Fordham Law Review

Volume 4 | Issue 3 Article 7

1935

Legislation

LEGISLATION

UNEMPLOYMENT INSURANCE—NEW YORK UNEMPLOYMENT INSURANCE LAW. —The recently enacted unemployment insurance law of New York State[1] constitutes another unit in a growing framework of social insurance legislation. The term "social insurance" is generally used to describe those measures, usually legislative, which are taken for the assistance of the worker and his dependents when gainful employment is interrupted or stopped, as by sickness, death or unemployment.[2] Workmen's accident compensation laws, such as have been enacted by a majority of the states,[3] are typical applications of the principles of social insurance. These laws partake of the nature of insurance in that the incidence of loss is distributed among many, and is not borne solely by the individual suffering the loss,[4] and in that the right to compensation for loss is a legal right, not a matter of gratuity.[5] Further, the insurance is social in its nature in that the coverage includes persons "collectively rather than individually."[6]

The Need for Unemployment Insurance

It is not the purpose here to discuss the thesis of social insurance in its entirety, but to treat of a particular application of the social insurance principle, namely unemployment insurance. The discussion is further limited to the compulsory and nation-wide or state-wide systems, rather than those private plans which are confined to a single company, industry, or locality.[7] The kind of unemployment insurance system with which we are concerned is one in which, first, a fund is built up by regular contributions from employer, employee, or the government, or all of these together; second, contributions to the fund are compulsory; third, the plan is administered by a body having legal authority; and fourth, benefits are payable to the unemployed worker as a matter of right.

Constant debate is provoked by the question of whether unemployment insurance is a necessary or even salutary step in our economic system.[8] There

1. N. Y. Laws 1935, c. 468, N. Y. LABOR LAW (1935) §§ 500-531.

2. EPSTEIN, INSECURITY, A CHALLENGE TO AMERICA (1933) 23.

3. Only two states, Arkansas and Mississippi, have failed to enact workmen's accident compensation laws. 25 AM. LAB. LEG. REV. 75 (1935).

4. EPSTEIN, *op. cit. supra* note 2, at 22.

5. This is the chief distinction between unemployment insurance and unemployment relief. EPSTEIN, *op. cit. supra* note 2, at 22.

6. Firth, *Social Insurance* (Apr. 1931) 59 SYSTEM 269.

7. Private plans, a few of which are in existence today in the United States, are necessarily limited in their scope and coverage. They are similar to employees' mutual benefit associations, although in some instances the employer contributes to the fund. For a discussion of the plans, see STEWART, UNEMPLOYMENT BENEFITS IN THE UNITED STATES (1930).

8. For theses in favor of unemployment insurance as the best method of meeting the problem of industrial unemployment, see ARMSTRONG, INSURING THE ESSENTIALS (1929);

is a similar disagreement as to whether unemployment insurance can ever be established on a sound actuarial basis.[9] One unchanging fact, however, admits of no denial. There is such a thing as mass unemployment. The phenomenon is present in good times and in bad.[10] The number alone varies as we pass from prosperity to depression.[11] Periods of business depression, such as we are presently experiencing, account for only one kind of unemployment, called *cyclical* unemployment.[12] There are other kinds,—for example, *technological* unemployment,[13] caused by change in industrial methods or change of styles; *seasonal* unemployment,[14] caused by the seasonal nature of the business, as in the clothing industry; *personality* unemployment,[15] caused by the personal inaptitude of the worker. All these types of unemployment are permanent and recurring, and are seemingly rooted into our economic structure.[16] Since the existence of the economic evil is beyond question, it goes without saying that it is expedient that some means be taken to prevent or at least palliate that evil.[17] The means which is being taken today is compulsory unemployment insurance.[18]

European Systems

The unemployment insurance idea is said to have been derived from the practice of certain European trade unions which allowed benefits to members during periods of unemployment.[19] In the year 1900 the city of Ghent in Belgium first launched a system of unemployment insurance on a large scale by offering subsidies to labor unions which allowed their members unemployment

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RUBINOW, THE QUEST FOR SECURITY (1934); EPSTEIN, *op. cit. supra* note 2. For an adverse criticism and analysis of unemployment insurance, see NATIONAL ASSOCIATION OF MANUFACTURERS, PUBLIC UNEMPLOYMENT INSURANCE (1930).

9. The difficulty in placing unemployment insurance on a working actuarial basis lies in the imponderable nature of unemployment as a risk, and the dispute largely concerns the accuracy of available employment statistics. A collocation of authority pro and con may be found in HALL, CURRENT CONFLICTING VIEWS ON UNEMPLOYMENT INSURANCE (1931).

10. DOUGLAS, STANDARDS OF UNEMPLOYMENT INSURANCE (1933) 2.

11. *Ibid.*

12. EPSTEIN, *op. cit. supra* note 2, at 225.

13. *Id.* at 228.

14. *Id.* at 223.

15. RUBINOW, THE QUEST FOR SECURITY (1934) 312. This type of unemployment differs from the others in that the cause is individual, rather than social. Often the worker is totally unemployable, and is properly the subject of relief rather than insurance.

16. EPSTEIN, *op. cit. supra* note 2, at 241.

17. It is argued that unemployment insurance plans, such as are being enacted into law today, would prevent the spread of unemployment during business depressions by increasing public confidence and purchasing power. DOUGLAS, *op. cit. supra* note 10, at 22.

18. See note 44, *infra.*

19. EPSTEIN, *op. cit.* supra note 2, at 324.

benefits.[20] The practice spread generally throughout Belgium.[21] This, of course, was a voluntary, not a compulsory plan of insurance.

England was the first country to establish a compulsory, nation-wide unemployment insurance system. This was accomplished in 1911 by the passage of the National Insurance Act.[22] Under this act contributions were payable in almost equal amounts by the employer, the worker, and the Treasury.[23] The fund was administered by the Board of Trade.[24] The coverage, however, was limited to only a few industries.[25] In 1920 the act was repealed and was supplanted by the Unemployment Insurance Act,[26] which provided a much broader coverage.[27] This in turn was amended by the Unemployment Act of 1934, which separated unemployment relief from unemployment insurance.[28] An essential element of the English system is the establishment and maintenance of employment centers or exchanges,[29] whose duty it is not only to investigate claims and pay benefits, but also to find employment for the applicant if possible, and to provide for vocational training.[30] The maintenance of employment exchanges is considered an integral part of the unemployment insurance idea.[31]

The German insurance system, which closely resembles the English, came into effect as a compulsory plan in 1927.[32] Contributions are made by employers and employees in equal amounts, and the state does not contribute to standard

20. This plan of insurance is known as the Ghent System. The original plan allowed a municipal subsidy of ten thousand francs a year, which was later increased as the need arose. The original benefits were one franc *per diem* for a period of not more than fifty days. Benefits were payable only to union members. KIEHEL, UNEMPLOYMENT INSURANCE IN BELGIUM (1932) 88.

21. *Id.* at 92.

22. 1 & 2 GEO. V, c. 55 (1911). For an exhaustive treatise on English legislation and experience, see GILSON, UNEMPLOYMENT INSURANCE IN GREAT BRITAIN (1931).

23. 1 & 2 GEO. V, c. 55, § 4 and Eighth Schedule (1911).

24. *Id.* § 92.

25. Apparently the object of the act was to insure only those trades which were physically hazardous. The occupations insured were building, construction, shipbuilding, mechanical engineering, ironfounding, construction of vehicles, and sawmilling. 1 & 2 GEO. V, c. 55, Sixth Schedule (1911).

26. 10 & 11 GEO. V, c. 30 (1920).

27. *Id.* First Schedule. The act covered all employments except agriculture, domestic service, military service, certain government service, non-manual labor at a salary in excess of £250 per year, and family employment.

28. 24 & 25 GEO. V, c. 29 (1934). The act is in two parts, part I dealing with unemployment insurane, and part II with unemployment assistanue, or relief. The purpose is to remove the stigma of the "dole" from unemployment insurance.

29. Free employment exchanges were provided in England as early as 1909 by the LABOUR EXCHANGES ACT, 9 EDW. VII, c. 7 (1909).

30. Training and rehabilitation are becoming increasingly important in the administration of insurance in England. DAVISON, THE NEW UNEMPLOYMENT INSURANCE ACT (1934) 27 *et seq.*

31. EPSTEIN, *op. cit. supra* note 2, at 272.

32. CARROLL, UNEMPLOYMENT INSURANCE IN GERMANY (1929) 48.

benefits.[33] Benefits are payable in eleven classifications regulated according to the wage previously earned by the applicant,[34] while in the English system there is a flat rate of benefit.[35] A further difference is that the German plan is administered by an autonomous body, independent of the state.[36] These are compulsory systems. Unemployment insurance, either voluntary or compulsory, is in effect in almost every European country today.[37]

The Development in the United States—The Social Security Act

In the United States, however, unemployment insurance laws are of very recent origin.[38] A number of private company plans have been in operation for some time,[39] but the first compulsory law of state-wide application was enacted in Wisconsin in 1931.[40] For a long time voices had been raised in favor of unemployment insurance, but they had received scant attention from the legislatures.[41] During the present economic crisis public attention has been more sharply brought to a consideration of the question, and public opinion has been reflected in the measures taken by the federal government.[42] But perhaps the strongest single impulse which the movement in the United States received, was the consideration and enactment by Congress of the Social Security Act of 1935.[43] Until 1935, Wisconsin was the only state having an unemployment insurance law. At the present time, nine states and the District of Columbia[44] have enacted such laws, some contingent upon the passage of

33. *Ibid.* The state however, does contribute to relief benefits. The theory of the German plan is that industry must pay for insurance, while relief is the problem of the national and local governments.

34. *Id.* at 58.

35. DAVISON, *op. cit. supra* note 30, at 8. The advantage of a flat rate is that administration is greatly simplified. In the system of graduated benefits, the work of investigation is increased.

36. CARROLL, *op. cit. supra* note 32, at 60.

37. For a summary treatment of all European systems see EPSTEIN, *op. cit. supra* note 2, at 324.

38. See note 44, *infra.* All except the Wisconsin act of 1931 have been enacted in 1935.

39. STEWART, *op. cit. supra* note 7.

40. Wis. Laws 1931, c. 20.

41. See RUBINOW, SOCIAL INSURANCE (1913); Henderson, *Insurance Against Unemployment* (1913) 3 AM. LAB. LEG. REV. 172; Halsey, *Compulsory Unemployment Insurance in Great Britain* (1915) 5 *id.* at 265.

42. Several unemployment insurance measures were introduced at the Seventy-Fourth Congress, the more prominent being: SEN. BILL No. 1130, H. R. No. 4120, H. R. No. 4142 and H. R. No. 4539 (the administration Security Act); H. R. No. 2827 (Lundeen Bill); H. R. No. 5545 (Ramspeck Bill); SEN. BILL No. 214 (Logan Bill); H. R. No. 7260 (Social Security Act).

43. P. L. No. 271, 74th Cong., 2d Sess. (1935).

44. (Dist. Col.) P. L. No. 386, 74th Cong., 2d Sess. (1935); Ala. (1935) Senate bill no. 395, approved Sept. 14, 1935; Cal. Laws 1935, c. 352; Mass. Laws 1935, c. 479; N. H. Laws 1935, c. 99, as amended by N. H. Laws 1935, c. 152; N. Y. Laws 1935, c. 468;

federal legislation,[45] others, like the New York law, to take effect independently. In many of the remaining states such measures are pending in the legislatures.[46]

The Social Security Act does not attempt to set up a nationally administered system of insurance, but rather to promote action by the states themselves. It provides for the allocation of federal money to those states which have unemployment insurance laws conforming to certain standards set up in the Act itself.[47] One of these standards requires that all moneys received from contributions to state plans shall be turned over to a federal deposit, the unemployment trust fund.[48] This fund will maintain separate accounts for each state.[49] A tax is imposed on certain employers, which will amount to three per cent of the annual payroll.[50] For the purposes of this tax, however, contributions to a state unemployment fund are allowed as a credit up to ninety per cent of the federal tax,[51] so that if an employer is contributing three per cent of his payroll to a state fund, he will pay to the federal fund only an additional three-tenths of one per cent of his payroll. This is probably the most important feature of the act from the standpoint of achieving practical results. The law does not compel the states to set up unemployment insurance laws, but makes that course an expedient and desirable one. The Act creates an agency to be known as the Social Security Board, whose function it will be to supervise the operation of the Act generally.[52] Thus, although we have not a compulsory national system, nevertheless the establishment of a central fund, a central supervising agency, and a national system of standards, serves to unify and consolidate the state laws into a coordinated body. The enact-

N. C. (1935) House bill no. 1507, approved May 11, 1935; Utah (1935) House bill no. 86, approved March 25, 1935; Wash. Laws 1935, c. 145; Wis. Laws 1931, c. 20, as amended by Wis. Laws 1933, cc. 186, 383, as amended by Wis. Laws 1935, cc. 192, 272, 446.

45. The following laws are contingent upon federal legislation: Cal. Laws 1935, c. 352; Mass. Laws 1935, c. 479; N. H. Laws 1935, c. 99, as amended by N. H. Laws 1935, c. 142; N. C. (1935) House bill no. 1507, approved May 11, 1935; Utah (1935) House bill no. 86, approved March 25, 1935; Wash. Laws 1935, c. 145.

46. The following measures are pending: Ariz. (1935) House bill no. 206; Colo. (1935) House bill no. 310; Conn. (1935) House bill no. 386; Del. (1935) Senate bill no. 18; Ind. (1935) House bill no. 521; Md. (1935) Senate bill no. 312; Mich. (1935) House bill no. 246; Minn. (1935) Senate bill no. 1242; Mo. (1935) Senate bill no. 98; Nev. (1935) A. no. 279; N. M. (1935) H. M. no. 2; Ohio (1935) Senate bill no. 6; Okla. (1935) House bill no. 6; Ore. (1935) House bill no. 329; Pa. (1935) House bill no. 2407; R. I. (1935) House bill no. 748; Tenn. (1935) House bill no. 1387; Tex. (1935) House bill no. 409; Wyom. (1935) Senate bill no. 116.

47. P. L. No. 271, 74th Cong., 2d Sess. (1935) tit. III, § 303. The purpose of the standards is to secure uniformity in state legislation, and thus prevent advantage to industries in any one state.

48. *Id.* § 303 (4).

49. *Id.* tit. IX, § 904 (e).

50. *Id.* § 901. However, for the calendar year 1936 the tax will be 1%, and for the calendar year 1937, 2%. The tax applies only to employers of eight or more persons. *Id.* § 907 (a).

51. *Id.* § 902.

52. *Id.* tit. VII, §§ 701, 702.

ment of this law makes unemployment insurance a national undertaking, and places squarely upon the several states "the responsibility of devising and enacting measures which will result in the maximum benefits to the American workman in the field of unemployment compensation."[53]

State Legislation—The New York Law

The New York law[54] is typical of unemployment legislation pending or enacted in the different states. Employers and workers in every classification of labor are subject to the Act,[55] with these exceptions: first, agricultural employment;[56] second, family employment, that is, employment of a spouse or minor child;[57] third, employment in religious, charitable, or educational work;[58] fourth, employment in a "white-collar" or non-manual occupation, where the salary is more than fifty dollars a week;[59] and fifth, employment by the state or any of its subdivisions.[60] Similar exemptions are found in most compulsory systems both in Europe and America.[61] A further exemption is provided by that section of the act which defines an "employer" as one who has regularly employed four or more persons for a given period.[62] The effect of this definition is to prefer the small employer by exempting him from contribution.[63] It is to be noted that the New York law does not provide exemption to domestic servants, and in this respect differs from most systems.[64] The reason offered for this exemption, that unemployment among domestics is not of a serious nature, may well be disputed.[65]

53. Frances Perkins, Secretary of Labor, in a radio address delivered over the Columbia Broadcasting System. N. Y. Times, Sept. 3, 1935, at 2.

54. N. Y. LABOR LAW (1935) §§ 500-531.

55. *Id.* § 502 (1).

56. *Id.* § 502 (1) (b) (1).

57. *Id.* § 502 (1) (b) (2).

58. *Id.* § 502 (1) (b) (3).

59. *Id.* § 502 (2).

60. *Id.* § 502 (3).

61. England: 10 & 11 GEO. V, c. 30, First Schedule, Part II (1920); Austria: CARROLL, UNEMPLOYMENT INSURANCE IN AUSTRIA (1932) 19, n. 43; Germany: CARROLL, UNEMPLOYMENT INSURANCE IN GERMANY (1929) 50; Cal. Laws 1935, c. 352, § 7; Mass. Laws 1935, c. 479, § 1; N. H. Laws 1935, c. 99, § 1 (IV), (V), (VI); Wash. Laws 1935, c. 145, § 3 (6), (7); Wis. Laws 1931, c. 20, § 108.02 (d), (e). These exemptions are allowed because unemployment is not considered serious in these occupations, and also to simplify administration by excluding employment which is difficult to investigate.

62. N. Y. LABOR LAW (1935) § 502 (3).

63. The exemption of the small employer is based on administrative expediency, since investigation of the business of the small employer is difficult. DOUGLAS, *op. cit. supra* note 10, at 50.

64. Many systems exempt domestics from the operation of the plan. England: 10 & 11 Geo. V, c. 30, First Schedule, Part II (b) (1920); Austria: CARROLL, UNEMPLOYMENT INSURANCE IN AUSTRIA (1932) 19, n. 43; Cal. Laws 1935, c. 352, § 7 (b); Mass. Laws 1935, c. 479, §§ 1 (a), 2; N. H. Laws 1935, c. 99, § 1 (VI) (b).

65. DOUGLAS, *op. cit. supra* note 10, at 49.

Every employer subject to the act must contribute an annual sum, three per cent of the total annual payroll,[66] to a state fund known as the unemployment insurance fund.[67] This is the *compulsory* feature of the law. No contributions are to be paid by the state[68] or by employees,[69] which will mean that aside from grants by the federal authority, the entire state fund will consist of contributions from employers. This is a provision which is peculiar to unemployment insurance in the United States. All European systems, with the exception of the Soviet system,[70] provide for joint contributions by employer and employee, and sometimes by the government as well.[71] The theory of joint contributions is that the financial burden will be more equally distributed, and also that the worker is made a part of the plan, and will feel that benefits are his due as a matter of right.[72] The theory of contributions by the employer alone first found legislative expression in the Wisconsin act.[73] The elements of this theory may be stated thus: first, employees are not financially able to contribute; second, employers are best able to shoulder the expense of contributions; and third, employers are responsible for unemployment, and therefore should bear the cost.[74] Whatever the merits or faults of this theory may be, it seems to have met with the approval of law-making bodies.[75]

In order to obtain benefits an employee must first of all be totally unemployed, as that term is defined in the law.[76] As a further prerequisite, the

66. N. Y. LABOR LAW (1935) § 516. However, for the calendar year 1936 the contribution will be 1%, and for the calendar year 1937, 2%. The purpose of this provision is probably to have the fund built up gradually while the administrative machinery is being organized.

67. N. Y. LABOR LAW (1935) § 514.

68. *Id.* § 529.

69. *Id.* § 517 provides that any agreement by an employee to contribute shall be void.

70. Duncan, *Social Insurance in the Soviet Union* (1935) 178 ANNALS 182. The Soviet State is the sole employer, and logically the sole contributor, since wages are generally paid in commodities rather than in money.

71. England: 10 & 11 GEO. V, c. 30, § 5 (employer, employee and government); Germany: CARROLL, UNEMPLOYMENT INSURANCE IN GERMANY (1929) 48 (employer and employee in equal amounts); Austria: CARROLL, UNEMPLOYMENT INSURANCE IN AUSTRIA (1932) 18 (employer and employee in equal amounts). The California, Massachusetts, New Hampshire and Washington laws compel contributions by both employer and employee. Cal. Laws 1935, c. 352, §§ 38, 44; Mass. Laws 1935, c. 479, § 3; N. H. Laws 1935, c. 99, §§ 6, 12; Wash. Laws 1935, c. 145, § 5 (1), (5). Under the Wisconsin and New York laws, the employer alone contributes. Wis. Laws 1931, c. 20, § 108.05; N. Y. LABOR LAW (1935) § 515.

72. EPSTEIN, *op. cit. supra* note 2, at 38; DOUGLAS, *op. cit. supra* note 10, at 149, 151.

73. Wis. Laws 1931, c. 20, § 108.01.

74. Commons, *The Groves Unemployment Reserves Law* (1932) 22 AM. LAB. LEG. REV. 8; Green, *Why Labor Opposes Forced Worker Contributions* (1934) 24 *id.* at 101.

75. The theory is given effect in the Social Security Act as well as in the laws of New York and Wisconsin. P. L. No. 271, 74th Cong., 2d Sess. (1935) tit. X, § 901 imposes a tax on employers alone for the unemployment trust fund.

76. N. Y. LABOR LAW (1935) § 502 (10) defines total unemployment as the total lack of any gainful work and the total lack of income.

applicant must prove that he has been employed for a certain period in the past.[77] The policy which underlies this requirement seems to incline toward the restriction of payment of benefits to workers in the real sense, *i.e.*, those who have worked in the past and who are earnestly seeking employment.[78] There are certain limitations on the amount and duration of benefit.[79] These are provided to assure the solvency of the fund, and are based on the recognized theory that the greater number of the unemployed are idle for a relatively short period of time.[80] Also in accordance with this theory, a "waiting period" of three weeks intervenes between the filing of a notice of unemployment and the commencement of benefits, thus allowing a period for seeking new employment.[81] This period is also necessary for investigation by the administrative authorities, to determine the validity of the claim.[82] Where the employee has been discharged for misconduct, the waiting period is longer.[83] An employee who refuses employment loses his right to benefits, but this rule is subject to certain qualifications.[84]

The unemployment insurance law of New York is to be administered by the state, through the industrial commissioner.[85] In addition, an advisory council is created, consisting of the employers, the employees and the public.[86] The work of the council will not be administrative, but will be confined to study and recommendation.[87] The commissioner may set up local offices throughout the state.[88] These offices will act as employment exchanges in addition to functioning as agencies for the distribution of benefits.[89]

All contributions received are to be deposited in the state unemployment insurance fund.[90] The contributions are pooled, and in contrast to the Wisconsin plan[91] are not kept in separate accounts for each employer. The "pool plan"

77. *Id.* § 503 (3) (c). The employee must have worked 90 days within the preceding year, or 130 days within the preceding two years.

78. As to the wisdom of such a provision, see DOUGLAS, *op. cit. supra* note 10, at 57.

79. One week of benefit is given for each 15 days of employment within the preceding year. N. Y. LABOR LAW (1935) § 503 (3) (e). The amount of weekly benefit is 50% of the employee's previous wage, or $15.00, whichever is lower. *Id.* § 505 (1). The employee may not have more than 16 weekly payments in one year. *Id.* § 507.

80. DOUGLAS, *op. cit. supra* note 10, at 129 (calculation based on census statistics).

81. N. Y. LABOR LAW (1935) § 504 (1).

82. For a general discussion of the waiting period see DOUGLAS, *op. cit. supra* note 10, at 64.

83. N. Y. LABOR LAW (1935) § 504 (2) (a).

84. *Id.* § 506. The applicant is not disqualified if the employment offered would require his joining a company union, if there is an industrial dispute in progress, if excessive expense of travel would be involved, or if the conditions are substantially less favorable than prevailing working conditions in the locality.

85. *Id.* § 518 (1).

86. *Id.* § 518 (4).

87. *Ibid.*

88. *Id.* § 518 (2), (5).

89. *Id.* § 518 (5).

90. *Id.* § 514.

91. Wis. Laws 1931, c. 20, § 108.16 (2).

has the advantage of greater protection to the worker, since his benefits will be paid whether his employer defaults in contributions or not, while in the "separate accounts" plan, the worker can look only to the fund of his own employer for the payment of benefits.[92] There are arguments on the other side, however.[93] The Wisconsin plan allows the careful employer to keep contributions at a minimum by keeping a sufficient balance in his account,[94] while under the New York law the conscientious employer must bear an equal proportion of the burden with the careless employer. The Wisconsin law has a further advantage in that an employer who guarantees to keep his men employed for the greater part of the year will be exempted from all contribution.[95]

Constitutionality

Since our unemployment insurance structure has been built so rapidly, there is naturally some doubt whether it has been built well. One question of outstanding importance is immediately presented. Is unemployment insurance constitutional? The constitutional provision involved is the "due process" clause, and the spearhead of an attack upon a state law would be the contention that the law deprives the employer of his "property without due process of law."[96] There is no doubt that unemployment insurance does take a portion of the employers' property. However, the constitutional inhibition is not violated by a legitimate exercise of the police power of the state.[97] The exact scope of this power cannot be accurately defined, and therefore each case must be decided on its own particular facts.[98] It is one of the broadest of state powers and it extends to the protection of all persons and all property within the state.[99] The police power is thus described in the case of *House v. Mayes:*[100]

". . . among the powers of the state, not surrendered—which power therefore remains with the state—is the power to so regulate the relative rights and duties of all within its jurisdiction so as to guard the public morals, the public safety

92. It is also argued that the administrative machinery required by the separate accounts plan is cumbersome and expensive. Andrews, *Two Acts for the Security of Wage Earners* (1935) 7 N. Y. B. A. BULL. 188, 190. For a discussion of both plans see DOUGLAS, *op. cit. supra* note 10, at 166.

93. Commons, *The Groves Unemployment Reserves Law* (1932) 22 AM. LAB. LEG. REV. 8.

94. Wis. Laws 1931, c. 20, § 108.18. When the employer's account reaches a satisfactory amount, no further contributions are required.

95. Wis. Laws 1931, c. 20, § 105.15. It can readily be seen that such a provision would tend to stabilize employment. The employer would have an incentive for keeping men at work regularly.

96. U. S. CONST. AMEND. XIV.

97. New York & N. E. R. Co. v. Bristol, 151 U. S. 556 (1894); see Atlantic Coast Line R. Co. v. City of Goldsboro, 232 U. S. 548, 558 (1914).

98. See Stone v. Mississippi, 101 U. S. 814, 818 (1879); Slaughter House Cases, 83 U. S. 36, 62 (1873).

99. Noble State Bank v. Haskell, 219 U. S. 104 (1911); see Slaughter House Cases, 83 U. S. 36, 62 (1873).

100. 219 U. S. 270, 282 (1911).

and the public health, as well as to promote the public safety and the common good; and that it is with the state to devise the means to be employed to such ends, taking care always that the means devised do not go beyond the necessities of the case, have some real or substantial relation to the objects to be accomplished, and are not inconsistent with its own constitution or the Constitution of the United States."

The question is then narrowed to this extent: is unemployment insurance a valid exercise of the police power? Any concrete exercise of the power by a state must have for its object the promotion of the public health, the public morals, or the public welfare.[101] This requirement is broad and general in its terms. It does not confine the liberty of the states within a narrow field, but includes as well those measures which are designed for the furtherance of public convenience and prosperity.[102] Applying this norm to the unemployment insurance laws, only one conclusion may be reached. The purpose of the laws is to promote the public welfare and prosperity.[103] However, the means used must be reasonably fitted to achieve that purpose; they must have a "real or substantial relation to the objects to be accomplished."[104] Moreover, the exercise of power must not be unreasonable to the point of becoming arbitrary.[105] In accordance with these principles it has been held that regulations which compel compliance with public health measures,[106] public safety measures,[107] and regulations of the use of property[108] are within the power of the states. By the same standards, minimum wage legislation[109] and regulation restricting the resale price of theater tickets[110] have been adjudged unreasonable exercises of the police power. In each case the factors to be considered are the reason-

101. California Reduction Co. v. Sanitary Reduction Works, 199 U. S. 306 (1905).

102. Chicago, B. & Q. Ry. Co. v. Drainage Comm'rs, 200 U. S. 561 (1906); see Bacon v. Walker, 204 U. S. 311, 317 (1907).

103. N. Y. LABOR LAW (1935) § 500 declares the legislative purpose: "Economic insecurity due to unemployment is a serious menace to the health, welfare and morals of the people of this state. Involuntary unemployment is therefore a subject of general interest and concern which requires appropriate action by the legislature. . . . Taking into account the report of its own committee, together with facts tending to support it which are matters of common knowledge, the legislature therefore declares that in its considered judgment the public good and the well-being of the wage-earners of this state require the enactment of this measure. . . ."

104. See House v. Mayes, 219 U. S. 270, 282 (1911).

105. See *In re* Wilshire, 103 Fed. 620, 622 (C. C. S. D. Cal. 1900). However, the courts will not inquire into the motives prompting the legislation if it appears that the legislature acted in good faith. See Union Oil Co. v. Portland, 198 Fed. 441, 443 (D. C. Ore. 1912).

106. Jacobson v. Massachusetts, 197 U. S. 11 (1906) (compulsory vaccination law).

107. Union Oil Co. v. Portland, 198 Fed. 441 (D. C. Ore. 1912) (storage of fuel oil within a city).

108. Chicago, B. & Q. Ry. Co. v. Drainage Comm'rs, 200 U. S. 561 (1906) (compelling railroad to rebuild bridge).

109. Adkins v. Children's Hospital, 261 U. S. 525 (1923) (statute setting a minimum wage for women workers).

110. Tyson & Bro. v. Banton, 273 U. S. 418 (1927).

ableness of the law and its fitness to achieve the object for which it was designed.

Factual situations which are analogous to unemployment insurance are to be found in cases dealing with the constitutionality of workmen's accident compensation laws. Statutes which give to the employer an election as to the method of insuring the worker, by contribution to a state fund, by placing insurance with an independent carrier, or by depositing securities have uniformly been held valid.[111] These cases, however, would not be controlling here since the unemployment laws do not give the employer such an election.[112]

A statute which gave no election, but compelled contribution to a state fund, was involved in the case of *Mountain Timber Co. v. Washington*.[113] In that case the constitutionality of the Washington Workmen's Compensation Act[114] was in question. That Act established a state fund, abolished actions at law by the employee for the negligence of the employer, and substituted compensation for all injuries arising out of employment. Contributions were required from employers alone. The fund established was separated into accounts for each industry. It was held by a divided court that the act was a fair and reasonable exercise of the police power, since, first, the main object of the legislation was of general and public moment; second, the charges upon employers were reasonable in amount; and third, the burden was fairly distributed. The same standards might well be applied to the New York Unemployment Insurance Law. However, the analogy fails in certain respects. In workmen's compensation cases, the injury for which compensation is given arises *out of* the employment,[115] and is to a certain extent caused by the employment, so that it is not unreasonable to place the entire cost upon the employer. In the case of unemployment, however, it cannot be said that the lack of employment arises from or is caused by the employment. The employer is not the cause of unemployment in the same way that he is the cause of a personal injury received upon his premises or in the conduct of his business. The greater part of unemployment is caused by circumstances over which neither the worker nor the employer has any control. Therefore, it might be argued that the cost of unemployment is unequally distributed in a system where the employer alone pays contributions. A further distinction is found in that the Washington act exempted the employer from liability for private action.[116] This was an essential part of the legislative scheme, and "the *quid pro quo* for

111. New York Cent. R. Co. v. White, 243 U. S. 188 (1917); Hawkins v. Bleakly, 243 U. S. 210 (1917); Matter of Jensen v. Southern Pac. Co., 215 N. Y. 514, 109 N. E. 600 (1915).

112. Wis. Laws 1931, c. 20, § 108.15 provides that no employer may place insurance with an independent company. N. Y. LABOR LAW (1935) § 529 provides that the state fund shall be the sole source of benefits.

113. 243 U. S. 219 (1917).

114. Wash. Laws 1911, c. 74.

115. Gilioti v. Hoffman Catering Co., 246 N. Y. 279, 158 N. E. 621 (1927); Ellamar Mining Co. v. Possus, 247 Fed. 420 (C. C. A. 9th, 1918).

116. Wash. Laws 1911, c. 74, § 1.

the burdens imposed upon him."[117] The unemployment acts make no similar substitution, since they confer no benefit on the employer, and remove no existing liability.

Perhaps a more complete analogy is found in the case of *Noble State Bank v. Haskell.*[118] That case dealt with the Oklahoma Bank Guaranty Acts,[119] which provided that all banks in the state were to contribute a certain percentage of deposits to a central fund, which fund would be used to indemnify depositors of any bank which should become insolvent. The question was whether or not the contributing banks were deprived of their property without due process of law. It was held that the law was a reasonable exercise of the state power. The similarity between this case and the unemployment insurance situation is that in both instances the contributions are exacted from those who have not in any way caused the condition for which compensation is given. In both instances, the evil sought to be remedied is one of public and general concern. In both instances, there is no immediate *quid pro quo* received by the contributing party. Perhaps this similarity will be a *datum* on the side of validity in a constitutional test of unemployment insurance.

In any event, it is generally agreed that the enactment of unemployment insurance laws by the states is a forward step in the direction of a more complete social security, and that they are destined to become as important in the history of labor legislation as the workmen's compensation acts of twenty-five years ago. It is to be hoped that under the guidance of a just administration, they will fulfill the purpose for which they were designed.

117. Mountain Timber Co. v. Washington, 243 U. S. 219, 234 (1917).
118. 219 U. S. 104 (1911).
119. Okla. Laws 1907, c. 6.