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THE PROGENITOR GERMAN MODEL OF WORKERS' COMPENSATION

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The Pennsylvania Act, and the workers' compensation system in general, were modeled on the British Workers' Compensation Acts of 1897 and 1906. Indeed, early Board and court decisions resolving issues arising under the 1915 Pennsylvania Act frequently invoked the authority of published decisions of *British* courts. Those early Pennsylvania adjudicators did so with good reason, as much of the initial Pennsylvania Act was taken word-for-word from its English progenitor.

We learn from an excellent 2003 article, however, that Germany – or to be more precise, Prussia – preceded England in the enactment of social insurance laws.* The groundwork for no-fault liability concepts was set down in early statutes that provided for strict liability on the part of the fledgling railroad industry. The initial law was the 1838 Railroad Law, and was designed to make railways responsible for damage to the vast real estate of the politically powerful “Junker” class of rich landowners.

In a remarkable move, however, the law was interpreted by the Prussian Supreme Court to apply to lawsuits by railway *workers* against their *employers*. In so doing, further, the court turned out to be quite liberal. In one case dealing with damages, for example, the plaintiff worker had been injured, and he sued his employer. The worker, however, refused to return to modified duty with the railroad. This refusal, arguably a failure to mitigate damages, was held not to prejudice his claim:

[The plaintiff engineer] F. had turned down alternative employment in the Buckau workshops of the Magdeburg-Halberstadt Railroad, but the court held that F. had qualified as a locomotive engineer and should be offered work equivalent to his rank, without the dangers to which he would be exposed in the Buckau workshops. The plaintiff demanded sixty marks per month (his old salary) to be paid for the rest of his life; the court granted him this but held that it should be reduced by any other [actual] earnings.

The law was expanded in 1871. Workers still had to sue mining industry and factory employers in negligence cases, though the 1871 law provided for vicarious liability on the part of

* See John M. Kleeberg, *From Strict Liability to Workers' Compensation: The Prussian Railroad Law, The German Liability Act, and the Introduction of Bismarck's Accident Insurance in Germany, 1838-1884*, 36 N.Y.U. J. Int'l Law & Policy 53 (2003). This essay is based on Mr. Kleeberg's article. To read his article, see <https://litigation-essentials.lexisnexis.com/webcd/app?action=DocumentDisplay&crawlid=1&doctype=cite&docid=36+N.Y.U.+J.+Int'l+L.+%26+Pol.+53&srctype=smi&srcid=3B15&key=4580c3f1c905b7dff698928145d115c6>.

such employers, and did away with a rule that corresponded to the “fellow servant” doctrine found in Anglo-American law.

During this period, a number of industrialists began to argue for a social insurance scheme, and an abolition of lawsuits prosecuted by workers for their work injuries. The steel industrialist Louis Barre was the leading exponent of such a no-fault plan. Barre thought that abolishing the requirement of showing negligence would reduce litigation, at which workers were becoming increasingly successful. He was also concerned that the legislature would continue to expand strict liability concepts throughout the law, and that an avalanche of litigation unfolding before liberal judges would harm industrialists’ interests.

It was Barre who first proposed that insurance benefits be provided at “two-thirds of final salary, which workers’ compensation schemes all over the world have copied.... The limit was to prevent disabled workers from receiving higher pensions than soldiers or civil servants...”

Ultimately, the statesman Otto von Bismarck (1815-1898), the “Iron Chancellor,” adopted Barre’s proposal and “made it part of his social insurance program.” As ultimately enacted, “Bismarck’s social insurance program, [which included] accident insurance ... [was] the first state workers’ compensation program scheme in the world.” This insurance scheme also had proposals to cover general health concerns and old age and non-work disability.

Bismarck’s motives were hardly humanitarian in nature. The 2003 article states, “[s]ocial insurance did not arise from the moral benevolence of Otto von Bismarck, but from the crude horse-trading known to us from public choice theory” In this regard, the author, among other things, points to Bismarck’s serving the interests of steel and other industries, and his own personal interests as a landowner, lumber merchant, and paper manufacturer. At the same time, in providing generous insurance benefits to the working class “he hoped the grateful workers loyally would serve their new benefactor, the German Empire.”

Ultimately, the laws advanced by Bismarck came into effect somewhat piecemeal. The health insurance aspect of the plan was enacted in 1882; and in 1884, the “accident insurance” (workers’ compensation) component came into effect. Employers funded the full cost of this latter aspect of the scheme. “Old age and disability insurance became law in 1889, and [this coverage, like health insurance] received a subsidy from the imperial government.”