Marquette Benefits and Social Welfare Law Review

Volume 18
Issue 2 *Spring*

Article 8

3-2017

Essay: Setting the Bases of a Policy Framework to Cover Old-Age Risk

Recommended Citation

Pablo A. Ortiz, *Essay: Setting the Bases of a Policy Framework to Cover Old-Age Risk*, 18 Marq. Benefits & Soc. Welfare L. Rev. 315 (2017).

ESSAY: SETTING THE BASES OF A POLICY FRAMEWORK TO COVER OLD-AGE RISK

Pablo Arellano Ortiz*

This Essay proposes a coherent vision about the protection of old-age pensions and establishes a public policy strategy that allows the protection of a country's entire population. It attempts to connect the action of the State, through the notion of the welfare state, with the protection of pension systems. It proposes three levels of protection: (1) the welfare state, (2) state regulation, and (3) pension scheme regulation. The first Section of this Essay reviews welfare states, explains their categories, and discusses their protective effects. The second Section examines how to structure the various pension schemes into a coherent pension system under a single protective logic, postulated after the Chilean Pension Reform of 2008. Finally, the third Section explains how pension schemes provide pension coverage to a greater number of people.

Key words:
Policy strategy – Old-Age Coverage – Social Security – Multi-Pillar System – Welfare State

* Professor of Labor and Social Security Law, Pontifica Universidad Católica de Valparaíso, Chile. Ph.D in Law, Université Paris Ouest Nanterre La Defense, France; Master 2 Recherche Droit Social et Droit de la Santé, Université de Paris X Nanterre, France; Master 2 Recherche Droit Social de la Université de Paris II Panthéon Assas, France. Lawyer, Universidad de Concepción, Chile. He has worked as International consultant in social security themes and also worked as Legal Officer in the Standard's Department at the International Labor Organization. He has published several papers in Spanish, French, and English about themes related to the right to social security and about international labor standards, especially unemployment, pensions, health, and migrant workers, concerning Chilean and international legislation. Email: pablo.arellano@pucv.cl

TABLE OF CONTENTS

I. INTRODUCTION

Globalization and changes in labor markets have made the protection against old-age risk more complex.[1] State action and private sector programs have become insufficient for the majority of the global population.[2] To protect more effectively against this risk, it is necessary to reevaluate the current policies and strategies of income protection.[3] A review of current day regulations should be evaluated on two levels: (1) the State and (2) the mechanisms of risk protection.

The State viewpoint considers the different interactions between public and private actors involved in the program.[4] Thus, the notion that the welfare state plays a key role is an accurate statement, and a review showing its origin, evolution, and current problems is appropriate.[5] This Essay analyzes classic and new classifications of protection schemes[6] and examines the eventual export of this concept from developed countries to emerging regions.[7]

Regarding the mechanisms of old-age risk protections, many countries have hybrid models of protection from old-age risk.[8] These hybrid models have also been categorized as "multi-pillar"

---

1. Old-age risk is one of nine social classic risks covered by social security. These nine risks were set in 1952 by ILO Convention no. 102. C102 – Social Security (Minimum Standards) Convention, 1952 (No. 102), Int'l Lab. Org., http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312247 [https://perma.cc/V6C8-74BS].

2. INTERNATIONAL LABOUR OFFICE, SOCIAL SECURITY PENSIONS: DEVELOPMENT AND REFORM (Colin Gillion et al. eds., Int'l Lab. Office, 2000) [hereinafter SOCIAL SECURITY PENSIONS].

3. INTERNATIONAL LABOUR OFFICE, BUILDING DECENT SOCIETIES: RETHINKING THE ROLE OF SOCIAL SECURITY IN STATE BUILDING (Peter Townsend, Geneva: Int'l Lab. Office, Palgrave Macmillan, 2009).

4. I will use my previous study on the subject. PABLO ARELLANO ORTIZ, *Estado de Bienestar: un sello europeo y su pretendida proyección mundial", in Programa de Estudios Europeos UDEC, in* TENSIONES EN EUROPA: DESAFIOS PARA LA INTEGRACIÓN 89-107 (RIL Editores, 2013).

5. *Id.*

6. *Id.*

7. Peter H. Lindert proposes this idea. PETER H. LINDERT, *Can the European Welfare model be exported?, in* BUILDING DECENT SOCIETIES: RETHINKING THE ROLE OF SOCIAL SECURITY IN STATE BUILDING (Peter Townsend, Geneva: Int'l Lab. Office, Palgrave Macmillan, 2009).

8. For a review of different models see ROBERT HOLZMAN & RICHARD HINZ, OLD AGE INCOME SUPPORT IN THE 21ST CENTURY: AN INTERNATIONAL PERSPECTIVE ON PENSION SYSTEMS AND REFORM (World Bank Pub. 2005); WORLD BANK, AVERTING THE OLD AGE CRISIS: POLICIES TO PROTECT THE OLD AND PROMOTE GROWTH (World Bank, Oxford U. Press 1994); SOCIAL SECURITY PENSIONS, *supra* note 2.

models.[9] However, these models often do not provide coverage for all populations.[10] The coverage policy, to provide maximum protection, should be based under a single logic based on the capacity to contribute to the future beneficiaries. While the protection of old-age risk is rooted in the basis of a single logic model based on contributory capacity, the compliance of the right to a pension with the principle of subjective universality is an unrealized quest in many countries.[11] The two components of a social security system, non-contributory and contributory mechanisms, should be assessed by their overall ability to cover the entire population.[12] The first component includes a State-provided non-contributory mechanism, which responds to international and constitutional obligations of protection for a population.[13] The second component involves both mandatory and voluntary contributory mechanisms that enable people to obtain protection against old-age risk on their own accord.[14] The blending of these two mechanisms characterizes the universal right to a pension.[15]

Because the problem of aging is a global issue,[16] it requires a global solution. Accordingly, a successful public pension policy should consider three levels of protection: (1) the welfare state, (2) state regulation, and (3) pension scheme regulation. As for the third level, in relation to protection regimes, many pension options should be considered,[17] such as whether the mechanism is

---

9. *See* HOLZMAN & HINZ, *supra* note 8; SOCIAL SECURITY PENSIONS, *supra* note 2, at 27.

10. Pablo Arellano Ortiz, *Marco de análisis del sistema de pensiones chileno después de la reforma de 2008,* 19 REVISTA DE DERECHO 21, 21-43 (2012).

11. *See* PABLO ARELLANO ORTIZ, LECCIONES DE SEGURIDAD SOCIAL (Librotecnia 2015).

12. Arellano Ortiz, *supra* note 10, at 21-43.

13. PABLO ARELLANO ORTIZ, UNIVERSALISME ET INDIVIDUALISME DANS LE RÉGIME DES RETRAITES, L'EXEMPLE DU CHILI (L'Harmattan 2012) [hereinafter UNIVERSALISME ET INDIVIDUALISME]; PABLO ARELLANO ORTIZ, *Universalism and Individualism in Chilean pension law: an example of extension of coverage for Eastern Europe, in* LABOUR MARKETS, INDUSTRIAL RELATIONS AND HUMAN RESOURCES MANAGEMENT 219-231 (Kluwer Law Int'l 2012) [hereinafter LABOUR MARKETS].

14. UNIVERSALISME ET INDIVIDUALISME, *supra* note 13.

15. *Id.*

16. *Social protection for older persons: key policy trends and statistics*, INT'L LAB. ORG., http://www.ilo.org/wcmsp5/groups/public/dgreports/dcomm/documents/publication/wcms_310211.pdf [https://perma.cc/QD66-FD5G] [hereinafter *Social protection for older persons*].

17. *See* Nicholas Barr, *Economic theory and the welfare state: A survey and interpretation*, 30 J. OF ECON. LITERATURE 741, 741 (1992); Nicholas Barr & Peter Diamond, *Reforma de pensiones, principios, errores analiticos y orientaciones politicas*,

"pay-as-you-go" or "individual capitalization;" whether the administration is public or private; or whether it is financed through contributions, taxes, or a non-contributory mechanism.[18]

62 REV. INTERNACIONAL DE SEGURIDAD SOCIAL 5, 5-33 (2009); Nicholas Barr, *Garantía de los derechos proporcionados por los regimenes de prestaciones privados*, Investigaciones & Puntos de vista N° 10, Iniciativa de la AISS, enero, 2003 ; Nicholas Barr, *La verdad sobre la reforma de pensiones*, 26 ANÁLISIS LABORAL 24, 24-27 (2002); Nicholas Barr, *La réforme des retraites: mythes, vérités et choix stratégiques*, 55 REVUE INTERNATIONALE DE SÉCURITÉ SOCIALE 3, 3-48 (2002); Esteban Calvo, Fabio M. Bertranou, & Evelina Bertranou, *Are old-age pension system reforms moving away from individual retirement accounts in latin america?*, 39 J. OF SOC. POL'Y 223, 223-234 (2010); Fabio Bertranou, Esteban Calvo, & Elevina Bertranou, *Is Latin America retreating from individual retirement accounts?*, CTR. FOR RETIREMENT RES. AT BOSTON C., (2009), http://crr.bc.edu/wp-content/uploads/2009/07/IB_9-14-508.pdf [https://perma.cc/K3K8-DMJM]; ROBERT HOLZMANN & ROBERT PALACIOS, *Les comptes individuels en tant qu'assurance sociale : une perspective de la Banque Mondiale*, in CONSTRUIRE LA SÉCURITÉ SOCIALE: LA PRIVATISATION EN QUESTION 61-80 (Xenia Scheil-Adlung, P. Lang 2002); Estelle James, *New systems for old age security. Theory, practice, and empirical evidence*, THE WORLD BANK POL'Y RES. DEP'T POVERTY AND HUMAN RESOURCES DIVISION, (1997), http://documents.worldbank.org/curated/en/695471468739536790/pdf/multi0page.pdf [https://perma.cc/PH8U-T7PG]; SOCIAL SECURITY PENSIONS, *supra* note 2; Katharina Müller, *Contested universalism: from Bonosolto Renta Dignidad in Bolivia*, 18 INT'L J. OF SOC. WELFARE 163 (2008); Mitchell A. Orenstein, *La crisis de la privatización de las pensiones: ¿desaparición o resurgimiento de una tendencia política global?*, 64 REV. INTERNACIONAL DE SEGURIDAD SOCIAL 73, 73-90 (2011); INT'L LAB. ORG., PENSIONES EN AMÉRICA LATINA. DOS DÉCADAS DE REFORMA, GINEBRA (Int'l Lab. Office 1998); INT'L LAB. ORG., INTRODUCTION TO SOCIAL SECURITY (Int'l Lab. Office 1984); Monika Queisser, Après le Chili, les réformes de la deuxième génération en Amérique Latine, 48 REVUE INTERNATIONALE DE SÉCURITÉ SOCIALE 27, 27-45 (1995).

18. For a better understanding of this concepts it should be consider under the terminology set by professors Nicholas Barr and Peter Diamond, as follows: A "contributory basic pension" is a pension paid, often at a flat rate, to a person with a full record of contributions, or pro rata to a person with an incomplete contributions record. A "defined-benefit (DB) pension" is a pension in which the benefit is determined as a function of the worker's history of pensionable earnings. The formula may be based on the worker's final wage and length of service, or on wages over a longer period, for example, the worker's full career. A DB system may be fully or partially funded, or unfunded. In a pure DB arrangement, the sponsor's contributions are adjusted to meet obligations. Insofar as the degree of funding is maintained, contributions are adjusted to meet anticipated obligations; thus, the risk of varying rates of return to pension assets falls on the sponsor. A defined-contribution (DC) pension" is a pension in which the benefit is determined by the value of assets accumulated toward a person's pension. Benefits may be taken as a lump sum, as a sequence of withdrawals, or by purchase of an annuity. The expected discounted value of benefits is equal to the value of assets, referred to as benefits being determined actuarially. Thus, a pure DC plan adjusts obligations to match available funds, so that the individual bears the portfolio risk. "Fully-funded pensions" pay all benefits from accumulated funds. "Partially- funded pensions" pay benefits both from accumulated assets and from current contributions. A noncontributory universal pension is based on years of residence. "Notional defined-contribution (NDC) pensions" are financed on a pay-as-you-go or partially-funded basis, with a person's pension bearing a quasi-

All these components aim to answer the same question: how can we protect old-age income security?[19] The decision to implement a program by one feature or another is often based on ideological and political rationales rather than technical issues.[20] This Essay does not develop these themes, but instead, analyzes the higher levels of rationale for the public policy decision-making side of the programs.

Additionally, this Essay does not refer to the different types of pension reform programs, such as a parametric reform were the formula is adjusted, or a structural reform in which scheme is changed for another.[21] Alternatively, this Essay focuses on a vision for a system providing old-age protection. In this vision, to meet the objective universal old-age protection standard, it is necessary to design a system that contains multiple elements.[22] This approach allows for better reflection on the history of pension protection to develop a current system for current times.[23] A policy framework that considers all actors and all mechanisms will be more successful in extending universal coverage.[24] Under

---

actuarial relationship to his or her lifetime pension contributions. "Pay-as-you-go (PAYG) pensions" are paid out of current revenue (usually by the state, from tax revenue) rather than out of accumulated funds. Partially-funded pensions are often referred to as PAYG. Barr & Diamond, *supra* note 17. For an explanation of non-contributory mechanisms *see Pensiones no contributivas y asistenciales,* INT'L LAB. ORG. (2002), http://interactions.eldis.org/sites/interactions.eldis.org/files/database_sp/Chile/Pensiones%20Asistenciales%20(PASIS)/asocfile.pdf [https://perma.cc/VA6S-8ZSL].

19. PABLO ARELLANO ORTIZ, RETO ACTUAL DE LAS PENSIONES DE VEJEZ: ¿FIN DE LAS AFP? ¿REGRESO A REPARTO? (Librotecnia 2015).

20. *Id.*

21. *See* Carmelo Mesa-Lago, *Reversing pension privatization: the experience of Argentina, Bolivia, Chile and Hungary*, INT'L LAB. OFFICE, GENEVA (2014), http://www.ilo.org/gimi/gess/RessourcePDF.action?ressource.ressourceId=43277 [https://perma.cc/SH3R-XETG]; CARMELO MESA-LAGO, *Lecciones y desafíos de 23 años de reformas estructurales de pensiones en América Latina, in* EL SISTEMA DE PENSIONES EN CHILE EN EL CONTEXTO MUNDIAL Y DE AMÉRICA LATINA: EVALUACIÓN Y DESAFÍOS, PONENCIAS DEL SEMINARIO INTERNACIONAL 45 (Int'l Lab. Org. 2004); Carmelo Mesa-Lago, *Política y reforma de la seguridad social en América latina*, 160 NUEVA SOCIEDAD 133 (1999), available at http://nuso.org/media/articles/downloads/2757_1.pdf [https://perma.cc/F5ZN-JPAY].

22. *See Social protection for older persons*, *supra* note 17; Robert L. Brown, *Criteria for the optimal design of a social security retirement system*, 2 INT'L J. OF SOC. SECURITY AND WORKERS COMP. 79, 79-90 (2010).

23. *See Social protection for older persons*, *supra* note 17; ARELLANO ORTIZ, *supra* note 19.

24. This trend on extension of coverage can be seen in ILO documents. *E.g.*, *Extending social security to all: A guide through challenges and options,* INT'L LAB. ORG. (2010), http://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/@publ/documents/publication/wcms_146616.pdf [https://perma.cc/39DN-W55G]

this framework, the retirement system would become a coherent whole, combining elements of universalism and individualism, to protect the entire population through a system that has only one logic.[25]

II. WELFARE STATE: CONCEPTS AND CATEGORIES

The concept of the welfare state is relatively new[26] and is attributed to Robert Titmuss, who in the 1950s, developed a series of studies examining the actions of protective policies of social risks.[27] Over time, the concept of a "welfare society" developed to refer to a similar, or very closely related, framework of protection. The concept of a welfare society ignores the protection from the state and analyzes how a society evolves and protects at an individual level. This framework has two elements: (1) a judicial element, mainly based on the legal protection of human rights, and (2) an economic element.[28]

In addition to these two concepts, the concept of "state protection" became important after World War II,[29] particularly during the "30 Glorious," which refers to the thirty-year period following World War II, also characterized as Europe's "reconstruction period".[30] Subsequently, during the 1980s and 1990s, questions and reflections arose on the utility of a welfare state.[31] The concept is not well received unanimously and has been a great topic of debate in Europe as well as other regions.[32]

[hereinafter *Extending social security*]; *Tripartite Meeting of Experts on Strategies for the Extension of Social Security Coverage*, INT'L LAB. ORG. (2009), http://www.ilo.org/wcmsp5/groups/public/—-ed_protect/-soc_sec/documents/ publication/wcms_secsoc_14323.pdf [https://perma.cc/Z8ZM-WW8B] [hereinafter *Tripartite Meeting*].

25. UNIVERSALISME ET INDIVIDUALISME, *supra* note 13.

26. ARELLANO ORTIZ, *supra* note 4, at 89-107.

27. RICHARD M. TITMUSS, ESSAYS ON "THE WELFARE STATE" (Allen & Unwin, Londres, 3d ed. 1976). For others, the expression was first used by William Temple and even by Bismarck. *See* Luis Enrique de la Villa Gil, *¿Qué es eso del Estado del Bienestar y cómo se mide, histórica y económicamente?*, 3 REV. DERECHO SOCIAL Y EMPRESA 15, 19 (2015).

28. de la Villa Gil, *supra* note 28, at 18-21.

29. JEAN-JACQUES DUPEYROUX, MICHEL BORGETTO, & ROBERT LAFORE, DROIT DE LA SÉCURITÉ SOCIALE (Dalloz, 16 ed. 2015).

30. ARELLANO ORTIZ, *supra* note 4, at 89-107.

31. *Id.*

32. *E.g.*, FRANÇOIS-XAVIER MERRIEN, RAPHAËL PARCHET & ANTOINE KERNEN, L'ETAT SOCIAL: UNE PERSPECTIVE INTERNATIONALE (Armand Colin 2005); PIERRE ROSANVALLON, LA CRISE DE L'ÉTAT PROVIDENCE (Seuil 1981); Isabella Mares, *Les conséquences de l'Etat providence pour l'économie*, 60 REVUE INTERNATIONALE DE

In a welfare state model, the State takes an active role in protecting its population against the social risks of old-age income insecurity.[33] The sociologist Gosta Esping-Andersen proposes a classification of three different forms of a welfare state.[34] The first is a liberal welfare state (as seen in the United States, Canada, Australia), in which the assistance is based on a needs assessment, modest universal transfers, and predominately social insurance plans. The second form is a social democratic welfare state (as seen in Northern Europe), in which there is a dualism between the State and market, the working class and the middle class, and those seeking equality at a high level instead of a low level. Thirdly, Esping-Andersen proposed a corporatist welfare state (as seen in Germany, Italy, France), in which the program is strongly linked to the government where the liberal obsession with the market and market performance is never prominent. These classifications are differentiated by three characteristics: (1) the role of the state, (2) public or private financing of benefits, and (3) the role of the private sector.[35] However, Esping-Andersen's classifications only take into account countries where the State has an established and sustainable social security system.[36] These classifications can be utilized in southern hemisphere countries and even more so in non-western countries where welfare states have not been identified.[37] This concept has not been fully developed, and exporting the European model may be difficult to effectuate.[38]

On the other hand, new categories of welfare states have replaced Esping-Andersen's classic-style categories in Europe today.[39] Other authors have proposed five new and more

---

SÉCURITÉ SOCIALE 71 (2007); Christophe Ramaux, *Quelle théorie pour l'Etat social? Apports et limites de la référence assurantielle*, 1 REVUE FRANÇAISE DES AFFAIRES SOCIALES 13 (2007).

33. GOSTA ESPING-ANDERSON, LES TROIS MONDES DE L'ETAT-PROVIDENCE (Presses Universitaires de France 1999).

34. *Id.*; *See also* GOSTA ESPING-ANDERSON, *The sustainability of welfare states into the 21st century, in* GLOBALIZATION AND WELFARE: A CRITICAL READER 50-60 (Ritu Vij, Palgrave Macmillan 2007); GOSTA ESPING-ANDERSON & BRUNO PALIER, TROIS LEÇONS SUR L'ETAT-PROVIDENCE (Seuil 2008). For critics to this classification *see* MERRIEN, PARCHET & KERNEN, *supra* note 32; ROSANVALLON, *supra* note 32.

35. ESPING-ANDERSON, *supra* note 34.

36. ARELLANO ORTIZ, *supra* note 4, at 89-107.

37. *Id.*

38. *Id.*

39. YURI KAZEPOV & STEFANIA SABATINELLI, *Los ingresos mínimos y la integración social: Disposiciones institucionales en Europa*, *in* PROTECCIÓN E INCLUSIÓN SOCIAL: EXPERIENCIAS Y POLÍTICAS 79-107 (Int'l Lab. Org. 2008), *available*

expansive categories of welfare states, including: (1) the liberal welfare state; (2) the social democrat welfare state; (3) the corporatist welfare state; (4) the family-based system; and (5) the transition model.[40]

The liberal welfare state (as seen in the United States and the United Kingdom), in which the State is in charge of social welfare, is seen as a relatively residual system where intervention occurs only when neither the market nor the family have managed to allocate resources. The market is the prevailing mechanism of regulation and integration in a highly individualized and competitive society. Next, the social democrat welfare state (as seen in Denmark), in which social welfare by the State is omnipresent, assumes the responsibilities of the family and the market where benefits are universally and generally applied to all citizens according to their needs. Thirdly, the corporatist welfare state is one in which the State provides social welfare conceived in a meritocratic way.

These first three regimes reproduce the socioeconomic range, reaching families in the labor market in accordance with the position of the head(s) of the household, which mirrors their work. The family is the predominant social entity, and accordingly receives strong support from state benefits in kind and cash. Market dependence is higher in the corporatist model than in the social democratic model, but lower than in the liberal model.

Like the corporatist model, the family-based system (as seen in Italy, Spain, Portugal, and Greece) is meritocratic and fragmented, but is less generous and very unbalanced in granting benefits in services and in kind. Far fewer resources are allocated to family policies (passive subsidiarity), to other contributory regimes, and to regimes verifying economic resources. The consequence is that families are overloaded with social care responsibilities receiving little to no resources from the State. The transition model (as seen in Central and Eastern Europe) is not yet a fully-developed, consolidated model possessing its own characteristics. The institutional framework to counter the conditions that produce vulnerability has undergone a radical change since 1989. The transition model's contents depend on the culture of each country.

A recent study attempted to analyze whether this five-category European welfare state model can be exported to

---

at http://staging.ilo.org/public/libdoc/ilo/2006/106B09_338_span.pdf [https://perma.cc/AT6J-CQG3].

40. *Id.*

developing countries.[41] To this end, the study decided to simplify the term "welfare state," defining it as: when a country devotes 20% or more of gross domestic product (GDP) to social transfers/benefits.[42] The study shows that developing countries today spend more on social transfers than advanced Organization for Cooperation and Development (OCD) countries.[43] Countries such as Uruguay, Brazil, Chile, and Mexico meet advanced levels of high spending,[44] but it is not certain whether these countries have a model comparable to the European welfare state model. A country's GDP spending figure may be useful for comparing different needs of different cultures. However, a study that only uses GDP as the benchmark oversimplifies the problem.[45]

While the study can be criticized for its analysis method, the author succeeds on the assertion that the European welfare state model hardly emulates developing countries.[46] Moreover, the fact that the welfare state model remains important in Europe and continues to help stabilize society, remains a strong argument for those who attempt to demonstrate its usefulness for welfare states in the developing world.[47]

In regions such as Latin America, Eastern Europe, China, and India, where the majority of the population is excluded from welfare state classifications, the European concept of the welfare state seems to fit, for various reasons, within national order.[48] It is precisely in these countries where extension policies are most needed.[49] It should be necessary to open the concept of welfare state to new cultures and stop considering it as a term that exclusively refers to European systems of social protection.[50] The idea of a State as the guarantor of protection must be adopted in cultures outside the western world to include characteristics of other regions' labor markets.[51] Nevertheless, the debate

---

41. LINDERT, *supra* note 7; *but see* de la Villa Gil, *supra* note 28, at 63 (In a similar sense, it can be criticized.).

42. LINDERT, *supra* note 7.

43. *Id.*

44. *Id.*

45. ARELLANO ORTIZ, *supra* note 4, at 89-107.

46. *Id.*

47. *Id.*

48. For a view of the Latin American context *see* Andres Uthoff, *Brechas del Estado de bienestar y reformas de pensiones en América Latina,* 89 REV. CEPAL 9, 9-37 (2006).

49. ARELLANO ORTIZ, *supra* note 4, at 89-107.

50. *Id.*

51. *Id.*

surrounding the concept will keep intellectuals and scholars occupied for a long time. Some welfare state characteristics are the result of a long evolution: the combination of different mechanisms and different actors, and the development of a relationship between the mechanisms and actors.[52]

III. A POLICY BASED ON THE CONTRIBUTORY CAPACITY

The second level of protection postulates the coordination of a protection policy for old-age risk. This policy must consider the various regimes with a systemic view of what is to be protected before examining each particular regime.[53] Accordingly, various reports analyze the protection of old-age risk as a protective system.[54]

At present, the strategies to cover the population have different characteristics but their objectives are the same: to provide pension coverage during old age.[55] They often consist of models based on the idea of "pillars of protection."[56] The image of a pillar evokes the vision of columns supporting a building.[57] However, the current definition in social security protection embodies a more complex vision than a mere vertical support of a building.[58] We often talk about multi-pillar systems of protection as a set of different protection mechanisms: differentiated coverage, "pay-as-you-go," and capitalization.[59] Thus, the multi-pillar model of social protection is illustrated as a multi-story building (vertical coverage), which provides different forms of coverage to diverse groups of the population (horizontal

52. ESPING-ANDERSON, *supra* note 34.

53. Ortiz, *supra* note 10, at 21-43.

54. Florencia Aníta & Arnaldo Provasi Lanzara, *La multipilarización de los sistemas previsionales en el escenario posreforma: Chile, Uruguay y Brasil*, 64 REV. INTERNACIONAL DE SEGURIDAD SOCIAL 63, 63-82; Ortiz, *supra* note 10, at 21-43; LABOUR MARKETS, *supra* note 13; ESTELLE JAMES, *Los tres – o cuatro? – pilares de un sistema previsional, in* EL FORTALECIMIENTO DE LOS NUEVOS SISTEMAS PREVISIONALES: EL ROL DE CADA PILAR EN LA SOLUCIÓN DEL PROBLEMA DE LAS PENSIONES 37 (Editado por CIEDESS 2005); ESTELLE JAMES, THE WORLD BANK'S THREE-PILLAR SYSTEM: WILL IT PROVIDE INCOME SECURITY TO THE WORLD'S AGING POPULATION? (Am. Inst. for Contemp. German Stud. 1997).

55. *E.g.*, HOLZMAN & HINZ, *supra* note 9; SOCIAL SECURITY PENSIONS, *supra* note 2.

56. *E.g.*, HOLZMAN & HINZ, *supra* note 9; WORLD BANK, *supra* note 9; SOCIAL SECURITY PENSIONS, *supra* note 2.

57. For example, the construction of the European Law model.

58. UNIVERSALISME ET INDIVIDUALISME, *supra* note 13.

59. *E.g.*, WORLD BANK, *supra* note 9; SOCIAL SECURITY PENSIONS, *supra* note 2.

coverage).[60] The image of a pillar as a vertical structure may be inappropriate when referring to pension systems.[61] To evaluate the coverage of pension systems in the context of the aging crisis, the World Bank[62] and the International Labor Organization (ILO)[63] have proposed two models of multi-pillar coverage. However, a more expansive view is needed, such as the one implemented after the Chilean Pension Reform of 2008.[64] An explanation of this systemic view will follow the discussion of the Chilean system examples.

Since the reform in 2008, the Chilean system has moved away from the multi-pillar model and towards a single-pillar model with two components: one contributory component, such as contributions to individual savings accounts,[65] and one non-

60. Arellano Ortiz, *supra* note 10, at 21-43; UNIVERSALISME ET INDIVIDUALISME, *supra* note 13.

61. Arellano Ortiz, *supra* note 10, at 21-43.

62. The World Bank multi-pillar model is a combination of five elements: (1) a noncontributory, or "zero pillar," (in the form of a demogrant or social pension) that provides a minimal level of protection; (2) a "first-pillar" contributory system that is linked to varying degrees of earnings and seeks to replace some portion of income; (3) a mandatory "second pillar" that is essentially an individual savings account; (4) voluntary "third-pillar" arrangements that can take many forms, (individual, employer sponsored, defined benefit, defined contribution) but are essentially flexible and discretionary in nature; and (5) informal intrafamily or intergenerational sources of both financial and nonfinancial support to the elderly, including access to health care and housing. HOLZMAN & HINZ, *supra* note 9, at 42. *See also* WORLD BANK, *supra* note 9; Lucy Roberts, *La retraite entre épargne individuelle et assistance: la recette de la Banque mondiale*, 48 Chronique Internationale de l'IRES 1 (1997); James, *supra* note 17; James, *supra* note 56; Estelle James, *Fournir une meilleure protection et faciliter la croissance: argument en faveur du rapport La crise du vieillissement*, 49 REVUE INTERNATIONALE DE SÉCURITÉ SOCIALE 3 (1996); Estelle James, *Réforme des retraites. Comment parer à la crise du vieillessement*, 32 FINANCES & DÉVELOPPEMENT 4 (1995).

63. The ILO model is based on four pillars: (1) a bottom anti-poverty tier of means tested benefits, and financed from general revenues, which provide income support for those without others means; (2) a second pay-as-you-go defined benefit tier, mandatory and publicly managed, which would provide a moderate replacement rate (say around 40 or 50 per cent of lifetime average earnings) for all those who has contributed to it, and which would be fully indexed; (3) a third tier, which would be defined contribution based, mandatory up to a determined ceiling, possibly managed by private pension agencies, and which would provide a pension by means of annuities; and (4) fourth tier, which would be defined contribution based, voluntary, without ceiling and also managed by private pension agencies. SOCIAL SECURITY PENSIONS, *supra* note 2.

64. For the origins of the reform *see* Alberto Arenas de Mesa, *Historia de la Reforma Previsional Chilena*, INT'L LAB. ORG. (2010), http://www.ilo.org/wcmsp5/groups/public/—-americas/—-ro-lima/—-sro-santiago/documents/publication/wcms_178562.pdf [https://perma.cc/3CWP-TD28].

65. Regarding individual accounts *see* HOLZMANN & PALACIOS, *supra* note 17, at 61-80.

contributory component, funded from taxation, resulting from the recent integration of "solidarity pensions."[66] The contributions accrue from a compulsory system,[67] which has increased the disparities in pension benefits between different social classes of citizens.[68] These disparities, along with the increasingly precarious nature of employment as a result of globalization and the rise in the informal sector, make the establishment of a universal retirement benefit essential.[69]

The multi-pillar system provides different levels of coverage, which are represented as several pillars in a horizontal position.[70] This scheme can have as many levels as the model considers pillars.[71] For example, the system can focus on a basic pillar, such as "pay-as-you-go," another pillar consisting of defined contributions, and still another consisting of defined benefits.[72] However, none of these pillars alone provide universal coverage. Furthermore, each pillar provides just one type of coverage limited to a worker's salary. In general, it can be argued that a horizontal multi-pillar system does not fulfill the principle of subjective universality.[73]

Some scholars argue that this reform introduces a pillar of solidarity.[74] However, this solidarity is different than the solidarity in Europe's public pension systems.[75] Both the World Bank and the ILO have proposed a multi-pillar model utilizing a

---

66. Before the 2008 reform, the regime consisted of two parts, contributory and non-contributory. *See* Hugo Cifuentes Lillo, *Características generales del Sistema de Seguridad Social Chileno, I Parte*, REV. LABORAL CHILENA 62 (2005); HUGO CIFUENTES LILLO, PABLO ARELLANO ORTIZ & FRANCISCO WALKER ERRÁZURIZ, SEGURIDAD SOCIAL: PARTE GENERAL Y PENSIONES (Librotecnia 2013); ARELLANO ORTIZ, *supra* note 11.

67. For an explanation of the contributory mechanism *see* Colin Gillion & Alejandro Bonilla, *La privatización de un régimen nacional de pensiones: El caso chileno*, 111 REV. INTERNACIONAL DEL TRABAJO 193, 193-221 (1998).

68. Arellano Ortiz, *supra* note 19.

69. In this sense, I have published Ortiz, *supra* note 19. *See also La protección social de cara al futuro: acceso, financiamiento y solidaridad,* COMISIÓN ECONÓMICA PARA AMÉRICA LATINA Y EL CARIBE (CEPLAC) (2006), http://repositorio.cepal.org/bitstream/handle/11362/2808/S2006004_es.pdf?sequence=1 [https://perma.cc/MT59-5FQZ]; Uthoff, *supra* note 48, at 9; Daniel Tielman & Andres Uthoff, *El papel del aseguramiento en la protección social*, 81 REV. DE LA CEPAL 103 (2003).

70. Arellano Ortiz, *supra* note 10, at 21-43.

71. *Id.*

72. *Id.*

73. *Id.*

74. The official position of the government when the law came into force.

75. *See Social protection for older persons*, *supra* note 17; SOCIAL SECURITY PENSIONS, *supra* note 2.

"basic pillar," or "pillar zero," as the foundation to a system for old-age protection as a way to protect the most vulnerable part of the population.[76] In this protection regime, each "pillar" supports a different logic and covers a different class of the population.[77]

The idea of protecting a population in a precarious situation is the basis of Chilean solidarity pensions.[78] The Chilean pension system utilizes a single-pillar model, based on an individual's ability to save.[79] The State projects the benefits as a form of solidarity and the benefits are only paid in the case of partial or total inability to save for retirement.[80] Thus, in the Chilean system, the transition from one mechanism to another depends on an individual's ability to save throughout his life.[81] The essence of the Chilean system is the ability to save individually, which

---

76. *E.g.*, HOLZMAN & HINZ, *supra* note 9; WORLD BANK, *supra* note 9; SOCIAL SECURITY PENSIONS, *supra* note 2, at 27.

77. Ortiz, *supra* note 10, at 21-43.

78. A presidential commission that analyzed the old-age coverage and proposed changes that were adopted later in the pension reform in 2008. The commission published the report as Consejo Asesor Presidencial para la Reforma Previsional, *El Derecho a una vida digna en la vejez, hacia un Contrato Social con la Previsión en Chile*. Volumen I, Diagnóstico y Propuestas de Reforma, Santiago (2006) [hereinafter *El Derecho a una vida digna*], https://www.sbif.cl/sbifweb/servlet/Ebook?CTR=XXXXXXXXXXXXXXX&ID_EBOOK=L3252&position=1. This can be also be noted in the region. *See* Mesa-Lago, *supra* note 21. It can also be found in several ILO documents where it can be identified the lack of coverage de juere or de facto. *See*, *e.g.*, Int'l Lab. Org. Advisory Group, *Social Protection Floor for a Fair and Inclusive Globalization,* INT'L LAB. ORG. (2011), http://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/@publ/documents/publication/wcms_165750.pdf [https://perma.cc/R4HV-YW8G]; *General Survey concerning social security instruments in light of the 2008 Declaration on Social Justice for a Fair Globalization*, INT'L LAB. ORG. (2011), http://ilo.org/wcmsp5/groups/public/-ed_norm/-relconf/documents/meetingdocument/wcms_152602.pdf [https://perma.cc/URH2-2D9B]; *Social security for social justice and a fair globalization*, INT'L LAB. ORG. (2011) http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@relconf/documents/meetingdocument/wcms_152819.pdf [https://perma.cc/Y3VG-UYW8]; *Extending social security, supra* note 24; *Reunión tripartite, supra* note 24; *Recovering from the Crisis: A Global Jobs Impact,* INT'L LAB. ORG. (2009), http://www.ilo.org/wcmsp5/groups/public/—-ed_norm/—-relconf/documents/meetingdocument/wcms_108456.pdf [https://perma.cc/4C24-2R6Q]; *Setting Social Security Standards in a Global Society,* INT'L LAB. ORG. (2008) http://www.ilo.org/wcmsp5/groups/public/-ed_protect/-soc_sec/documents/publication/wcms_secsoc_5953.pdf [https://perma.cc/S8SP-DGJX]. All these efforts led to the approval of a new ILO instrument on social security, but this time concerning social protection. *See R202 – Social Protection Floors Recommendation, 2012 (No. 202)*, INT'L LAB. ORG., http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:3065524 [https://perma.cc/4CNK-BNRB].

79. UNIVERSALISME ET INDIVIDUALISME, *supra* note 13.

80. *Id.*

81. *Id.*

determines whether the State's intervention is total, partial, or unneeded.[82]

To clarify the framework of the Chilean system, reference should be made to fundamental legal principles[83] essential for Chilean social security.[84] Chilean law and the social security doctrine recognize these principles, but there is no unanimous agreement about their application to the Chilean system.[85] However, the Chilean social security system has adopted the principles of universality, solidarity, comprehensiveness, efficiency, consistency, and subsidiarity.[86] For the purposes of the present study, an in-depth analysis of the principle of universality is provided. This principle can be understood in terms of "objective universality," according to which all social contingencies are covered.[87] The concept can also be understood in terms of "subjective universality," according to which all citizens or residents must be protected.[88] The entire population is covered, but coverage is achieved by means of minimum benefits.[89] For example, Chile has opted for "subjective universality" where the entire population is covered, but coverage is subject to conditions for obtaining basic benefits.[90] The principle of "subjective universality" in Chile is the result of a combination of public and private mechanisms, all based on the ability to save.[91] The analysis of pension rights necessarily includes an analysis of the entire pension system and not just pension fund mechanisms.[92]

---

82. *Id.*

83. RUTH GABRIELA LANATA FUENZALIDA, MANUAL DE LEGISLACIÓN PREVISIONAL 9 (Universidad de Concepción Departamento de Derecho Laboral, 2d ed. 2000).

84. *Id.*

85. UNIVERSALISME ET INDIVIDUALISME, *supra* note 13.

86. On social security principles *see* ARELLANO ORTIZ, *supra* note 11; Ricardo Hormazabal, *El sistema de AFP chileno: una visión critica*, 9 REV. CHILENA DE ADMINISTRACIÓN PUBLICA 121, 123 (2007); FUENZALIDA, *supra* note 84, at 9; Juan Sebastian Gumucio Rivas, *De reparto a capitalización: la experiencia chilena, II Parte*, 12 REV. LABORAL CHILENA 62, 66-74 (1996); SALVADOR VALDÉS-PRIETO, POLÍTICAS Y MERCADOS DE PENSIONES: UN TEXTO UNIVERSITARIO PARA AMÉRICA LATINA 36 (Ediciones Universidad Católica de Chile, 1st ed. 2002).

87. ARELLANO ORTIZ, *supra* note 11.

88. *Id.*

89. *Id.*

90. For my view on this principle *see* ARELLANO ORTIZ, *supra* note 11; Hugo Cifuentes Lillo, *Características generales del Sistema de Seguridad Social Chileno: I Parte*, 136 REV. LABORAL CHILENA 61, 61-69 (2005).

91. ARELLANO ORTIZ, *supra* note 19.

92. *Id.*

Traditionally, the World Bank has classified the Chilean system of pension funds as a system that fits within the multi-pillar structure devised.[93] However, following the reform in 2008, this classification is no longer appropriate.[94] On one hand, elements of the Chilean pension model appear to fit easily into a multi-pillar structure in which "pillar zero" is the non-contributory pension (that may benefit 60% of the population). The first pillar is mandatory capitalization and the second pillar consists of individual and collective voluntary contributions. However, it should be emphasized that they are voluntary and complementary to the mandatory pillar.[95] On the other hand, it may be argued that the Chilean system no longer adopts the framework of a multi-pillar model, but instead constitutes a single-pillar model.[96] While there are different mechanisms (non-contributory, mandatory contributions, and voluntary contributions), the Chilean pension system is based on a single-pillar model fundamental principle: the ability to save individually.[97] This ability determines the mechanism applicable to a particular case, so an individual without the ability to save will receive a solidarity (non-contributory) pension, an individual with a limited ability to pay will receive a solidarity-based top-up benefit, and an individual who has a significant ability to make voluntary contributions will be entitled to a contributory pension.[98]

The articulation of these mechanisms in a single-pillar model, along with the coherent character, can be graphed as follows:

93. This is the view of the public administration, for more details see http://www.spensiones.cl [https://perma.cc/ZLU5-3GMY].

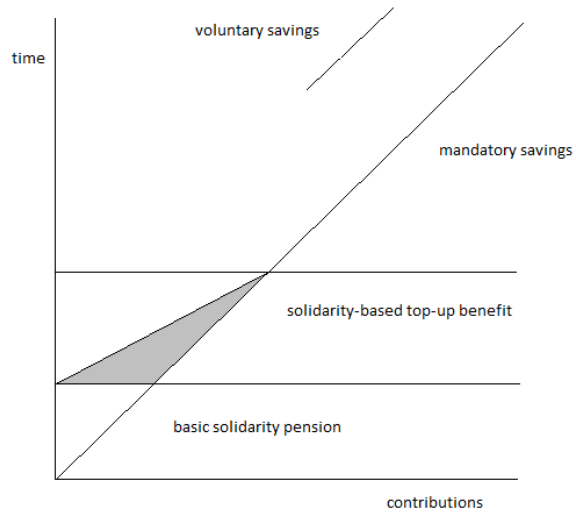
94. Arellano Ortiz, *supra* note 10, at 21-43.

95. *Id.*

96. For more details on this opinion *see* UNIVERSALISME ET INDIVIDUALISME, *supra* note 13; Pablo Arellano Ortiz, *El pilar solidario, la solución esperada para nuestro sistema de AFP*, 164 REV. LABORAL CHILENA 86, 86-88 (2008).

97. UNIVERSALISME ET INDIVIDUALISME, *supra* note 13.

98. *Id.*



Source: Arellano Ortiz (2012).

IV. Final remarks

The analysis in this Essay proposes a postulate to design protection against old-age risk to provide better coherence to the social security system.[99] It extends coverage to those not included under a social insurance mechanism based in a right-based approach.[100] The example of the Chilean pension system demonstrates that a multi-pillar model is no longer the only way to analyze a pension system.[101] Additionally, the Chilean pension system provides the elements necessary to meet the international social security standards laid out by the ILO.[102] Viewing the coverage as a single concept provides an understanding of today's

99. Arellano Ortiz, *supra* note 10, at 21-43.

100. This type of extension is what the ILO calls a "horizontal extension," and it is part of the staircase approach promoted by the ILO. *See Tripartite Meeting, supra* note 25, at 18.

101. Labour Markets, *supra* note 13, at 219-31.

102. I propose this in Arellano Ortiz, *supra* note 11. *See also* Juan Sebastián Gumucio Rivas, (2009) *Descripción del sistema chileno de seguridad social desde la perspectiva del Convenio Núm 102 de 1952 de OIT*, 8 Rev. Latinoamericana de Derecho Social 131,131-70 (2009).

pension problems as a whole.[103] Pensions should incorporate the realities of all the population and not focus solely on contributions.[104] The solution should also consider the evolution of the welfare states under internal and external factors in the present time. In relation to old-age risk, the solution should also consider the coherent approach that this paper presents. A useful welfare state outside Europe is one that can be adapted to the social security culture where it is applied.

---

103. UNIVERSALISME ET INDIVIDUALISME, *supra* note 13.

104. *E.g.*, SOCIAL SECURITY PENSIONS, *supra* note 2; *El derecho a una vida digna, supra* note 78.