DEVELOPMENT OF UNEMPLOYMENT COMPENSATION

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EVEN more than most legally created institutions, unemployment compensation as it now exists in the United States is an historical product rather than a logical conception. The enactment of the original laws was the result of many compromises. Since then they have been changed frequently and in many respects without following any set patterns. There never has been agreement as to the purpose of unemployment compensation or its basic principles. Differences of opinion among the champions of the institution are so extreme as to disrupt lifelong friendships and to provoke more heat than light in discussions. Unemployment compensation differs so much from state to state that there is a large element of truth in the claim that there is no such thing as an American unemployment compensation system. It is not now and never has been entirely satisfactory to any of the specialists in this field nor to any element in our complex society. Even during a period of rising employment, its limitations and inadequacies have become very apparent. Very certainly, it will not protect us from another depression nor afford an adequate safeguard against its worst consequences.

Yet unemployment compensation has not proved a failure. After twenty years of discussion before the first state enacted an unemployment compensation law and three more years before the second law was passed, the next two years witnessed enactment of such legislation in literally every state. Since then eight years have elapsed, during which unemployment compensation has been improved in many respects. Benefits have been very distinctly liberalized and, while still inadequate, are much better than the actuaries considered to be within the realm of possibility when the laws were enacted. Much larger reserves have been accumulated than were expected. Both these results are primarily attributable to very favorable employment conditions, but are likely to prove of greatest value now that the war has ended and we are confronted with reconversion unemployment. While there has been much distrust and a great deal of friction between the state and federal officials concerned with unemployment compensation, its administration has been quite satisfactory and not very costly. Unemployment compensation has truly become an accepted part of the American way of life, and all discussion of it nowadays concerns its improvement, not whether it should be retained. Yet it is, by no means, a finished institution, but one which is likely to continue to undergo many changes and which clearly still needs to be improved to realize its fullest possibilities.

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ENACTMENT OF THE UNEMPLOYMENT COMPENSATION LAWS

The American unemployment compensation laws stemmed from two major sources: the American workmen's compensation system and the British unemployment insurance system. The most novel feature of the American system of unemployment compensation (federal-state administration), however, was introduced through the Social Security Act of 1935. The provisions in that act relating to unemployment compensation were designed to induce the states to enact such legislation, after years of failure to get them to do so. This purpose was accomplished in a remarkably short time, but the provisions remained as a method of administration. This aspect of the legislation, lightly considered at the time, has powerfully affected all subsequent developments, as have the controversies between the advocates of unemployment compensation which developed during the years when they were debating the institution in a vacuum, in the absence of actual experience.

*Earliest Discussions of Unemployment Insurance.*¹ There was some discussion of unemployment insurance in the United States even before Great Britain passed its pioneer national act in 1911, under the leadership of the American Association for Labor Legislation. At its First Annual Meeting in 1907, Professor Henry R. Seager of Columbia University discussed the "Ghent system" of unemployment insurance. At its Fifth Annual Meeting in 1911, Professor Charles R. Henderson of the University of Chicago discussed the recently enacted British law, and the Association organized a Committee on Unemployment to study the problem and to consider methods of prevention and alleviation. In 1913, the Association sponsored the first American Conference on Social Insurance, at which Professor Henderson, in a paper on "Insurance Against Unemployment," strongly urged that such insurance was a necessity for this country, no less than in the older countries of Europe.

Much more extensive interest in unemployment insurance developed during the depression of 1914-1915. In February 1914, the American Association for Labor Legislation and the affiliated American Association on Unemployment conducted a National Conference on Unemployment and followed this up by a second conference in December. At this Second National Conference on Unemployment a tentative draft of "A Practical Program for the Prevention of Unemployment

1. *Growth of the Job Insurance Program—An Evolutionary Development* (1933) 23 AM. LAB. LEG. REV. 146 is an excellent brief account of the development of interest in unemployment insurance in this country and of the efforts to get unemployment insurance laws on the statute books down to date of its publication. Numerous other articles published in practically every issue of the *American Labor Legislation Review* serve as the best source for tracing the development of unemployment insurance in the United States prior to the passage of the Social Security Act.

in America" was presented and endorsed.² This called for a nationwide and coordinated system of public employment offices, planned public works programs and the expansion of public construction in periods of depression, the regularization of industry, and unemployment insurance. While the major function of unemployment insurance was conceived to be to stimulate the prevention of unemployment, it was also to serve "for the maintenance, through out-of-work benefits, of those reserves of labor which may still be necessary to meet the unprecedented fluctuations of industry." This program was supported by many of the emergency commissions created throughout the country during the depression of 1914-1915 and also by many big-name reformers. As far as unemployment insurance is concerned, however, it led to but one legislative proposal, the Massachusetts bill of 1916, which was almost a copy of the original British law except that it applied to a wider range of industries.³ By the time this bill was introduced, boom had succeeded depression, and it received scant consideration. In the succeeding years, even the American Association for Labor Legislation seems for a time to have lost interest in unemployment insurance. In 1916, however, the Dennison Manufacturing Company pioneered with the first company unemployment reserve system, to be followed in the twenties by quite a few more company plans and some joint company-union unemployment reserve systems.⁴ These were indications that American opinion was gradually coming to recognize not only that unemployment is a problem of industry and not merely of unwillingness to work, but also that something can be done about it. But all progressive thought on the subject regarded the regularization of industry and the prevention of unemployment, rather than the alleviation of its consequences, as the objective.

The Huber Bill in Wisconsin. Although Americans became increasingly conscious of the problems of unemployment during the short but very severe depression of 1920-1921, for the most part they turned to remedies other than unemployment insurance. The keynote was sounded in the opening statements of President Harding and Secretary of Commerce Hoover to the President's Conference on Unemployment of 1921, warning the members to avoid "the demoralizing experience of Europe" or seeking the remedy "in doles from the public treasury."⁵

2. This draft was first published in 1915. 5 AM. LAB. LEG. REV. 173. Its principal author was Dr. John B. Andrews, Executive Secretary of the American Association for Labor Legislation, to whom also goes the credit for the leadership of this organization for many years in the promotion of unemployment insurance in this country.

3. *Social Insurance Urged in Massachusetts* (1916) 37 THE SURVEY 207.

4. The most comprehensive account of the voluntary unemployment insurance experiments which preceded the first compulsory act is BRYCE M. STEWART, *UNEMPLOYMENT BENEFITS IN THE UNITED STATES* (1930). See also Brown, *Company Plans for Unemployment Compensation* (1933) 23 AM. LAB. LEG. REV. 176.

5. REPORT OF THE PRESIDENT'S CONFERENCE ON UNEMPLOYMENT (1921) 25, 28.

Unemployment insurance, however, was more widely discussed than ever before, and in Wisconsin a new proposal for unemployment insurance made its appearance. This was the Huber Bill of 1921, whose real author was the late Professor John R. Commons.⁶ Ten years before, Professor Commons had been one of the first workmen's compensation administrators in this country and had been very much impressed by the stimulus which the workmen's compensation laws had afforded to the safety-first movement. He believed that if employers were required to pay a substantial part of the costs of unemployment they would find means of greatly reducing unemployment, just as industrial accidents had been reduced after passage of the workmen's compensation laws. To effectuate this purpose, the Huber bill deviated quite considerably from unemployment insurance as it had developed in England, and was distinctly a blend of workmen's compensation and unemployment insurance. This was reflected in the very name given the institution, "unemployment compensation." Unlike the British Act, it provided for contributions from the employers only and for variations in contribution rates. In the terminology of the later controversy over pooled funds versus employer reserves, it provided for a pooled fund but with the contribution rates varying in accordance with the risk of the industry to which a firm belonged and its own employment record.

This measure, at the time, had a broader appeal than the British act or the Massachusetts bill of 1916. It came within one vote of passage when first introduced. Thereafter it was reintroduced in every succeeding session of the Wisconsin Legislature in the 1920's, and, although it never again came as close to passage, it always commanded respectable support. It was copied during the same period in many other states, where it received endorsements from many sources. While the American Federation of Labor adhered to its official position (adopted in 1916) of opposition to unemployment insurance in any form, the Wisconsin and many other state federations of labor actively supported the Commons proposal, as did the progressive employers who were experimenting with unemployment reserves of their own and literally everybody who at that time was advocating unemployment insurance in this country. Until the great depression began in the fall of 1929, the support for unemployment insurance, however, was too small for passage of any legislation on the subject.

Throughout the twenties, the British unemployment insurance system was in low repute in the United States. In popular discussions it was usually referred to as a "dole," and the fact that England appeared

6. The author, as Chief of the Wisconsin Legislative Reference Service, was in close touch with all developments in relation to unemployment insurance in Wisconsin, from the time of the introduction of the Huber bill until the Wisconsin law came into operation.

For the text of the Huber bill see ALLEN BENNETT FORSBERG, *SELECTED ARTICLES ON UNEMPLOYMENT INSURANCE* (1926) 124-7.

to be less prosperous than the United States was ascribed to its mistaken policy of governmental coddling of the unemployed. Under the circumstances, it was but natural that the champions of unemployment insurance insisted that their proposal was an "American plan," radically different from the defective British system. Nor did unemployment insurance as it existed in England become immediately popular after the great depression set in; for the early years of the depression witnessed the near collapse of the British system, and it was not until a considerable time after it had passed the crisis in 1931 that its basic strength was appreciated in this country.

Interest and Progress in the Early Depression Years. The idea that there should be unemployment reserves to tide the workers over periods of depression, akin to the corporate reserves from which corporations were able to keep up dividend payments although operating in the red gained, however, great popularity. Business leaders who looked with favor upon this idea wanted each corporation or trade association to set up and control its own unemployment reserves, with the government doing no more than to exempt from taxation funds set aside for this purpose. The people who had long urged unemployment insurance sought to capitalize upon the growing popularity of unemployment reserves in the ranks of business. The result was a further emphasis upon the features which distinguished the American proposals from their British prototype. In 1930 the American Association for Labor Legislation promulgated "An American Plan for Unemployment Reserves,"⁷ and a new unemployment compensation bill (named for its introducer, Professor Harold M. Groves, and drafted by students of Professor Commons, particularly Elizabeth Brandeis and her husband Paul Rauschenbush) made its appearance in Wisconsin.⁸ These measures were very similar to the Huber bill but provided for segregating each employer's contributions in a separate account within the state's unemployment reserve fund, to which all payments of benefits to his employees were to be charged. Unlike a true employer reserve, moneys in this account did not belong to the employer, and the entire fund was pooled for purposes of investment and management; but it was stressed that this sort of a system made each employer responsible only for his own unemployment and afforded the possibility of keeping his costs at a minimum.

Even with the vigorous support of the state administration of Governor Philip F. LaFollette, however, it was not possible to get the necessary votes for passage of the Groves bill until its supporters accepted

7. For the text see *Senate Passes Unemployment Bills* (1930) 20 AM. LAB. LEG. REV. 125. A revised draft of this American Plan was issued by the Association in 1933: *An American Plan for Unemployment Reserve Funds* (1933) 23 AM. LAB. LEG. REV. 79.

8. Wisconsin Assembly Bill 225 A. On this bill see Groves, *Program for Unemployment Reserve Funds in Wisconsin* (1931) 21 AM. LAB. LEGIS. REV. 55.

two amendments offered by its opponents. One of these provided that the state scheme should not take effect if a sufficient number of employers voluntarily set up unemployment reserves of their own during the period of a year and a half before the law's effective date. The other allowed employers with unemployment reserve systems providing as liberal benefits as the state system to retain their reserves and manage their own systems. It was in this form that Wisconsin in February 1932 enacted the first American unemployment insurance law,⁹ to become effective, as far as the collection of contributions was concerned, on July 1, 1933 (unless a sufficient number of employers in the meantime established employment reserve funds of their own), with benefit payments to begin two years later.

When Wisconsin enacted its pioneer law, there was a rapidly growing interest in unemployment insurance throughout the country. The national administration manifested no interest in the subject, but it attracted ever-increasing attention in the states. It was discussed for the first time at the Conference of Governors in June 1930. On that occasion Governor Franklin D. Roosevelt of New York said, in his first statement on the subject, "Unemployment insurance we shall come to in this country just as certainly as we came to workmen's compensation."¹⁰ The platform on which he was re-elected in November pledged a thorough study of the subject. In the ensuing legislative session a serious attempt was made to pass a bill embodying the American Plan for Unemployment Reserves of the American Association for Labor Legislation, which had the endorsement of Frances Perkins, then the State Commissioner of Labor. This was not successful, but a state commission was organized to study unemployment insurance.¹¹ In sixteen other states, unemployment insurance bills made their appearance, and no less than 23 such bills were introduced in the legislative sessions of 1931.¹² Nowhere did these bills get through even one house, but six states created legislative commissions to study unemployment insurance and a select committee for the same purpose was organized by the United States Senate.¹³ Several more such commissions were

9. Wis. Laws 1931, c. 20, Spec. Sess. 1931, WIS. STAT. (1943) §§ 108.01-26. For an authoritative discussion of this measure, see Rauschenbush, *Wisconsin's Unemployment Compensation Act* (1932) 22 AM. LAB. LEG. REV. 11.

10. *Roosevelt on Unemployment Insurance* (1931) 21 AM. LAB. LEG. REV. 219.

11. On the developments in New York in 1931 relating to unemployment insurance see *Unemployment Reserve Fund Bill Introduced in New York* (1931) 21 AM. LAB. LEG. REV. 61; *Complacency of Labor Creates Crisis*, *id.* at 204; *New York Legislature Resolves to Study Unemployment*, *id.* at 208; *Roosevelt on Unemployment Insurance*, *id.* at 219.

12. *Unemployment Insurance Legislation* (1931) 21 AM. LAB. LEG. REV. 332.

13. The earliest proposal for unemployment insurance presented in Congress was a bill by Representative Meyer London (New York Socialist) in 1916. In 1928, the Senate adopted a resolution by Senator Couzens (Michigan) for a study of unemployment insurance by the Committee on Education and Labor. That committee, after brief hearings before a sub-

organized by governors in 1931 and 1932. In 1931 there also was organized, at the suggestion of Governor Roosevelt, an Interstate Commission on Unemployment, constituted of the representatives of the governors of seven northeastern states. This Interstate Commission, reporting in 1932, urged immediate legislation to establish unemployment reserves.¹⁴ Recommendations for the enactment of unemployment insurance laws were also made by the study commissions of six states. The most important development in this year, however, was that unemployment compensation became a practical political question. At its annual convention, the American Federation now came out for unemployment insurance, stressing in its resolution that the legislation should be designed to stimulate the prevention of unemployment.¹⁵ Still more important was the promise by the Democratic national platform of "unemployment insurance through state action" and the election, on that platform, of Franklin D. Roosevelt and a large party majority in both houses of Congress.

Failure of Efforts at State Legislation in 1933. In view of these developments, there appeared to be at the beginning of 1933 every prospect that many states would enact unemployment insurance laws in the legislative sessions then convening. A total of 68 bills were introduced in 25 states, and Senator Wagner introduced in Congress an unemployment reserves bill for the District of Columbia.¹⁶ In seven states one house passed an unemployment insurance bill, but nowhere was such a bill enacted into law; and in Wisconsin repeal of the law enacted in the previous year was avoided only by the acceptance of its supporters of postponement of the effective date for another year.¹⁷ By the end of the year, hope for the establishment of unemployment insurance in this country through unaided state action seemed remote.

One factor accounting for this situation was division of opinion among the advocates of unemployment insurance; another, that with the continuance of wholesale unemployment, unemployment insurance and particularly unemployment reserves seemed less valuable than

committee, reported that compulsory legislation was premature but recommended the voluntary establishment of unemployment reserves by employers. SEN. REP. No. 2072, 70th Cong., 2d Sess. (1928).

The select committee created in 1931 consisted of Senators Hebert, Glenn, and Wagner. This committee made a report generally favorable to unemployment insurance, but concluded that the only thing the national government could do on the subject was to allow credit in the administration of the federal income for payments made into unemployment reserve funds. SEN. REP. No. 964, 72d Cong., 1st Sess. (1932).

14. *Governors' Interstate Commission Urges Unemployment Reserves* (1932) 22 AM. LAB. LEG. REV. 19.

15. Trafton, *America Moves Toward Compulsory Unemployment Reserves* (1932) 22 AM. LAB. LEG. REV. 125, 133; AMERICAN FEDERATION OF LABOR PROCEEDINGS (1932) 39, 340.

16. See *Unemployment Insurance Bills Introduced in 1933* (1933) 23 AM. LAB. LEG. REV. 73.

17. Wis. Laws 1933, c. 186.

earlier in the depression. Controversy developed with the passage of the Wisconsin law and the filing, late in 1932, of the report of the Ohio state commission for the study of unemployment insurance.¹⁸ In this report a strong stand was taken against individual employer reserves, and a plan of unemployment compensation was recommended which closely resembled the original Huber bill. The controversy which developed at first concerned the Wisconsin law versus the Ohio plan, but soon shifted to a more general debate over employer reserves versus pooled funds, the advisability of variations in contribution rates, employer versus tri-party financing, and the purposes of unemployment insurance. Two camps developed, with one or the other of which nearly all of the intellectuals interested in unemployment compensation were identified—the one composed of most of the early advocates of unemployment insurance connected with the American Association for Labor Legislation, the other centering in the American Association for Social Security, which until 1933 was the Association for Old Age Security but which with its change in name became the great champion of a British unemployment insurance system for the United States. This controversy gave the general public the impression that these advocates did not know what they wanted. At least of equal importance in stalling progress was that the continuance of the depression made it impossible to see the solution of the unemployment problem in unemployment insurance. While employer unemployment reserves seemed very promising early in the depression, they had by this time been conclusively demonstrated to be inadequate. The great increase in popular support for unemployment insurance in the years 1931–1933 came primarily from those who were experiencing or feared the inadequacies and hardships of relief, but the size of the problem and its long continuance made it very clear that unemployment insurance at its best was only a partial solution.

But a far more important obstacle to attaining unemployment insurance through state action was the argument that any state which enacted an unemployment compensation law thereby handicapped its employers in interstate markets by burdening them with costs their competitors in other states were not required to meet.¹⁹ It was this argument which everywhere defeated the unemployment insurance bills despite their endorsements, and which came very close to bringing about the repeal of the one law which had been put upon the statute books.

Wagner-Lewis Bill, 1934. This situation naturally led the advocates of unemployment insurance to turn to the national government, par-

18. Dr. I. M. Rubinow and Dr. William M. Leiserson, both advocates of unemployment insurance of long standing were the leading members of this commission.

19. On this point read the testimony of Dr. I. M. Rubinow in *Hearings before Committee on Ways and Means on H. R. 7659*, 73d Cong., 2d Sess. (1934) 187, 190.

ticularly as it was then demonstrating in its New Deal program its sympathy for the forgotten man and its willingness to experiment.²⁰ Scarcely anyone then believed that the national government under our Constitution could itself establish a system of unemployment insurance, so federal legislation was sought which would induce the states to enact unemployment compensation laws. The first such proposal was Senator Wagner's bill of March 1933 to allow employers to deduct from their federal income taxes a part of their contributions to state unemployment compensation reserve funds.²¹ A year later, in February 1934, Senator Wagner and Representative Lewis presented a radically different proposal to accomplish the same purpose. This Wagner-Lewis bill²² was drafted in the Department of Labor but is believed to have been suggested by the late Justice Louis D. Brandeis. It proposed the levy of a federal tax upon employers throughout the country against which they might offset their contributions paid to state unemployment compensation funds. This measure was approved by President Roosevelt and, in extended hearings by a subcommittee of the House Ways and Means Committee, was endorsed by Secretary of Labor Perkins, by leading representatives of both groups among the advocates of unemployment insurance,²³ by President Green of the American Federation of Labor, and by an impressive list of progressive employers. Yet it was never reported upon, and in May it was announced from the White House that the Administration would not press for a vote in that session but that the President would soon present a comprehensive program for social insurance, including unemployment insurance. This was followed by the President's social insurance message of June 8, 1934, in which he announced his intention to present a comprehensive social insurance bill to the incoming Congress the next January and his organization of a Committee on Economic Security to study the entire subject and to prepare the legislation which the Administration would recommend.²⁴

Preparation of the Social Security Act. The Committee on Economic Security consisted of five members of the Cabinet, with Secretary Perkins as the chairman, the author of this article as its executive director, and Thomas E. Eliot as its counsel. The Committee employed a small staff of "experts" and was flanked by a large group of

20. For a more detailed account of the development of the titles in the Social Security Act of 1935 relating to unemployment compensation than is here given see Witte, *An Historical Account of Unemployment Insurance in the Social Security Act* (1936) 3 LAW & CONTEMP. PROB. 157-69.

21. S. J. Res. 26, 73d Cong., 1st Sess. (1933).

22. H. R. 7659, 73d Cong., 2d Sess. (1934).

23. Among these were Dr. I. M. Rubinow, Paul Douglas, Abraham Epstein, and John B. Andrews.

24. H. R. Doc. No. 397, 73d Cong., 2d Sess. (1934).

advisory committees, the most important of which was the Technical Committee on Economic Security, whose chairman was Arthur J. Altmeyer, then Assistant Secretary of Labor, and whose members were all selected from the government service on the basis of their special knowledge of some aspect of social security.

Unemployment insurance was the form of social security of greatest interest to a majority of all people connected with the Committee on Economic Security. The subject provoked the most extended discussions and the widest differences of opinion. To add to the old controversies of the immediately preceding years, wide differences developed over the degree of control the national government should exercise over unemployment compensation. The Subcommittee on Unemployment Insurance²⁵ of the Technical Committee on Economic Security at one of its first meetings decided that it would recommend a federal system of unemployment insurance, rather than legislation like the Wagner-Lewis bill. It made a very genuine attempt to carry out this resolution, but its members could never agree upon the provisions of the federal system of unemployment insurance to be recommended, and it wound up by unanimously recommending a federal-state system of unemployment compensation to be inaugurated through legislation like the Wagner-Lewis bill. That was also the unanimous recommendation of the Committee on Economic Security in its report presented informally to the President on Christmas Day 1934 and in final form before the middle of January 1935.²⁶

By that time the Committee had ready for introduction in Congress a draft bill, which was discussed in advance with Congressional supporters of the Administration, particularly the leading members of the two committees to which this bill would be referred—the House Ways and Means Committee and the Senate Finance Committee. All these members of Congress were agreed that the federal-state approach was the only one that could be considered and that the Wagner-Lewis bill was the most promising approach, both from the point of view of gaining approval from the Supreme Court in the inevitable test of constitutionality which would follow enactment of the law and to win the necessary cooperation of the states. Some of the staff members of the Committee on Economic Security and some consultants of the Committee refused to accept this decision and throughout the months of the Congressional consideration of the Social Security Act criticized and opposed the Administration's program. In relation to unemployment

25. The Chairman of this subcommittee was Dr. Alvin H. Hansen. Other members were Dr. William M. Leiserson, Thomas H. Eliot, Dr. Jacob Viner, and E. Willard Jensen.

26. Published separately as H. R. Doc. No. 81; in 79 CONG. REC. 545-9; and in *Hearings before Committee on Finance on S. 1130, Economic Security Act* (rev. ed.), pp. 1131-51, and *Hearings before Committee on Ways and Means on H. R. 4120, Economic Security Act*, pp. 19-59, all 74th Cong., 1st Sess. (1935).

compensation they advocated what they called a "subsidy system," which differed from the Wagner-Lewis proposal in providing for the collection of all unemployment insurance taxes by the national government, return to each state of the taxes collected from its citizens, and the imposition of many standards to be observed by the states to get this money.²⁷

Congressional Consideration. The President presented the report of the Committee on Economic Security to the Congress on January 17, 1935, with the recommendation that it enact the legislation recommended by the Committee. He urged that action be taken without delay, because most of the state legislatures, which would also have to act to put the program into effect, were then in session. The Wagner-Doughton bill²⁸ was introduced immediately after the President's message, and hearings on the measure were begun within a few days in both houses. But it was not until August that the Social Security Act became law. The reasons for this long delay lie outside of the scope of this article, as they were not related to unemployment compensation. Suffice it to express my belief (based upon the closest daily contact with every development during these months) that but for the efforts of Secretary Perkins and her assistants, and, above all, the insistence of President Roosevelt and the loyal support he received from the leaders of the congressional committees having this legislation in charge, the Social Security Act would not have become law even though on the final vote the measure passed both houses by large majorities. It is also my conviction that, if this law had not been enacted at the time, no legislation on the subject could have been gotten through Congress in the next five or six years.

Unlike the people connected with the Committee on Economic Security, the great majority of the members of Congress were little interested in unemployment compensation and there was at the time no very great popular demand for any legislation on the subject. Unemployment compensation was, indeed, discussed by many of the witnesses before the congressional committees, most of them being critical of the Administration's proposals. Fully worked out substitutes providing, respectively, for a federal system of unemployment insurance and for the "subsidy" plan were presented to the committees, but received no support whatsoever. The members of Congress throughout

27. The "subsidy system" proposed differed from the normal federal grant-in-aid in that it did not contemplate grants from the federal treasury to the states, but only the return to each state of the taxes collected for unemployment compensation purposes from its employers, subject to its compliance with standards prescribed in the federal act. It, thus, would not have given the states any aid whatsoever, but would have made it virtually obligatory for them to observe the standards for unemployment compensation prescribed by the national government.

28. S. 1130 and H. R. 4120, 74th Cong., 1st Sess. (1935).

took it for granted that if anything was to be done about unemployment insurance, the Administration's proposals would have to be approved. While other parts of the bill were radically changed by the congressional committees, the provisions on unemployment compensation became law almost exactly as introduced.²⁹

Unemployment Compensation in the Social Security Act. The Social Security Act contemplated a "federal-state" system of unemployment compensation. The states were to enact and administer the actual unemployment compensation laws and were to collect the unemployment compensation funds, which, however, were required to be deposited in the United States Treasury and invested in United States securities. The role assigned to the national government was principally that of inducing the states to pass unemployment compensation laws. To this end the Social Security Act imposed an excise tax of 3 percent upon the payrolls of all employers of eight or more (with stated exceptions) against which, however, they could offset their payments to state unemployment compensation funds up to 90 percent of the total tax. In addition, the Act authorized an appropriation for aid to the states for the administration of their laws. No conditions of any great moment had to be met to entitle a state law to recognition for tax-offset purposes, other than that all of the unemployment compensation funds had to be actually used for payments to unemployed workers; however, the condition was prescribed that the administration of the state law must be satisfactory to the Social Security Board to entitle a state to a share in the federal aid for administration. The Social Security Board was given authority to pass upon whether a state law qualified for the tax offset and to allot the moneys appropriated for the administration of the state laws, and it was charged with making continuous studies of all forms of social security, with a view to improving the protection afforded. No other specific duties in relation to unemployment compensation were imposed on the Board, although the inference may be drawn from the Act that it should give assistance to the state authorities in the passage of the necessary state legislation and on problems as to which they might seek aid. The truth is that the entire plan was developed as an expedient to get the states to enact unemployment compensation laws, with but little thought as to how the plan would work out once this primary purpose was realized.³⁰

29. 49 STAT. 620 (1935), 42 U. S. C. § 301 (1940). At one stage, the House Ways and Means Committee adopted an amendment which would have eliminated the extra credit in the tax offset provisions when states have reduced the contribution rates after their reserve funds had attained a size sufficient to warrant such action. This, however, is best described as an accidental occurrence and did not reflect any dissatisfaction with the Administration's proposals. The eliminated provisions were restored without objection.

30. In the order of passage of their unemployment compensation acts these states were Washington, Utah, New York, New Hampshire, California, Massachusetts, and Alabama. The Social Security Board refused to approve the original Utah law and it passed a second act (which was approved) in 1936.

Enactment of the State Unemployment Compensation Laws. Passage of the Social Security Act did not result in the immediate enactment of laws in all the states. For more than a year progress was distressingly slow. By the time the Social Security Act had been passed the 1935 sessions of the state legislatures had adjourned, and the next regular session in most states did not convene until January 1937. Even more important was uncertainty as to whether the federal legislation would endure. Congress had adjourned shortly after passage of the Act without making any appropriation to carry out its provisions (there was no opposition to the appropriation but it failed of passage because of a filibuster staged by Senator Huey Long for reasons which had nothing to do with the Social Security Act). In consequence, the Social Security Board did not begin functioning until October 1935, and had to get along with a small borrowed staff until Congress appropriated funds after reconvening in January 1936. And there was still grave doubt whether the legislation would be held constitutional. As the presidential election of that year approached, the future of the Social Security Act seemed ever to become more uncertain. It was not until after the reelection of President Roosevelt by an overwhelming majority that the tide was really turned.

While the Social Security Act was still before Congress, the Committee on Economic Security prepared several drafts of model state unemployment compensation bills. Six states actually passed state laws before the Social Security Act became law and another did so within a month thereafter, during which Congress also enacted an unemployment compensation law for the District of Columbia. Then followed a period of six months in which but one additional law³¹ was passed—and that a measure drafted before the Social Security Act became law. Only six additional states³² enacted unemployment compensation laws before the election, plus which one more state enacted a new law because the Social Security Board would not approve its original act.

In the six weeks following the reelection of President Roosevelt nearly all the remaining states passed laws. The Social Security Act provided that the 3 percent tax on employers was to apply to the payrolls of the year 1936 and that only payments made to state unemployment compensation funds prior to January 1, 1937 would be credited as an offset against this tax. The governors of state after state now convened their legislatures in special sessions "to come under the wire," and these sessions enacted unemployment compensation laws without giving any real consideration to their provisions. To make sure of the approval of the Social Security Board they used the model "pooled

31. Oregon.

32. Indiana, Mississippi, Rhode Island, Louisiana, South Carolina, Idaho.

"fund" state bill drafted by the Board, which its staff plainly preferred to the model state "employer reserves" (really "employer account") bill which the Board also distributed. By the close of the year 1936 all but two states³³ had passed unemployment compensation acts and these two states did so within the next six months.

In May 1937, the Supreme Court of the United States held constitutional both the unemployment compensation provisions of the Social Security Act and the state unemployment compensation laws³⁴ on such broad grounds that it appears that almost any kind of an unemployment insurance system would have been sustained, including one operated exclusively by the federal government. Yet until shortly before these decisions were handed down, there was grave doubt whether unemployment compensation would be found constitutional. A committee of the American Bar Association, composed of eminent members of the Bar, reporting in 1936,³⁵ declared the entire legislation to be unconstitutional; and several of the lower federal courts took the same view.

So it came to pass that in less than two years after the Act was enacted unemployment compensation was securely established everywhere in the United States, and contributions for unemployment compensation purposes were being collected in all states. In accordance with their terms, benefits under these laws were not payable until two years after collection began, but by January 1939 unemployment compensation benefits were being paid in all states. Each of the 51 "state" (48 states, two territories, and the District of Columbia) laws had some provisions different from every other law, but all had far more similarities than differences. Most of the differences, indeed, were attributable to changes in the successive drafts of the model bills which the Committee on Economic Security and the Social Security Board recommended during the period in which the state laws were being enacted, for not above a half dozen states passed their laws without definite assistance from these federal agencies and all of these early in the game.

PROGRESS SINCE ENACTMENT OF THE UNEMPLOYMENT COMPENSATION LAWS

*Administration of Unemployment Compensation.*³⁶ Once the state

33. These were Missouri and Illinois. Congress subsequently amended the Social Security Act to allow the full offset to the employers in these laggard states, as if they had their unemployment compensation acts in effect on January 1, 1937.

34. *Steward Machinery Co. v. Davis*, 301 U. S. 548 (1937); *Carmichael v. Southern Coal & Coke Co.*, 301 U. S. 495 (1937).

35. AMERICAN BAR ASS'N, REPORT OF THE SPECIAL COMMITTEE ON SOCIAL SECURITY AND UNEMPLOYMENT INSURANCE LAW (published in Advance Program of 59th Annual Meeting, 1936).

36. The account of the difficulties met with and the progress made in the administration

laws had been enacted, unemployment compensation became a matter of administration. On this vital subject the provisions of the Social Security Act were scanty. As has been noted, the Act created the Social Security Board, with responsibility for the performance of most of the functions assigned to the national government. As proposed by the Committee on Economic Security, the Board was to be within the Department of Labor. Congress changed this to make the Social Security Board an independent agency, but it left the United States Employment Service within the Department of Labor. One of the few provisions with which the states had to comply to secure approval for their laws under the tax offset provisions of the Social Security Act was that all payments of unemployment compensation must be made through the public employment offices, whose connection with the national government is through the United States Employment Service. The allotment of the federal aid for the administration of unemployment compensation, however, was made a function of the Social Security Board. From the outset the Social Security Board exerted pressure upon the states to place unemployment compensation and the public employment offices under a unified administration; but on the level of the national government the two functions have always been separated except for a short period before our entrance into the war. After Pearl Harbor the national government took over the administration of the public employment offices but made this a function of the War Manpower Commission, while the federal functions in relation to unemployment compensation remained with the Social Security Board. In the early years of the Social Security Act this division of functions produced conflicts which perplexed the states and to some degree interfered with efficient administration. At all times, however, the principal agency of the national government concerned with unemployment compensation has been the Social Security Board.

The Social Security Board throughout its history has been an efficient agency, operated on a strictly non-political basis. Dr. Arthur J. Altmeyer, its guiding genius, ranks among the top federal administrators and its other members and principal staff executives have been able, high-grade people. When unemployment compensation started there were no trained administrators, but the Social Security Board attracted a goodly percentage of all the people in this country who had any more than a most superficial knowledge of the subject. In contrast, in the states many of the top administrators were political appointees and the lower prestige and salaries resulted in less promising staffs.

In the American system, the actual administration of unemployment

of unemployment compensation is based on the author's observations and notes, but has been checked with many people both in the state and federal administrations.

compensation is a state function. The Social Security Board has never paid unemployment compensation to any one nor has it any direct contacts with claimants. The states collect all the unemployment compensation funds, determine the eligibility of claimants and make all payments. But the Social Security Board has had a much larger role in the administration of unemployment compensation than is suggested by the brief provisions of the Social Security Act. This is a consequence, in part, of the ability and aggressiveness of the staff of the Board, but above all of the fact that the Social Security Board controls all of the funds for administration. The Act does not specifically provide for this control, but it has been thus interpreted from the start. With the exception of the Wisconsin act, none of the original state laws made any provisions for financing the administration of unemployment compensation other than from the federal aid dispensed by the Social Security Board.³⁷ The result is a situation well expressed in the old adage, "He who pays the piper can call the tune." The Social Security Board has not hesitated to do so. It has insisted not only upon strict accounting for all funds it allots, but upon detailed budgets setting forth the purposes of all expenditures.

On its face, this is not a good arrangement. The states which spend the money bear no part of the costs, while the Social Security Board sits in judgment upon their acts while bearing no responsibility therefor. But, while this has led to much senseless bickering, bitter recriminations, and unfortunate hostilities, the results have not been wholly bad. The state administration of unemployment compensation is better for the interference of the Social Security Board, and it is my belief that the provisions of the unemployment compensation laws are more liberal today than they would have been by this time under either exclusively federal or state administration.

Although the Social Security Board exerted a very great influence on the provisions of the original state unemployment compensation laws, it was less helpful to the states with their initial problems of administration. At this stage many of the states asked the Social Security Board for assistance, but the Board let the opportunity pass. Instead of sending its staff people into the states to work the administrators on their problems, it took the attitude of merely reviewing critically

37. No state other than Wisconsin made any provisions for funds for administration apart from the federal grants-in-aid until Missouri did so in 1941. Now 17 states, including Wisconsin and Missouri have such provisions, 13 of these amending their laws to this effect in 1945. These states all utilize interest earnings and penalties on overdue payments as the sources of special administrative funds they have created. No state other than Wisconsin has thus far used any of its own moneys for administration and Wisconsin did so only prior to the time when its law was approved as complying with the Social Security Act. The 17 states which now have special administrative funds, however, are far less dependent upon the funds controlled by the Social Security Board than nearly all states have been, until very recently, in the administration of their unemployment compensation laws.

the activities of the state administrators. The Social Security Board gave a very great impetus to good state administration, however, by its insistence upon keeping out politics and basing the selection and tenure of all employees in the state administrations on a merit basis. Congress had expressly amended the Social Security bill in the course of its passage to deprive the Social Security Board of any control over the personnel, tenure, or salaries of the people in the state administrations, but the Board courageously interpreted this provision as having reference only to individuals and not to its insistence upon selection on a merit basis. The great majority of the states, unlike the national government, had no civil service systems. The Board met this situation by requiring the states (as a condition of receiving federal aid for administration) to establish special merit systems for employees concerned with social security services. In doing so, it not only was largely responsible for the fact that the unemployment compensation administrations got staffs which while inexperienced were able to learn from experience, but also gave impetus to the passage of general civil service laws in a number of states.

Most of the states began the payment of benefits in 1938, a year of a sharp depression and rapidly increasing unemployment. Preparations were inadequate, and the state administrations were soon swamped by the large number of claims which were filed. In some states, including several of the most important industrial ones, there was a near breakdown in administration, with claims piling up which were not acted upon for months. Within half a year or so, however, this situation was straightened out, and in a majority of states no such condition ever developed. Since this early period there have been few complaints about delays or mixed-up records. Costs of administration have been much lower than expected. By this time the administration of unemployment compensation has been standardized and we now have a large corps of experienced administrators. And we have developed a strong tradition of non-political administration, although in many states the top administrators still go in and out with the governors.

Liberalization of Benefits. Great progress has been made in the liberalization of benefits. Literally every state has increased the benefits payable under its unemployment compensation law.

At the time the states enacted their original laws, the Committee on Economic Security and the Social Security Board cautioned them to guard against letting their benefits get too high. In this vein the Social Security Board said in *The Federal-State Program for Unemployment Compensation*,³⁸ issued October 1, 1935 as the first publication in its *State Series: Unemployment Compensation*,

38. This was issued as a guide to the states in framing their unemployment compensation laws. The quotations are from page 6.

"It is suggested that the states should be conservative in fixing the benefit rates at the outset, and establish rates which it is believed can be paid in full except in a serious depression without exhausting the fund. If these rates prove to be lower than necessary they can be increased after the state has had experience."

In the same publication, it advised the states that estimates made by its actuaries indicated

"that if an unemployment compensation system for the entire country had been set up in 1922 with 3 per cent payroll contribution, 50 per cent benefit payments for total unemployment, a waiting period of four weeks within any year, and a maximum of twelve weeks of standard benefits within any year, it would have remained solvent and paid benefits in full until the end of 1933. . . . If a waiting period of three weeks instead of four had been provided, the maximum number of weekly benefits payable to an eligible employee within a year would have had to be reduced to eleven weeks."

The states were told that all matters affecting the liberality of benefits were within their control, but the plain implication of the Board's advice was that the benefits should not exceed those which the actuaries estimated to be possible on the basis of employment data for the years 1922 to 1933.³⁹

Actually, the benefit provisions of most of the original unemployment compensation laws were somewhat more liberal than the recommendations of the actuaries of the Social Security Board.⁴⁰ Only two states prescribed as long a waiting period as four weeks, but nearly all states which fixed a two or three weeks' waiting period also provided that an employee who became unemployed a second time within a benefit year would be subject to a further waiting period. Instead of the maximum duration of eleven or twelve weeks recommended by the

39. The extreme conservative character of these estimates resulted in large part from the fact that the actuaries loaded their cost figures by $33\frac{1}{3}$ percent, with the explanation that such a margin of safety is necessary because in all forms of insurance there is a tendency for the contingency insured against to increase. The soundness of this loading was questioned by the author at the time, but such was the dread of doing anything which the actuaries regarded as "actuarially unsound" that no one dared to advocate benefits as liberal as their cost figures (without the artificial loading) indicated to be possible.

40. Detailed comparisons of the State Unemployment Compensation Laws have been published by the Social Security Board from time to time. Comparative studies dealing with many aspects of these laws have been made by the staff of the Social Security Board and have been published either as publications of its Bureau of Employment Security or in the *SOCIAL SECURITY BULLETIN*. Especially helpful are the Board's *UNEMPLOYMENT COMPENSATION ABSTRACTS: PROGRAM STATISTICS; PROVISIONS OF STATE LAWS, 1937 TO 1944* (1944); Reticker, *Unemployment Compensation in the United States* (1944) 49 *INT. LAB. REV.* 446, and Reticker, *State Unemployment Compensation Laws*, *SOCIAL SECURITY BULLETIN*, July 1945, p. 9.

actuaries, most of the original unemployment compensation acts provided for a maximum of sixteen weeks, but on what is known as a "variable durations" basis under which employees who have not worked fairly steadily prior to unemployment exhaust their benefit rights in a shorter period. Only six states had longer maximum durations than sixteen weeks, all of these on a variable durations basis, and none of them had a maximum above twenty weeks. With few exceptions, the original laws provided for compensation on a 50 percent of earnings basis. All the laws, however, also fixed maximum weekly payments; the most common weekly maximum was \$15, but many states used a lower maximum and only two states a higher one. In a majority of the laws no minimum weekly benefit rates were specified and many states provided no compensation at all for partial unemployment.

No sooner had benefit payments begun than it became apparent that these provisions were very inadequate. Even during the sharp depression of 1938 most of the states then paying benefits collected more money currently from contributions than they paid out. Despite rapidly improving employment in the years which followed, high percentages of the workers entitled to unemployment compensation benefits exhausted their benefit rights before they found other work. While it is clear from such limited data as is available that but few of the recipients of unemployment compensation required supplementary relief or had to go on the relief rolls as soon as their compensation payments ended, the compensation checks they received were so much less than their prior earnings that they seemed totally inadequate.

The Social Security Board took the lead in pointing out the inadequacies of the benefits, almost from the time that benefits first became payable. In the actual liberalization which occurred, however, there was not much leadership. While the Social Security Board constantly dwelt upon the inadequacy of the state laws, it leaned backward to avoid giving the appearance of dictating to the states. Not until January 1, 1943 did it address definite recommendations to the state administrators for improvement of state laws. Not until shortly before the legislative sessions of 1945 did it appeal to the governors (for the first time since enactment of the original laws) to impress upon them the need for prompt legislative action to correct existing inadequacies. The Interstate Conference of Employment Security Administrators,⁴¹

41. This organization, originally known as the Interstate Conference of Unemployment Compensation Administrators, was organized by the Social Security Board and all expenses involved in its annual (and sometimes more frequent) meetings and committee meetings, together with those of the state administrators in attending these meetings have been paid from the administrative funds within control of the Board. Almost from the beginning, however, it has been a thorn in the flesh for the Board, serving as an agency to organize opposition to proposals for increased federal control.

the organization of the state administrators, has at all times appeared to be more interested in fighting federalization than in improving state legislation. It has made recommendations for changes in the existing laws only on a few matters of relatively minor importance. No comprehensive program for improvement of the state unemployment compensation laws emanating from state sources was presented until immediately prior to the legislative sessions of 1945, when the Council of State Governments came forward with proposals.⁴² Nor has organized labor ever developed such a program. While the state federations of labor and the state industrial councils have kept an eye on unemployment compensation legislation in the states, the great labor federations have taken the attitude that the only remedy lies in federal legislation and have all but neglected the states.

Yet very considerable progress has been made in the liberalization of the unemployment compensations laws and all of it through state action. Some states have liberalized their unemployment compensation laws in every year since these laws were first enacted. Such liberalization was most extensive in the regular sessions of 1943 and 1945. This year no less than twenty states increased both their weekly benefit maximum and their maximum benefit duration and twelve more states one or the other.⁴³ Even before the 1945 legislative sessions, no state had a waiting period longer than two weeks and nearly two-thirds of all the states had waiting periods of but one week. At the present writing, no state has a weekly benefit maximum of less than \$15, while 27 states (with 77½ percent of all workers covered) have maximums of \$20 or more. The maximum benefit duration is now twenty weeks or more in 32 states (79 percent of all workers covered). Partial unemployment is now compensated in all states. Considerable liberalization has also resulted, in many states, from changes in the benefit rates and benefit formulas.

Other Changes. Only brief note can be taken of other changes which have been made in the less than nine years since the enactment of the majority of the state laws.

Changes in coverage have been relatively slight. The so-called "unemployment insurance tax" in the Social Security Act applies only to employers of eight or more. Twenty-two states, however, from the outset provided for broader coverage, and ten omitted all numerical limitations. The number of states including employers of less than eight employees has now risen to 29 and that of states without any numerical limitations to sixteen. The increase in the total number of employees covered has been much greater, thanks to the greatly in-

✓ 42. COUNCIL OF STATE GOVERNMENTS, UNEMPLOYMENT COMPENSATION IN THE POST-WAR PERIOD (1944).

43. On the 1945 amendments to the state unemployment compensation laws see Reticker, *State Unemployment Compensation Laws*, SOCIAL SECURITY BULLETIN, July 1945, p. 9.

creased industrial employment of wartime, rising from around 21 million workers at the end of 1937 to 36 million in 1945.

Provisions governing eligibility for benefits have undergone far more changes. These have mainly had the effect of restricting eligibility and of denying benefits to some unemployed workers who would have qualified under the original laws. Many states which had originally had no such provisions in 1939 and 1941 included disqualifications for voluntary leaving of work, discharge for misconduct or refusal of suitable work, either denying all unemployment compensation in such contingencies or prescribing a much longer waiting period for workers unemployed for these reasons. At this writing, 27 states have all or some of these disqualifications, and a study by the Social Security Board of the effect of these provisions shows that, in five states, they operated to disqualify from 2.8 to 10.2 percent of all claimants in 1943.⁴⁴ No similar study has been made of the effects of changes in the state laws which have increased the requirements for eligibility to benefits in terms of the minimum earnings prior to unemployment. These have everywhere accompanied the adoption of uniform maximum durations of benefits. Initially, uniform maximum durations of benefits were provided in only one state law, while at the end of 1944 there were fifteen laws with such provisions. Their effect has been to increase the duration of benefits of employees who normally are regularly employed, but also to exclude from any benefits workers who have had little or only very irregular employment in covered employments.

At least one development (besides the slight extensions of coverage which have been noted) has operated to give benefit rights to workers not protected under the original unemployment compensation laws. This relates to what has often been discussed as one of the outstanding weaknesses of state administration—the failure to afford protection to workers whose work takes them into more than one state or who move from state to state. Initially, the state laws operated in 51 tightly compartmented jurisdictions, with the result that migrant workers were left, for all practical purposes, outside of the protection of unemployment compensation. The problem has not been completely solved, but real progress has been made, and this has been the outstanding accomplishment of the Interstate Conference of Employment Security Agencies.⁴⁵ Practically all states now have a uniform definition of employment under which the employees of a single employer who work in more than one state are treated as if all their work were done in one state. All states have subscribed to the Interstate Benefit Plan under which workers entitled to benefits in any state can collect these benefits

44. Friedman and Wandell, *Unemployment Compensation Goals in the Reconversion Period*, SOCIAL SECURITY BULLETIN, Sept. 1944, p. 6.

45. Rector, *Interstate Benefit Procedures in Unemployment Compensation*, AMERICAN ECONOMIC SECURITY (Chamber of Commerce of USA), June 1944, p. 5.

wherever they may go within the United States and preserve their rights when they accept employment outside of the state. Beyond this, a considerable number of states have within the last two years adopted the Interstate Plan for Combining Wage Credits and the Reciprocal Coverage Arrangement under which credits for employment by several employers and in different states are combined to give such employees the same benefits as if all their employment had been within a single state and for a single employer.

Changes relating to the financing of unemployment compensation have been as extensive as those affecting benefits. From the outset, the American laws differed from the British act in placing the burden of financing almost exclusively upon the employers. This characteristic has become even more pronounced, despite the fact that organized labor, reversing its original position, now favors tri-party financing. Ten states at one time provided for employee contributions and one law for a government contribution. The last mentioned provision was operative for only one year and today only four states have employee contributions, and the total collections from employees in 1944 totaled but 85 million dollars, contrasted with 1,100 million dollars collected from employers.

Of greater consequence has been experience rating, which likewise is a distinctive feature of the American laws. Whether employer contribution rates should be uniform or varied in accordance with the employer's experience was central in the controversy over pooled funds versus employer reserves which preceded the enactment of the unemployment compensation laws.⁴⁶ It remained the major controversial

46. There never were employer reserves in the accounting meaning of that term under any unemployment compensation law except for a small number of such reserves in Wisconsin which existed for one year prior to the enactment of the Social Security Act. As has been previously noted, the Huber bill in Wisconsin in the 1920's contemplated a pooled fund with the employer contribution rates varying with their individual risks and unemployment records. The Groves bill as introduced also proposed a single pooled state fund, in so far as the collection and investment of the fund and the payment of benefits are concerned, but provided for a separate employer account for each employer, which was credited with all contributions paid by the employer and charged with all benefit payments made from the state fund to his employees—the principal purpose of such individual employer accounts being to determine the employer's future contribution rate. These provisions were retained in the Wisconsin act of 1937, but, as has been recited, that act allowed employers to establish unemployment reserves of their own, instead of making contributions to the state fund. Only a handful of employers ever took advantage of this provision of the Wisconsin law. In an amendment to the Wisconsin law enacted in 1935 it was made clear that the moneys credited to an employer's reserve account do not belong to him. Another Wisconsin amendment adopted in 1937 created an equalizing account from which payments of benefits were to be made to the employees of any employer whose employer account was exhausted—a contingency which had not occurred up to that date. In actual operation the Wisconsin state fund and the Wisconsin administration at all times have been practically the same as those of states having pooled fund laws with experience rating provisions, although until 1945 it was entitled an "employer reserve fund" law. This applies also to all other employer

issue until, in the last few years, the federalization of unemployment compensation became a practical political possibility. It has, moreover, pretty much determined the alignments on the federalization issue and, despite the fact that experience rating now prevails in nearly all of the states, is still hotly debated among the specialists in this field.

Experience rating was sanctioned in the provision of the Social Security Act allowing employers who had built up specified reserves, after no less than three years of contributions, to credit as an offset against the 3 percent tax levied in the Act not only their actual contributions to state unemployment compensation funds but also the reductions in contributions rates allowed them under state laws. Holding forth the hope of reduced contribution rates in the course of time, this provision led employers generally to support the inclusion of experience rating provisions in the state laws. Organized labor as strongly opposed such provisions, with the Social Security Board officially neutral but with its staff generally supporting the position of organized labor. The outcome of this conflict was that 40 of the 51 "states" included experience rating provisions in their original laws, but among the eleven states without such provisions were both New York and Pennsylvania. As the time for putting the experience rating provisions into effect approached, a number of states either repealed or postponed the effective date of these provisions. In the years 1938 to 1941, seven states took such action while only five states which had not provided for experience rating in their original laws did so during this period. Since then seven states, including both New York and Pennsylvania, have provided for experience rating, while no state has repealed such provisions. As compared with 40 states with experience rating on December 31, 1937 and 38 on December 31, 1941, there are now 45 states, including all the major industrial states, which make provision for experience rating. These provisions, moreover, are now in actual operation in all of these states, as against 17 states in which this was true at the end of 1941.

FEDERAL LEGISLATION AND PROPOSALS

Federal Legislation Subsequent to the Social Security Act. There has been much greater interest in proposals before Congress affecting unemployment compensation than in the efforts to improve the existing laws through state action. The results in legislation enacted, however, have been much more meager.

The three most important acts passed by Congress during these ten years have been the District of Columbia Unemployment Compensation

reserve laws. "Pooled funds" and "employer reserves" as used in connection with unemployment compensation have been far more "fighting words" than descriptive terms. On the other hand, there always has been and still is a very real difference between laws (whether "pooled fund" or "employer reserve" laws) with experience rating and those without such provisions.

tion Law, the Railroad Unemployment Insurance Act, and the Servicemen's Readjustment Act (often called the "G. I. Bill of Rights").

The District of Columbia law was passed soon after the Social Security Act in 1935.⁴⁷ It differed from the original state laws in two major respects: it provided for government contributions (along with the usual employer contributions) and varied the benefits in accordance with the number of dependents of the unemployed worker. Since its enactment the only important changes in this law have been the repeal of the provisions for government contributions, the inclusion of experience rating provisions, and some liberalization of benefits. Dependent's allowances have remained a distinctive feature of the District of Columbia law, which was not copied anywhere else until 1945 when three states adopted similar provisions.

The Railroad Unemployment Insurance Act⁴⁸ will be discussed hereafter and the Servicemen's Readjustment Act is not primarily an unemployment insurance law. This 1944 law, however, does provide for readjustment allowances which serve the same purpose as unemployment compensation. These allowances will be paid to unemployed veterans during the first two years after their discharge, and in a flat amount of \$20 per week for total unemployment and for maximum periods of from 26 to 52 weeks, varying with the length of service. The allowances are paid from the Treasury and are administered by the Veterans' Administration but through the state unemployment compensation services.

The amendments to the parts of the Social Security Act dealing with unemployment compensation enacted by Congress since 1935 have all been very minor. The most important has been an increase in the appropriation for federal aid to pay the costs of state administration. In the early years of unemployment compensation Congress several times delayed passage of the appropriations acts including this item, with resulting embarrassment to the states. This has not occurred in more recent years, and the Congressional appropriations for this purpose have always been ample. The only other changes in the provisions of the Social Security Act which are of sufficient importance to be noted in this article are those which were made by the Social Security Act Amendments of 1939, the only major revision of the Act to date, which included a number of changes in the coverage of the 3 percent tax (90 percent of which is offset by state contributions), the total effect of which was some narrowing of coverage, and which exempted from this tax the excess above \$3,000 per year in the earnings of any employee.

Railroad Unemployment Insurance Act. The Social Security Act exempted railroads from the federal 3 percent tax and most of the state

47. 49 STAT. 946 (1935), 46 D. C. CODE § 301 (1940).

48. 58 STAT. 284 (1944), 38 U. S. C. § 693 (Supp. 1945).

laws included a like exemption, because it was expected that a separate unemployment insurance system would be established for them. Work on such an act was begun before the Social Security Act became law, but it was not until 1938 that the Railroad Unemployment Insurance Act was passed by Congress.⁴⁹ This was to all practical intents and purposes an agreed-to measure, worked out by committees of the railroads and the railroad labor unions under the guidance of Murray W. Latimer, chairman of the Railroad Retirement Board. It set up a national unemployment insurance system for the employees of the railroads, express companies, and sleeping-car companies, under the administration of the Railroad Retirement Board. It provided for a uniform contribution rate from the carriers of 3 percent and a schedule of benefits varying by wage classes and ranging from \$1.75 to \$3.00 per day. A waiting period of seven days during any half month and a maximum duration of benefits for 80 days in any year were prescribed. The total effect of these provisions was a benefit system considerably less liberal than that provided under most of the state laws, although more liberal to the lowest paid employees. In the first year of operation, benefits averaged only \$18 for fifteen days of total unemployment, and the total of the payments in that year amounted to only 26 percent of the contributions collected.

A comprehensive revision of the Railroad Unemployment Insurance Act in 1940⁵⁰ liberalized very considerably the benefit provisions. The waiting period was reduced to four days in a two weeks period, the maximum benefit was increased to \$4.00 per day, and the maximum benefit duration to 100 days per year. With these amendments, the Railroad Act ranks in liberality today somewhere near the average of the state laws. Proposals to increase the benefits now pending in Congress are supported by the railroad labor unions but opposed by the railroads.

Unemployment Compensation for Maritime Workers. All maritime activities were exempted from the tax provisions of the Social Security Act as it was expected that Congress would soon set up a national unemployment compensation system for maritime workers. Work on the preparation of a bill to accomplish this purpose began soon thereafter. After the Railroad Unemployment Insurance Act became law in 1938, the National Maritime Union launched a campaign for such legislation and received some encouragement from President Roosevelt. In 1941, a Seamen's Unemployment Insurance bill,⁵¹ supported by most of the maritime labor unions and the Railroad Retirement Board, was accorded hearings by the Merchant Marine and Fisheries Committee of

49. 52 STAT. 1094 (1938), 45 U. S. C. § 351 (1940).

50. 54 STAT. 1094, 45 U. S. C. § 351 (1940).

51. H. R. 5446, 77th Cong., 1st Sess. (1941). See also *Unemployment Compensation for Maritime Employees* (1941) 41 COL. L. REV. 1217.

the House. The next year, Admiral Land, chairman of the Maritime Commission, urged Congress to pass such legislation. But none of the bills for unemployment compensation for maritime workers have ever come to a vote in either house.

Because it was expected that a federal system would be established and there was serious doubt whether the states had any authority to include maritime workers in their unemployment compensation systems, nearly all of the states excluded these employees from their original laws. Failure of Congress to act, and court decisions upholding the right of the states to include at least some types of maritime workers,⁵² have altered the situation to such an extent that nineteen states now include all or some maritime workers within the scope of their state acts.⁵³ Proposals to bring all maritime workers within the scope of the state laws are included in the Administration bills now pending in Congress for supplementary federal unemployment compensation benefits.

Proposals for Federal Standards, Reinsurance, and Tax Reduction. Proposals for basic changes in the unemployment compensation provisions of the Social Security Act which have not become law have attracted far more attention than any legislation actually enacted affecting unemployment compensation. These have centered about increased federal control and participation in unemployment insurance. In the first years after passage of the Social Security Act complete federalization was not contemplated, but rather the establishment of uniform federal standards and a national reinsurance fund. The earliest of such proposals was made in 1939 in a report by the Special Senate Committee to Investigate Unemployment and Relief,⁵⁴ popularly known as the "Byrnes Committee," which urged that the Social Security Act be amended to provide that no state unemployment compensation law was to be recognized for tax offset purposes unless it met prescribed minimum standards. A bill to carry out these recommendations was promptly introduced by the committee chairman, Senator (now Secretary of State) Byrnes.⁵⁵ However, no further action was ever taken upon it.

The next proposal for federal standards in unemployment compensation was the McCormack amendment to the bill which became the Social Security Act amendments of 1939.⁵⁶ This amendment represented

52. *Great Lakes Dredge & Dock Co. v. Huffman*, 319 U. S. 293 (1943), *aff'g* *Great Lakes Dredge & Dock Co. v. Charlet*, 134 F. (2d) 213 (1943); *Matter of Cassaretakis*, 289 N. Y. 119, 44 N. E. (2d) 391 (1942); *Shore Fishery v. Board of Review*, 127 N. J. L. 87, 21 A. (2d) 634 (1941).

53. For a good brief summary of the status of maritime workers under the state unemployment compensation laws see Reticker, *State Unemployment Compensation Laws*, SOCIAL SECURITY BULLETIN, July 1945, p. 23.

54. SEN. REP. No. 302, pt. 1, 76th Cong., 1st Sess. (1939).

55. S. 2203, 76th Cong., 1st Sess. (1939).

56. H. R. 5482, 76th Cong., 1st Sess. (1939).

an attempt to combine tax reduction, popular with businessmen, with federal standards, desired by organized labor. It proposed minimum standards to which the state laws would have to conform, similar to those recommended by the Byrnes Committee. Along with such standards it authorized the states to reduce the contribution rates to their unemployment funds whenever they had been built up to one and one-half times the total contributions collected in the best year or to this percentage of the total benefits paid out in the worst year, whichever was the higher. The amendment passed the House on recommendation of the Ways and Means Committee, but was killed in the Senate after both organized labor and the Social Security Board expressed opposition to the tax reduction feature.

In the next session, the McCormack amendment (with some changes) became the McCormack bill,⁵⁷ which was introduced at the request of the American Federation of Labor. Not to be outdone, the Congress of Industrial Organizations came forward with the Murray bill,⁵⁸ differing only in details from the McCormack bill. Both bills prescribed benefit standards somewhat more liberal than the predecessor proposals;⁵⁹ both drastically restricted experience rating and provided for a reinsurance fund to be established by the national government to serve as a source to which the states might turn to pay benefits in depressions when their state funds became exhausted. Neither bill came to a hearing, however, and these proposals are of interest principally as representing organized labor's program at this time for improving unemployment compensation.

During the next year and a half, immediately prior to Pearl Harbor, new proposals for increased federal control were put forward and the battle lines on this issue were more tightly drawn, but there was little publicity about what was happening and no action at all in Congress. In this period, the Social Security Board in its official statements recommended only federal standards and a national reinsurance system. Within the Board there was serious discussion of a program under which minimum federal standards would be combined with an overall reduction in 3 percent tax on employers of eight or more. The American Association for Social Security publicly urged such a program, taking the position that a 2 percent contribution rate was ample.⁶⁰ During this period also, the Bigge plan (named after its author, Pro-

57. H. R. 7762, 76th Cong., 3d Sess. (1940).

58. S. 3365, 76th Cong., 3d Sess. (1940).

59. The McCormack bill prescribed that the state laws must provide for a waiting period of not more than one week, a minimum benefit of \$6 per week, a maximum benefit of at least \$24, and a uniform maximum benefit duration of 24 weeks per year. The Murray Bill prescribed the same standards with the difference that its minimum benefit was \$7 per week, and the maximum benefit \$25.

60. N. Y. Sun, Oct. 14, 1940, p. 20, col. 2.

fessor George E. Bigge, a member of the Social Security Board) made its appearance and was the most widely discussed proposal at the time.⁶¹ This contemplated a reduction in the tax offset to a maximum of 2 percent, making the federal tax actually collected 1 percent, instead of 0.3 percent. In return, the national government was to pay 75 percent of all benefits exceeding those which the states could finance with 2 percent contribution rates. Neither this proposal nor any other emanating from Washington was acceptable to the state administrators. A permanent lobby, privately financed but working in close conjunction with the state administrations, was set up, which most uncompromisingly fought all proposals for changes in existing provisions of the Social Security Act relating to unemployment compensation. Under these conditions, the people who had championed federal minimum standards gradually came to the conclusion that complete federalization of unemployment insurance was the only solution.

Wartime Changes and Proposals. The first definite recommendation for the federalization of unemployment compensation by any agency of the national government was made, shortly before Pearl Harbor, by the Labor Division of the Office of Production Management⁶² which advocated the federalization of both the public employment offices and the administration of unemployment compensation. The first of these recommendations was carried out almost immediately after the Axis made its attack upon the United States. The President, in a telegram to all governors, requested them to turn over to the national government the state public employment offices, with an explicit statement to the effect that the states would retain the administration of unemployment compensation. This request was complied with by all states, but by many of them only with a statement by their governors that they interpreted the President's telegram as including a promise that the public employment offices would be returned to the states at the end of the war. Such a promise has since been spelled out very definitely several times by Congress, most recently in the annual appropriation to the Social Security Board for the fiscal year beginning July 1, 1945. So it came to pass that throughout the war period the public employment offices have been operated by the national government, while unemployment compensation has remained with the states.

In his budget message of January 7, 1942, President Roosevelt recommended "liberalization and expansion of unemployment compensation in a uniform national system." It was expected that this would be followed by an Administration proposal either for the federalization of

61. First presented in Bigge, *Some Unsolved Problems in Connection with Unemployment Compensation* in CONFERENCE OF EMPLOYMENT SECURITY AGENCIES OF NEW YORK, PENNSYLVANIA, NEW JERSEY, AND DELAWARE (Hershey, Pa., Feb. 14, 1941) 4.

62. See *Federalization of Employment Service Proposed*, ECONOMIC SECURITY BULLETIN (National Ass'n of Manufacturers), Oct. 1941, p. 8.

unemployment insurance or for uniform federal standards for unemployment compensation. Instead, the President recommended passage of a bill appropriating 300 million dollars for supplementary unemployment compensation to workers temporarily unemployed during the conversion of American industry to war production.⁶³ This proposal was premised upon an expected large volume of unemployment, the inadequacy of the benefits under state laws, and a fear of the exhaustion of many state funds. Extended hearings were held by the House Ways and Means Committee, but the bill was never reported. Unemployment during the conversion period was much smaller than expected and the state funds did not have to pay out in benefits even as much as they were currently collecting from contributions.

Thereafter, throughout the war period, unemployment was at the lowest levels ever attained. There was little interest in unemployment compensation and no occasion for concern about the adequacy of the state funds. By this time, organized labor, the Social Security Board, and many top officials in the national government were openly advocating federalization, but only as a postwar measure so that it received scant attention while we were at war.

Federalization as Part of a Unified Social Insurance System. In the last years of the war, the federalization of unemployment compensation was advocated, not as an independent measure, but as one feature of a unified and enlarged social security program. It was first presented in this light in the report of the National Resources Planning Board on *Security, Work, and Relief Policies*,⁶⁴ published in March 1943, of which Dr. Eveline M. Burns and Dr. William Haber were the principal authors. This report was not followed up by any bills in Congress, but some months later the (first) Wagner-Murray-Dingell bill⁶⁵ was introduced. While it presented a comprehensive social security program, its two most discussed features were a national health program and a national unemployment compensation system to replace the existing federal-state system. This national system would have all-inclusive employee coverage, with uniform benefits throughout the country, but varying with earnings and the number of dependents, with \$30 per week as the maximum benefit and 26 weeks as the maximum duration.

63. The Administration's program was first presented to Congress in two bills, H. R. 6465 and H. R. 6466, by Congressman Cannon, Chairman of the Appropriations Committee. These were soon replaced by H. R. 6559, introduced by Chairman Doughton of the Ways and Means Committee. It was upon this last bill that extended hearings were conducted by the Ways and Means Committee.

64. This report was published in two documents: a long report by the Committee on Long Range Work and Relief Policies of the National Resources Planning Board on SECURITY, WORK, AND RELIEF POLICIES, and a summary of this long report, with an introduction by the NRPB, which President Roosevelt transmitted to Congress, which bears the title POST-WAR PLANNING.

65. S. 1161, 78th Cong., 1st Sess. (1943).

Outside of Congress, this bill was widely discussed and often referred to as an Administration measure, but it was never endorsed by President Roosevelt, never came to a hearing in either house, and died with the adjournment of the 78th Congress.

It was not until several months after the 79th Congress convened in its present First Session that the second Wagner-Murray-Dingell bill⁶⁶ made its appearance. Although the bill differs in quite a few respects from its predecessor, few changes were made in the unemployment insurance provisions. Like the first bill, it provides for the federalization of unemployment compensation and the retention of the public employment offices by the national government. To date, no hearings have been held, but the alignments on the measure are already quite clear. It is actively supported by organized labor and the Social Security Board, and opposed by the Interstate Conference of Employment Security Agencies and the Council of American State Governments. There have been reports that President Truman will endorse the bill, but, to date, he has not done so.

Unemployment Compensation for Veterans and War Workers. In Congress, major attention has been given not to the Wagner-Murray-Dingell bill but to proposals designed to meet the situation of an expected large volume of unemployment during the transition from a wartime to a peacetime economy. This problem first received real attention in Congress in the summer of 1944. One aspect was dealt with in the Servicemen's Readjustment Act,⁶⁷ previously noted. More comprehensively, the problem was considered in connection with demobilization legislation. Two rival bills were considered in the Senate: the Kilgore bill and the George bill.⁶⁸ The former provided, in effect, for the federalization of unemployment compensation, with more liberal benefits than are paid under any state law. The latter left unemployment compensation with the states, but made provisions for unemployment compensation for federal employees to be financed by the national government although paid through the state unemployment compensation services. While the Kilgore bill, despite a favorable report by the Military Affairs Committee, never came to a vote, the George bill passed both houses. In the House, however, the provisions for unemployment compensation for federal employees were eliminated. As passed, its only provision relating to unemployment compensation was one for loans from the Treasury to any state whose unemployment compensation fund might approach exhaustion during the reconversion period—an unlikely contingency.

Several months before the end of the war, President Truman in a

66. S. 1050, 79th Cong., 1st Sess. (1945).

67. 58 STAT. 284 (1944), 38 U. S. C. § 693 (Supp. 1945).

68. The George bill was S. 1767; the Kilgore bill was S. 1893, and a substitute therefor, the Kilgore-Murray-Truman bill was S. 2061 (all 78th Cong., 2d Sess., 1944).

special message recommended legislation for supplementary federal unemployment compensation during the period of reconversion. Not until nearly two months later was any bill introduced to carry out these recommendations. In July two bills having this objective made their appearance, the Doughton bill in the House and the Kilgore bill in the Senate.⁶⁹ While differing in some respects, both bills propose that in any state which enters into an agreement with the Director of War Mobilization and Reconversion the national government will pay until June 30, 1947, through the state unemployment compensation agency, supplementary unemployment compensation to increase the maximum payments to eligible workers to \$25 per week and the maximum duration to 26 weeks and also to include within the scope of benefits all workers otherwise eligible now excluded from coverage, including maritime workers. Under these bills also, the national government will pay unemployment compensation to its civilian employees whose jobs are terminated, subject to the same conditions as apply to private employers in the state where employed, and will pay up to \$200 transportation costs to displaced war workers.

Hearings on these bills were begun in both houses during the last week in August. On September 6, the President in his reconversion message urged immediate passage of this proposed legislation and postponement of the return of the public employment offices to the states until reconversion is completed. The Senate responded by passing the Kilgore bill on September 20, with amendments providing for deletion of the provisions for the increase of the maximum payments to \$25 per week and for return of the public employment offices to the states within 90 days. By this time, no action has been taken on the Doughton bill and what the House will finally do with the President's recommendations appeared still very uncertain.

CONCLUDING OBSERVATIONS

A survey of the legislative developments such as is presented in this article can only inadequately measure the progress which has been made in unemployment compensation in the United States. "The proof of the pudding is the eating." When the test of the results in actual operation is applied, a strong case can be made for the thesis that unemployment compensation has proven a disappointment.

Proof in support of this thesis is afforded by the small benefit payments. In the ten years since passage of the Social Security Act, above 9 billion dollars have been collected in taxes (contributions) for unemployment compensation purposes but less than $2\frac{1}{4}$ billion dollars has been paid out in benefits. Despite all of the liberalization of benefits, the average benefit for total unemployment now being paid

69. H. R. 3736 and S. 1274, 79th Cong., 1st Sess. (1945).

is only \$18 per week. Even in the prosperous war years, large percentages of all unemployment compensation beneficiaries have exhausted their benefit rights before finding employment. As recently as 1941, above 50 percent of all claimants were in this plight in no less than nineteen states. Nearly a third of all workers in this country, moreover, are entirely outside the protection of the unemployment compensation laws.

Looked at historically, however, this record appears better. Instead of benefits limited to twelve weeks at the maximum, after a four weeks waiting period, as the Social Security Board originally suggested on the basis of the forecasts of its actuaries, most states now have maximum benefit durations of twenty weeks and maximum benefits of \$20 per week or more, with a one week waiting period. These are as liberal as the standards which the champions of uniform federal standards sought to impose upon the states in the period prior to our participation in the war. The average benefits paid have increased even more. As late as 1940, the average benefit for total unemployment was but \$10.56 per week, while today it is \$18. This is not a munificent amount, but much greater than the average of the payments to the recipients in any of the public assistance programs or to the primary beneficiaries in the federal old-age insurance system. While disbursements totaling $2\frac{1}{4}$ billion dollars in the six or seven years that most states have paid unemployment compensation benefits are small compared with the contributions collected, this figure triples the total of all payments made to date in the old-age and survivors' insurance system. And the present total reserve of 7 billion dollars is much larger than anyone dared hope might be accumulated in preparation for the next depression.

These results are mainly attributable to the full employment which has prevailed during the war. Except for the year 1938, when most of the states began benefit payments, unemployment declined steadily until it reached a modern low in the last years of the war. Under such conditions unemployment compensation was not put to much of a test.

We are now in the postwar period, in which this country faces new conditions and new problems. While it is to be hoped that reconversion unemployment will be of short duration, there is every reason to expect unemployment compensation to be much more important in postwar America than it was during the war. Under the new conditions we now face, there is danger in looking backward rather than forward. Nothing is to be gained by name calling or the rehashing of issues which have little present significance; for, while unemployment compensation has had an interesting history in this country and one which records real progress after difficult beginnings, it is not an institution which has attained final form. How it will develop is likely to depend upon its functioning in this period of its first real test.