Fordham Law Review

Volume 28 | Issue 3 Article 9

1959

Deprivation of Social Security Benefits: A Constitutional Analysis

the considerations which compelled the *Romero* Court to give effect to the agreement of the parties to submit to a foreign standard of compensation, likewise govern the problem of whether or not recognition should be accorded agreements to litigate abroad?

DEPRIVATION OF SOCIAL SECURITY BENEFITS: A CONSTITUTIONAL ANALYSIS

In January of 1959, the constitutionality of the suspension of benefits provision of the Social Security Act[1] was challenged in *Nestor v. Folsom*.[2] Plaintiff, an alien, in November, 1955, had commenced receiving old-age assistance benefits.[3] On July 7, 1956, he was deported to Bulgaria because of his past membership in the Communist Party.[4] In accordance with an amendment[5] to the Social Security Act, enacted on September 1, 1954, the Secretary of Health, Education and Welfare suspended further payments to Nestor. An evaluation of the congressional purpose in enacting social security legislation, with particular reference to the specific classification of alien deportees, raises serious questions regarding the constitutionality of this or similar provisions suspending social security benefits.

The Social Security Act provides for old-age payments financed by prior payroll deductions.[6] The statute seeks to insure that persons who have fulfilled the prescribed conditions shall not become public charges.[7] In the original social

1. 70 Stat. 819 (1956), 42 U.S.C. § 401 (Supp. V, 1958). The Social Security Act, itself, was held to be constitutional under the power of Congress to "spend money in aid of the 'general welfare.'" Helvering v. Davis, 301 U.S. 619, 640 (1937). See U.S. Const. art. I, § 8.

2. 169 F. Supp. 922 (D.D.C. 1959). Plaintiff brought this action under 53 Stat. 1370-71 (1939), 42 U.S.C. § 405(g) (1952), which provides for judicial review of decisions suspending or refusing old-age insurance payments.

3. 70 Stat. 815 (1956), 42 U.S.C. § 402(a) (Supp. V, 1958) provides: "Every individual who—(1) is a fully insured individual . . . (2) has attained retirement age . . . (3) has filed application for old-age insurance benefits or was entitled to disability insurance benefits for the month preceding the month in which he attained the age of 65, shall be entitled to an old-age insurance benefit . . . ."

4. Plaintiff's deportation was authorized by the Immigration and Nationality Act § 241(a), 66 Stat. 204 (1952), 8 U.S.C. § 1251(a) (1958).

5. The Department of Health, Education and Welfare suspended plaintiff's old-age assistance payments upon notification by the Attorney General of his deportation, and in accordance with § 202(n), 70 Stat. 818 (1956), 42 U.S.C. § 402(n) (Supp. V, 1958), which provides that no monthly social security benefits shall be paid to any individual who has been deported under subdivisions 1, 2, 4, 5, 6, 7, 10, 11, 12, 14, 15, 16, 17, or 18 of § 241(a) of the Immigration and Nationality Act, 66 Stat. 204 (1952), 8 U.S.C. § 1251(a) (1958).

6. Helvering v. Davis, 301 U.S. 619, 635, 645-46 (1937); Cain v. United States, 211 F.2d 375, 377 (5th Cir.), cert. denied, 347 U.S. 1013 (1954); Abney v. Campbell, 206 F.2d 836, 841 (5th Cir. 1953), cert. denied, 346 U.S. 924 (1954).

7. United States v. Silk, 331 U.S. 704 (1947). See Hearings Before the Subcommittee of the House Committee on Ways and Means on the Analysis of the Social Security

security legislation Congress expressly reserved "the right to alter, amend, or repeal any provision . . ."[8] of the Act. The 1954 amendment, referred to above, terminates the benefits upon deportation of the primary beneficiary under any one of fourteen of the eighteen subdivisions in section 241(a) of the Immigration and Nationality Act.[9] In brief, it may be said that social security benefits

System, 83d Cong., 1st Sess. 882-90 (1953). See Broderick v. Squire, 163 F.2d 930 (9th Cir. 1947). See also Ewing v. Black, 172 F.2d 331, 335 (6th Cir. 1949); Ray v. Social Security Bd., 73 F. Supp. 58, 62 (S.D. Ala. 1947).

8. 49 Stat. 648 (1935), 42 U.S.C. § 1304 (1952).

9. See note 5 supra. Section 241(a), 66 Stat. 204 (1952), 8 U.S.C. § 1251(a) (1958), provides in substance that any alien in the United States shall be deported, upon the Attorney General's order, who:

(1) entered in violation of exclusion laws;
(2) entered without inspection;
(3) within five years of entry became institutionalized at public expense;
(4) within five years of entry was convicted of a crime involving moral turpitude or at any time is convicted of two crimes involving moral turpitude;
(5) wilfully failed to register properly;
(6) is or has been, after entry, a member of any of the following classes:
  (a) anarchists,
  (b) teaches or advocates or is affiliated with an organization that teaches or advocates opposition to all organized government,
  (c) member of or affiliated with the Communist Party or totalitarian parties of the United States,
  (d) aliens who advocate the economic, international, and governmental doctrines of world communism or the establishment in the United States of a totalitarian dictatorship,
  (e) aliens who are members of any organization required to be registered with the Attorney General,
  (f) aliens who advocate or teach or are members of an organization which advocates or teaches the overthrow by force, violence or other unconstitutional means the Government of the United States,
  (g) writes, publishes, circulates or prints material advocating the overthrow of the United States Government by force or the unlawful destruction of property or sabotage or the doctrines of world communism or the establishment in the United States of a totalitarian dictatorship,
  (h) affiliated with any organization that writes, distributes or publishes any material of the character described in (g);
(7) the Attorney General believes is engaging in activities prejudicial to the public interest, welfare or security of the United States;
(8) within five years of entry becomes a public charge;
(9) failed to maintain nonimmigrant status properly;
(10) entered from foreign contiguous territory without the required period of stay in such place;
(11) is or has been, after entry, a narcotic drug addict or at any time has been convicted of violating the laws relating to illicit traffic in narcotic drugs;
(12) engaged in prostitution;
(13) prior to, or at any time of any entry or within five years after any entry, knowingly and for gain aided or abetted other aliens to enter or try to enter the United States unlawfully;

may be suspended when deportation results from "unlawful entry, conviction of a crime or subversive activity."[10] The remaining four deportation provisions deal generally with aliens who, within five years of entry become public charges, or aid other aliens to enter the United States illegally or aliens who at any time fail to maintain nonimmigrant status properly. The activities embodied in the latter four provisions do not deprive the deportee of any social security benefits.

The federal district court in *Nestor v. Folsom,* reinstating the payments to the plaintiff, held that the benefits were *accrued property rights* and that, therefore, the suspension of benefits provision of the Social Security Act did not accord plaintiff due process of law.[11] This reasoning merely serves to confuse the issues. Should not the court have given primary consideration to the classification in the 1954 amendment? Is the characterization of the plaintiff's interests as a property necessary or even relevant?[12] The 1954 amendment does not prohibit all nonresident aliens from receiving social security benefits. In fact, not even all alien deportees are excluded, but only certain designated classes of deportees. The court's failure to analyze the due process problem

(14) is convicted of possessing firearms;

(15) within five years of entry is convicted of violating title I of the Alien Registration Act, ch. 439, 54 Stat. 670 (1940) (now Crimes and Criminal Procedure, 18 U.S.C. §§ 2385, 2387 (1958));

(16) at any time, after entry, shall have been convicted more than once of violating title I of the Alien Registration Act of 1940;

(17) violates certain acts relating to espionage, sabotage, false reports during war time to hinder military operation, unauthorized use, manufacture or possession of explosives in time of war, unauthorized departure or entry into the United States in time of war, threatening the President, seditious conspiracy, participating in a military expedition against a friendly foreign power;

(18) is convicted of importing aliens for purposes of prostitution.

10. H.R. Rep. No. 1698, 83d Cong., 1st Sess. 77 (1953).

11. 169 F. Supp. at 934. See U.S. Const. amend. V.

12. The characterization of the plaintiff's right in the Nestor case as a property right is against the weight of cases dealing with governmental benefits. The Court in Pennie v. Reis, 132 U.S. 464, 471 (1889), held that before benefits are due, the employee had "a mere expectancy created by the law, and [it was] liable to be revoked or destroyed by the same authority." In Roston v. Folsom, 158 F. Supp. 112, 120 (E.D.N.Y. 1957), it was held that "social security has the ear marks of a benefit rather than a right. . . . It is beyond reason to refer to Social Security benefits as property rights. . . ." However, Dismuke v. United States, 297 U.S. 167 (1936), held that a wage earner's right to a primary benefit was not a gratuity, but rather a property right. While there is conflict in the cases, the weight of authority favors the view that such benefits are gratuitous in nature until a particular payment is due. See, e.g., Dodge v. Board of Educ., 302 U.S. 74 (1937); MacLeod v. Fernandez, 101 F.2d 20 (1st Cir. 1938), cert. denied, 308 U.S. 561 (1939); Mullowney v. Folsom, 156 F. Supp. 34 (E.D.N.Y. 1957). In New York, the rights of public employees in pension systems are vested by virtue of N.Y. Const. art. V, § 7, which prohibits any alteration in rights accrued to employees who were participating in a pension system as of July 1, 1940. As to future members the legislature can regulate their rights. Fisher v. State Employees Retirement Sys., 279 App. Div. 315, 110 N.Y.S.2d 16 (3d Dep't 1952), aff'd, 304 N.Y. 899, 110 N.E.2d 733 (1953).

inherent in the classification substantially diminishes the precedent value of the decision.

Due process requires that a law shall not be *unreasonable* or capricious and that the legislated means shall have a substantial relation to the legislative purpose. A law should embrace all persons in similar circumstances and not merely affect classes of individuals. If applied to a special class, as here, the classification must be natural and reasonable.[13] Is there any merit, then, in denominating plaintiff's rights as a property rather than a contract right or a gratuity? If plaintiff's benefits, however we might characterize them, were suspended pursuant to an arbitrary enactment of Congress, he has been denied due process.

Ex Post Facto and Bill of Attainder Laws

Due process is not the only constitutional problem raised by the *Nestor* case and the 1954 amendment. There is also a question as to whether the 1954 amendment violates the constitutional prohibitions against ex post facto or bill of attainder laws.[14] The former relates to a law which ascribes to an act punishment greater than that existing at the time the act was committed.[15] The latter refers to the imposition of criminal punishment without a judicial trial.[16] Both prohibitions relate specifically to criminal, not civil, proceedings.[17] The deportation provisions of the Immigration and Nationality Act have been held to be civil in nature.[18] Conceding this, nevertheless, is not the additional penalty,

13. Hirabayashi v. United States, 320 U.S. 81 (1943); North Am. Co. v. SEC, 133 F.2d 148 (2d Cir. 1943); Minski v. United States, 131 F.2d 614 (6th Cir.), cert. denied, 319 U.S. 775 (1942); Wallace v. Currin, 95 F.2d 856 (4th Cir. 1938), aff'd, 306 U.S. 1 (1939); Smolowe v. Delendo Corp., 46 F. Supp. 758 (S.D.N.Y. 1942); Doyle Transfer Co. v. United States, 45 F. Supp. 691 (D.C.C. 1942); United States v. Ballard, 12 F. Supp. 321 (W.D. Ky. 1935).

14. U.S. Const. art. I, § 9, cl. 3.

15. An ex post facto law is one which imposes a punishment for an act which was not punishable at the time committed or inflicts an additional punishment to that then prescribed. United States v. Trans-Missouri Freight Ass'n, 166 U.S. 290 (1897); Burgess v. Salmon, 97 U.S. 381 (1878). Ex post facto relates to criminal cases. Bugajewitz v. Adams, 228 U.S. 585 (1913); Johannessen v. United States, 225 U.S. 227 (1912). "[T]he legislature shall not pass any law, after a fact done . . . which shall have relation to that fact, so as to punish that which was innocent when done, or to add to the punishment of that which was innocent when done or to add to the punishment of that which was criminal, or to increase the malignity of a crime. . . ." 1 Cooley, Constitutional Limitations 547 (8th ed. 1927).

16. United States v. Lovett, 328 U.S. 303 (1946); Inland Steel Co. v. NLRB, 170 F.2d 247 (7th Cir. 1948); Dodez v. United States, 154 F.2d 637 (6th Cir.), rev'd on other grounds, 329 U.S. 338 (1946); Bauer v. Acheson, 106 F. Supp. 445 (D.D.C. 1952). See 1 Cooley, Constitutional Limitations 536-40 (8th ed. 1927).

17. See notes 15 & 16 supra.

18. Since deportation has been held not to be criminal in character, retroactive legislation in this field does not violate the ex post facto clause. Marcello v. Bonds, 349 U.S. 302, rehearing denied, 350 U.S. 856 (1955); Bridges v. Wixon, 144 F.2d 927 (9th Cir. 1944), rev'd on other grounds, 326 U.S. 135 (1945); United States ex rel. Barile v. Murff, 116 F. Supp. 163 (D. Md. 1953). The Supreme Court has upheld deportation for past

the deprivation of social security benefits, punitive in nature? While it is true that Congress cannot escape the impact of these constitutional prohibitions simply by giving a civil form to a statute criminal in character,[19] and vice versa, it can be argued that the Social Security Act itself recognizes the penal nature of the suspension of benefits. We are told in section 202(u)[20] that, in addition to all other "penalties" provided by law, a reduction of the payments due an individual is permitted when he has been convicted after August 1, 1956, of offenses relating to subversive activities. By analogy, it is possible to conclude that the 1954 amendment also inflicts a penalty. It remains, however, to be determined whether the use of a "penalty" in the Social Security Act connotes the same meaning as that intended in the ex post facto or bill of attainder clauses.

If the 1954 amendment is found to be penal in nature, that finding in and of itself does not condemn the amendment as an ex post facto law. A second problem remains to be resolved. In *Nestor v. Folsom*, for example, plaintiff was deported in 1956 because of his participation in communist activities in the 1930's. The amendment in question was enacted in 1954. Plaintiff became eligible for benefits in 1955. It can reasonably be contended that plaintiff's benefits were suspended in 1956 for his 1930 activities because of the 1954 amendment. Assuming the suspension of benefits provision is a penalty, this would violate the ex post facto clause. But at the same time it must be noted that as Congress reserved the right to revise the Act, which it did in 1954, plaintiff had a mere expectancy until his eligibility date in 1955.[21] We are, thus, returned to the due process clause rather than the ex post facto or bill of attainder clauses. It becomes a matter of determining whether the 1954 amendment unreasonably affected the plaintiff's interest, which is a question of due process.

There are sufficient judicial precedents to permit the conclusion that the 1954 amendment, if penal in character, violates the bill of attainder clause.[22] The cases point up the difficulties encountered in determining whether a restrictive law transgresses a constitutional prohibition or is within the wide discretion of

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Communist Party membership. Galvan v. Press, 347 U.S. 522 (1954); Harisiades v. Shaughnessy, 342 U.S. 580, rehearing denied, 343 U.S. 936 (1952).

19. United States v. Bize, 86 F. Supp. 939 (D. Neb. 1949).

20. 70 Stat. 838 (1956), 42 U.S.C. § 402(u) (Supp. V, 1958) provides in part that if any individual is convicted after August 1, 1956, of offenses relating to sabotage, espionage, censorship, treason, sedition or subversive activities, the court may, in addition to all other penalties provided by law, impose an additional penalty which would allow the court, in determining the amount of benefits payable to such individual, to disregard any wages earned during the calendar quarter in which the conviction occurred or any net earning from self-employment during the previous taxable year.

21. Another reasonable interpretation would be that the plaintiff was deported in 1956 and we should not be concerned with the reasons for his deportation. Since the 1954 amendment was enacted prior to his deportation, it would not therefore violate the ex post facto clause.

22. See note 16 supra. See also Wong Wing v. United States, 163 U.S. 228, 237 (1895).

the legislature. In *United States v. Lovett*,[23] a statute[24] provided that after November 15, 1943, no salary or compensation should be paid to specifically-named government employees out of any moneys then or thereafter appropriated, unless, prior to that date, they were again appointed by the President of the United States with the advice and consent of the Senate. The Court declared that "legislative acts, no matter what their form, that apply to named individuals or to easily ascertainable members of a group in such a way as to inflict punishment on them without a judicial trial are bills of attainder prohibited by the Constitution."[25] In *Bauer v. Acheson*,[26] however, plaintiff, a naturalized citizen since 1944, traveled to France in 1948 with a valid American passport issued by the Secretary of State. In June of 1951, the plaintiff's passport was, without notice or hearing, revoked. Renewal was refused except to permit his return to the United States. The court held that "a statute which makes the right to engage in some activity in the future depend on past behavior, even behavior before the passage of the regulatory act, is not invalid as a bill of attainder or ex post facto law if the statute is a bona fide regulation of an activity which the legislature has power to regulate and the past conduct indicates unfitness to participate in the activity."[27]

Thus, the courts should concern themselves not with whether a penalty is inflicted, but with whether the penalty inflicted is *reasonable*. Any deprivation of a right, whatever called, is in the nature of a punishment.[28] The real distinction is one of reasonableness. For example, a person may be forbidden to practice a particular profession because he has been convicted of a felony[29] or he is no longer qualified.[30] There is a "punishment" imposed, but in the latter it is

23. 328 U.S. 303 (1946).

24. Urgent Deficiency Appropriation Act of 1943, ch. 218, § 304, 57 Stat. 450.

25. 328 U.S. at 315. "The fact that the punishment is inflicted through the instrumentality of an Act specifically cutting off the pay of certain named individuals found guilty of disloyalty, makes it no less galling or effective than if it had been done by an Act which designated the conduct as criminal. . . . The effect was to inflict punishment without the safeguards of a judicial trial. . . ." Id. at 316.

26. 106 F. Supp. 445 (D.D.C. 1952).

27. Id. at 450. Nestor v. Folsom, 169 F. Supp. 922 (D.D.C. 1959), also discussed the possibility that a penalty was being inflicted by the 1954 amendment. The Nestor court, unfortunately, came to no conclusion, apparently satisfied with its determination that the amendment violated due process.

28. "The deprivation of any right, civil or political, previously enjoyed, may be punishment, the circumstances attending and the causes of the deprivation determining this fact." Cummings v. Missouri, 71 U.S. (4 Wall.) 277, 320 (1866).

29. Hawker v. New York, 170 U.S. 189 (1898). See Davis v. Beason, 133 U.S. 333 (1890); Murphy v. Ramsey, 114 U.S. 15 (1885).

30. Dent. v. West Virginia, 129 U.S. 114 (1889). See Slochower v. Board of Educ., 350 U.S. 551 (1956); Wieman v. Updegraff, 344 U.S. 183 (1952). "A state can require high standards of qualification, such as good moral character or proficiency in its law, before it admits an applicant to the bar, but any qualification must have a rational connection with the applicant's fitness or capacity to practice." Schware v. Board of Bar Examiners, 353 U.S. 232, 239 (1957). See also Douglas v. Noble, 261 U.S. 165 (1923);

obviously reasonable since the past conduct is indicative of the individual's fitness to participate in the activities therein involved. If, in fact, a restriction is unreasonable then the courts should be concerned with the violation of due process of law and not with the ex post facto or bill attainder clauses. The essential determination here, therefore, is not whether punishment is being inflicted in some manner, but whether or not there is any reasonable justification for the discrimination between the enumerated classes of alien deportees in the 1954 amendment.

Due Process of Law: Reasonableness of Classifications

Congress, obviously, did not intend to set up social security benefits which did not apply alike to all people similarly situated.[31] The reason often proffered for the omission of four classes of deportees from the 1954 amendment is that it would be inequitable to another country to deport such destitute persons without permitting them to retain their social security benefits. It is also contended that it is most unlikely such a person after so few years in this country would be eligible for social security payments.[32] This reasoning is certainly speculative. Destitution is not restricted to the four excluded classes. Furthermore, the time element is not significant. Deportation may also occur under the other fourteen provisions within the time limit specified for the excluded classes. Congress could have easily included, if it wished, a provision omitting from suspension of benefits destitute aliens deported within a designated period from entry.

The only possible distinction between the included and excluded provisions in the 1954 amendment is that the former generally deal with violations more harmful to the national welfare. However, listed within this amendment are sections which necessitate suspension of an alien's benefits upon deportation for entering the United States without proper inspection; wilfully failing to notify the Attorney General in writing, during January of each year, of his present address or failing to advise the Attorney General within ten days of each change of address; making false statements in a registration application; entering the United States from foreign contiguous territory or adjacent islands without the required period of stay in such foreign places; being a narcotic drug addict or connected with the management of an immoral place of business.[33] Certainly, it is arguable that some of the above provisions resulting in

Ex parte Garland, 71 U.S. (4 Wall.) 333 (1866); Cummings v. Missouri, 71 U.S. (4 Wall.) 277 (1866).

31. Sparks v. United States, 153 F. Supp. 909 (D. Vt. 1957).

32. Brief for Defendant, pp. 18-19, n.15, Nestor v. Folsom, 169 F. Supp. 922 (D.D.C. 1959). Subdivisions 3, 8 and 13 of § 241(a), 66 Stat. 204 (1952), 8 U.S.C. § 1251(a) (1958), deal with aliens who are deported within five years of entry for the reasons designated therein. Subdivision 9, however, does not mention any time limit within which deportation must occur. The benefits of the above four classes are not suspended. Certainly subdivision 9 substantially weakens the time element argument. See H.R. Rep. No. 1698, 83d Cong., 1st Sess. 77 (1953).

33. See note 9 supra.

deportation are no more serious than the four deportation sections which do not result in a termination of benefits. In fact, deportation for aiding other aliens to enter the country illegally would seem more serious than the above provisions, yet this deportee is classified among those who do not lose their benefits.

The statute in question also discriminates between deported aliens and those who voluntarily absent themselves from the United States.[34] In the former, the suspension of benefits begins immediately upon deportation, while in the latter, the suspension does not commence until the alien is outside the United States for six consecutive months, and even then only applies to aliens with less than forty quarters of coverage or to aliens who have resided here for less than ten years. If he has such coverage or residency qualifications, though never returning to the United States, his social security benefits are not terminated. Furthermore, in regard to a voluntarily absent alien, no mention is made of his *reason* for departing. It is considered irrelevant. This would seem to raise serious doubts as to the importance of the reason *why* an alien was deported and, therefore, as to whether the distinction between the enumerated offenses in the 1954 amendment is reasonable.

Treatment of Aliens

The limits of a sovereign's power to restrict and regulate the rights and activities of an alien have always been replete with controversy.[35] A district court of California, in one case,[36] upheld the constitutionality of a statute[37] punishing an alien against whom an order of deportation was outstanding. The court held that the Government has an inherent right to expel and deport aliens. However, a statute[38] providing for an administrative finding of an alien's unlawful residence in the United States and permitting the imprisonment of the alien based upon such finding, was held unconstitutional.[39] In the latter case, the Court said: "[W]hen Congress sees fit to further promote such a policy [deportation] by subjecting the persons of such aliens to infamous punishment

34. 70 Stat. 835 (1956), 42 U.S.C. § 402(t)(1) (Supp. V, 1958). "Discrimination is valid, if not arbitrary . . . that is, outside of that wide discretion, which a legislature may exercise." German Alliance Ins. Co. v. Kansas, 233 U.S. 389, 418 (1914). See also Steward Mach. Co. v. Davis, 301 U.S. 548, 584 (1937). It should be noted that in the cases of deported aliens and voluntarily absent aliens, payments are not terminated completely, but are suspended pending their lawful return to permanent residence in the United States. 70 Stat. 818 (1956), 42 U.S.C. § 402(n)(1)(a)(ii) (Supp. V, 1958).

35. An alien legally in the United States, is protected by the due process and equal protection clauses of the fourteenth amendment. Truax v. Raich, 239 U.S. 33 (1915). The Truax case held that the words "any person" includes aliens. See United States v. Pink, 315 U.S. 203 (1942); Wong Wing v. United States, 163 U.S. 228 (1896); Fong Yue Ting v. United States, 149 U.S. 698 (1893); De Lacy v. United States, 249 Fed. 225 (1918).

36. United States v. Spector, 99 F. Supp. 778 (D. Cal. 1951), rev'd on other grounds, 343 U.S. 169, rehearing denied, 343 U.S. 951 (1952).

37. Immigration Act of 1917, ch. 29, 39 Stat. 874, 890.

38. Act of Sept. 13, 1888, ch. 1015, 25 Stat. 476.

39. Wong Wing v. United States, 163 U.S. 228 (1896).

at hard labor, or by confiscating their property, we think such legislation to be valid must provide for a judicial trial to establish the guilt of the accused."[40] Whether the punitive character of the 1954 amendment abuses the wide discretionary power of the legislature in its treatment of aliens will, of necessity, have to await further judicial rulings.

CONCLUSION

The criterion to be employed in determining the reasonableness of the suspension of benefits provision is difficult to ascertain. The problem does not lend itself to easy solution. Cases are of little value, as each set of facts is peculiar unto itself.[41] They merely provide, at best, dictionary definitions. The resolution of the problem is imperative, as other provisions of the Social Security Act may be substantially affected by such determination.[42]

The evinced purpose of social security is to render financial assistance to persons who have fulfilled the statutory prerequisites.[43] Several conditions subsequent, which may affect payment, are also present in the Act.[44] Social security, however, is not intended as a charity. Benefits are computed on the basis of earnings in covered employment. They reflect length of service in such work and individual productivity.[45] Social security should be considered an earned

40. Id. at 237. In Steinberg v. United States, 163 F. Supp. 590 (Ct. Cl. 1958), plaintiff's annuity under the Civil Service Retirements Act, 62 Stat. 48 (1948), 5 U.S.C. § 691 (1958), was suspended, after he pleaded the fifth amendment before a federal grand jury. The court reinstated the payments holding that the "'constitutional protection does extend to the public servant whose exclusion pursuant to a statute is patently arbitrary or discriminatory.'" Id. at 591.

41. See, e.g., American Communications Ass'n v. Douds, 339 U.S. 382, rehearing denied, 339 U.S. 990 (1950) (labor problems); Bankers Trust Co. v. Blodgett, 260 U.S. 647 (1923) (taxes); Marcello v. Ahrens, 212 F.2d 830 (5th Cir. 1954), aff'd sub nom. Marcello v. Bonds, 349 U.S. 302 (1955) (naturalization and citizenship); Kuczynski v. United States, 145 F.2d 310 (7th Cir. 1944) (sentence and parole); Beland v. United States, 128 F.2d 795 (5th Cir.), cert. denied, 317 U.S. 676, rehearing denied, 317 U.S. 710 (1942) (additional punishment).

42. It casts doubt on the validity of 70 Stat. 835 (1956), 42 U.S.C. § 402(t) (Supp. V, 1958), which, under certain circumstances, requires the suspension of payments to any alien voluntarily absent from the United States for over six months, and who has not forty quarters of coverage (full coverage) or who had not resided for ten years or longer in the United States. It may also effect 70 Stat. 838 (1956), 42 U.S.C. § 402(u)(6) (Supp. V, 1958), which authorizes the imposition of a penalty upon the conviction of certain crimes. See note 20 supra and accompanying text. It may substantially effect the provisions in 70 Stat. 808 (1956), 42 U.S.C. § 403 (Supp. V, 1958), which provide for a reduction in monthly payments to beneficiaries whose income exceeds a designated amount. However, a former provision of this section which rendered a person under the age of seventy-five ineligible for benefits for the months during which he works and earns over fifty dollars in employment, was held not to be arbitrary and, therefore, constitutional. Canfield v. Ewing, 108 F. Supp. 130 (E.D.N.Y. 1952).

43. See note 3 supra.

44. See note 42 supra.

45. See Hearings on the Social Security Amendments for 1955 Before the Senate Com-

right. Whether it is, in fact, a property right, contract right or mere gratuity is irrelevant, as in any event Congress lacks the power to withhold, distribute or terminate social security benefits arbitrarily.

If Congress sought to provide only for the elderly residing in the United States, then the benefits of all nonresident aliens should be terminated. This would no doubt be reasonable and compatible with this supposed purpose of social security. To suspend the benefits of only some of those deported may be consistent with congressional intent in other areas, i.e., punishment of subversives, but is foreign to the manifested aims of Congress in enacting old-age assistance programs. Even if benefits are considered as the gratuitous bounties of a benevolent government, an eligible individual has acquired some kind of *right,* and a statute in derogation of such right should be strictly construed. It should not be capriciously maintained that congressional legislation transgresses constitutional safeguards, but here, in view of the arbitrary discrimination between deported aliens, is not such a conclusion justified.

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mittee on Finance, 84th Cong., 2d Sess. 1318-19 (1956) wherein it was stated: Under existing law benefits are paid to an insured worker and his eligible dependents or survivors without considering his attitudes, opinions, behavior, or personal characteristics. The right to benefits having been earned, the individual's actions do not modify or restrict that right. See Hearing on the Analysis of the Social Security System Before the Subcommittee of the House Committee on Ways and Means, 83d Cong., 1st Sess. 948 (1953).