AMERICAN EXPERIENCE WITH WORKMEN'S COMPENSATION

Experience under the American compensation statutes has justified in fair measure the hopes and claims of those who have advocated the legislation. It has not been millennial. But it has realized no small part of the advantages which were predicted. So much may be stated with entire confidence and after due allowance for the present incompleteness of definitely relevant data.[1] In fact, a reasonably confident conclusion of that character might be reached without examining any of the detailed reports upon the practical working of the statutes and with only a knowledge of the rate at which the compensation system has been extended from state to state. Ten years ago the early and ready acceptance of workmen's compensation in other lands was urged as a strong argument for the enactment of compensation legislation in this country. It was pointed out that within a quarter century the newer principles and policy for the relief of employees injured in industry had been adopted in some forty foreign jurisdictions, including all of the industrially important ones, and that, once adopted, there nowhere had ever been any serious proposal to give them up.

But foreign readiness to enact compensation laws has been more than matched in the United States. It is not yet nine years since the first of the really effective American workmen's compensation statutes were enacted.[2] Yet such laws now have been enacted in forty-two of the forty-eight states and in Alaska, Porto Rico, and Hawaii. Only the District of Columbia, North Carolina, South Carolina, Georgia, Florida, Mississippi, and Arkansas are still without compensation statutes. And a late appropriation for the District of Columbia brings all public employees in that jurisdiction under the provisions of the federal workmen's compensation law. It is not credible that the states would have taken action so speedily, one after another and in full knowledge of what had been done elsewhere, often in adjacent states, except upon conviction that the action taken was of proved wisdom. Doubtless none of

[1] Conditions growing out of the war have delayed and even suspended the publication of data in several of the states, including some of the largest of them, whose experience would be most instructive. Here may be mentioned New York, Pennsylvania, Ohio, and Illinois, as well as a number of others.

[2] In Kansas and Washington on the same day, March 14, 1911.

the tardier legislatures knew every effect of the earlier enactments. Nobody knows as much as that, even now. But they did know, through universal report and belief, that of evil effects there had been as good as none and that general results had been eminently satisfactory. And upon such knowledge they acted.

There is other general evidence of the same presumptive character. As in foreign lands, so in America there has been never a voice raised for the repeal of the statutes. Rather the tendency of legislation everywhere has been to go farther, to strengthen and improve the first laws. The field of the acts has been broadened somewhat, by the inclusion of additional workmen. Rates of compensation have been increased in various ways, by higher percentile ratings upon wages, by raising the fixed maxima, by shortening the waiting periods, by extending the duration of the payments, by more liberal provisions for medical care, and in still other minor ways. The original limitation to accidental injuries has been done away in a few states.[3] The certainty of payments to injured employees has been made greater, by stricter requirements of insurance and by corrections of administrative procedure. And the simpler and more summary administration by boards or commissions, rather than through the courts of law, has been increasingly favored.

By many tokens employers have shown their approval of the system. There are, to be sure, some regrettable failures of the optional statutes to win acceptance by employers.[4] But these are not very numerous, relatively. Much the larger numbers of the employers affected have accepted their new obligations cheerfully. In the states in which the employer's acceptance of the optional statute is presumed, in the absence of his notification to the contrary, positive rejections have been few. And in states with optional statutes there have been a great many purely voluntary elections of the compensation system by employers who have been under no constraint of fear that they might have to face suits at law without their old-time common law defenses. So in California in 1918 there had been more than 20,000 such voluntary elections which had been formally notified to the Industrial Accident Commission, and in addition to these an unknown number of oth-

[3] Diseases now are included in California, Connecticut, Massachusetts, North Dakota, and Wisconsin.

[4] See Bulletin of the United States Bureau of Labor Statistics, no. 240, p. 34.

ers which had been legally implied by the taking out of compensation insurance.[5] And, in fact, a good part of the liberalizing amendments to which reference has been made have had the support of employers, or even have been proposed by them.

Employees have become even more cordial than employers in their approval. Unorganized laborers, of course, on the farms and elsewhere, never were on record, or even heard as to their wishes about workmen's compensation. But organized laborers, as a rule, were at first skeptical or positively hostile. It was but natural that the representatives and spokesmen of the labor unions, knowing little about the measures proposed for their avowed benefit, and by outsiders at that, should be doubtful of the real advantage to themselves. The verdicts for large sums now and then won in personal injury actions loomed in their minds as the grand prizes of the lottery loom in the minds of ticket-holders. And they did not appreciate fairly the fact that the compensation awards, limited although they might be, would come very much oftener than the rich damage verdicts. In 1909 Mr. Samuel Gompers, as president of the American Federation of Labor, declared his preference for an improved employers' liability law. Two years later the president of the Connecticut Federation of Labor appeared in his official capacity at a legislative hearing to oppose a pending workmen's compensation bill, announcing that the organized laborers of Connecticut wished rather a simple abolition of the common law principle of the fellow-servant. In Illinois the opposition to early proposals of workmen's compensation had some of its sharpest, even bitterest, expressions by organized laborers. But now, after a few years of experience with compensation, laborers, both organized and unorganized, are generally enthusiastically in favor of it, not necessarily in its present typical form and with its commonest limitations, but certainly as a general principle and in contrast with employers' liability. Perhaps the great railway unions, to whose highly paid members the modest maxima of the ordinary compensation awards appear particularly unjust, are the only important bodies of laborers who

[5] Report of the Commission for 1917-18, p. 6. Hereafter in this article definite references usually will not be cited for statements based upon official reports of the various compensation boards and commissions. In most cases the statements themselves will indicate sufficiently the source of the authority, the state and the year; and any interested reader will find the page without difficulty.

cannot be considered as now having renounced their former hostility.

It is clear also that the doubts and fears and the opposition which were so widespread among the general public a few years ago have been dissolved. When the agitation for workmen's compensation was first gathering strength some ten years ago, and even after the earliest statutes had gone into effect, many among those who could not properly be regarded either as employers or as industrially employed, and who, therefore, were not directly affected, were decidedly skeptical about proposals to import such radical European measures, if, indeed, they did not range themselves definitely with the opposition. But now—what a change! It is not merely that employers, high and low, great and small, are old and ardent friends of workmen's compensation—at least such of them as declare themselves at all. So also are the insurance men. So also are nearly all audible workers. And among other classes of the general public it is scarcely possible now to find a well informed person who is not friendly. Truly it is a marvel that the struggle for compensation laws could have been so hard: there are so many long-time friends on every side. But, at any rate, there have been enough reversals of judgment to make present public opinion emphatically favorable to the new system. And this general and cordial approval of workmen's compensation is of greater practical importance than may appear at first. It has had and continues to have important bearings upon judicial decisions as to the validity and the practical meaning of the laws.

But much more to the point, under the American system of government, is the fact that the constitutionality and the general legal propriety of workmen's compensation may be said to be now definitely established—established, that is, beyond any possibility of unsettling. For they have been affirmed abundantly in the highest courts, both state and federal. Early unfavorable decisions in Montana, New York, and Kentucky, and in lower courts elsewhere have been made quite negligible, by changes in the provisions upon which they turned, by constitutional amendments,[6]

[6] As in New York, Ohio, California, and Wyoming. The New York amendment of November 4, 1913 (art. 1, sec. 19), is of general interest in political science, as a perfect illustration of the popular recall, or reversal, of a judicial decision. Both in form and in substance it is nothing else. It made not a word of change in existing provisions of the constitution, but merely declared, in effect, that the decision of the Court of Appeals in the Ives case—which

and by the accumulated weight of later favorable opinions. Of these there have been a great many, perhaps fully half a hundred by now, which may be said to have covered questions of constitutionality, sustaining the statutes of more than a score of the states, some of them of the so-called optional type and some directly compulsory.[7] It is true that the scope of some of the favorable judicial opinions is not quite so comprehensive as at times is assumed and that, therefore, their weight is not quite so overwhelming as the list of states might indicate.[8] But none the less it is now entirely safe to conclude that no attack upon any essential feature of either optional or compulsory compensation statutes will prevail in the highest courts, whether state or national. Notwithstanding volumes of over-fine analysis and distinctions, the one strictly vital question is whether an employer may free himself from the obligation to pay compensation by proving his own freedom from negligence or fault. And that he may not claim such a right, in the face of a statutory declaration to the contrary, is determined sufficiently in at least five decisions from the Supreme Court of the United States,[9] to say nothing of a score or more of cases in state supreme courts.

It, therefore, may be taken as settled that henceforward the workmen's compensation system is to be a part of our industrial order. If there were less adequate sanction for it in definite prin-

had annulled the compensation statute of 1910—was reversed, or recalled. It enacted simply that "nothing in this constitution shall be construed to limit the power of the legislature to enact laws for" [compulsory workmen's compensation].

[7] Optional: Illinois, Iowa, Kansas, Louisiana, Kentucky, Massachusetts, Michigan, Minnesota, Montana, New Hampshire, New Jersey, Ohio, Oregon, Pennsylvania, Rhode Island, Texas, West Virginia, Wisconsin; compulsory: California, Hawaii, New York, Washington, Wyoming. Perhaps other states should be added. It would be gratuitous, and tedious also, to keep the list up to date.

[8] The early favorable decision in Wisconsin, in the case of *Borgnis et al.* v. *Falk Co.*, 1911, 147 Wisc. 327; 133 N. W. 209, has been cited as authority in nearly all of the later decisions sustaining the optional statutes. But the Wisconsin law does not abrogate the defense of assumed risks in so far as the risks are "inherent" or "necessary." Accordingly, the Falk decision cannot properly be cited as authority for sustaining laws which do abrogate the doctrine of assumed risks completely.

[9] *Northern Pacific Railway Co.* v. *Meese*, 229 U. S. 614. *N. Y. C. R. R. Co.* v. *White*, 243 U. S. 188. *Hawkins* v. *Bleakley*, 243 U. S. 210. *Mountain Timber Co.* v. *State of Washington*, 243 U. S. 219. *Middleton* v. *Texas Power and Light Co.*, 249 U. S. 152.

ciples of law, strictly construed, there still would be abundant sanction in the great principle—legal, too, in a sense—which Justice Holmes invoked in 1911 in his epoch-making opinion in the Noble bank case. "It may be said in a general way that the police power extends to all the great public needs. It may be put forth in aid of what is sanctioned by usage, or held by the prevailing morality and strong and preponderant opinion to be greatly and immediately necessary to the public welfare."[10] In view of this principle, it well might be that a decisive consideration in favor of the constitutionality of the compensation acts should be found in that prompt and general legislative acceptance and that present popular approval to which attention has been turned.

If now it be noted further that this general acceptance of workmen's compensation has been accomplished not only without any appreciable disturbance of our social relations, either in industry, or in our legal system, or elsewhere, but with a common agreement that conditions and relations have been improved, the broadest outlines of the present situation will have been marked. It then will remain to trace a number of special developments in a more definite and positive manner.

The most conspicuous excellence of the compensation system, as its merits were presented by its early American advocates, was that it would afford greater pecuniary compensation and solace for the losses and sufferings of the victims of industrial accidents. That it has done so is not open to doubt.

There have been no attempts to sum up the grand totals of compensation awards for all of the states. Nor would it be worth the necessary effort to do so. Even within a given state there sometimes are such changes of method in the presentation of data that items are of varied or uncertain significance. It must suffice now to submit typical figures from several of the states, figures which, unfortunately, are not generally or closely comparable. In Wisconsin the cash benefits actually paid from the beginning, in 1911, until June 30, 1918, had amounted to $5,144,000, in addition to some $1,773,000 for medical care, making thus a total of $6,917,000. The losses reported under the comprehensive insurance provided in West Virginia amounted to $6,678,237 in the five years, 1913-18. In California there had been awards of at least $13,370,000 from January 1, 1914, to December 31, 1917. In On-

[10] *Noble State Bank* v. *Haskell,* 219 U. S. 104, 111.

tario in the four years, 1915-18, there were cash awards to the amount of $9,332,524, aside from all provision of medical care. In Massachusetts in the first six years of compensation there were awards of $20,253,000 in cash and medical care. In the first three and a half years of the New York law benefits to workmen whose employers were not carrying their own risks, about 85 per cent of all, amounted to $36,631,000.

Large as these figures are, they become more impressive when it is noted that, in each case, the periods covered include the first years of compensation experience, when a number of conditions combine to keep payments, and even awards, far below the heights to which they naturally soon must rise. After a few more years of experience the amounts of the benefits will be much greater than they are now. So, of the total of $9,332,500 awarded in Ontario in four years, no less than $3,514,600 belongs to the one year, 1918, when medical care to the amount of $370,000 was also provided. In Pennsylvania in 1917, the second year of compensation, benefits paid and awarded amounted to $7,161,000, while the figure for the next year was $11,640,000. In Illinois in the single year, 1917, cash benefits to the amount of $4,906,000 were paid. And, of the $20,250,000 awarded in Massachusetts in six years, $4,647,500 was for the latest year reported upon, 1918.

Yet even in Massachusetts the awards are still far short of their normal maximum. Even if there should be no increase in the number of injuries or in the scales of benefits, and if workers already have learned fully about the law and never neglect to claim their rights under it, the maximum cannot be reached until after 1924. For it was in 1914 that the term for the payments of benefits for fatal injuries was extended to 500 weeks, approximately ten years. And so it is in other states. Since there are many states which allow 500 weeks or ten years of payments for death and permanent disability, as well as a number which continue payments on account of these same injuries during the life of the beneficiary, it is clear that it must be a great many years before the stoppage of payments which will have run their full term will balance the payments which will be starting anew. But all influences must be counted at their true weight. So far as the sums paid on awards may be increased by the growth of industry and its personnel or by a rise of wages *pari passu* with general prices there may be no change either in the real value of the benefits for those who receive them or in the real burden which the awards place upon in-

dustry. But so far as injuries may become more frequent or more serious through the introduction of more powerful or more rapid machinery or through the taking on of new and untrained operatives, or so far as workers may seize more fully the advantages which the laws offer them or even may lean more heavily upon the law, as they appear to have done in certain European lands,[11] there must be for an indefinite time to come an increase in the values, real as well as in mere money, of the benefits which American employees will receive under the compensation laws. There is every prospect, too, that the laws will be made more comprehensive, not only will be extended to the few states which now have them not, but everywhere will come to cover workers more generally. But, even if the country as a whole, by one change and another, should never come to make more liberal allowances than had been developed in Massachusetts in 1918, the total for all of the states would be not far from $125,000,000 or $150,000,000 a year. If the experience of Pennsylvania and New York be taken as an indication of what is to come, the figures must be placed higher, perhaps at $200,000,000.

Such sums for a probable future are truly enormous. But when the amounts now paid out or likely soon to be paid out, a few or several millions yearly in a single large state and a few hundreds of thousands or even less in smaller states, are averaged over the total numbers of beneficiaries, they do not appear large. For it must not be forgotten that a great many persons are the victims of industrial accidents each year. Thus the total payments in Wisconsin during practically the whole of her compensation experience, from September 1, 1911, to June 30, 1918, reduce to about an even $100 for each compensated injury, cash benefits and medical care both included. Other states show rather lower average figures. In California in 1916 the average payment in all compensated cases was $93.20. In Iowa total benefits averaged $63.71 in 1917 and $90.46 in 1918. In Massachusetts during the first five years of the law the average costs per case for all payments, as actually made and estimated to be outstanding, were: 1913, $40.53; 1914, $43.58; 1915, $43.38; 1916, $43.56; 1917, $38.98.

These figures and others of the same general character are not very instructive. They are not fairly comparable one with another. They run in terms of a vague general average of widely different particulars; and they are affected in many ways by the

[11] Ludwig Bernhard, *Unerwünschte Folgen der deutschen Sozialpolitik.*

situations in the several states. The more recent the institution of the compensation system the wider the difference between awards and actual payments. And the provisions of the statutes vary so widely, as to ratings of awards, extent of medical care, duration of payments, and so on, that general averages yield no real information as to what compensations are received for definite injuries under definite conditions.

It is somewhat more instructive to consider the awards made for specific injuries, of which the practical consequences may be understood readily. For fatal injuries the average award made in Connecticut in 1915 was $2,269. In Illinois in the same year awards for the same injury averaged almost exactly the same, $2,273. In California the awards averaged $2,445 in 1917 and $2,625 in 1918. In Pennsylvania for 1916, 1917, and 1918 the figures were $2,383, $2,272, and $2,659. In the first year of the New York law, awards for fatal injuries averaged $3,241. In Oregon in the two-year period, 1915-17, the awards, where there were dependents averaged $5,752. In Massachusetts for the first five years the figures were: $1,367, $1,781, $2,970, $2,603, and $2,631. In Ohio in 1915 the amount was $3,098. Perhaps it will be accurate enough to put the general average for all of the states at about $3,000, or something less.

The payment of from $2,500 to $3,000 is manifestly inadequate compensation for the death of a bread-winner. None can deny that. But it must be remembered that the purpose of the statutes never yet has been to make full compensation for the pecuniary losses due to injuries. The pertinent question is whether such amounts, painfully inadequate as they are, are not greater than the amounts paid and received on account of the death of industrial workers before the compensation system was introduced. And, in this connection, it will not do to raise for comparison the sums awarded by way of damages in suits at law. Probably such damages did amount to considerably more than $3,000, on an average. But they came only after protracted and expensive litigation, so that their net amounts for successful litigants should be reduced much for purposes of comparison with present compensation awards, which are made more promptly and with only trifling cost to the beneficiary, or none at all. When due allowances have been made for direct and indirect costs of litigation, a $3,000 verdict, or even $5,000 or $10,000, becomes a much smaller thing than at first it appears to be. But even more important is

the sad fact that, when employees were killed at their tasks, suits at law were not always brought and pushed to a successful issue. In a great majority of the cases no suit was brought. And such suits as were brought were not always won by the plaintiffs. For much the larger number of fatal injuries there was either no payment at all or only such payment, large or small, as the employer might feel inclined to offer. And in all too many cases he felt inclined to offer nothing, or only a piteously small sum.

For information upon this unpleasant subject there are now no more valuable data than the figures presented by the state commissions of inquiry which reported some ten years ago with reference to the desirability of enacting compensation laws. These show that in great numbers of cases employers, even some of the largest and most prosperous of them, frequently neglected to make any payment whatever to the dependents of those who had been killed in their service. In many cases money was paid, but in sums so petty as to be little better than nothing, $50, $100, or perhaps a little more. Cases in which the payments ran in thousands were extremely rare. It may be a not unfair sweeping generalization to say that under the so-called liability laws payments at any amount were not made in more than a third of the cases of fatal injury to employees. And the average of the sums actually paid would be in the small hundreds. A careful study has shown that in Pennsylvania shortly before the passage of the compensation act the average amount paid on account of fatal injuries was $261,[12] at a time when under the compensation laws of Connecticut and Ohio the corresponding figures were $2,269 and $3,098. The next year in Pennsylvania the average compensation award on account of fatal injuries was $2,383, while in 1918 it was $2,659, a little more than ten times as much as had been secured under the liability laws.

There can be no reasonable doubt that the compensation awards made for fatal injuries do mean a large increase from the petty and uncertain sums which dependents received under the liability laws. The differences appear so great in the loose comparisons which it is possible to make that, to a complete certainty, they could not disappear after the fullest collation of data. Indeed, the differences now apparent may quite as likely be below the reality as above it. And it must not be forgotten that such sums as now are received come promptly and without appreciable costs

[12] Bulletin of the United States Bureau of Labor Statistics, no. 217, p. 107.

to the recipients. It is true that much the greater number of compensation awards for fatal injuries, as for other injuries, are paid in a continued series of small sums, not at once in a lump, and that, in so far, the awards must be discontinued for purposes of close comparison with the payments made in full at one time under the old order. But again the difference in amounts is so much in favor of the compensation awards that a full discounting of them could not bring them down to or near the level of the liability payments. It might, indeed, not be unreasonable to maintain that, on the whole, the series of continued small payments are the better arrangement for beneficiaries. That, at least, has been the judgment of those who made the compensation laws.

An examination of the compensation awards for non-fatal injuries leads to similar conclusions. In Pennsylvania the awards for the loss of an eye in the three years, 1916-18, were $959, $1,065, and $1,198. In Wisconsin in the four years, 1914-18, the cash awards, aside from medical care, for the loss of an eye were: $990, $1,033, $1,033, and $1,078. In California in 1917, the first year with relevant reports, the average award for the loss of an eye was $1,137. These figures, too, are pathetically small. But unquestionably they show payments much greater than were made for the loss of an eye before the days of workmen's compensation.

If it be true that the compensation system has meant the payment of much larger sums to those who have suffered from industrial accidents, it should be quite safe to infer at once that injured workers and their dependents have been made much better off. There is, of course, a possibility that, in a given case, the compensation award may prove of little real advantage to the recipient, or of no advantage at all. But such cases must be so very exceptional that they need not be considered. It, therefore, is almost a work of supererogation to show in definite detail that recipients actually have been benefited. Yet this has been done. A painstaking study, carried out under the United States Bureau of Labor Statistics, has traced the uses and consequences of the compensation awards in a number of concrete cases.[13] And the results are exactly such as were to be anticipated. It appears that in Connecticut and Ohio there was an unmistakable effect in pre-

[13] *Effect of Workmen's Compensation Laws in Diminishing the Necessity of Industrial Employment of Women and Children,* Bulletin of the United States Bureau of Labor Statistics, no. 217.

serving family life for the dependents of those who had been killed or permanently disabled. Children were enabled to continue at school. Mothers were enabled to remain in their normal relations to their families. The Ohio Industrial Commission has issued a bulletin devoted wholly to showing the uses made of lump sum payments on account of death and permanent disabilities. The bulletin is illustrated profusely. And the pictures of tidy little homes bought and of modest business places established with the lump sums bring one almost to the point of declaring it a happy fate for an Ohio woman to lose her husband by an industrial accident.

One consequence of the compensation awards which figured largely in the forebodings of some appears not to have developed at all in this country as yet. In view of many unpleasant reports from European countries, some of them on high authority, there were early expressions of fear that malingering, in one form or another, conscious or unconscious, might result from the worker's assurance that he would be paid during disabilities following injuries. Perhaps it is not yet time to draw lessons from America's few years of experience. And there can be little profit in speculating about the likelihood that American workmen will either deliberately injure themselves or relax their normal caution against accidents because they may hope for half pay, or less, while disabled; or that, once injured, they will be slow to recover and return to their earning because of a preference for the same low pay while idle.

The best present guide to a judgment here is the fact that there is perhaps to be found in all of the official reports upon the operation of the compensation laws not a single suggestion or indication that malingering has been found an appreciable evil. And at the Washington conference on social insurance, in 1916, Mr. D. M. Holman, long a member of the Massachusetts Industrial Accident Board, declared that, after four and a half years of experience in administering the Massachusetts law, he did not recall half a dozen clear cases of malingering. In this favorable report he was supported by Mr. E. S. Lott, president of the United States Casualty Company of New York.

If the compensation system has increased several fold the pittances which formerly were paid to the victims of industrial accidents, that in itself is enough to justify the system fully. But workmen's compensation laws may have far more beneficent effects

than can be seen in the payment of any awards for injuries, however liberal these may be. It is vastly better to prevent disablement, maiming, and death than to provide even the most generous allowances to the injured and to the dependents of the slain. And, while in the years of agitation for workmen's compensation perhaps the greatest stress ordinarily was laid upon the assurance of pecuniary indemnifications for injuries suffered, few American advocates of the compensation bills failed to claim that the proposed measures might be expected to reduce the numbers of accidents. Indeed, it would be unfair not to allow that the more earnest advocates were always fully aware of the possibilities of accident prevention which lay in their proposals. If they did emphasize the other consideration, probably it was because of a well grounded conviction that there was more persuasive argument in it. To state results which must follow at once, directly and in definitely measurable magnitudes, was likely to be more effective argument than to make claims which, in the nature of the case, it would be impossible to prove, at least to the conviction of an interested doubter.

And it is not seriously to be questioned that already the American compensation laws have benefited workmen, and other classes as well, much more by stimulating intelligent and successful campaigns for industrial safety than by adding some millions to the yearly payments on account of accidents which have happened.

There is, to be sure, great danger that enthusiastic advocates of workmen's compensation may over-estimate its influence and claim for it alone credit which it must share with other forces. Indeed, one may note on every hand unwarranted assumptions or express statements that the compensation legislation of the decade now drawing toward its close has been the one great cause of the contemporaneous movements for safer places and conditions of work. But the play of forces has been by no means so simple as that. Years before the American movement for workmen's compensation had attained any success, or even had come to show real promise of success, there were other influences operating to reduce the frightful numbers of industrial injuries in this country. Perhaps these influences meant merely a belated and special manifestation of that social humaneness which has been in evidence more and more everywhere for many years. Perhaps they were due to the employer's clearer understanding that it did not pay to break and replace human machinery unnecessarily. Perhaps they were due

to an increasing intelligence and strength in organized labor. Perhaps they may have had still other origins. But, at least, they were at work.

Some of the largest of American employers and many of the smaller ones had well organized plans and agencies for the reduction of accidents among their employees. And results were developing, as appears from several reports of undeniable significance. Statistics of the safety movement in the iron and steel industry and in machine making which have been published by the United States Bureau of Labor Statistics,[14] show reductions of accident frequency and severity more rapid before there were any American compensation laws than later. Substantially similar is the lesson from the coal mining industry, as its figures have been prepared by the United States Bureau of Mines.

And yet, notwithstanding all of the oft-lamented looseness and incompleteness of American accident statistics, it is possible to trace a connection between the compensation laws and the safety movement. In fact, the accident statistics themselves are of only minor utility in the tracing of the connection. The agitations for the laws did more than anything else to uncover, and bring to the knowledge of all, horrors which had not been really known before. And when America came to know, when Americans of every class came to know that in the United States each year thousands of industrial workers were killed needlessly, and hundreds of thousands injured quite as needlessly, that the American industrial accident rates were higher than those of most other lands, it was certain that something would be done to make work safer. It will not quite do to say that here was an educational influence which must have had its effect in any event and so must have tended to reduce industrial accidents even if no compensation laws had been enacted. That may be true, at least in a measure; and again it may not be true to any considerable extent. There are unpleasant reasons for believing that it is not largely true. But, at any rate, a new impulse for the promotion of industrial safety came from the workmen's compensation movement.

But more might be said. It would be ungracious now, when American employers are so hearty in their support of compensation, to attempt to say how many of them there are who were induced to begin or to quicken their efforts for the safety of their

[14] As in its bulletins 234 and 216.

work-people simply and solely by the fact that the new compensation laws made accidents expensive for the business, or more expensive than before. Moreover, such an attempt would fail of any definite success. And so this unpleasant topic may be dismissed with the brief but confident statement that there were many such employers. Of this all are convinced who have watched closely the bringing in of the compensation statutes in one or more of the states. There was sinister significance in the objections which employers raised against any compensation enactments, in their strong efforts to weaken the provisions of bills which promised to become laws or to prevent the inclusion of themselves under them, and in their panic eagerness for the adoption of safety measures and appliances as the laws went into effect. There is, therefore, no doubt whatever that in the directest possible way the compensation laws have conduced to the promotion of safety policies, and thus to the saving of life and limb, by exacting more money from employers in whose service injuries are suffered.

It is not possible to reach any safe conclusion as to the actual effects of the compensation movement, or the compensation statutes, in the promotion of industrial safety by a superficial reading of the general statistics of accidents during the few years since the American laws have been in force. Perhaps it will be impossible to reach any such conclusion of general validity by any use of the current statistics. For the influences which the compensation laws must be presumed to have exercised have been blended with other influences. As in Europe in earlier years, so now in the United States the compensation laws, with their requirement of a return of industrial accidents and with their promise of money to the injured, must tend for years to increase the returns of accidents, even while there may be no increase of actual numbers. And nobody knows how important this consideration is or how long it will continue to be important. Again, there were, as has been seen above, unmistakable downward trends in the American accident rates, at least in certain important industries, before the era of compensation. And nobody can tell how much of a later decline might be merely a continuance of this early movement. Still further, large account must be taken of the industrial conditions brought in by the great war. An influence in modern times always making for higher accident rates is in the technical

progress and the expansion of industries generally. The appliances of modern industry are ever becoming vaster and more powerful, and their speed is ever faster. Its tension is ever higher. Its labor force is ever being augmented by the taking on of new and untrained operatives. And all of these conditions and tendencies have been found in abnormal degree in American industry during these past four or five years, while the compensation laws have been taking effect.

While, then, there has been of late years one large force, the general safety movement developed under the compensation laws and independently of them, making for greater safety in American industry or for an appearance of it, as reflected in the statistical returns of accidents, there have been two making in the opposite direction, the progress and expansion of industry and the fuller reports which the compensation laws secure. Accordingly, there is nothing surprising in the fact that nearly all state reports show larger and larger numbers of accidents and probably would show also an increasing rate of accident frequency, if the figures were all presented in such manner as to reveal the true situation. Nor is there anything highly instructive in this same fact, at least there is not anything definitely instructive as to the effect of compensation laws upon accident frequency or severity. It is, indeed, rather disconcerting, at first glance, to read that the accidents reported to the Massachusetts Industrial Accident Board rose from 90,631 in 1912-13, the first year, to 174,372 in 1916-17, and that corresponding figures for Maryland rose from 20,348 in 1915 to 42,570 in 1918, for West Virginia from 11,418 in 1913 to 24,379 in 1918, for Washington from 11,896 in 1913 to 27,306 in 1918, and in New York from 225,391 in 1915 to 286,871 in 1918. But these typical increases are explained easily by a reference to the familiar forces mentioned just above, and most largely by the industrial conditions of the war period. So in Massachusetts the rise in the number of reported accidents was surprisingly small until the war began to show its influence. The increase was only from 90,631 to 95,769 between 1912-13 and 1914-15, or less than 6 per cent; whereas in the next two years there was an increase of more than 80 per cent. In Washington the increase from 1912 to 1915 was only from 11,896 to 13,162; whereas in the following three years the accidents more than doubled.

Indeed, it is reasonably clear, where careful and comparable re-

turns of accident frequency are to be had for a term of years, that the campaigns for safety have had their natural influence uninterruptedly throughout these latest years of unprecedented industrial activity. There are important branches of American industry, not unaffected by war conditions, in which some influence—presumptively the general movement for safety—has been operating continuously against the unfavorable influences arising out of the war and finally has overcome them. This pleasant truth may be read in the following table showing total accident frequencies per 1,000 300-day workers in certain plants or industries.

Year	1[1]	2[1]	3[1]	4[1]
1905.....	300	...	...	...
1906.....	214	...	...	...
1907.....	189	242	...	6.19
1908.....	150	...	...	5.45
1909.....	174	...	...	...
1910.....	134	184	...	5.31
1911.....	112	174	...	4.97
1912.....	153	192	...	4.46
1913.....	115	156	175	4.70
1914.....	74	113	126	4.66
1915.....	48	111	125	4.44
1916.....	96	101	137	3.94
1917.....	85	81	104	4.25
1918.....	...	...	87	...

[1] Column 1 represents one large steel mill with from 4,575 to 10,862 employees and column 2 represents a group of smaller steel mills with from 27,632 to 108,994 employees. Both of these sets of figures are from United States Bureau of Labor Statistics, Bulletin no. 234, pp. 15-16. Column 3 represents iron and steel mills amounting to about half of the industry in the United States, and the data are from the *Monthly Labor Review* of the Bureau of Labor Statistics, vol. 8, p. 1784. Column 4 shows fatal accidents only in coal mining, as reported by the United States Bureau of Mines.

That the tendency toward a lower accident rate, where this is to be observed, has been due, to nearly or quite its full extent, to the efforts of employers, the employed, the insurance companies, and the public authorities to promote industrial safety is not difficult of proof. But the proof is not to be found in general accident statistics, which at their best can but show the joint effect of several combined forces. It is to be seen rather in the *a priori* certainty that to cover dangerous machinery and in a thousand other ways to fence against the ascertained cause of accidents must make for safety, and in the records of a great number of individual employers. The records of certain few very large corporations, as the United States Steel Corporation and the International Harves-

ter Company (if it be not invidious to cite employers who are conspicuous rather for size than for any superiority of their plans or motives) have become a part of the world's best known economic data. But there are many smaller employers who have records quite as creditable. It is not profitable to elaborate the obvious. And, if anyone doubts the efficiency of well organized and persistent efforts after industrial safety, he may find most impressive evidence in the records of establishments with safety appliances and organizations and establishments without them. In iron and steel mills of three groups the total accident frequency, per 1,000 300-day workers, was found to be 167.1, 272.4, and 507.9, according as the plants had safety systems fully developed, in course of development, or not developed at all.[15] In machine-building plants the accident frequency was found to differ as follows in three groups of plants, according as there was or was not a good safety organization: electrical apparatus, 65.1 *v.* 185.6; locomotive engines and other engines, 119.5 *v.* 141.7; machine tools, 42.1 *v.* 123.4.[16]

Happily, then, we may conclude that campaigns for safety are producing their natural results in this country. But, if again an attempt be made to apportion credit for this broadly effective movement, the same serious difficulties recur. How much of the motive comes from the compensation laws? How much comes from deeper sources, to which the safety movement and the compensation movement alike might be traced, and other humane movements also, perhaps? I, for my part, do not care to attempt here any fuller answer than already has been given in this article. Many employers, and others, giving little heed to mere economic costs, apparent or real, were more and more active in their endeavors to promote industrial safety, as they came to know more and more clearly how many injuries and how much of resultant misery the regular course of American business was causing. And these welcomed the help toward their own desired ends which the compensation laws afforded. But there were also a great many employers, and others, who appeared to care nothing at all about the costs in human misery, if only business might continue to run in such ways as to assure high profits and cheap goods. And these could be brought to a better mind only by the pressure of such pecuniary penalties as the compensation statutes imposed.

[15] Bulletin of the United States Bureau of Labor Statistics, no. 234, p. 204.

[16] Bulletin of the United States Bureau of Labor Statistics, no. 216, p. 43.

The compensation movement, if not in every state the very compensation acts themselves, is providing a highly important form of practical education. It is giving us our first real and exact knowledge about industrial accidents in the United States. Before the era of the compensation laws there was not a single state in the country whose accident statistics were of any real value. It is, indeed, interesting to observe that the broad general estimates of the total numbers of industrial injuries in this country which had been made in recent years are being substantially confirmed by the increasingly full and reliable returns which now are coming in. Mr. F. L. Hoffman's well known estimate of some 25,000 killed each year and about 700,000 disabled for at least four weeks[17] is finding substantial verification in the reports which now are coming from the compensation commissions. The latest available returns for several of the states show total injuries and fatalities as follows:

State	Total	Fatalities
California (1917).....	109,988	628
Illinois (1918).....	36,432	492
Maryland (1918).....	42,570	163
Massachusetts (1917)...	174,372	481
New York (1918).....	286,871	1,504
Pennsylvania (1918)....	184,844	3,403
Washington (1918).....	27,306	414
West Virginia (1918)...	24,379	548
Total	886,762	7,633

When there was no better authority for such frightful figures than estimates, it was possible to doubt their truth. Many would not believe that American industry was killing three workers every hour of the year, night and day, and was wounding some millions annually; but now it is becoming more and more difficult to deny the facts. The reports of the compensation commissions are doing more than to give a terrible confirmation of early estimates. They give also much additional information as to the nature of the injuries, their physical and social causes, and their consequences. Doubtless the present returns of most states still leave much to be desired in the way of regularity, fullness, clearness, and comparability. But a well-thought-out plan for the standardizing of accident statistics has been prepared by the International Asso-

[17] Bulletin of the United States Bureau of Labor Statistics, no. 155, p. 6.

ciation of Industrial Accident Boards and Commissions. And as the standard forms are more generally adopted for the return of accident reports, there will accumulate a mass of statistical data which will be of the highest value in every way. These will give the country indubitable evidence of the reality and magnitude of one of our greatest industrial evils. Then we may trust that American public opinion will not tolerate any neglect of remedies. But the mass of scientific data for which we are coming into the debt of the compensation laws will do more than arouse public opinion. It will provide the only basis for sound and hopeful policies of prevention and palliation. It will do more even than that: it will help—is already helping—to humanize industry and industrial relations by showing how practicable and expedient it is for twentieth century business to adopt in its human relations principles and methods as well considered and as highly specialized as those which long have been taken as matter of course in other relations.

The effects of the compensation system in the promotion of safety are none the less real because the appeal to selfish and heartless employers is not made directly in the commonest form of statute but indirectly and through practices developed under the statutes. For, while the most common form of statute does lay upon the employer an obligation to make payments on account of accidental injuries suffered in his service, it also directs him to insure his liabilities, and thus limits his costs to the definite amount of his insurance premiums. Accordingly, it has been said by some that the employer's direct business inducements to make his workplaces safe are diminished, not increased. For the moment this may appear to be true. But it is not true. For, in connection with the state funds which often are established as agencies of insurance, either exclusive, as in Washington, Ohio, and other states, or optional and competitive, as in New York, Pennsylvania, California, and elsewhere, provision always is made in the statutes for at least some partial adjustment of premiums to the accident rates of the insured, either individually or by groups. And it cannot be doubted that the statutes and their provisions for insurance have been drafted in the reasonable expectation that private insurance carriers also would vary their premium charges in accordance with the same general principle.

And in actual practice one of the most interesting and gratify-

ing developments under the compensation system in America is seen in the careful and unremitting endeavors of all insurers—state funds, insurance companies, and mutual associations alike—to work out a sound rule for making premium rates depend in part upon the employer's efforts or success in safeguarding his work-places. Both the principles of discrimination adopted and the practical measures for carrying them into effect vary. There are open questions as to the relative weights to be assigned to the accident rates actually developed in experience (experience rating) and to conformity to prescribed standards of safety (schedule rating). There are also unanswered questions as to the extent to which individual conditions and experience may be considered without departure from the sound essential principle of all insurance, that is, the principle of pooling the individual in the collective group of the insured. It is not necessary here to outline the excellent work which has been done by members of very capable insurance experts in their attempts to solve such problems. But it must not be forgotten that much of the best thought of the insurance companies and of the compensation commissions is devoted to the working out of plans which may combine sound insurance procedure with the utmost practicable allowances and penalties for observance and neglect of approved safety measures.

And there are still other ways, at least as important, in which compensation insurance has conduced to the safety of industrial employees. Once the insurer has contracted for his premiums, it is clear that he stands to gain the more—to save the more of the premiums for his own profit—the more he can reduce the accidents of the insured below the numbers upon which the premiums were computed. And, at the same time, he may encourage his insured to hope that a reduced accident rate will mean a reduced premium for the next policy period. Thus we find that, as a matter of the most obvious business interest, all sellers of compensation insurance seek constantly to improve their risks, by inspections, by counsels of safety, and by the preparation and urging of all manner of safety policies and appliances. Very fortunate indeed it is that corporations with resources as great as those of the large insurance companies find it unmistakably good business to work for the safeguarding of industry. Nothing has done more to clear private sellers of compensation insurance from the charge of heartlessly exploiting human misfortune for their own profit than their intelligent and persistent endeavors to make work-places ever safer.

Nothing can be more likely to preserve for them their present rights in a large and expanding field of enterprise. At first individually, company by company, but more recently chiefly through their specially constituted associations and bureaus, and sometimes in friendly conference with representatives of the state compensation commissions, private insurance carriers have done a most admirable work in devising and recommending plans for the safe construction, equipment, and management of factories, mines, and other work-places. Their provisions for the human element, that is, against the so-called moral hazards, are scarcely less elaborate.

Whenever, as often under the statutes, those who employ large numbers are allowed to dispense with formal insurance and to "carry their own risks," workmen's compensation tends in the simplest and most direct way to promote safety. In all such cases employers know that each injury means so much direct cost to themselves and that, therefore, it is for their own immediate business advantage to reduce accidents to the lowest possible figures. Essentially so it is also with all genuinely mutual insurance associations.

The conclusion, therefore, is fully warranted that compensation insurance, with its merit ratings, does contribute largely to the contemporary movements for industrial safety. And both insurance and the merit ratings were contemplated in the workmen's compensation legislation generally, even in the states where they were not expressly required by the statutes. Here, then, is the happiest consequence of the compensation system. It certainly is well if many millions of money have been added to the sums formerly received as indemnity and solace for the losses and sufferings entailed upon workmen's families by industrial accidents. But it is much better in every way if, as is not unlikely, some few thousands of lives are saved each year and some scores or hundreds of thousands of injuries prevented.

It must be confessed that, except as they did bring in compensation insurance and its merit ratings, the compensation laws have not done much for industrial safety. Not often have they prescribed rules or standards of safety or even conferred powers of inspection. This, however, has been because such matters have been left to distinct statutes and distinct offices. In California there was a temporary change of policy. For the revised com-

pensation act of 1913, replacing substantially the act of 1911, was made up in considerable part of sections devoted specifically and exclusively to the direct promotion of safety in industry; and the act itself was legally designated the "Workmen's Compensation and Safety Act." But in 1917 the safety sections were entirely removed to a separate statute. Other states, as a rule, have followed the plan of separate statutes from the first. At present there are only about a dozen states which make any provision for accident prevention in their compensation acts. Doubtless there are real advantages in some measure of coördination or unification in the two lines of activity. But the present degree of separation is not as great as might appear. For in many of the states there are industrial commissions with general authority over all administration of laws affecting labor, workmen's compensation laws, factory inspection laws, safety laws, and the rest. And it can make but trifling difference whether public regulations which a given office is to administer are found in different parts of one statute or in different statutes.

In the critically important matter of fixing compensation insurance rates, whether for the state funds or for private insurers, the framers of the statutes usually have thought it sufficient to take account of the actually developed accident experience of industries or groups of industries. Rarely have they thought it well to sanction schedule ratings, that is, ratings based upon conformity to approved standards of safety.[18] The terms of typical statutes, as in Ohio, unmistakably contemplate no other principle of merit rating than such as may be derived from the accident experience of the insured. There are statutes, as in Kentucky and Virginia, which in general terms authorize "merit rating," while others authorize or direct "schedule rating," with or without a fair implication that the words are to be taken in their technical meaning. Only in a few of the states, as in Colorado from the first, in Michigan, New Jersey, Pennsylvania, and now since 1917 in Washington, is there express and definite sanction for the adjustment of premium rates with reference to physical and moral conditions in plants, as distinguished from accident rates revealed in experience. Accordingly, the state commissions, practically limiting themselves to experience ratings in their administration of the

[18] As a matter of fact, legislatures and their draftsmen knew very little about the different principles and methods of merit rating.

state funds, have been much less efficient than private insurers in their use of a most powerful force for the promotion of industrial safety. The provisions of the Pennsylvania statute and of recent amendments in New Jersey and Washington may indicate that this important fact is coming to be recognized in public places. If so, a change for the better may be in prospect.

But, even without large use of this efficacious means, some of the state commissions have produced gratifying results. They have conducted extensive educational campaigns. They have made inspections, examined and recommended safety devices, established safety exhibitions and museums, and widely scattered helpful printed materials. The California Industrial Accident Commission long has issued a valuable illustrated *California Safety News* which cannot have failed to do much good. The same commission conducted a special campaign for safety in mining industries, with the apparent result that fatal accidents in California mining fell from 20 in 1916 to 10 in 1917. In 1914 the Massachusetts Industrial Accident Board carried on for three months a campaign for safety in establishments with some 55,000 employees. And a comparison of accident rates for half-year periods before and after the campaign shows a reduction of 20.8 per cent in the total number of accidents. It is by discriminating attention to experiments and reports like the two just mentioned —not by observing the broad general movements of accident rates —that one may come to his best conclusions as to the effects of the compensation laws in making industry safer.

Of the general economic consequences of the compensation laws, the consequences for business and industrial society at large, there are but few positive statements which can be based directly upon observation or experience. The most important of the clearly warranted statements—negative in character—already have been made. No important direct consequences of the compensation legislation have been traced in business. The early fears that the charges imposed upon business in order to provide funds for the compensation awards might deaden enterprise and restrict industrial activity have been proved groundless. And the expectation that industries might be driven to migrate in order to escape oppressive burdens has been disappointed completely, as, indeed, it must be disappointed when there remain so few civilized regions into which industries might flee for escape. In short, the evidence of a general economic character is wholly negative. So far, then,

it would appear that the compensation system has had no appreciable direct effect upon business.

Nor, in the nature of the case, can there have been any large direct effects. The single new influence to work directly is the weight of the compensation costs as an addition to the expenses of doing business. And, on the average, these costs cannot have figured for much. Clearly their magnitude is shown by the premiums for compensation insurance. And these, varying from a minor fraction of one per cent of the pay-roll in most textile mills to several per cent in structural iron work, mining, and other specially dangerous operations, may perhaps be generalized at about one per cent, or a little more.[19] And such a cost, a cost of such amount and of such character, can have no great effect upon the total expenses of producing, upon necessary prices of products, or upon demands for goods.

The addition of one per cent to labor costs becomes an addition of about one fifth of one per cent to total costs, when account is taken of the fact that labor, as in manufacturing, figures at about one fifth of all costs. In other industries, as in mining, labor counts for much more. But the costs of compensation, of compensation insurance, are not a net addition to the employers' business expenses. Something employers paid in former days on account of industrial accidents. The largest item was the amount paid for employers' liability insurance. But there were other items also, the small sums given occasionally in direct and gratuitous settlements of claims, the costs of litigation, and the rest. So that the immediate net increase in the costs of production or business must be much less than the present costs of compensation insurance. In fact, there have been official claims for several of the states that the new system costs employers no more than the old.[20] Something still further must be allowed in reduction of the

[19] In Montana, where employments cannot be especially free from dangers, one per cent is the official estimate of the costs for the two years, 1917-18. In West Virginia, where also mining is an important industry, the general average of premiums for 1916-17 was 1.41 per cent. In Wisconsin during 1913-16 it was 1.33 per cent. In the exclusive state funds the premiums or assessments are lower. But the question of true costs is so much involved with other subordinate questions that it cannot be answered in a convincing manner without elaborate expositions and discussions. The variety of Wisconsin industries and the different agencies of insurance operating in that state perhaps make Wisconsin figures as instructive as any.

[20] Montana Industrial Accident Board, 1918-19, pp. 28-29.

fair charge against compensation. Better medical care for injured employees and larger cash benefits for them make the interruptions of their work less prolonged and less disturbing to the orderly course of the business.

When all due allowances have been made for these reactions of the compensation system, as for others which might be added, possibly there may still appear some trifling increase in the direct costs of industry. But trifling indeed must the increase be. And, such as it may be, it bears upon producers in nearly all branches of industry, taking the word in its narrower meaning, and in nearly all parts of the civilized world. Its true and final effects, therefore, can be ascertained only by elaborate and somewhat profound analyses and by careful examinations of industrial conditions, such as would in themselves constitute an important study in economic theory. Are modern producers' profits so high that from them can be taken these trifling net additions to costs? If not, will the producers' necessary increase of his selling prices appear in a corresponding increase in consumers' costs? If so, will demand be turned from the products of those who have to pay compensations to the products of those who do not have to pay, as from manufactured goods to agricultural products? Or will consumers find their purchasing power commensurate with the higher prices, because they receive compensation benefits, or are enabled to work and earn better, or are relieved somewhat from charges for the care of victims of industrial accidents? These and still remoter questions need not be answered now. We may rest content in a reasonable confidence that, as no disturbances because of workmen's compensation have been observed in the industry of the United States or of foreign lands, so none which can possibly come can outweigh, or even approximately balance the business and social advantages which already have been derived from that same system.

There are other consequences of the compensation legislation already apparent. As it has been humanizing industry, so it has been humanizing judicial opinion, which in America is so powerful for social good or evil. One need not be an extremist in order to believe that the great body of our judicial reasoning about social relations has been a dry and lifeless formalism, showing little recognition of what it meant for the life and welfare of human beings. An eminent New England jurist, still living, once declared, in a decision from the bench, that the atrocious fellow-

servant doctrine rested upon "considerations of right and justice."[21] Now such a complete disregard of the human significance of the law never is found in the compensation decisions. Rather the judges in a score of courts vie with one another in praising the humane wisdom of the compensation acts and declaring their purpose of interpreting them in no narrow and technical sense, but broadly and liberally and in such manner as to get the fullest practical effect to their noble humanitarianism!

Let still other observed consequences of the compensation system be passed over now. But mention must be made, if only the briefest, of certain serious defects in the present statutes, which have developed in practical experience. It would not do to dwell only upon the merits of the American compensation system, with never a word about its defects.[22]

To leave the enforcement of the injured worker's rights to the law courts has been proved, in New Jersey[23] and elsewhere, practically to nullify the provisions of the statutes in great numbers of cases. "The administration of American justice is not impartial, the rich and poor do not stand on an equality before the law, the traditional method of providing justice has operated to close the doors of the courts to the poor, and has caused a gross denial of justice in all parts of the country to millions of persons."[24] Yet there remain compensation states, north, east, south, and west, which have constituted no special administrative boards. The sums paid under the acts for medical care have been proved gen-

[21] *Hoxie* v. *New York, New Haven, and Hartford R. R. Co.*, 82 Conn. 352.

[22] For the most part, the defects may be regarded as merely shortcomings, as merely preventing a full realization of the advantages which might be derived from a compensation system. But in some few respects workmen have been made positively worse off by the compensation acts. As men who have been disabled or maimed are more than ordinarily liable to accident, such appear to find their opportunities of employment diminished somewhat (*Monthly Labor Review*, vol. 9, pp. 206-7). More important is the fact that the compensation laws, making recoveries under the employers' liability law practically impossible, shut off from any relief the workers whose injuries are not provided for by way of compensation awards, that is, broadly speaking, those whose disabilities do not continue beyond the prescribed waiting period, a week or ten days, more or less. But, since most of these many thousands would have been unable to secure relief under the liability system, the evil is not enormous. But it is real.

[23] *Three Years under the New Jersey Workmen's Compensation Law*, report by the American Association for Labor Legislation.

[24] *Justice and the Poor*, Bulletin 13, Carnegie Foundation for the Advancement of Teaching, p. 8.

erally to be most wisely and helpfully expended, hastening cures and thus benefiting both the injured and the employer. Yet there are but four or five states which do not limit the extent of provision for curative treatments, by fixing a maximum either of amount or of time. The waiting period, during which no benefits accrue, still is two weeks in some states and ten days in many. Yet experience shows that not far from three fourths of all disabilities cease within two weeks. In Oregon in 1915-17, when there was no waiting period, it was found that a waiting period of one week would have cut off 35.38 per cent of the injured from their awards, while two weeks would have cut off 62 per cent. While to many prosperous persons it may appear a small matter to have income suspended for two weeks or less, it is by no means a small matter to the hundreds of thousands who have the experience each year in this country, because they have been injured while at work. Failure of the employer to insure his liabilities often makes it impossible for the injured to secure their promised benefits. Yet there still are several states which make no requirement of insurance. The limitation of awards to those whose injuries have been of accidental origin has raised many perplexing questions as to what is an accident and has cut off from compensation a great many victims of industrial diseases and of exposures of one sort and another.

A defect deserving of special attention is the inadequacy of the schedules of awards. About these there is much misunderstanding. The amounts of compensation, in nearly all cases, are stated as such or such a percentage of current earnings, as less than 50 per cent in several states and under certain conditions, 50 per cent in about half of the states, 55 in two or three, 60 in some fifteen, 65 in two or three, and 66⅔ in the rest. But these figures exaggerate the benefits actually paid, being maxima which cannot be reached under many common conditions of earnings, dependence, and the like. Moreover, they are qualified in most of the states by the provisions that, no matter how high the actual earnings, the awards may not be above some maximum, as $12 a week, more or less, and that, no matter how long disability may continue, payments must cease after a while. The Minnesota commissioner of labor estimates that in his state, while the nominal rate was 60 per cent, the awards in cases of temporary disability were but 38 per cent of the direct wage loss in 1916-17 and but 48 per cent in 1917-18. It is a cruel mockery to present as half

pay, or two thirds, a series of payments which may cease while yet the injured person is to live through a long period of disability. It is scarcely less cruel to modify a nominal half or two thirds of pay by a fixed maximum of $15, $12, $10, or $8. The highly paid railway employees have understood this all the time. And nowadays it is being realized by many others. To what extent present schedules of awards might be raised need not be asked here. Most of them were fixed before the war period and its enhanced costs of living; and the present height of prices has forced a number of increases in the schedules,[25] but not enough. They still are generally too low. It is the amount actually paid that counts. Be it remembered that actual awards for fatal injuries average from $2,500 to $3,000, while the terms of the statutes commonly put into readers' minds thoughts of $5,000 or more.

Much the greatest defect of the American compensation statutes is their lack of comprehensiveness. In a recent issue of the *Monthly Labor Review*, Mr. Carl Hookstadt estimated that in the so-called compensation states there were not less than 7,400,000 employees who were not covered at all by the statutes. Some of these, a million and a quarter of them, are in interstate commerce, where there are special but not insuperable difficulties in providing coverage. But the greater number, more than six millions, have been deliberately left out or excluded by state legislatures. The reasons are well known. There are strange beliefs as to the needlessness of compensations in occupations which, with or without good reasons, are counted as not hazardous. There are rather discreditable deferences to the prejudices of such classes as the farmers. And there are other minor reasons. But the fact remains that nearly a third of the employees in the so-called compensation states are in no wise affected by the statutes. An estimate of the United States Bureau of Labor Statistics indicates that nine of the compensation states cover less than half of their employees and that only eighteen cover as many as two thirds. And these estimates assume that in the states with optional acts there have been no rejections by employers.

The net result of all this is that the present American compensation system is much narrower in its application than we in our optimism might suppose. In Kansas, with her population of more than a million and a half, there were in 1914 only 806 compensation awards of all sorts; while in 1917-18, after the waiting period

[25] *Monthly Labor Review*, vol. 9, p. 1233.

had been reduced from two weeks to one, cash awards were made only at the rate of 1916 a year. In New Hampshire, with a population of some 450,000, there were in 1914 but 404 awards; and the latest report of the Bureau of Labor makes no mention of compensation awards. In Nebraska, with nearly a million and a half of people, there were in 1915 but 605 awards. In the same state in the calendar year, 1917, but $67,028.73 was paid for all cash benefits, and in the first ten months of 1918 but $65,362.74. Can such states fairly be counted as having compensation laws? But even in the states which make the best showings only a small minority of the injuries suffered are followed by compensation awards. There are few states in which the figure is as high as 20 per cent. In California, where the compensation law had been in operation five or six years and had been administered by a capable and alert commission, there were in 1917 only 14,313 awards for temporary disability, although there were 107,420 temporary disabilities reported.

The sum of it all is that the American compensation laws have proved fairly their beneficence but cannot be supposed to have attained their final forms. Either a superficial observation of the contemporary course of legislation or a closer examination of the underlying conditions which appear to direct it will yield reasons for believing that the compensation system will be extended and that its provisions will be made more liberal than they are at present.

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