Possible revisions of our unemployment compensation laws

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POSSIBLE REVISIONS OF OUR
UNEMPLOYMENT COMPENSATION LAWS

by

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C. INTRODUCTION

One of the unfortunate byproducts of the capitalistic system is unemployment, which exists to a greater or less extent at all times. Such unemployment may be the result of one or more of several factors, chief among which are seasonal influences, the effects of the business cycle, and the displacement of individuals because of technological changes.

In former times, individuals could offset the effects of unemployment by their own efforts to a greater extent than is possible today, due to the present trend toward urbanization and the specialization of tasks resulting from mass production methods. No longer can unemployed workers make their own economic security by going west in response to Horace Greeley's famous dictum. In most instances they must wait around until their employers call upon them to return to their jobs at the shop or the factory.

Much thought has been given to the problem of regularizing employment by such means as ironing out the seasonal peaks in certain industries, by attempting to control the business cycle, and by a training program to fit workers to acquire new skills to adapt themselves to changing technological processes. In spite of all this, unemployment is still with us.

As any doctor knows, the next best thing to curing a patient, if this cannot be accomplished at once, is to make
the patient comfortable until his natural recuperative powers bring him back to health once more. Similarly, if our present knowledge of economics or our ability, and willingness to apply what we know, are inadequate to cure unemployment, we can at least make the lot of the unemployed easier until the natural forces of the economic system restore jobs to those out of work.

In other days, when unemployment was more frequently the result of individual incompetence or emotional incompatibility, the accepted method of relieving the distress caused by such unemployment was charity, largely from private sources. But charity, however sweet it may be traditionally, has a way of souring its beneficiaries if continued for too long a time. This is true both with the older practice of private charity and with the present plan of governmental relief measures.

Since the early Colonial days, Americans have possessed an innate respect for frugality and thrift. Putting something away for a "rainy day" had become almost an obsession until the more recent days of installment buying and the New Deal. The difficulty with saving for a "rainy day", however, is that the national income is so inequitably distributed that millions of Americans who are earning money are earning barely enough to live on, and have little left over to add to their savings after the necessities of life have been paid for. Furthermore, voluntary savings on the part of
individuals may be erratic and may be drawn upon and spent needlessly.

However, if a plan could be devised whereby workers could have a certain percentage of their wages deposited in a general fund, there to remain indefinitely and be subject to withdrawal only when such workers became unemployed, there would be created a source of funds which would assist in tiding such workers over their periods of unemployment. Such a plan, to be fully successful, would have to be fairly universal in its scope and compulsory in its application.

It is just such a plan as this that the so-called Social Security Act, enacted by Congress in 1935, attempts in part to bring about, in the form of what is called "unemployment compensation". In its simplest form, unemployment compensation is a system whereby a sum of money is set aside by or in behalf of workers when and as they are employed, which money is held in trust by a designated authority and is later paid out to such workers, as a right and not as an act of charity, in accordance with a specified plan when they become unemployed, and at the same time remain willing and able to work. These unemployment compensation benefits received by unemployed workers in lieu of wages are designed to cushion the economic shock of unemployment.

The Social Security Act does not of itself establish a national system of unemployment compensation. It simply, among other things, enables the several States to make more adequate provision for the administration of their unemploy-
ment compensation laws, when and if the States choose to enact such laws.

The writer has no fault to find with the theory underlying unemployment compensation, and has in his own mind accepted this new governmental function as a permanent part of the life of the nation. The present study confines itself to a discussion of possible modifications in the organizational structure and methods of administering unemployment compensation. Since no question of constitutionality now remains to cloud the issue, inasmuch as the United States Supreme Court has upheld all phases of unemployment compensation, and since 25 of the 51 benefit paying jurisdictions have had a year or more of benefit paying experience, actual operating conditions can be used as a basis for proposing such modifications as may appear necessary.

Many questions concerning which serious discussion has taken place are not included in this study, as for example, the wisdom of levying a tax on pay rolls to secure the funds necessary to carry on the system. In this connection it has been argued that since the power to tax is the power to destroy, any tax tends to decrease its base. Furthermore, since a tax on pay rolls rests ultimately on the base of employment it is contended that such a tax exerts a depressive effect on employment, thus aggravating the situation which unemployment compensation was designed to alleviate. However, the relative convenience of levying a tax on pay rolls may have
been an important factor in its establishment.

The possibility of a labor turnover tax has been suggested in place of the present tax on pay rolls to avoid the possibility of decreasing the amount of pay rolls, which is the base of the existing tax. Such a labor turnover tax would probably be opposed by large corporations, since it would penalize them for making use of the "labor reserve" system of maintaining the necessary personnel to carry on their operations. Without such a labor reserve to draw upon when needed and dispense with as soon as the need had passed, such corporations would of necessity have to fix their attention more on their workers and less on their stockholders, which state of affairs might prove irksome to some corporations, as for instance, in the steel industry.

It should be remembered, however, that aside from the purely insurance aspect of unemployment compensation, it is not essential to raise the money to operate the system by levying taxes on either pay rolls or on labor turnover. Additional income taxes or some form of a sales tax could just as well be levied to secure the funds with which to pay unemployment compensation benefits.

These references to the questions involved in raising revenue to pay unemployment compensation benefits have been introduced merely to show that the problem at hand is not one only of organizational structure. Such taxation matters are reserved for future study as more factual information is ac-
cumulated with the passage of time.

The general pattern of this thesis is first to explain briefly the present organization of the system of unemployment compensation in this country; then to point out the difficulties encountered in the existing overlapping of authority and the consequent unfortunate effect on administrative policy; and then to analyze the salient points of the various state unemployment compensation laws to show their inequities and inequalities with respect to unemployed individuals. At this point the writer turns to the question of whether or not a centralized system of unemployment compensation under the direct control of the Federal government would be desirable. Following this, an analysis is made of the ideas now held by the United States Supreme Court, as expressed in their decisions in the "Social Security" cases, in an attempt to determine the probable reaction of the Court to a centralized Federal system of unemployment compensation based on the "general welfare" clause of the Constitution. Having answered this question of the attitude of the Supreme Court toward this matter to the satisfaction of the writer, at least, the thesis proceeds to a definite conclusion which outlines the personal beliefs of the writer in regard to possible revisions in our unemployment compensation laws.

The writer has been connected with the Massachusetts State Employment Service since 1933, and has witnessed at first hand its growth under the Wagner-Peyser Act and its subsequent
absorption into the unemployment compensation system. Much of the material contained in this thesis is quoted from outside sources simply to permit further study of the matter by others from data which are readily available to anyone, even though the writer was aware of such material upon its original issuance, as a consequence of his official duties.

It should be distinctly understood that all observations and conclusions presented herein are the personal opinions of the writer, and do not represent, either directly or by implication, the views or beliefs of any official body engaged in any phase of the administration of unemployment compensation or employment service activities.
D. THESIS

POSSIBLE REVISIONS OF OUR
UNEMPLOYMENT COMPENSATION LAWS
I. PRESENT ORGANIZATION OF THE UNEMPLOYMENT COMPENSATION SYSTEM IN THE UNITED STATES.

1. The Social Security Board

The mainspring of the entire program of governmentally operated unemployment compensation in the United States is the so-called Social Security Act, which received the approval of President Roosevelt on August 16, 1935. Its purpose, as outlined in its full title, is: "An Act to provide for the general welfare by establishing a system of Federal old-age benefits, and by enabling the several States to make more adequate provision for aged persons, blind persons, dependent and crippled children, maternal and child welfare, public health, and the administration of their unemployment compensation laws; to establish a Social Security Board; to raise revenue, and for other purposes." ¹

Of the eleven "Titles", or major sections of the Act, only two apply directly to unemployment compensation. These are Title III and Title IX. The former relates to grants to states for unemployment compensation administration, while the latter imposes a tax on employers of eight or more, and then goes into some detail concerning the certification of state unemployment compensation laws, the investment of the funds paid in as contributions to the system, general administrative

¹. Public -- No. 271 -- 74th Congress.
policy, certain important definitions, and the allowance of additional credit. Title IX is the real meat of the system itself, while Title III is of interest primarily from an administrative point of view.

By the terms of Title III, there is authorized to be appropriated the sum of $4,000,000 for the fiscal year ending June 30, 1936, and the sum of $49,000,000 for each fiscal year thereafter, to be distributed to the states for the administration of approved unemployment compensation plans. The Social Security Board is given wide discretion in the amount of money to be granted to each state, and is bound only by general rules regarding the minimum standards which must be adhered to by the states in setting up their plans in order to be eligible to receive the grants made available by this Title.

Title IX of the Act begins by imposing upon every employer, as later defined in the Act, a pay roll tax on a graduated scale, beginning January 1, 1936. During the calendar year 1936 the tax is one per cent of the total wages paid, two per cent during 1937, and three per cent thereafter. However, the employer may credit against this tax the amount paid by him into an unemployment compensation fund which has been created by a state law, which law has been approved by the Social Security Board, up to ninety per cent of the amount of the federal tax. No exemption is granted for any of the
higher salary brackets -- "total wages paid" meaning all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash.

According to the Act, an "employer" is construed to be any person who had in his employ eight or more persons during any portion of the day on each of some twenty days during the taxable year, each day being in a different calendar week. There are certain exempted lines of endeavor -- seven in number -- chief among which are agricultural labor, domestic service in private homes, governmental service, whether federal, state, or local, and non-profit organizations of a religious, charitable, scientific, literary, educational, or humanitarian nature.

The several states are free to enact unemployment compensation laws of their own liking, subject only to the comparatively mild restrictions of the Social Security Act. Three general types of systems are recognized by the Act, which any state is free to adopt. These are the "reserve account" plan, the "pooled fund" system, and the "guaranteed employment account" plan.

To quote directly from the Act:

"(1) The term "reserve account" means a separate account in an unemployment fund, with respect to an employer or group of employers, from which compensation is payable only with respect to the unemployment of individuals who were in the employ of such employer, or one of the employers comprising
The term "pooled fund" means an unemployment fund or any part thereof in which all contributions are mingled and undivided, and from which compensation is payable to all eligible individuals, except that to individuals last employed by employers with respect to whom reserve accounts are maintained by the State agency, it is payable only when such accounts are exhausted.

"(3) The term "guaranteed employment account" means a separate account, in an unemployment fund, of contributions paid by an employer (or group of employers) who

"(A) guarantees in advance thirty hours of wages for each of forty weeks (or more, with one weekly hour deducted for each added week guaranteed) in twelve months, to all the individuals in his employ in one or more distinct establishments, except that any such individual's guaranty may commence after a probationary period (included within twelve or less consecutive calendar weeks), and

"(B) gives security or assurance, satisfactory to the State agency, for the fulfillment of such guaranties, from which account compensation shall be payable with respect to the unemployment of any such individual whose guaranty is not fulfilled or renewed and who is otherwise eligible for compensation under the State law."

1. Social Security Act, Section 910.
The general requirements which every state unemployment compensation law must meet before approval by the Social Security Board are not particularly burdensome, and allow considerable latitude. "They deal with the handling of the funds and the circumstances and rules attending the payment of benefits rather than with the amount or duration of the benefits to be paid. The states are left free to adopt any scale of benefits they wish and to fix at their pleasure the waiting period and the maximum period of benefit."¹

Among the general requirements are those which require that all compensation be paid through public employment offices in the State or through such other agencies as the Board may approve; a two year period between the date contributions are first required and the date the first benefits are paid, in order to permit the accumulation of a reserve fund; a provision that all money received by the States in the form of contributions be turned over to the federal government to the credit of the Unemployment Trust Fund; a requirement that all money withdrawn from this Fund by the States must be used for the payment of compensation, exclusive of administrative expenses; and further, to quote the Act, "Compensation shall not be denied in such State to any otherwise eligible individual for refusing to accept new work under any of the following conditions: (A) If the position offered is vacant due directly to

a strike, lockout, or other labor dispute; (B) if the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; (C) if as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization."1 In addition, the states are granted the power to amend or repeal their unemployment compensation laws at any time.

The Act sets up in the Treasury of the United States a trust fund to be known as the "Unemployment Trust Fund," into which all contributions to the unemployment compensation plans of the States must be deposited immediately upon receipt. Such of this fund as is not needed for current use is to be invested by the Secretary of the Treasury only in interest bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. Although the Fund is to be invested as a single fund, the Secretary of the Treasury shall, according to the Act, maintain a separate book account for each State agency and shall credit quarterly to each such account a proportionate part of the earnings of the Fund. The States may requisition from this Fund such amounts as they may need for the purpose of paying unemployment benefits, not to exceed the amounts

1. Social Security Act, Section 903.
credited to them individually at the time. This Fund is not expected to remain static, as the right to buy and sell bonds, as well as to issue special obligations to be sold only to the Fund is granted by the Act to the Secretary of the Treasury.

Provision is made in the Act for the establishment of "merit ratings" by the States, under certain conditions, whereby employers with good records of employment will be permitted to pay a lower tax than the regular rates prescribed. The merit rating is based on the argument that such a plan will encourage employers to stabilize employment in their plants by increasing their income to the extent of the merit ratings. Specific conditions are laid down for each of the three basic plans recognized by the Act — reserve account, pooled fund, and guaranteed employment account.

The Act also provides certain administrative procedures regarding the method of collection of the excise tax on pay rolls and establishes penalties for delinquent payment or non-payment of such tax.

In the final analysis, the Social Security Act provides unemployment compensation for not a single individual. It simply makes use of the unquestioned power of the government to tax as a means of inducing the several States to enact unemployment compensation laws of their own.

As a condition of approval of a state unemployment compensation law by the Social Security Board, such state law must provide, among other things, that "All compensation is to
be paid through public employment offices in the State or such other agencies as the Board may approve."¹ This matter of "public employment offices" brings us to a discussion of the present system of public employment offices in the United States, which come within the province of an entirely separate and distinct federal agency from the Social Security Board -- the United States Employment Service.

2. The United States Employment Service

The government agency which exists today under the name of the United States Employment Service was created by Congress by the so-called Wagner-Peyser Act² which was approved by the President on June 6, 1933. The purpose of this Act, as stated in its title, is "To provide for the establishment of a national employment system and for cooperation with the States in the promotion of such system, and for other purposes." The Act specified that the agency thereby created shall be a part of the Department of Labor.

"It shall be the province and duty of the bureau (the United States Employment Service) to promote and develop a national system of employment offices for men, women, and juniors who are legally qualified to engage in gainful occupations, to maintain a veterans' service to be devoted to securing

¹ Social Security Act, Section 903.
employment for veterans, to maintain a farm placement service, to maintain a public employment service for the District of Columbia and, in the manner hereinafter provided, to assist in establishing and maintaining systems of public employment offices in the several States and the political subdivisions thereof in which there shall be located a veterans' employment service. The bureau shall also assist in coordinating the public employment offices throughout the country and in increasing their usefulness by developing and prescribing minimum standards of efficiency, assisting them in meeting problems peculiar to their localities, promoting uniformity in their administrative and statistical procedure, furnishing and publishing information as to opportunities for employment and other information of value in the operation of the system, and maintaining a system for clearing labor between the several States. ¹

To carry out the provisions of the Act, appropriations are authorized, and a certain amount of such appropriations, as designated, is apportioned among the several States in the proportion which their population bears to the total population of the United States, to be available for the purpose of establishing and maintaining systems of public employment offices in the several States. No apportionment to any given State is less than $10,000.

In order that an individual State may obtain the

¹. Wagner-Peyser Act, Section 3.
benefits of its apportionment of these appropriations, it must, in general:

(a) Accept through its legislature the provisions of the Act and designate or authorize the creation of a State agency vested with all powers necessary to cooperate with the United States Employment Service under this Act.

(b) Submit to the director of the United States Employment Service through the State agency mentioned in (a) above detailed plans for carrying out the provisions of the Act within such State. Such plans shall be approved by the director of the United States Employment Service if they are in conformity with the provisions of the Act and reasonably appropriate and adequate to carry out its purposes.

(c) Appropriate or otherwise make available not less than twenty-five per cent of the amount apportioned to that State, and in no event less than $5,000, from State funds, for the purpose of maintaining public employment offices as a part of a State-controlled system of public employment offices. The amounts so appropriated by the State, together with amounts so appropriated by local subdivisions within that State will then be matched on a dollar-for-dollar basis by the United States Employment Service up to the limit of the apportionment for that State plus any reapportionments of such funds previously appropriated by the Federal government but not expended. In this way the States have available for public employment services in general twice the amount of money as
would otherwise be the case.

(d) Make such reports concerning its operations and expenditures as shall be prescribed by the director of the United States Employment Service. "It shall be the duty of the director to ascertain whether the system of public employment offices maintained in each State is conducted in accordance with the rules and regulations and the standards of efficiency prescribed by the director in accordance with the provisions of this Act." The director may for cause revoke the dollar-for-dollar Federal grants to any State, subject to appeal to the Secretary of Labor.

(e) Carry out the remaining, and perhaps less vital, provisions of the Act and conform with the rules and regulations, prescribed by the director and approved by the Secretary of Labor, as are necessary to carry out the provisions of this Act.

It is apparent from the above summary of the Wagner-Peyser Act that the Federal government is given a firm grip on the operation of public employment services by the States, through its power to grant or withhold the dollar-for-dollar matched grants to the States. On the other hand, there is nothing to prevent a State from giving up its affiliation with the United States Employment Service, if it so chooses, either by failure to adhere to the provisions of the Act and the rules

1. Wagner-Peyser Act, Section 9.
and regulations prescribed by authority thereof, or possibly by legislative repeal of the acceptance by the State of the Act.

3. State Administrative Agencies

To go back to a consideration of the Social Security Act once more, we find in Title III the conditions imposed upon the States in setting up their administrative machinery for operating their state unemployment compensation systems. Under that Title we find that the Federal government is empowered to make direct grants to the States to cover the expense of operating such of the state unemployment compensation systems as may meet with the approval of the Social Security Board.

The Board cannot, according to the Social Security Act, approve any state unemployment compensation law and certify to the Secretary of the Treasury for payment to any state the sums needed for the administration of such state law unless that law includes provisions for:

"(1) Such methods of administration (other than those relating to selection, tenure of office, and compensation of personnel) as are found by the Board to be reasonably calculated to insure full payment of unemployment compensation when due; and

"(2) Payment of unemployment compensation solely through public employment offices in the State or such other
agencies as the Board may approve; and

"(3) Opportunity for a fair hearing, before an impartial tribunal, for all individuals whose claims for unemployment compensation are denied; and

"(4) The payment of all money received in the unemployment fund of such State, immediately upon such receipt, to the Secretary of the Treasury to the credit of the Unemployment Trust Fund established by section 904; and

"(5) Expenditure of all money requisitioned by the State agency from the Unemployment Trust Fund, in the payment of unemployment compensation, exclusive of expenses of administration; and

"(6) The making of such reports, in such form and containing such information, as the Board may from time to time require, and compliance with such provisions as the Board may from time to time find necessary to assure the correctness and verification of such reports; and

"(7) Making available upon request to any agency of the United States charged with the administration of public works or assistance through public employment, the name, address, ordinary occupation and employment status of each recipient of unemployment compensation, and a statement of such recipient's rights to further compensation under such law."

The Board may for cause revoke such certificate and

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1. Social Security Act, section 303.
thus withhold Federal funds from any state for the administration of its unemployment compensation law if such state denies, in a substantial number of cases, unemployment compensation to individuals entitled thereto, or if such state fails to comply substantially with any of the seven provisions quoted above.

"To be approved, a State law must fulfill the few broad criteria which show it to be, in reality, an unemployment compensation act; but a State is left free to establish any type of unemployment compensation system it desires. The States determine the rate and type of contribution, rate of compensation, the length of the waiting period, the duration of benefits, the type of unemployment compensation fund. In fact, the State laws already enacted vary widely in many respects, and the Nation is today utilizing the "experimental workshops" to test many competing theories concerning ways and means of providing unemployment compensation."2

As a result of these provisions of the Social Security Act, the states have formulated their own unemployment compensation laws, which, as might be expected, differ widely in their provisions, although they all of necessity must adhere to the general pattern outlined in the Social Security Act. As outlined more fully in Chapter IV, most of these state laws embody the "pooled fund" type of system, some with and some

1. Social Security Act, section 303.
without the merit rating feature included. A comparatively small number of state plans are based on the "reserve account" type of system, of which Wisconsin is the leading exponent. A mere handful of states favor the "guaranteed employment account" type of plan, but only as an optional measure.

From the point of view of administrative organization, most of the states have followed the lead of the Federal government and have adopted the commission form of organization for the administration of their unemployment compensation laws. "The federal government and thirty-five of the jurisdictions have lodged administrative responsibility for unemployment compensation in commissions or boards rather than individual administrators. The Social Security Board and twenty of the state unemployment compensation agencies are independent bodies, but twenty-one state agencies are subject to the authority which administers other labor laws. Some degree of co-ordination of unemployment compensation and employment service administration, ignored by the Social Security Act, is achieved in all jurisdictions except two."¹

4. Co-ordination With State Employment Services

The last sentence in the above quotation indicates that practically all states have achieved, to a greater or less degree, the co-ordination of the functions and activities of the state employment services affiliated with the United States Employment Service and the state unemployment compensation agencies functioning under the authority of the Social Security Act. This co-ordination is desirable since, "Paradoxical as it may sound to a layman, you and I are agreed, I am certain, that the most efficiently administered unemployment compensation system is the one that pays the least benefits; in other words, the one that most frequently and most quickly places the unemployed worker in a new job equal in all particulars to his former job. Not how many people received benefits and for what periods, but how many people received jobs and for how long, will be the measuring rod of your service."¹

The matter of the relations between the United States Employment Service, an integral part of the Department of Labor, and the Social Security Board, an independent agency of the government, which relations have appeared at times to have been strained, will be discussed more fully in the next chapter, as will also certain other administrative difficulties along

¹ Address by R. Gordon Wagenet, Director, Bureau of Unemployment Compensation, Social Security Board, Before the International Association of Public Employment Services, May 28, 1936.
other lines which are brought about by the present organization of unemployment compensation in the United States.

5. Summary of Chapter

Summarizing this chapter briefly, we find that at the top of the huge pile of administrative machinery which has been set up to handle unemployment compensation activities in this country we have the Social Security Board. This Board is responsible only to the President, and only a part of its functions are concerned with unemployment compensation. The authority for the existence and responsibilities of the Board is derived from the Social Security Act.

Co-operating with the Social Security Board by implication, but not by direction, of the Social Security Act, is the United States Employment Service, a part of the Department of Labor, the authority for which Service is derived from the Wagner-Peyser Act.

Allied with the Social Security Board in a fiscal capacity is the Treasury Department, which handles and invests the Unemployment Trust Fund as well as its other more orthodox fiscal duties in relation to all governmental activities generally.

In the several States there are unemployment compensation commissions or their equivalent which administer, largely in their own individual ways, the benefit-paying
functions of the unemployment compensation systems, and which look directly to the Social Security Board for the grants of Federal funds necessary for their very existence.

Also in the several States we find the state employment services, through which benefits are customarily paid, which in most cases are co-ordinated to a greater or less extent with the state unemployment compensation organizations. The state employment services look to the United States Employment Service for guidance in the maintenance of their technical standards as well as for the Federal funds made available on a matched basis under the provisions of the Wagner-Peyser Act.

Add to this unwieldy organization such agencies as state treasury departments, state civil service or personnel departments, state purchasing departments, the sometimes contradictory rulings of various state legal departments on identical questions, and other similar examples of the traditional complexity of government and the result is a potential source of inefficiency and wastefulness in the guise of "efficiency by means of checks and balances." Some of the characteristics of this vast and unwieldy organization and its effect on administrative policy are discussed in the next chapter.
II. OVERLAPPING AUTHORITY AND ITS EFFECTS ON ADMINISTRATIVE POLICY

1. The United States Employment Service and the Social Security Board

"The most outstanding failure to unify agencies concerned with similar problems appears in the maintenance of the United States Employment Service and the Social Security Board as separate agencies. The framers of the Social Security Act faced the fact that the placement service had already been set up in the Department of Labor. The persons in authority were loath to part with the service and hoped, no doubt, that unemployment insurance would also be relegated to them. The plan of the Committee on Economic Security favored administration by the Department of Labor. The recommendation was opposed by the House Committee on Ways and Means and supported by the Committee on Finance of the Senate, and there also was a conflict between the two bodies on other features of the bill. By a compromise the House Committee's insistence on administration by a commission was recognized in return for its acceptance of the Senate committee's position on another point. Nor was provision made for the co-ordination or integration of the two agencies.

"The problem of co-ordination of the employment service and unemployment compensation functions in the present divided set-up is well-nigh insuperable; it involves too much
conciliation of different interests and absorbs energy that especially in so vast an enterprise should be directed into productive channels. For some time the United States Employment Service (of the Department of Labor) and the Bureau of Unemployment Compensation (of the Social Security Board) were at cross-purposes, and several indications of friction between the two bureaus appeared, not only in their relationships in Washington but also in their dealings with the states...."1

Perhaps some of this friction may be traced to the circumstances surrounding the creation of the unemployment compensation provisions of what is now the Social Security Act. It will be recalled that the Wagner-Peyser Act, passed in 1933, provided for the establishment of the United States Employment Service. It will also be recalled that in the previous chapter Mr. R. Gordon Wagenet, Director of the Bureau of Unemployment Compensation, was quoted as saying, "... Not how many people received benefits and for what periods, but how many people received jobs and for how long, will be the measuring rod of your service." It is obvious that the business of getting jobs for people is a function of an employment service. A further link in this chain of circumstances is the fact that the Committee on Economic Security, to which was entrusted the task of formulating a social security program by the President in 1934, had as its chairman none other than Frances

Perkins, the Secretary of Labor, and hence the "boss" of the United States Employment Service. As related previously, the Committee favored administration of unemployment compensation by the Department of Labor, but the fortunes of Congressional compromises decreed that such administration should be delegated to a mere upstart -- the Social Security Board. It is easy to imagine that at least a part of the friction which later developed between the United States Employment Service and the Bureau of Unemployment Compensation was the result of wounded pride.

2. Steps Taken to Bring about Co-ordinated Effort by these Agencies

Such a situation could not, of course, be permitted to continue indefinitely, if the general welfare of the nation were to be fostered. As stated by Mr. Arthur J. Altmeyer, Chairman of the Social Security Board, in an address before the American Federation of Labor, "From the beginning, the Board has recognized the necessity of close cooperation between the administration of unemployment compensation and the United States Employment Service, in order to avoid setting up a dual system of employment offices. The Board, therefore, suggested to the Secretary of Labor that a joint agreement be made. This agreement, as consummated, in effect enables the United States Employment Service and the Unemployment Compensation Bureau of the Board to act jointly and concurrently
as a single agency, with respect to all matters affecting a
state employment service. As a result duplication of agencies
and effort has been avoided; a Nation-wide employment service
has been maintained; and furthermore, it has been greatly
strengthened and expanded . . . . "1

This agreement between these two Federal agencies,
based not on Congressional action, but rather on the practical
necessities of actual operating practice reads as follows:

"The recommendation made February 20, 1937, by
the Social Security Board to the Secretary of Labor being
mutually acceptable is hereby adopted by the respective parties
and agreed upon as the policy of the Board and the Secretary
with respect to services rendered State Employment Services.

"To give force and effect to this policy the
Social Security Board and the Secretary of Labor further
agree as follows:

1. Address of Mr. Arthur J. Altmeyer, as contained in the
"Report of the Proceedings of the 58th Annual Convention
of the American Federation of Labor, held at Houston,
Texas, October 3 to 13, inclusive, 1938."
"I. The Social Security Board and the Secretary of Labor agree that if benefits are to be paid through State Employment Offices joint Federal action on the part of the Social Security Board and the Department of Labor is required and will be pursued in assisting the States in the administration of State Employment Services as an integral part of the State Unemployment Compensation System.

"II. The Social Security Board and the Secretary of Labor agree that a coordinating committee representing the Department of Labor and the Social Security Board is required to integrate their programs with respect to State Employment Services, to assure unity of action on the part of the Bureau of Unemployment Compensation and the United States Employment Service in their relations with the State Employment Services; and that the coordinating committee shall be responsible for effecting and directing the cooperative activities of the Bureau of Unemployment Compensation and the United States Employment Service in rendering assistance to each State in the administration of the State Employment Service to meet the requirements of the State Unemployment Compensation System.

"III. The Board and the Secretary of Labor agree that a representative from the Department of Labor and a representative from the Social Security Board shall constitute the coordinating committee representing the Board and the
Department of Labor; that all matters relating to the Employment Service in connection with legislation for and administration of State Unemployment Compensation Systems shall be referred to the coordinating committee for decision before action is taken with respect to such matters by the United States Employment Service or the Bureau of Unemployment Compensation.

"IV. The Social Security Board and the Secretary of Labor agree that all decisions of the coordinating committee shall be countersigned by the Social Security Board and the Secretary of Labor and all action by the Bureau of Unemployment Compensation and the United States Employment Service shall be in accordance with such decisions.

"V. The Social Security Board and the Secretary of Labor agree that in the event the coordinating committee cannot reach a decision the matter at issue shall be referred to the Board and the Secretary of Labor and that the Bureau of Unemployment Compensation and the United States Employment Service shall take only such action relating to such matter as the Board and the Secretary of Labor may jointly approve.

"VI. The Social Security Board and the Secretary of Labor agree that all records, reports, memoranda, correspondence and other information in the possession of the Bureau of Unemployment Compensation and the United States Employment Service shall be made available to the coordinating committee."1

This agreement indicates that at least an effort is being made to effect a practical solution of the failure of the Social Security Act to unify the two principal agencies concerned in the administration of unemployment compensation. The weakness of this plan, however, lies in the fact that the Department of Labor and the Social Security Board may not be able to reach an agreement on a specific point and an impasse will be reached. Since each of these agencies is responsible only to the President, it is entirely possible that disputes as to matters of policy might have to be decided by the Chief Executive himself. Such a situation is obviously inadvisable and the entire agreement should be considered merely as a makeshift arrangement which should be eliminated by the establishment of a unified agency.

3. The Federal Government and the States

In their relations with the several States, the United States Employment Service and the Social Security Board have varying degrees of control and varying methods of exercising that control. By the Wagner-Peyser Act, emphasis is placed on the control of state employment services by the United States Employment Service. On the other hand, the Social Security Act simply sets up relatively simple guides for the states to follow which in most instances give the Social Security Board little actual control over the administration by the states of their unemployment compensation laws.
The Social Security Board cannot, for example, develop and prescribe minimum standards of efficiency or promote uniformity in administrative and statistical procedure in the several states, whereas the United States Employment Service is specifically directed by the Wagner-Peyser Act to perform these functions. In fact, the Social Security Act specifically bars the Social Security Board from exerting any control over the states in regard to selection, tenure of office, and compensation of personnel, and gives the Board control of the methods of administration adopted by the states only to the extent necessary "to be reasonably calculated to insure full payment of unemployment compensation when due."¹

There is further difficulty along these lines in regard to fiscal matters. The United States Employment Service has, in general, $3,000,000 a year which it can distribute to the states, mostly on the basis of population. This sum, when matched by equal amounts of state appropriations, gives a fund of only $6,000,000 to carry on the entire public employment office activities of the nation. Such a sum would provide a fairly adequate system of employment offices under ordinary conditions, but when such offices are operated as adjuncts to the unemployment compensation system, the sum of $6,000,000 is decidedly inadequate.

On the other hand, the Social Security Board has at

¹. Social Security Act, section 303.
its disposal the sum of $49,000,000 annually available for outright grant to the states "for the purpose of assisting the States in the administration of their unemployment compensation laws."¹ It is obvious that, all other factors being equal, more can be accomplished with $49,000,000 than with $6,000,000. With the latter sum inadequate to support a system of public employment offices in a manner suited to the needs of unemployment compensation, the question of whether Social Security funds could be used to supplement the combined Wagner-Peyser and state funds arose, in order that an adequate structure of employment offices could be set up.

This question resulted in the establishment by the Social Security Board of the following statement of policy, under the date of February 27, 1937, regarding the granting of Social Security funds to the states for the purpose of expanding the facilities of the state employment services in connection with their functions in regard to unemployment compensation:

"It is the present policy of the Social Security Board:

"1. To regard the State Employment Service and the State Unemployment Compensation System as a unified service.

"2. To require of the State, prior to certification of grants to provide for the cost of the State's Employment

¹ Social Security Act, section 301.
Service as a part of the State's Unemployment Compensation System, either: (a) an affirmative showing on the basis of which the Board finds that sufficient sums (exclusive of funds received under Title III) have been, or will be, used to provide for the necessary cost of a proper State Employment Service for workers not subject to, and for employers to the extent that such service is not required under, the State Unemployment Compensation Act, and of such other activities of the State Employment Service as are not essential to the proper administration of the State Unemployment Compensation Act; or (b) in the absence of such a finding, the Board will assume that the amount required to cover such necessary cost will have been provided, if the Board finds that with respect to the fiscal year the State has made, or will make, available to the State Employment Service and such service is using, or will use, a sum equal to the total amount available to the State upon acceptance of the Wagner-Peyser Act and upon matching by the State of its maximum annual apportionment under that Act.

"3. To accept its responsibility for developing and providing funds for the State Employment Service, for insured workers, as a part of the State Unemployment Compensation System when benefits become payable.

"4. To supplement the sums required to be available to the State under paragraph 2, as the need for such additional funds in connection with the proper administration of its Unemployment Compensation Act is established by the State.
"This supplement, as part of the administration grant to the State, shall be in such amount as is necessary to assure the effective operation of a State-wide Employment Service as an integral part of the State Unemployment Compensation System.

"5. To cooperate with the United States Employment Service in the maintenance and further development of standards for State Employment Services, in order that the Board may have additional and reasonable criteria on which to base future grants for the expansion of State Employment Services."¹

Here again it is seen that sheer force of circumstances has forced a degree of cooperation between the United States Employment Service and the Social Security Board in fiscal matters as well as, to a certain extent, in administrative matters. While such co-ordinated action was not provided for in the Social Security Act, it is obvious that the operating agreements effected between these two federal agencies should at least be formally ratified by an amendment to that Act, and preferably that the law be completely revised to bring about absolute unification of the federal agencies charged with the administration of unemployment compensation.

4. Other Instances of Overlapping Authority

Another factor entering into the question of overlapping authority is the relation of the federal Treasury

¹ Bryce M. Stewart, op. cit., p. 75.
Department to the general scheme of unemployment compensation. This factor has perhaps less effect on internal administrative policies than it does on general relations with the taxpaying employers. Closely related to this is the fact that each state having an unemployment compensation law has its own taxing authority to collect the payroll taxes from employers, each with its own reporting forms and procedures. The Bureau of Internal Revenue of the Treasury Department is said to have co-operated very little with the Social Security Board in regard to uniform interpretations of the provisions of the Social Security Act.

"The interpretation of the many laws and the decisions of numerous administrators and appeals tribunals result in a great body of material. The rulings of the Bureau of Internal Revenue assembled by the Unemployment Compensation Interpretation Service of the Social Security Board already constitute more than 300 pages. State interpretative decisions, opinions of state attorney generals and appealed benefit decisions now cover more than 800 pages. When appealed benefit decisions for all of the fifty-one benefit-paying jurisdictions begin to appear, this material will bulk into thousands of pages. Employers, especially those who operate in more than one state, will be hopelessly confused."¹

Within the individual states there exists a certain amount of overlapping authority which is perhaps in some cases unavoidable under a functionally organized state government, but which nevertheless slows down the pace at which the administrators of unemployment compensation can adjust their organizations to meet changing conditions.

To cite one instance of this, not in criticism, but merely as an example of the way things are done, it is necessary in Massachusetts, in order that a location may be secured for a state office in rented premises, in general to (a) conduct a survey to determine the available suitable locations in a given city; (b) secure the assent of the State Superintendent of Buildings who thereupon draws up the lease of the premises finally decided upon; (c) secure the signatures of the interested parties; (d) secure the approval of the Attorney General's Department of the technical form of the lease; (e) secure the approval of the Governor and Council of the lease itself. Following that, the State Purchasing Bureau enters into the picture in connection with alterations in such premises and the purchase of the equipment necessary to permit the office to function properly. All this presupposes the existence of the funds necessary to carry out these steps which presupposition involves the fiscal and budget making authorities of the state and principally the Social Security Board from which most of the funds are ultimately derived.

"The Social Security Board has adopted a rigid line-
item budget procedure for the states, which hampers their planning and administration and, in order to secure the necessary flexibility, impels them to request more than they really require. Such budgetary restrictions are difficult to eliminate when the federal authority is conscious of the tendency to prodigal spending by the states under a system which places no responsibility on them to provide any part of the cost of administration.\(^1\)

5. Summary of Chapter

It must be concluded, however, that in a democracy where the system of checks and balances is a fundamental one, the overlapping authority which exists in regard to the expenditure of public funds must continue as long as our democratic system continues. Our study of the problem should therefore be concentrated upon the question of overlapping authority only as it affects administrative policy in its narrowest sense.

It appears evident from the foregoing that the administrative difficulties in the federal organization will not be entirely eliminated until the United States Employment Service and the Bureau of Unemployment Compensation are consolidated by law into one unit. The questions involved in the relation of the Bureau of Internal Revenue to unemployment compensation should, the writer feels, be reserved for discussion elsewhere,

\(^1\) Bryce M. Stewart, *op. cit.*, p. 539.
as should also the question of the investment powers of the Treasury Department in connection with the Unemployment Trust Fund.

It also appears evident that the difficulties arising out of the diverse practices and rulings of the fifty-one pay roll tax collecting and benefit paying jurisdictions in the United States are too great to be the subject of co-ordination by any central agency. It would therefore appear that the only practical solution along these lines is to establish a centralized system of unemployment compensation under the direct control of a unified federal unemployment compensation agency. This proposal will be more fully discussed in a later chapter.
III. INEQUITIES AND INEQUALITIES IN STATE UNEMPLOYMENT COMPENSATION LAWS

1. Fundamental Inequities and Inequalities

As previously pointed out in this study, the Social Security Act provides unemployment compensation for not a single individual. Rather, it makes use of the government's power to tax as a means of inducing the several states to set up systems to provide such unemployment compensation within their own borders.

In addition, reference has been made to the three general types of unemployment compensation systems which are recognized by the Social Security Act, any one of which a state may adopt, and a quoted comment was included which stated in part, "The states are left free to adopt any scale of benefits they wish and to fix at their pleasure the waiting period and the maximum period of benefit."¹

Each of the three general types of unemployment compensation has its advantages and disadvantages, but the existence side by side within the same nation of plans of such marked variations in their fundamental philosophy, let alone their administrative practices, is a fertile field for the growth of inequities and inequalities, in so far as individual workers are concerned. To be sure, if the Social Security Act

¹ Supra, p. 11.
had recognized but one type of unemployment compensation system, there still would exist the lack of uniformity among the several states in regard to the scale of benefits paid, the waiting period, and the maximum period of benefit.

It is the purpose of this chapter first to explain briefly the advantages and disadvantages of each of the three systems authorized by the Social Security Act -- reserve account, pooled fund, and guaranteed employment account. Following this the essential provisions of the various state plans will be presented and the more obvious inequities and inequalities in these plans will be pointed out, in so far as they affect individuals.

a. The "Reserve Account" Plan

The first type of unemployment compensation plan authorized by the Social Security Act is the "reserve account." This plan had been adopted by Wisconsin even before the Social Security Act was passed, and in general provides that contributions paid by the employer to the state be held by the state in a separate account for the benefit only of the employees of the contributing company, or of a group of companies to which the contributing employer may belong.

The employees of other concerns receive no benefit from the contributions of employers for whom such employees have not worked, or from the contributions of employers not in the same group as that for whom they have worked.
An individual employer pays a certain percentage of his pay roll to his separate account in the fund only until the reserve reaches a certain level, at which point his payments cease until such time as the reserve fund falls below the established level due to benefit payments being made, whereupon he again contributes to the fund.

When a worker becomes unemployed, benefits under this system are paid out of his most recent employer's reserve account, rather than from a general fund. If the reserve account of his most recent employer is exhausted before he has received the maximum benefits to which he is entitled, he simply ceases receiving benefits. He has no claim on the reserve funds of other companies not in the same group as his most recent employer, which funds may not be exhausted. Certain provisions have been incorporated into the Wisconsin act, for example, to care for transient workers under this general plan.

The "reserve account" plan has the advantage of practically compelling employers to stabilize employment in order to permit their reserve accounts to build up to the maximum and thus exempt them from further contributions to their accounts in the reserve fund.

From the point of view of protection to the individual unemployed worker, however, this plan is the least satisfactory. Since the reserve is limited, it is not possible to build up the fund during prosperous times to meet
the heavy demands for benefits arising out of serious unemployment at the bottom of the business cycle. Furthermore, the aggregate amount of benefit payments is governed by the size of the reserve fund of the employer or group of employers concerned, which would mean that the protection offered would not be uniform from plant to plant nor possibly from season to season in any given plant.

b. The "Pooled Fund" Plan

The second type of plan to be considered is the "pooled fund." "Under the simple pooled reserve system all employers pay the same percentage tax on pay rolls. They continue to pay this tax through fat years and lean. The money obtained, together with whatever may be contributed by workers or by the state, is placed in a central pool out of which benefits are paid."¹

This system has the advantage of a wide distribution of risks, which tends to even out the effects of seasonal drains on the central fund, inasmuch as all industries are not affected by seasonal influences at the same time of the year. This plan has the further advantage that benefit payments are not affected by the liquidation of an employing company, as might occur under the "reserve account" plan.

On the other hand, the fact that in the absence of

some "merit rating" feature in connection with this "pooled fund" plan all employers must contribute a fixed percentage of their pay rolls, regardless of the degree to which they have succeeded in stabilizing employment, may result in a lack of incentive to continue such stabilization policies, particularly in the case of industries ordinarily affected by seasonal influences.

c. The "Guaranteed Employment Account" Plan

The third and final general type of unemployment compensation plan which is authorized by the Social Security Act is the "guaranteed employment account." This plan provides that employers shall guarantee forty weeks of work each year to their employees, and if the guarantee is not met, such employers shall be liable for benefits to the extent that they fail to provide the required forty weeks work. Thirty hours is considered a standard week's work under this plan. Thus, if a worker is employed by a concern for only thirty-six weeks during any given year, such worker is eligible to receive benefits for four additional weeks to bring his total number of pay checks for the year up to forty.

While it is somewhat to the advantage of the worker to know that he is to be assured of forty weekly pay checks during the year, the question immediately arises as to what he will do during the remaining twelve weeks of the year. Of course, in a definitely seasonal industry, a worker instinctively
prepare himself financially for slack seasons, either by budgeting on a fifty-two week basis or by turning to other lines of endeavor when not employed in his usual vocation.

On the other hand, a worker in an industry which is relatively stable seldom makes such provision for himself, so that it is possible that personal hardship might result under a "guaranteed employment account" plan which makes no provision for employees for nearly one-quarter of the year. Then again, in a period of declining production, an employer might find it advantageous to operate at capacity for forty weeks and then shut down completely, thus reducing his annual output to conform with market conditions and at the same time free himself from any liability for benefit payments to his employees.

In any event, this plan is certain to meet with opposition by employers, since it is difficult in most cases, if not impossible, to predict the state of business forty weeks hence, particularly in periods of economic uncertainty. Employers would naturally hesitate to commit themselves to the policy of guaranteeing employment for the length of time contemplated by this plan.

d. The "Merit Rating" Option

The "merit rating" plan, which may or may not be included in a state unemployment compensation law, in general provides that after actual experience over a prescribed number of years, those employers who have a better employment record
than others may be granted the privilege of paying a smaller payroll tax. When used in connection with the "pooled fund" type of unemployment compensation, the "merit rating" feature renders unemployment compensation as strong financially as the central pooled fund itself, and at the same time offers to employers the incentive to stabilize employment which is an inherent advantage of the "reserve account" type of unemployment compensation.

However, stabilization of employment is at the present time largely a matter which can readily be discussed, but about which little can be done in all but a few industries. Seasonal style changes in many consumer goods industries militate against the stabilizing of employment. The production of staple goods, in which seasonality is but a small factor, may of course be stabilized as far as seasonality is concerned, but only in rare instances can variations brought about by the workings of the business cycle be even partially overcome. It might therefore be argued that the "merit rating" would increase, relatively, the cost of production of seasonal style goods, as compared with staple goods.

The studies which will of necessity be made in connection with the "merit rating" feature prior to its final adoption in those states which make provision for it should prove to be valuable sources of data regarding personnel policies, labor turnover, and the stabilization of employment.
2. Specific Inequities and Inequalities

a. Type of Unemployment Compensation Fund

Turning now from the general consideration of the various types of unemployment compensation to a survey of the types actually adopted by the fifty-one benefit paying jurisdictions (the forty-eight states, the District of Columbia, and the territories of Alaska and Hawaii) we find from Table I that there is a marked preference for the "pooled fund" type, with or without the merit rating feature.

Forty-two jurisdictions have unqualifiedly adopted the "pooled fund" plan -- thirty-two with the "merit rating" feature, and ten without. Of the remaining nine jurisdictions, three have provided for the pooled fund with merit rating as a possible plan, but have also provided alternative plans as well. The other six have largely adopted the employer reserve plan with various qualifications as outlined in the table. Only three of these nine jurisdictions offer the "guaranteed employment" plan as an optional choice to employers.

It is thus seen that the workers in forty-two at least, and possibly forty-five jurisdictions have the entire resources of a pooled fund to stand back of their claims for unemployment compensation benefits. The workers in the remainder of the jurisdictions have only the admittedly unreliable protection of employer reserve accounts to provide such benefits, or in some cases the dubious protection of guaranteed employment. However, some states provide for the
## TABLE I

**SIGNIFICANT PROVISIONS OF STATE UNEMPLOYMENT COMPENSATION LAWS**
as of January 1, 1939. -- **TYPE OF UNEMPLOYMENT COMPENSATION FUND**

<table>
<thead>
<tr>
<th>Pooled</th>
<th>Pooled, with Merit Rating</th>
<th>Other types of funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Georgia</td>
<td>Alabama</td>
<td>Missouri</td>
</tr>
<tr>
<td>Maine</td>
<td>Alaska</td>
<td>Montana</td>
</tr>
<tr>
<td>Maryland</td>
<td>Arizona</td>
<td>Nevada</td>
</tr>
<tr>
<td>Mississippi</td>
<td>Colorado</td>
<td>N. Jersey</td>
</tr>
<tr>
<td>New York</td>
<td>Conn.</td>
<td>New Mex.</td>
</tr>
<tr>
<td>Penna.</td>
<td>Dist. of Col.</td>
<td>Ohio</td>
</tr>
<tr>
<td>Rhode Is.</td>
<td>Florida</td>
<td>Oklahoma</td>
</tr>
<tr>
<td>Virginia</td>
<td>Hawaii</td>
<td>So. Carolina</td>
</tr>
<tr>
<td></td>
<td>Idaho</td>
<td>Tennessee</td>
</tr>
<tr>
<td></td>
<td>Illinois</td>
<td>Texas</td>
</tr>
<tr>
<td></td>
<td>Iowa</td>
<td>Utah</td>
</tr>
<tr>
<td></td>
<td>Kansas</td>
<td>Washington</td>
</tr>
<tr>
<td></td>
<td>Louisiana</td>
<td>West Va.</td>
</tr>
<tr>
<td></td>
<td>Michigan</td>
<td>Wyoming</td>
</tr>
</tbody>
</table>

Source: The Social Security Board
pooling of a portion of the funds, where employer reserve accounts are the general rule, in order to afford to workers some of the advantages of the pooled fund plan along the lines of distribution of risk.

In Vermont, the employer is permitted to choose between the pooled fund plan with merit rating or the employer reserve plan. Thus, in the same state, some workers will have better protection than others, all other factors being equal. The inequalities of protection of workers in the United States from the economic hazards of unemployment thus have their roots in the fundamental structures of the unemployment compensation systems of the fifty-one benefit paying jurisdictions.

b. Size of Firms Subject to the Plans

Another source of inequality in the protection of workers is the lack of uniformity in the sizes of the firms subject to the unemployment compensation laws in the several jurisdictions. The largest group of jurisdictions -- 25 of the 51 -- follow the Social Security Act and restrict the protection of unemployment compensation only to the workers employed by those firms having eight or more employees in each of 20 weeks, as shown in Table II. However, nine states based their coverage on employers of one or more in 20 weeks, one to employers of three or more in 20 weeks, seven to employers of four or more in 20 weeks, and one to employers of five or more in 20 weeks. The District of Columbia law is the most inclusive,
## TABLE II.

**SIGNIFICANT PROVISIONS OF STATE UNEMPLOYMENT COMPENSATION LAWS as of January 1, 1939.** — SIZE OF FIRMS SUBJECT TO THE PLANS

<table>
<thead>
<tr>
<th>Employers of 1 or more in 20 weeks</th>
<th>Employers of 4 or more in 20 weeks</th>
<th>Employers of 8 or more in 20 weeks</th>
<th>Other Requirements regarding size of firm</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arkansas</td>
<td>California</td>
<td>Alabama</td>
<td>Arizona: Employers of 3 or more in 20 weeks.</td>
</tr>
<tr>
<td>Delaware</td>
<td>Mass.*</td>
<td>Alaska</td>
<td>Connecticut: Employers of 5 or more in 20 weeks.</td>
</tr>
<tr>
<td>Hawaii</td>
<td>Maryland</td>
<td>Colorado*</td>
<td>District of Columbia: Employers of 1 or more</td>
</tr>
<tr>
<td>Idaho</td>
<td>New Hamp.*</td>
<td>Florida</td>
<td>Iowa: Employers of 8 or more in 15 weeks.</td>
</tr>
<tr>
<td>Minnesota</td>
<td>New Mexico</td>
<td>Georgia</td>
<td>Kentucky: Employers of 4 or more in 3 quarters, to each of 4 of whom $50 payable in each such quarter, or of 8 or more in 20 weeks.</td>
</tr>
<tr>
<td>Montana</td>
<td>Rhode Is.*</td>
<td>Illinois</td>
<td>Louisiana: Employers of 4 or more in 20 weeks or 12 or more in 10 weeks.</td>
</tr>
<tr>
<td>Nevada</td>
<td>Utah</td>
<td>Indiana</td>
<td>New York: Employers of 4 or more for 15 days.</td>
</tr>
<tr>
<td>Penna.</td>
<td></td>
<td>Kansas</td>
<td>Ohio: Employers of 3 or more at any one time.</td>
</tr>
<tr>
<td>Wyoming</td>
<td></td>
<td></td>
<td>Oregon: Employers of 4 or more in any one day with pay roll of $500 in any calendar quarter.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Texas</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Vermont</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Virginia</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Washington</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>West Va.</td>
</tr>
</tbody>
</table>

| 9 | 7 | 25 | 10 |

*Also all employers liable to Federal tax.

**Source:** The Social Security Board
and applies to employers of one or more without regard to the length of time employed. Other variations with respect to the size of the firm may be noted in the table.

Such variations as these mean that in many states workers in small establishments do not have the protection of unemployment compensation, while in other states the employees of concerns of similar size are so protected. Thus in New York City, employers of four or more for 15 days are subject to the law, while just across the river in Jersey City employers must have eight or more employees in 20 weeks in order to be subject, even though the two jurisdictions are within the same metropolitan area. The comparison is even more marked in the Philadelphia area, where the Pennsylvania metropolis is on one side of the river, and Camden, New Jersey on the other -- both in the same metropolitan area, but with coverage on the basis of the size of firm widely separated.

Such inequality in coverage has no sound economic basis, as far as the workers to be protected are concerned. If an employee subjects himself to the hazards of unemployment, as he does just as soon as he becomes employed, he should, from the point of view of equitable considerations be granted the right to unemployment compensation regardless of the size of the firm for which he works. The difficulties of bookkeeping for a multiplicity of small employers, which are the chief factors preventing the general coverage of all workers in all subject industries, might be solved by the adoption of the
stamp system for paying contributions, as is done in Great Britain.

To assure equality and hence equitable treatment of all workers the laws regarding coverage on the basis of the size of the firm should be made uniform. The acme of equitable treatment is secured under the District of Columbia plan, where every employer is subject to the law and hence every employee in every subject industry is able to build up credits to be drawn upon in the form of benefits in the event of unemployment.

c. Contributions Required for 1938.

The next factor to be considered is the basis of contributions as they existed in 1938 in the fifty-one jurisdictions. As indicated in Table III, the great majority of jurisdictions imposed a flat 2.7 per cent levy on wages paid, to be borne entirely by employers. This rate of 2.7 per cent is arrived at by taking 90 per cent of the Federal tax of 3 per cent -- the maximum allowable tax-offset -- which is levied by the Social Security Act on the pay rolls of all employers of eight or more in each of twenty weeks during each taxable year. There were 41 jurisdictions where this flat 2.7 per cent tax was levied on all subject employers during 1938. In two jurisdictions the rate was 3 per cent of wages in all cases. New York was in both of these categories, levying a tax of 2.7 per cent on those employers subject to the Federal tax and 3
## TABLE III

SIGNIFICANT PROVISIONS OF STATE UNEMPLOYMENT COMPENSATION LAWS as of January 1, 1939. -- CONTRIBUTIONS REQUIRED FOR 1938.

<table>
<thead>
<tr>
<th>By employer, 2.7 per cent of wages</th>
<th>By employer, 3 per cent of wages</th>
<th>Other bases for contributions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alaska New Hamp. Dist. of Col.</td>
<td>Michigan</td>
<td>Alabama: Employer 2.7 per cent; Employee 1 per cent.</td>
</tr>
<tr>
<td>Arizona New Mex.</td>
<td>Michigan</td>
<td>California: Employer 2.7 per cent; employee 1 per cent, not to exceed 50 per cent of general employer rate.</td>
</tr>
<tr>
<td>Arkansas New York® New York®</td>
<td></td>
<td>Kentucky: Employer 2.7 per cent; employee 1 per cent on wages up to $3,000 per year, not to exceed 50 per cent of employer’s contribution.</td>
</tr>
<tr>
<td>Colorado N.California</td>
<td></td>
<td>Louisiana: Employer 2.7 per cent; Employee 0.5 per cent.</td>
</tr>
<tr>
<td>Conn. No. Dakota</td>
<td></td>
<td>Massachusetts: Employer, 2.7 per cent; employee 1 per cent on wages not over $2,500 per year. (but suspended between 7-1-38 and 6-30-39.)</td>
</tr>
<tr>
<td>Delaware Ohio</td>
<td></td>
<td>New Jersey: Employer, 2.7 per cent; employee, 1 per cent on wages up to $3,000 per employer.</td>
</tr>
<tr>
<td>Delaware Ohio</td>
<td></td>
<td>Rhode Island: Employer, 2.7 per cent; employee, 1.5 per cent on wages up to $3,000 per employer.</td>
</tr>
<tr>
<td>Florida Oklahoma</td>
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<tr>
<td>Georgia Oregon</td>
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<tr>
<td>Hawaii Penna.</td>
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<tr>
<td>Idaho So. Carolina</td>
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<tr>
<td>Illinois So. Dakota</td>
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<tr>
<td>Indiana Tennessee</td>
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<td>Iowa Texas</td>
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<tr>
<td>Kansas Utah</td>
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<td>Maine Vermont</td>
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<td>Maryland Virginia</td>
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<tr>
<td>Minnesota Washington</td>
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<tr>
<td>Mississippi West Va.</td>
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<td>Missouri Wisconsin</td>
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<tr>
<td>Montana Wyoming</td>
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<tr>
<td>Nebraska</td>
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<td>Nevada</td>
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<tr>
<td></td>
<td>41 1/2</td>
<td>2 1/2</td>
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<tr>
<td></td>
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<td>7</td>
</tr>
</tbody>
</table>

* 2.7 per cent rate only for employers subject to Title IX tax.  
** 3 per cent rate for employers not subject to Title IX tax.

Source: The Social Security Board
per cent on all other subject employers.

In the remaining seven jurisdictions, contributions were required from both the employer and the employee. In every case the employers' contributions were at the 2.7 per cent rate, while the employees' contributions ranged from 0.5 per cent in Louisiana to 1.5 per cent in Rhode Island, with one per cent, with certain limitations, prevailing in the remaining five jurisdictions. In Massachusetts, however, employee contributions are suspended between July 1, 1938 and June 30, 1939. During the year 1938 the varying rates which would prevail under the merit rating system in certain jurisdictions had not become effective.

While there is relative uniformity among the fifty-one jurisdictions in the matter of contributions to the unemployment compensation system, nevertheless the fact that contributions are required of employees in some jurisdictions but not in others creates a certain degree of inequality among workers, although perhaps not of serious consequence. The deduction of one per cent for the employee contribution amounts to only 25 cents in the case of a worker whose weekly wage is $25.00, for example. However, if future experience will show that 44 jurisdictions can definitely forego employee contributions and still maintain solvent unemployment compensation funds, it seems hardly necessary to exact such contributions in the remaining jurisdictions.
d. Month Benefits First Payable

Of interest only from the point of view of temporary inequality of protection of employees in the several jurisdictions is the month when benefits first became payable, as displayed in Table IV. As shown in that table, 22 jurisdictions started paying unemployment compensation benefits in January, 1938, while 18 jurisdictions began such payments in January, 1939. Only two states -- Illinois and Montana -- have not begun to pay benefits at the time this is written, but will begin to do so in July, 1939. The remaining nine jurisdictions began paying benefits at various times, as shown in the table, beginning with Wisconsin, the pioneer, in July, 1936.

e. Initial Waiting Period for Claimants

The initial waiting period for claimants, that is, the time that must intervene between the filing of the claim for benefit and the first compensable week, is a factor in which uniformity is much to be desired if equitable treatment is to be accorded to workers in all jurisdictions. As indicated in Table V, 32 jurisdictions maintain a waiting period of two weeks, 18 of three weeks, and one -- California -- of four weeks.

Initial waiting period is a factor which can be looked upon in two ways. From the point of view of some, a long waiting period is desirable in that the unemployment compensation fund would thereby be conserved and thereby be
### TABLE IV

**SIGNIFICANT PROVISIONS OF STATE UNEMPLOYMENT COMPENSATION LAWS**

*as of January 1, 1939. -- MONTH BENEFITS FIRST PAYABLE.*

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<tbody>
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<td>Wisconsin</td>
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<td>Indiana</td>
<td>Iowa</td>
<td>Idaho</td>
<td>New Mex.</td>
<td>Alaska</td>
<td>Illinois</td>
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<tr>
<td>Arizona</td>
<td>Mississippi</td>
<td>Michigan</td>
<td>Oklahoma</td>
<td>Arkansas</td>
<td>Montana</td>
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<td>California</td>
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<td>Connecticut</td>
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<td>Dist.of Col.</td>
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<td>Maine</td>
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<td>Mass.</td>
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<td>New Hamp.</td>
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<td>New York</td>
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<td>N.Car.</td>
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<td>Oregon</td>
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<td>Penna.</td>
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<td>Rhode Is.</td>
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<td>Tennessee</td>
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<td>Texas</td>
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<td>Utah</td>
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<tr>
<td>Vermont</td>
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<tr>
<td>Virginia</td>
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</tr>
<tr>
<td>West Va.</td>
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<td></td>
</tr>
</tbody>
</table>

|       | 1 | 22 | 2 | 3 | 1 | 2 | 18 | 2 |

**Source:** The Social Security Board
### Table V

**Significant Provisions of State Unemployment Compensation Laws as of January 1, 1939.** **Initial Waiting Period for Claimants**

<table>
<thead>
<tr>
<th></th>
<th>Two Weeks</th>
<th>Three Weeks</th>
<th>Four Weeks</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alaska</td>
<td>Nebraska</td>
<td>Alabama</td>
<td>California</td>
</tr>
<tr>
<td>Arizona</td>
<td>Nevada</td>
<td>Dist. of Columbia</td>
<td></td>
</tr>
<tr>
<td>Arkansas</td>
<td>New Jersey</td>
<td>Florida</td>
<td></td>
</tr>
<tr>
<td>Colorado</td>
<td>New Mexico</td>
<td>Hawaii</td>
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<tr>
<td>Connecticut</td>
<td>North Carolina</td>
<td>Idaho</td>
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<tr>
<td>Delaware</td>
<td>North Dakota</td>
<td>Illinois</td>
<td></td>
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<tr>
<td>Georgia</td>
<td>Oklahoma</td>
<td>Kentucky</td>
<td></td>
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<tr>
<td>Indiana</td>
<td>Oregon</td>
<td>Michigan</td>
<td></td>
</tr>
<tr>
<td>Iowa</td>
<td>Rhode Island</td>
<td>Missouri</td>
<td></td>
</tr>
<tr>
<td>Kansas</td>
<td>South Carolina</td>
<td>Montana</td>
<td></td>
</tr>
<tr>
<td>Louisiana</td>
<td>Texas</td>
<td>New Hampshire</td>
<td></td>
</tr>
<tr>
<td>Maine</td>
<td>Utah</td>
<td>New York</td>
<td></td>
</tr>
<tr>
<td>Maryland</td>
<td>Virginia</td>
<td>Ohio</td>
<td></td>
</tr>
<tr>
<td>Massachusetts</td>
<td>Washington</td>
<td>Pennsylvania</td>
<td></td>
</tr>
<tr>
<td>Minnesota</td>
<td>West Virginia</td>
<td>South Dakota</td>
<td></td>
</tr>
<tr>
<td>Mississippi</td>
<td>Wyoming</td>
<td>Tennessee</td>
<td></td>
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<tr>
<td></td>
<td></td>
<td>Vermont</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Wisconsin</td>
<td></td>
</tr>
</tbody>
</table>

Source: The Social Security Board
available for use during periods of prolonged unemployment. On the other hand, others feel that a fairly short waiting period is preferable, inasmuch as unemployment compensation cannot be relied upon to alleviate prolonged unemployment which may last for months or even years during periods of serious business depression. The latter group therefore feel that workers should be able to become eligible for unemployment compensation before the economic distress occasioned by loss of employment can become acute.

It would appear that perhaps two weeks is in general a fair length of time to establish as a waiting period, on the basis of the arguments of the latter group. The waiting period of three weeks is possibly a compromise figure to satisfy both groups. However, it seems to the writer that the four weeks waiting period established by California is unnecessarily long. Massachusetts, which formerly had a waiting period of three weeks, has dropped this down to two.

With the majority of states adhering to the two weeks standard, and with this length of time perhaps about right to fulfill the true mission of unemployment compensation, it may be concluded that any variation from this standard by other states places the workers in those states in a relatively inequitable position. The states which maintain long initial waiting periods conserve their funds, to be sure, but for use during periods of prolonged unemployment when governmental relief measures would in all probability be established any-
way. This matter is one which should be given study with a view to the establishment of uniformity as soon as practicable, in order to afford unemployment compensation benefits on an equitable basis to all workers in the country who become eligible for them.

f. Percentage of Weekly Wages Payable

The percentage of weekly wages payable as benefits is practically uniform in all but two jurisdictions, as indicated in Table VI. In forty of the fifty-one jurisdictions the benefit rate is 50 per cent of the weekly wages previously received by the claimant. In four cases this same rate is approximated and accounting is simplified by defining the benefit rate as one twenty-sixth of the wages received by the claimant in a previous quarter of highest earnings. Five other jurisdictions approximate a benefit rate of 52 per cent by paying claimants four per cent of the wages they received in a previous quarter of highest earnings. Wyoming prescribes a benefit rate of 60 per cent of the weekly wages previously received by claimants.

The most serious variation occurs in the District of Columbia, where the whole philosophy of unemployment compensation is undermined by setting up a sliding scale for benefits, based on the number of dependents possessed by individual claimants. Thus a claimant with no dependents is assigned a benefit rate of 40 per cent of wages. If he has a dependent spouse, 10 per cent is added, while 5 per cent more is added for each dependent relative, up to a maximum of 65 per cent of the former weekly wage or $15.00, whichever is less.
TABLE VI
SIGNIFICANT PROVISIONS OF STATE UNEMPLOYMENT COMPENSATION LAWS
as of January 1, 1939 -- PERCENTAGE OF WEEKLY WAGES PAYABLE

<table>
<thead>
<tr>
<th>50 per cent of weekly wages</th>
<th>1/26 of wages in a previous quarter of highest earnings</th>
<th>4 per cent of wages in a previous quarter of highest earnings</th>
<th>Other plans</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alabama</td>
<td>Nevada</td>
<td>Massachusetts</td>
<td>Connecticut</td>
</tr>
<tr>
<td>Alaska</td>
<td>New Mex.</td>
<td>Mississippi</td>
<td>Indiana</td>
</tr>
<tr>
<td>Arizona</td>
<td>New York</td>
<td>New Hampshire</td>
<td>Kansas</td>
</tr>
<tr>
<td>Arkansas</td>
<td>No. Car.</td>
<td>New Jersey</td>
<td>Michigan</td>
</tr>
<tr>
<td>California</td>
<td>No. Dakota</td>
<td></td>
<td>Missouri</td>
</tr>
<tr>
<td>Colorado</td>
<td>Ohio</td>
<td></td>
<td>Dist. of Col.: 40 per cent, plus allowance for dependents to maximum of 65 per cent.</td>
</tr>
<tr>
<td>Delaware</td>
<td>Oklahoma</td>
<td></td>
<td>Wyoming: 60 per cent of weekly wages.</td>
</tr>
</tbody>
</table>
This mixture of relief methods and the actuarial science has no place in the structure of unemployment compensation and should be eliminated as soon as possible. The true basis of the system should rest on the theory of risk bearing and its structure should be designed in accordance with actuarial considerations rather than with those of charity. The unemployed eligible claimants in the District of Columbia are thus subjected to an inequitable situation in this respect, even though the benefit rate may under certain conditions be the highest in the country. To administer this law properly it would be necessary to maintain a staff of investigators to ascertain the number of dependents each claimant possessed — an invasion into the private lives of citizens which is incompatible with the whole underlying philosophy of unemployment compensation.

g. Minimum Benefit Rates per Week

Next to be considered are the minimum benefit rates per week established in the several jurisdictions, and which are displayed in Table VII. As seen from the table, there is a wide variation in this factor, with the range extending from no minimum benefit rate in five jurisdictions to $8.00 per week, or three-fourths of weekly wages, whichever is less, in Oklahoma. The most popular minimum benefit rate is $5.00 per week, or three-fourths of wages, whichever is less, which rate prevails in 21 jurisdictions.
TABLE VII
SIGNIFICANT PROVISIONS OF STATE UNEMPLOYMENT COMPENSATION LAWS as of January 1, 1939. -- MINIMUM BENEFIT RATE PER WEEK.

<table>
<thead>
<tr>
<th>State or District</th>
<th>Minimum</th>
<th>$3</th>
<th>$4</th>
<th>$5 or 3/4 of wages</th>
<th>$5 or 6 per cent of highest wage in highest quar.</th>
<th>$6 or 3/4 of wages</th>
<th>$7 or 3/4 of wages</th>
<th>$7 or 6 per cent of wages in highest quar.</th>
<th>$7.50 or 3/4 of wages</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alabama</td>
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<td>Dist. of Col.</td>
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<tr>
<td>Mississippi</td>
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</tbody>
</table>

1. "$5 per week or 6 percent of highest quarterly wage earned during first 6 of last 9 calendar quarters preceding benefit year, whichever is less."
2. Generally the same as Kansas in intent, although slightly different in detail.
3. Based on the first 4 of the last 5 completed calendar quarters.

Source: The Social Security Board
In this matter of minimum benefit rates we find wide divergence where, if actuarial principles had been preserved, there would be no such varying provisions. While it is unfortunate that many workers in this country are inadequately paid for their labors, and hence are unable to build up sizable credits in their unemployment compensation accounts, it is not the function of a system designed presumably on actuarial lines to make up for the shortcomings of the wage system of which such inadequately paid workers are victims.

The five jurisdictions in which no minimum benefit rates are prescribed are on the right track, actuarially, in that benefit rates, at the lower end at least, are related to the level of wages previously received. (As previously explained, however, the District of Columbia system nullifies the good actuarial policy of establishing no minimum benefit rates by making the claimants' dependents a factor in the determination of the weekly benefit rate.)

From the points of view of equity and equality, as well as of true actuarial considerations, the wide range of minimum benefit rates in the several jurisdictions should be abolished and benefit rates related solely to previous wage rates. Any deficiencies resulting from the operation of such a plan should be remedied by relief rather than by insurance methods.
h. Duration of Benefits

The final comparison of unemployment compensation laws which will be made is in regard to the duration of benefits. As indicated in Table VIII, the most popular duration of benefits is a maximum of 16 weeks in 52 weeks, which prevails in 25 jurisdictions. The maximums range from twelve weeks in 52 weeks in Missouri and West Virginia to over 32.8 weeks, under certain special conditions not yet fully operative, in Massachusetts. Kansas has no definitely fixed maximum duration of benefits, as benefits cease under its law as soon as eight per cent of the wages credited to the individual claimant's account has been paid out in the form of benefits.

The existing variation in the maximum duration of benefits in the several jurisdictions is an inequality which results in inequities as far as the unemployed workers in states with a low maximum benefit period are concerned.

From a cursory study of the maximum periods for which benefits are payable, it appears that variations in these periods in states having the same general economic structures are due to the effects of inequalities in other factors in their unemployment compensation laws.

Thus, Connecticut and Rhode Island, more or less the same economically, maintain different maximum periods for which benefits are payable. Connecticut, which levies contributions on employers only, evidently feels that with a two week waiting period it can afford to pay benefits for a maximum
### TABLE VIII

**SIGNIFICANT PROVISIONS OF STATE UNEMPLOYMENT COMPENSATION LAWS**

*as of January 1, 1939. — DURATION OF BENEFITS*

<table>
<thead>
<tr>
<th>States</th>
<th>Maximum times weekly benefit payable in 52 weeks</th>
</tr>
</thead>
<tbody>
<tr>
<td>West Va., Delaware</td>
<td>Mississippi, Indiana, Arkansas, Nevada, California, Mass.</td>
</tr>
<tr>
<td>Wyoming, Georgia</td>
<td>Illinois, Wisconsin, Ohio</td>
</tr>
<tr>
<td></td>
<td>Maine, Maryland, Michigan</td>
</tr>
<tr>
<td></td>
<td>Minnesota, Montana, Nebraska, New Hamp.</td>
</tr>
<tr>
<td></td>
<td>New Jersey, New Mex., New York</td>
</tr>
<tr>
<td></td>
<td>No. Car., No. Dakota, Oklahoma, Oregon</td>
</tr>
<tr>
<td></td>
<td>Tennessee, Texas, Utah</td>
</tr>
<tr>
<td></td>
<td>Virginia, Washington</td>
</tr>
</tbody>
</table>

1. 8 per cent of wages credited to account
2. Over 32.5, depending on prior earnings
3. 16 weeks within 12 months.

**Source:** The Social Security Board
of only 13 weeks. On the other hand, Rhode Island levies
contributions on both employers and employees, and thus feels
that with the same waiting period of two weeks it is in a
position to pay benefits up to a maximum of 20 weeks. The whole
thing causes one to recall the old adage that in this world
"you get just what you pay for."

However, upon studying the matter further, it appears
that perhaps the states, in setting maximum benefit periods,
were perhaps not guided entirely by actuarial principles, but
in part at least by sheer guesswork. "Under our federal-state
procedure the greater part of the administration of unemploy-
ment compensation rests with the states, and the Social Security
Act does not require them to have any concern for the solvency
of their funds. Indeed, the federal government washed its hands
of all responsibility for the actuarial basis of the state plans."¹

Consequently, while the writer feels that uniformity
is necessary in the maximum period for which benefits are pay-
able, in order to insure equal and equitable protection for un-
employed workers in all parts of the country, the question as
to just what such maximum period should be must remain unanswered
at the present time. The mere fact that 25 states favor a
16 week period is no assurance that such is desirable from an
actuarial point of view. "Such calculations as have been made
suggest that many state laws have promised a greater duration

of benefit than the funds will provide even during normal times. Assuming a benefit rate of 50 per cent of wages and a $15 weekly maximum, the Committee on Economic Security made the following estimates of the contribution rate required to pay benefits for specified periods:

<table>
<thead>
<tr>
<th>Waiting Period</th>
<th>Duration Permitted by Contribution Rate of</th>
</tr>
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<tbody>
<tr>
<td></td>
<td>2.7 per cent</td>
</tr>
<tr>
<td>2 weeks</td>
<td>10 weeks</td>
</tr>
<tr>
<td>3 weeks</td>
<td>11 weeks</td>
</tr>
<tr>
<td>4 weeks</td>
<td>12 weeks</td>
</tr>
</tbody>
</table>

On the basis of his analysis of the various factors that might modify costs in the future, W. R. Williamson, actuary of the Social Security Board, computed that a 5.2 per cent contribution rate would be needed to pay the 50 per cent benefit for fifteen weeks after a waiting period of three weeks and for ten additional weeks for the regularly employed. This compares with a standard rate of 2.7 per cent in most states. Mr. Williamson points out that his estimates are not conclusive but recommends that the state administrations recognize the possible deficiencies in the rates set.¹

3. Guinea Pigs

We are led to the conclusion, therefore, that the

unemployed workers in the several jurisdictions are being used as guinea pigs in a great actuarial experiment which is nevertheless made necessary because of the prior lack of the "mortality tables" for unemployment which are required in setting up actuarial formulae.

If it were certain that these actuarial experiments would eventually lead to the adoption in all jurisdictions of the one plan which proved to be the best, the present chaotic state of affairs could be tolerated. However, there is no such certainty as long as each state is its own master in regard to the details of its unemployment compensation law.

It appears conclusive therefore, that no uniformity on an equitable basis can be brought about by permitting fifty-one jurisdictions to do as they please. The only apparent way of overcoming this lack of uniformity is to take unemployment compensation out of the hands of the states and place it directly under the supervision of the federal government. In this way, the various factors discussed above can be made uniform, and the varying personnel experiences of various firms and industries in the same area or in different parts of the country can be adjusted automatically by means of a merit rating system.

4. The Difficulties of Handling Multi-State Workers

Another phase of the present system of unemployment compensation, administered as it is by the states, is the
difficulty encountered by the so-called multi-state worker in securing the full benefit of unemployment compensation. A multi-state worker is one who works in several states, accumulating credits in each, and who would naturally expect to draw upon those credits upon becoming unemployed, regardless of where he is living at the time.

The Social Security Board has given this matter a considerable amount of study, since many difficulties are involved. "The principal administrative problems with respect to employees who work in more than one jurisdiction are:

(1) how to cover all such employees, (2) how to avoid double coverage, (3) how to provide that such an employee may file a claim and secure benefit where he resides though he may not be insured in that state, and (4) how to provide that the different spells of employment served by the employee in more than one state shall count toward his qualifying period and the duration of his benefit."¹

Most of the states have now entered into agreements with one another in an attempt to solve this problem, so that an unemployed worker may file a claim for benefits in almost any state -- the "agent state" -- and receive his benefits, if qualified, from almost any other state -- the "liable state." However well intentioned these agreements may be, the fact remains that they should be considered merely as temporary expedients to attempt to overcome the shortcomings of the Social Security Act.

¹. Bryce M. Stewart, op. cit., p. 87.
It would appear that the problems raised by varying provisions of the state unemployment compensation laws, as well as by the subconscious effects of the theory of state sovereignty, cannot be solved in any permanently satisfactory manner until unemployment compensation is taken out of the hands of the states and placed directly under the control of the federal government. The inferences which have been made in this chapter regarding a federal system of unemployment compensation naturally lead up to the consideration of the next major question, which is, "Is a centralized system desirable?"
IV. IS A CENTRALIZED SYSTEM DESIRABLE?

1. The Limits of the Discussion

It is not the purpose of the writer to enter into any theoretical discussion as to the relative merits of the arguments of those who favor a strong central government as opposed to those who uphold the doctrine of states' rights. Without seeking proof for the assertion, the writer regards as axiomatic the statement that state boundaries as they are now delimited have no relation to economic realities, and that in some instances our national organization of forty-eight states is an anachronism under present-day conditions. As a matter of fact the United States Supreme Court has gone on record regarding the "sovereignty" of the states by making use in this connection of the words "quasi sovereign existence." (Charles C. Steward Machine Company v. Davis. 57 S. Ct. 883, at 893; 301 U.S. --.)

The sole purpose of this section is to attempt to determine whether a centralized system of unemployment compensation is desirable from the point of view of economic considerations, uniformity of administration, and above all, of its value to the beneficiaries of the system -- the unemployed.
2. Economic Considerations

From the point of view of economics, the Supreme Court has in some of its recent decisions nullified the effect of state boundaries on the problem of unemployment. For example, in the decision rendered in the case of Helvering v. Davis (57 S. Ct. 904, at 909; 301 U.S.--.) the Court said, "The purge of nation-wide calamity that began in 1929 has taught us many lessons. Not the least is the solidarity of interests that may once have seemed to be divided. Unemployment spreads from state to state, the hinterland now settled that in pioneer days gave an avenue of escape. ... Spreading from state to state, unemployment is an ill not particular but general, which may be checked, if Congress so determines, by the resources of the nation. ..."

In another case, that of the Charles C. Steward Machine Co. v. Davis (57 S. Ct. 883, at 890, 891; 301 U.S.--) the Supreme Court presumably digested all the mass of facts presented to it concerning unemployment and summarized the material in part as follows: "... there is need to remind ourselves of facts as to the problem of unemployment that are now matters of common knowledge. ... The relevant statistics are gathered in the brief of counsel for the government. Of the many available figures a few only will be mentioned. During the years 1929 to 1936, when the country was passing through a cyclical depression, the number of the unemployed mounted to unprecedented heights. Often the average was more than 10
million; at times a peak was attained of 16 million or more. Disaster to the breadwinner meant disaster to dependents. Accordingly the roll of the unemployed, itself formidable enough, was only a partial roll of the destitute or needy. The fact developed quickly that the states were unable to give the requisite relief. The problem had become national in area and dimensions. There was need of help from the nation if the people were not to starve. It is too late today for the argument to be heard with tolerance that in a crisis so extreme the use of the moneys of the nation to relieve the unemployed and their dependents is a use for any purpose narrower than the promotion of the general welfare. . . . The nation responded to the call of the distressed. Between January 1, 1933, and July 1, 1936, the states (according to statistics submitted by the government) incurred obligations of $689,291,802 for emergency relief; local subdivisions an additional $775,675,366. In the same period the obligations for emergency relief incurred by the national government were $2,929,307,125, or twice the obligations of states and local agencies combined. According to the President's budget message for the fiscal year 1938, the national government expended for public works and unemployment relief for the three fiscal years 1934, 1935, and 1936, the stupendous total of $8,681,000,000. The parens patriae has many reasons -- fiscal and economic as well as social and moral -- for planning to mitigate disasters that bring these burdens in their train."
It appears conclusive from the foregoing that unemployment is a general ill which knows no state boundaries. Furthermore, it appears that the relief of unemployment is conceded by the Supreme Court to be a field wherein the nation may expend its moneys under the authority of the "general welfare" clause of the Constitution. Continuing even further, there appears to be little doubt that from a purely economic point of view, at least, the individual states are hardly the ideal units for the administration of such a plan as unemployment compensation, since in such a case a local palliative would be applied when the ill to be relieved is general. Since there is no intermediate step of economic regions existing between our state governments and the national government, the conclusion must be drawn that the national government is the logical administrator of a system of unemployment compensation as far as purely economic considerations are concerned.

This conclusion is shared by the American Federation of Labor. The report of the Executive Council of that organization to the officers and delegates of the fifty-eighth annual convention of the Federation on October 3, 1938, stated in part:

"Experience in those states that have been paying unemployment benefits demonstrates need for immediate amendments of the basic law.

"First: We must have a national system of compensation for loss of work -- work insurance. The workers of this
country are employed by industries organized nationally or
dependent on markets organized nationally which in turn flow
into world markets and commerce. The causes of unemployment
are not within an industry or a locality, but are national and
international in scope. Our plans for security of workers
should, therefore, cover the largest area possible in order to
assure equity through uniformity, simplicity and economical
administration. A state boundary means nothing in business
organization and employment. Workers must follow jobs and the
administration of their rights should be just as flexible. 1

It is of interest to note that in the above-quoted
excerpt, the reasons for proposing or advocating a national
system of unemployment compensation are not limited solely to
the field of economics. The words "uniformity, simplicity and
economical administration" as used above serve to introduce
further lines of inquiry concerning the desirability of a
centralized system controlled directly by the Federal govern-
ment.

3. Uniformity

Considering first the question of uniformity as it
applies to the individual claimants of unemployment compensation,
we have seen from the preceding section that although each state
unemployment compensation law follows a certain fixed general

1. Report of the Proceedings of the Fifty-eighth Annual Con-
pattern, there are nevertheless many points of divergence in such matters as coverage, waiting period, and maximum period of benefits. It was pointed out that these differences result in inequities and inequalities among the benefit recipients of the several States. It is obvious that if a national system were adopted that all covered workers in all parts of the country would be on an equal footing in regard to the benefits to be secured under such a system of unemployment compensation.

Adding to the difficulty is the fact that the several states have not only their own individual laws, but also their own agencies for interpreting their laws and for rendering decisions on disputed claims and other phases of the laws.

To the employer doing business in more than one state, even the diversity in the state laws regarding the number of employees necessary to make that employer subject to the state unemployment compensation laws is confusing. In some cases the same employer is subject in one state and not in another. In other cases, one state might decide that a sales representative was an employee, while another state might adjudge such a person as an independent self-employed person. Distinctions such as these, which are often fine when one authority makes the decision, become chaotic when all 51 benefit-paying jurisdictions make independent and uncoordinated decisions.

To the individual employee, the diversity in ad-
judging such things as failure to accept "suitable work" in one jurisdiction as compared with another, is not only a source of irritation, but also may in some cases work a distinct hardship.

As already mentioned in a previous section, a great body of material has already resulted from state interpretive decisions, opinions of state attorney generals and appealed benefit decisions which by 1938 had amounted to more than 800 pages. While no effort has been made to determine the fact, the writer assumes that a good proportion of such decisions are contradictory in relation to decisions on similar points rendered by other jurisdictions. If such contradictions do not exist there is at work a supreme coordinating power of which the writer is unaware. It is evident that in a centralized system of unemployment compensation there would be uniformity throughout the country in regard to the interpretation of a single federal law and a uniform basis upon which a possible future system of regional appeals boards could render their decisions in individual cases.

Uniformity in coverage, in benefit rights and in procedure in a national system of unemployment compensation would be of distinct benefit to workers who engage successively in employment in more than one state. As already shown, the requirements for coverage by state unemployment compensation laws vary from state to state. An individual employee may be covered when he works in one state but not when he works in
another. To be sure, most of the states have entered into agreements with one another to attempt to solve the problems raised by multi-state workers. However, it seems unlikely that any complete solution of this problem can be found without resorting to centralization of the entire system under federal control, thus putting all covered workers in the entire country on an equal footing.

Uniformity in administration and matters related thereto would of course be brought about by centralization. In the matter of personnel alone, a centralization of the unemployment compensation system would tend to bring about uniformity in personnel classifications and in the qualifications for each classification. While the Federal Civil Service has its generally known shortcomings, the fact remains that only nine states -- Arkansas, California, Colorado, Illinois, Massachusetts, New Jersey, New York, Ohio and Wisconsin -- have established civil service requirements for unemployment compensation personnel. In at least one of the above named states the abuse of the civil service laws has become a public scandal. "A former governor of New Jersey has recently been appointed to head the administration of unemployment compensation in that state, and as a consequence two of the higher officials, regarded as among the most competent in the country, resigned."

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2. Ibid., p. 479.
The remaining thirty-nine states have no civil service systems. This fact, coupled with the stipulation of the Social Security Act which bars the Social Security Board from insisting that state unemployment compensation laws contain suitable provisions to assure efficiency and uniformity in regard to selection, tenure of office, and compensation of personnel, makes possible the appointment of persons not qualified to carry out their duties properly and efficiently. Centralization of the system and the application of the Federal Civil Service laws to the personnel of such a system would do much to improve the calibre of the employees of the system.

4. Simplicity

Turning now to the second major advantage of centralization -- simplicity -- the first thing that meets our eyes is the overwhelming topheaviness of the whole administrative structure of unemployment compensation in this country. Beginning in Washington we find the Social Security Board and the United States Employment Service both engaged in tasks that should, as already been shown, have been delegated to one unified agency. It has also been shown that only the pressure of circumstances forced these two bodies to enter into a working agreement which was not provided for by law. In each state capital there is some form of unemployment compensation board or commission, each with its own administrative staff, together with a state administrative office of the state employment ser-
vice. Thus in New England, which can be considered as a single economic area, there are six state unemployment compensation and state employment service administrative organizations, where one regional headquarters of a centralized system would undoubtedly be sufficient.

Simplicity is also needed in the structure of the organizations responsible for the collection of the payroll tax from employers. At the present time, an employer is required to go through the following procedure in regard to unemployment compensation: "(1) deal with two federal agencies, the Bureau of Internal Revenue and the Social Security Board, and at least one state agency in every state in which he has a sufficient number of employees to be subject for contributions, (2) send taxes and tax returns to the Bureau of Internal Revenue with respect to unemployment compensation on a different basis from those for old age pensions, (3) submit to the Bureau of Internal Revenue a statement of his contributions under state laws, (4) send contributions and informational returns at different intervals to the state headquarters in every state in which he has the specified number of insured employees, usually on a basis different from either of his federal reports and also different as between the states involved, (5) in some states, submit reports on employees hired or released, (6) maintain different payroll bases for the unemployment insurance and pension taxes, since the former is levied on total payroll and the latter, on the first $3,000 of each employee's earnings."\(^1\)

\(^1\) Bryce M. Stewart, op. cit., p. 81.
It is obvious that much of the "red tape" outlined above would be cut by a unified federal agency for administering a centralized unemployment compensation system. Further simplification could be accomplished in such a centralized system by making provisions for the direct collection of the pay roll taxes by the unemployment compensation agency rather than through the Bureau of Internal Revenue. The Post Office is an example of such direct payment system. Perhaps no one would advocate a plan whereby a person wishing to purchase a postage stamp must first file a report with and pay the required sum to an office of the Bureau of Internal Revenue, there receive a receipt and then exchange such receipt at a post office for a postage stamp. Similarly, there appears to be no insurmountable objection to adopting such a direct payment procedure in collecting pay roll taxes.

Simplicity would be enhanced in many ways by a unified centralized system, other than in the ways already discussed. For example, in the local offices where employees come to file claims for unemployment benefits and applications for employment, there exists in at least one state, to the writer's personal knowledge, a dual organization -- one concerned with claims for benefits and the other with employment service work. This dual organization has been a cause of conflicts of authority, personal misunderstandings, and a general source of irritation and lowered efficiency. Unification of the benefit paying and employment service functions of unemployment com-
pensation activities would do much to increase efficiency in the
field in any given jurisdiction. Centralization of the system
would apply uniform methods to the country as a whole or permit
suitable variations in specific economic regions -- all co-
ordinated and all in the interests of general efficiency.

5. Economical Administration

Under the general heading of economical administra-
tion, it appears obvious that the present top-heavy administrative
structure which has already been discussed results in an ad-
ministrative cost which is excessive. Without going into de-
tails concerning salaries paid, it seems hardly necessary from
a purely administrative point of view to maintain in the New
England states six unemployment compensation bodies, each with
its own complete administrative organization, and six separate
and distinct state employment services, each also having its
administrative staff. From the point of view of economical
administration, it is unnecessary to have a local office in
Springfield, Massachusetts, for example, do business with a
central office in Boston, while a local office in Thompsonville,
Connecticut, just across the state line, transacts its business
with a similar but yet autonomous central office in Hartford.
To avoid a parochial attitude in this matter, consider another
and more sparsely settled portion of the country, such as the
Rocky Mountain area. Why is it necessary, from the point of
view of economical administration, to have a complete administra-
tive organization in the state of Wyoming, for example, to serve about 225,000 persons, when such work as is necessary in connection with unemployment compensation could be handled just as well by the corresponding organization in Colorado? As a matter of fact, the regional office of the Social Security Board in Denver serves six states, extending from border to border. Case after case of such unnecessary state organizations can be discovered by reference to a map of the United States.

The more one considers the matter the more one is convinced that organization on the basis of state lines is not conducive to the economical administration of a system which is designed to minimize the effects of unemployment, which unemployment in turn knows no state boundaries. Duplication of effort, uncoordinated activities, excessive administrative costs, and in some cases even geographical inconvenience result from the present system of individual state unemployment compensation and state employment service administrative organizations.

6. The Argument for Decentralization

Advocates of a system of unemployment compensation organized on the basis of state lines have put forward many arguments to prove that their ideas are best. These arguments range all the way from the sanctity of states' rights to the greater individual attention which claimants might expect to receive from a relatively localized state organization than
from an agency of the Federal government.

Of these, the two arguments which appear to have been most valid at the time of the passage of the Social Security Act were, 1. the doubtful constitutionality of a Federal system, and 2. the highly experimental nature of the whole plan of unemployment compensation.

Since the first of these points has been settled by the United States Supreme Court, there remains for discussion only the second -- the experimental nature of the system. As described in the previous chapter, the present system, with its many variations from state to state, permits the establishment by trial and error of a suitable plan for unemployment compensation which will be actuarially sound and organized for the best interests of all concerned. The lack of satisfactory data upon which to construct experience tables for the purpose of estimating the risks of unemployment is now being remedied under actual operating conditions.

Since any system of trial and error is bound to produce many errors before the most ideal plan is evolved, the advocates of the state systems felt that it would be better to localize such errors within individual states, rather than to have them affect the country as a whole. Thus, if a state unemployment compensation fund became insolvent because of improper actuarial considerations, the effect on the country as a whole would not be as serious as a similar disaster to a centralized Federal fund. In like manner, any mistakes of
organization in the state system could be discovered and rectified without endangering the plan in the country as a whole. It was also felt that inertia in enacting legislation in the states was not as great as in Congress, so that the cycles of trial and error and trial again would be more frequent and hence productive of more factual data.

However, this period of experimentation is not likely to be permanent, and in fact, it need not be. In the course of five or ten years, for example, it should be possible to build up sufficient data upon which to plan a permanent system along sound actuarial lines and efficient organizational ideas. When that time comes, the most potent argument which the advocates of state unemployment compensation systems have so far put forward will no longer be valid, and a Federal system will probably be demanded by the insistent clamoring of public opinion.

7. The Question Answered

From the above discussion it appears that a centralized system is desirable in many ways, barring of course the question of the "quasi-sovereign existence" of the individual states, and assuming that a sufficient period of experimentation by the states will provide the necessary data for the proper operation of such a centralized system.

If there were in existence in the structure of the Federal government a unified agency for administering all
phases of the unemployment compensation program, including the
collection of the pay roll taxes, the payment of benefits, and
the operation of the employment service, such an organization
could, if properly administered, accomplish the three principal
aims already set forth -- uniformity, simplicity, and economical
administration.

Uniformity would be accomplished automatically in
such matters as coverage, waiting period, and maximum period
of benefits. The co-ordination which would result from cen-
tralization would eliminate the possibility of contradictory
interpretations of the law in various parts of the country,
and reduce the volume of substantive law which is now develop-
ing. The problems arising out of the multi-state worker would
be solved by the establishment of a centralized system.
Uniformity in administration and in personnel policies would be
an important result of centralization.

Simplicity of organizational structure would result
from the centralization of the system, with a few regional
branch offices taking the place of the many state unemployment
compensation organizations now in existence. Further sim-
plcity would result if such regional offices were made the
collecting unit for pay roll taxes.

Economical administration would be fostered by a
centralized organization working through regional branches in
place of the quasi autonomous state organization which we have
at present. The topheavy and expensive state administrative
bodies now existing are in many instances not worth the price when compared with regional offices of a centralized system.

Centralization into a unified federal agency appears to be the only logical way out of the present administrative waste and confusion and complication resulting from adherence to artificially delineated, uneconomic, and archaic state boundaries.
V. CAN A CENTRALIZED SYSTEM BE ADOPTED WITHOUT AN AMENDMENT TO THE CONSTITUTION?

1. Early Worries of the Framers of the Social Security Act

The Tenth Amendment to the Constitution states,
"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

On the other hand, Article I, Section 8 of the Constitution gives to Congress the power to tax to provide for the general welfare of the United States.

In addition to these basic introductory points there is the statement attributed to Chief Justice Hughes of the United States Supreme Court to the effect that, "We are under a Constitution but the Constitution is what the judges say it is."¹

Faced with the problem of devising a plan for unemployment compensation which would not only appear to be constitutional in theory, but which in addition would have a fair chance of being upheld by a more or less hostile Supreme Court, the framers of the Social Security Act staged an intricate act of legal legerdemain.

Resting on the firm base of the provisions of Article I, Section 8, of the Constitution, the Social Security Act, in Title IX, levies an excise tax upon employers of eight

¹ Paul H. Douglas, op. cit., p. 308.
or more individuals (with certain exceptions), which tax is based upon the wages paid to the employees of such employers.

Proceeding further, the Act encourages the states to establish systems of unemployment compensation by permitting the employers in any state which has such a system to credit towards the federal excise tax any payments to a state unemployment compensation agency, up to ninety per cent of the federal excise tax which would normally be due.

In addition to this tax offset feature as it applies to the payment of the excise tax, there is the provision in Title III of the Act which authorizes outright grants from the Federal government to those states which have systems of unemployment compensation, for the administration of such systems. The money to provide these grants theoretically comes from the general funds of the Federal government, just as, in theory, the proceeds of the excise tax set up by Title IX of the Act flow into and become intermingled with the general funds of the Government.

The funds to provide these grants to the states, as provided in Title III, "are in reality derived from the one-tenth of the payroll tax authorized under Title IX, which will be retained by the federal government even though every state were to pass an unemployment insurance law. But no such organic connection between Title III and Title IX is admitted in the act itself. Instead, the grants authorized under Title III are made without any explicit reference to the source
from which they are really derived and are treated as though they came solely from the general fund. This was done because of the belief that had the 10 per cent of the payroll tax which the government retained been earmarked specifically for the payment of the administrative costs to the states of unemployment insurance, the case for the constitutionality of the system would have been appreciably weakened. In order to strengthen the constitutionality of the act, the two titles were, therefore, widely separated from each other and a legal fiction is maintained that they have no connection with each other."¹

"While it is true that the receipts which will be derived from Title IX exceed those specifically authorized under Title III, it is clear from a logical point of view that the outlay under the earlier title was in fact intended to be met from the revenues provided by the latter. This is a somewhat sad commentary upon the political contrivances and legal fictions which an inflexible and written constitution forces upon those who are seeking to adapt the activities of the government to the needs of the times."²

2. The Supreme Court Speaks

All of the foregoing, however, pertains to the line of thought which prevailed before the Supreme Court had its final say in the matter. From this point on, the dis-

¹ Paul H. Douglas, op. cit., p. 146.
² Ibid., pp. 147-148.
cussion will center upon the more liberal point of view of the Court as expressed in the decisions rendered in the "Social Security cases" in May, 1937, and to attempt to foretell, from purely a layman's point of view, whether or not the Court would countenance the setting up of a centralized system of unemployment compensation under the direct control of the Federal government.

3. -- on "General Welfare"

As already indicated above, the Constitution gives to Congress the power to tax to provide for the general welfare of the United States. The question which first arises in connection with this is the definition of "general welfare" which is currently held by the Supreme Court.

This question is apparently answered in no uncertain terms in the decision rendered by that court in the case of Helvering v. Davis (57 S. Ct. 904; 301 U.S. --)
The Court said, in part, "... Congress may spend money in aid of the "general welfare." ... There have been great statesmen in our history who have stood for other views. We will not resurrect the contest. It is now settled by decision. United States v. Butler, supra. The conception of the spending power advocated by Hamilton and strongly reinforced by Story has prevailed over that of Madison, which has not been lacking in adherents. Yet difficulties are left when the power is conceded. The line must still be drawn between one welfare and another, between particular and general. Where this shall be
placed cannot be known through a formula in advance of the event. There is a middle ground or certainly a penumbra in which discretion is at large. The discretion, however, is not confided to the courts. The discretion belongs to Congress, unless the choice is clearly wrong, a display of arbitrary power, not an exercise of judgment. This is now familiar law. "When such a contention comes here we naturally require a showing that by no reasonable possibility can the challenged legislation fall within the wide range of discretion permitted to the Congress." ... Nor is the concept of the general welfare static. Needs that were narrow or parochial a century ago may be interwoven in our day with the well-being of the nation. What is critical or urgent changes with the times.

"The purge of nation-wide calamity that began in 1929 has taught us many lessons. Not the least is the solidarity of interests that may once have seemed to be divided. Unemployment spreads from state to state, the hinterland now settled that in pioneer days gave an avenue of escape. ... Spreading from state to state, unemployment is an ill not particular but general, which may be checked, if Congress so determines, by the resources of the nation. ... But the ill is all one or at least not greatly different whether men are thrown out of work because there is no longer work to do or because the disabilities of age make them incapable of doing it. Rescue becomes necessary irrespective of the cause."
It appears from the above-quoted words of the Court that that body would look favorably upon the constitutionality of a system for the relief of unemployment which is based solely on national lines, as distinguished from the state systems of unemployment compensation such as we now have. That is, to take a restricted point of view of the matter, it appears that the Court has construed "general welfare" to include the relief of unemployment. Consequently, for our purposes at the moment, we can assume that the Constitution, Article I, Section 8, now reads in part, "The Congress shall have Power To . . . provide for the . . . relief of unemployment of the United States. . . ."

Having used the Court's own words to show, to our own satisfaction at least, that the bugaboo of unconstitutionality need no longer stand in the way of a national system for providing relief to the unemployed from the Federal treasury, the next question which arises is the probable attitude of the Court with respect to the particular moneys which may be paid out of the Federal treasury for such relief. That is, must such moneys be raised by general taxation and placed into a general fund before being paid out for such relief of unemployment, or may a special tax be levied in respect to pay rolls, the moneys thus realized kept in a separate fund in the Federal treasury, and paid out only to those who have contributed when such contributors become unemployed?
4. -- on Pay Roll Taxes

As far as the levying by Congress of a tax on pay rolls is concerned, the Supreme Court, in the case of Charles C. Steward Machine Company v. Davis (57 S. Ct. 893; 301 U.S.--) said, in part, in the decision rendered, "The caption of title IX (of the Social Security Act) is "Tax on Employers of Eight or More." Every employer (with stated exceptions) is to pay for each calendar year "an excise tax, with respect to having individuals in his employ," the tax to be measured by prescribed percentages of the total wages payable by the employer during the calendar year with respect to such employment. . . . The proceeds, when collected, go into the Treasury of the United States like internal revenue collections generally. . . . They are not earmarked in any way. In certain circumstances, however, credits are allowable. . . .

"The assault on the statute proceeds on an extended front. Its assailants take the ground that the tax is not an excise; that it is not uniform throughout the United States as excises are required to be; that its exceptions are so many and arbitrary as to violate the Fifth Amendment; . . .

"The objections will be considered seriatim with such further explanation as may be necessary to make their meaning clear.

"First: The tax, which is described in the statute as an excise, is laid with uniformity throughout the United States as a duty, an impost, or an excise upon the relation of
employment.

"... Whether the tax is to be classified as an "excise" is in truth not of critical importance. If not that, it is an "impost" ... or a "duty" ... . A capitation or other "direct" tax it certainly is not. "Although there have been, from time to time, intimations that there might be some tax which was not a direct tax, nor included under the words 'duties, imposts, and excises,' such a tax, for more than 100 years of national existence, has as yet remained undiscovered, notwithstanding the stress of particular circumstances has invited thorough investigation into sources of revenue." ... 

"The tax being an excise, its imposition must conform to the canon of uniformity. There has been no departure from this requirement. According to the settled doctrine, the uniformity exacted is geographical, not intrinsic. . . .

"Second: The excise is not invalid under the provisions of the Fifth Amendment by force of its exemptions.

"The statute does not apply, as we have seen, to employers of less than eight. It does not apply to agricultural labor, or domestic service in a private home or to some other classes of less importance. Petitioner contends that the effect of these restrictions is an arbitrary discrimination vitiating the tax.

"The Fifth Amendment unlike the Fourteenth has no equal protection clause. . . . But even the states, though subject to such a clause, are not confined to a formula of
rigid uniformity in framing measures of taxation. ... They may tax some kinds of property at one rate, and others at another, and exempt others altogether. ... They may lay an excise on the operations of a particular kind of business, and exempt some other kind of business closely akin thereto. ... If this latitude of judgment is lawful for the states, it is lawful, a fortiori, in legislation by the Congress, which is subject to restraints less narrow and confining. ... "The classifications and exemptions directed by the statute now in controversy have support in considerations of policy and practical convenience that cannot be condemned as arbitrary. The classifications and exemptions would therefore be upheld if they had been adopted by a state and the provisions of the Fourteenth Amendment were invoked to annul them. ... The act of Congress is therefore valid, so far at least as its system of exemptions is concerned, and this though we assume that discrimination, if gross enough, is equivalent to confiscation and subject under the Fifth Amendment to challenge and annulment."

From the foregoing it is apparent that if a federal system for providing relief of unemployment were established, there could also be levied, at the same time, an excise tax on employers, such tax to be measured by prescribed percentages of the total wages payable by the employer with respect to such employment. We have shown that the moneys for such relief of unemployment need not necessarily come from general taxation,
as far as the Supreme Court is concerned, but we have not attempted as yet to determine whether the receipts from such an excise tax on employers may be segregated in a special fund in the United States Treasury or whether they must be made a part of the general funds of the Government, subject to appropriation by Congress in the customary manner.

5. on the Earmarking of the Proceeds of a Tax

It would appear that on the basis of the attitude of the Supreme Court toward the processing taxes levied by the act of Congress which created the Agricultural Adjustment Administration in 1933 the segregation, or "earmarking" of the proceeds of an excise on employers on the basis of a percentage of the wages paid by such employers would not be upheld. This is referred to in the decision in the Charles C. Steward Machine Company case, wherein the Court stated in part, "There (under the act creating the Agricultural Adjustment Administration) a tax was imposed on processors of farm products, the proceeds to be paid to farmers who would reduce their acreage and crops under agreements with the Secretary of Agriculture, the plan of the act being to increase the prices of certain farm products by decreasing the quantities produced. The court held (1) that the so-called tax was not a true one, the proceeds being earmarked for the benefit of farmers complying with the prescribed conditions, (2) ... None of them is applicable to the situation here developed (the excise tax on employers of
eight or more).

"(a) The proceeds of the tax in controversy (the above mentioned excise tax on employers) are not earmarked for a special group! (b) . . . "

Consequently, if a federal system for the relief of unemployment were established, and if an excise tax were levied on employers with respect to pay rolls as a part of, or coincident with, such a system, it seems from the above that the proceeds of such an excise would have to be paid into the general funds of the United States Treasury without being earmarked for a specific purpose.

6. -- on Unemployment Compensation in General

The final step in this analysis is to attempt to find some basis for distributing equitably the proceeds of the above-discussed excise tax on employers among those employees of the taxed employers who happen to become unemployed, that is, some basis of distribution which might be looked upon with favor by the Supreme Court. Very early in the present discussion we showed that Congress may spend money in aid of the "general welfare" and that the Supreme Court was of the opinion that Congress could spend money for the relief of unemployment under these "general welfare" powers conferred on it by the Constitution. We now must relate in some way, satisfactory to the Supreme Court, the general disbursements by Congress for the relief of unemployment and the actual
receipt of unemployment benefits by an unemployed worker who
had formerly worked for an employer subject to the excise tax
already discussed.

We have no specific case to serve as a guide in
solving this final step in a positive manner. There are, how­
ever, some interesting and appropriate comments by the Supreme
Court on unemployment compensation in general and the Alabama
Unemployment Compensation Act in particular, contained in the
decision in the case of Carmichael et al v. Southern Coal &
Coke Company (57 S. Ct. 868; 301 U. S. -- ). These comments
may give some inkling as to the possible reaction of the
Court to possible solutions of this final step, even though
they are concerned particularly with the unemployment com­
pensation law of only one state.

Under the sub-heading "Restriction of Benefits"
the Court said, "Appellees again challenge the tax (on employers
of eight or more, based on pay rolls) by attacking as arbitrary
the classification adopted by the legislature for the distribution
of unemployment benefits. Only the employees of those subject
to the tax share in the benefits. Appellees complain that the
relief is withheld from many as deserving as those who receive
benefits. The choice of beneficiaries, like the selection of
the subjects of the tax, is thus said to be so arbitrary and
discriminatory as to infringe the Fourteenth Amendment and
deprive the statute of any public purpose.

"What we have said as to the validity of the choice
of the subjects of the tax is applicable in large measure to the choice of beneficiaries of the relief. In establishing a system of unemployment benefits the legislature is not bound to occupy the whole field. It may strike at the evil where it is most felt, ... or where it is most practicable to deal with it. ... It may exclude others whose need is less, ... or whose effective aid is attended by inconvenience which is greater. ...

"As we cannot say that these considerations did not lead to the selection of the classes of employees entitled to unemployment benefits, and as a state of facts may reasonably be conceived which would support the selection, its constitutionality must be sustained. There is a basis, on grounds of administrative convenience and expense, for adopting a classification which would permit the use of records, kept by the taxpayer and open to the tax gatherer, as an aid to the administration of benefit awards, as is the case here, where the recipients of benefits are selected from the employees of those who pay the tax. ..."

7. The Question Answered

From the foregoing study of the attitude of the Supreme Court toward the general subject of unemployment compensation, it would appear that a centralized system of unemployment compensation under the direct control of the Federal government could be established without an amendment
to the Constitution and would in all probability be upheld by the Court if the moneys received from employers in the form of an excise tax on pay rolls became a part of the general funds of the Treasury and were not earmarked for the benefit of any specific group — in this case former employees of those employers subject to the tax. The fact that the proceeds of the pay roll tax become a part of the general funds of the Treasury does not apparently preclude the establishment of a bookkeeping system whereby unemployment benefits may be distributed to unemployed workers in proportion to the amounts of the pay roll tax which had been paid by their respective former employers as a consequence of their formerly having been on the pay rolls of those employers.

Since these cases were decided in May, 1937, there has been a change in the personnel of the Court which has resulted in a decided liberalizing of thought in that body. The social concepts shared by the appointees of President Roosevelt — Mr. Justice Black, Mr. Justice Reed, Mr. Justice Frankfurter and Mr. Justice Douglas — coupled with the precedents established in the cases discussed in this chapter, lead to the conclusion that legislation, properly drafted, designed to establish a centralized system of unemployment compensation under direct Federal control would not be nullified by the United States Supreme Court.
VI. CONCLUSIONS

On the basis of the material already presented, the conclusions which may be drawn are as follows:

1. Unification of the various Federal agencies engaged in the administration of unemployment compensation should be effected with a minimum of delay. This is particularly necessary in the case of the United States Employment Service and the Bureau of Unemployment Compensation. It is also necessary, perhaps to a lesser extent, that some method for coordinating the payroll tax collecting methods of the Bureau of Internal Revenue with the statistical and other needs of the administrators of unemployment compensation be adopted. Whether the recommendations of the American Federation of Labor should be followed, and the Bureau of Unemployment Compensation transferred from the Social Security Board to the Department of Labor, of which the United States Employment Service is now a part, is a matter which merits further study. No satisfactory answer can be given to this problem until the relationship of the tax collecting and trust fund investment functions of the unemployment compensation system and the old age pension system is thoroughly studied. The recommendations of the American Federation of Labor are undoubtedly the best as far as service to workers is concerned, but other factors would perhaps make some other plan of organization best for the country as a whole. There is no question, however, in regard to the immediate need of placing the United States Employment Service
and the Bureau of Unemployment Compensation into some one department or agency of the Federal government, to bring about harmony, efficiency, and unity of purpose and action.

2. Steps should be taken to swing public opinion toward the idea of centralizing unemployment compensation functions in the Federal government, with state control of such functions terminated. Unemployment has been shown to be a general economic ill which knows no state boundaries, and hence a system to alleviate the economic effects of such unemployment should not be restricted to state lines. It seems necessary, however, to bring the American public to a state of mind where they will demand centralization of unemployment compensation functions, rather than to antagonize states' rights advocates by proposing such centralization immediately. It would appear from the analysis already presented that the United States Supreme Court would not reject as unconstitutional any plan for centralized unemployment compensation which was properly drafted. Only with a centralized system can the present diversity in the provisions of the unemployment compensation laws in the fifty-one benefit-paying jurisdictions be overcome, and the existing inequities and inequalities eliminated. Such centralization would make possible uniform interpretations of the law, uniform protection for all employees in the country, the solution of the problem of the multi-state worker, and the simplification of the relations of employers doing business in more than one jurisdiction and the various unemployment compensation administrative agencies.
As soon as the "guinea pig" stage of unemployment compensation has run its course, any further adherence to the present plan, whereby the system is administered by the individual states, is not only unnecessary but in fact definitely not for the best interests of all concerned.

3. Since it appears that the actuarial considerations of unemployment compensation have not been given the detailed attention they deserve, steps should be taken to build up a nation-wide "mortality table" for unemployment, in order that the rates of contribution to the system and the amount of and conditions of benefit payments may be actuarially sound. With such data computed on a national scale, and with a centralized system as advocated above in operation, the entire resources of the nation would be behind the system and the chances of the unemployment trust fund ever becoming insolvent would become negligible.

4. The procedures now in effect for collecting the payroll taxes should be examined to determine whether such functions cannot better be handled by an agency other than the Bureau of Internal Revenue of the Treasury Department. Just as the Post Office Department handles its own receipts, so also should the agency of the Federal government which is charged with the administration of unemployment compensation, in order to secure simplicity in methods and uniformity of interpretations. The levies on wages for the purposes of unemployment compensation should be made to appear less like taxes and more like insurance premiums if the system of unemployment compensation is to remain
permanently acceptable to the public.

The first two conclusions which are presented above are by far the most important. Unification should take place as soon as possible; centralization must await a receptive mood on the part of the people and their representatives in Congress. The present system of unemployment compensation has many features which could be changed for the better.
E. COMPREHENSIVE DIGEST OF THE THESIS

The enactment of the so-called Social Security Act set in motion an entirely new governmental activity in the United States. Among other things, this Act enabled the States to make more adequate provision for the administration of their unemployment compensation laws, when and if the States enacted such laws.

Prior to the enactment of this Act, there was very little factual experience at hand to guide the framers of the Act in their work. Furthermore, the Constitution and the Supreme Court were factors which had to be given a great deal of consideration in charting the course to follow to achieve the desired end, which was, among other things, the establishment of a nation-wide system of unemployment compensation.

With the experience gained in the actual operation of unemployment compensation benefit paying organizations in 25 jurisdictions for a year or more, and with the constitutionality of the system settled favorably by the Supreme Court, it seems advisable to study the matter in the light of this actual experience to see if the system could in any way be improved upon, particularly along the lines of organizational structure.

Under the present plan of organization there are two distinct Federal agencies responsible for the administration of unemployment compensation. These are the Bureau of Unemployment Compensation of the Social Security Board and the United States Employment Service of the Department of Labor. No Federal law
provides for the coordination in any way of the activities of these two bodies which are administratively entirely independent of each other.

In each of the 51 benefit paying jurisdictions in the country -- the 48 states, the District of Columbia, and the territories of Alaska and Hawaii -- there exist unemployment compensation commissions or their equivalent which administer, largely in their own individual ways, the benefit-paying functions of their respective systems. Under the terms of the Social Security Act, the administrative expenses of these 51 agencies are paid by the Federal government.

Also present in each of these 51 jurisdictions are state employment services, through which benefits are customarily paid, and which in most cases are co-ordinated to a greater or less extent with the state unemployment compensation organizations. The state employment services look to the United States Employment Service for guidance in the maintenance of their technical standards as well as for the Federal funds made available on a matched basis under the provisions of the so-called Wagner-Peyser Act.

The cumbersome organization thus set up results in problems of co-ordination which are almost insurmountable. Too much energy is spent in the conciliation of divergent interests which energy should be directed into productive activities. The two major Federal agencies were for some time working at cross-purposes, not only in their dealings with each other but
also with the several States. Finally, and perhaps in sheer desperation, the Social Security Board and the Secretary of Labor made arrangements for a joint committee, representing the Bureau of Unemployment Compensation and the United States Employment Service, to attempt to co-ordinate the activities of these two agencies. Such a step, while laudable in its intentions, is hardly a permanent solution of the problem of co-ordination. Moreover, this is only one example of lack of co-ordination; many others exist, particularly in the state organizations.

In addition to this lack of co-ordination, there is also the matter of the inequities and inequalities which exist, as far as the individual worker and benefit claimant is concerned, in the 51 benefit paying jurisdictions. Unemployment knows no state lines, yet unemployment compensation is at present organized along such lines. A worker who migrates from state to state may be covered by these laws in one state but not in another. When he becomes unemployed in one state he may receive benefits at a higher rate than if he became unemployed in another, and so on. He may even work in a state where the system is insolvent or where the whole plan has been repealed. In defense of such situations, however, it may be said that in the present experimental stages, 51 "laboratories" are productive of more data than one Federal unemployment compensation "laboratory". However, such a state of inequity and inequality should not be permitted to continue
beyond the experimental period.

From the point of view of uniformity, a centralized Federal system appears to be the most desirable ultimate goal. In addition, such a Federal organization would recognize the fact that unemployment is not confined to state boundaries, but is a national problem. Simplicity of organization and economical administration would also be fostered by a Federal system of unemployment compensation.

The decisions of the United States Supreme Court in the "Social Security" cases lead one to believe that the constitutionality of a properly drafted bill providing for such a Federal system would be upheld by the Court, especially since the "liberal" members of the Court are increasing in number as new appointments are made by President Roosevelt.

We are therefore led to the conclusion that the unification of the various Federal agencies now engaged in the administration of unemployment compensation should be effected as soon as possible. We also may conclude that it would be advantageous to bring about in the course of time a complete centralization of unemployment compensation in the Federal government and terminate all state control over such functions. Other aims should be the establishment of the system on a sound actuarial basis by adjusting the contributions and benefits in accordance with actual experience and also the examination of the pay roll tax collecting machinery now in operation to see if such work cannot better be handled by an agency other than the Bureau of Internal Revenue.


Acts of Congress


(48 Stat. 113)

Decisions of the United States Supreme Court


Charles C. Steward Machine Co., v. Davis. 57 S. Ct. 883, 301 U.S.--.

Helvering v. Davis. 57 S. Ct. 904, 301 U.S.--.

(All of the above decisions were handed down on May 24, 1937.)
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Speeches


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