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IN THE

Supreme Court of the United States

OCTOBER TERM 1936

No. 837

CHAS. C. STEWARD MACHINE COMPANY,
Petitioner,

v.

HARWELL G. DAVIS, Individually and as Collector
of Internal Revenue,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED
STATES CIRCUIT COURT OF APPEALS
OF THE FIFTH CIRCUIT

BRIEF FOR PETITIONER

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BRIEF FOR THE PETITIONER

OPINION BELOW

The opinion of the Circuit Court of Appeals has not been reported. It is contained in the record (p. 27).

JURISDICTION

The judgment of affirmance below was rendered on March 20, 1937 (R.33). Petition for writ for certiorari was filed March 22, and was granted March 29, 1937. The jurisdiction of this Court rests on Section 240 (a) of the Judicial Code as amended (44 Stat. 938).

QUESTION PRESENTED

Does the action of Congress in undertaking to impose taxes by TITLE IX of the Social Security Act (49 Stat. 620, 639) upon the petitioner constitute a valid exercise of the powers of Congress under the Constitution?

STATUTES INVOLVED

TITLES III, VII and IX of the Social Security Act (herein called the Federal Act) are necessarily involved in the determination of the validity of the taxes sought to be recovered by the petitioner. An analysis of these TITLES is found on pp. 9-13 herein.

STATEMENT

The petitioner, an Alabama corporation with its principal place of business at Birmingham, Alabama, having paid a tax of \$46.14 imposed on it by Section 901 of the Federal Act for the period from January 1 to December 31, 1936, filed with respondent his claim for refund (R. 9) which the Commissioner of Internal Revenue denied (R. 12). Petitioner then filed its bill of complaint in the District Court (R. 1) claiming of the Collector of Internal Revenue for the collection district of Alabama the sum of \$46.14, which the petitioner had so paid. In its complaint petitioner averred that the Federal Act is unconstitutional and invalid, and that the tax was wrongfully and illegally assessed and collected by the respondent for the following reasons:

1. The plan and scheme set up by Congress in the Federal Act has for its purpose and effect the enactment of unemployment compensation laws by the states, which are not the voluntary acts of the governments of the states, but

which are brought about by the coercion and compulsion of the Federal Act.

2. Such plan and scheme violate the 9th and 10th Amendments to the Constitution of the United States in that Congress, through the Federal Act, undertakes to set up a Federal system of unemployment compensation in order to engage in the regulation of matters with which it is not concerned under the Constitution and which are wholly within the power and jurisdiction of the states to regulate. Under such plan and scheme the states surrender control of the monies collected from their citizens and attempt to surrender to the United States effectual control of the construction, operation and methods of administration of the laws of the states.

3. Under the pretext of exercising its powers, Congress, by the Federal Act, undertakes to effecuate an end which is inconsistent with the limited grants of power to Congress in order to bring about a system of unemployment compensation, which is a matter reserved to the states or to the people thereof.

4. Under the system created by the Federal Act and the state acts enacted under the coercion thereof, the property of petitioner and other employers is taken for the benefit of an arbitrarily defined class without the payment of just compensation to petitioner and such other employers.

5. The taxes imposed under the Federal Act are not taxes creating revenue for the support of the Government in the accomplishment of its constitutional purposes, but are imposed for the purpose of providing funds for disbursement in the administration of state laws relating to matters beyond the control of Congress and which the Federal Act

coerces and compels the states and the people thereof to enact.

6. The Federal Act violates Article I, Section 1, of the Constitution in that it attempts to vest in the Social Security Board power to determine what sums shall be paid out of the Treasury of the United States for the administration of state unemployment compensation laws without fixing any legal standards whereby the amounts to be paid to any state can be determined except by the exercise of discretion legislative in character and extent.

The respondent demurred to the petitioner's complaint (R. 13), setting up the validity of the tax complained of. The District Court sustained the petitioner's demurrers and dismissed the cause (R. 16). Petitioner appealed to the Circuit Court of Appeals, and that Court on March 20, 1937 affirmed the judgment of the District Court (R. 33).

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

(1) In holding that the taxes imposed by TITLE IX constitute a valid exercise of the taxing power of Congress.

(2) In affirming the judgment of the District Court.

The petitioner also urges that the Circuit Court of Appeals further erred in holding:

(3) That TITLE IX is complete in itself and is separable from the remainder of the Act.

(4) That the appropriation of \$49,000,000 in TITLE III does not correspond with the tax raised under TITLE IX so as to justify the Court in regarding the two as vitally joined in spite of the separability section (Section 1103).

(5) That if the Social Security Board and its function (fixed under TITLE VII) be unconstitutional, the immediate effect would be to render the credit impossible and leave the full tax to be collected.

(6) That the tax and credit scheme has been devised by Congress for the purpose (a) of refilling the treasury (in respect to the recent expenditure by the United States of several billion dollars for relief, the primary duty and burden of which rests on the several states) and (b) of encouraging the states to assume for the future their proper burden.

(7) That there is in the Federal Act no undue coercion or compulsion on the state.

(8) That while the subject of unemployment is admittedly a matter primarily for the states, the recent experience of the federal treasury in providing relief funds is also involved, and the reasonable protection of the treasury is part of the general welfare in a constitutional sense, as a result of which grants are justified to aid state agencies (under TITLE III) whose operation will tend to protect the federal treasury.

(9) That the tax is calculated to raise more money than is appropriated to aid state administrations even if all the states establish them, and the net result of it will be to put money into the federal treasury as well as to aid federally protective state activities.

(10) That the credit is not a penalty or coercion on the taxpayer.

(11) That the imposition of the tax on employers of eight or more does not deny due process or take property without just compensation.

SUMMARY OF ARGUMENT

The Federal Act is so lacking in precedent that our argument is to a large extent devoted to the history of the legislation in order to show that Congress seized on the taxing power merely as a pretext to provide this plan for unemployment. In the history of the Act, from its inception in the President's message to its final passage, there are no important questions overlooked. The measure does not contain ten titles without a purpose; it was to force the exploration of new fields along with the old; to prevent the defeat of new measures at the hands of Congress which they may have suffered if not propped up by grants for the blind, for crippled children, for public health.

TITLES III and IX were for the purpose of taking care of the unemployed "through no fault of their own"; of providing for the man who had lost his job without requiring the means test; of maintaining wage levels; of bringing about an equitable distribution of income; of stimulating a more intelligent stabilization of industry and of providing more security for the workers.

This is no mean undertaking. But from what source does the Federal Government derive the power it now assumes? Who is to provide this security for the worker? The Government? No. The public generally? No. The employer is to carry the burden. The benefit he derives is the opportunity to select his labor from the newly created pool which exists on cash benefits. It is true that the employer has to a greater or less degree never lacked this opportunity before; now it costs him \$200,000,000 the first year and \$900,000,000 the third year.

The plan itself is ingenious admittedly. Congress lacks the power to establish the complete system of contribution and

benefits. Sadly, the proponents of the measure faced that reality. A prior senate committee in 1932 had held such an undertaking unconstitutional (Senator Wagner dissenting). Now some "device" must be found which will skirt the courts. The states must be "stimulated" to provide their part of the system. The costs of doing business in all the states must be equalized. Competition among the states must be levelled. The tax-credit device is the plan. If the state is recalcitrant, its employers pay their taxes anyhow, and they are spent in other states. If the states follow (as forty-two have) they may keep ninety per cent of the tax. The remaining ten per cent. is necessary for administration of the system from Washington.

Singularly enough, if the measure succeeds in raising revenue for the treasury, it fails in its purposes! For that means that the states do not bend under the federal yoke. How can this be done within the limits of federal power was the question that constantly arose, a ghostly visitor at the committee table. Separate the two acts; put the spending part in a different dress from the taxing feature. Remove it from attack. Lessons are to be learned from experience. The case of *United States v. Butler*¹ had been decided by the District Court in Boston on October 19, 1934 and gave some support to the proponents of the measure. The committees were hearing witnesses from January 21 to February 20, 1935. *Panama Refining Co. v. Ryan*² had been decided on January 7. The report of the Committee on Ways and Means was made on April 5. Its timidity in support of the constitutionality of the measure was marked. The House passed the bill on April 19. The case of *Railroad Retirement Board v. Alton*³ had been decided on May 6. The Senate Committee

¹ 297 U. S. 180 (L. ed. 477)

² 293 U. S. 388 (79 L. ed 446)

³ 295 U. S. 330 (79 L. ed. 1468)

reported the bill out with amendments on May 20. Before it came on for debate in the Senate *Schechter Poultry Corporation v. United States*¹ was announced on May 27. These decisions should have carried the lesson of constitutionality, but they failed to do so.

As a device the two-way system was adopted. No one could raise the validity of the tax. No one could question an appropriation. The tax club was sufficient to drive the states into line. The few standards surrounding the grants would be sufficient to assure control of the system. If the Federal Act should be held unconstitutional the state acts would continue to operate. So the federal-state system was launched in preference to the national system, in which the federal government would administer the entire plan, and in preference to the subsidy plan, in which the government collects all the taxes and subsidizes the states.

Indeed, argued the proponents of the measure, the Court cannot look into the motive of Congress, provided the power exercised be constitutional. And certainly, the imposition of an excise tax is constitutional. But here the motive is not concealed. The Court is not required to seek it. It stands out, starkly revealing the taxing power as a mere pretext.

We contend further that the provisions of TITLES III and IX have not only no reasonable relationship to the taxing power, but no relationship at all; that the Act is not severable, for it is plain that without the system of unemployment Congress would not have enacted the measure.

Pursuing the Act from its beginning through the lengthy hearings and the debates in Congress, one can come to but one conclusion: That Congress stepped beyond its sphere and in

¹ 295 U. S. 495 (79 L. E. 1570)

the most far-reaching measure it has ever enacted, undertook to assume control of activities of the states fundamental in their character.

If Congress has this power, no longer may a clash of sovereignties ring out. The states will have lost their powers and one supreme government will regulate their affairs from Washington.

ARGUMENT

I

Analysis of TITLES III, VII and IX of the Federal Act

In framing the Federal Act Congress undertook to separate the taxing provisions from the regulatory provisions, with the expressed hope¹ that this Court would consider them separately, as a result of which the possibility of their being held void would be enhanced. It is therefore the view of the petitioner that the Court must consider, not only the taxing sections of the act, but all related provisions. These are found in TITLES III, VII and IX. The Court is not required to explore to find the motive of Congress in enacting the legislation. Such a motive and purpose stand out boldly in its written provisions.

TITLE III of the Act authorizes an appropriation of \$49,000,000 annually for the purpose of assisting the states in the administration of their unemployment compensation laws. The basis on which the Social Security Board determines the amount to be paid to each state is (1) the popula-

¹ *Infra*, pp 79, 80, 86, 88

tion of the state, (2) an estimate of the number of persons covered by the state law and of the cost of proper administration of such law, and (3) such other factors as the Board finds relevant. [302 (a)].

The Board is forbidden to certify payments to any state until it finds that the law of such state includes provisions for (a) such methods of administration (other than as to selection, tenure of office, and compensation of personnel) as the Board finds to be reasonably calculated to insure full payment of unemployment compensation when due; (b) payment of unemployment compensation solely through such agencies as the Board may approve; (c) opportunity for a fair hearing for all individuals whose claims for unemployment compensation are denied; (d) the immediate payment of all contributions exacted by the state, to the Secretary of the Treasury to the credit of the Unemployment Trust Fund established by the Federal Act, and the expenditure of all money requisitioned by the state from this Trust Fund, in the payment of unemployment compensation only; (e) 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 find necessary to assure the correctness and verification of such reports; (f) making available upon request to any agency of the United States charged with the administration of public works or assistance through public employment, certain detailed information relating to the status of each recipient of unemployment compensation, with a statement of such recipient's right to further compensation under such law [303 (a)].

The Board is authorized to terminate payments to any state upon a finding that there is (g) a denial by the state agency in a substantial number of cases of unemployment

compensation to individuals entitled thereto under the law, or (h) a failure of substantial compliance with any of the provisions contained in (a) to (f) of the next preceding paragraph. [303 (b)].

TITLE VII of the Act establishes the Social Security Board, imposes on it the duties provided by the Act and also the duty of studying and making recommendations as to legislation and matters of administrative policy concerning unemployment compensation and related subjects.

Under TITLE IX of the Act taxes are imposed on employers amounting to 1 per cent. during 1936, 2 per cent. during 1937 and 3 per cent. thereafter. (901). Against this tax the employer may credit the amount of contributions paid by him into an unemployment fund under a state law, such credits not to exceed 90 per cent. of the federal tax and to be allowed only for contributions made under the laws which shall have been approved by the Board. (902).

The Board is required to approve any state law which provides, among other things, that (a) all compensation is to be paid through such public agencies as the Board may approve; (b) no compensation shall be payable with respect to any day of unemployment occurring within two years after the first day of the first period with respect to which contributions are required; (c) all money received by the state is to be immediately paid over to the Secretary of the Treasury to the credit of the Unemployment Trust Fund, and all money withdrawn from this fund is to be used solely in the payment of compensation, exclusive of expenses of administration; (d) compensation shall not be denied by the state to any otherwise eligible individual for refusing to accept new work (1) if the position offered is vacant due directly to a strike, lock-out or other labor dispute, (2) 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, or (3) if as a condition of being employed the individual would be required to join a company union or to resign or refrain from joining any bona fide labor organization; (e) the legislature has the right at any time to amend or repeal the state law without reservation of any rights, privileges or immunities conferred by such law. [903 (a)]. The Board is authorized on December 31 in each taxable year and after notice and opportunity for hearing to disapprove the law of any state which it shall have theretofore approved, and thus deprive the employer of the 90 per cent. credit otherwise afforded him under the Federal Act, if the Board finds that such law no longer contains the provisions specified under (a) to (e) of this paragraph or has with respect to such taxable year failed to comply substantially with any of such provisions. [903 (b)].

The Unemployment Trust Fund is established in the Treasury and all states are required to deposit all contributions in such fund. The Secretary is directed to administer the fund and is authorized to purchase United States bonds on the market. The purposes for which obligations of the government may be issued under the Second Liberty Bond Act are extended to authorize the issuance of special obligations exclusively to the fund, the interest rate of which shall be equal to the average rate of interest borne by all interest bearing obligations forming part of the public debt. Such special obligations may be redeemed at par plus accrued interest and the Secretary may sell any obligations acquired by the fund. The fund shall be invested as a single fund but the Secretary shall maintain a separate book account for each state agency. He is directed to pay to any state agency such amount as the latter may duly requisition, not exceed-

ing the amount standing to its account at the time of such payment.

This TITLE contains a list of definitions including employer, wages, state agency, employment fund and contributions. "Employment" means any service performed within the United States by an employee for his employer except (a) agricultural labor; (b) domestic service in a private home; (c) service performed as an officer or member of the crew of a vessel on the navigable waters of the United States; (d) service performed by an individual in the employ of certain members of his immediate family; (e) service in the employ of the United States Government; (f) service in the employ of a state or of its political subdivisions; (g) service performed in the employ of a corporation, community chest, fund, or foundation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals. (907).

II

The Court May Give Consideration to the Deliberations of Legislative Bodies

What is the purpose of the TITLES of the Act under attack? The only power under the Constitution which appears on the face of the Act and which Congress is authorized to exercise is the taxing power. But the purpose of the Act appears on its face to be, not to raise revenue, but to bring about a condition of social security so that, among other things, unemployment will be lessened if not ended. Is this purpose valid? Is this use by Congress of the taxing power a pretext to accomplish an object which is beyond the con-

stitutional power of Congress? In ascertaining the purpose of the Act the court

“is at liberty to advert to the view expressed by individual members in debate, or by a committee in its report, and gather therefrom as from any other source the history of the times or of the evil which the legislation was intended to remedy. . . .”

25 R. C. L. 1037, Section 270.

In United States v. Union Pacific Railroad Company (1875), 91 U. S. 72 (23 L. ed. 224), the court said that

“courts may, with propriety, in construing a statute, recur to the history of the times when it was passed, and this is frequently necessary, in order to ascertain the reason as well as the meaning of particular provisions in it.” (citing cases) ¹ 79 (228).

Joseph R. Binns v. United States (1904), 194 U. S. 486 (48 L. ed. 1087), was a case involving license fees on certain kinds of business in Alaska. The court considered

¹ See also *American Net and Twine Company v Roland Worthington* (1891), 141 U S 468, 473-4 (35 L. ed 824), *Church of the Holy Trinity v United States* (1892), 143 U S 457, 465 (36 L. ed 226, 230), *Standard Oil Company of New Jersey v United States* (1910), 221 U S 1, 50 (55 L. ed. 619, 641); *United States v Forty Barrels* (1916), 241 U S. 265, 281-3 (60 L. ed 995, 1002-3), *Duplex Printing Press Co v Emil J. Deering* (1921), 254 U S 443, 474-5, 477 (65 L. ed 349, 360, 361), *Railroad Commission of Wisconsin v Chicago, B & Q R Co* (1922), 257 U S 563, 588-9 (66 L. ed. 371, 383), *United States of America, et al v Missouri Pacific Railroad Company* (1928), 278 U S 269, 278-9 (73 L. ed 322, 376-7); *Federal Trade Commission v Raladam Company* (1931), 283 U S 643, 650-1 (75 L. ed 1324, 1330-1); *Atlantic Cleaners & Dyers Inc, Globe Dry Cleaners & Dyers, Arcada-Sunshine Company, et al, v United States of America* (1932), 286 U S 427, 435 (76 L. ed 1204, 1208), *United States v Shreveport Gram & Elevator Co* (1932), 287 U. S. 77, 83 (77 L. ed. 175, 178), *Humphrey v United States* (1935), 295 U. S 602, 624-6 (79 L. ed 1611, 1617-18)

the investigation made by the committee reporting the bill to Congress, saying that the committee prepared the list of licenses

“after consultation with prominent citizens of the territory of Alaska, including the governor and several other officers, . . .” 495-6 (1091)

In *United States v. St. Paul, Minneapolis & Manitoba Railway Company, et al.* (1918), 247 U. S. 310 (62 L. ed. 1130), involving a suit by the United States to annul a patent to lands on the ground of fraud and mistake, the court considered a special message of the President explaining the magnitude of the work of adjustment arising out of railroad land grants and recommending an amendment to be enacted by Congress applicable to such a situation, and to the fact that the Committee to which the President’s message was referred did not accede to the recommendation contained therein. [316 (1133)].

While no ambiguity exists in the Act and while by its plain terms its purpose is beyond the powers of Congress, the court may go further in support of the theory that the use of the taxing power is a pretext. In *United States v. Great Northern Railway Company* (1932), 287 U. S. 144 (77 L. ed. 223), the court referred to the rule that in aid of construction of a statute if the meaning be uncertain, the court has recourse to the legislative history of the measure and the statements by those in charge of it during its consideration by Congress. It stated [154 (230)] that in construing the act in question the court had not traveled beyond the borders of the statute; but that

“ . . . If such recourse be had, there is confirmation of the view that the certificates were more than estimates of provisional advances.” 155 (230)

and proceeded to consider the progress of the statute through Congress.

In showing such use of the taxing power to be a mere pretext we shall have recourse to the following:

(1) Messages of the President of June 8, 1934, and January 4, 1935;

(2) Message of the President of January 17, 1935 transmitting the Report of the Committee on Economic Security theretofore created by the President by executive order and recommending legislation on the subject of Economic Security;

(3) The Report of the Committee on Economic Security;

(4) The introduction in both houses of the Wagner-Lewis bill;

(5) The hearings on the Wagner-Lewis bill before the Ways and Means Committee of the House and the Committee on Finance of the Senate;

(6) The reports of the House and Senate Committees recommending the passage of the bill;

(7) The debates in Congress on the passage of the bill.

We use the following excerpts from the statements of the witnesses before the Committees, not to indicate the view of the individual, but to show that the testimony before the Committees indicated without exception that the purpose of the bill was to avoid the evils of unemployment which the history of the times showed was so disastrous. If this thought and purpose run throughout the entire history of the consideration of that subject—the Messages of the President, the

Report of the Committee on Economic Security, the Hearings before the Committees, and the Debates in Congress,—it must result that the plain purpose of the bill was not to raise taxes; that the use of the taxing power by Congress is a mere pretext to accomplish an object beyond the powers of Congress. The purported tax loses its qualities as a tax, becomes a mere penalty to force the states to carry out the plan and scheme of Congress, and is invalid.

In explanation of the extent to which we feel impelled to go in submitting this history to the Court, we have only to say that the hearings before the Committees occupy 2,492 pages and the debates in Congress extend over a period of nine days in the House and six days in the Senate, with consideration being given the measure at other times and during its several stages; the debates in the house being found in the Cong. Rec., Vol. 79, Part 5, beginning at page 5454 and ending at page 6070; and in the Senate in Part 9, beginning at page 9267 and ending at page 9650.

(1) History and Evils of the Times and General Purposes of the Legislation

(a). Messages of the President

In his message to Congress on June 8, 1934 (Cong. Rec. Vol. 78, Pt. 10, p. 10770) the President set out that the first objective in the task of reconstruction was “. . . the security of the men, women, and children of the nation . . .”; that this security for the individual and for the family concerns itself primarily with three factors.

“ People want decent homes to live in; they want to locate them where they can engage in productive work; and they want some safeguard against misfortunes

which cannot be wholly eliminated in this man-made world of ours." (Ib.)

The President referred to the custom in the earlier days when security was attained through the interdependence of members of families upon each other and of the families within a small community upon each other; but that the complexities of great communities and of organized industry

"make less real these simple means of security. Therefore, we are compelled to employ the active interest of the Nation as a whole through government in order to encourage a greater security for each individual who composes it. (Ib.)

* * * * *

"The third factor relates to security against the hazards and vicissitudes of life. Fear and worry based on unknown danger contribute to social unrest and economic demoralization. If, as our Constitution tells us, our Federal Government was established, among other things, 'to promote the general welfare', it is our plain duty to provide for that security upon which welfare depends. (Ib.)

"Next winter we may well undertake the great task of furthering the security of the citizen and his family through social insurance. (Ib p. 10771)

* * * * *

"These three great objectives—the security of the home, the security of livelihood, and the security of social insurance—are, it seems to me, a minimum of the promise that we can offer to the American people. They constitute a right which belongs to every individual and every family willing to work. They are the essential fulfillment of measures already taken toward relief, recovery, and reconstruction.

“This seeking for a greater measure of welfare and happiness does not indicate a change in values. It is rather a return to values lost in the cause of our economic development and expansion.

“We must dedicate ourselves anew to a recovery of the old and sacred possessive rights for which mankind has constantly struggled—homes, livelihood, and individual security. The road to these values is the way of progress. Neither you nor I will rest content until we have done our utmost to move further on that road.”
(Ib)

In his message upon the convening of Congress, January 4, 1935, the President referred to his message of June 8, 1934, stating that a comprehensive survey of what had been attempted or accomplished in many nations and in many states on the subject of security proved to the President that the time had come for action by the national government; that he would send to Congress in a few days definite recommendations based on these studies, covering, among others, the broad subjects of unemployment insurance and old age insurance. (Cong. Rec. Vol. 79, Pt. 1, p. 95).

Accompanying his message of January 17, 1935 the President submitted to Congress the Report of the Committee on Economic Security which he had created. He referred to the fact that most of the other advanced countries of the world have adopted social insurance, and that their experience affords the knowledge that it can be made a sound and workable project (Ib. p. 598). He strongly recommended action to attain the objectives sought in the report submitted, referred to his promise in his annual message to submit a definite program of action, which he now does in the form of a report to him by a Committee on Economic Security, appointed by him for the purpose of surveying the field and of recommending the basis of legislation. (Ib.)

“The detailed report of the committee sets forth a series of proposals that will appeal to the sound sense of the American people. It has not attempted the impossible, nor has it failed to exercise sound caution and consideration of all the factors concerned; the national credit, the rights and responsibilities of States, the capacity of industry to assume financial responsibilities, and the fundamental necessity of proceeding in a manner that will merit the enthusiastic support of citizens of all sorts.” (Ib.)

(b). Report of the Committee on Economic Security

In his message of January 17, 1935, the President said that he was

“gratified with the work of this committee (on Economic Security) and of those who have helped it: The Technical Board on Economic Security, drawn from various departments of the Government; the Advisory Council on Economic Security, consisting of informed and public-spirited private citizens and a number of other advisory groups, including a Committee on Actuarial Consultants, a Medical Advisory Board, a Dental Advisory Committee, a Hospital Advisory Committee, a Public Health Advisory Committee, a Child Welfare Committee, and an Advisory Committee on Employment Relief. All of those who participated in this notable task of planning this major legislative proposal are ready and willing, at any time, to consult with and assist in any way the appropriate congressional committees and Members with respect to detailed aspects.” (Cong. Rec., Vol. 79, Pt. 1, p. 598)

In its report, signed by the Secretaries of Labor, Agriculture and the Treasury, by the Attorney General and the Federal Emergency Relief Administrator, the Committee on Economic Security said:

“In our economic system the great majority of the workers must find work in private industry if they are to have permanent work. The stimulation and maintenance of a high level of private employment should be a major objective of the Government. All measures designed to relieve unemployment should be calculated to promote private employment and also to get the unemployed back into the main channel of production. We believe that provision of public employment in combination with unemployment compensation will most effectively serve these purposes. Both will operate to maintain purchasing power, and public employment will indirectly give work to many more persons in private industry who otherwise would have none. At the same time it will stimulate workers to accept and seek private employment when it becomes available. (Report to the President of the Committee on Economic Security, p. 8)

* * * * *

*“Individual industry and company accounts.—*The primary purpose of unemployment compensation is to socialize the losses resulting from unemployment, but it should also serve the purpose of decreasing rather than increasing unemployment. . . . (Ib. p. 22)

* * * * *

“ . . . Normally the insured worker will return to his old job or find other work before his right to benefits is exhausted. If he does not find work, we recommend that his further period of unemployment should be met by a work benefit, as described in the section of this report dealing with employment assurance . . . ” (Ib. p. 14)

(c). *Hearings Before the Committees on Ways and Means of the House of Representatives and on Finance of the Senate*

There was a total of one hundred and eighty-four appearances made before or statements submitted to the Committees on Ways and Means of the House and on Finance of the Senate. It is interesting to note the classes into which they may be divided.* These are, with the number of appearances in each class, as follows:

	Number of Witnesses Appearing
1. Business Associations and Organizations	23
2. Economic Research Institutions and Societies	5
3. Governmental Agencies and Departments	24
4. Health Agencies and Societies	12
5. Individuals Unclassified	21
6. Labor Interests	12
7. Miscellaneous Societies and Associations of Particular Classes	12
8. National Women's Associations	5
9. Religious Societies	5
10. Representatives and Senators	13

***CLASSIFICATION OF APPEARANCES MADE AND STATEMENTS PRESENTED BEFORE THE HOUSE COMMITTEE ON WAYS AND MEANS AND THE SENATE COMMITTEE ON FINANCE ON THE HEARINGS ON THE ECONOMIC SECURITY ACT**

1.

Business Associations and Organizations

C. D. Cass¹—American Transit Association²
 George B. Chandler—Ohio Chamber of Commerce³
 James L. Donnelly—Illinois Manufacturers Association²

-
- (1) The witness represents or is connected with the organization, department or office appearing after his name
 (2) Appeared before House Committee
 (3) Appeared before Senate Committee.

	Number of Wit- nesses Appearing
11. Societies and Associations Interested in the Blind	4
12. Societies and Associations Interested in Welfare of Children	4
13. Societies Interested in the Betterment of Social and Living Conditions	10
14. State Agencies	20
15. Universities, Schools and Related Subjects	14

The hearings are closely and intimately connected with the reports of the Committees and the debates in Congress; for it was in committee room that the discussions first arose on which the reports are based and which were brought to and repeated on the floor of the House and Senate.

Mr. Treadway, a member of the Ways and Means Committee, referred on the floor of the House to the fact that there was little testimony before that committee from persons of experience in business lines; that practically everybody who appeared had some part in drafting the legislation or was consulted with respect to the problems involved; that

Business Associations and Organizations (Cont'd.)

James A. Emery—National Association of Manufacturers⁴
 Lincoln Filene—William Filene's Sons Co.³
 H. Walter Forster—Vice President of the Pension Casualty
 Division, Towers, Perrin, Forster & Crosby, Inc⁴
 John C. Gall—National Association of Manufacturers³
 Henry I. Harriman—United States Chamber of Commerce³
 John Harrington—Illinois Manufacturing Association³
 Elon H. Hooker—Manufacturing Chemists Association³
 Albert D. Hutzler—Vice Chairman National Retail Dry Goods
 Association⁴
 J. P. Kerr—Association of Drainage and Levee Districts of
 Illinois²
 J. F. Kolb—National Metal Trades Association³

(2) Appeared before House Committee.

(3) Appeared before Senate Committee

(4) Appeared before House and Senate Committees.

there were not in excess of half a dozen persons who testified who were not a part of the "present new-deal administration." (Cong. Rec. Vol. 79, Pt. 5, p. 5528)

Business Associations and Organizations (Cont'd.)

Stanley Latshaw—National Publishers Association³
 L C Morrow—National Publishers Association³
 Lloyd A. Peck—Laundryowners' National Association³
 Samuel W. Reyburn—National Retail Dry Goods Association⁴
 Noel Sargent—National Association of Manufacturers³
 W. A. Snow—Associated General Contractors of America³
 Harold W Story—Vice President and General Counsel, Allis-Chalmers Manufacturing Company³
 U S. Engineers, Inc—New York City³
 Wm. R. Webster—Connecticut Manufacturers Association³
 W. R. Williamson—Travelers Insurance Company²

2.

Economic Research Institutions and Societies

Dr Robert R. Doane—Director of Research, American Business Surveys⁴
 Henry E. Jackson—President, Social Engineering Institute³
 E W Mason—Progressive Study Club²
 Dr Harold G. Moulton—Brookings Institution²
 George Shibley—Director, The Research Institute³

3

Governmental Agencies and Departments

Miss Grace Abbot—Member Advisory Council on Economic Security⁴
 Dr. Fred L. Adair—Advisory Committee on Child Welfare²
 A. Altmeyer, Jr—Second Assistant Secretary, Department of Labor²
 Hon. Hugh S. Cumming—Surgeon General, U. S. Public Health Service⁴
 Robert G. Elbert—Member Unemployment Insurance Committee to the Industrial Advisory Board³

(2) Appeared before House Committee.

(3) Appeared before Senate Committee.

(4) Appeared before both House and Senate Committees.

(d). Hearings Before the Committee on Ways and Means of the House

The general purposes of the bill are indicated by the statements of the following named witnesses:

Murray Latimer, Chairman, Railroad Retirement Board, discussing the fundamental difference between old-age insurance and unemployment compensation lamented the fact

Governmental Agencies and Departments (Cont'd.)

- Dr. I. S. Falk—Member of the Staff of the Committee on Economic Security³
 M. B. Folsom—Member Advisory Committee on Economic Security⁴
 Frank P. Graham—Chairman Advisory Council⁴
 Dr. Clifford G. Grulee—Advisory Committee on Child Welfare⁴
 Miss Helen Hall—Member, Advisory Council to the Committee on Economic Security³
 Alvin Hanson—Chief Economic Analyst, Department of State⁴
 Harry L. Hopkins—Federal Relief Administrator²
 Paul H. Kellog—Vice Chairman, Advisory Council to the Committee on Economic Security³
 Murray Latimer—Chairman Railroad Retirement Board⁴
 Wm. N. Leiserson—Chairman National Mediation Board⁴
 Miss Katherine Lenroot—Chief, Children's Bureau, U. S. Department of Labor⁴
 Hon. Henry J. Morgenthau—Secretary of the Treasury²
 George Nordlin—Advisory Council on Economic Security²
 L. H. Parker—Chief of Staff, Joint Committee on Internal Revenue Taxation³
 Hon. Frances Perkins—Secretary of Labor⁴
 Miss Josephine Roche—Assistant Secretary of the Treasury⁴
 John W. Studebaker—Commissioner of Education, Department of the Interior⁴
 C. E. Waller—Assistant Surgeon General, U. S. Public Health Service²
 Dr. E. E. Witte—Executive Director, Committee on Economic Security⁴

(2) Appeared before House Committee.

(3) Appeared before Senate Committee.

(4) Appeared before both House and Senate Committees

that there is nothing we can do about getting old; we either have to get old or die; but that there is some possibility of reducing the amount of unemployment, if proper incentives

4

Health Agencies and Societies

- Dr. T. F. Abercrombie—State and Territorial Health Officers Conference²
 H. B. Anderson—Citizens Medical Reference Bureau⁴
 Rev. George Reid Andrews—American Eugenics Society³
 Dr. George E. Bennett—Maryland League for Crippled Children²
 Dr. Walter Bierring—American Medical Association²
 S. J. Crumbine—American Child Health Association⁴
 Miss Susan Lawrence Davis—Townsend-Davis Clystertory Health Treatments⁴
 Lawrence L. Gourley—American Osteopathic Association⁴
 Julia Minerva Green—Women's Homeopathic Medical Fraternity³
 Rt. Rev. Monsignor Maurice F. Griffin—Catholic Hospital Association²
 Robert Jolly—American Hospital Association⁴
 R. J. Knoppel—Vice President, International Society for Crippled Children²

5

Individuals Unclassified

- Benjamin F. and Henrietta Adams—Silver Springs, Maryland³
 C. M. Armstrong—Schenectady, New York²
 Hugo E. Czerwonky—Washington, D. C.⁴
 H. H. Halsell—Lubbock, Texas²
 A. L. Harbison—Tulsa, Oklahoma²
 Roger Sherman Hoar—North Milwaukee, Wisconsin³
 Glen J. Hudson—Oakland, California²
 Philip Ickler—Portland, Oregon³
 C. G. Kelley—Cleveland, Ohio²
 Dr. George M. Lyon—Huntington, West Virginia⁴

(2) Appeared before House Committee

(3) Appeared before Senate Committee

(4) Appeared before both House and Senate Committees.

are given to the employer to make all the rearrangements, the planning, the control of production, for the purpose of eliminating unemployment. (Hearings before the Committee on Ways and Means of the House, p. 229)

Individuals Unclassified (Cont'd.)

William P. McGervey²
 James Ragland Miller—Hartford, Connecticut⁴
 O. Otto Moore—Denver, Colorado—Representative of Townsend Clubs of Colorado²
 Dr. Oscar Reiss—Professor, Southern California Medical School³
 M. H. Reymond—Industrial Engineer³
 Miss Marquis Robb—Newtonville, Massachusetts³
 Dr. F. E. Townsend—Long Beach, California⁴
 Joseph P. B. Weir—Washington, D. C.³
 Ernest Wells Williams—Washington, D. C.³
 Mrs. James H. Wolfe—Women's Division, Democratic Committee³
 Dr. Rachelle Yarros—Hull House, Chicago, Illinois³

6

Labor Interests

I. Amter—National Unemployment Council⁴
 John B. Andrews—American Association for Labor Legislation³
 Nathan Cronheim—Local Action Committee and the Philadelphia Chapter of the Interprofessional Association³
 David Gordon—Committee for Unemployment Insurance³
 William Green—President American Federation of Labor⁴
 O. J. Hall, Jr.—Local Action Committee for Workers, American Federation of Labor²
 Thomas Kennedy—International Secretary-Treasurer, United Mine Workers of America, Lieutenant Governor of Pennsylvania³
 David Lasser—Workers' Unemployed Union²
 Frank W. McCulloch—Chicago Workers' Committee on Unemployment⁴

(2) Appeared before House Committee.

(3) Appeared before Senate Committee.

(4) Appeared before both House and Senate Committees.

William M. Leiserson, Chairman, National Mediation Board, said that the problem was not one of relief when 60 or 70 per cent. of the elderly unemployed are willing and able to work and are unable to find work. It is a very great injustice to remit them to charity.

Labor Interests (Cont'd.)

Charlton Ogburn—Counsel to the American Federation of Labor³
 Louis Weinstock—National Committee on Unemployment Insurance, American Federation of Labor²
 Ralph Whitehead—American Federation of Actors⁴

7.

Miscellaneous Societies and Associations of Particular Classes

Earl Browder—Communist Party³
 Guy Irving Burch—Population Reference Bureau, New York³
 John J. Burke—National Catholic Welfare Conference³
 Wm. D. Guthrie—Chairman Special Committee of the American Bar Association³
 C. A. Hathaway—Communist Party in the United States²
 Richard W. Hogue—Independent Legislative Bureau³
 Charles H. Houston—National Association for the Advancement of Colored People⁴
 Benjamin C. Marsh—People's Lobby⁴
 Frank L. Peckham—Sentinels of the Republic³
 Dr. Ellen Potter—National Committee on Care of Transient and Homeless³
 Sherwood L. Reeder—U. S. Conference of Mayors⁴
 Mrs. Margaret Sanger—President, National Committee on Federal Legislation for Birth Control³

8

National Women's Associations

Mrs. Harris T. Baldwin—National League of Women Voters⁴
 Louise G. Baldwin—National League of Women's Voters²

(2) Appeared before House Committee.

(3) Appeared before Senate Committee.

(4) Appeared before both House and Senate Committees.

“ There is something the matter with industry, and we ought to say that ‘here is a fund at the cost of industry out of which you can draw an income, a meager income to be sure, that will keep your family together.’ ”
(Ib. p. 406)

The witness likened unemployment insurance which is paid the worker when his job is cut off to workmen’s compensation which is paid him when his toe is cut off, insisting that the same principle should be applied to both situations.
(Ib.)

National Women’s Associations (Cont’d.)

- Miss Elizabeth Christman—National Women’s Trade Union League⁴
Mrs. Beatrice Pitney Lamb—National League of Women Voters⁴
Mrs. Charles W. Sewell—Associated Women of American Farm Bureau Federation³

9

Religious Societies

- George E. Haynes—Federal Council of Churches of Christ in America⁴
George A. Huggins—Church Pensions Conference⁴
Owen E. Pence—National Council, Y. M. C. A.³
Mrs. Frederick Shelton—National Board of Young Women’s Christian Associations³
Bert Wilson—Church of the Disciples of Christ²

10.

Representatives and Senators

Representatives

- Hon. George Burnham, California²
Hon. Sam L. Collins, California²
Hon. Wm. M. Colmer, Mississippi²

(2) Appeared before House Committee.

(3) Appeared before Senate Committee

(4) Appeared before both House and Senate Committees.

David Lasser, representing the Worker's Unemployed Union, urged that Congress tell the employing class of America that Congress would provide a sufficiently large public works program to employ all jobless, at living wages, who are thrown out of work; that for those who cannot be so employed unemployment insurance will be provided, which will be charged to "the employers and the wealthy class". (Ib. p. 786). Such a policy would cause all employers to consider carefully "whether they had better not re-employ their workers rather than pay the same wages as an unemployment insurance fund. . . ." (Ib. p. 787)

Representatives (Cont'd.)

Hon. Henry Ellenbogen, Pennsylvania²
 Hon. David J. Lewis, Maryland²
 Hon. John L. McClellan, Arkansas²
 Hon. James W. Mott, Oregon²
 Hon. Wright Patman, Texas²
 Hon. Samuel B. Pettingill, Indiana²
 Hon. Howard W. Smith, Virginia²
 Hon. Roy O. Woodruff, Michigan²

Senators

Hon. Daniel O. Hastings, Delaware²
 Hon. Robert F. Wagner, New York³

Societies and Associations Interested in the Blind

Lewis H. Carris—National Society for the Prevention of Blindness³
 Robert B. Irwin—The American Foundation for the Blind³
 H. R. Latimer—Pennsylvania Association for the Blind³
 L. L. Watts—Virginia Commission for the Blind, and the American Association of Workers for the Blind³

(2) Appeared before House Committee

(3) Appeared before Senate Committee

31

(1). *Adequacy of the Measure*

Dr. E. E. Witte, Executive Director of the Committee on Economic Security, said that this unemployment program is not a complete program for dealing with the hazards

12.

**Societies and Associations Interested in
Welfare of Children**

C W. Areson—Child Welfare League of America, Inc³
 Jacob Kepecs—Child Welfare League of America²
 Mrs Virginia Kletzer—Child Welfare Commission of Oregon³
 J. Prentice Murphy—Children's Bureau of Philadelphia²

13.

**Societies Interested in the Betterment of Social
and Living Conditions**

Herbert Benjamin—National Council for Unemployment and Social Insurance⁴
 R. E. Clements—Old-Age Revolving Pensions, Ltd.³
 Abraham Epstein—Executive Secretary, American Association for Social Security⁴
 George D Evans—Organization for the Abolition of Poverty²
 Miss Dorothy Kahn—American Association of Social Workers³
 Mrs William Kittle—The National Consumers' League and Women's Homeopathic Medical Fraternity⁴
 C. C. Mayer—End Poverty in Civilization Society²
 Miss Lea D Taylor—Illinois Committee on Social Security³
 Miss Mary Van Kleeck—Russell Sage Foundation²
 M. M. Walter—National Rehabilitation Association³

14.

State Agencies

Elmer F Andrews—State Industrial Commissioner of New York³

(2) Appeared before House Committee

(3) Appeared before Senate Committee

(4) Appeared before both House and Senate Committees.

of unemployment; that it is complementary to the proposal of a work program (Ib. p. 133). The benefits, while limited, are valuable. At the time they are paid the employee has a reasonable prospect of getting back to his old employment (Ib. p. 141).

State Agencies (Cont'd.)

M. L. Brown—Old Age Pension Bureau of Ohio²
 R. R. Clark—Supervisor of Rehabilitation, State of Illinois²
 Homer Folks—Secretary, State Charities Aid Association, New York²
 Clarence E. Ford—Acting Commissioner of Social Welfare, New York²
 H. D. Hicker—Chief of Bureau of Vocational Rehabilitation of California²
 Harry H. Howett—Secretary-Treasurer, Michigan Crippled Children's Commission⁴
 Mrs. Blanche La Du—Minnesota State Board of Control³
 John J. Lee—Department of Public Instruction, Michigan²
 Dr. R. M. Little—State Educational Department, New York²
 Dr. A. T. McCormack—Commissioner, State Board of Health³
 Dr. Thomas Parran—State Health Commissioner of New York²
 Miss Olivia Peterson—Minnesota Department of Health²
 Charles B. Reed—Illinois State Medical Society²
 S. Merwin Sinclair—Executives of State Commissions and State Agencies for Blind, and Pennsylvania Council for the Blind³
 Dr. Lillian R. Smith—Michigan Department of Health²
 Joseph Sweeney—President, Child Welfare Board of Cuyahoga County, Ohio²
 Mrs. Alfred Moore Tunstall—Director Alabama State Welfare Department²
 Dr. F. J. Underwood—Mississippi State Health Officer³
 Dr. Alfred A. Walker—Chairman Board of Health, Jefferson County Medical Society²

(2) Appeared before House Committee

(3) Appeared before Senate Committee

(4) Appeared before both House and Senate Committees.

William Green, President of the American Federation of Labor, objected to the amount of the tax as being inadequate to provide a shorter waiting period than four weeks and to pay the employee a larger compensation than that contemplated with the maximum of \$15.00 per week for fifteen weeks (Ib. p. 392). He recommended that the tax be increased to five per cent. Unless benefits are extended considerably beyond fifteen weeks, they will not cover the time which experience shows the unemployed seek work before they find it. Even in times of prosperity 54 per cent. of the unemployed wage earners would fall outside the period

Universities, Schools, and Related Subjects

- Mrs Mary T. Bannerman—Committee on Legislation, Congress of Parents and Teachers³
 Miss S. P. Breckinridge—School of Social Service Administration, University of Chicago²
 J. Douglas Brown—Director Industrial Relations, Princeton University⁴
 Dr. Eveline M. Burns—Columbia University⁴
 Dr. Paul H. Douglas—University of Chicago⁴
 Dr. Allen W. Freeman—School of Hygiene and Public Health, Johns Hopkins University²
 Percival Hall—Chairman Executive Committee, Conference of Executives of American Schools for the Deaf³
 Clarence A. Kulp—University of Pennsylvania³
 Mrs. B. F. Langworthy—National Conference of Parents and Teachers²
 Dr. Cloyd H. Marvin—American Council on Education³
 E. V. McCollum—Johns Hopkins University⁴
 Dr. James R. McCord—Emory University³
 Miss Louise McGuire—National Association of Classroom Teachers²
 Francis D. Tyson—Professor of Economics, University of Pittsburgh³

(2) Appeared before House Committee.

(3) Appeared before Senate Committee

(4) Appeared before both House and Senate Committee

provided during which benefits could be paid under a 3¹ per cent. tax; 26 per cent. would find work within the waiting period of four weeks and 28 per cent. would be out of work more than fifteen weeks. In times of depression or extended unemployment, as high as 80 per cent. of the unemployed wage earners would fall outside the benefit period, while in average times 60 per cent. would be outside. (Ib.)

(2). *To Avoid Competition Between Industries in Different States*

Dr. Witte stated:

“ . . . The purpose of the entire scheme is to make it possible for States to enact unemployment compensation acts. States cannot very readily burden their employers with the cost of unemployment compensation, unless they know that their competitors in other States will also have that same cost. . . .

“The system operates so that employers in a State that does not enact an unemployment compensation act will have the same cost as employers in States that do not enact an unemployment compensation act. The disadvantage that a State puts itself under by enacting such an act is removed by this bill. (Ib. p. 136)

* * * * *

“The contribution by the employer is made uniform because it is impossible for the States to act unless the cost to the employers throughout the country is uniform. I think that is elementary. (Ib. p. 142)

* * * * *

“Mr. Cooper (of Tennessee) Doctor, if I understand the underlying principle supporting the idea of a Federal tax, it is to make it uniform throughout the entire country?

¹ Changed to 1 per cent. for 1936, 2 per cent for 1937, and 3 per cent. thereafter. (Sec 901)

“Mr. Witte. Yes, sir.” (Ib. p. 145)

Mr. Cooper (a member of the Committee) stated that “we are legislating for a long time in the future here.” (Ib. p. 147)

Miss Perkins, Secretary of Labor and Chairman of the Committee on Economic Security, stated that levying the same tax whether or not there is an unemployment-insurance law in a state “is a very real equalization of competitive costs between employers in the various states, so that there will be no special advantage to any employer to continue to carry on his business in a state which does not have an unemployment insurance law.” (Ib. p. 183)

Alvin Hansen, Chief Economic Analyst, Department of State, and chairman of the sub-committee considering the unemployment features of the measure, set out the intention of the bill to be to “equalize the interstate competitive situation. . . .” If the states wished to impose heavier contributions, that was their business; but at any rate “there would be an equalization of interstate competition to the extent that each state would tax the employer 3 per cent.” (Ib. p. 377)

Albert D. Hutzler, Vice Chairman, National Retail Dry Goods Association, referred to the fact that there were missing from the bill minimum standards of compensation, which should be written into the bill

“in order that no State may adopt such low standards that most industries can take advantage of differential rates and thus give partially cooperating States a competitive advantage over fully cooperating States. (Ib. p. 773)

* * * *

“Mr. Cooper . . . The point I am asking you at this time is whether or not you recognize that the under-

lying principle which forms the basis for the system of unemployment insurance from a national standpoint, is the question of competition.

“Mr Hutzler. Competitive concerns should have equal opportunities under it. (Ib. p 780)

* * * *

“Mr. Cooper . . . In other words, the purpose of having a national unemployment insurance system other than having State unemployment insurance systems is to try to strike at the question of competition, is it not?

“Mr. Hutzler Oh, absolutely” (Ib pp. 780-1)

Mr. Cooper, while questioning Senator Hastings, who was before the Committee, stated that the Committee had been led to believe that the underlying principle supporting the idea of levying a federal tax was the necessity of meeting the question of competition that would arise and would be a very serious question that would have to be encountered; that he believed it had been rather clearly shown all along that

“it is highly desirable to have a uniform rate of tax levied on industry throughout the entire country so as not to produce a situation where the industry of one State can undersell the industry of another State because that other State has to bear a tax that it does not.

“Senator Hastings. I think that is very important. It is the one argument in favor of this bill that is sound, in my judgment, economically.” (Ib p. 961)

The Report of the Advisory Council to the Committee on Economic Security set out that disadvantages in interstate competition are always raised against purely state legislation that involves costs to industry; that this knot should be cut by requiring industries in all states (whether the states enact

unemployment compensation laws or not) to make uniform payroll contributions. (Ib. pp. 882-3)

The minority of the Council adopted a motion recommending the tax-credit type of law as having, among others, the advantage of requiring uniformity where uniformity is essential, namely the equalization of competitive costs. (Ib. p. 883)

*(e). Report of
Ways and Means Committee of the House*

The report (No. 615) traces the history of the legislation beginning with the President's message of June 8, 1934, the appointment by him of the Committee on Economic Security which devoted six months to the study of the subject, assisted by its staff of specialists and by fourteen advisory groups; refers to the President's message of January 17, 1935 adopting the report and forwarding it to Congress. The committee report sets out the purpose, scope and need for the legislation.

Under the question of unemployment compensation the report notes that the establishment by the states of unemployment compensation systems is urgently to be desired in order to provide something better than relief on a needs basis for the unemployed of the future; that TITLES III and IX seek to encourage the states to set up such systems and to keep them from being handicapped if they do so. (Report, p. 7)

The report undertakes to tread softly with reference to the standards imposed on the states (Ib. pp. 8-9), but sets out on later pages a list of requirements as contained in the bill (Ib. pp. 34-5).

(1). *Adequacy of the Measure*

Unemployment is due to many causes and there is no one safeguard that is all sufficient. Provisions must be made for the relief of those now unemployed, and there should also be devised a method for dealing with the unemployment problem in a less costly and more intelligent way in future years. State unemployment compensation plans are designed to afford security against the large bulk of unemployment in the future. The essential idea in unemployment compensation is the accumulation of reserves in time of employment from which partial compensation may be paid to the unemployed for a limited period and for a percentage of the wage loss. In normal times it will enable most workers who lose their jobs to tide themselves over without having to resort to relief, to which it is greatly preferable because it is given without any means test. (Ib. p. 7)

The failure of the states to enact unemployment insurance laws is due to the competition to which their industries would be subjected with those of other states. It is therefore necessary before the states can go ahead to impose a

“uniform, Nation-wide tax upon industry, thus removing this principal obstacle in the way of unemployment insurance, . . . (Ib. p. 8)

“This is one of the purposes of title IX of this bill. . . .” (Ib.)

The report refers to the important functions which the Federal Government under the bill has to perform

“in order to make it possible for the States to have unemployment insurance laws and to facilitate their operation. It equalizes competitive conditions through the

imposition of the employment excise tax provided for in title IX. . . .” (Ib. p. 9)

*(f). Hearings before the Committee on Finance
of the Senate*

Before the Senate Committee on Finance the history and evils of the times were more extensively discussed than before the Committee on Ways and Means of the House. Senator Wagner, the author of several prior bills of like purpose, was a member of the committee and took a foremost part in its deliberations. “What can human ingenuity do,” asked he, “to prevent economic disorder in its most widespread and virulent forms from leading to national disaster? This may be called the problem of industrial stabilization.” (Hearings before Committee on Finance, U. S. Senate, p. 2)

“ . . . Unemployment is also the force that attacks and destroys those who live on the narrow margin of security. Lost profits may be regained upon the upward swing of the business cycle, but the working day that is lost is gone forever. Above all, the secret of unemployment is the key to industrial stabilization. In 1929 fluctuations of 600 per cent. in the volume of unemployment were the storm signals of depression. When we discover how to keep men at work, we shall have discovered all.

“Unemployment insurance ranks high in the list of remedies for unemployment. In respect to those disinherited during normal times, it is more economical than relief because preparedness is better than planlessness; and it is more humane because it does not rest upon the degrading means test which assumes that society has no duty to the idle worker until he is destitute.” (Ib.)

Others who discussed this subject fully were Miss Perkins, Secretary of Labor, and William Green, President of the American Federation of Labor.

Miss Perkins' forecast for the present generation of children is an "infinitely complicated" life, unless provisions are made for unemployment, as well as for old-age and sickness. (Ib. p. 101) An accumulation of these various types of unemployment, together with world-wide depressions which are partially financial and partially economic in their causes, creates a situation over which no employer has any control. Some people become completely destitute. Others have their incomes reduced. For instance, the general trend of one industry from New England States to the Southern States has put out of work in the former a large number of people formerly attached to that industry, who faced a prolonged period of social readjustment for which no particular provision was made, and which constituted a very serious cause of destitution.

" . . . I should like to say with regard to unemployment insurance that the circumstances of the last few years have certainly impressed most of us with the necessity of making preliminary provisions for benefits to unemployed persons in order to carry them, as individuals, through periods of depression when, through no fault of their own, they are without work, and also to provide that preliminary provision for their individual needs, or at least modify the relief programs as they affect localities, States, and even the Federal Government." (Ib. p. 111)

Mr. Green, in his presentation of the viewpoint of labor regarding the proposed social-security legislation recalled that during every depression we have had in recent years, we talked about unemployment insurance, plans for which were

always forgotten with a return of prosperity. The United States is the last great industrial country to give serious consideration to a system of unemployment insurance, being decades behind in the development of a social program, comprehensive systems having been in practical operation in various foreign countries for many years. (Ib. p. 141) Today the lives of millions of our people are governed by the fear of losing their jobs. Economic security today and for a long time will be our greatest national problem. The bitter experiences of the past five years have rudely shattered our belief that this problem would take care of itself. (Ib. pp. 141-2) In our continued dependence upon relief we see the gravest dangers to our wage-earning population. Relief must be a temporary and emergency measure, "unless we wish so seriously to undermine morale that many men and women will never again be self-sustaining or self-respecting citizens." (Ib. p. 142) During the present years of unemployment the members of organized labor have contributed out of their earnings more than sixty million dollars per annum in an attempt to extend temporary relief for unemployment relief, sickness and out-of-work benefits; some trade unions are struggling in an effort to care for their unemployed members, "and as a result are contributing a very large percentage of their own earnings for the purpose of taking care of the unemployed." (Ib. pp. 142-3)

Miss Perkins stated that the thing for us to do as a group "is to provide socially for the method of taking care of the people who are most adversely affected by such a depression." (Ib. p. 102) It seems wise, therefore, to take steps in advance "to provide for a steady income to people when they are unemployed through no fault of their own. . . ." (Ib.)

Mr. Green said that

“if employers are going to continually displace workers, then they will have to be prepared to pay more out of their earnings to take care of those displaced. They have to increase the tax; that is all. (Ib. p. 145)

* * * *

“We can hope and expect only that unemployment insurance will help to maintain wage levels and will exert some stabilizing effect upon our industrial system. We may hope also, I believe, that it will help in bringing about a more equitable distribution of income than we have had in the past or have at the present time. (Ib. p. 154)

* * * *

“Senator Couzens. Did your committee give any consideration to the fixing of an annual income for these workers and making it a charge against industry?” (Ib. p. 214)

Dr. Witte:

“We felt that by legislation you cannot reverse the entire tide. We have in this bill provisions to encourage what we call guaranteed employment, which is essentially an annual salary idea.” (Ib. p. 215)

In the Report of the Advisory Council to the Committee on Economic Security, dated December 18, 1934, it is said that the plan should promote security by providing compensation for workers who are laid off, and should serve as an incentive to employers to provide steady work and to prevent unemployment. (Ib. p. 226)

Wm. N. Leiserson, Chairman of the National Mediation Board, stated the purpose of the unemployment tax [fix-

ed at 3 per cent. in the bill being considered by the committee (Sec. 601)]

“is really to meet only one situation. The National Government is called upon to pay out great sums of money in doles. There is no way of avoiding it if you make no other provision for unemployment. The National Government therefore wants to stimulate the States to provide for their own people, in their own way, and one way is unemployment insurance, and it is not the only way.” (Ib. pp. 273-4)

J. Douglas Brown, Director Industrial Relations Section and Professor of Economics, Princeton University, stated the purpose of the federal-state cooperation to be

“to stimulate a more intelligent stabilization of industry and to provide more security for the workers. . . .” (Ib. p. 316)

Abraham Epstein is one of the leading authorities in this country on social security. He describes unemployment insurance as being chiefly interested in offering a system whereby the unemployed workers, who through no fault of their own lose their jobs, can at least be given self-respecting financial assistance without being placed on relief as paupers immediately after they lose their jobs. Its aim is to provide at least a first break to the unemployed worker when he loses his job through no fault of his own, as long as it can be done and for as many weeks as possible (Ib. p. 464)

“ . . . but essentially let us keep that in mind, that we are concerned with one thing only in this bill, and that is to offer the best bulwark to the unemployed workers.

* * * *

“That purpose of providing a break for the unemployed worker, regardless of the stabilization and unemploy-

ment, is the chief purpose of unemployment insurance as it is brought about and as it is understood by all students, . . . ” (Ib.)

The Advisory Council to the Committee on Economic Security consisted of twenty-three members (Report, p. 51). Six members of the committee (M. B. Folsom, M. E. Leeds, S. Lewisohn, Raymond Moley, Gerard Swope and W. C. Teagle) on December 15, 1934 made a supplemental statement to the report which the council had theretofore made to the Committee on Economic Security, in which they set out the following:

“1 The first objective that should be encouraged is stabilization of employment, or assurance of employment, and this is along the line of the President’s pronouncement that, if this could be accomplished, the worker would be able to look forward to at least a minimum amount for an annual wage on which to plan his family’s support. This should produce better work at lower cost, reflected in lower selling prices and a consequent increase in consumption on the part of the community. . . . ” (Ib. p. 324)

A report was submitted to the Industrial Advisory Board by the Unemployment Insurance Committee, acting at the request of the former. The report set out that unemployment compensation is, primarily, a social service.

Miss Perkins:

“ . . . we expect the States to provide systems of unemployment insurance which will pay cash benefits for limited periods of time, a period limited by the size of the fund and by the actuarial principles of keeping the fund sound.” (Ib. p. 119)

Senator Black of Alabama :

“A maximum of 6 months?”

“Secretary Perkins. Fifteen weeks, perhaps or 26 weeks; the duration depends on various factors.

“Senator Black. Yes. (Ib)

* * * *

“Senator Black. Let me see if I understand the basis of your viewpoint for distinguishing between the two. As I understand it, then, it is your view, so far as unemployment insurance is concerned, that it takes care of temporary unemployment only?”

“Secretary Perkins. That is all

“Senator Black. Probably caused by technological changes, shifting from one plant to another, or temporarily closing down of a plant.

“Secretary Perkins. Seasonal variation.

“Senator Black. So far as that is concerned it is your opinion, and perhaps the opinion of the committee, that it is proper for that to be taken care of locally on the theory that if local communities have to take care of it it would be an incentive to reduce such temporary unemployment?”

“Secretary Perkins. Yes, sir.

“Senator Black. But insofar as unemployment lasting over a long period of time is concerned, the hazards of health, hazards of old age - - (Ib. p. 124)

“Secretary Perkins. And dependency of youth.

“Senator Black. And dependency of youth, over a long period, that the committee is of the opinion that that is not purely local and would call for Federal aid to the localities.

“Secretary Perkins. Yes, sir.

“Senator Black. Thank you.

“Secretary Perkins. That is the principle involved in this bill.” (Ib. p. 125)

Mr. Green expressed the hope that unemployment insurance would help to maintain wage levels, to exert some stabilizing effect upon our industrial system, and to bring about a more equitable distribution of income than has existed in the past or exists in the present. (Ib. p. 154). Employees would have to work a certain length of time and make certain payments, the plan being an insurance feature. (Ib. p. 169)

Dr. Witte defined the concept of unemployment compensation as

“merely a measure to give a limited benefit to employees during a period while they have a reasonable opportunity to be taken back within a short time in their old positions. Unemployment compensation, if it is not to be mere relief, must be based on the contributions that are received. Unless the contribution rates are extremely high, the period during which compensation can be paid will necessarily be quite limited.” (Ib. p. 215)

Mr. Leiserson likened the remedy to fire insurance, which is just “to help people who suffer to avoid some of the suffering.” (Ib. p. 271)

From the Preliminary Report of the Technical Board to the Committee on Economic Security, we take the following:

“(a) Unemployment insurance is an essential measure for the economic security of the most stable part of our industrial population, but is not a complete, all sufficient solution of the problem.” (Ib. p. 327)

M. B. Folsom, Assistant Treasurer, Eastman Kodak Company, stated the purpose of the legislation to be to provide, or to build up, a fund from which to pay benefits to people who are laid off for a limited period. (Ib. p. 555)

Miss Helen Hall, President National Federation of Settlements and Member of the Advisory Council to the Committee on Economic Security:

“ . . . unemployment compensation is one way of adjusting the loss so that the unemployed themselves and their children shall not bear the whole burden of lost earnings, with resulting deprivation and misery. . . . ”
(Ib. p. 769)

Robert G. Elbert, one of the signers of the Report of the Unemployment Insurance Committee to the Industrial Advisory Board, said that the insurance system will act as a dam against the rising tide of distress. (Ib. p. 845). Unemployment insurance is based on the idea that a reserve fund will be accumulated in normal times to meet the contingency of unemployment in eras of depression; to carry the insured over out-of-work periods in normal times. (Ib. p. 848)

Miss Lea D. Taylor, of the Illinois Committee on Social Security, said that the 3 per cent. payroll tax “is entirely inadequate and does not provide security to the worker. . . . ”
(Ib. p. 975)

(1). *Work Benefits to be Paid After Compensation is Exhausted*

It was practically the unanimous thought of the proponents of the measure that the government would be required in periods of world-wide or national depressions over

which no group has any control to make its contributions in the form of a supplemental system of work benefits “paid for out of federal taxes” to which the unemployed could look after their cash benefits had been exhausted. (Miss Perkins, pp. 119-120)

*(2). To Avoid Competition Between Industries in
Different States*

So long as the Federal Government remains dormant, there will be practically no unemployment insurance at all. After decades of propaganda and education, only Wisconsin has by enacting a law of its own dared to throw down the gauntlet to the interstate competition of other states with lower standards. (Senator Wagner, *Ib.* pp. 3-4). The purpose of the credit of 90 per cent.¹ was to put all states on a parity so that if a state refuses to pass a law it hasn't the competitive advantage gained by its low standard. “That is the purpose of the Act.” (*Ib.* p. 22)

Miss Perkins: The effect (of the 3 per cent. tax) is to equalize the competitive cost of manufacturing between the states by equalizing the amount of the contribution (*Ib.* p. 122); the purpose being

“to equalize the cost of doing business in every State, so far as it can be equalized, with regard to taking care of unemployed persons.” (*Ib.* p. 126)

Dr. Witte said:

“ . . . The States cannot act—experience has shown that amply—the States cannot act unless the competitive disadvantage to which the employers within a given State are subjected by having an unemployment compensation

¹ Social Security Act, Section 902

law while neighboring States do not, is removed.” (Ib. p. 220)

The Report of the Advisory Council to the Committee emphasizes the effect of the measure as securing

“uniformity where uniformity is essential, namely, the equalization of competitive costs.” (Ib. p. 227)

Dr. Witte: Very few states will act

“so long as the Federal Government does not remove the disadvantage to which employers in such a State are under in interstate competition . . . ” (Ib. p. 240)

The disadvantage resulting to a state enacting such a law has defeated many such bills and

“Unless you remove that great obstacle to State action you cannot or are not likely to have unemployment compensation laws along State lines.” (Ib. p. 241)

The same view was presented by Mr. Leiserson (Ib. p. 274) who suggested that when employers in a state are shown that they will have to pay the (federal) tax anyway, as will their competitors

“that objection will be removed and they will go along with State laws, which many of them have said they would like to have if they could.” (Ib. p. 274)

J. Douglas Brown: The employer contribution

“makes uniform throughout industry a minimum cost of providing old-age security and protects the more liberal employer now providing pensions from the competition of the employer who otherwise fires the old person without a pension when superannuated.” (Ib. p. 284)

Elmer F. Andrews, Secretary of the American Association for Labor Legislation, said that the good employer will not be

“undercut unfairly in competition with his competitors in States that otherwise might not take the legislative action.” (Ib. p. 442)

Mrs. Beatrice P. Lamb, representing the National League of Women Voters, (Ib. p. 443) and Mrs. Frederick Shelton, representing the National Board of Young Women’s Christian Associations (Ib. p. 444) upheld the argument that the tax would remove the element of competition.

Senator Harrison, Chairman of the Committee and the Senator in charge of the bill on the floor of the Senate, referred to the competitive system as bringing about an unjust result to the manufacturers in the states putting on the tax, to which Mr. Epstein replied that this argument against the tax was being met by requiring all employers to pay the same tax. Mr. Epstein inquired:

“ . . . all employers would be paying the same tax, but after all, Senator, what are you after? Are you after just merely levying a tax on the employers, or are you after providing benefits for unemployed workers? . . . ” (Ib. p. 468)

Albert D. Hutzler of Baltimore, Vice Chairman of the National Retail Dry Goods Association, said that the retailers, having studied the bill at great length, believed that a national law should be passed so that interstate competition would be the same, but that the funds should be contributed by the employer, the employee and the state. (Ib. p. 712)

Paul H. Kellogg, Editor The Survey and Survey Graphic, and Vice Chairman of the Advisory Council, Committee on Economic Security, referred to the fear of interstate competition which for twenty years had kept the states (except Wisconsin) from acting, said that once the payroll tax provisions of the bill are passed, the disadvantage in one state of protecting employees against unemployment will no longer exist and the dread of unfair competition will be lifted.

“The Wagner-Lewis bill will mark a great advance in using the force of congressional enactment as a leverage to overcome the drag of interstate competition. The Federal payroll tax provided for in the bill will free and spur the States to act, and its funding provisions will pry the reserves raised into the custody of the Federal Treasury to prevent their chaotic handling. (Ib. p. 904)

* * * *

“To start action the country over, and to start it right, the bill recognizes the need for national leverage. We look to the Federal pay-roll tax to get the States to act. By the same token we should look to national standards in the Federal bill to assure minimum protection the country over. If we let them slide now we shall be confronted later on with the coalesced resistance of States and industrial interests to any interference with their own standards, however meager. Instead of scotching the snake of interstate competition, we shall have it in this new guise, harder to combat, putting employers in progressive States at a new disadvantage and stultifying the attempt to give security to wage earners everywhere.” (Ib. p. 905)

James A. Emery, Counsel for the National Association of Manufacturers, commenting on the claim of interstate competition, raised the specter of foreign competition. (Ib. pp. 925-6)

Dr. Eveline M. Burns, Columbia University, who prepared an article on the bill (S. 1130) lamented its failure to go further and lay down the essential standards to be required of approved unemployment insurance schemes; the absence of which

“seriously limits the extent to which the general 3 percent. tax levy protects business men from unfair competition from States which enact inadequate unemployment-compensation laws ” (Ib. p. 1007)

Miss Grace Abbott, Editor Social Service Review and Professor of Public Welfare, University of Chicago, commented that as a result of the uniformity in the tax levied “the competitive aspect is withdrawn.” (Ib. p. 1081)

Henry E. Jackson, President Social Engineering Institute, New York City, regards the “depreciation of human machinery” as a proper charge to production cost, to be absorbed as such if our industries are all on the same basis of competition. (Ib. pp. 1112-13)

(g) Report of the Committee on Finance of the Senate

Senator Harrison, Chairman of the Committee on Finance, submitted the report on May 20, 1935. The committee in the report referring to the trying years of the depression stated that “unemployment is the most important single cause of dependency . . . a hazard which confronts all industrial workers . . .” (Senate Report No. 628, Committee on Finance, U. S. Senate, 79th Congress, 1st Session, May 20, 1935, p. 10) The report continued: The present is the most opportune time for launching the plan. Great interest exists in the subject and improved conditions forecast the building up of considerable reserves within the next few years. Delay

the plan, and reserves otherwise available for the next industrial crisis will be correspondingly lessened. (Ib. p. 16) The depression demonstrates the great cost of "the folly of failure" to make timely provision for social security. (Ib. p. 27)

(1). *Adequacy of the Measure*

Unemployment compensation differs from relief in that payments are made as a matter of right, not on a needs basis. The period of payments is related to the prior period of employment. After the waiting period compensation is paid at a stated percentage of the prior wage, with a minimum and maximum rate. Beneficiaries must accept suitable employment when offered or they lose their right to compensation. (Ib. p. 11) To the extent that unemployment reserves are accumulated, they will reduce the necessity for relief. In normal periods unemployment compensation will provide a sufficient safeguard for most of the unemployment that will occur, and in depression periods very materially reduce the burden of relief costs (Ib. pp. 15-16) "That we must have a greater degree of security than has prevailed heretofore if our social order is to endure, is tragically evident." (Ib. pp. 27-8)

(2). *Work Benefit to be Paid After Compensation is Exhausted*

Supplemental to unemployment compensation is need for work relief after compensation is exhausted and for workers outside the compensation system. (Ib. p. 11)

(3). *To Avoid Competition Between Industries in Different States*

Interest in unemployment compensation began with the depression of 1920-21. Bills on this subject have been intro-

duced in state legislatures, but until 1932 all were defeated, “principally on the argument that no state can afford to handicap its employers in competition with those of other States. . . .” (Ib. p. 11) Under the plan proposed in the bill the handicap of competition will be removed. (Ib. p. 16)

“ . . . With a uniform tax and its offset device, employers in all States will be put in an equal competitive position. No State can gain any advantage through failing to establish an unemployment compensation system This provision will equalize competitive conditions and thus enable States to enact unemployment compensation laws without handicapping their industries.” (Ib p. 13)

(h). Statements made in House of Representatives

Mr. Greenwood of Indiana feared that the monopoly arising from the profits accruing to the management of industry would not be divided with those who worked with their hands; that the invention of machinery crowds out hundreds and thousands of men and women workers. (Cong. Rec. Vol. 79, Pt. 5, p. 5455). He favored the measure which turned the advantages accruing from the machine to the care of the people displaced. (Ib. p. 5456)

Mr. Scott of California agreed with Mr. Greenwood that more wealth resulted from technological development and contended that such wealth should be in turn devoted in part to provide unemployment insurance. (Ib. p. 5477)

Mr. Truax of Ohio:

“Unemployment is due not only to the depression but to tremendous concentration of wealth in the hands of a few, massed industry, and the mechanistic age. I heartily approve of unemployment compensation. The cost should be borne, however, by the large industrialists who

profit by the sweat and toil of wage workers
(Ib. pp. 5689-90)

* * * * *

“ The steam shovel, the tractor, the road grader, the huge concrete mixer, the cigarette robot displace permanently thousands of workers. Here, unquestionably, shorter hours, less days per week, and at the same weekly wage level as was formerly received for the longer hour day and week, must prevail in the end. To bridge the gap now between wholesale and ruinous unemployment, workers' compensation must be established.” (Ib. p. 5691)

Mr. Mott of Oregon stated that with the last thirty or forty years, and particularly the last ten years, the improvements in methods of producing and distributing the necessary commodities required only a portion of our population to provide all we need and are able to buy. (Ib. p. 5586)

Mr. Doughton, Chairman of the Ways and Means Committee, and in charge of the bill:

“The need for unemployment insurance is well recognized. Eighty-five percent of the families on relief are in want because of unemployment. Unemployment, or the fear of unemployment, has been the principal reason for the unfortunate decline of our purchasing power. No greater hazard confronts the American worker today than that of losing his job. . . . (Ib. p. 5476)

“Unemployment insurance is based upon the principle of laying aside reserves during periods of employment to be used in periods of unemployment. . . . (Ib.)

“It is undoubtedly true that what the American citizen wants and needs, above all else, is steady employment, but under modern economic conditions and with the rapid development of machine techniques, it is inevitable

that large numbers of workers will be thrown out of work from time to time. . . ." (Ib.)

Mr. Eaton of New Jersey:

" And as for the hazards of life, Mr. Chairman, how are you going to avoid hazards? They are the essence of life. There will not be a blade of grass grow to maturity this summer that does not have to fight for its existence every moment. (Ib. p. 5580)

" This is a crazy notion, as expressed in a lot of this new-deal legislation, and accepted by increasing numbers of our people, that somehow, by some legerdemain, the Government of the United States can make it impossible and unnecessary for any of its citizens to face any difficulty, to run any risk, to bear any burden, but to be assured an income in youth, childhood, and old age, and even after they die. The thing is absolutely absurd. (Ib.)

* * * * *

"Mr. Chairman, I think we stand today in this country at the crossroads of a great decision which transcends all parties, all sections, and all interests; and this decision is whether we are going to choose American organized industry as the instrument for the solution of these tremendous, far-reaching problems, or whether we are going to resort to some modified form of Russianism and attempt to solve these problems by government. . . . the ultimate aim of the new deal is to place all American industry, business, and individual liberties under the control of Government here in Washington. We have no Democratic Party and we have no Republican Party functioning as such in an American way. We are in a state of suspense awaiting to see what under heaven's name is going to happen to the country and to our Government." (Ib. pp. 5581-82)

Mr. Dirkson of Illinois thought that

“ the matter of effecting happiness for our people is one of the basic objectives of government.” (Ib. p. 5811)

Mr. McCormack of Massachusetts :

“ Under our economic system, known as the ‘profit system’, we shall always have the employer and the employee. As a result of this relationship, problems arise which require action on the part of the Government to control and regulate, where the general welfare is involved, whenever abuses arise out of private industry and whenever private industry is unable to control them, the continuance of which abuses would be inconsistent with the welfare of the country. Under such circumstances some agency must step in and assume the burden of correcting such abuses in the interest of the general welfare; and in the past, as we see again in the pending bill, this agency is government itself.” (Ib. p. 5871)

Mr. Knutson of Minnesota :

“Business recovery at the present time hangs in a very delicate balance. Every additional burden of this kind upon business, however small, tends to make recovery more remote; hence, imposing directly upon industry such a tremendous burden as I have mentioned is bound to cause a reaction which will result in prolonging the depression indefinitely.

* * * * *

“The prime need of the hour is recovery, not social reform. Since these proposals to which I am opposed are definitely within the scope of social reform, there is no compelling reason for taking them up at this time unless when so doing we provide a proper measure to restore business volume.” (Ib. p. 5544)

Mr. Dickstein of New York:

“ . . . Unemployment is even more of a curse of modern society than is dependent old age. Some plan of unemployment insurance had therefore to be devised if ours was to be a country where the individual was to live happily and enjoy the blessings of civilization. . . .” (Ib. p. 5704)

Mr. Rich of Pennsylvania:

“Today, while we are talking about social security and trying to take care of the people of this country, it seems to me there is only one way you are going to be able to do it, and that is to let the business people of the United States try to employ other people in the United States so that we can be our brother’s keeper, and in this way we will furnish employment, so that men may earn bread and butter for their children and for themselves in order that they may sustain life. . . .” (Ib. p. 5795)

Mr. Doughton of North Carolina:

“The proposed bill presents a broad plan for social security, embracing measures for (1) protection against destitution and dependency in old age, (2) unemployment compensation, (3) security for children, and (4) increased public health protection. These measures of protection against the principal causes of destitution and dependency, taken together, in conjunction with the immediate program of public works, and with the cooperation of the States, will provide a coordinated plan for social security. It is of great importance that the many overlapping phases of insecurity should be approached in this manner, rather than through separate piecemeal proposals. (Ib. p. 5468)

* * * * *

“The essential feature of the social-security bill is that of social insurance against the principal hazards or

risks which have caused American families to become dependent upon relief. These causes are well known: (1) Unemployment, (2) old age, (3) lack of a breadwinner in families with young children, and (4) sickness. The bill includes comprehensive measures against all but the last of these. Measures proposed to furnish protection against the risks arising out of old age and unemployment are usually called social insurance. Social insurance protects the worker and his family against dependency by enabling them, with the help of their employers, to build up reserves which may be used during periods of unemployment and in old age (Ib)

* * * * *

“Title VII establishes a social-security board of three members, appointed by the President for overlapping terms of 6 years each. The social-security board will have charge of the administration of the grants in aid to the States for old-age pensions and the administration of the Federal old-age-benefit system. It will also be responsible for the certification of State unemployment-compensation systems and is charged with the duty of making actuarial and scientific studies of the broad problems of social security.” (Ib p. 5476)

Mr. Hill of Washington:

“Mr. Chairman, this legislation is forward looking. It means to take care of the future and create conditions in the future operation of the industry and economics of this country that will absorb some of the shock of these panics and depressions; at least tend to stabilize industry and employment and carry the country along over the rough spots until conditions may be righted” (Ib. p. 5536)

Mr. Eaton of New Jersey:

“ I am especially opposed to it in the part that has to do with unemployment insurance in industry. I

think I can speak with some authority on this subject, because I have spent the last 18 years of my life in the industries of this country, based upon the belief that industry has become the chief instrument of modern civilization, and unless industry in some way is permitted to function and solve its problems by its own initiative and in accordance with its own nature I do not see how civilization can escape final collapse. I admit with sorrow the failure of industrial leaders in the past to face the social implications of their job. They have been deluded, like everyone else, by the notion that a part is greater than the whole. But this ought not to involve capital punishment for all industry, nor does it justify turning all industry over to the control of politically minded bureaucrats." (Ib. pp. 5580-1)

Mr. Kenney of New Jersey:

" The passage of this bill has for its purpose the lifting of worry and economic insecurity from the minds and backs of our people. Perchance the method employed by the bill is not the ideal way to accomplish our purpose. And to me there is a close constitutional question involved on the job-insurance provisions. But I shall vote for the bill as it is looking forward to the security of our employed, and that means the Nation." (Ib. p. 5606)

Mr. Cullen of New York:

"The economic-security bill presents the most substantial evidence to date that our twin objectives of recovery and reform are found in an inseparable unity of purpose and action. While the horror of the depression is still fresh upon our memory, we are taking decisive steps to shake off its lingering aftermath, to prevent its recurrence, and to set up safe guards for those who may suffer in the future from economic forces beyond the control of the individual. (Ib. p. 5685)

* * * * *

“Another important feature of this bill is the provision for unemployment insurance. There is no reason why the worker unemployed through no fault of his own should be more neglected than machinery that is idle during the slack season. There is no justification for giving the man who has grown old and tired in the performance of his life’s work no consideration for his efforts. The day has passed when the wealthiest nation in the world can remain the most delinquent in its treatment of the most pressing of all social questions.” (Ib.)

Mr. May of Kentucky :

“ It [the measure] grows out of conditions that have fastened themselves upon this country during this depression, and I may say that in the report of the majority of the committee as to the purpose and scope of the bill, I think they state it very soundly when they say that this is laying the foundation for social security in the future,” (Ib. p. 5779)

Mr. Healey of Massachusetts :

“ They [members of the minority party] fail to visualize the tendency of unemployment insurance toward stabilizing and insuring steady, year-around employment.” (Ib. p. 5813)

Mr. Haines of Pennsylvania :

“ Title III of the bill does not give full and complete insurance against unemployment, but it is the beginning of a fund that will be built up that will furnish sufficient funds for the maintenance of those who will find themselves unemployed, for temporary periods, and I think in the writing of any legislation we are wise in making it temporary periods, for unless we do (and throw down the bars) we will find a great host of our people who will not take a job or work when offered. These are the evils we must guard against. We do not

want to put into effect a dole system that will further break down the morale of our people, but on the contrary make men and women work when an opportunity is afforded to them. The temporary benefits will tide many of the unemployed over until they can find a job. That, as I understand it, is the purpose of the bill. . . .” (Ib. p. 5826)

Mr. Dickstein of New York:

“ Our legislation today is record breaking and the statutes we are enacting today will forever lift the specter of want and depression from the shoulders of the American people. We are providing in short for social security, the security of every man and women who is gainfully employed to see to it that they are not caught again in the throes of unemployment, and security provided for old age so that when men and women have passed their prime and are no longer in a position to be gainfully employed, the community should step in and save old age from want. Such in brief are the purposes of the bill, and such in brief are the ideals which this administration wishes to enact into law by way of stabilizing and assuring our people of a fair and honorable living.” (Ib. p. 5704)

Mr. Sirovich of New York stated that the Federal Government could assist business, industry and labor by the

“perfection of unemployment insurance in times of prosperity to provide for the unemployed in times of distress.

* * * * *

“ This bill seeks to minimize unemployment by cushioning with unemployment insurance any critical period of unemployment that might afflict us in the future.” (Ib. p. 5789)

(1). Adequacy of the Measure

Mr. Doughton:

“ Some think various provisions are too inadequate. I, for one, would far rather start cautiously than to go too far and bring about the collapse of our handiwork in the future. . . . ” (Ib. p. 5476)

Mr. Treadway of Massachusetts:

“I might point out that even if the States promptly enact unemployment-insurance laws no benefits could be paid to the unemployed until after a reserve has been built up, and this, of course, would take several years. Even then benefits would be paid for only a few weeks, after a certain waiting period, and with the present number of unemployed the funds would soon be exhausted.” (Ib. p. 5529)

Mr. Truax of Ohio:

“Mr. Chairman, I think that they generally admit, as we all do, that this bill does not in any manner or means adequately or satisfactorily solve the problems which we seek to solve. However, we all admit that this is a beginning. We admit that unless more effective provisions, such as increasing the amount of old-age pensions, finding additional sources of revenue, and increasing in the end unemployment compensation, this legislation will eventually fall by its own weight . . . ” (Ib. p. 5688)

Mr. Cooper of Tennessee:

“ . . . The central purpose of the Federal bill in regard to unemployment compensation is to equalize the financial burden placed upon employers throughout the country and thereby permit States to go ahead.” (Ib. p. 5782)

(i). Statements Made in the Senate

Senator Harrison, Chairman of the Committee in charge of the bill, in discussing the unemployment problem said:

“For in normal times, and in fact even in boom years, there is always considerable unemployment. Some 3,000,000 people who wanted work did not obtain it in the comparatively prosperous year of 1928. When machinery is replaced by more efficient machinery, when overproduction arises from any of many causes, when an industry is dying because its product is being supplanted, men are thrown out of work. (Cong. Rec., Vol. 79, Pt. 9, p. 9270)

“Further, with little thought directed toward stabilization, many industries operate with considerable irregularity of employment. There are peak periods and there are low periods, and a plant that employs thousands of men in March and April carries on with merely a skeleton force in the autumn months. The thousands who are thus dropped face a resulting period of unemployment, exhausting, in many instances, their meager savings, and sometimes becoming a charge on charity before an opportunity for regular wages is again afforded them. (Ib.)

“It has always been natural for the cost of this unemployment to fall upon the local community. Those who are out of work first look to their neighbors for help; and, when that source is no longer sufficient, to their local and State governments. Unemployment may, in extraordinary depressions, necessitate the Federal Government assisting the States to meet the problem, but otherwise the problem of so-called ‘normal’ unemployment is one that primarily is of local concern. (Ib.)

“This has long been recognized by the States, and the problem of meeting this ‘normal’ unemployment has been the subject of earnest study by commissions estab-

lished by them. Especially has this been true since 1929, when increasing ranks of the unemployed brought the necessity of some action more keenly to public attention. (Ib.)

“It is significant that almost every State commission investigating the subject urged some form of unemployment insurance, and, while differing as to details, uniformly recognized that part or all of the cost should be borne by employers in industry and that reserves should be built up in good times to help in providing for the welfare of those unfortunates cut off from regular work by seasonal unemployment, or that resulting from the many other causes found even in normal times” (Ib)

Senator Wagner, who with Mr. Lewis of the House, was the author of the bill, discussed “Economic Insecurity as an Indictment of America”. He traced social insecurity in its modern aspects from the dawn of the factory era, the increasing shift from farm to city—all beginning with the end of the Civil War. He referred to the economic strength which our energy and genius had built, the extent and efficiency of our mechanical equipment, our resources, fabulous enough to offer a promise against the possibility of adversity, to the enormous wealth which we achieved exceeding the wildest flights of fancy; for all of which we became “the envy and admiration of the universe, and a shining example for the ages yet to come”. (Ib. p. 9283)

The Senator’s flights of fancy continued. From the material wealth which blessed us a prophet of old would have envisaged the worker freed from the necessity of seeking bread alone, secure against unemployment, working under conditions calling forth creative intelligence, enjoying ample leisure for the cultivation of family life and the enrichment of spiritual outlook. The worker grown old, would spend his

declining days in mellow comfort, neither the charge of charity nor the victim of the bitterness of unrequited efforts. But the prophet awakened in 1922 to face a rude disillusionment. In these matchless years until 1929, he found three million unemployed—twenty million were living in the cold cellars of poverty. Old people relied upon younger relatives. Children were denied the joys of carefree childhood. The inequitable distribution of tremendous wealth “was sharpening the tragic contrast between the House of Have and the House of Want.”

The Senator traced his efforts beginning in 1928 to begin a survey of unemployment, for the creation of a nation-wide exchange system, and for the inauguration of a long-range public-works program. In 1930 and 1931 he introduced measures designed to promote federal encouragement of unemployment insurance laws in the several states, similar in ideas to the present bill. They were promptly buried in committee. At his instance a special senatorial investigation of the problems of unemployment insurance was had. A committee of three senators had protracted hearings, the majority deprecating the potentialities of federal action. The Senator filed a minority report urging immediate legislation along the lines of the pending measure.

“ When future historians of the gilded age from which we have emerged seek a moral to adorn their story, they will find that social injustice brought the retribution of sure decline. The income of the masses, shriveled by the blight of wide spread unemployment and uncompensated old age, was not sufficient to buy the goods flowing from the ever expanding factories. The huge profits of the few, which could not be spent in self indulgence, were reinvested again and again in plants and machines. When the market became flooded with unsold surpluses, the depression came with the certainty of nightfall. (Ib.)

“From that emergency we have been rescued by a program combining constructive action with enduring faith in the essential fortitude and strength of the American character. We now seek a new era of well being in which the social inequalities of the past will be driven forever from the scene. We seek a more even tempered and widely diffused economic enjoyment that will provide a bulwark against the resurgence of hard times. The social-security bill draws its inspiration from both of these objectives. It is a compound in which are blended elements of economic wisdom and of social justice. (Ib.)

“UNEMPLOYMENT INSURANCE: LEGISLATIVE PHASE

“At the very hub of social security is the right to have a job. Even in the care-free decade of the nineteen twenties, an average of 1,500,000 workers per year were care-worn and tormented by the visitation of unemployment. Between 1922 and 1933, 15 percent of our total man power remained idle and disdained. When 15,000,000 people walked the streets of despair in early 1933, we knew at last that the fall and rise of our national prosperity kept pace with the rise and fall of unemployment; and we knew that until we solved this baffling enigma, our bravest and sincerest efforts would spend themselves in vain. (Ib.)

“There is no quick relief for unemployment that has reached its zenith, any more than there is a sure cure during the last stages of a malignant disease. But the common experience of many progressive countries has revealed a relatively humane and economical method of alleviating the sporadic or seasonal unemployment which occurs even during normal times. And in addition to its curative aspects, it is a method which serves as a check upon further unemployment. Needless to say, this remedy is unemployment insurance. (Ib.)

“There are many reasons why unemployment insurance in the United States should be developed along State lines. The tremendous expanses of our territory and the infinite variety of our industrial enterprises create totally dissimilar conditions in different parts of the country. Besides, it would be unwise to fit an inflexible strait-jacket upon the entire Nation without testing by comparison in operation the two or three major proposals for unemployment insurance, each of which has elements of merit urged by divergent schools of reputable thought (Ib.)

“At the same time, the disheartening results of 50 years of agitation for unemployment insurance prove conclusively that there will be no substantial action unless the Federal Government plays its part. Less than one-half of 1 percent of the workers in this country are covered by the much-heralded private and voluntary plans for their protection. And so paralyzing has been the fear of unfair competition by backward States that only Wisconsin dared to proceed in splendid isolation by enacting an unemployment-insurance law. The very fact that four other States have taken the same course in the short period of time since the inception of this measure is the best token of the validity of Federal encouragement.” (Ib. pp. 9283-84)

Senator McNary entered into an exhaustive analysis of the history of the times, discussing the increase within a hundred years of the expectancy of life from 39 to 60, the advance of the machine age which relegates to the shadows the skilled and elderly artisan; the constantly decreasing population of the farms balancing the increasing urban life; the decrease of families and the advent of labor-saving devices. But the inevitable march of progress compels us to re-adjust our economic life to the new industrialization and mechanical advancement. At present wages the average workman cannot

save enough for old age. "It must be evident to the most determined individualist", said the Senator,

"that in most instances old-age dependency in the United States is not due to individual maladjustment, but to social and economic forces which the individual cannot hope to govern." (Ib. p. 9542)

Once the magnitude of the problem is clearly recognized, once we face squarely the fact that the problem is no longer the individual's but the nation's to master, "we shall set ourselves to the task of its solution". (Ib.)

Senator Harrison undertook briefly to outline the purposes of the measure. It is designed to meet three major problems: (1) pensions for the aged and blind, (2) provisions for child welfare, and (3) unemployment insurance provisions. (Ib. p. 9267)

Senator Wagner observed that it was obvious that the 3 per cent. payroll tax could not be a panacea for the burden of unemployment such as we have borne in the past. Its protective features would cover only twenty-four million of the forty-eight million gainfully employed. After a waiting period of four weeks the unemployed would receive benefit payments for fifteen weeks, not in excess of \$15.00 per week. If the rate of unemployment were the same between 1936 and 1950 as it was between 1925 and 1935, the total wage and salary loss in the covered group of workers would be \$75,000,000,-000, or three times the sum available for the 3 per cent. payroll tax. (Ib. p. 9284). But this analysis overlooks the purpose and indirect effects of unemployment insurance. It is designed to supplement the public works projects, to provide for intermittent, short term unemployment,

"a remedy that is more dignified, more humane, more certain, and more economical than emergency relief, with

its inflated ballyhoo and its deflating effect upon the moral stamina of the recipients." (Ib.)

The mere focus of business attentiveness upon the problems of the jobless will tend to prolong work, as the study of life insurance has tended to increase the length of the average life. A provision in the measure requires that the tax rebate shall be used to encourage a close connection between state job-insurance laws and unemployment offices.

The measure permits the employer with a good employment record to offset against the federal tax not only the state tax he has paid but the amount of the reduction he has won. But the bill takes great pains to prevent any state from circumventing the (federal) law by allowing additional credits without setting up adequate safeguards against unemployment. (Ib.)

The Senator discusses the stabilizing effect upon industry which unemployment insurance will have in times of stress. For instance, the 3 per cent. tax would have provided ten billion dollars between 1922 and 1933. It would have produced an accumulative reserve of two billion dollars in 1929, the prompt release of which would have mitigated and abbreviated the down-swing of the business cycle. (Ib.)

Senator Schall of Minnesota noted that beginning January 1, 1936 a payroll tax of 1 per cent. would begin to finance unemployment insurance, which would amount to \$200,000,000, which would be doubled in 1937. (Ib. p. 9537)

(2) The Act as a Tax Measure*(a) Messages of the President*

In his message of June 8, 1934 the President said that he believed “that the funds necessary to provide this [unemployment and old-age] insurance should be raised by contribution rather than by an increase in general taxation”. (Cong. Rec., Vol. 78, Pt. 10, p. 10771)

In his message of January 17, 1935 transmitting the report of the Committee on Economic Security the President said that, with respect to unemployment insurance, he had concluded

“that the most practical proposal is the levy of a uniform Federal pay-roll tax, 90 percent of which should be allowed as an offset to employers contributing under a compulsory State unemployment-compensation act. . . ” (Cong. Rec., Vol. 79, Pt. 1, p. 599)

(b) The Report of the Committee on Economic Security

The Committee on Economic Security referred frankly to the “tax-credit device” which it preferred to one in which the tax would be wholly collected and then remitted to the states as grants-in-aid; because

“under the latter system the States would not have self-supporting laws of their own, and as with all compensation having its source in Federal grants there would be great and constant pressure for larger grants exceeding the money raised by the tax, with a consequent confusion of compensation and relief.” (Report of the Committee on Economic Security, p. 17)

In making the recommendations as to the "technique" of establishing a Federal-State unemployment system the Committee proceeds in the conviction that its purpose could be most promptly and effectively accomplished by federal legislation which would, among other things, (1) produce uniformity in the burden by levying a payroll tax, (2) stimulate the passage of compensation laws by the states, by allowing a credit against the federal tax for contributions paid under state laws (Ib.). This credit should be allowed only if the state is cooperating with the Federal Government in the administration of unemployment compensation, expending the money raised solely for benefits, and is depositing all contributions as collected in the Unemployment Trust Fund. (Ib. p. 18)

Additional credits are recommended on the reserve account and guaranteed employment account, which finds its place in Section 910 of the Federal Act. (Ib.)

(c) Hearings Before the Committee on Ways and Means of the House

The Committee on Ways and Means (as well as the Committee on Economic Security) had before it the choice of the grant-in-aid system or the Federal-state system. Under the first the Federal Government would collect the entire tax and by grants of 80 to 90 per cent. of the tax subsidize the states to enact measures submitting control in all particulars to the federal authorities.

The national system was put aside apparently with much regret. Mr. Leiserson commented that everybody knew

"that regulating working conditions has been up to the present always considered a State system." (Hearings before the Committee on Ways and Means, p. 400)

So what appeared to be the lesser of the two evils was adopted (Sections 901, et seq.).

Miss Perkins told the Committee on Ways and Means that the Committee on Economic Security believed that "the device of utilizing the taxing power of the Federal Government", as a method of raising revenue for the government and for encouraging and stimulating the passage of proper and suitable unemployment-insurance laws, was the best scheme, the best method, which the Committee could recommend at the time (Ib. p. 183). Mr. Vinson of Kentucky asked Miss Perkins if the Committee gave any consideration to the matter of securing this money from sources other than payrolls; in answer to which Miss Perkins said that the Committee did consider the matter of securing funds out of general taxation; that a part of the whole system could be financed, if desired, by contributions on the part of the Government, made possible "by increased general taxation, either income, inheritance, or any other form of taxation". (Ib. p. 205) The Committee gave consideration also to the matter of imposing a tax on labor-saving machinery for unemployment insurance, but most of the members decided to abandon such a plan as a practicable theory at the time. "Although theoretically it [such a theory] is a very enticing thing, it is extremely difficult to estimate in advance how much money that would bring in". The actuaries found it impossible to tell in any given year whether a labor-saving machine would be introduced that would put so many thousand men out of work, or whether one would not be introduced in that year but ten years later (Ib.). The Committee was directing its thought toward unemployment insurance and old-age annuities; and

"in devising the taxes, we tried to indicate these taxes in the spot which would develop the necessary income and

the necessary impetus to the enactment of State laws in the matter of unemployment insurance. (Ib. p. 207)

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“ . . . With regard to the unemployment insurance, we do not believe that this is an appropriation out of general taxes. The taxes raised by the 3-percent excise tax on pay rolls will not be used to pay unemployment insurance or unemployment benefits.” (Ib. p. 208)

The tax recommended

“is not the assessment of a tax out of which benefits will be paid. It is the assessment of a tax on a person who is not paying a premium out of which benefits will be paid.” (Ib.)

Mr. Lieserson felt that the objection to the subsidy plan was sound; that the Supreme Court had said in the Child Labor Cases that Congress could not “under the guise of a federal regulation” regulate conditions within the states; a ruling which likewise applies to the attempt of Congress to regulate the industrial relationships within the states (Ib. p. 400). But, Mr. Lieserson hoped:

“ May be they [the Supreme Court] will not hold that now. But I felt, and most of the members of the committee felt, that we cannot jeopardize this step that needs to be taken now on any theoretical argument about what the Supreme Court might do or might not do.” (Ib. pp. 400-1)

Mr. Hill, a member of the Committee, adverted to the grant-in-aid system of constructing highways; describing the grant as a pure subsidy arising from general taxes and paid out of the treasury. He added, however, that the subsidy for roads

“does not involve, of course, the question of levying these taxes upon employers or employees to raise the fund.”
(Ib. p. 413)

Mr. Leiserson replied that the highways could be connected with interstate commerce, whereas it

“would be pretty difficult to connect manufacturing of, let us say, pocketbooks within a State to interstate commerce. (Ib.)

* * * * *

“the Federal law is designed only to collect this tax in order to get the States to enact certain laws— . . . ”
(Ib. p. 418)

Mr. Morgenthau, Secretary of the Treasury, recognized that the tax would fall ultimately on the mass of the population, but emphasized that the effect of these taxes is to provide a substitute form of savings

“from which our workers will receive far greater and more assured benefits than from many other forms of savings now in existence. These taxes, in other words, will not be a net deduction from workers’ incomes. They will release funds, as well as relieve anxiety, hitherto directed toward the universal problem of providing against one’s old age.” (Ib. p. 900)

Mr. Morgenthau thought it entirely possible that improvements in the revenue system would permit a reduction of taxes on “consumption goods”, thereby returning to the mass of the population in this form

“what is taken from it in the form of pay-roll and earnings taxes.” (Ib.)

Senator Hastings, appearing before the Committee, asserted that a method patterned on the road grant-in-aid plan

provided “the only constitutional way in which it [the institution of the unemployment system] can be done”; that he was quite sure in his own mind that “the Federal government cannot [constitutionally] impose this kind of a tax”. (Ib. p. 956) But the Senator added, he had not given very careful study to the question of the constitutionality of the tax because his experience in the Senate had led him to believe that it was not worthwhile to argue constitutional questions; if the Senate favors a measure it goes ahead frequently and ignores the question of constitutionality. (Ib. p. 959). But he goes upon the theory that the Federal Government can tax only for governmental purposes; that if it were the primary duty of the government to take care of the unemployed, the Constitution would permit the passage of this measure; but such is not the duty of the Federal Government; it is the primary duty of the state. (Ib.)

Mr. Emery felt that upon a serious examination it would be found that the proposed tax is not a tax at all; it does not give a legal basis for a tax, and that there are very serious objections to an exercise of congressional power of this character for this purpose. (Ib. p. 1020)

Mr. Emery discussed the case of *United States v. One Ford Coupe Automobile*, 272 U. S. 321 (71 L. ed. 279), quoting from the court’s opinion that the use of the word “tax” did not prove conclusively that the burden is imposed by the tax. Such is a matter for judicial determination after the legislature has exercised its discretion. He referred to the *Child Labor Tax Case*, 259 U. S. 20 (66 L. ed. 817), *Stafford v. Wallace*, 258 U. S. 495 (66 L. ed. 735), and *Hill v. Wallace*, 259 U. S. 44 (66 L. ed. 822), as authority for the principle that so-called taxes which undertook to regulate the conduct of the states were not in fact taxes. He distinguished

the case of *Florida v. Mellon*, 273 U. S. 12 (71 L. ed. 511), in which the court pointed out that

“a tax is the compulsory taking of the private property of the citizen for the purpose of the support of the sovereignty or government which levied the tax. That is the test of what constitutes a tax.” (Ib. p. 1025)

The difference between the estate tax and the payroll tax is that in the first instance the credit is not dependent on the adoption by the state of a policy proposed by Congress; in the second place, unless the state puts into effect the unemployment plan with its standards fixed by Congress, the taxpayer receives no credit for the state tax. Congress did not enact the estate tax for the purpose of endeavoring to persuade the states to enact a like tax. Only three states in the Union lacked such a tax (Ib. p. 1026). If by the use of the taxing power an attempt is made to impose a penalty or to compel an independent sovereign or individual to pursue a certain line of conduct, if what is done is the endeavor to exercise a forbidden power under the color of a permissive power, the exercise of the latter cannot be sustained. If the federal tax is intended not to raise revenue but to control the local conditions of production, the tax is invalid. The purpose of the tax is not to raise revenue for the Federal Government; for if it were successful in raising revenue the bill would be a failure. The proposed statute therefore, as it is worded, defeats its own purpose.

“It would be, in this instance, you gentlemen will clearly admit, a complete failure if it succeeded in raising revenue which the Federal Government retained, instead of raising revenue which the State recaptured if it conformed to the requirements imposed by the Federal Government, carrying out the will of Congress, as laid down in legislation. Therefore, I say it is a regulatory statute.” (Ib.)

An examination of the legislation piece by piece is convincing that it is upon its face pointed to one result:

“to secure State legislation upon a subject on which the States have not legislated and which under the tenth amendment is not only under their control but which they are free to accept or reject.” (Ib. p. 1027)

And it is here proposed that unless the states act, a tax will be levied upon their citizens which the states cannot recover and which will lessen their taxing power.

“So, paradoxical as it may seem, the success of this bill depends upon its failure to produce revenue for the Federal Government.” (Ib.)

Mr. Emery, in answer to questions from the Committee, stated that in the instance of the estate tax the taxpayer could secure his credit as a result of his own act, while under the present bill no act of the employer could recover his credit, such being dependent entirely upon the act of the state of which he is a citizen (Ib. p. 1029). While the tax (or 10 per cent. thereof, dependent on the action of the states) goes into the federal treasury subject to appropriation for any purpose, the major purpose of the bill according to its title is “a bill to alleviate the hazards of old age, unemployment, illness, and dependency, to establish a social insurance board in the Department of Labor, to raise revenue, and for other purposes”, while the minor purpose is revenue (Ib. p. 1030).

(1) *Desirability of Placing Tax in Separate Bill*

Mr. Green advised that the grant-in-aid plan be adopted so as to lessen the question of constitutionality, asserting that Congress has power to appropriate money

as grants-in-aid for unemployment insurance on such terms as Congress may establish, as it has done in respect to public roads (Ib. p. 389).

Mr. Epstein advised separate bills—one as a tax measure. In the other Congress would say to the legislatures of the states that if they want protection for their people (which the employers do not want but which the governor and the legislature do want); if they adopt a decent bill that will comply with federal standards as to minimum benefits, a “real guarantee of good administration”—if they guarantee that they are going to administer such a system rightly “we will turn over to you the money we collect from your state”. (Ib p 563). The witness stated that this was “more constitutional . . . logical and legitimate” The governors and the legislatures will see that the tax is enacted (Ib. pp. 563-4). His suggestion as to splitting up the measure into two bills is based on the idea that

“it is safer constitutionally to separate the revenue-raising part from the disbursement part. . . .” (Ib. p. 564).

The witness expressed his willingness to do anything to minimize constitutional problems. From his bitter experience he knew that if the court nullified a social law, a generation is lost trying to change it, as for instance, the child labor amendment (Ib.) By separate bills one step is taken away from constitutional troubles. The entire plan in the same bill would permit the court to say “you set up that tax for a specific purpose”, the answer to which would be, if separate bills were provided:

“ . . . ‘Why, we set up the tax, that is all. That was just the revenue for the Government, general revenue. We happen to be disbursing an equal sum in a separate bill.’ Well, that is another story.” (Ib. p. 565)

Dr. Frank P. Graham, Chairman, Advisory Council to the Committee on Economic Security, likewise advocated a tax bill separate from the grant-in-aid type, to avoid the strain of carrying sufficient national standards and other regulations required by the interstate and national nature of industry and employment.

“ . . . Such a joint act more seriously raises the question of constitutionality ” (Ib. p. 881)

Senator Hastings undertook to draw a distinction between using general funds for these purposes and laying a special tax for the particular purpose. He did not think the Federal Government could lay a special tax for the purpose of taking care of the unemployed and paying it out of its own funds. If funds are collected for general purposes, they might be used for the purpose of the bill, and the constitutional objection would be lessened; for it is very difficult to raise the question as to the disposition Congress makes of the general funds. At least, the question of levying a tax for a special purpose would be eliminated (Ib. p. 960).

Mr Leiserson, Chairman, National Mediation Board, called the 3 per cent. tax a premium which is paid for unemployment insurance; for the principle is insurance (Ib p. 409)

*(d). Report of the Committee on Ways and Means
of the House*

The report states that practically no objections have been made to the imposition of the taxes levied in the bill. Such objections as have been offered overlook the fact that the initial rates are very low (Ib. p. 16). That the tax is imposed on employers is indicative of the conviction that employers should bear at least a part of the cost of unemployment compensation, just as they bear the cost of workman's compensation. (Ib. p. 8)

The views of the minority deserve attention. It is stated that:

"Titles III and IX taken together provides for what is commonly known as 'unemployment insurance.' The incidental revenue collected under title IX is intended to offset the payments made under title III. (Ib. p. 43)

* * * *

"The best legal talent that the Attorney General's office and the Brain Trust could marshal has for weeks applied itself to the task of trying to bring these titles within constitutional limitations. Their best effort is only a plain circumvention. They have separated the proposition into two titles. This separation is a separation in words only. There is no separation in spirit or intent. These two titles must stand or fall together." (Ib.)

The minority view as to the purpose of the 10 per cent. tax retained by the Government is not different from that of the majority.

*(e). Hearings Before the Committee on Finance
of the Senate*

Miss Perkins stated that all the federal government does is to place an ordinary excise tax upon the payrolls which the employer must pay. He may however offset against that tax up to 90 percent. any contribution he pays under a state compulsory unemployment insurance system. The reason for not offsetting the 100 percent. is to have the 10 percent, remaining for administration; a percentage supported by the experience of other countries (Hearings before Committee on Finance of the Senate, p 112)

Miss Perkins stated that the state could assess an employer at any rate it wished to fix, different from the rate imposed on other employers, for the reason that "This is not a tax, you see; it is an assessment to a fund." (Ib. p 125)

Senator Barkley raised an objection to the use of a tax for general government expenses which had been collected for the purpose of unemployment insurance as to which Miss Perkins insisted that the tax was not collected for unemployment insurance; that it is a general tax; that

" It is assumed that the Federal Government has an ample use for taxes and is always seeking new sources of revenue." (Ib p. 127)

Senator Barkley replied that

" We would not be levying this tax except to provide for unemployment insurance." (Ib.)

In reply Miss Perkins answered that the purpose was to provide general funds for general purposes and "to encourage the states to pass unemployment insurance laws of their own". Senator Barkley pursued his discussion as to the use of this particular tax, levied for the purposes of unemployment insurance, for the support of the army and navy, diplomatic corps or some other normal branch of the federal government, which Miss Perkins countered by saying that it did not matter how this particular money was used, just as it did not matter whether she paid her rent out of her savings bank or her salary "That is your money," replied Senator Barkley. (Ib.)

Miss Perkins objected to making this a special fund if it were ever to be returned to states for paying unemployment benefits, for each state would be thus encouraged to postpone the passage of its own law. Senator Barkley again inquired if Miss Perkins objected to holding the amount of the tax in a special fund to give the states a chance to pass the required laws, twelve states not having legislatures until 1936, the states complying being entitled to their share of the fund? Miss Perkins answered by saying that 44 states have legislatures in 1935, that the amount will be much smaller as 1 per cent. will probably be substituted for 3 percent. the first year. (Ib. p 134)

Mr. Green, in discussing the constitutional features, raised the question whether Congress can use its taxing power "to indirectly compel a state to do something"; a question involved in the child labor laws. The plan suggested by Mr. Green therefore would be for the federal government "to prescribe the standard and require the states to conform to that standard. . . ." (Ib. p. 159)

Dr. Witte: One of the reasons for the low rate of

the old-age tax is that a tax is being imposed for unemployment insurance purposes simultaneously. (Ib. p. 196) If a system of unemployment insurance were devised and its administration vested in the national government, it could not rest on the taxing power alone; the question of the use of the regulation of interstate commerce would arise. But under the plan submitted [which was adopted in substance] the question does not arise. (Ib. p. 223) The money collected by the state is not a tax; it is a contribution or a premium. (Ib. p. 239)

Mr. Leiserson remarked that if we start with the premise that we want to use the principles of insurance, the first question is, how much premium shall we pay for the insurance? The bill provides that there shall be a 3 percent. tax "which really is the premium". (Ib. p. 262)

Mr. Harrington, of Fyffe & Clarke, General Counsel for the Illinois Manufacturers Association, said that the bill involved the equivalent of a general sales tax,—“not for the general purposes of Government, but for special purposes.” (Ib. p. 688)

Mr. Reyburn, National Retail Dry Goods Association, disagreed with the Secretary of the Treasury who advocated a payroll tax for the purposes of the bill. Many merchants and others felt the charge to be a proper one against general revenues of the states and nation. (Ib. p. 706)

Professor Paul H. Douglas, Department of Economics, University of Chicago, referring to the few standards to which the state systems were required to conform assumed that this was so as to avoid a declaration of unconstitutionality on the ground that Congress

“ was using the taxing powers for a purpose which was primarily if not exclusively regulatory.” (Ib. 892)

Mr. Webster, representing the Connecticut Manufacturers Association, Bridgeport, Conn.: Reduced to their elementals the measures propose by the use of taxing power to achieve by indirection an end that could not be legally accomplished directly. (Ib. p. 897-8)

Mr. Emery, Counsel, National Association of Manufacturers, Washington, D. C.: The very purpose of the legislation upon its face is to compel the legislative action of the states. It is not the purpose of the legislation on its face, to raise revenue for the general government. On the contrary the success of the bill as a revenue raiser would be the defeat of its purpose as social legislation. In no other measure has Congress provided on the face of its tax measure the means of defeating its own revenue. (Ib. 925) If all the states complied with the statute the government would be deprived of the revenue raised by the tax, observed Senator Barkley; with which Mr. Emery agreed, adding that the government would retain ten percent. which on its own calculation would cover the cost of administration. (Ib. p. 927) It is unfortunate, added Senator Barkley, that to induce the states to act, it is necessary to offer an inducement or impose a penalty. (Ib. p. 928)

On the face of the bill, said Mr. Emery, it is obvious that the regulations suggested are not for the purpose, incidentally of assisting in the collection, administration or enforcement of the tax, but that the tax was levied with no intent to secure the revenue but with the major purpose of securing action by the state.

“So as a general conclusion we point out that on the face of this legislation, the success of it as it is written, as its proponents assert, as its terms identify it, all go to the proposition that as a revenue measure it must fail in order to be successful as a social measure. In other words it will fail exactly to the degree contemplated by its proponents if it raises revenue instead of procuring regulation by the States, and thus carries on its own face the means of defeating its own revenue objective.” (Ib. p. 930)

Miss Perkins: The reason for not offsetting 100 percent. is to have 10 percent for administration, which according to the experience of other countries is proper and suitable. The tax that goes into the Treasury is available for appropriation by Congress. There is no advantage to the state in allowing employers merely to pay the federal tax; for the state would then have to pay in the form of relief for distress due to unemployment, or something else. The advantage to the employers will be to have a compulsory unemployment insurance law in every state to which every employer will be contributing. Such funds will be used for regular benefits to the unemployed persons in that state. (Ib. p. 112)

(1). Desirability of Placing Tax in Separate Bill

Mr. Green explaining his grant-in-aid plan, said that the government could collect the tax and put it into the Treasury. Then the states are given to understand that if they pass unemployment insurance legislation which measures up to standards set by Congress, the federal government will subsidize them to the extent of the tax paid by the different states. (Ib. p. 156) The subsidy would be provided by separate and distinct bill. (Ib. p.

157) The difference between the two said Mr. Green, is one of constitutionality. Under the subsidy plan Congress can fix its own standards. Under the federal-state (or tax-credit) plan the state fixes its own standards without any control by Congress. (Ib. p 158)

In the Report of the Advisory Council to the Committee on Economic Security (Ib. p 246) the Council recommended the subsidy plan in the belief that it had its advantages (a) in dealing on a nationwide basis with situations crossing state boundaries; (b) in establishing and maintaining throughout this country the essential minimum standards; (c) in removing all obstacles to bringing the reserve funds into federal control; (d) it would run less risk of unconstitutionality than the Wagner-Lewis type when the latter is equally equipped with provisions of minimum standards for the states; (e) the federal control of funds and the power to allow or disallow grants, would be an important element in national control; (f) it would lend itself more readily to developing a national system should that become advisable

The minority of the Committee favored the Wagner-Lewis type as having the following advantages: (a) It permits experimentation by the states; (b) it secures the equalization of competitive costs; (c) it permits the requirement of all essential uniform standards, such as that the money collected must be spent for unemployment benefits, the custody of the funds, and others; (d) it secures the advantages of federal supervision with decentralization of administration, and local responsibility; (e) it avoids the hazards of an annual appropriation by Congress; (f) it raises substantially the same constitutional questions as the subsidy type of bill, but has the great merit that should it be held