Contribution-Benefit Relationship in Social Security in Italy and Japan

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Abstract

Regarding social security in Italy, any bilateral or corresponding relationship between contribution and benefit is considered denied, following the 'social security benefit automaticity principle' under Art 2116 of the Italian Civil Code of 1942. Meanwhile, in Japan, some connection between contribution and benefit in the social insurance system is generally considered almost self-evident. Despite these opposing basic perceptions, in reality, the legal systems and operations in both countries governing the contribution-benefit relationship are extremely similar. The employee's right to receive benefits under the social security system is generally protected from any failure on part of the employer in making his/her contribution. At the root of this asymmetry in both countries, there may be differences in the understanding concerning the actor(s) responsible for contributing toward financial resources for social security.

I. The Background

1. The Contribution-Benefit Relationship

Financial resources are required in order to provide social security benefits. In social insurance systems, that is, those that use insurance infrastructure, by definition, contributions are the main source of finance. Accordingly, systems for workers or employees usually involve contributions made by both employee and employer.

This is where financial resources come from. Let us consider whether or not there is any relationship between individual contributions or contribution obligations and individual benefits or benefit entitlements. The issues are whether one must make a contribution in order to receive benefits or not, whether one must make a contribution even if one does not receive benefits or not, and whether one can receive benefits even without any contributions or not. This paper will refer to these issues as the *contribution-benefit relationship*.

2. Contrasting Ideas: Italy and Japan

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In Italy, the principle of automatic social security benefit ('*principio dell'automaticità delle prestazioni previdenziali*') exists. Put simply, this is a principle whereby an employee can receive benefits even if his/her employer did not make appropriate contributions. The principle is mentioned under Art 2116 of the Italian Civil Code of 1942. Accordingly, any corresponding or bilateral connection ('*corrispettività*' or '*sinallagma*' in Italian, respectively) between contribution and benefit is fundamentally understood to have been denied ('*negare*') or overcome ('*superare*').

Meanwhile, in Japan, while there is less active debate, and it is doubtful as to whether such a common understanding as in Italy exists or not, there is, nonetheless, a shared recognition that the relationship between contribution and benefit should definitely, to a degree, be bilateral and corresponding. For instance, there is deep-rooted antipathy toward people insured under Category-three National Pension, namely 'housewives' of salaried men, who are unfairly deemed to be eligible to receive pensions without paying contributions.

3. Ideals and Responding to Reality

From the explanation given above, the perceptions and ideas in Italy and Japan seem quite different. We could even consider them complete opposites.

However, the two countries actually have extremely similar systems when it comes to social security legislation, particularly, in how they regulate the relationship between individual contributions and benefits. It can even be said that the two countries are almost the same in that the receipt of benefits is generally protected, even when a contribution has not been made.

How do we explain this similarity, despite the perceptions and ideas being completely opposed to one another? This holds the key to understanding the characteristics of social security in each country. Addressing such correspondences between ideals and reality can be an interesting task not only in terms of comparing Italy and Japan, but also from a wider, globally comparative perspective.

This paper is intended to offer a starting point for such work.[1] [2]

[1] The table below details the key terms used in this paper.

ITALIAN LAW	JAPANESE LAW	COMMON TERM (ENGLISH)
Previdenza, previdenza sociale	*shakai-hosho*	social security
	shakai-hoken	social insurance
Lavoratore, prestatore di lavoro (c.c.)	*hi-hokensha* (insured person)	employee
Datore di lavoro, imprenditore (c.c.)	*jigyo-nushi*	employer
Contributo	*hoken-ryo*	contribution

[2] Note that '*previdenza*' and '*previdenza sociale*' in Italian law may sometimes refer to 'social security' and sometimes 'social insurance'. In Italy, social security in a broad sense consists

II. Ideals Concerning the Contribution-Benefit Relationship

1. Italy: Principle of Automatic Benefit

a) Legislative Process

The principle of automatic benefit is mentioned in para 1, under Art 2116 of the Italian Civil Code, which was enacted in 1942. The provision defines it as follows:

> 'Social security benefits as indicated under Art 2114 will be paid to the employee, even when the employer has not appropriately paid the contributions due to the social security system. However, this does not apply under different provisions of any special laws'. ('*Le prestazioni indicate nell'Art 2114 sono dovute al prestatore di lavoro, anche quando l'imprenditore non ha versato regolarmente i contributi dovuti alle istituzioni di previdenza e di assistenza, salvo diverse disposizioni delle leggi speciali (...)*').

It was already provided for by a 1935 law concerning labor incidents,[3] and a unifying law concerning social insurance in 1939,[4] to the effect that despite the employer's duty to pay contributions (Art 2115, Civil Code), benefits may be received even if an employer does not make contributions. Art 2116 of the Civil Code made this provision a principle for all forms of social security. It must be noted that before Art 2116 of the Civil Code, there was no stipulation of the principle of automatic benefit for pension systems.[5]

b) Application to the Pension System

The proviso to Art 2116 of the Civil Code allows for exceptions under special legislation. It was assumed from the time the Civil Code was enacted that the pension system would fall under one of these exceptions. Fundamentally, this was for financial reasons. In the end, however, no provision stipulating exceptions was established. As a result, even though it was strange to interpret the text literally, simply because automatic benefit had not been stipulated in a separate law, for a long time, the automatic principle was not applied to the pension system. This came to be established by a precedential ruling by the Italian

of three sectors: '*previdenza, assistenza, e sanità*'. '*Previdenza*' is a general term that refers to a system of monetary benefit following prior contribution. In this sense, we may consider '*previdenza*' to be a collection of and a general term for individual social insurance systems. Meanwhile, '*previdenza*' may sometimes also be used to represent social security overall, including the other two sectors. Accordingly, this paper uses differing translations depending on the context.

[3] Regio decreto legge 17 August 1935 no 1765.

[4] Regio decreto legge 14 April 1939 no 636.

[5] In the unifying law above (R.D.L. no 636/1939), no pension system was included in the list found in the provision (Art 27) stipulating the applicability of the automaticity principle to individual systems.

Supreme Court (ISC) (*Corte di Cassazione*).[6]

Later, the Brodolini Reforms were implemented in 1969. These reforms expanded pension benefits significantly, based on labor union initiatives. They also reached a sort of accommodating legislative solution to the issue of the principle of automaticity.[7] A 'principle of partial automaticity' ('*automaticità parziale*') was introduced, albeit only for the obligatory general pension (AGO) ('*Assicurazione Generale Obbligatoria per l'invalidità, la vecchiaia ed i superstiti*'), from the National Institute for Social Security (INPS) ('*Istituto Nazionale della Previdenza Sociale*'). This introduced automaticity for as long as the period of prescription, that is, the period of the right held by the INPS to collect contributions from an employer, had not expired. These reforms also extended this period of prescription from five to ten years.

The Dini Reforms in 1995 changed the calculation of pension benefit amounts from a remuneration-based approach to a contribution-based approach. The reforms also expanded the principle of partial automaticity to other pension systems, going beyond the INPS AGO.[8] Under these reforms, the period of prescription, beyond which contribution collection rights would expire was also cut down from ten to five years. This point is of particular significance in this paper, so it will be detailed further below.

In 1997, the Constitutional Court overturned the previous precedent set by the Supreme Court and ruled that the principle of automaticity should also be applied, as written, with pension systems, provided there were no exception stipulations.[9] At this stage, however, the principle of partial automaticity had already been provided for in each system, since these were interpreted as exception stipulations. In reality, though, the change had little effect.

c) The Contribution-Benefit Relationship and the Principle of Automaticity

In general, the following two points are indicated as common knowledge regarding the principle of automaticity. First, drawing on the social purpose and public nature of social security, the principle seeks to achieve social protection without burdening an employee with, for instance, the risk of his/her employer failing to pay contributions. Second, the principle separates social security matters from private insurance contracts and denies or overcomes any bilateral or corresponding relationships between contribution and benefit.

The second point relates to the topic of this paper. There are different nuances depending on the author's arguments. However, we may consider the following to be an established and common understanding. Traditionally, with private

[6] Corte di Cassazione 7 April 1992 no 4236, *Informazione previdenziale*, 787 (1992).
[7] Legge 30 April 1969 no 153.
[8] Legge 8 August 1995 no 335.
[9] Corte Costituzionale ordinanza 5 December 1997 no 374, *Giustizia civile*, 617 (1998).

insurance, it is understood that insurance contracts are set up between three parties: the insurance carrier, the insured person, and the policyholder. However, the principle of automaticity in social security divides this single three-party relationship into two two-party relationships. These are the relationship between the employer and the social security body for the purpose of the contribution, and the relationship between the employee and the social security body for the purpose of benefits. Both relationships are mutually independent. As a result, any bilateral or corresponding relationship between contribution and benefit is said to disappear.[10]

The most thorough discussion in this regard was developed by one author thus:

> 'the non-existence of a correspondence between contributions and social security benefits is (...) confirmed by the principle of automaticity' ('*l'inesistenza di una corrispettivita tra contributi e prestazioni previdenziali è (...) confermata dal principio dell'automaticità*').[11]

Based on detailed arguments on the contribution-benefit relationship in earlier writings, the fundamental impossibility of any bilateral relationship between contribution and benefit was asserted.[12]

This idea was also used in a precedential ruling by the ISC, and now appears to be the dominant opinion. In a case before the ISC in 2003,[13] it was decided that there is an obligation to make a contribution even when it is not possible to receive a benefit. In this ruling, the ISC highlighted points such as the principle of automaticity, and clearly stated that the foundation of social security is a principle of solidarity ('*principio di solidarietà*'). The judgment also indicated that the concepts of corresponding obligations and bilateral relationships did not adequately represent the system, and that there is no means of justification through any reciprocal or causal link between contributions and benefits

> ('il fondamento della previdenza sociale stia nel principio di solidarietà (...) non esiste tra prestazioni e contributi un nesso di reciproca giustificazione causale').

Here, 'a link which is justified through some reciprocal, causal relationship' ('*un nesso di reciproca giustificazione causale*') is the exact phrase found in expert studies to deny the existence of a bilateral relationship.

[10] L. Riva-Sanseverino, 'Disciplina delle attività professionali, impresa in generale: Art 2060-2134', in A. Scialoja and G. Branca eds, *Commentario al Codice Civile* (Bologna-Roma: Zanichelli, 1986), 565.

[11] M. Persiani, *Diritto della previdenza sociale* (Padova: CEDAM, 19th ed, 2012), 49.

[12] M. Persiani, *Il sistema giuridico della previdenza sociale* (Padova: CEDAM, 1960), 88-110.

[13] Corte di Cassazione-Sezioni unite 27 June 2003 no 10232, *Archivio civile*, 34 (2004).

2. Japan: Overwriting Insurance Principles

a) Insurance and Social Security Principles

In Japan, social insurance using insurance infrastructure is often used to achieve social security. It is said that with social insurance, insurance principles will be overwritten by social security principles. Of the three main insurance principles, those that do stand are the law of large numbers (the need to be able to predict probabilities with groups over a certain size), and the principle of balance equality (the insurer has equal income-expenditure balance). The one that does not stand is the principle of equivalence of benefit ('performance') and premium ('counter-performance') which means that insurance premiums will be probabilistically equal to benefit amounts.[14]

In other words, when a benefit is needed, the social security principle that requires that definite provision is prioritized, and any insurance principles here will be overwritten by the principles of social security. The degree of this modification is subject to a variety of opinions and ongoing debates. Nonetheless, there is a shared perception of there being some relationship between insurance premiums (contribution) and benefit, even if not one of equivalence; accepting the existence of some correspondence, in a broad sense, does seem to be a vague shared perception. One of the representative scholars of social security wrote in a text about pensions that 'even if not of equivalence, there is, nonetheless, some corresponding relationship'.[15]

b) The Expression 'Implication' (*Kenrensei*)

The Supreme Court of Japan (SCJ) uses the expressions 'implication' or 'implicated' (*kenrensei* in Japanese). This term was originally used to talk about being related to some method or results (eg, see Art 54, para 1, of the Penal Code of Japan, 1907, 'Implicated crime'). In a 2000 ruling,[16] it was held that because there is an indirect implication between contribution and benefit with a survivor's pensions, the pensions do not qualify for loss of income calculations. This means that a survivor's pension benefit amounts were not included in compensation when the recipient died as a result of a tort.

Moreover, in a 2006 ruling,[17] it was decided that National Health Insurance contributions are collected as counter-performance on an insured person's ability to obtain benefit payments, and that even if two-thirds of the financial resources used to cover benefits are public funds, it is still not possible to break

[14] Y. Kikuchi, *Shakai hoshō hō (Social security law)* (Tokyo: Yuhikaku Publishing, 1st ed, 2014), 22-24.

[15] K. Hori, *Nenkin hoken hō (Pension insurance law)* (Kyoto: Horitsu Bunka Sha, 4th ed, 2017), 66-72.

[16] Supreme Court of Japan, 3rd Petty Bench, Judgment of 14 November 2000, Minshū 54-9, 2683.

[17] Supreme Court of Japan, Grand Bench, Judgment of 1 March 2006, Minshū 60-2, 587.

the implication between contribution, and being in the position to receive benefits. This ruling resulted in denying the strict application of tax legalism (ie, the principle of no taxation without legal provisions thereof) under Art 84 of the Constitution of Japan to the collection of National Health Insurance contributions.

It must be noted that the perception generally held by most people is that one will receive a pension because one has paid contributions. There are regular discussions concerning profit and/or loss here. Some economists have long argued for the thorough application of insurance principles in social insurance and the opposition of any income redistribution undertaken through social insurance, such as pensions.

In the world of legal scholarship, there was traditionally a tendency to view the thinning of insurance principles positively. In recent years, in contrast with methods of social assistance financed via taxation, there has been a growing tendency to positively assess some correspondence in social insurance, focusing on increasing 'entitlement' or 'eligibility,' for instance, through the ease of skipping means testing.[18]

III. Prevailing Legal Systems

1. Introduction

Before comparing the prevailing legal systems, we first need to establish an arena for comparison and check for similarities.

a) Systems Subject to Comparison

We use pension systems for this comparison. Representative forms of social insurance in Japan are healthcare, pensions, and nursing care. However, since Italy has a national health service (SSN) ('*Servizio Sanitario Nazionale*'), there is no healthcare insurance there. There is also no social insurance for nursing care.[19]

Looking beyond Italy and Japan, from a global perspective, pension systems have common frameworks and are amenable to comparison. Accordingly, in both countries, the contribution-benefit relationship in practice mostly becomes an issue for discussion and debate in the context of pension systems.

This paper looks at pension systems that deal with employees, specifically, the INPS AGO ('general obligatory pension') system for Italy, and the Employee's Pension Insurance (*kōsei nenkin hoken*) system for Japan.

b) Shared Features of the Core Structures of Each System

[18] Y. Kikuchi, n 14 above, 25-28.

[19] While worker accident insurance does exist in both Italy and Japan, its benefit payout is protected from any non-payment of contribution by employers in both countries. Thus, there is little related debate.

The core structures of both, the Japanese and Italian systems compared are almost identical, and may be considered to present an unproblematic arena for comparison.

First, in both countries, the social insurance connection between the actors concerned is established compulsorily and automatically, based on the fact that employees are subject to direction-dependence relations. In Italy, this is called the 'automatic establishment of social insurance connection' ('*automatica costituzione del rapporto previdenziale*'). In Japan, the qualification for receiving insurance is confirmed by the Minister of Health, Labour and Welfare, according to Art 18 of the Employee's Pension Insurance Act, 1954, but this is considered an administrative act, officially confirming the qualification which is already automatically established by Arts 9 and 13 of the same Act.

Second, in both countries, the party responsible for paying contributions is the employer. The burden is divided between employee and employer, but the duty of payment of contribution in its entirety, including the employee's portion, is the employer's.[20] In both countries, the employer is also obliged to give notifications. Sanctions against violating duties are also almost identical.

Finally, in both countries, the basic design of benefit payouts, for old-age pensions, features age and qualifying period criteria. Moreover, in both countries, the benefit amounts are, in principle, proportionate to earnings, and proportionate to the period as an insured person.

2. Benefit when Contribution Has not Been Paid: Basic Rules

In Italy, the 'principle of partial automaticity' described above is applied as a basic rule while considering what happens to benefits when an employer has not paid contributions. This principle introduces automaticity, though limited within the scope of the period in which the right to collect contribution is still valid, and has not expired (ie, the period of prescription). In other words, insofar as the INPS is able to collect contributions, the principle of automaticity applies, and there is no loss of benefit. In periods after which the INPS has become unable to collect contributions, employees incur benefit losses.

Meanwhile, in Japan, provisions that make stipulations about this issue can be found in Art 75 of the Employee's Pension Insurance Act. The article reads: 'When the right to collect insurance contributions has expired, benefit payments based on the contributions concerned will not be undertaken'. Again, in periods after which contributions can no longer be collected, employees incur benefit losses.

It is noteworthy that the systems for the prescription periods of contribution collection rights are also fundamentally the same in both countries. This means

[20] However, the distribution of responsibility between labor and management differs. Whereas the distribution is fifty- fifty in Japan, the ratio in Italy is approximately seventy-thirty for the employer and the employee, respectively.

that the prescription is invoked without a claim, and forcefully, at that. It also means that it is not possible to make a contribution after the prescription period is over.[21] The prescription periods differ and are longer in Italy (five years in Italy, and two in Japan). The period of prescription here is a key factor in the Italian case.

3. Methods of Preventing the Occurrence of Benefit Losses by Employees

This section examines the methods by which an employee may prevent his/her losses after learning that his/her employer has not made contributions.

In Italy, after various debates, there is now a strong tendency, for it to be more effective, to take action against social insurance bodies, such as the INPS, rather than to consider working with the employer to pay correct contributions. In other words, it is better to send notifications or alerts ('*denuncia*') to the INPS, in the event of a failure on part of the employer to make a contribution. This notification has the effect of interrupting the expired prescription of contribution collection rights, while also extending the period of prescription.

First, when it comes to the extension of prescription periods, it was noted earlier that the period of prescription is, in principle, five years. This is the result of the shortening of the Brodini Reform-era ten-year period to five years by the Dini Reforms. The Dini Reforms also established an exemption stipulation whereby a notification or alert from an employee could keep the period at the existing ten years. At present, the period is, in principle, five years, but can be extended to ten years if a notification to this effect is sent. Next, concerning the interruption of prescription, which was recognized through the precedential ruling by the ISC,[22] ultimately, if an employee sends a notification or alert to the INPS before the period of prescription ends, a further prescription period of ten years is incurred from the relevant point in time. Accordingly, it is possible to expand the scope of applicability of the principle of automaticity significantly, however partial it may be. Indeed, in some cases, it is even possible to create circumstances in which it may be viewed as identical to a complete principle of automaticity.

In Japan, a proviso to Art 75 of the Employee's Pension Insurance Act explains this issue. It states thus:

> 'This shall not apply when the prescription of the right to collect contributions has expired following the submission of an employer notification based on Art 27 concerning the qualification to be insured, a request for confirmation of qualification from the insured person themselves based on Art 31, or a request for correction of the Employee's Pension

[21] Italy: legge 8 August 1995 no 335, Art 3, para 9; Japan: Accounting Act, 1947, Art 31.

[22] Corte di Cassazione 12 February 2003 no 2100, *Giustizia civile Massimario*, 318 (2003).

Insurance Register based on Art 28.2'.

Setting aside the employer notification, this means that as an insured person, it is possible to prevent benefit losses by taking action, such as confirmation requests against the Minister of Health, Labour and Welfare (in practice, the Japan Pension Service (JPS) Branch Office), against the insurer, before the period of prescription ends.

4. Recovering Original Pension Benefits

This section considers whether or not it is possible to recover original pension benefits later, when there have been some actual benefit losses.

In Italy, a life annuity ('*rendita vitalizia*') system was legally established in 1962.[23] Here, an employer can request the INPS to set up a life annuity, and employees can also make requests in place of an employer. The life annuity supplements pension benefits, unchanged. This means that the lost pension amount is supplemented and, combined with the portion that is not lost, from the INPS, the original pension amount is provided intact. In addition to supplementing monetary amounts, by fulfilling the qualification period criteria, it is also possible to restore the qualification to receive benefits itself. The employer is responsible for financing the actuarial accumulated amount.

In Japan, the 'Act concerning special cases of Employee's Pension Insurance benefit and contribution payments' (a special treatment law under the Employee's Pension Insurance Act), was established in 2007, in response to the 'lost pension' problem. At first, this did in fact provisionally function as special legislation using a third-party pension record checking council under the Ministry of Internal Affairs and Communications (MIC). A revision of the Employee's Pension Insurance Act in 2014 made the system permanent, combined with, for instance, structures for requesting correction of register records. Insured persons who had questions about their own pension records, such as when their employer has not paid contributions, are allowed to make a request for the corrections of their records by the Minister of Health, Labour and Welfare (in practice, the JPS Branch Office), even after the right to collect contributions has expired due to its period of prescription. When a request is granted after inspection, qualifications may be renewed, standard remuneration may be revised, register records may be corrected, and so on and so forth. Ultimately, this means that the original pension benefits are provided based on corrected records. The employer provides the financial resources again, here, through a special contribution fee.

5. Employer's Obligation to Damage Compensation

Finally, this section examines whether it is possible for an employee to

[23] Legge 12 August 1962 no 1338, Art 13.

request damages from an employer when benefits have not been recoverable.

In Italy, an employer's obligation to pay damages is already stipulated under para 2 of Art 2116 of the Civil Code, which provides for the principle of automaticity.[24] By this mechanism, employees are protected through the supportive measure of damages by the employer even in cases that are omitted from protection by the principle of automaticity.

In Japan, there is no such stipulation. Recently, however, there have been more cases of employees requesting damages from employers. Judicial precedents also tend to recognize these requests in general.[25] In academia, there may be debates such as whether one should follow structures for defaulting on their debt or not, or for illegal behavior, but overall, there is a consensus on the core approach of recognizing and providing for damages.

6. Summary

This section summarizes the prevailing legal systems in both countries. First, there is almost complete similarity in the basic rules that benefit losses will be incurred by expiry of the period of prescription for the right to collect contribution. Second, in both countries, it is possible to prevent losses through certain action taken by an employee against the insurer before the end of the period of prescription.

Third, in both countries, special legislation has systematized the recovery of original benefits within a certain scope. Fourth, the employer's obligation to pay damages is largely recognized in the same manner in both countries.

In conclusion, we may consider the prevailing legal systems of both countries to be largely similar.

IV. Comparing Japan and Italy, and Some Hypotheses

1. Italy, Japan, and Other Major Countries

This section offers an overall comparison of the two countries. In Italy, the ideal supposes that there is no bilateral or corresponding relationship between contribution and benefit. Indeed, in the prevailing legal system, there is a weak relationship between contribution and benefit, with employee benefit generally

[24] Art 2116, para 2, Civil Code: '*Nei casi in cui, secondo tali disposizioni, le istituzioni di previdenza e di assistenza, per mancata o irregolare contribuzione, non sono tenute a corrispondere in tutto o in parte le prestazioni dovute, l'imprenditore è responsabile del danno che ne deriva al prestatore di lavoro*' ('In cases in which, in accordance with such provisions, the social security or assistance institutions are not required to pay all or part of the benefits owed due to the non-payment or irregular payment of the contribution, the enterpriser is liable to the employee for the resulting damages': translation by J.H. Merryman et al, *The Italian Civil Code and Complementary Legislation* (New York: Oceana, 2010)).

[25] For example, Nara Prefectural Court 5 September 2006 no 925, *Labor case*, 53 (2006).

protected from employers not paying contribution. We may say that the ideal and the actual legal system are consistent with each other. Meanwhile, in Japan, while the ideal is that there is some correspondence between contribution and benefit, the actual legal system is the same as in Italy, with the relationship between contribution and benefit being weak. Here, we may say that there is some difference between the ideal and the actual legal system.

In a comparative legal study, we should be checking circumstances not only in these two countries, but also in other major countries, from the same perspective. Unfortunately, however, this paper has not been able to do this. Nonetheless, the following may be given as perceptual impressions.

First, the author has not seen the principle of 'automatic benefit' outside of Italy. Italian scholars also appear to offer no indication of its existence in other countries. This suggests that even if other countries were indeed to exhibit the same circumstances as in Italy, it is still only in Italy that these circumstances are clearly acknowledged and formalized as 'principles'.

Second, as far as the prevailing legal systems are concerned, at least in EU states, there is considerable convergence between legislation on labor and on social security, and there is a general tendency for worker rights to be protected from an employer's arbitrary behavior. This means that we may consider the Italian legal system as classifying the issue as normal or standard based on the issue in question.

2. Two Hypotheses[26]

Considering the above premises, the first hypothesis that comes to mind is that Japan is lagging behind. In Japan, the special treatment law in the form of the Employee's Pension Insurance Act was a measure cooked up owing to pressure from the need to cope with pension record issues. The obligation to pay damages placed on employers has also only come to be recognized relatively recently through legal precedent. The prevailing legal system has finally caught up to respond to reality. However, the ideal has not broken free from the old form of private insurance, or from a principle of exchange. We could perhaps think of things this way.

Another feasible hypothesis is that Italy is either an extreme or a progressive case. In other words, even if employee benefit is protected in a similar manner in major countries including Italy and Japan, rather than having any basis in ideals, the main factor behind this could be responding to reality, as in Japan. If these circumstances are indeed the results of responding to reality, it would in fact be rare for ideals or principles to be acknowledged in the system, and the situation in Japan may even be considered normal. For such a progressive

[26] These hypotheses are premised on the idea that employees are generally protected in other major countries, and that the 'principle of automaticity' exists only in Italy. Of course, altering these premises would enable a great number of other hypotheses.

principle as 'automaticity' to be provided for in law as early as in 1942, when the very concept of social security had not even been established, surely indicates that Italy is a special case. This is our second hypothesis.

3. Who Makes Contributions?

Since these two hypotheses do not necessarily contradict each other, it is also possible that they may both stand together, that is, Italy is an extreme or progressive case, and Japan is behind. There is also the possibility that both countries may exhibit some special characteristics here.

What would seem to be the key to resolving this issue is in fact the question of *who should be contributing the financial resources* for social security. In both Italy and Japan, it is the employer who is responsible for paying contributions, and the employer pays portions for both the management and labor. Despite this, it seems that in Japan, it is thought that insurance contributions should ultimately be paid by the insured person themselves. This means that there is a difference with Italy's principle of automaticity, which discusses in terms of an *employer contribution obligation* and an *employee benefit right*.[27]

Italy's Civil Code is a product of the Fascist era. The socioeconomic structure of this era, known as *corporatism* ('*corporativismo*'), placed special responsibilities on employees and, in particular, on employers. It surely cannot be denied that this has influenced circumstances in Italy. However, is this itself the reason it is thought in Italy that it is not the employee but the employer that should be responsible for contributing financial resources? Meanwhile, in Japan, are administrative convenience and more certain payment the only reasons why the duty to pay contribution is assigned to the employer in legal terms, as the situation is usually explained?

As we can see, it is not immediately obvious who is actually thought to be the actor that should be contributing financial resources for social security. Furthermore, there are different possibilities for different countries, not only Italy and Japan. There is also the issue of what sort of factors lead to the spread of these perceptions. This paper shows that there is still a lot of ground to be covered here, but also that, nonetheless, it must be seen to the end.

[27] In pension systems for the self-employed, the insured persons themselves are responsible for making contributions in both Italy and Japan. The 'principle of automatic benefit' does not apply in systems for the self-employed in Italy.