UNEMPLOYMENT COMPENSATION AND SOCIO-ECONOMIC OBJECTIVES

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THE application of the principles of social insurance to the specific risk of unemployment has been a relatively recent development. Only Great Britain in 1911, the United States from 1935 onwards (Wisconsin in 1932) and Canada in 1940 included unemployment insurance or compensation among their inaugural social insurance measures. Germany, although introducing health insurance in 1883 did not enact a compulsory unemployment insurance law until 1927, and in other countries this type of legislation is either non-existent or a development of the last twenty-five years.¹

The basic historical facts occasioning the development of the institution have been the prevalence of unemployment, the characteristic patterns of income distribution in modern industrial societies, and a growing public sensitivity to the importance of conserving human resources.² The specific arguments in support of the institution which have been adduced in individual countries have, however, necessarily reflected prevailing social attitudes and values at the time the legislation was introduced.³

I. WHAT IS UNEMPLOYMENT COMPENSATION?

Unemployment compensation or insurance is a social institution that is far from easy to define in generalized but precise terms. It has taken

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1. For example, Italy 1919, Austria 1920, Queensland 1922, Poland and Switzerland (certain cantons) 1924, Bulgaria 1925, Canada and Yugoslavia 1935.

2. Compare Bakke, Discussion (1944) 34 AM. ECON. REV. SUPP., No. 1, pp. 222-4.

3. Thus in Great Britain unemployment insurance has, from the first, been favored as a device more effective and less humiliating than public assistance for providing for the needs of the "independent and self-respecting" unemployed worker, and the analogy to private insurance initially served to render more acceptable what was then a revolutionary change in social policy. In the United States great emphasis was placed upon the similarity of unemployment compensation to other already accepted types of labor legislation such as workmen's compensation or to socially approved self-help devices such as trade union out-of-work benefits or private insurance. See Burns, *Social Insurance in Evolution* (1944) 34 AM. ECON. REV. SUPP., No. 1, p. 199; Witte, *What to Expect of Social Security*, *id.* at 212; Bakke, Discussion, *id.* at 222.

different forms in various countries and at various times. Unemployment insurance as it operated in Great Britain between 1911 and 1920 differed in regard to coverage, character of benefits and methods of financing from the similarly-named system which was in effect from 1928 to 1931.⁴ Both British forms of unemployment insurance differed from unemployment compensation as it was first introduced in the United States.⁵ Furthermore, not only have the American laws changed their character in important ways since 1936,⁶ but from the very first the laws of the individual states have reflected different purposes and have therefore been characterized by different provisions, as is evident from a comparison of the Wisconsin and Ohio laws as first enacted.

What then is unemployment compensation? In general it can be said only that it is a method of providing against loss of income due to unemployment that differs in certain characteristic ways from alternative measures for the unemployed such as public assistance (general relief) or work relief.

The first and most generally found distinguishing criterion is that unemployment compensation makes cash payments to unemployed workers as a right under more or less clearly defined conditions⁷ which do not include, however, the requirement that the recipient undergo a test of need.⁸

4. In the early period coverage was restricted to a small group of workers in carefully selected industries where unemployment was due "not to a permanent contraction but to a temporary oscillation in their range of business"; benefits were of short duration and intended to serve merely as a modest supplement to private resources; government participation in financing was limited to a small token payment. Between 1928 and 1931 unemployment insurance was frankly utilized as the major device for maintaining both long- and short-period unemployed. Coverage was greatly extended, duration was in fact unlimited, benefits included allowances for dependents and approached the maintenance level, and by 1929 one-third of the income of the fund was being provided by general taxation. See EVELINE M. BURNS, *BRITISH UNEMPLOYMENT PROGRAMS, 1920-1938* (1941) cc. III, IV.

5. The major differences concerned the principles on which benefits were determined (flat rates in Great Britain, a percentage of wages in the United States), the methods of financing (reliance on tripartite financing from employers, workers and government in Great Britain, almost exclusive reliance on payroll taxes paid by employers in the United States), and widespread adoption of experience rating devices in the United States and their complete absence in Great Britain.

6. For a comparison of the laws as of 1937 and 1943 see Burns, *Unemployment Compensation in the United States* (1938) 37 INT. LAB. REV. 584; Reticker, *Unemployment Compensation in the United States* (1944) 49 INT. LAB. REV. 446.

7. Most of the conditions are defined with considerable specificity in the law, e.g., minimum earnings requirements, elapse of a waiting period, and the like. However, as will be shown *infra*, pp. 17-20, those relating to the involuntary character of unemployment involve a considerable measure of administrative discretion, and are continually being re-defined.

8. The New Zealand law which makes payments subject to an income limit is the only prominent exception to this statement. However, this income test is relatively formal and involves no contact with public assistance authorities. It should be compared in principle with the requirement in the American old-age and survivors insurance system for

Second, the amount of the payment is defined in the law in such a way that the worker can determine his benefit beforehand, and its amount is not subject to modification by the exercise of official discretion. The actual amount is a compromise between two often conflicting sets of considerations: the desire not to make a payment that is too close to the sum the worker would normally be expected to secure from employment and the conviction that the benefit should bear some relation to the needs of the worker.⁹ This system of pre-determined and non-discretionary benefits is in sharp contrast to public assistance, where payments are theoretically based on the budgetary deficiency principle and depend upon the difference between each individual's (or more commonly, family's) estimated budgetary needs and his (or the family's) available resources. The determination of both needs and resources involves considerable discretion on the part of the official administrators and always calls for an investigation of the family.

A third distinguishing characteristic of unemployment insurance as compared with other measures for dealing with income loss due to unemployment is that payments are always limited to persons who are involuntarily unemployed and who have had some attachment to the labor market in some defined period prior to claiming benefit. This period may however, be so short as to be almost insignificant.¹⁰

In the fourth place, in unemployment compensation the period for which benefits are payable is defined in the law and is usually, but not

suspension of benefits in cases where the applicant has earned more than \$15 a month in covered employment. Cf. Lipson, *The New Zealand Means Test (1944-45)* 22 PUBLIC ADMINISTRATION 131.

9. The Beveridge Plan represents the extreme form of the emphasis on maintenance in that the benefit is deliberately based upon a calculated minimum subsistence budget. See SIR WILLIAM BEVERIDGE, *SOCIAL INSURANCE AND ALLIED SERVICES (1942)* 14-5, 54-5, 76-90. The early American laws, which provided for payments equal to approximately 50% of wages (regardless of how low the wages were) and some of which for a time provided no fixed minimum, represent an example of the other extreme view. Most unemployment insurance laws today are a compromise between these two positions although very generally, even in the United States, there is a trend towards the maintenance concept. From this point of view the slowly growing concern about "adequacy" is highly significant. For a discussion of the conflict between the two views see REPORT OF THE UNEMPLOYMENT INSURANCE STATUTORY COMMITTEE (Great Britain, 1937). For an analysis of the factors that have occasioned the trend toward maintenance as a major consideration see Burns, *supra* note 3; Bakke, *supra* note 3.

10. In Great Britain between 1927 and 1931 a worker who had had eight weeks of employment in the preceding two years could claim up to 74 weeks of benefit. Some of the American laws which define eligibility in terms of a fixed and relatively low amount of minimum earnings in one quarter also permit very short periods of employment to qualify for benefit rights, especially for higher paid workers. Thus in Rhode Island, where the required minimum earnings are only \$100, a worker earning \$25 a week would be eligible even if he had had only four weeks of work in some one quarter in his base period. Seven other states have minimum earnings requirements of \$150 or less.

always, limited to a period of less than 52 weeks within a period of a year.¹¹

In the fifth place, some part of the costs of unemployment compensation are normally provided by earmarked taxes paid into a special fund, apart from the general budget. Almost universally, these taxes include payroll taxes paid by employers; usually, except in the typical American law, they include also wage taxes paid by workers, and often, again with the notable exception of the United States, part of the costs are met by a contribution from the general revenues.¹²

Finally, in unemployment insurance, the period over which income and outgo are expected to balance is normally in excess of one year and is usually related to some specific cyclical period so as to include both booms and depressions. Here again, the American laws provide a notable exception, for, although the period of account is more than one year, the concept of covering expenditure over the cyclical period by a tax levied at an unchanged rate over good and bad years alike, is departed from in three ways. First, there has in general been no clear formulation of the period of time over which the Fund is expected to balance.¹³ Second, there appears to be an unwillingness to accept the

11. Here again the laws exhibit great diversity. In Great Britain duration, originally limited to 15 weeks, was greatly extended after 1920 until it became almost unlimited. In 1931 a 26-weeks limit was reimposed. In the United States duration is typically short, and, except in 17 states, the overriding maximum is further qualified by reference to the worker's previous earnings. The average duration of benefit for workers exhausting benefit rights without becoming re-employed in the benefit years that ended in 1943 ranged from 6.2 weeks to 20 weeks. In 21 states the average duration was less than 12 weeks. Social Security Board, Bureau of Employment Security, Unemployment Compensation Abstract November 1944, Table 8.

12. New Zealand does not include an employer contribution as such. Only four American laws now provide for a worker's contribution. The principle of a contribution from the general revenues has been introduced in the United States by the War Mobilization and Reconversion Act of 1944, Title IV of which provides that in addition to the sums resulting from the excess of the 0.3% federal tax over administrative expenses there may also be appropriated to the Federal Unemployment Account "such further sums as may be necessary to make advances to the State accounts" and these are to be available free of interest. 58 STAT. 785 (1944), 50 U.S.C. §§ 1666, 1667 (Supp. 1944). Although the District of Columbia law originally authorized a government subsidy for the calendar years 1936, 1937, and 1938, 49 STAT. 949 (1935), funds were actually appropriated by Congress only for the first two of these years. 49 STAT. 1611 (1936); 49 STAT. 1858 (1936).

13. On the two occasions when it might have been expected that there would have been a clear formulation of the period of time over which the Fund has been expected to balance, such analysis has been conspicuously lacking. First, in the period around 1939-40 the obviously inadequate benefits and duration periods in many state laws gave rise to a movement for liberalization which was often supported by pointing to the growing reserves but which was unaccompanied by any profound study of the adequacy of these reserves to meet probable expenditures over some defined cyclical period. Cf. Malisoff, *The Import of Theory in Unemployment Compensation* (1940) 55 POL. SCI. Q. 249, 250-1. Second, despite the warnings of the Social Security Board [see, e.g., *FOURTH ANNUAL REPORT* (1939) 63-5; *FIFTH ANNUAL REPORT* (1940) 86-7], the state studies of solvency which

fact that the policy may properly involve the accumulation of deficits to be subsequently repaid just as much as the accumulation of a reserve to be drawn on when needed.¹⁴ Thirdly, there has been a widespread adoption of experience-rating formulas which result in practically automatic tax reductions in periods of high employment, and which may force some states to raise the general level of taxes in periods of depression.¹⁵

were made in 1943 on the occasion of a growing concern about the effect of reconversion lay-offs, still appeared to operate on the assumption that solvency was assured if the fund could sustain heavy drains during a reconversion period lasting anywhere from six to nine months up to two years. Little attention seems to have been paid to the views of economists that the real unemployment problem is to be expected, not during the reconversion period, but some years after. Where any consideration has been given to the probability that in such a depression the unemployment compensation system would have to serve at least as a first line of defense, pending the development of work programs or other measures, there has been a tendency to pin considerable faith on full employment policies which it is hoped would render such a demand on the unemployment compensation system unnecessary. For the views of the states on solvency issues see Social Security Board, Research and Statistics Letter No. 23, Supplement No. 3; and, especially, *Hearings before Special Committee on Post-War Economic Policy and Planning on S. R. 102, 78th Cong., 2d Sess.* (1944) 851. The treatment of problems of solvency in the United States should be contrasted with the thorough analysis of the period of time over which the Fund is to be brought into balance, of the probable ranges of employment and unemployment in each year over the period adopted, and of other matters germane to the financing of the program, by the British Unemployment Insurance Statutory Committee from 1934 onwards. See BURNS, *op. cit. supra* note 4, at 160-5.

14. From the very first, American unemployment compensation laws have been marked by an obsession with the importance of avoiding a deficit. This can largely be traced to the desire of the early advocates of this legislation to protect their program from the widely publicized criticisms current in the early 1930s of the British program which was then accumulating a large debt. It is unfortunate that equal publicity has not been given to the fact that by March 31, 1944 the British debt accumulated between 1921 and 1931 had been entirely repaid and that the current General Fund showed a balance of £224.7 millions, or almost twice the deficit of 1931 which so greatly disturbed those promoting the movement for unemployment compensation in America. This concern to avoid debt showed itself in the inclusion in the Social Security Act of the provision prohibiting the payment of benefits within two years of the first collection of taxes (regardless of the state of the economy at the time any law should be passed) and was pronounced in many states in the deliberations regarding the benefits to be provided in the early laws. The prevailing theory at the time was, in the words of Malisoff, "that benefits should be limited to contributions and incapable of menacing solvency." Malisoff, *The Emergence of Unemployment Compensation: III* (1939) 54 POL. SCI. Q. 577, 588. Further evidence of the failure to realize that the theory underlying the financing of unemployment compensation logically implied accumulation and subsequent repayment of deficits as well as drawing upon previously accumulated reserves, is found in the provisions which still exist in twelve states that benefits are to be curtailed when the Fund falls below a certain amount.

15. As long ago as 1936 I. M. Rubinow had pointed out that there were real dangers if the three year period required as the basis for calculating experience, "accidentally were to be three fat years rather than three lean years. As the average rate is based upon both fat and lean years, with the inclusion of at least one serious crisis, the experience of three good years might result in rebating the rates on most of the industries, thus cutting very

II. THE OBJECTIVES OF THE SYSTEM AND THE PROVISIONS OF THE LAWS

It is evident from this brief survey that unemployment compensation is an institution capable of assuming a great variety of forms. The specific provisions vary from country to country and from time to time in any one country. And yet, as a study of the growth and development of the laws in different countries reveals, there is a very close and logical interrelationship between the various provisions. Questions affecting eligibility, coverage, benefits, duration, and financing must necessarily be considered not in isolation, as appears to have happened all too frequently in the United States hitherto, but in relation to each other, and, above all, each must reflect the major function the system is expected to perform.

Extensions of coverage or more liberal eligibility conditions or extensions of duration, for example, cannot take place without leading, sooner or later, to a reconsideration of benefit formulas and methods of financing. For the admission to eligibility of workers from lower-paid employments or of workers who in the past have had a relatively short period of employment leads, in a system basing benefits on previous earnings, to relatively low weekly payments to workers who by definition are hardly likely to be in possession of other resources to eke out the benefit.¹⁶ The necessity to liberalize benefits as coverage and

heavily into the basis of a reserve to be accumulated for the depression era." Rubinow, *State Pool Plans and Merit Rating* (1936) 3 LAW & CONTEMP. PROB. 65, 86. His prediction has been confirmed only too exactly, as is indicated in the following table showing the percentage of employers with reduced ratings in the 42 states with reductions in force at the beginning of 1944. SOCIAL SECURITY BULLETIN, Nov. 1944, pp. 44-5.

<i>Percentage with Reduced Rates</i>	<i>Number of States</i>
Over 90	14
Over 80 and less than 90	13
Over 70 and less than 80	11
Over 60 and less than 70	1
Over 50	3

It is difficult to believe that the granting of reduced rates to over eighty percent of all employers in two-thirds of the states reflects solely meritorious action on the part of employers to reduce unemployment. The more obvious explanation is of course that the favorable employment experience in these years is a result of the tight labor market, and the fact that very few workers remain unemployed long enough to draw benefits.

The effect upon the accumulation of reserves has also confirmed Rubinow's prophecy. "In the fiscal year 1943-44, experience rating resulted in a reduction of some \$484 million in contributions which would have been collected under normal unmodified rates; by the end of that year, nearly a billion dollars had been lost in contributions which otherwise would have added to the reserves in years of increasing employment and pay rolls to meet the inevitably greater costs of benefits during and after demobilization." SOCIAL SECURITY BOARD, NINTH ANNUAL REPORT (1944) 12.

16. Compare NATIONAL RESOURCES PLANNING BOARD, SECURITY, WORK AND RELIEF POLICIES (1942) 516: "If benefits are payable for only a brief time, it may be reasonable to assume that they are but a minor supplement to private resources. Benefits closely in-

duration are extended was clearly demonstrated by the British experience during the 1920s.¹⁷ Similarly, extension of the system to bring in low-paid and irregularly employed workers or the payment of benefits for an extensive period compels reconsideration of methods of financing, for the lower income groups cannot be expected to contribute in the same degree as their more highly paid colleagues toward the costs.¹⁸ Some element of unearned benefits appears in the system and the question as to who shall pay for them must then be faced. There is also a close connection between the duration and eligibility provisions. Adoption of flat duration periods and the lengthening of the time for which benefit is payable as a right may expose the system to charges of encouraging idleness unless the eligibility provisions are revised so as to eliminate workers who have had only a slight attachment to the labor market in the past.¹⁹

Essentially, as the National Resources Planning Board Report pointed out,²⁰ the issue turns around the role that is to be assigned to unemployment compensation in the total complex of measures providing for the security of the unemployed. This question still awaits a definitive answer in the United States. During the early thirties, up to and including the passage of the Social Security Act, proponents of unemployment insurance were sharply divided into two camps: those who held that the major purpose was to encourage employers to stabilize employment (the so-called Wisconsin school²¹), and those who held that the primary purpose was the payment of benefits to unemployed workers (the so-called Ohio school²²). When the Social Security

fluenced by the amount of previous earnings and the stability of employment, even if payable for a longer time, would also cause no difficulties if the system were restricted to the relatively small group of high-paid and regularly employed workers. . . . If unemployment compensation is thus to be utilized as an important institution, capable of carrying a significant proportion of low-paid as well as highly paid workers for meaningful periods following unemployment then reconsideration of the present benefit formula is imperative."

17. See EVELINE M. BURNS, *BRITISH UNEMPLOYMENT PROGRAMS, 1920-1933* (1941) 64-8.

18. The connection between the benefit provisions and methods of financing has already been recognized by the American labor movement which, in sponsoring the liberalizing Wagner-Murray-Dingell bill reversed its previous position of opposition to a worker's contribution.

19. It seems doubtful whether this vulnerability of the system to public criticism has yet been fully appreciated by those who have framed many of the American unemployment compensation laws. Relatively few of the states which, since 1940, have adopted uniform duration and longer periods of payment appear to have tightened their earnings requirements.

20. NATIONAL RESOURCES PLANNING BOARD, *op. cit. supra* note 16, at 516.

21. See Brandeis, *The Employer Reserve Type of Unemployment Compensation Law* (1936) 3 LAW & CONTEMP. PROB. 54; Brandeis, *What Road Is Forward in Social Security?* in *PROBLEMS OF THE POSTWAR WORLD* (McCormick ed. 1945) 49.

22. For an account of the groups and individuals involved see Malisoff, *The Emergence of Unemployment Compensation* (1939) 54 POL. SCI. Q. 237, 391, 577, and *The Import of*

Act was passed in 1935, the unemployment insurance provisions reflected a none-too-happy merger of these views, and it is significant that in his message to Congress transmitting the Economic Security Bill on January 17, 1935, President Roosevelt emphasized that "an unemployment compensation system should be constructed in such a way as to afford every practicable aid and incentive toward the larger purpose of employment stabilization." For several years the provisions of the laws and the arguments of their proponents reflected different theories as to the major purpose of the legislation.²³

But, while there has been a growing tendency more recently to emphasize the benefit-paying functions of the program, there have still been two views as to the role which this benefit system should fulfil in the complex of income security programs for the unemployed. On the one hand it is viewed as a restricted system whose object is to provide payments based upon past earnings to a carefully selected group of workers for a limited period during occasional lay-offs. On the other hand the system is viewed as the major protection against income loss due to unemployment, covering all or almost all workers and paying, for a significant period of time, benefits that for the vast majority are sufficient to cover subsistence without resort to supplementary public aids.

The first, or restricted view, was clearly that held by the Committee on Economic Security, as it was also the view of those who introduced the British program in 1911. Unemployment compensation was to be "a front line of defense, especially valuable for those who are ordinarily steadily employed," and the Committee added that the institution "is best adapted to employees who normally have some degree of security in their employment."²⁴ This emphasis upon the worker's stability of employment probably reflected the views of the Committee's Executive Director, Dr. E. E. Witte, to the effect that the primary importance of unemployment compensation was as a measure providing partial compensation for waiting time. Speaking in 1941 Dr. Witte said, "I have always looked upon unemployment compensation as an insurance institution, designed to give workers normally employed a partial wage for a limited period after being laid off, until

Theory in Unemployment Compensation (1940) 55 POL. SCI. Q. 249. See also Witte, *An Historical Account of Unemployment Insurance in the Social Security Act* (1936) 3 LAW & CONTEMP. PROB. 157; Rubinow, *State Pool Plans and Merit Rating*, *id.* at 65; Raushenbush, *The Wisconsin Idea: Unemployment Reserves* (1933) 170 ANNALS 65.

23. See Malisoff, *supra* note 22; Bakke, *Back to First Principles in Unemployment Insurance* in AM. ASS'N FOR SOCIAL SECURITY, *SOCIAL SECURITY IN THE UNITED STATES: 1939* (Record of Twelfth Nat. Conf. on Social Security) 121; Burns, *Common Sense and Unemployment Compensation* (1939) 46 AM. FEDERATIONIST 672.

24. REPORT TO THE PRESIDENT OF THE COMMITTEE ON ECONOMIC SECURITY (1935) 4, 21.

they find other work or, more commonly, are called back to their old jobs." ²⁵

The difficulty about the restricted view of the functions of unemployment compensation is that its practical implementation requires the satisfaction of three conditions which have not hitherto been easy to fulfil. First, there must be rigorous eligibility requirements to restrict the system to those for whom a limited benefit equal to a modest percentage of wages or some small arbitrary sum represents a substantial solution of the problem of income loss. Second, there must be a socially acceptable justification for the favored treatment of those admitted to the unemployment compensation program. Third, there must exist an economically and socially acceptable method of providing for unemployed workers excluded from unemployment compensation; otherwise there will be irresistible pressure to extend the scope and coverage of the system. It is the failure to satisfy these conditions that has almost everywhere led to a broadening of the original scope of unemployment compensation laws.

Rigorous eligibility requirements that would exclude low paid and irregularly employed workers or which would confine the system to those unlikely to suffer long-term unemployment are technically difficult to devise and to administer. Furthermore, there is the risk that a system so severely limited in scope will fail to command enough popular support to ensure passage or continuation of the legislation.²⁶ With a program of limited scope and offering a form of security that is generally regarded as preferable from the recipient's viewpoint it becomes necessary to justify the favored position of those covered. Here the American laws have been at a real disadvantage because of the almost complete absence of a worker's contribution which might otherwise

25. Witte, *Experience Rating and Other Forms of Incentive Taxation to Promote Employment* in NATIONAL TAX ASS'N, PROCEEDINGS OF THIRTY-FOURTH NAT. CONF. ON TAXATION (1941) 479. "It now seems to me," Dr. Witte wrote in 1936, "that the major part of the unemployment which will be compensated under American unemployment insurance laws, represents merely a lay-off without pay which ends with the return of the employer to his old job." Edwin E. Witte, *Some Aspects of Unemployment Insurance in the United States* (Paper read before joint session of the American Economic Association and the American Association for Labor Legislation, Dec. 1936). For an elaboration of Dr. Witte's views of the functions of unemployment insurance as "a payment for standing by" under the assumption of speedy reemployment by the previous employer see Witte, *The Economic Basis of Unemployment Compensation* (Manuscript on file in Social Security Board Library).

26. The history of the movement for unemployment insurance in the United States provides an excellent illustration of this point. In spite of the long study and agitation for the passage of such laws in the late twenties and early thirties, it was impossible to summon sufficient support until the advent of widespread unemployment caused legislators to think of the system as a possible contribution to the general problem of unemployment relief rather than a method of reducing the losses suffered by workers on account of frictional unemployment. See Malisoff, *The Emergence of Unemployment Compensation: I* (1939) 54 POL. SCI. Q. 237, 241-9.

have served to justify the more privileged position of those who, it could thus have been argued, had themselves contributed to the cost of their benefits. Finally, the popularity of unemployment insurance, and its administrative convenience as a device for assuring a continuous flow of income during substantial periods of unemployment, coupled with a failure to devise socially acceptable and more obviously appropriate methods of providing security for those excluded, have everywhere led to a broadening of the functions of the unemployment insurance program.²⁷

Reference has been made above to the progressive expansion of the role of unemployment insurance in Great Britain. But even during the brief life of the American laws the same tendency has been evident.²⁸ It is true that legal coverage has expanded only slightly,²⁹ and that there appears to be some tightening-up of the minimum earnings requirements. Yet, even in the matter of coverage, whereas at the end of 1937 29 states excluded employees of firms employing fewer than 8 workers, by September 1944 the number had fallen to 25, while the number of states covering workers in firms of one or more employees had increased from 10 to 13.

Changes in benefit formulas, waiting period requirements, and duration have substantially increased the relative importance of unemployment compensation. The increasing use of the highest quarter of earnings as the basis for computing benefits and the shift from the 1/26th to the 1/20th formula in calculating benefits, together with the adoption of real minimum benefits in all save two laws and the raising of maximums and minimums, have all tended to increase the amount of the average benefit and have thus reduced the need for supplementation by some other public aid program.³⁰ It is particularly significant that during 1945, three states adopted dependents' allowances. Waiting

27. See Burns, *The Relation of Unemployment Compensation to the Broader Problem of Relief* (1936) 3 LAW & CONTEMP. PROB. 150.

28. The statistics which follow have been derived from Social Security Board, Bureau of Employment Security, Unemployment Compensation Abstract, Nov. 1944.

29. Coverage has increased from 20 million in 1938 to around 31 million in September 1943, but much of this increase is attributable to increasing employment and earnings in covered employment. *Unemployment Compensation in the Reconversion Period: Recommendations by the Social Security Board*, SOCIAL SECURITY BULLETIN, Oct. 1944, pp. 3, 5.

30. In 1937, 36 states used the 1/26th formula; by 1944 12 were using 1/20th, and 13 between 1/22d, and 1/25th. Seven states had however adopted annual earnings formulae which have a tendency to depress average benefits. At the end of 1937 there were five states with no minimum benefits and 39 with a flexible minimum which was in effect no minimum at all; by 1944, all but two states had fixed minima. At the end of 1937 only two states had maxima in excess of \$15; by 1944 only 22 states had retained the \$15 maximum, and in 25 the maximum was \$18 or higher. The average weekly benefit rose from \$10.56 in 1940 to \$15.95 in the third quarter of 1944. Some part of this increase is of course attributable to higher earnings. The proportion of benefits of less than \$10 weekly fell from 43.7% to 17.1% between 1940 and 1943.

periods too, have been substantially reduced³¹ and benefits are now payable for a longer period.³² Only in regard to disqualifications has there been a contraction of the potential role of unemployment insurance.³³

This de facto expansion of the role of unemployment compensation has been accompanied by an equally pronounced change in theoretical formulations of the function of unemployment compensation. Ever since the passage of the Social Security Act a number of writers had combatted the view that the purpose of unemployment compensation was to provide deferred wages, for a very brief period of time, in the form of a benefit equal to a percentage of wages, regardless of how low the actual payment might prove to be. They also rejected the theory that unemployment compensation should be restricted to those workers whose earnings were such that a 50 percent payment yielded a substantial sum.³⁴ Criticizing the American method of gearing benefits "to the very irregularities and inadequacies we are trying to correct," E. W. Bakke stated in 1939 that "the issue . . . is thus not whether such a relationship can be made to work but whether if it does work it can do the job which has called forth the adjustment named unemployment insurance in every industrial nation in the world" and asserted that if this need were not met by unemployment compensation another social service would have to be called into being to do the job.³⁵

The implications of the view that the purpose of unemployment compensation was the payment of significant benefits and that these should be available to more than a carefully hand-picked group of workers were not at first realized. Nevertheless, a wide gap separates the viewpoints expressed in the statements of Dr. Witte and the Committee on Economic Security quoted above, and the recent assertion of the Social Security Board that "no better mechanism than unem-

31. At the end of 1937 no state had a waiting period of less than two weeks while 20 required three weeks or longer. By 1944, 29 states required only one week, and no state required more than two weeks. (Two states however required a two-weeks' initial waiting period plus additional weeks after reemployment.)

32. The number of states with uniform duration of benefit increased from one to fifteen between 1937 and 1944. Whereas only six states provided a maximum duration of more than sixteen weeks in 1937, while seven limited duration to thirteen weeks or less, by 1944 sixteen states had maximums in excess of sixteen weeks and there were none providing for less than fourteen weeks.

33. There has been a pronounced tendency to replace postponement of benefits rights as a penalty by reduction or cancellation of benefit rights, 28 states now reducing or cancelling rights for one or more of three major disqualifying acts, as compared with seven in 1937. At the same time the voluntary leaving disqualification has been redefined to the disadvantage of the claimant in sixteen states.

34. For example, Abraham Epstein, E. W. Bakke and the present writer. The broader interpretation of the function of unemployment insurance was also supported in NATIONAL RESOURCES PLANNING BOARD, SECURITY, WORK AND RELIEF POLICIES (1942).

35. Bakke, *supra* note 23, at 127, 126.

ployment insurance exists for enabling the workers affected to weather the readjustment and thus for helping to speed the reconversion of the nation."³⁶ Nor is the changed point of view confined to public officials. Economists, social scientists, business and labor groups, and many politicians appear today to agree that unemployment insurance should be viewed as an obviously convenient instrument for grappling with a substantial part of the problem of loss of income due to unemployment, and one which, by maintaining a minimum of purchasing power, might act as a national safeguard against a downward economic spiral.³⁷

Nevertheless, there are still strong opposing views, and the provisions of many of the laws and the nature of some current proposals still reflect earlier uncertainties as to what unemployment insurance was intended to do, or mirror a restricted theory of its functions.³⁸ The most significant of the obstacles to the adoption of a consistent unemployment insurance system which would have some prospect of stability because reflecting social and economic realities, is the existence of experience rating, itself the expression of an earlier view of the function of unemployment compensation, namely that it is primarily a technique for encouraging stabilization of employment.

As early as 1936 Rubinow had drawn attention to a shift of employers' interests toward the Wisconsin point of view and asserted that "This shifting is not so much to be ascribed to the victory of the Wisconsin theory over the Ohio theory but to the fact that . . . the question of costs or rates is involved; and if American industry, rightly or

36. SOCIAL SECURITY BOARD, NINTH ANNUAL REPORT (1944) 5. For an elaboration of the Board's view that "unemployment compensation should provide a bulwark to private enterprise that cannot readily be obtained in other ways" see *Unemployment Compensation in the Reconversion Period: Recommendations of the Social Security Board*, SOCIAL SECURITY BULLETIN, Oct. 1944, pp. 3-8.

37. See ALVIN H. HANSEN AND HARVEY S. PERLOFF, STATE AND LOCAL FINANCE IN THE NATIONAL ECONOMY (1944) 154-63, 189, 192; RICHARD A. LESTER, PROVIDING FOR UNEMPLOYED WORKERS IN THE TRANSITION (1945) 27-58; NATIONAL PLANNING ASS'N, JOINT STATEMENT ON SOCIAL SECURITY BY AGRICULTURE, BUSINESS AND LABOR (April 1944) 3. See also the statement of the House Special Committee on Post-War Economic Policy and Planning of August 14, 1944, that "unemployment compensation is the principal means of protection which the Government can provide for the unemployed worker." The sponsors of the Kilgore bill also envisaged a function for unemployment insurance far wider than that originally conceived of by the Committee on Economic Security.

38. It is significant that the George Committee so far failed to realize the issues at stake that they omitted from their recommendations on unemployment compensation any reference to extensions of duration. SEN. REP. No. 539, 78th Cong., 2d Sess. (1944) pt. 5, *passim*. Similarly, the growing tendency to redefine the "voluntary quitting" disqualification in such a way as to deny benefits unless the reason for leaving is directly attributable to the employer or is the "employer's fault" is a logical step in a system whose main function is to provide an incentive to stabilization of employment. But it has no place in a system whose primary objective is the payment of benefits to unemployed workers including those who, after quitting a job or undergoing a period of disqualification if misconduct was involved, again seek work and are unable to find it.

wrongly, should decide that the Wisconsin plan is the cheaper of the two, the conflict may be reopened in all its fury this year and next in all the remaining thirty-nine legislatures. . . . Perhaps it isn't very gratifying to find that 'How much is it going to cost the employer?' is so much more vital an issue than 'What is the unemployed worker going to get out of it?' " ³⁹ By 1945 the accuracy of this interpretation was evident. Experience rating, the more popular and practical form of the Wisconsin theory, was everywhere on the increase and its consequences on unemployment compensation as a benefit paying institution were profoundly disturbing.⁴⁰ It is now evident that, however attractive the arguments for experience rating as a form of incentive taxation may be in theory, as an integral part of an unemployment compensation program financed almost wholly by employer's contributions it has grave weaknesses in practice. To attain successfully the original objective (presumably the intensification of employers' efforts to stabilize employment ⁴¹) it would have been necessary to devise a system which would possess three major characteristics. First, it would grant tax reductions solely in response to positive employer action to reduce unemployment, eliminating the influence both of purely accidental fluctuations in the general employment situation and of successful action on the part of employers to avoid benefit liability, *i.e.*, merely the reduction of *compensable* unemployment. Second, it would classify industries to reflect the differing stabilizing potentialities of whole industries and make possible a classification of the employment record of individual employers by reference to that of other employers in their own industry. Third, it would be essential that legis-

39. Rubinow, *supra* note 15, at 67, 76. By 1941, C. L. Hoffman was asserting before the National Tax Association that "employers were learning too, and they developed some ideas as to how their tax money should be spent and who should control it . . ." Hoffman, *Incentive Taxation with Special Reference to Unemployment* in NATIONAL TAX ASS'N, PROCEEDINGS OF THIRTY-FOURTH NAT. CONF. ON TAXATION (1941) 477, 478.

40. The Social Security Board in its *Ninth Annual Report* stated, "Whatever the merits of experience rating, the present competition in rate reduction threatens to undermine the effectiveness of unemployment insurance in the United States. . . . experience rating has had the unforeseen effect of holding back development of the program and even cutting down standards." SOCIAL SECURITY BOARD, NINTH ANNUAL REPORT (1944) 12-3. In fact, these unfortunate consequences of experience rating had been pointed out by the opponents of the system for many years. See, *e.g.*, Rubinow, *supra* note 15; NATIONAL RESOURCES PLANNING BOARD, SECURITY, WORK AND RELIEF POLICIES (1942) 473-4 523-4.

41. Some authorities have however supported experience rating on a different ground. Thus Dr. Witte has stated, "Viewing unemployment compensation as basically an insurance institution, I believe that experience rating is necessary to equitably distribute compensation costs Just as each employer must pay his own wage bill, . . . it is equitable that he should also pay the partial wages we call unemployment compensation" Witte, *supra* note 25, at 482. Support for experience rating as a method of "distributing a social cost to the production with which it is associated" is also given by HAROLD M. GROVES, PRODUCTION, JOBS AND TAXES (1944) 95-6.

lators be able to withstand pressure from industries or groups of firms who, under the above conditions, would permanently pay tax rates substantially above the average.

Unfortunately these conditions have not been fulfilled in practice. The first two would call for a far more complex and costly administrative system than the majority of the states appear as yet to be willing to contemplate. Instead, reliance has been placed upon the evolution of ever more complicated formulas, whose automatic and universal application has hitherto enabled administrators to avoid making the difficult economic decisions and classifications that a fully effective incentive tax program would logically require. Hence the experience-rating systems typically grant rate reductions by formulae that reflect reductions in compensable unemployment as much as reductions in unemployment itself,⁴² and, more importantly, they make no allowance for the influence of fluctuations in the general level of employment. They fail to distinguish between industries according to their potentialities for stabilization, and they have been unable to withstand pressure from groups whose experience would justify a rate substantially above the average.⁴³ In consequence, experience rating has degenerated into a system of competitive bidding for tax reductions between the states. The average employer's prospects of securing a reduction in his tax rate depend far more upon the industry in which he happens to be, the state of the labor market, and the control his representative can exercise over state legislation governing the benefit and eligibility provisions of the laws than upon his own stabilizing activities.

III. THE SPECIFIC PROBLEMS AHEAD

Despite the widespread popularity of experience rating among employers and the internal inconsistency of many state laws, two influences are likely to force America to adopt the broader view of the functions of unemployment compensation. The first is the absence of any preparation of alternative methods of coping with loss of income

42. In consequence they have fostered employers' lobbies for the purpose of opposing liberalizations of the program and have led to undue restrictions upon eligibility and to harsher disqualifications. See Clague and Reticker, *Trends in Disqualification from Benefits under State Unemployment Compensation Laws*, SOCIAL SECURITY BULLETIN, Jan. 1944, pp. 12-23.

43. In 1941, 21 of 38 state laws provided for a maximum rate in excess of 2.7% while one law had no provision relative to maximum rates. By the end of 1943 only 16 of 44 states permitted rates in excess of 2.7%. Social Security Board, Comparison of State Unemployment Compensation Laws as of December 31, 1941 (Employment Security Memorandum No. 8, 1941) 53; *Experience-Rating Operations in 1943*, SOCIAL SECURITY BULLETIN, Sept. 1944, pp. 11, 48. In some states special arrangements have even permitted employers in seasonal industries to qualify for favorable ratings. See also Bigge, *Strength and Weakness of Our Unemployment Compensation Program* in CHAMBER OF COMMERCE OF THE UNITED STATES, SOCIAL SECURITY IN AMERICA (Addresses, Nat. Conf. on Social Security, 1944) 24.

due to unemployment, especially for those who have exhausted insurance benefit rights. America faces the economic uncertainties of the postwar world with neither a well devised work program nor a reorganized and socially acceptable general public assistance system. Should unemployment exceed the present very limited capacity of the existing laws to carry the burden of income loss (a capacity that is limited by the restrictive benefit and eligibility conditions rather than by finances ⁴⁴), it is safe to predict that the absence of more appropriate supplementary programs would lead, as in Great Britain during the 1920s, to modification of the laws so as to make greater use of what would seem to be an obviously convenient institution with administrative machinery already established. The probability that unemployment insurance would be seized upon *faute de mieux* as the major instrument for providing unemployment relief is all the greater because of the large reserve funds that are likely to remain frozen in many states despite the existence of high unemployment.⁴⁵ Sooner or later the public, and especially the taxpayers, would begin to question the purpose of these large accumulations which were presumably built up to pay unemployment benefits but were untouchable when apparently most needed.

But if unemployment compensation is to fulfil a broader function than is now possible under most existing state laws, the changed theory must be reflected in changes in the provisions of the laws. The exponents of the broader view of the function of unemployment compensation have indicated certain changes which adoption of their view would logically require. These include broadening of coverage, some liberalization of benefits, and, above all, extension of duration.⁴⁶ Nevertheless, it will be no easy task in the United States to devise a concrete program which will permit unemployment compensation to play the important role which is called for in a highly dynamic industrialized society without extending its functions to an economically undesirable degree. Quite apart from the practical question whether under 51 state laws the necessary changes can be brought about in time for the system to make a major contribution to easing the economic readjustments of the reconversion period, and quite apart too from the serious doubt

44. Compare LESTER, *op. cit. supra* note 37, at 22-58.

45. Dr. Lester has estimated that, because of the restrictive benefit and eligibility conditions in the present laws, between one-third and one-half of the reserve funds would not be used even if unemployment were as high as 12 millions during the first postwar years and eligible workers drew all the benefits to which they were entitled. LESTER, *op. cit. supra* note 37, at 46.

46. See recommendations of the Social Security Board in NINTH ANNUAL REPORT (1944) 4-16, and SOCIAL SECURITY BULLETIN, Oct. 1944, p. 3; recommendations of the Technical Committee of the National Resources Planning Board in SECURITY, WORK AND RELIEF POLICIES (1942) 516-7, 522-4, 536-7; Bakke, Discussion (1944) 34 AM. ECON. REV. SUPP., No. 1, p. 222; Burns, *Social Insurance in Evolution*, *id.* at 199.

whether the desirable integration of unemployment compensation with broader governmental compensatory fiscal policies will ever be possible under a state operated system, the economic and social environment in America presents the framers of unemployment compensation laws with peculiar difficulties.

Among the questions which call for solution is the feasibility of retaining the present benefit provisions if unemployment compensation is to be used as a major first protection against loss of income due to unemployment, in a country characterized by wide differences in earnings and real standards of living as between different occupations, industries, and geographical areas. For extension of coverage is of no advantage to low paid groups such as agricultural and domestic workers unless the benefits make at least a substantial contribution to living expenses, and this can certainly not be assured so long as the present automatic relationship to past wages is retained. On the other hand, the adoption of significant minima and dependents' allowances will undoubtedly involve benefits dangerously close to, or even exceeding, wages in certain occupations and geographical areas. More attention will have to be paid, too, to the selection of the period for which benefit is payable. At the present time there seems to be general agreement on the part of reformers on the desirability of extending duration to 26 weeks. But the reasons for the selection of this period rather than any other have not been made explicit.⁴⁷ Above all they have not been explained to, and are not understood by, the public. In any case it is highly doubtful whether a satisfactory answer can be given, and indeed, as indicated above, whether any selected period will prove acceptable and can be retained in practice, until socially and economically acceptable and workable alternative measures are devised for providing for those who are unemployed after exhaustion of insurance benefit.⁴⁸

Finally, a system with broader coverage, and paying benefits for more substantial periods, will necessitate renewed attention to policies connected with the application of tests of "involuntary unemployment." For when the community undertakes to make money payments to unemployed workers unaccompanied by any test of need, it admittedly runs certain economic risks. Specifically, it runs the major economic risk of weakening the willingness of the individual to provide for himself through employment. In consequence, all unemployment

47. In recent years this aspect of the problem has received relatively little attention. In 1932 a group of authorities in Minnesota had urged the use of unemployment insurance for long-period unemployment, proposing to pay benefits up to 40 weeks in any one year with an initial waiting period of eight weeks. ALVIN H. HANSEN AND MERRILL G. MURRAY, *A NEW PLAN FOR UNEMPLOYMENT RESERVES* (1933). This view no longer appears to command any support.

48. Compare EVELINE M. BURNS, *BRITISH UNEMPLOYMENT PROGRAMS, 1920-1938* (1941) c. XI.

insurance laws contain provisions which are intended as safeguards. In general the level of benefits is set sufficiently low that the margin between what can be secured through participation in production and what is payable as benefit is sufficiently large. The eligibility provisions aim to limit the right to benefit to persons whose past employment record gives some assurance that they are normally dependent upon employment for their livelihood and have in the past secured a reasonable amount of work. Yet a third safeguard is the provision, found in all laws, that benefits are payable only in the event of involuntary unemployment. All of these safeguards have given, and will increasingly give, rise to considerable policy or administrative difficulties.

The attempt to limit benefit payments to workers who are involuntarily unemployed is expressed in specific disqualifications for voluntary quitting and denial of benefits during participation in strikes and lockouts and for refusal of suitable work. Of these, the suitable work clauses have created the greatest amount of difficulty and for a very good reason, for it is at this point that unemployment compensation impinges most closely upon the economic life and working practices of the community. The undesirability of dealing with each individual case on its merits, thereby sacrificing one of the major advantages of unemployment compensation as a relatively formal and nondiscretionary method of providing income for large numbers during periods of unemployment, has led in all countries to the attempt to embody in the law broad general principles indicating what is and what is not to be regarded as "suitable work." Necessarily these definitions involve a compromise between the interest of the workers and of society as a whole, for if "suitable work" is defined broadly so as to make refusal of any kind of work, however poorly remunerated or out of line with the claimant's previous experience, ground for denial of benefit, the unemployment insurance system can become an influence depressive to wages and destructive of established labor standards. On the other hand, if a narrow definition is adopted, the worker would be permitted to reject, for the period of benefit rights, any work that he disliked or that offered wages lower than he thought he was entitled to; or, in general, if the determination of "suitability" is left to the worker's judgment alone, unemployment insurance may postpone or impede needed wage and occupational adjustments.

Some of the principles adopted are relatively non-controversial.⁴⁹

49. Thus the provisions in the Social Security Act which prohibit denial of compensation to workers who refuse work when the position offered is vacant due directly to a strike, lockout or other labor dispute or when, as a condition of being employed, the worker would be required to join a company union or to resign from or refrain from joining any bona fide labor organization, are merely methods of ensuring that one federal law does not nullify other federal laws or policies in the field of labor relations.

Other general principles, such as that which permits workers to refuse work as unsuitable if the wages, hours, and other conditions of work are substantially less favorable to the individual than those prevailing for similar work in the locality aim to keep the system economically "neutral," *i.e.*, to prevent it from operating as a general depressive influence on wages or working conditions or from favoring the competitive position of substandard employers. Yet even this broad principle cannot entirely prevent the system from exerting some controversial influence on economic relationships, for in a country in which notoriously low-paid areas exist within the borders of a generally high-standard state, it still has to be decided whether a worker can be denied benefit for refusing to undertake a job in another area at the low but prevailing wages paid in that area, and always there is the question whether a claimant may refuse a job which is in an occupational or industrial classification where the wages or conditions of work are prevailingly lower than those in his accustomed or previous employment. Hence, in addition to these broad principles, all unemployment insurance laws have found it necessary to embody further definitions of what is suitable work or to evolve a body of case law defining more precisely the conditions under which jobs may be refused without loss of benefit rights.⁵⁰ The most important body of such industrial case law is of course the long series of decisions handed down by the Umpire in Great Britain. These weighty volumes are impressive testimony to the fact that once the community undertakes to compensate for unemployment it cannot avoid establishing norms and standards in regard to a tremendously wide range of industrial practices and economic policies. The influence of this type of legislation in imposing upon the economy more or less consciously determined industrial practices and relationships is a fascinating field which has as yet been very imperfectly explored. The need to do so will become imperative in the United States in the years of reconversion.

During the war there have been great occupational and geographical

50. Thus policies may be established which in effect limit suitable work to work in the applicant's previous occupation, or to work which does not involve too great a sacrifice of previously acquired skills or which is not too geographically distant from his place of residence. Yet another solution of the problem is the method, which has occasionally been adopted, of allowing the worker very wide leeway to reject jobs in unfamiliar occupations or places for a certain period of time which may coincide with the normal duration of benefits or be some specified shorter period. Obviously too, the significance of policy decisions in this difficult field is not independent of the period of disqualification. The longer and more drastic it is, the more controversy is there likely to be about "suitable work" decisions. Here again is an example of the necessity for logically relating the various parts of the unemployment compensation program. Decisions on duration and on the character of the disqualification or cancellation of benefit rights will have direct repercussions on the kinds of definitions of "involuntary unemployment" that can effectively be administered with a reasonable chance of public acceptance.

shifts of workers, and a marked rise in wage rates and more particularly in earnings. Instead of isolated cases, administrators will be faced with thousands of cases involving the question whether, for example, an unemployed woman welder in a war plant should be forced to return to her old employment of waitress or domestic servant or even low-paid textile employee under penalty of denial of benefit, or whether a worker who has moved to a war center from a rural community should be forced to return to his old job in his old district even though the wage rate would be much lower, or, more generally, whether agricultural workers who have streamed into industry should be forced to return to agricultural employment. These are not hypothetical questions, for they are already arising in individual cases;⁵¹ indeed, there is evidence in certain states that as a matter of deliberate social policy or from a desire to protect the insurance funds steps are even now being taken to tighten up the laws so as to make possible precisely such pressures toward occupational and geographical readjustments.

The problem of a working population adjusting to a generally lower wage level, which may well be a concomitant of the reconversion period, also illustrates the dilemma in which unemployment compensation administrators will be placed because whatever they do they cannot avoid exerting an influence over economic developments. Workers may well prefer to draw benefits rather than accept, for their customary work, wages lower than they have been accustomed to in recent years. The probability that the number of such cases will be especially large in the United States is great. The American laws typically base benefits, not on full-time normal weekly wages, but on a fraction of quarterly, and usually highest quarterly, earnings. As a result, benefits will reflect the heavy overtime of recent years and are likely to be especially high in relation to postwar wages for a 40-hour week. The differential between benefit and wages may be small enough to tempt a substantial number of workers to wait in the hope that jobs offering higher wages may become available. Second, liberalizations of benefit formulas have in large measure affected the higher paid workers,⁵² a large proportion of whom are war workers who will have to face wage readjustments now that the war is over.

The risk that the unemployment insurance laws will become the center of controversy in the near future is therefore considerable, and administrators will have to tread a difficult path to avoid unpopularity with workers on the one hand, because of what will seem to them to be

51. See Loysen, "Suitable Work" for Unemployment Benefit Claimants, *Am. Econ. Security* (Chamber of Commerce of the United States), Sept.-Oct. 1944, p. 9.

52. During 1943, while thirteen states raised the weekly maximum rate, only three raised the minimum as well, and only three others raised benefits in the lower wage classes. This tendency to emphasize the raising of maximums appears to be encouraged by the Social Security Board. See SOCIAL SECURITY BOARD, NINTH ANNUAL REPORT 9-10. (1944).

unjustified coercion and illiberalism, and to escape, on the other hand, criticism from employers and the general public, who will be intolerant of any "governmental action" that appears to impede needed readjustments. Certain it is that policies and practices regarding these vital aspects of unemployment compensation administration cannot depart too far or too long from what is popularly regarded as fair and reasonable, nor can they fail to reflect the economic and social situation of the time.⁵³ In these circumstances it would seem that the responsible authorities must frankly face the fact that they are necessarily making *economic policy* and endeavour, while there is yet time, to chart the course they propose to follow and to inform the public of the considerations that have influenced their decision.⁵⁴ Undoubtedly, too, public acceptance of the individual decisions as well as the general policies would be fostered if the appeal bodies were composed more generally than is now the case in the United States of representatives of employers and workers in addition to an official referee or impartial person, and if the general policies to be applied could be worked out with the advice and participation of representative advisory councils. In this respect the British representative procedure is much better calculated to prevent uninformed criticism and resentment over what may otherwise appear to be "bureaucratic" or arbitrary decisions. The presence of a representative of workers and employers on the appeal bodies not only assures a more practical and realistic approach to questions involving customary industrial practices and relationships, but also gives the administration a large number of more or less sympathetic, because informed, interpreters throughout the community.⁵⁵

53. Thus the recent tightening up of disqualifications and more rigid interpretation of the suitable work clauses in the United States, while in large measure attributable to experience rating considerations is also in part a reflection of the manpower shortage and the national importance of utilizing all available workers. See testimony of Mr. Bigge, *Hearings before Special Committee on Post-War Economic Policy and Planning on S. R. 102*, 78th Cong., 2d Sess. (1944) pt. 3, p. 758.

54. If, for example, it should be decided that the best solution is to avoid undue pressure on the individual worker by allowing him, through the receipt of benefit, a certain period of time in which he can stand out for the kind of job at the wage and in the place to which he has been accustomed, the public should be prepared in advance to face the fact that this may postpone readjustments for the period for which benefit is payable so that this consideration can be kept in mind with others when decisions as to duration of benefit payment are being made.

55. The Social Security Board has recently emphasized this point in the recommendations to the states. *Unemployment Compensation in the Reconversion Period: Recommendations by the Social Security Board*, SOCIAL SECURITY BULLETIN, Oct. 1944, pp. 3, 7. See also NATIONAL RESOURCES PLANNING BOARD, SECURITY, WORK AND RELIEF POLICIES (1942) 486, 501, 544.