late years the craze for litigation over Pension and Compensation matters has become extraordinary:—

"'This easily explains why in 1909, out of 422,076 decisions by the industrial unions, 76,352, that is, 18.9 per cent., have been appealed against; that of the roughly 100,000 arbitration judgments 22,794, that is, 27.74 per cent., were fought further. The figures for Invalidity and Old Age are not much better.'

"The Imperial Insurance Office, which is intended to handle questions of law, is overburdened with frivolous and unfounded claims. The problem of the exact amount of compensation 'for a twisted thumb' is fought until it reaches this highest Court:—

"'No less than 77.7 of the appeals to the highest instance in 1909 were on the question of the exact amount of a claimant's loss of earning power. . . . . How greatly the claims for trifling injuries have increased is shown by the fact that from 1888 to 1908, despite the increase of the total compensation paid from 5,900,000 marks to 155,100,000 marks, the average compensation per accident fell from 232.19 marks to 155.53 marks. . . . . There are men, particularly among the wood-workers, who for three or four different injuries of a kind very common in their occupation draw part pensions of 30s., 40s., or more, and yet are earning their full wages. . . . . It is no wonder that the number of accidents grows with monstrous speed. In 1886 100,159 accidents were reported, and 10,540 compensated; in 1908 the figures were respectively 662,321 and 142,965.'

"This is due, in part, to the leverage which an 'accident' gives to a chronically sick man to get permanent support. 'Often an accident is actually sought for and arranged.' The 'victim' swears that his old illness is the result of the 'accident' and gets consequential help. Whole pages of Privy Councillor Friedensburg's book deal with similar frauds. 'It is a common experience,' he

says, 'to find workmen doing everything possible to foster their illnesses':

"'The doctor, usually regarded as the sick man's best friend, becomes his worst enemy. The most embittered quarrels rage in the sanatoria, and complaints and grumbling over spoiled food and bad treatment appear, of course anonymously, in the form of newspaper articles.'

"This last is a characteristic feature of all pauperizing enterprises. But at heart, says Dr. Friedensburg, workmen prefer the hospitals and sanatoria to their own homes, 'and no longer feel well at home, but continue to hanker after the flesh pots of Egypt.' The laxity which has neutralized the benefits of State insurance, however, is not confined to the workman and to the special insurance authorities. The employers and the minor local officials have fallen into the same pit. The legal and ethical conceptions of insurance, as an institution in which two sides are materially interested, required that employees should *de facto* pay their shares of the premiums as prescribed by the law. That was essential to the workingman's self-respect. It has not been realized. In domestic service the employer out of a sense of charity habitually pays both halves of the premium; and many employers of industrial labor, especially in the country, do the same. The local non-pension authorities are similarly demoralized; and they oppose the basic idea that State insurance is a matter of legal right and not of charity or of class exploitation:—

"'The communal chiefs (*Amtsvorstehern*) act entirely under the belief that they ought to help their local residents. They get this belief as a result of the *communis opinio* that the insurance funds have more money than they know what to do with; and this idea strikingly deadens the conception of legality and love for the truth.'

"Naturally the universal laxity, the payment of unjustified claims, and the extravagance practised in equipping hospitals and sanatoria impair the integrity of the insurance funds. Employers do all that is possible to escape their burdens, which they feel to be unjust, and in vain enormous sums are annually exacted from them in fines. The higher insurance authorities are repeatedly being called upon to remedy the evils due to such causes:—

"'Only those who have taken part in these quarrels—I might call them battles—have any idea of their depressing effect and their costliness. This alone makes it understandable why industrial unions and insurance institutions, in particular those at work among the agricultural population, have been repeatedly on the brink of bankruptcy. To effect any improvement in their position there are needed month-long tours both of the officials of the organizations themselves and of the officials of the Imperial Insurance Office.'

"Dr. Friedensburg says that the excessive cost of the insurance system, which is one result of the degradation of the system into charity, is complained of by employers; and that State insurance, therefore, reacts injuriously upon the Empire's industry:—

"'Unluckily, it is just the middle and petty employers who feel as most oppressive the percentage increase of their working expenses caused by the payments they must make to the various systems of insurance. As a result of the cost of insurance which has gradually become monstrous—it amounts to 2,000,000 marks a day—German industry is put at a disadvantage and is hampered to the extreme in its competition with foreigners. The institution is held first of all responsible for the marked rise in prices, which is felt as oppressive by all classes of the population.'

"It is impossible here to deal with the evidence given by Dr. Friedensburg of wholesale dishonesty and of the painful tolerance shown by the public to frauds against the Pension Funds; that is, against the State, the employer, and the workman as the three contributories. Numerous men, he says, live by travelling about the Empire fabricating pension and compensation claims for others. An official gives false evidence for a claimant on condition that the claimant shares the proceeds: he is sentenced only for 'negligent perjury.' No serious attempt is made to suppress insurance frauds by penal methods, because 'if all the untruthful statements made in pension matters were criminally brought before the Courts, the number of our State procurators and criminal judges would have to be doubled and trebled.'

"The original provision that claims could be fought cost-free was so abused by the making of baseless claims that it had to be abolished by amendment in 1900. The amendment allows the Courts to impose costs on a litigant who obstinately persists in hopeless appeals. But the Courts, under the ban of 'charity,' interpret this amendment by imposing costs upon the Pension Funds when these are the losers, but by allowing costs to litigious workmen. The result is that the latter

'come with absolutely hopeless claims across the whole of Germany to Berlin: their expenses to Berlin are borrowed, but the cost of sending them home has to be recovered from the Poor Law administration, after infinite letter-writing, explanations, and misunderstandings.'

"It is curious, in view of the careless statements which are habitually made in England, to find the 'Poor Law administration' playing this important rôle. But Dr. Friedensburg shows that neither of the two evils against which State insurance was directed has been exorcised. Class opposition (*i. e.*, Socialism) has not

been weakened, nor has pauperism been diminished. In February, 1910, the Imperial Secretary of State for the Interior admitted the first. As for the promise to kill pauperism, 'it is remarkable,' says Dr. Friedensburg, 'how little of that promise is heard to-day.' He refers to Herr Zahn's recent study intended to prove the contrary, but quotes Herr Zahn's admission: 'In reality the poor expenditure, both as regards the number of beneficiaries and as regards the number of individual allowances, has almost everywhere increased.'

"The system, concludes Dr. Friedensburg, is a *circulus vitiosus.* Charity, pauperism, and fraud are the segments of the circle; and 'to those who do not see in their countrymen a mere mass it is a deeply painful experience that the insurance has directly led to a general alienation and demoralization.'

"Such is the view of Germany's social legislation, as seen by a high official who has been administering it for twenty years. As to how far it can be taken as a final word, and a sufficient demonstration of the worthlessness of the system, the writer reserves his opinion. But it is at least a remarkable exposure of the delusion, common in England, that the German system is so admittedly and unqualifiedly a success that it is outside the sphere of native criticism."—*The Spectator* (London), July 1, 1911.

THE PRACTICAL RESULTS OF WORKINGMEN'S INSURANCE IN GERMANY

By DR. FERDINAND FRIEDENSBURG
President of the Senate in the Imperial Insurance Office (Retired)

Translated from the German by Louis H. Gray, Ph.D.
Amplified Reprint from the *Zeitschrift für Politik*,
Vol. IV, Parts 2-3

The Imperial Message of November 17, 1881, constitutes not only the Magna Charta of labor legislation, but also the scheme for its realization; and when it is combined with the data afforded by the various laws and with the sessions of the Reichstag, it admits of not the slightest doubt as to the foundation on which workingmen's insurance was intended to be constructed. The object was to afford "Government protection" to workingmen who, through sickness, accidents incurred in their occupations, invalidism, or old age, were unable to gain a livelihood, and also to their dependents and survivors; and this was to be accomplished "by a combination of the material forces of the life of the people under the form of corporate associations with Government guarantee." Strictly speaking, the Message created no new principles of law. Corporations had always existed for the promotion of the best interests of their own members or of others, and, like all other legal persons, had enjoyed Government guarantee, sometimes, it may be, in greater measure than was altogether agreeable when Government guarantee became Government supervision. Neither was the concept, nor even the word "protection" new. The common law of Prussia had already spoken of the special "protection" which the State exercises over such persons as are unable to provide for themselves; the Servant Regulation Act of 1810 compels masters, under certain circumstances, to "protect" sick servants; similar provisions are made by the laws of 1842 and 1855 for the care of the poor; and the Pensions Regulation for Civil Service Employees, promulgated in 1842 and corresponding almost word for word with the Imperial Message of 1881, recognizes the regulation and the protection of the conditions of Government employees as a most important matter for the State to supervise. The term "support," which is preferred by the Sickness Insurance Law and which is

also employed by the common law, was used in the Imperial Law of June 6, 1870, referring to the place of residence of those so "supported." It occurs likewise in the Imperial Trade Regulation, and it is significant that the Marine Accident Insurance Law designates as "protection" those services to which seamen, in case of sickness, are entitled in accordance with the Commercial Code and the Mariners' Regulations. The only thing that was essentially new, from a legal point of view, in the Imperial Message of 1881 was that it united and amalgamated these various concepts and components. Under no circumstances could there be any doubt that the German Empire here desired to establish an actual legal institution, and not a mere government or administrative regulation; and it was equally obvious that this creation was to come within the domain of private law in those respects which were most essential to those who were thus insured. The Empire took upon itself obligations which found their counterparts in the rights of the insured, and it created for itself rights to which the obligations of the party of the second part corresponded.

This general character of the Imperial Message received sharper expression in numberless details. On the one hand, those who were insured shared in the burdens and the expenses of the insurance, and they likewise shared in the management; while the insurance carriers were empowered to impose penalties not only upon other insurance carriers, but also upon those whom they insured. On the other hand, many individual requirements of ordinary civil law were accepted, such as forms of procedure, time limitations, exclusion of claims on account of non-use, and the like. That there might be absolutely no doubt as to the rights of the insured under this insurance, not only did he possess the power to prosecute with all customary legal means of redress, but a strict line of demarcation was also expressly drawn between this form of insurance and poor relief; for it was enacted that enjoyment of the advantages arising from insurance should not, as was the case in application for poor relief, carry with it diminution of civil rights. The Imperial Insurance Office subsequently made an additional decision by which it recognized the claim of the insured to be inheritable, and placed such claim, in this respect likewise, on the same basis as a private right.

With marvelous rapidity all these new laws became established—despite their truly enormous realm of activity which, in one way or another, affected the entire nation, despite the diffi-

culty of the subject-matter of the laws themselves, and despite the innovations arising from a large number of special requirements. Theorizers were still wrangling over the legal nature of the enactments, not only as a whole, but even in regard to their component parts; and the laws were already in operation as though things had never been otherwise! Those were noble and instructive days. With magnificent zeal, inspired alike by theoretical interest and warm enthusiasm, every nerve was strained to perform the task set by the Imperial Message, and to translate the thought of protection into act. The legislator certainly did not fail to grant the insured all legal favor. Wherever possible, all obstacles to the realization of their claims were obviated; they were freed from all so-called legal formalities. In a word, whatever could be done was done to aid the spirit of the law to triumph everywhere and to help the insured, under all conditions, to secure the support that was due him. The insurance organs—both those of the State and those of the insurance carriers—did even more. Free from all bureaucracy and red tape, surrendering the most customary and most common formalities, the claimants for pensions, who at first were naturally unskilled and ignorant in this respect, were assisted to validate their rights; they were taught unwearyingly, while judge and advocate were combined in one person.

In the very first statistical year of accident insurance (1886) 15,863 pensions, amounting to 1,547,593 marks, were granted, this including indemnification for the most insignificant injuries resulting in a loss of 3 or 5 per cent. of earning capacity. Invalid insurance, as soon as it went into effect, paid old-age pensions to some 130,000 persons who had worked within the three years previous—a gift pure and simple. Enormous sums were scattered with generous hands to familiarize the people with the idea of insurance; and in investigating the legality of claims for insurance magnanimity was carried to such an extent that, on the analogy of the principle *in dubio pro reo,* pension claims were recognized in cases of doubt, simply to avoid embittering quarrels which it had been one of the legislator's most cherished aims to avoid.

This fine zeal, which saw in workingmen's insurance the first ripe fruit on the tree of the social justice of the future, can be the object neither of reproach nor of scorn. The unselfish endeavor to realize the intentions of the law is in itself a proof of the idealism inherent in strata of society that are to-day the

objects of much contumely. But it was unwise; to quote an old adage of deep significance, "Less would here again be more." In any case pause should have been made betimes, that habituation to insurance might not degenerate into pampering through insurance. First and foremost, this should have been the outlook of the insurance carriers, for the law had made it their duty to manage the funds of their associations like good guardians. But, on the contrary, the extreme concessions made to the insured resulted in the necessity of ever-increasing claims on those circles whose contributions gave the requisite funds. This has recently been proved, with special reference to the sick funds, in most careful and suggestive fashion by Privy Medical Councillor Dr. F. Ritter, of Oldenburg (*Grenzbote,* 1910, No. 52), who has shown how —entirely apart from deliberate deception and shirking of labor— the funds suffer from the continual widening of the circle of the insured, not only through the inclusion of the family, etc., of the insured, but also because insurance continues to be held by those who had been expected to withdraw as their incomes increased, while this latter class is precisely the one which lays more and more claim to such assistance, both in kind and in degree. In consequence of the noteworthy rise of wages in recent years the contributions to invalid insurance have naturally increased; and as regards accident insurance it need only be said that the total disbursements of the Trades Associations have risen from 2.57 marks for each man insured and 193.45 marks for each accident reported in 1888 to 7.40 and 303 marks, respectively, in 1908. It would accordingly seem that the real limit of endurance has now been reached, if, indeed, it has not already been exceeded.

Unfortunately, the employers of moderate or of scanty means are the very ones from whom the contributions to the various classes of insurance exact a percentage of running expenses that becomes more and more oppressive. Unlike larger firms, they are unable to recoup themselves by their power to set prices, which are determined independently of them; and, although relatively few complaints have thus far been heard from these circles, this is very possibly because the more personal controversies between employer and employee, which in the labor world are the characteristic of the time, give rise to even more bitterness and anger than these contributions to the Trades Associations. Only recently the Prussian Minister of Finance has shown, by actual statistics, how the workingman submits to a taxation by his "colleagues" that would undoubtedly drive him to revolution

if it were the State that levied it. An additional factor is terror of the Social Democrats; and, in pursuance of a train of thought that was vaguely felt by the original legislator, and which we shall consider again at the close of our study, it was believed that the threatening perils of Social Democracy might be averted by contributions toward the insurance fund—that the workingmen might be bought off, so to speak, from revolution. The extreme unwillingness to incur disfavor with this party is clearly shown by the attitude of a witness in the Moabit Riot trial, who, when asked if he belonged to it, first answered with a decided denial, then declared that he did, and ended by saying that he "belonged to no party."

As early as February 4, 1890, an Imperial Decree emphasized the necessity of "so maintaining German industry that it may compete with the markets of the world," this solicitude being based on the incontestable statement that "Decrease of home industry through loss of foreign trade would deprive of bread not only the employer, but also the employee." The instigations of the Social Democrats have apparently blinded the workingmen to the fact that it is poor economy to kill the goose that lays the golden egg; but recently there has become audible an increasing volume of protest from large organizations, worthy of respect in every way, that authoritatively voice the complaints of the tradesmen, both small and great. Expressly denying from the very start all hostility to workingmen's insurance in the abstract, they show how gravely German industry is handicapped in competition with foreign markets by the cost of insurance, which can now be characterized by nothing short of monstrous, amounting, as it does, to almost exactly 2,000,000 marks daily; it is this insurance that they make primarily responsible for the great rise in prices which bears so heavily on all strata of society; and finally they point to the extreme difficulty, if not impossibility, of recovering these funds, although this would be absolutely necessary should Germany become involved in economic calamity, financial panic, or unfortunate war.

Excluding from the mass of accessible expressions of opinion on this subject those of the Trades Associations themselves, since they would naturally be exposed to the charge—so much in vogue to-day—of lack of impartiality, we cite only the reports of certain chambers of trade and commerce for the last year. Lübeck complains that the workingmen alone receive support in the Reichstag, to the utter disadvantage of the employers;

and adds that there should be some end of rivalry for the favor of the workingmen from mere motives of partizan politics. Elberfeld writes: "The steady advance in the price of production, due to the increase of wages, salaries, and other expenses, the augmented taxes, and—last, but by no means least—the financial burdens of a social policy which limits industrial freedom seriously endanger the exportability of the products of many branches of industry, this being especially true of the textile industry, whose foreign competitors pay lower wages and have no social burdens, or, at most, merely minor ones. We must, therefore, earnestly and emphatically repeat the warning against an excessive tension of the burdens of social policy." Finally, Essen declares: "If, disregarding the burdens of taxation, we consider simply the burdening of our industrial activity with social assessments, we reach the result that even to-day the burden of contributions to insurance, caused by this social policy, alone amounts to nearly 800,000,000 marks annually. It is self-evident that such enormous assessments, especially after crises and in periods of depression, can only constitute a formidable obstacle to the recovery of our economic life. It is equally obvious that this obstacle will in future become increasingly powerful when combined with the steady augmentation of burdens that may certainly be foreseen. Nevertheless, the surplus expenses which the new Government Insurance Regulation will create amount, according to one estimate, to 127,000,000 marks, and according to other estimates to 300,000,000 marks annually, while the pension insurance of private officials will involve an additional burden of some hundreds of millions of marks annually. We must, therefore, soon reckon with a burden of about 1,250,000,000 marks each year, laid upon our industrial activity simply and solely for purposes of social insurance. We are far from opposing either the legislation or the development of our social insurance, but, in view of the alarmingly rapid rise of all these assessments, we must emphatically admonish the reader of the fact that, once these burdens are assumed, they must be permanently borne, whether our foreign competitors follow us or not; and they must be borne in times of economic depression no less than in those of economic prosperity. And should there come times when our industrial activity—or even merely essential parts of it—should no longer be able to meet the social obligations legally imposed upon it, then there will be no alternative except for the State as the State to assume those burdens if it is to avoid

a catastrophe whose scope none can foresee, even so far as social conditions will be concerned."

The report of the Imperial Insurance Office meets these objections, which it recognizes as having a very real foundation, by remarking that, despite its heavy burdens, German industry has shared in the forward trend of the development of political economy; it enumerates the theoretical advantages for the employer in an organization of Trades Associations; and it calls attention to the fact that accident insurance frees the employers from claims for damages and from suits for liability. And yet, as the Office itself is forced to admit, at least this last advantage loses much of its importance when it is remembered that, in addition to his insurance, the individual employer is still liable to a very considerable degree and one that transcends, in consequence of certain decisions of the civil courts, what the legislator apparently foresaw and intended. It is, from every point of view, a deplorable, though undeniable, fact that—with the natural exception of official laudations, which are of scant value—there is nowhere a trace of the enthusiasm which once greeted the new institution. Everyone who can possibly do so endeavors to escape from the burdens of insurance, and this naturally and rightly results in counter-measures on the part of the corporations that carry the insurance, since they must and will secure what is due them. Controlling officials of the various associations constantly traverse the country, themselves controlled in turn by the Imperial Insurance Office and the State governments, so that frequently one official objects to the measures required by another, while the employer is at a loss to know whom to obey, and unpleasantness is rife. An endless mass of writing becomes requisite to track down and apprehend those who shirk their obligations; penalties are imposed to compel the delinquents to perform their legal duties; and "the combination of the material forces of the life of the people" has become one which is absolutely forced. The figures are eloquent: in 1908, the last year for which statistics are available, the fines collected by the insurance companies amounted to 268,177.11 marks, and those by the Trades Associations to 412,608.51 marks.

Despite all these compulsory measures, the economic position of the insurance carriers is by no means as secure as might be wished. Though the Trades Associations have now been established for twenty-five years, their status is peculiarly liable to great variation, even if the Imperial Insurance Office sanctions

change only for cogent reasons. At one time large groups of industries will petition to be transferred from one Trades Association to another where, they hope, their taxation will be less; and at another time an employer will make the same request for himself individually, or will even seek to be exempt altogether. The insurance obligations of individual industries and of entire lines of industry thus become as problematical as their precise relationship to the Trades Associations; and the positions of main industry and subsidiary industry are interchanged. This entails great labor and expense, not only on the Imperial Insurance Office, but also on the insurance carriers themselves; such being especially the case when an industry burdened by an accident is concerned, or when lines of industry peculiarly liable to accidents are involved, since each Trades Association is naturally unwilling to accept such industries, and one passes them on to the other. These controversies affect the Government authorities, the chief victim being the jack-of-all-trades of Prussian administration, the district president, who is often asked questions, in the hope of reaching a decision that shall be as unbiased as possible, which the employer himself could not answer. Only he who has taken part in these controversies—or, rather, battles—can form any conception of their embittering and costly nature. It thus becomes readily intelligible why those Trades Associations and insurance institutions which carry on their work among an agricultural population are the very ones that repeatedly come perilously close to bankruptcy, so that the officials of the organizations concerned, and of the Ministry of the Interior and the Imperial Insurance Office, are compelled to make tours that may require months, in order to gain at least some measure of relief.

Activity in the Trades Associations has gradually become both unpleasant and unpopular, as is clear from the fact that there is a steady dwindling in the forces which at first were placed at the service of those Associations, and which included names of high reputation, experienced students of social politics, and political economists. Since the managers of the Associations were required to be chosen from the ranks of employers still engaged in active business, and not from those who had retired to private life, and since the law forbade the managers to receive any salary, allowing them merely compensation for loss of time, the Associations sought to retain their services by giving them such compensation in generous measure. Thereupon the Social Democratic press raised its customary outcry "in the name of the

workingmen"—who, in reality, had no concern in the matter, since they contributed nothing toward accident insurance—that this compensation was a violation of the law. Although this assertion was false, the boards of control were so weak as to interfere with the legitimate rights of the Associations and to curtail the compensation for loss of time as far as they possibly could, even though they were given proof that the managers in question, in their devotion to the interests of the Associations, were suffering losses that could scarcely be reckoned in marks and pfennigs. The natural consequences are a constantly increasing difficulty of securing the proper persons for these important positions, a limited degree of devotion to the interests of the Associations on the part of those who have actually been secured, and a resultant and steadily accelerated transfer of the control of the Associations into the hands of paid officials, business managers, administrative directors, and similar officers of various designation. However excellent the work of these gentlemen may be—and excellent it is indeed—none the less, there is no longer any "combination of the material forces of the life of the people," which was, of course, intended to be self-administrative. Incidentally it may be noted that this system is by no means less expensive, for the cost of administration has risen from 34 pfennigs per insured in 1888 to 53 pfennigs in 1908.

Hand in hand with the growth of bureaucracy the Trades Associations tend more and more to become regular organizations of officials, especially as the officers of the middle and lower rank demand permanent positions and pension privileges, these demands being entirely justifiable from their point of view. In the case of agricultural Trades Associations—at least in Prussia—bureaucratic administration is implied from the very first in virtue of their connection with the State, municipal, and provincial authorities. Since these authorities normally control invalid insurance, two officials, occupying the same position and charged with the duty of deciding a given case, may go to law with each other in the name of the two insurance carriers which they control when one of them desires to shift a pension claim from himself to his colleague. This is a result of bureaucracy which many will fail to deem as serious as it really is. In the very nature of the case the element of autonomous administration recedes far into the background where invalid insurance is concerned, although the more recent wording of the law has sought to save this principle to some extent by the creation of an intermediary in the form

of a Pension Office. Nevertheless, the enormous mass of work to be performed apparently renders impossible any realization of the basal concept of autonomy, for the sessions of the committees appointed for this purpose are utterly unable to give thorough consideration to the ever-increasing host of applications. The paid officials perform the chief task of preparation, and their influence on the final decision is thus self-evident.

It is beyond all question that autonomy has been most perfectly secured—at least superficially—in the case of the sick funds, yet the result has been scarcely a happy one; it has at least failed to realize the concept and wish of the legislator. It is well known that the Social Democrats have found a way to put the sick funds under their complete control by means of distribution of votes in the committees; and the qualification for the office of president, treasurer, comptroller, and other vacancies is not merit, but political affiliation—all these offices are reserved to be the perquisites of trusty fellow-partizans. The phenomenon is identical with that presented by the official positions in the miners' unions, which have recently extorted public protest from so reserved a man as Dr. Sydow, the German Minister of Commerce. By a vicious circle, which will be still more frequently evident in the future, this firm foundation serves as the basis for an agitation that is, for this very reason, all the more powerful, so that the institution which was designed to cut the ground from under the revolutionary party is now made to promote it. The writings of St. Neumann (*Die Sozialdemokratie als Arbeitgeberin und Unternehmerin*) and of M. Lohan (*Die sozialdemokratische Gefahr*), and especially Möller's recent *Herrschaft der Sozialdemokratie in der deutschen Krankenversicherung,* supply an overwhelming mass of details to which the press adds new instances almost daily. And it should also be noted that complaints of the diversion of sick funds to purposes hostile to the State are now commencing to come from those parts of Germany that have a Polish-speaking population.

The real value, in many instances, of State or Imperial supervision of the autonomy of the Trades Associations may be seen in yet another respect, which is at the same time a proof of the statement already made, that the generosity of the insurance companies is excessive. As in the former case, it was a wise, beneficent, and thoroughly commendable measure for Trades Associations and institutions to build hospitals and sanitariums for those whom they insured, that prevention and cure might

there be effected with the greater speed, perfection, and permanency. But it was neither commendable nor in accord with the duties of a good parent and careful guardian that these measures should be carried out with an expenditure that can properly be characterized only as wasteful, and that was foredoomed to create false ideas of the enormous wealth of the insurance companies, besides exaggerating all claims upon them both in kind and in degree. No one can object in the least to the fact that these hospitals were equipped in the most appropriate and practical manner, and that, without regard to expense, the most modern achievements of skill, architecture, industry, and medical science were installed; nor can any one cavil at the lavishing of the most whole-hearted care for the welfare of the inmates. And yet there is no more need for such buildings to be homes of luxury than there is for the business offices of the insurance carriers to be palaces. Nor was this all. The inmates of many of these institutions enjoyed food and drink, shelter and chance for slumber, entertainment and recreation such as they had never dreamed of before, so that many and many a one learned to prefer his sojourn in the hospital to his own home, and, when he had returned to his family, was no longer content, but yearned for the flesh pots of Egypt, for the comforts which, too brief for his desires, were yet long enough to fill him with envy and hatred for those who, as he fancied, always fared so well. "Less would here again be more." One example out of many will be sufficient. Such a sanitarium which, it was estimated, could be built for 500,000 marks, finally cost 2,700,000, but it included a hall which, in the architect's proud claim, was a modern imitation and adaptation of the Baths of Caracalla, to say nothing of a bowling-alley which alone required an expenditure of 18,000 marks, while the patients were to be entertained by four orchestrions, at 12,000 marks each.

But what do the boards of control do in such cases? It is a magnificent testimonial to our official spirit, faithful to time-honored Prussian tradition, that the trend toward luxury and extravagance, which forms so repellent and dangerous a characteristic of the materialistic tendencies of our time, has found, relatively speaking, less entrance here than in any other class. Here the mad craze for external show is not yet the dominating factor; and economy is observed even in the case of money which is not one's own, which belongs, in other words, to the State. For these reasons the plans of the insurance institutions at first

aroused special consternation in the Imperial Insurance Office, for the Trades Associations are far more conservative in this regard, since their members share immediately in their operations. Efforts were made to simplify the institutions and to maintain less expensive establishments, not only for their own offices, but also for their sick and convalescent; and neither ink nor paper was spared in the cause of reform. But it was all in vain. Those who are familiar with our official organism know that the lower court is not over-fond of amendment by the upper, especially when the case is one of alleged self-government. So many plausible reasons could readily be brought forward to justify this luxury: insurance would gain regard and popularity; the insured would measure the good will of their compatriots and the protection of the State in proportion to the sums expended for them, etc., etc., in a strain known only too well. What was the Imperial Insurance Office to do? Was it to proceed to inflict twenty-mark fines on the executive committees? And suppose it did carry its plans into effect? In any event the Office would have been opposed by public opinion, whose generosity, as will be shown below, is exceeded only by its ignorance. Accordingly, the Office was silent, for its right of supervision had proved to be like the famous knife that had no blade and was minus a handle. Before long all the authorities were in the same boat, hailing with full official paraphernalia that happy day when hundreds of thousands, that might have been employed to advantage, were squandered in empty show to the detriment of the nation and the breeding of discontent.

If the insurance carriers must be charged with having failed, to a greater or a lesser degree, to observe that conservatism which both private and public considerations dictated with regard to those whom they insured, this indictment holds in far severer measure against the State organs of insurance. In this respect the Imperial Insurance Office has been particularly guilty of having entered upon a course that is apparently beset with the gravest perils. It must be clearly borne in mind that the efforts of this board were, as has already been said, necessarily devoted to gaining the confidence of the people, and especially of the so-called working classes, who had even then been superabundantly filled with discontent and false teachings, to making the new creation of value to them, and to accustoming them to a mode of treatment so entirely different from the rigidly legal point of view. This was no easy task. The first president of the Office was fond

of terming the insured as children, often ill-bred and stubborn children, who could best be won by kindness. It may well be questioned whether this comparison rightly appraised the class consciousness of the workingmen of to-day, and whether it was in harmony with the extensive rights which they enjoy in the State by virtue of modern legislation or with their still more sweeping demands. It may even be queried whether, from the point of view of mere logic, a human being may be treated as a child in one respect, while in another respect he is very decidedly considered an adult. But the comparison was an anachronism from each and every point of view. It was an inheritance from the despotism of eighteenth century rationalism, though this benevolent despotism had not only cake ready for its children subjects, but also, like every wise teacher, a good stout rod. Yet this principle, had it been intelligently applied, might have accomplished much; it might have been of advantage for all concerned, especially in the initial stages, and particularly in the administrative division in drawing up "petitions for workingmen's aid." As a matter of fact the workingmen very speedily became accustomed to present their grievances, doubts, and claims of any sort whatever to the Imperial Insurance Office, frequently without making claim on any class of intermediate court. The number of these petitions rose from 304 in 1887 to 3,303 in 1909. With infinite patience, and with an expenditure of time, devotion, and energy that was often out of all proportion to the subject-matter of the petitions, every effort was made to do justice to the petitioners, their cause was pleaded before every possible court, ample instruction was given them, and, to use a favorite expression of the Office, a strong right arm was lent to those who were insured. But even the Imperial Insurance Office is not omnipotent, and there are impossibilities even in workingmen's insurance. Nevertheless, the children, spoiled as they have been, now become stubborn and ill-bred; and many petitions are filled with insults and threats to appeal to the Emperor, to Bebel, and to the Social Democratic *Vorwärts;* while letters are written incessantly, even though the Office may repeatedly explain that it can do nothing further for the petitioner.

In this way an absolutely enormous mass of writing has been multiplied, and two details have had an especially injurious effect. One is the habit of continually giving the petitioner specific instruction as to his legal rights, though the precise form chosen is usually an unhappy one. He is informed that he must await

the decision of the Trades Association. "Should you be dissatisfied with this decision, you have the right of appeal. In case you fail to be satisfied with the verdict then rendered, you next have the right of recourse to the Imperial Insurance Office." This instruction is entirely superfluous, for the law expressly requires the decision of the Trades Association to designate the petitioner's legal rights with all requisite minuteness; and even a "child" like the workingman must know, now that workingmen's insurance has been in force for almost a generation, that the Imperial Insurance Office is the final court in ninety-nine out of a hundred cases. Since the petitioner is, naturally enough, "satisfied" with a decision or verdict only when it gives him all that he demands, he now considers himself practically bound to make use of his legal rights; and his composition not infrequently begins with the phrase, "At the direction of the Imperial Insurance Office I appeal" (or, "take recourse"). In this way there is a purely artificial multiplication of legal rights, and it becomes readily explicable that in 1909, out of 422,076 decisions of the Trades Associations, 76,352, or 18.9%, were opposed by appeals, and out of some 100,000 verdicts by courts of arbitration, 22,794, or 24.74%, were met by recourse. The proportions are not much better in the institutions for invalid and old-age insurance, although here, in the great majority of cases, the data contained in the vouchers are of themselves sufficient to decide the fate of an appeal. The decisions in these classes of insurance numbered 386,737, the appeals 28,831, and the revisions of decision 6,161. All these figures have a tendency to rise—this tendency being strongly marked in the case of accident insurance—and they are amply sufficient, without taking other evidence into account, to warrant passing verdict on our insurance, which was called into existence to avoid controversies concerning damages for liability.

The second detail which has laid an insufferable burden upon both the insurance carriers and the entire institution has its origin in a publication of the Imperial Insurance Office which states that it permits the Trades Associations—that it is, in other words, not irreconcilable with the obligations of a guardian and parent —to submit to a second examination a claim whose legal validity has already been denied, and to pass a new decision, such a decision, even though again adverse, rendering it possible for the insured once more to try his fortunes by means of the courts. This eliminated for (or, more accurately, to the prejudice of) the Trades Associations the legal power which, in all other re-

spects, was generally recognized as one of the most important defences of legal security. There was no possibility of taking from the insured a pension which had been unjustly granted him, even though such grant should prove to have been based on error. On the other hand, the permission of re-examination accorded to the Trades Associations has developed, in course of time, into obligation, for the heavy hand of the Imperial Insurance Office presses upon them until they yield and render a decision, whereupon the pension struggle begins anew. This course of procedure might be accepted with favor if it was followed only in peculiar and exceptional instances; but it has become far too general because of the efforts of the Office to "help," and because of insufficient power of resistance on the part of the insurance carriers, who are unwilling to incur the disfavor of their supervising court—especially when they intend ultimately to win their point as regards the baseless claim—and who fear the charge of lacking friendship for the workingmen more than the complaints of their overburdened colleagues. Here again there is total forgetfulness of the great general principle that bitterness engendered by pension controversies was precisely what the legislator feared, and that he sought by every possible means to exclude such controversies.

The real administration of justice is still more suspiciously affected by the attitude which thrusts into the background the legal character of protection and brings into the foreground the desire to help. It is beyond all question, even though there was no explicit legal declaration on the subject, that the Imperial Insurance Office was intended from the very first to be a court of justice with full judicial independence, and the legislator gave this court of justice a legal equipment that was possessed by scarcely any other court of its class. Its president was to be its presiding judge; a member of the Office was to report its proceedings; the Federal Council was to delegate one of its members to guard the great interests of the Empire; two judges were to maintain the court's connection with the jurisdiction of the civil law; and an employer and an employee were to represent their colleagues. This was, of course, feasible only when the judicial rulings of the Office were but seldom required. Nevertheless, the pompous and unwieldy machinery remained unchanged even when the suits for pensions became more and more frequent, and when the Imperial Insurance Office was forced to become the favorite arena for litigitis and pension hysteria. The president

has practically ceased long since to be the presiding judge, and even the directors have far too many other claims upon their time; the rôle of presiding officer falls to the older members, whom the Emperor nominates to this especial position, and who, with significant contempt for their scope of activity, are denied the title of president which is customary in such cases. The Federal Council is almost invariably represented by members of the Office, and the judges complain of the overwhelming burden of reports and verdicts which they must assume. The labor that is both required and performed is enormous; during 1909 cases of accident insurance alone demanded 1,297 sessions. And yet the Imperial Insurance Office complains that, "Despite this increased activity, which is possible only by straining every nerve, the Imperial Insurance Office has not succeeded in so mastering the tremendous increase of recourse cases as even approximately to pass final decision on such cases with that rapidity which is both requisite for the insured and intended by the legislator. On the contrary, a state of affairs has here developed which grows worse from year to year, and which in recent years has become utterly unbearable." No criticism, however hostile it may be, passes sterner condemnation on our insurance than this truly piteous lament.

In the majority of these sessions there is absolutely no ruling on questions of law. The seven men, selected representatives of their various colleagues, decide whether, for example, a man who has been injured shall receive a partial pension of 10% for a crooked finger, or whether nothing is due him. The great majority of cases decided by the Imperial Insurance Office are wretched wranglings as to how far a man who has been injured has lost his earning capacity in consequence of his accident; yet cases of this type formed no less than 77.7% of the total number of recourse actions in 1909. The great increase in claims for trivial injuries is shown by the fact that between 1888 and 1908 the average amount paid for each accident indemnified sank from 232.19 to 155.53 marks, although the total cost of indemnity rose from 5,900,000 to 155,100,000 marks during the same period. In the case of invalid insurance somewhat decisive measures soon became necessary. Here retrial is the last legal resort, and the court is usually composed of only five persons. This state of affairs has long been universally recognized as intolerable, and the Imperial Insurance Office itself sees its only hope in a "not too narrow limitation of its competency for final decision in con-

troversies regarding claims for damages, especially in the domain of accident insurance." The reason why no remedy has yet been found is probably not regard for the wishes of the Trades Associations, which, for reasons to be considered later (page 44), prefer recourse to retrial, but the difficulty of framing regulations which will meet the problems involved. Yet the law is practically inconsistent when there is competency of decision where the Empire shares in the burden, but not where the Trades Associations carry the pension load. Nevertheless, the Empire suffers even under such conditions, since it pays the expenses of maintaining the court, while the number of positions in the Imperial Insurance Office has increased to a degree that can be termed nothing short of unnatural, in proportion to the steady growth of the tasks that it must perform. In the fiscal year 1909–10 there were, in addition to the president and the two directors, sixty-three standing members, besides ten assistants, while the number of associate justices had risen from four to ninety-nine.

The conviction that jurisdiction must also help those who have been insured has laid another and a very considerable burden upon the Empire because of the voluminous testimony which is taken in the last court—that of recourse—this being done in great part, through a sort of agreement between the presiding judge and the official who reports the proceedings, before the case is debated in open court. Just as the administrative division examines the petitions for workingmen's aid, the senates scrutinize from every point of view the petitions that come before them, in the hope that some further concession may be made the persons insured. Nor is this scrutiny restricted to the claims and demands of the appellant, for if he considers himself aggrieved in the degree of his loss of earning capacity as assumed by the lower court, he may, under certain circumstances, exaggerate the amount of his yearly wages which serves as a basis for calculating his pension; and the Office has repeatedly declared that a petitioner's dissatisfaction, in any respect whatsoever, with the preliminary judgment rendered him secures for his petition the consideration due to any legal means of redress. Documents are searched—or at least should be—with the utmost meticulosity, on the chance that some point may still bear "interpretation" in favor of the insured; expert opinion is heaped on expert opinion, often with the additional requirement of tedious hospital observation of the person alleging injury, especially in case of one of the many neuroses which it is so much the fashion to claim to be the

results of accident. The foremost medical authorities must then be consulted, and they prepare learned treatises which, in very many cases, amount simply to making the decision dependent on the value placed upon the evidence offered, this being dutifully left to the judge. All this is naturally very expensive, and, although every president of the Office has had thus far to limit the taking of evidence, practically the only result has been to provoke charges from many quarters that the independence of the judges was being attacked. A few of last year's figures will suffice to prove the truth of these statements. Out of 4,509 cases evidence was taken before trial in 3,370, and on the basis of a formal resolution of the senate in 1,139, while expert medical opinions were sought in 2,014. Of the 2,500,000 marks expended for the Imperial Insurance Office in 1910, the Imperial budget provided 95,000 marks simply for the taking of evidence.

Even the senates of invalid insurance are not exempt from this mania for instruction. Instead of thanking their creator for wishing to save them from repellent association with petty details of actual data, so utterly unworthy of the dignity of a court of last resort, they availed themselves of the provision that a decision is liable to retrial if it contradicts the "evident contents of the records" to make excessively minute investigations, on the chance that they might find here and there in the records some assertion—however unimportant it might be—which, when duly proved and properly applied, might be sufficient to cause a different verdict to be rendered. He that seeketh findeth, and as a consequence of the enormous mass of work exacted from the courts of arbitration, the resultant brevity customary in many places when recording the written basis of the verdicts, and the impossibility of foreseeing what the Imperial Insurance Office will finally deem essential, almost every verdict of a court of arbitration will include some such contradiction to the evident contents of the records. The verdict is then annulled, and the case is returned to the lower court for reconsideration, frequently when it is perfectly clear that the final result, notwithstanding all these precautions, will be unfavorable to the person insured. Even if there be no other outcome, the court of arbitration is supposed to receive "educational influence"; although it may be questioned whether such influence is the purpose of jurisdiction, and whether infinite harm may not be wrought to insurance by arousing empty hopes in the insured. Once more figures are eloquent. Of the 6,161 retrial decisions in 1909, 15.3% call for recon-

sideration of the case by a lower court, and there are instances in which a case has been sent back for reconsideration two, and probably even three, times.

Attention has already been called to the perils threatening jurisdiction when it is based on subjective sentiment rather than on the objective foundation of the law, and when it derives its decisions from benevolence, social sympathy, humanitarianism, or whatever other feelings these unhallowed catchwords cover. This may readily be perceived in deliberations on a case that really admits of doubt. The concepts and principles of jurisprudence are extremely unpopular in the Imperial Insurance Office; the most subtle legal argument falls flat before the charge that it is not social, and the most that such pleading can do is to give an external justification to a decision that has been rendered from motives of benevolence. Consequently there is not only a general and increasing decline in theoretical interest in the law of workingmen's insurance, to which many distinguished authorities at first devoted themselves, but, with the exception of some valuable commentaries, the circles of the Imperial Insurance Office have themselves written practically nothing but guides through the mazes of jurisdiction and similar aids in service of a prejudice that may indeed be necessary, yet is of an inferior character both intellectually and ethically. How different is this condition of affairs from that which prevails in the Supreme Court of the Empire and in other supreme courts, even though its wide scope of duties fully entitles the Imperial Insurance Office to be considered their equal! Yet a celebrated Secretary of State in the Imperial Ministry of the Interior has made scholarly study of the legal aspects of their professional activity practically impossible for members of the Imperial Insurance Office by making publications on these themes dependent on his approval. In his day Bismarck declared that he would make the Federal Council small to strengthen the Imperial Insurance Office; his successors hold it down whenever they can. Can the Office, then, be blamed when the majority of its members, who are allowed to see nothing but recourses and retrials, are submerged in petty details, and lose sight of widesweeping points of view?

This neglect of broad outlook in favor of assistance in individual cases is one of the grave detriments to the insurance business of the present day, and it has infected the entire domain of jurisdiction. This, more than anything else, should be kept free from considerations based on personal sentiment, which is an

utterly unstable foundation. Perhaps this is the very point where subsequent reality has diverged most widely—and most painfully—from the concept which guided the legislator. Yet it is precisely here that the Imperial Insurance Office finds a special and justifiable characteristic (or, rather, the glory) of its jurisdiction, and it devotes a lengthy defence to the concept that its verdicts, "in conformity with the intention of the legislator, must be filled with that spirit of benevolence toward those who both need and are entitled to protection that has long been customarily designated 'social and political sentiment.'" Herein it enjoys the unstinted applause of its former senatorial president—now counsellor to the Superior Court of Administration—Dr. Weymann, who, in the March number of the *Preussische Jahrbücher,* enthusiastically exclaims: "This is jurisdiction indeed, from whose eyes flashes the native hue of resolution." Herr Weymann proceeds with the admirable statement that in our jurisdiction and jurisprudence a ceaseless battle is being waged for the victory of the right with the concepts that are conducive to it, and as whose antitheses he brands those "dialectic and purely formalistic views characterized by the maxim, *fiat justitia, pereat mundus.*" Similar views have recently been promulgated through an appeal from Cologne regarding the alleged need of reform—what does not need reform to-day?—in our administration of justice. This is not the place for a general discussion of this special shading of our modern movements for reform, but it may be noted that Emperor Ferdinand I. employed this Latin aphorism in a very different sense from what is customary to-day, when it commonly serves as a catchword to condemn jurisdiction which is in conformity with the law. The Emperor meant, as Zinkgref's German rendering clearly shows, that justice must prevail, even against the might of the world; that, in other words, right is more than might, a position that scarcely any one will deny. The only lamentable fact is that the twisting of words which is now so popular, and which is, so to speak, pursued as a regular sport, immediately gives rise to the question, "What is justice?" It must, however, be borne in mind that this jurisdiction which is in conformity with the law—this stumbling-block of all precipitation and excrescence, for which neither the Imperial Insurance Office nor Herr Weymann would plead—has, long since, been recast into the formula, *fiat justitia, ne pereat mundus,* thus obviating all misinterpretation of the Emperor's words. Yet from this point of view the type of jurisdiction emanating from

the Imperial Insurance Office can not be pronounced altogether fortunate, even by its warmest admirers.

In consequence of the basal principle which we are here opposing, the senatorial members of the Office, and especially the president, must submit to being occasionally informed by zealous representatives of the insured that it is their duty to decide invariably in favor of the workingman in case of doubt; and, in addition, those insured persons who are called to the Imperial Insurance Office in Berlin are immediately introduced to a body of associate justices who are blessed by being controlled by the Social Democrats, and the new members there receive corresponding instruction as to their judicial duties. Even associate judges who have had a legal training cling tenaciously to the idea that, in pension cases, a conviction of a very peculiar nature is requisite either for affirmation or for denial. Here again the reason lies in a decision of the Imperial Insurance Office—a decision which, in the abstract, was filled with good intentions and based on a solid foundation. This ruling, designed to elucidate the concept of untrammeled estimation of the value of the evidence offered, declared that a court of arbitration might, under certain circumstances, base its verdict simply on probability, provided this gave conclusive evidence of the existence or non-existence of an actual state of affairs. Since, however, "rigid proof" was required in other cases, as in the exceptional instance of hernia as a result of accident, the theory was developed that a minor degree of certainty—possibly even mere probability—was sufficient reason for granting a pension. The remark may, therefore, frequently be heard that, "As a man I am convinced that the claim lacks all foundation, but as a judge I do not feel myself justified in denying the pension." Such considerations are very proper for an overseer of the poor, but not for a judge in a court of law; and yet how could they be refuted by counter-arguments? Thus the insurance courts are invaded by the crying evil of our courts with juries, that the judge's convictions are influenced only too easily by external considerations foreign to his domain; and this evil is here perhaps the more corrupting since, though it is better—at least in the popular mind—to acquit any number who are guilty rather than condemn one who is innocent, in insurance not "only" does the certainty of the law suffer, but the insurance carriers are also overburdened. Moreover, in the other courts this problem touches only isolated cases; but in the insurance courts the question affects a fundamental point of view which, in

the end, imperils the entire institution without reaching, as will be shown below (page 59), a result that gives even an approximate degree of compensation.

Nor is this all. Men—and judges are but men—render extremely divergent decisions according to their views and sentiments, and according to their own circumstances and their power of resisting external influences. Where, therefore, no rigid form of law has fortunately been found to compel decision one way or the other, views as to what is right vary in considerable measure. This is shown in the simplest concepts, in the most ordinary considerations of every-day life. Many associate judges, for example, give much weight to the wages still received by the injured party, while others consider this point wholly immaterial. These and similar contradictions thus become no rare occurrence in the verdicts rendered by every court; and the connotations in the mind of each individual of such obscure concepts as "social," and such subjective ideas as "benevolence," can not fail to be manifold. Much divergency is, therefore, inevitable in a jurisdiction which operates with such bases of decision. Since no one, outside a very narrow circle, understands the subtleties by which the Imperial Insurance Office construes a peculiar case—one which, in other words, calls for the granting of a pension contrary to the normal rule—a fertile soil is prepared for the charge of partiality. Lamentations are rife that jurisdiction and the people are aliens to each other. In opposition to this attitude one of our foremost judges has well argued, in a *Festschrift* in honor of the University of Berlin, that the reason for this phenomenon lies in the steadily increasing lack of knowledge of the nature of law, the deterioration of such knowledge being accelerated by a system of jurisprudence which substitutes vague sentiment for fixed rules of law. This has likewise been recognized by Professor Rosin in his review of the new "Handbook" of the Imperial Insurance Office (*Preussisches Verwaltungsblatt*, Dec. 3, 1910). Establishing the fact of excessive influence of social and political sentiment on the rendering of verdicts, he queries whether, in view of this, it is really advisable to maintain a special insurance for accidents contingent upon occupation, in addition to the general insurance of invalids and survivors. This thorough student of our workingmen's insurance, to whom the greatest indebtedness is due as regards its juristic construction, is convinced of the impracticability of uniting the strict judicial decision which the rules of accident insurance demand with the

endeavor to make the services of such insurance effective in the widest measure possible. As a matter of fact, one or the other of these aims must recede into the background; and a few examples will show how jurisdiction gets around this difficulty.

As already noted, the question of the degree of earning capacity still possessed by an injured person is by far the most frequent problem for decision; and this holds good whether it is a case of indemnity for the first time, or an increase or decrease of pension in view of aggravation or improvement in the plaintiff's condition. It is evident from the very first how important a rôle is played by the personal sentiment of the individual judge—the greater or less degree of his "friendship for the workingman," his knowledge of conditions in the various trades, the credence which he gives to the allegations of the person injured, his personal experiences—possibly by a similar injury sustained by himself or within the circle of his acquaintances—and his degree of confidence in medical science. This consideration should of itself be sufficient to relieve a judge in a court of last appeal from such decisions. It is true that two tables have been drawn up showing the valuations placed on individual injuries, such as the loss of an eye, arm, or leg. Similar data are given, as is well known, with almost comic minuteness in the folk-laws of the ancient Germanic peoples, and also by very modern insurance companies, while tables of the same sort have been compiled from the decisions of the Imperial Insurance Office. It is perfectly true that the Office declines—and with entire justice—to formulate a rate table which shall be valid generally, and that it reserves for itself the right of estimating damages according to each individual case. Yet even here—and again with entire justice—certain fixed principles have been developed, as that the loss of an eye regularly entitles a workingman to from 30 to 33⅓% of the pension for complete loss of earning capacity. This very principle is one of those most constantly opposed. The Trades Associations have given the Office long extracts from the payrolls which prove beyond all doubt that very many workingmen—if not the majority of them—receive, after losing an eye, precisely the same wages as those who have suffered no injury, and as they themselves did previous to their accident; and that these maimed workingmen share in the increase of wages that are either general or to be secured by the workingman's own services. A still more curious result arises from certain combinations of injuries to the hands or fingers. It has been shown that such

injuries, when received in brawls or in other ways unconnected with the workingman's occupation, do not prevent him from gaining his old wages within a short time, for the adaptability and habituation of the human body are nothing short of marvelous. Nevertheless, an industrial accident with exactly the same results was indemnified with a pension of 30%, or even more. There are workingmen, especially among those engaged in the wood industry, who draw pensions of from 30 to 40% for two, three, and even four accidents of this type, which are very frequent in their occupation; and yet earn full wages. An especially troublesome difficulty results from a decision of the Imperial Insurance Office which is again perfectly justifiable in the abstract and which, in awarding damages for an accident, requires that injuries existent before the accident in question be taken into consideration. It is evident that a man suffering from an old injury to his hand receives more harm if he is also injured in the leg than if he had previously been entirely uninjured; or, to put the case more strongly, the loss of the second eye is incomparably worse than the blinding of the first. On the other hand, it is unjust to make the Trades Association responsible for consequences which have their origin in the injured man himself; and it thus becomes most difficult to find a golden mean that will satisfy both parties' sense of justice. In agricultural insurance provision has been made for such cases by estimating the pensions according to the corresponding loss of yearly wages. Yet even here benevolence still has a scope which can scarcely be reconciled with the duty of a judge to consider simply the facts in the case before him. Thus, for example, a court of arbitration known to be particularly "friendly to the workingman" once awarded a pension on the basis of complete and undiminished wages to an injured farmer who had been deaf and dumb prior to his accident; though there could be no doubt that if he had lost his speech and hearing through an accident incurred in his occupation, he would have been granted a very high pension, if not, indeed, the highest.

The question whether an accident is to be regarded as incurred in the pursuit of an occupation, whether it is, in other words, to be indemnified by an accident pension, would seem at first blush to be the problem that might most readily be solved by legal considerations, so that here benevolence would appear to have its smallest range of action. Experience, however, teaches a very different lesson. It is a recognized principle that accident

insurance is awarded only for injury by an actual accident, not for a sickness which the insured has contracted in consequence of his trade employment. Accordingly, every possible effort has been made to construe the law so as to make the Trades Associations responsible in these cases as well. Thus, for example, many cases of poisoning, which normally do not become perceptible until the harmful influence has long been operative, are regarded by one theory as the result of a number—which, under certain circumstances, may be very great—of small individual industrial accidents, each consisting in one inhalation of the deleterious substance. Although this theory has not yet become dominant in jurisdiction, kindred views have long prevailed. Industrial accident is assumed not only in cases where the injury results from a single, sudden occurrence, but also where the injurious process did and must continue for some time in order to produce an effect prejudicial to earning capacity, such as colds as a result of working in water, heat stroke from remaining in excessive heat, paralysis from working in rooms where electric machines are in operation, and the like. If in such cases the distinction between sickness and accident is made to consist in the length of time that the deleterious influence has continued, the door is opened wide to subjective estimates, to social and political sentiment, and to benevolence. A precisely similar problem emerges in cases where a sickness latent in the person insured breaks out in consequence of some process connected with his occupation, as happens, for instance, when persons with a tendency to consumption are obliged to lift and carry. Or if a disease—perhaps merely the weakness of old age—which still permits the sufferer some measure of toil is so aggravated in consequence of a slight accident, as is frequently the case, that he can no longer do any work whatever, is the old disease or the slight accident the reason of the cessation of his earning capacity? These cases are frequently complicated by death, which the person insured might indeed have expected in the near future, but which may have been hastened by the accident, and perhaps also by the excitement incidental to it, the confinement to his bed, and the like. Is the man then killed by the accident? In these cases decision is rendered in favor of the insured when the accident was an essential contributory factor in causing his loss of earning capacity or his death; and the estimate placed upon "essential" is again determined by benevolence.

Even abstract questions of law are brought within this fatal

sphere. That accidents incurred while on the way to work can not be deemed industrial accidents scarcely requires proof, and yet all kinds of indirect ways have been devised to help those who have thus been injured to secure pensions, so that many grants have been made in cases where the employee chanced to be carrying a tool which contributed to the accident, or where his employer directed him to take a certain road, or to attend to this or that on the way, and the like. The extreme difficulty of deciding, under certain circumstances, and especially in agricultural occupations, between uninsured labor on one's own account and insured industrial activity has led, on the one hand, to a most agonized splitting of hairs or to a divergent decision of similar cases, based on the chances involved in rendering the verdict; while, on the other hand, it has given rise to most marvelous assertions by those who have been injured, that they may prove that the injuries in question were received in consequence of their occupation. Two particularly striking examples will be sufficient to show this. A farmer was injured on his way to church, but he claimed that he was going to pray for rain, that his journey had, therefore, been made in the interests of agriculture, and that he should receive compensation for his accident. In undressing her daughter, aged six years, a peasant woman injured her finger, which, on account of subsequent infection, had to be amputated. She declared that the child had been engaged in agriculture, since it had kept the geese; the undressing of the child, therefore, should be considered the same as unharnessing a draft animal, and should be accounted an agricultural operation. The very preferment of such claims shows what may be expected in the courts of jurisdiction, and any one who glances through the volumes of published decisions will often be astonished to see all the calamities that are forced into the category of accidents incurred in the course of occupation. In this way the jurisdiction contributes to the unnatural growth of industrial accidents. In 1886 the accidents reported were 100,159, and damages were awarded in 10,540 cases; in 1908 these figures were 662,321 and 142,965 respectively. Then words were poured out in the Reichstag to lament the sacrifices demanded by the Moloch of capital, and foreigners to whom our insurance was lauded pointed to this increase and emphatically declined to allow it to be introduced in their own countries.

As a matter of fact, the entire system of this jurisdiction, especially in accident insurance cases, might here be set forth, subject

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after subject, and controversy after controversy; and it might be shown how it has been possible to transcend even the beneficent intentions of the legislator at every time and in every place, regardless of any union of the advantages granted the insured with consideration for the common weal, or with the justice due the Trades Associations as the party of the second part. Only cursory mention can be made of the controversies centering around yearly wages as the basis of estimating pensions. Contrary to the intention of the law, which was designed to secure a certain average in such estimations, and which sought also to express the concept that the workingmen should contribute at least indirectly to the expenses of insurance, the courts have exerted every effort to credit the insured never with less, and, wherever possible, with more, than his actual wages, the attempt thus being made to compensate him for the "wrongs" which he suffered on account of the legal provision that loss of his entire earning capacity could be indemnified only to the extent of two-thirds of his wages. To this must be added the endeavor to extend the benefits of insurance in widest possible measure to persons and legal relations which hitherto it had not comprised. The deciding senates repeatedly declared industries insured which the administrative division invariably emphatically declined to insure; and similar difficulties were involved in carrying through the insurance itself, with its registration, reckoning of contributions, and other necessary details, as when, for example, some person hitherto considered to be independent is held to have entered upon or to have been transferred to an industry for the sake of the pension.

With full consideration of the dangers of supplementary definitions, and with due regard for the general security of the law, the legislator had very intentionally laid down clear rules as to forfeiture of claims through non-use within a given time. Nevertheless, this is frequently considered unfair; and the Trades Associations, which are supposed to act with all the conscientiousness of a faithful guardian, are even objects of suspicion if they raise this objection, although no guardian would escape an action for damages should he fail to employ it. In considering whether and how far the insured may possibly have been prevented from securing his rights because of circumstances beyond his control, so that forfeiture by expiration of time-limit can not be counted against him, jurisdiction develops a degree of condescension which lowers the workingman to the level of a child incapable of judg-

ment, and, as a sorry compensation, makes this beneficial rule an empty and totally ineffectual bogy. Absolute ignorance is frequently imputed to the "poor, ignorant workingman." For example, a decision was once formulated with infinite toil and trouble which assumed that the person insured was aware that a letter must have a postage stamp, or else it runs the risk of being refused by the addressee. The same people who demand for the workingman the most sweeping control in the guidance of the State can not do enough to prove his mental limitations where his most vital private interests are concerned.

The law sought also to protect the workingman against accidents due to carelessness and inattention, and it accordingly authorized the employer to frame prohibitions designed to obviate any possible dangers arising from this cause. Acting on this principle, jurisdiction long maintained that a workingman who disobeyed such a prohibition which had been made properly effective placed himself "outside his industry," and accordingly lost all claim to a pension in case of accident. This ruling has recently been abandoned. In considering the occupations incidental to an industry the causal relation between accident and industry requisite to recognition of an industrial accident is no longer excluded by the fact that the person insured may have incurred the accident in question because of his disregard of a prohibition of the type just described. This decision is certainly extraordinarily friendly to the workingman, but its perils are equally extraordinary, since it cripples the efficiency of regulations framed to prevent accidents, and, consequently, the protection of the workingman, which is acknowledged to be an important function of accident insurance.

One more point may be cited in conclusion to show how far jurisdiction has carried the principle of the favor of the law. With a childlike trust that was almost pathetic, the law granted to those who were insured exemption from all costs and fees in the prosecution of their legal claims. At the same time the courts were empowered to decide whether the party against whom verdict was rendered should pay its opponent extrajudicial fees, and, if so, what these fees should be; and also to determine what expenses would be necessary for legal cognizance of the claims and rights in question. In consequence of the unexpectedly rapid growth of legal rights, the amendment of 1900 held that some means of protection must be created, and it empowered the courts to impose on the parties such costs as should accrue from the

wanton prosecution of a hopeless claim. What was the result of these regulations? Extrajudicial fees were practically never allowed to the Trades Associations, while they were granted to the insured in ever augmented measure, even when the insured could allege no real basis for their claims. Sometimes mere inspection of the injured member, or even nothing more than personal impression, was considered to be the taking of evidence, in order to reimburse the costs incurred by the party against whom verdict was rendered. This may, perhaps, occasionally pass unchallenged in the courts of arbitration, yet it obviously creates another strong temptation which, in case of unwelcome verdict in a suit, results in the direct opposite of the reconciliation sought. As a matter of fact, people with perfectly hopeless claims travel across the whole of Germany to Berlin; the expenses of the trip to the capital have been scraped together by borrowing; and the return must be ultimately contested by the Department of Poor Relief at a cost of infinite correspondence, annoyance, and vexation. Yet it is extremely rare for the *poena temere litigantium* to be imposed, and the Imperial Insurance Office itself acknowledges that it has "little inclination" to penalize the insured with costs, since they can seldom be collected, and although they may legally be charged against the pension, this course "easily leads to hardships, and causes embitterment"—an argument which appears to be entirely insufficient to justify the elimination of a defence provided by the law with the express intention of obviating an abuse whose existence is universally recognized.

Naturally the Imperial Insurance Office is chiefly responsible for the tendency developed by jurisdiction, for its decisions form the model for, and are in certain respects binding on, the verdicts of the courts of arbitration. Nevertheless, the courts of arbitration must themselves be held partly responsible for this development of actual administration, for, being still closer to the facts than the authorities in Berlin, they might have protected themselves against an extension of the benefits of insurance whose suspicious character they could perhaps have estimated with still greater impartiality. The fact that the courts of arbitration have failed to realize this expectation, and that they have, as a whole, assumed and maintained a position characterized by complete loss of independence, is certainly due in great part to the scanty esteem accorded, as has already been noted repeatedly, to insurance by the administrative authorities of the State, since they only too frequently employ as presiding officers of the courts of arbi-

tration associate judges who have just passed their examinations, and who, though young and well trained, have no qualifications except benevolence for their difficult position, so that they often act as a drag on the decision of many claims in cases where such decision has in the meantime become more strict. The grave errors which frequently result may be seen in the printed decisions of the Imperial Insurance Office, from which one case may be cited as a real legal curiosity: a court of arbitration granted a pension, but, in formulating its reasons for this decision, became doubtful of the justice of its verdict, which it "amended" by denying the pension in question. When complaints are made in the Imperial Insurance Office that the recourses and retrials are increasing, and when ways and means to remedy this state of affairs are under consideration, the carelessness shown in the choice of presiding officers for the courts of arbitration becomes particularly evident, especially as these gentlemen generally resign their positions just as they are beginning to become familiar with their duties. Though it is self-evident that there are many exceptions to this rule, the trouble is that they are only exceptions, after all; and so great and so manifest is this evil that it has compelled the Trades Associations to cling to the legal means of recourse, despite the grave sacrifices which it entails upon them in other respects (see above, page 31).

If it has already been said that the boards entrusted with the duty of jurisdiction have, like their members, shown to those who are insured a complaisance which exceeds the limits of the law, this does not, of course, imply an accusation of unlawful partiality. These judges make their rulings after thorough consideration of the case; they act according to their best knowledge and belief; and they are guided by an honorable conviction, frequently against their own inclinations, since they believe that they are morally bound to construe the law and their duty as they do. It is only this construction which is criticized in the remarks here made, which are intended to set forth, from a purely scientific point of view, a divergent interpretation. Yet it is beyond all doubt that if even a small fraction of the subtlety, learning, and care now employed in favor of the insured were made to contribute to the best interests of the Trades Associations and insurance institutions, the nauseatingly familiar cries of partizanship, class justice, robbery of the people's rights, and the like would be raised. This statement is capable of proof. When the amended accident insurance law went into force, laying many new

burdens on the Trades Associations and bringing them few alleviations of their load, the president of the Imperial Insurance Office at the time delivered an address to the representatives of the Associations, in which he implied that the Office would endeavor to protect the insurance carriers against being overburdened, these innocent words bringing upon him a torrent of abuse.

The old basal principle of Roman law, *liberum corpus non recipit existimationem,* is impossible in modern times. Its proud dignity finds no place in a world ruled by property interests, and where, men boast, money is everything; while from a world of poverty-stricken masses it is still more completely alien. It could scarcely be expected, therefore, that the insured would observe any restraint whatsoever in their demands for insurance; but, on the contrary, it might be anticipated that the insured would strain every effort to secure the comforts of insurance in the greatest possible measure, and for the longest possible time. The experience of many years has shown that the German has an easy conscience so far as the State and its treasury are concerned, and this experience is confirmed not only by the members of boards for the assessment of taxes, but by every one who, in crossing a frontier, has observed how assiduously everything is concealed from the customs inspectors. Moreover, litigiousness has always been regarded as one of our hereditary faults, so that even the Imperial Insurance Office lays the responsibility for the enormous increase of appeals and recourses on "the craze for litigation and the stubborn insistence on alleged rights inherent in the German mind, and the morbid tendency to go to law to the greatest possible degree, and especially to exhaust the resources of every court." It must, however, be noted in simple justice that the numerous foreigners, especially Poles and Italians, who gain a livelihood in Germany vie with our compatriots both in greed and in inventive genius. The Latins are especially cunning in taking advantage of our institutions for the promotion of the general weal, particularly as they are aided by their possession of diplomatic representation in Germany and by the friendly relations required by our share in the Triple Alliance. As a rule, the entire village, including the syndic and the physician, helps the pensioner whose pension the wicked Germans wish to decrease or stop altogether. In the last year 800,000 marks were taken from the treasuries of the Trades Associations to Italy alone, a fact which may be recommended to the consideration of the organs of our

foreign policies when in the future—as has so often happened in the past—Germans resident in Italy shall suffer injury, and even mistreatment, in the course of their occupations.

For the general reasons just set forth, it was from the very first a doubtful, if not absolutely incorrect, mode of procedure to grant those who were insured exemption from costs in the prosecution of their claims. It is true that scarcely anyone could have dreamed that insurance would have been abused to the extent and with the methods that have actually proved to be the case, and he who looks for and regards something higher than the mere multitude of his nation can feel only deep and bitter pain when he sees that insurance has been the very factor which has led to universal degeneration and demoralization. To all who have not themselves passed through the horrible experience it will be perfectly incredible how far beyond the generous favor of the law, how far beyond the still more generous favor of all the authorities—even those of the Imperial Insurance Office—claims are carried, prosecuted through each and every court, and driven on with petitions for workingmen's aid, memorials directly to the Emperor, and complaints to all competent and incompetent authorities. In considering the actual operation of the Imperial Insurance Office examples have been given (page 40) of the gentle art of preparing claims, and while in all else, even in regard to the elements of insurance, the most lamentable ignorance reigns, a knowledge of backstairs methods of dealing with important points has been developed to a degree which can only be termed amazing. The enormous scope of insurance jurisdiction aids in the dissemination of this knowledge in ever widening circles. It is almost absurd to see how considerations adopted in special cases to grant a pension under circumstances that would normally exclude it penetrate into the remotest corners and become the common property of all pension hunters. The Imperial Insurance Office once decided that an accident received while chopping wood should be indemnified because it was shown that the wood in question was being chopped to boil fodder for cattle. Since that time—at least if the allegations of claimants for pensions may be believed—cattle have never and nowhere received fodder that was not boiled, nor has wood ever been chopped except to boil such fodder.

Here again the individual cases might be taken point by point, and in each one it might be shown how those who are insured seek to remove the last barriers that may possibly still prevent the recognition of their claims by means of what can, unfortu-

nately, be termed only lies. Once more only a few examples need here be cited. Even in everyday life many sickly persons are inclined to overrate and exaggerate their ills and aches, and the popular modern complaint of nervousness has essentially fostered this weakness in general. Now insurance furnishes a shockingly fertile soil for this sort of nonsense, and here grows the evil and envenomed weed of pension hysteria, one of the most melancholy consequences of our workingmen's insurance. A vast amount has been written concerning this evil, from the time when Professor Oppenheim discovered "traumatic neurosis" in 1889, until it finally enjoys practical unanimity in the authoritative circles of the medical profession. Windscheid's clever aphorism, "Where there is no pension, there is no accident neurosis," sharply and clearly expresses the conviction that has gradually become dominant; but any estimation of the influence exercised upon the earning capacity of the pension claimant through phenomena either caused or at least increased by his "appetitive concepts" is subject to the widest variations and exposed to the grossest errors with physicians as well as with judges. In view of the enormous mass of literature on the subject, reference can here be made only to the admirable discussion of Franz C. Müller (*Zeitschrift für Versicherungswissenschaft,* VII), who has shown in detail how the evil has only been fostered by the excessive humanitarianism of jurisdiction. As a matter of fact, those who are insured know how to take advantage of the difficulties of decision which, in the last analysis, are involved in even the simplest case. Whoever, in the course of his occupation, receives an injury, which may be of the most trivial nature and which, as has already been shown in the case of injuries to the hand (see above, page 38), would not disturb him in the least under other circumstances, guards it like a veritable treasure and tends it like a milch cow. From unconscious exaggeration to direct invention, from neglect of the treatment prescribed to the artificial keeping open of wounds, daily, and in the case of the majority of those injured, there is found a gradation of the most diverse efforts to render their condition suitable for the payment of a pension. Even artificial limbs and similar appliances furnished by the Trades Associations are not used, are carelessly handled, and are even intentionally damaged and then termed injurious. Every sickness and injury a man either has or ever has had is brought into connection with the accident, the allegation being either that the sickness or injury was caused or aggravated by the accident, or that

it is to be regarded as accelerating its own normal consequences. Frequently an accident is deliberately invited, and is then made to serve as a plea for a pension claim, in harmony with the jurisdiction already described (page 39) in cases of combination of sickness and accident. Whether the injury is great or small makes no difference. The vast majority of cases, as stated above (page 30), involve infinitesimal injuries, and the annullment of a partial pension of 10% is fought with the same bitterness as a denial of indemnity for the gravest sufferings. Improvement is the last thing ever to be acknowledged; a gradual diminution of a pension is bewailed as a continual source of uneasiness, and its lessening in marked degree as a hardship. Any thought of decreasing a pension is normally answered with the assertion that the trouble is growing worse, if not with a demand that the pension be increased, and in this way an accident forms the starting-point of a series of suits which frequently do not end even at the death of the man injured, since a pensioner having other persons dependent upon him can scarcely die except as a result of an accident received in the course of his occupation, however long ago this accident may have occurred, and however remote its cause, medically speaking, from his last illness. It even happens frequently that an industrial accident results in no injury whatever, and the man injured simply imagines that his health is impaired. Hereupon he ceases to work and prosecutes his claim through all the courts, especially when, as may be the case, he has behind him an alleged expert who gives him a certificate that this imagination constitutes a result of the accident which calls for damages. In one such case the Imperial Insurance Office denied a pension, only to be accused publicly of lack of social intelligence.

Here again is manifested the lamentable phenomenon of the transformation of reason into folly and of the change of benefits intended into injuries. There can be no doubt from the very first that the pension, the indemnity, should constitute only the last means of protection to one who has suffered an injury, and that the highest aim must be the recovery of earning capacity. The law accordingly gave both the Trades Associations and the insurance institutions extensive privileges in regard to the medical treatment of the insured, and the Imperial Insurance Office is never weary of urging the most generous use of these privileges. But there is an alarmingly large number of the injured who are absolutely unwilling to be cured. The regulation that the

insurance carrier must sustain the cost of cure gives them a welcome opportunity to enjoy themselves in every way on another's money, since they can almost invariably find a compliant physician who will certify that the expenditures desired are necessary and proper, regardless of their relation to the patient's former modes of life and his social surroundings. This special method, to which little attention has thus far been given, of taking selfish advantage of the benefits of insurance to an excessive and thoroughly corrupting degree has been discussed with surprisingly rich results by the neurologist, Dr. Placzek, in a lecture reprinted in the *Zeitschrift für Bahn- und Bahnkassenärzte* for 1910. A single one of his examples may be cited here. An engineer earning 2,600 marks a year met with an accident and demanded 20 marks per diem for 48 days during which he had been nursed in the house of his mother-in-law, the widow of a post-office clerk, this total of 980 marks including a bottle of wine daily at 4 marks, caviar or asparagus for breakfast and supper, and 177 marks for cab hire. The sanitariums themselves, which have been equipped at such expense, are regarded as a sort of "pension lever," and are often the scene of bitter quarrels that give ground for a very low opinion of the "reconciling influence" of workingmen's insurance, in view of the complaints and allegations of poor food and bad treatment—these always being, of course, anonymous, or appearing as letters to the daily press—to which must be added sweeping denunciations of the physicians. The physician is commonly supposed to be the best friend of his patient, but here he is regarded as the bitterest enemy, against whom any and every weapon may be used, as the voluminous examples given by Dr. Placzek amply prove. And these institutions have an unhealthy influence in yet another regard. Any means of deception which a patient may not previously have known he there learns through his contact with real or alleged fellow-patients, becoming acquainted with the chief points in diagnosing his complaint, and being taught how to feign the corresponding symptoms if they do not arise of their own accord. It is self-evident that his political education becomes perfect in this admirable school.

In cases of this type patients who exaggerate their sufferings because of anxiety for their future have at least the excuse that they can plead a *bona fide* injury. Accordingly, the Imperial Insurance Office, which, to do it justice, unreservedly acknowledges wild exaggeration on the part of many claimants for pensions,

considers it humanly explicable that a patient who believes his condition to be worse than it really is may resort to illegal measures in consequence of his fear that otherwise his injuries might not be deemed sufficiently grave; and the Office in like manner explains the fact that those who receive pensions fight to the bitter end to retain pensions which have once been granted them, and which they often erroneously assume should be paid them permanently. This is certainly an extremely mild judgment, perhaps appropriate enough in the case of "children," but scarcely complimentary to the modern workingman, who is, in all other regards, so proud and lordly. However it may be considered in the abstract, this excuse utterly fails when statements of fact in regard to legal conditions are involved. This is particularly true in the consideration of the problem of wages. While press and convention can not lament bitterly enough the misery, the starvation wages, and the grinding of the laboring classes, the allegations of the insured rise to incredible heights in reckoning up their pension claims, which include tips, free beer, clothing, and the like to a degree and with a valuation that would fill the tax commissioners with delight if they were given similar estimates. If the present earnings of a person who has suffered injury, but who, in consequence of improved health, should receive a decrease of pension, are cited as evidence of such improved health, the invariable reply is that the workingman in question owes this wage simply and solely to the generosity of his noble-hearted employer. The fact that, under all other circumstances, "blood-sucker" is the gentlest designation vouchsafed this same employer does not form the slightest barrier to this laudation, and pensions bring oblations to an idol that otherwise is burned with fire.

Pension lies unblushingly involve even family life. Attempts are made, ever and again, to transform the wife into the employee of her husband, and the husband into the employee of his wife, as circumstances may demand; brothers and sisters become servants; and even children not yet four years old are alleged to be regularly employed in agricultural pursuits. In his old age the man who has retired from active life again becomes a plowboy, and the mother-in-law who has been received into the household is metamorphosed into a nurse-girl. This latter transformation became especially popular since, when the invalid and old-age insurance law went into effect on January 1, 1891, persons who had already reached the age of seventy could receive pensions

only after proof that they had been engaged in an occupation entitling them to insurance within the three years previous. The clever concept doubtless emanated from Berlin, and spread like wildfire over the whole Empire; and though at first regarded as a joke, since one would scarcely think of treating his mother-in-law as a servant with regard to wages, stamped documents, or even giving her notice to leave, yet it secured pensions for many old women through benevolent consideration of the special circumstances involved. Accident insurance affected family relations in another way, since, under certain conditions, it granted a pension to the parents and grandparents of a man who had been killed after having been insured, provided he had been their "sole support." The interpretative genius of the Imperial Insurance Office executed one of its master-strokes in this ruling, since it assumed this presupposition to be already existent if the deceased had "actually and essentially been the sole support" of his ascendants—if he had, "in other words, protected them against poverty and want." This interpretation was sanctioned by the legislator, and the amendment of 1900 acknowledges that ascendants are entitled to pensions if "they have been either wholly or predominantly dependent for support upon the deceased." Legally, therefore, those who are insured could wish for nothing more, but it now becomes necessary to make the facts harmonize in every detail with the demands—a task which is carried out with a zeal and a skill that would be absurd were the point at issue not so grave. No matter how many children the parents may have had, the one who has been killed is invariably their sole support, even if he has been only a boy or an apprentice. He gave his parents every pfennig that he earned, and he lived, so to speak, on air, while his brothers and sisters, on the contrary, spent their wages, no matter how ample they were, exclusively on themselves. Even the fact that the parents in question draw an old age or invalid pension does not exclude this claim, the result apparently being a cynical comment upon insurance, which is supposed to protect the insured against want.

This most unpleasant section of our discussion may be brought to an end with the statement that in 1909 only 16.7% of the recourses of those alleging injuries were successful, and only 10.5% of their retrials, these figures showing a steady tendency to decrease. This fact is, at the same time, the best proof of the falsity of a charge of prejudice or exaggeration which might perhaps the more easily be made since no one has hitherto dared

to discuss these matters before the general public, although they have long been familiar to the organizations concerned.

After the details just considered, the question of possible check to this fraudulent method of securing pensions becomes too pertinent to be ignored. It is perfectly true that one seldom reads of convictions for pension frauds; and there are very good reasons for this fact. If every individual guilty of false allegations in claims for pensions were placed on trial for his offense, it would be necessary to double and treble the number of our prosecuting attorneys and criminal judges, with the result of—nothing. Since, according to the more recent system of jurisdiction, the so-called factor of subjective guilt is requisite for conviction of fraud, it would be necessary in every case to prove that the defendant had himself been aware of the baselessness of his claim. It is obvious how hard it would be to prove this to a neurotic patient, and this is not the only instance where such demonstration would be difficult, since in all such cases the defendant might appeal, with fair chances of success, to the general uncertainty prevailing not only with regard to the structural details of workingmen's insurance, but also with regard to its aims and methods. A jury in East Prussia was, therefore, entirely consistent—though consistent only in this limited sense—when it rendered a verdict merely of involuntary perjury against a local magistrate who, in consideration of a promise that he should receive a portion of the pension, falsely testified that a certain pension claimant had been in his employ; for, it was alleged, the magistrate in question could scarcely have foreseen the far-reaching effect of his statement in so difficult a case.

This ignorance, which constitutes such a shameful symptom of the political immaturity of our nation, is to be found among employers and employees alike, and the most amazing misconceptions are current in each and every stratum of society. The workingmen may be pardoned for frequently believing—or at least asserting—that the expenses of accident insurance devolve principally, or even solely, on them, since that is part and parcel of the stock doctrines of the type of political economy taught by socialism. It is far more grave that, despite the extraordinary facilities for applying for pensions, very many of those who are insured are still ignorant of the proper course of procedure in case they come within the category of the actual beneficiaries of such insurance. Serious blame here attaches to their teachers and guides, who do not attempt impartially and accurately to explain to the work-

ingmen these matters, which concern the laboring classes most intimately and most vitally; for it is this ignorance alone which has rendered possible the development of a maleficent parasitical excrescence, of which even the Imperial Insurance Office is forced to complain, on the all-nurturing tree of insurance in the shape of the professional counsellors in legal affairs, the so-called people's advocates. It is true that modern legislation is far more kindly to this profession than were, for example, the Prussian General Statutes, although no one would now be willing to represent their point of view. Nevertheless, it is beyond all question that the most heterogeneous elements are found side by side among the people's advocates, and it is not always the aristocracy of this profession which devotes itself to insurance cases. The majority of these individuals consider no claim too hopeless and no means too vile to earn a fee. Many of them go from place to place in the country, searching everywhere for pensioners and those who may have suffered some injury, and egging them on to claims which are often of the wildest kind. Others attend to the case by writing from a distance, for it is a special recommendation when the gentleman who thus writes in a purely private capacity has himself at some time met with an accident as a workingman, a fact which is particularly emphasized by addressing his communications to his "honored fellow sufferer." Such an individual naturally knows the laws as thoroughly as he knows the wickedness of the insurance carriers, and he is sure of an enormous clientage. A private letter-writer of this type is living in one of the German capitals who, in consequence of a nervous disorder caused by an accident, draws a pension for complete loss of earning capacity, but who, nevertheless, if common report may be believed, receives from this occupation an income of thousands of marks annually. The exorbitant amounts which must often be paid by the insured to this class of counsellors naturally constitute a frequent basis of complaints of the great expense of obtaining justice. Unfortunately, the generosity of the courts shows these creatures a degree of consideration which is wholly undeserved; individuals whom the smallest local courts and the youngest associate justices would immediately show the door dare to appear before the courts of arbitration as well as before the highest court for workingmen's insurance, for the exclusion of such elements, though contemplated by the law itself, is neither generally accepted nor rigidly enforced. There are, in addition, a great number of workingmen's syndicates, supported by the

most divergent political organizations, and the secretaries of these syndicates represent the insured without charge, and usually in most unexceptional fashion. Yet the very fact that, to preserve their own self-respect, they can not and do not accept each and every case prevents many of those who have been insured from entrusting to them the prosecution of their claims, this tending, in its turn, to blunt the secretaries' sense of responsibility, and again leading ultimately to an overburdening of jurisdiction.

The ignorance of those whose services underlie the whole structure of insurance is a problem no less grave than the ignorance of those who are insured. It has already been implied (above, page 18) that the members of the Trades Associations are in many respects remiss in that active and conscientious representation of their interests which is inherent in autonomy. Conventions of the Trades Associations have long ceased, generally speaking, to attract the great attendance enjoyed, for example, by festivals of choral societies, athletes, and bowlers, especially as the Trades Association meetings carry with them no copious drafts of beer. Only a very small minority of employers still deem it worth while even to receive instruction in one of our numberless clubs, and the theme of insurance is popular nowhere. It has long been the regular custom for masters (whose example is followed by many other employers, especially in the open country) to pay the full contributions for the invalid insurance of their servants, and not to subtract the half, as they may optionally do; many employers are entirely unacquainted with any other course of procedure, and others would doubtless be absolutely ashamed to do differently. Insurance is regarded simply as a tax for a State institution which, as its many magnificent offices, hospitals, and similar buildings prove, has more money than it can spend, money intended simply and solely to free the workingman from the anxieties of existence. How many great and noble concepts of profound pedagogic value have been stifled by this false idea! A tax might have been levied far more cheaply, nor would it have required the huge army of officials, the intricate mechanism of administration, or the costly system of vouchers, and the like. Insurance was intended to be a right which the insured was to help secure by his own efforts; and in this way he was to be educated to feel himself part of the nation as a whole, to take part in the life of the State, and not to rely on the help of others, but rather to provide for his own future. With a purpose that was the fruit of ripe reflection, therefore, the origi-

nal draft of the invalid insurance law enacted that the employer was obliged to deduct from the wages paid half the sum of his contributions to the insurance fund; but this time it was the Reichstag that, unable to do enough in its benignity and its craving for popularity, changed the obligation into an authorization which for wide circles remained only a dead letter. Nevertheless, the concept itself is not yet entirely forgotten, and only recently the Chamber of Commerce at Frankfort-on-the-Oder, opposing a projected insurance law for private officials, has set forth in detail how "overstraining State protection involves the grave peril of crippling more and more that feeling of personal responsibility which is so powerful an incentive to economic activity."

If even the State has been unable to curb its complaisance toward the "so-called poor man," the blind philanthropy of our generation, which has already led to so many errors, and which has become a favorite theme for the comic stage, can not, of course, lag behind. In workingmen's insurance it speedily found a new field for its activity, and neither before nor since has the fine Latin proverb, *"Facile est de alieno largiri,"* received such brilliant demonstration. Many clergymen, physicians, and others of all sorts and conditions offered themselves as advisers of the insured, their lack of technical knowledge being compensated by social sentiment; and the petitions of these intruders often revel, characteristically enough, in the maddest accusations against the insurance carriers. Such charges read as though that envy of the propertyless classes which is now proverbial had infected wide circles, and as though workingmen's insurance were to be made a means to wrest from the hated wholesale industries some of their superfluity—another echo of the conventions of our theoretical socialists. Of grave significance, though in another direction, was the position taken by our nation after the terrible disaster in the Radbod mines, a position which was, moreover, a bitter proof of the type of our social insight. The moral effect of the horrifying fact that a large number of men in the prime of life had there suddenly been killed, probably with the utmost agony, was wholly obscured by the outpouring of an absolutely senseless sympathy with the fancied financial needs of the survivors. In this regard too much could not be done; the petitions vied with each other in picturing the distress of the families of the dead miners; but no one gave a thought to workingmen's insurance, which at once intervened and expended lavish sums.

There were, at most, only one or two political economy journals that tardily found time and courage to refer to this shameful fact.

It is particularly lamentable that many of the very men who, by reason of their profession, should be thoroughly familiar with the matter are not free from that uncertainty regarding the aim and object of accident insurance which is here criticized. Many attorneys, for example, continue to liquidate claims according to the general fee regulation, and submit stamped powers of attorney regardless of special rules to the contrary. One of these gentlemen recently came in person from the Rhine to Berlin to plead a hernia case which, according to the system of jurisdiction recognized for many years, was hopeless; and he was extremely astonished to hear the judge reprove a workingman for ignorance of this jurisdiction. In the case of local magistrates the determination to help their fellow residents, combined with the prevalent opinion that insurance has more money than it can use, often tends completely to obscure, in amazing fashion, the concept of right and the love of truth (see above, page 52). Here again the Imperial Insurance Office affords a confirmation which seems to become the more cogent the more tortuously it is construed. As one of the reasons for the excessive increase both in invalid and in agricultural accident pensions the Office designates "the insufficient knowledge which still prevails in every quarter regarding the principles which regulate the treatment and the decision of pension cases." It is true that these statements are to some degree extenuated by the promise with which the legislator once recommended his results to the general public, that workingmen's insurance would aid in lessening the burdens of the poor. Curiously enough, very little is now heard regarding this promise. Even the literature upon it is extremely scanty, and is practically restricted to a theoretical discussion as to how insurance should or can diminish the burdens of poor relief; the extent to which this result is actually attained is, as a rule, entirely ignored. The most recent—and very careful—study in this field (by Zahn, in the *Bulletin des assurances sociales* for 1910) seeks to prove, it is true, that this diminution of burdens has actually been effected, and it is alleged that a similar admission is made by those engaged in poor relief and in the insurance institutions. When, however, Zahn closes with the declaration that "In reality expenditures for the poor have increased almost everywhere, both as regards the number of those who are supported and as regards the degree of support which is given in

individual cases," it is scarcely possible to avoid the inference that this is yet another of the blessings of insurance which have utterly failed to be realized; and the absolute silence of the Imperial Insurance Office regarding this matter is highly significant.

Attention has already been drawn (above, page 49) to the difficult situation of the physicians, who stand between the insured who wishes to retain his pension and the insurance carrier who wishes to cancel it. The struggles of the physicians with the sick funds already constitute almost a standing rubric in our newspapers, and both together are amply sufficient to show the danger which confronts this noble and important profession—the danger of forfeiting both their own self-respect and the esteem of the public; and this danger is gravely increased in yet other respects by workingmen's insurance. Naturally the social zeal of the day casts its spell over many physicians and leads them to play the rôle of benefactors of the poor—of course, at the expense of the Trades Associations. Many expert opinions, even by recognized authorities, by men who, standing in the limelight of public life, ought rightly to estimate the importance of their tasks and the limitations of their special knowledge, read like partizan screeds; and their authors, abandoning the domain of their own profession, revel in legal arguments which, however, as is proverbially the case, almost invariably conclude unfavorably to jurisprudence. Yet it is only in the most sporadic instances that there is demonstrable evidence of conscious prejudice in favor of the pension claimant personally, or even against the purse of the insurance carrier. Nevertheless, it is occasionally possible to see, by dint of long practice, that a certain expert opinion has been colored in the interests of political partizanship or because the plaintiff is a fellow countryman of the physician in question; and the fact that the services of a particular physician are invoked with peculiar frequency by those who are insured often serves as an indication of his trustworthiness. A physician who has the reputation of being "generous" in his diagnoses of those who have been injured by accidents is certain of a host of patients, and the courts of honor of the medical profession have repeatedly been forced to interfere, since this generosity has led to a suspicious disturbance of scientific knowledge. A melancholy counterpart is furnished by the numerous cases in which a physician of probity renders an expert opinion unfavorable to the pension claimant, begging that the claimant in question be kept in ignorance of this opinion, since otherwise the physician

concerned would lose his practice, while his neighborhood would be made too hot to hold him.

It is practically undeniable that there is some internal connection between the excessive benevolence of the jurisdiction, the untruthfulness of the pension claimants, and the ignorance of the general public, however divergent these factors may be deemed, especially in their ethical aspects. The root of the entire evil is that the legal character of the whole system of workingmen's insurance, though primarily developed in exact detail, has not become a vital force, and the almost senile trait of indolence, so characteristic of our age, has allowed a perilous development of the germ latent in this root. No estimate of the practical efficiency of workingmen's insurance can altogether ignore the ethical intentions regarded by the legislator as a necessary component of his task, even though precise valuation of these intentions perhaps falls less within the scope of technical knowledge than within that of feeling and political insight. Not only are the ethical effects inextricably confused with the material, as has already repeatedly been shown in the course of the discussion, but the hope of favorable results within the ethical sphere itself was, in the last analysis, the strongest incentive to make the great hazard and, to adopt the phrase of the time, to take the leap into the dark. One of these effects was to be a reconciliation of social antitheses and a restoration of internal peace. The actual result in this respect has been, unfortunately, utter failure. Those who are insured refuse to recognize the protection and assistance afforded them by the insurance laws. Again and again the speeches of their leaders and that portion of the press which ostensibly represents their interests repeat the insults with which the *Sozialdemokrat* once hailed Bismarck's great work of reform; yet it is in itself a high compliment to characterize as an "improved poor relief" a legislation intended and adapted expressly to protect the financially weak against the humiliation of poor relief. And while in workingmen's insurance we have before our eyes, in daily, blissful operation, the most towering structure of the inequality of the law—as may be learned simply from the section on promotion of welfare in the report of the Imperial Insurance Office—the idiotic charge of "robbery of the people's rights" pursues its way unchecked. There is an element of tragedy in the bold public declaration of the Secretary of State for the Interior on February 18, 1910: "It has proved impossible for us to bridge the deep

gap rent by the economic struggles of recent decades." Unfortunately, we may go still further, and, in harmony with the monograph of Ritter to which allusion has already been made (above, page 18), the *Denkschrift des Verbandes deutscher Baugewerks-Berufsgenossenschaften zur Jubelfeier der Unfallversicherung,* and many other expressions of opinion, we must hold workingmen's insurance guilty of essential aggravation of the general unrest. No law can help all who desire its aid, not even all who rightly desire such aid; nor can any law exclude all who are unworthy. If, in addition to all this, insurance jurisdiction is liable, as has been shown, to the influence of vague subjective considerations, the granting, denial, and cancellation of pensions only contribute, in countless cases, to the shattering of the faith of the honorable and the dishonorable alike, both in the justice and in the efficiency of our State institutions. Nor is this all. By virtue of the marvelous self-equalization inherent in the universe, every exaggeration produces a corresponding counteraction. Even the most benevolent minds, firmly convinced that all that is done by way of social protection is done for conscience' sake and as a Christian duty, are beginning to ask whether the ends which have demanded such great sacrifices of freedom, toil, and money have really been attained. If, then, the answer is "No," they begin to be weary of the excess of protection that has been lavished on the insured, and they begin to think, "We, too, are still here." They compare their position with that of the workingmen, and find that they can not pamper themselves with such magnificent medical aid or such expensive nursing, nor can they look forward to the future and its vicissitudes with an equal degree of unconcern. They next find these heavy expenditures irreconcilable with the repeated promises of protection for the middle classes, and they accuse the Government of untrustworthiness, thus strengthening the sullen discontent which is so perilous for the State since it cripples many forces of great value; and sometimes, with a perversity that is only too common, they even become supporters of Social Democracy. In any event the party of revolution is here again helped to victory by the very institution created to combat it. Unhappily, neither the way of escape from this vicious circle, which has already repeatedly been mentioned, nor the method which should be employed to attain the lofty end desired is obvious. Especially deep—and this is the last point—is the silence which broods over a concept frequently expressed in essential portions of the insur-

ance laws—if the State protects its citizens against anxiety and want by assuring them an ample livelihood, it is also justified in opposing with a double measure of decision all attempts at revolution. That in affording this protection the State has done all that is humanly possible, and that nowhere else on earth has this degree of protection been even distantly approximated, is too evident to require demonstration here. On the other hand, there is no record that it has ever made any use whatsoever of its right of self-defence.

On the basis of a service of more than twenty years in the governing board, I have sought to set forth the operation of our workingmen's insurance, not, as it might appear to the superficial observer, as its juristic, economic, or political foe, or even as the blind fool who fails to recognize that the blessings of this insurance can not be adequately described even by the usual phrases of unconditional laudation. But I have been faithful to the concept which has become a part of me, which I have retained from my service as a judge, and which I have represented unwaveringly from the beginning to the end of my activity —that justice should not be subordinated to mere kindly feelings; and I have written in the hope that I might render, even now, some aid, even though it be but small, to this great achievement to which I once devoted myself with joy and with enthusiasm.

It has been felt by many to be a faulty feature of my study that I have not entered upon the question of what is next to be done, and how the unhappy features whose existence is tacitly granted by every one may be abolished. Though the answer falls, strictly speaking, outside the scope of my article, a few words may, nevertheless, be devoted to the problem. This question has only too much justification so long as the Pandora's box of social politics is unexhausted, which is by no means the case. Unceasingly resounding, and an especial favorite as a bid for votes, the demand for "perfecting insurance"—the insurance of survivors—is an old promise of more than one party; the insurance of private employees is as enthusiastically desired in some quarters as it is emphatically repudiated in others; and the fair Utopia of insurance of the unemployed is pressing hard upon the municipal communities. In addition to all this, labor has long been expended on that great Imperial Insurance Regulation from which optimistic souls expect the fulfillment of every wish within this sphere. Whatever portion of these plans succeed or fail, first of all the organization must be simplified, and simplified

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essentially. Only the smallest minority have even the faintest concept of the absolutely enormous machinery which insurance maintains. In addition to the Imperial Insurance Office there are eight District Insurance Offices, which, with a delimitation of functions that is by no means always clear, supervise 66 industrial Trades Associations with 14 insurance institutions, 48 agricultural Trades Associations, and 209 Imperial and State executive committees, as well as 545 municipal executive committees, which the district central authorities have declared competent to assume the burdens arising from accident insurance; besides which invalid insurance has 31 insurance institutions and 10 funds. It may readily be imagined what an army of officials of the most various ranks is required by this organization, and what mountains of paper and oceans of ink are conquered by such a host. Even this is not all, for there are still the innumerable sick funds and the officials employed in these tasks by the State and municipal authorities. To remedy this condition of affairs appears to me to be the most important problem of all, especially as this would perhaps realize the desire of the Imperial Insurance Office to be relieved of the burden of jurisdiction, and also Rosin's idea that accident insurance is really superfluous. This does not imply that the Trades Associations should be abolished. That would be the most serious mistake that could be made, for if anything has stood the test, it has been the Trades Associations, and they are indispensable as being the most appropriate representatives of circles which now, despite all juggling with figures on the part of their opponents, bear by far the greatest burden of the expenses of insurance. But will "the legislator" have the courage to resort to measures that shall be really incisive? And will the reform that is desired not be ruined, as so many other projects have been, by the curse of the parliamentary craze for making law? It would seem so, and yet no tears should be shed for that. It is better to labor on with the old laws, faulty though they be, and with the old organization, despite its clumsiness, than to experiment anew with creations still more awkward, and devoid of a uniform guiding concept. Yet, after all, practical results are the main thing; with the best of laws they can work calamity, and with the worst of laws they can fulfill their purpose. Here we would again reach the conclusions with which I have already (above, page 58) summarized the results of my criticisms. The source of the trouble lies, when rightly considered, within the political sphere, on which it is neither the

province nor the purpose of my task to enter. Even in this respect I have doubtless made my position sufficiently clear, and it is only to avoid all suspicion of cowardice that I state it once again: workingmen's insurance can be truly beneficial in its operation only when, free from all exaggeration and excess, and especially from conscious or unconscious subservience to the lower classes, it works as an institution of the State, as impartial as every other kindred institution.

In an age which, in Prince Bülow's words, can not abase itself low enough before "King Mob," this judgment has scant prospect of success. This was self-evident to me from the very instant that I began my task, yet I deem it a deed well done to have called attention once again to the all-pervading cancer that is destroying the vitals of our State.

Full boldly have I dared,
And I repent me not!

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