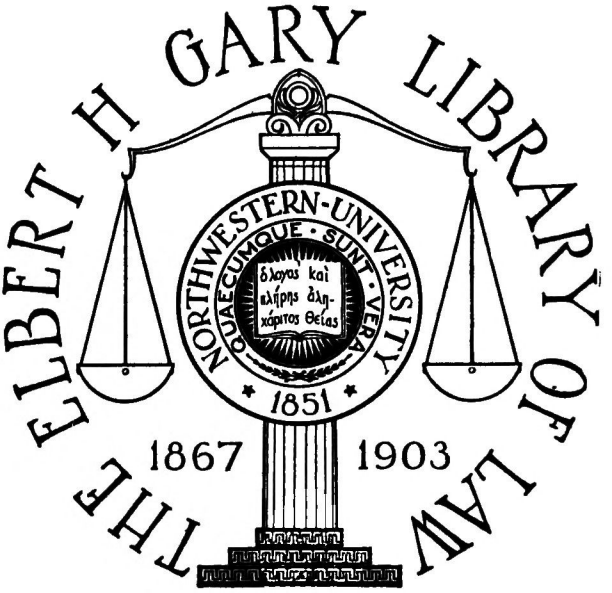

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HISTORY OF LABOR IN THE UNITED STATES, 1896–1932



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HISTORY OF LABOR IN THE UNITED STATES, 1896-1932

Introduction to Volumes III and IV

BY

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VOLUME III

Working Conditions

BY

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Labor Legislation

BY

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NEW YORK
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1935

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PREFACE

The History of Labor in the United States, Volumes I and II, by Commons and Associates, published in 1918, is continued in the following two volumes. The earlier volumes brought the History down to 1896. The present volumes have followed it down to the beginning of the New Deal.

The period 1896–1932 is treated as a unit, but owing to the greater fullness and complexity of the material a departure has been made from the method of presentation in Volumes I and II where the discussion of working conditions and labor legislation was merely incidental to the discussion of labor movements. In the present study Working Conditions and Labor Legislation constitute Volume III and Labor Movements Volume IV.

The authors, University of Wisconsin colleagues and former students of Professor John R. Commons, have employed his method of sifting and interpreting historical data. They wish to express their immeasurable indebtedness to Professor Commons for his intellectual guidance and inspiration, and are happy that the reader will have a first hand contact with Professor Commons' influence through the medium of the Introduction by him. Much of the material was collected by the successive generations of graduate students in the Labor Research Seminar of the University of Wisconsin, until recently in Professor Commons' general charge.

The cost of the enterprise, extending over six years, was covered by a generous contribution made by the late Professor Henry W. Farnam to Professor Commons in 1928 and by unstinted aid from the research funds of the University of Wisconsin.

The authors wish to express their indebtedness to the numerous graduate and undergraduate students who have assisted in the preparation of this work. Where a student's contribution has extended to a whole chapter his name appears as the author. In other cases acknowledgment is made in a footnote. Thanks are due to the staff of the Wisconsin State Historical Society and of the Library of the University of Wisconsin, notably to Miss L. Beecroft, Mrs. A. Evans, Miss M. Foster and Mr. D. Lamont and

their staffs. Thanks are also due to Miss Patricia Adams, secretary to Professor Commons, and to Mrs. Edith Hope Pearson for their patient and devoted help in the office work incidental to the preparation of these volumes.

DON LESCOHIER
ELIZABETH BRANDEIS
SELIG PERLMAN
PHILIP TAFT

September, 1935

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INTRODUCTION TO VOLUMES III AND IV

By *John R. Commons*

In the year 1902 the City of New York was building its first subway along Fourth Avenue. The contract for construction and operation was made with a syndicate of bankers headed by August Belmont and Company of New York and including the House of Rothschild. About 30,000 Italian subway workers went out on strike, demanding that they should be paid directly "at the office" of the syndicate and not indirectly through the labor contractors. They did not ask for an increase in their wages of $1.35 for ten hours. They asked only for the elimination of the padroni. This demand, if acceded to, would have increased their actual wages considerably by eliminating the extortions of the padroni.

Mr. Ralph M. Easley, secretary of the National Civic Federation, conferred with the financiers, and the present writer, as his assistant, conferred with the leaders of the strikers. The subway workers were organized in some fifty local branches, each electing its delegate to a central council. At the head of this council was Tito Pacelli, a North Italian barber, who had given up his private business in order to organize the laborers, who were South Italians and Sicilians. Pacelli was an idealistic yet practical man, with that peculiar cast of countenance and drooping eyelids that so often identifies the idealist humanitarian. Yet he knew nothing of the labor movement. I presented the matter to Samuel Gompers, president and founder of the American Federation of Labor and one of the labor representatives on the board of the National Civic Federation, the other group represented being the employers and "the public," including August Belmont himself. Gompers immediately acceded, and, conforming to the constitution of the American Federation of Labor, appointed Pacelli as special organizer and agreed to issue a "Federal Union" charter to the subway workers. This charter is independent of any other labor organization, a federal union reporting directly to the Executive Council of the American Federation.

Pacelli went to his subway council with these two propositions: a recognized organization of the American Federation of Labor and a collective agreement at $1.35 a day to be paid directly by the capitalists constructing the subway. The council agreed to the proposals and recommended their adoption by the fifty or more local branches of the subway workers. Then, in order to arouse solidarity and win public support, the council staged a procession, 30,000 strong, ten abreast, down Fifth Avenue to Washington Monument. As Pacelli and I reviewed the parade from a soap box at the side, I was thrilled by the imagination that here were the historic proletarii of Rome, after twenty centuries of suppression, with starved faces, bent shoulders, meager bodies, and ragged clothes, coming up at last out of the ground into the freedom of America.

But soon came the collapse. The Italian anarchists, afterwards to be known as syndicalists, played, intentionally I thought, the game of the padroni. They broke into and captured the fifty local branch meetings, with their fiery denunciations of any kind of agreement that recognized the capitalist system; with their denunciations of Pacelli and his subway council as corrupt conspirators intriguing with the capitalist class. It ended in an overwhelming repudiation by the locals of their leaders, of the American Federation of Labor, of the National Civic Federation, and of America as the "stronghold of capitalism." After a further week or two of starvation they went begging back to their padroni.

I learned the policy of the American Federation of Labor: collaboration with capitalists and the general public, on this occasion through the National Civic Federation; eagerness to organize the unskilled and the immigrants for resistance against oppression; reliance on self-help and local self-government instead of the one big union of the former Knights of Labor, or of the later Communists, Socialists, and I. W. W. Though the Federation of Labor has been charged repeatedly by economists with trade-union selfishness, and by anarchists, syndicalists, communists, and socialists with a craft unionism which merely lifted a few above the mass, yet I learned here, through my own enthusiasm and disappointment, the immense problem of the Federation in organizing, on the traditional American self-governing basis, those who are too stupid to stand by each other and by leaders who try to get for them bread and butter *now* instead of a future millennium.

In this New York case the banker capitalists were willing to deal with the new union. They also wished to eliminate the padroni. But I learned well enough why they and capitalists generally use all their power to prevent the ingress of unionism to their establishments.

Five years after the New York tragedy I was in Pittsburgh with my students investigating labor conditions, on the financial support of the Russell Sage Foundation and under the management of Paul U. Kellogg, afterwards editor of *The Survey* magazine. We came upon some fifty Italian laborers sitting along the road leading to the Pennsylvania Railroad station and staring at us. I looked for their padrone. He came forward, a spick-and-span Italian. I told him I was looking for 200 laborers to come to Wisconsin to dig a ditch across the state and lay an oil-pipe line. He jumped eagerly; pulled out his huge gold watch and showed his name and address engraved inside the cover. The price would be $1.85 a day with return passage to Pittsburgh, and himself to have the sole contract to board and lodge the workers. Asked for references he pointed to this gang of laborers waiting for the train to take them to a job for the Pennsylvania Railroad Company, and stated that he had just finished a job in Oklahoma for the Standard Oil Company on exactly the same terms as he was offering me. I did not leave him my address, but I needed no imagination to see where he got his profits nor where were the foundations of Capitalism in America.

I had long advocated restriction of immigration and had spent a year for the Industrial Commission of 1900 investigating the subject throughout the United States, ending in assistance to the immigration authorities in drafting what later became the Immigration Act of 1903.[1] But effective legislative restriction of immigration did not come until after the Great War. In Madison, Wisconsin, I came upon a huge ditch-digging machine operated by four American mechanics at wages two to three times as high as the padrone's price. I calculated, with these mechanics, about how many Italians would have been required to do this work with pick and shovel. We agreed on thirty. Since that time thousands of miles of gas and oil pipes have been laid by machine, and even the pipes themselves have been welded together in the ground by a firm whose engineers travel by aeroplane from their factory

[1] Cf. Lescohier, Working Conditions, Chap. II.

in Milwaukee to their several jobs hundreds and thousands of miles away.

This is American Capitalism and American Laborism of the past forty years. My colleague, Professor C. K. Leith of the Geology Department of the University of Wisconsin, estimates that during that period the installation of power-generating machines in the United States has been fourfold greater than the installation of mechanical power in all the centuries preceding.

I had advocated restriction of immigration [2] for the double purpose of raising the wages of American laborers and driving the capitalists to the invention and installation of mechanical aids to labor. It worked this way in my ditch-digging machine. These had been the arguments of Samuel Gompers, himself, strangely enough, an immigrant. But these academic arguments were ineffective. It required a revolutionary World War and the appeal to Americanism and patriotism to reverse the free immigration policy of the country. The traditions of the nation were against it. America had always been the land of refuge for the oppressed and for the defeated revolutionists of Europe. But the meaning of Americanism and patriotism had suddenly changed. Patriotic soldiers were needed, divorced from allegiance to Europe, and a dread, instead of a welcome, for revolutionists swept the country. The organized capitalists had always previously opposed restrictions on immigration through their powerful lobbies and appeals to liberty. The American railways and the development of the country, they alleged, could not have been brought about except by immigrants willing to do the heavy work avoided by Americans. It turned out that what they wanted was cheap labor and padroni labor. They did not realize, and indeed nobody realized, how marvellously the capitalists could adapt themselves to a new scarcity of labor by unimagined mechanization of industry propelled by power generators.

So Americanism, during these marvellous forty years, has changed its meaning from a refuge for the oppressed of the world on the free lands of the West, already reduced to private ownership at the beginning of the period, to a new meaning of opportunities for promotion and investment within a capitalist system that seems to create wealth faster than it can be consumed. Amer-

[2] Cf. Commons, John R., *Races and Immigrants in America*, 1906; United States Industrial Commission, Report, 1901, Vol. XV.

icanism means no longer the expansion of population and the freedom of uncontrolled production. It means elevation of standards instead of expansion, and, strangely enough, restriction of output.

Always had it been a paradox, since the time of Alexander Hamilton, and sanctioned permanently by our own revolutionary Civil War, that a protective tariff should protect American capitalism but free immigration should afford an abundance of labor. America accepted one-half of the free-trade doctrines of the classical economists—free labor but not free commerce. The fallacy was not unbearable when labor could "move West." I have frequently traced the leaders of defeated unionism in the East, when they were displaced by unorganizable immigrants, to the free land and free mining of the West. Indeed, organized labor in the East early demanded a Homestead Law opening up the public domain in the West.[3]

The old line of inequitable argument still continues in the case of the farmers when they try to organize and search for a device to restrict output to meet the similar practices of American capitalists. The farmers struggle to save their homes against the pressure that drives them into tenancy and the status of wage earners. Yet in their case, as in that of the wage earners, the traditions of Ricardo and English free trade dominate the economic theories when applied to the uprisings of depressed classes, unmindful of the way in which those traditions had previously been set aside by the rising capitalist class. Therefore a third meaning of Americanism is coming to be called for—not a one-sided doctrine of freedom for the weak and protection for the strong, but a reinterpretation of constitutional government as industrial government.

In the year 1900, during my investigation of immigration, I saw this new meaning take organized shape.[4] I attended, at Columbus, Ohio, the Joint Conference of mine owners and mine workers of the bituminous coal fields from West Virginia to Illinois. Three years previously, at the bottom of the long depression of trade, 150,000 mine workers had come out on strike at the notification

[3] Commons and Associates, *History of Labour in the United States*, The Macmillan Company, 1918, Vol. I, pp. 562–563.

[4] Commons, John R., "A New Way of Settling Labor Disputes," *American Monthly Review of Reviews*, March, 1901.

of a small union of 10,000 workers. Most of them were immigrants and the sons of immigrants. After five months they obtained an agreement with the owners for joint conferences to regulate wages, hours, discipline, and other conditions of labor in the mines. The session of 1900 was the second of these conferences. I saw them there unconsciously repeating the first parliaments of England six hundred years before. On the one side of the huge council chamber were about fifty owners of the mines, each holding his seat directly by virtue of ownership—the ancient House of Landlords. On the other side of the chamber were a thousand, more or less, mine workers elected by the local unions of the 150,000 miners—the ancient House of Commons. I listened for two weeks to impassioned and eloquent oratory. Each charged the other with most of the crimes and misdemeanors of the economic calendar—lack of good faith, many kinds of discrimination, unauthorized strikes by local unions, and so on. It was a period of free speech, the literal meaning of the word parliament. At the end of these diatribes, by means of which obviously no agreement could be reached yet everybody had his opportunity, a joint committee of eight on each side was elected to draft an agreement. But sixteen was too large a number. The committee resolved itself into two for each side. I was personally permitted to sit in at these committee meetings. These four men were plainly astute. There was no arbitrator from outside. Their procedure was collective bargaining, not very different from individual bargaining. All of the grievances were coldly considered. Finally, after nearly two weeks, the committee of four reported to the sixteen and these reported to the parliament, and an agreement was unanimously adopted. It designated certain "basing points" and referred to subordinate parliaments further details for the several districts.

This is what I named constitutional government in industry. It has not always been successful since that time. There have been seceders and strikers because there is no dictatorship set up like that of communism or fascism. But the idea was copied elsewhere; improvements were devised; and forty-five years after the first bituminous conference in 1898, the federal government under the National Industrial Recovery Act, began to encourage the procedure of collective bargaining in all the industries of the nation.

This, indeed, is a notable revolution in the meaning of Americanism, during the past forty years. America, though strongly set against political revolutions that attempt to overthrow the government itself, leaves yet a space for the minor economic revolutions of strikes, which actually change the constitution of industrial government itself.

Two years after the conference at Columbus I entered more intimately into one of these economic revolutions. With Walter Weyl, afterwards collaborator with John Mitchell,[5] I visited the anthracite coal field to report to the National Civic Federation an estimate of about the length of time during which the 150,000 strikers would hold out.[6] The financiers, headed by J. Pierpont Morgan and Company and persuaded by reports from superintendents of mines owned by the great railway companies which had effected a monopoly of anthracite coal, were led to believe that the strikers would soon give in. But our report in July predicted they would hold out until September, which proved to be true.

Mr. Easley dealt with the Morgan group of financiers and with President Theodore Roosevelt, while I dealt with Mitchell and Gompers. Eventually the strike was called off on the promise of both sides to submit to a finding by an arbitration board to be appointed by the President. This board provided for joint conferences, as in the case of the bituminous industry, but with the addition of a permanent referee to decide minor disputes and interpret the agreement. It is such an agreement as this, with a government representative as chairman, which more nearly furnished the model for the code-making and code-interpreting machinery of the National Industrial Recovery Act of 1933.

In my interviews with the local strikers and their local leaders I learned what might eventually happen among the immigrants who had been brought in by the coal companies during the thirty years before in order to break the old union of anthracite workers. The old union, broken up twenty years earlier, consisted of mining contractors from the English-speaking countries, who hired and paid their helpers, similar to the padrone system. Theirs was not,

[5] Mitchell, John, *Organized Labor*, American Book and Bible House, Philadelphia, 1903.

[6] See Vol. IV, Chap. IV.

in fact, a union of laborers—it was a union of sweatshop bosses. The companies retained these labor contractors, and the abolition of the system was a leading demand of the strikers of 1902.

But now the new union of the immigrants and their children, no matter how many races, nationalities, and languages, was bound together by an amazing solidarity, not as a "trade" union, but as an "industrial" union, including all the skilled crafts, the former bosses, and all the unskilled laborers and helpers.

This was accomplished largely by race or language "locals," each with its nationalistic leader. At Shenandoah, Pennsylvania, a Polish town, we visited, on Sunday morning, "John the Polock." He spoke English and Polish from childhood—a huge, intelligent piece of manhood. The same afternoon we sat on the hillside surrounding the mine pit, along with a thousand strikers and their families dressed up for Sunday, looking down upon the mining property surrounded by a strong picket fence and protected inside by armed guards in uniform. One of the strikers somehow broke into the enclosure, evidently drunk, and waved his arms and threatened the guards. Immediately from the opposite side came our John the Polock. Admitted to the enclosure, he took the drunken striker by the shoulder and gently led him out to the crowd on the hillside.

The next morning I received a telegram from my wife in New York asking if I were alive and safe. She had read in the New York Sunday paper of the bloody riot of the mine-workers at Shenandoah, of the shootings by strikers and guards, of the dead and wounded. Is it any wonder that thereafter I seldom believed the news concerning strikes that I read in the capitalistic press?

The anthracite agreement has lasted and been strengthened, without serious interruption, for more than thirty years. I discovered later various reasons for its continuance. The coal companies, dominated as a unit by the bankers, controlled all the anthracite mines, and, as long as they lived up to their agreement, there could be no wage-cutting by low-wage competitors. In this they differed from the bituminous field of the same mine-workers' union where the agreement was constantly menaced and frequently disrupted by the competition of non-union mines. The anthracite companies were at first indifferent to the agreement and did not aid the union in maintaining wages or retaining

its membership. Theirs was an "open shop" agreement.[7] Consequently, with the weakness of the union, the companies in 1912 discovered that their mines were being invaded by syndicalists, the I. W. W. They reversed their attitude towards the union. It was discovered that the American labor movement, however aggressive it might be, was the first bulwark against revolution and the strongest defender of constitutional government. Upon the unions, indeed, falls the first burden of "Americanizing" the immigrants, and it has done so for more than fifty years. When President Wilson saw the need of uniting a heterogeneous nation for the World War he was the first President to attend and address the convention of the American Federation of Labor. When Samuel Gompers, at seventy-four years of age, and fifty years of leadership, returned from his alliance with the labor movement of Mexico, to which he had gone to prevent its capture by the communists, his last words on his dying bed at the Mexican border in 1924 were, "God bless our American institutions." And when President Roosevelt, in 1933, started his procedure under the National Industrial Recovery Act, the American Federation of Labor was consulted in the code-making system for the entire United States. Truly these forty years have been witnessing an economic revolution in America.

My first indirect dealings, in 1900 and 1902, with the financiers in control of the subway and anthracite coal set me to thinking again of the theories of the anarchists and of Karl Marx. Here we were endeavoring, not to oust Proudhon's merchant capitalists and bankers in favor of the petty sweatshop employers, and not to oust Marx's employers in charge of a factory system, but to make agreements with the bankers themselves who, as middlemen between investors and laborers, had come into control of the huge industries of a technological age. So that the evolution of capitalism in America had been from the Merchant Capitalism of the middleman, to the Employer Capitalism of the factory system, and was now emerging into the Banker Capitalism of world-wide financiers.[8]

In another industry I saw, and even participated in, a recapitula-

[7] Cf. Commons, John R., "Causes of the Union-Shop Policy," *Publications American Economic Association*, 1905, Vol. VI, 140–159.

[8] Cf. Commons, John R., *Institutional Economics*, The Macmillan Co., New York, 1934; "The American Shoemakers, 1648–1895," *Quarterly Journal of Economics* (1909), XXIV, 39–83.

tion of this evolution from Merchant Capitalism to Employer Capitalism. In the year 1901, as a part of my investigation of immigration, I visited, with Abram Bisno, a tailor émigré from Russia, the sweatshops of the men's clothing industry of Chicago. Scattered over the city were Polish shops, Bohemian shops, Norwegian shops, other shops, and Italian women finishing garments with needles in their tenement homes. I took a room and boarded in one of these homes, and wrote a complete report on the sweatshop system.[9] The workers did not speak of their shop bosses as their employers, but of the large merchant firms whose garments these bosses brought from the cutting rooms of the firms to the various shops.

Gradually these merchant firms took over the shops from the contractors and eventually built large factories and a central warehouse and factory. The sweatshop boss became first a contractor within these factories, then a foreman. The workers, after 1910, organized strikes for "recognition" of the union, by which was meant collective bargaining on wages, hours, and discipline, with a permanent chairman to interpret the agreement. In 1924 this system had gone so far that "unemployment insurance" was included in the agreement. I was made chairman during the two years of installation of this new device and then the two positions of arbitrator of disputes and chairman of insurance were consolidated.

During the war and subsequently the leaders of this union spoke to me quite cavalierly as to what they would do to their employers and stockholders when they "took over" the shops and operated them. They would pension off the management and allow the stockholders a moderate compensation for depriving them of their ownership.

The union, however, at first found it difficult to maintain discipline and conformity to the agreement among its members, and what they formerly called strikes they now called "stoppages." A stoppage was a strike against the union. The strikers considered themselves as enemies of the employers and opponents of their own leaders who had joined with the management in begging them to go back to work. But, eventually, when the employers and the union had installed the system that provided part wages during periods of unemployment, there were no more serious

[9] Cf. United States Industrial Commission, Report, 1901, Vol. XV, 319–324.

stoppages and the union, with the consent of the members, appointed a committee to investigate every shop and eliminate all restrictions and inefficiencies. Asking the leader of the union, Sidney Hillman, how it had come about that his 20,000 workers now co-operated with the employers instead of standing by their original preamble and declaration of taking over the industry and operating it themselves, his answer was, "they are now *citizens* of the industry, more interested in its permanent prosperity than the employers themselves."

Thus in the course of twenty-five years I saw an industry evolve not only from merchant capitalism to employer capitalism, but also from struggles for "proletarian dictatorship" to the concerted regulations of constitutional government. Finally, in 1933, the Amalgamated Clothing Workers, this former "Socialist" union, was admitted to membership in the American Federation of Labor, and what had been a "class struggle" became class collaboration. The evolution has, indeed, been a struggle of conflicting interests, as is all evolution, with its ups and downs, its strikes and blacklists, and we are yet in the midst of it. What the outcome shall be in the immediate or remote future is not only the "labor problem," it is the problem of a changing form of democratic government to be brought about by collective action of all classes.

In our first two volumes we frequently came across periods when farmers and wage-earners united in political organizations for the furtherance of what they then deemed to be their joint interests.[10] But it turned out that their interests were opposite. The periods when they united politically were periods of depression, when the farmers' prices and debt-paying ability were reduced and the laborers were unemployed. The periods when they were opposed were periods of rising cost of living, 40 to 50 per cent of which was the food furnished by farmers. The farmers, in depression periods, set forth various means for restoring prices by the aid of government and the laborers for restoring employment and wages.

In the decade of the 1890's I affiliated with one of these groups of farmers, the populists in Indiana, attending their meetings and

[10] *History of Labour in the United States*, Vol. I, pp. 262–268, 287–289; Vol. II, 239–251, 462–464.

making speeches. In these meetings and speeches I gradually developed what I thought was their fallacy in the theory of value. The populists demanded a government system of warehouses where their non-perishable products would be stored and they would be given in exchange warehouse certificates with the legal-tender quality, that would be redeemable on demand at the warehouses, without interest, but with the usual charges for cost of storage.

I discovered what I thought was a double meaning of value, which afterwards, on a study of economic theories since the time of Adam Smith, I named use-value and scarcity-value. The economists had always had this double meaning of value as I later discovered. In working on labor history I discovered that the populist theory had first been formulated by Edward Kellogg in the depression of 1847, preceded and followed by various schools of socialists and anarchists. Kellogg's version was afterwards taken over by the National Labor Union in 1867 and then by Peter Cooper, the first candidate for President, 1876, of the Greenback Labor Party.[11] I illustrated to the populists their double meaning of value. If you pile up around the square in town thousands of cords of firewood, each cord will undoubtedly have the same value as any other cord, measured, on the average, by the amount of labor which it has cost you to produce the wood. And you will receive, in legal-tender money, as many paper dollars as will represent the labor-value of the cordwood at the time when you began this method of warehousing, because the value in terms of labor has not been reduced.

But if, instead of warehousing, you *sell* the increasing stocks of wood, you find that the value per cord is being greatly reduced on account of excessive supply. Finally, when you come to redeeming your dollars in firewood, you will undoubtedly get the same number of cords as you deposited, but the value of your cords, and consequently the value of your dollars, will be reduced to whatever might then be the reduced value of the cordwood which consumers were able to pay for the increased supply of wood. It was, as I afterwards said, a confusion of use-value with scarcity-value.

[11] *History of Labour in the United States*, Vol. II, pp. 119–121; Commons, John R., *Legal Foundations of Capitalism*, The Macmillan Company, New York, 1932; *Institutional Economics*, pp. 591–595.

Thirty years after this populist venture in the realm of value theory, I was called upon, as president of the National Monetary Association to make quite the same exposition to Thomas Edison and Henry Ford. Edison had turned aside from electricity, at the request of Ford, to make a scientist's intensive study of monetary theory. He began with Ricardo, and developed substantially the same warehouse theory of money as had my sincere populists. Ford had also proposed that the Muscle Shoals development should be financed by issues of non-interest bearing legal-tender notes. I now brought to these engineers, accustomed as they were to read blue-prints, my charts of the movement of wholesale prices over a long period of years, and expounded to them the new plan of stabilization of prices under the Federal Reserve System, instead of maintaining a labor-cost theory of value by means of the populistic warehouse legal-tender system. Soon afterwards Ford declared for Coolidge to the great relief of my banker friends supporting, at that time, the National Monetary Association.

But I had finished my usefulness for them. I discovered how intensely interested were bankers and Federal Reserve authorities in party politics, notwithstanding their disavowal of politics, and how they could alternately use and discard economists who stuck to a straight and narrow path of economic theory. For I was concerned, more than all else, with the alternations of over-employment and unemployment and the misleading land-value speculations and resulting bankruptcies of farmers; but they were concerned, as I discovered, with the liberty of bankers, acting in concert, to dominate the business of the nation as they saw fit.

I thus discovered two additional meanings of the transition to Banker Capitalism, which I now named, with its Federal Reserve System, a trade-union of bankers. Its methods were similar to those of trade-unionism but I had not experienced them from the inside previously as I had, since 1883, the methods of unionism.

Shortly after my venture with the populists I was thrown into the midst of unemployment at Syracuse, New York. I had joined a Sunday afternoon conference of all classes of the dissatisfied, except the farmers, but ranging from prohibitionists to anarchists. I learned there, mainly by listening and without previously having studied Karl Marx, the difference between Marxian socialism and

trade-unionism. The leading Marxian I afterwards voted for as governor on the Socialist Labor Party ticket. The leading trade-unionist in the debates was James Lynch, afterwards president of the International Typographical Union and chairman of the State Industrial Commission of New York. After much listening I spoke out to the Marxians. What is to prevent the capitalists and farmers from taking possession of the government, instead of the wage-earners and proletariat, when your materialistic evolution has reached its culmination? Is it not better to encourage the trade-unionists, by collective action, to educate and prepare themselves to get an equal voice with the capitalists? The Marxians could not see it that way, and the argument went on, from Sunday to Sunday, between the Marxians, anarchists, prohibitionists, and unionists.

Forty years afterwards I find my Marxian and socialist friends throwing up their hands in mental despair that the whole foundation of their materialistic philosophy has been taken from under them. They have won a magnificent revolution in Russia, they claim, but they dread that the rest of the world will go Fascistic and Nazistic. They are now up against a fighting capitalism at the head of a despondent and revolutionary middle class instead of the materialistic interpretation of history.

Thus I learned my social philosophy and forecasts of the future, not from theories and books of the economists, which I could not apply in practice, and not from a materialistic but from a volitional way in which their followers talked and acted in the conflict of opinions and interests. It required, indeed, a world war and its aftermath to know, by the brutal test of experiment, what were the meanings of the words the economists had used. These third and fourth volumes of the labor history, covering forty years since those debates, is not merely a chronology—it is a record of the culmination in action of the theories, philosophies, and practices of more than a hundred years.

In the midst of these Sunday afternoon debates I participated also in a Workers' Education movement. Since then I have cooperated in every one of its kind that came along. This one, in 1896, was financed by Cornelius Vanderbilt, and its traveling organizer was Harry Lloyd, a leading union carpenter from Boston, where such a movement had been successfully set on foot. Lloyd brought together ministers of the Gospel, anarchists, socialists,

Marxists, trade-unionists, and others who were interested in the depressed condition of labor at that time. He opened up with a free discussion and it required but a short time to find that the ministers, and those afterwards called "intellectuals" or "intelligentsia," were gradually dropping out, so that the so-called "education" became a heated debate between Marxians and trade-unionists. Finally the organization dwindled until there were only two members, myself and an Irish Marxian, whom I came across twenty-five years afterwards in Cleveland, Ohio. He was indeed a worker globe trotter, who had worked as a day laborer all the way from England, India, and Africa to America. Like all Marxians with whom I have come in contact, he exceeded other manual laborers in his persistent study of the theories of economists. We decided to investigate the contract system of municipal public works as a means of furnishing work to the unemployed in Syracuse. My Marxian friend had worked for these contractors, and I soon discovered, with him, that the contractors were simply politicians, fattening on public works contracts and exploiting by many devices the laborers begging for work.

He and I then started an investigation of the Day-Labor System, or direct employment by municipalities, by corresponding with city engineers from Boston to Denver. The day-labor system showed, we thought, a superiority over the contract system, especially in the introduction of winter-work devices, the prompt employment instead of waiting for bids, and the absence of politics, favoritism, and beating down wages by taking advantage of unemployment. This investigation was published in thirteen articles in the *American Federationist* in 1897 and was my first contact with Samuel Gompers, the editor of the magazine.[12] Thirty-five years afterwards I watched with interest the creation of a National Public Works program and the same conflict between the dilatory contract system and the day-labor system.

After leaving Syracuse I discovered, in 1899 and 1900, by constructing in the Astor Library of New York a weekly index number of prices, just about where it was that the political affiliations of wage-earners and farmers were changed to economic

[12] Commons, John R., "A Comparison of Day Labor and Contract System on Municipal Works," *American Federationist*, III and IV, January 1897–January 1898.

antagonisms. During the downward period, after 1893, the inelastic supplies of farmers' crops seemed to fall more rapidly in prices than the prices of manufactured products, whose production could be stopped promptly. But in the upward period, after 1897, farmers' prices rose more rapidly than manufacturers' prices. Again, during the downward period, laborers' *rates* of wages did not fall as rapidly as either farmers' or manufacturers' prices, but they lost more by unemployment than they retained by rates of wages. Retail prices, or the laborers' cost of living, did not fall as fast as the wholesale, or manufacturers' and farmers' prices. But, on the upward turn, after 1897, the farmers' prices rose more rapidly than manufacturers' prices. But the laborers gained by re-employment more than they lost by the failure to keep up with their employers' prices or to exceed the rise of retail prices which measure the cost of living.

Lacking adequate statistics at that time, the curve of employment and unemployment could be fairly measured by the dues-paying membership figures of the labor unions. This number, for the American Federation of Labor, had fallen to 350,000 in 1897, and I remember, in 1902, at a conference with leaders of the Federation, their exhilaration over the fact that their membership had passed the 1,000,000 mark the previous month. But they could not point to a corresponding rise in the daily rates of wages.

Here I discovered a feature of the policy of union organizers which I often thereafter verified. If you had to choose between getting the union shop and getting a rise in wages or shortening of hours, which would you choose? The union shop, they answered, because if we get that then we can afterwards get the wages and hours. They could get the union shop more easily when employers' prices were rising and profits were increasing, so that the unemployed were being taken off the competitive market, than they could get rising wages and shorter hours in competition with the unemployed seeking work.

This theory of the organizers was not wholly accepted by the rank and file, yet I discovered, when working on labor history, that in a period of rapidly rising prices, beginning in 1835 and 1836 [13] and repeated often thereafter, the first strikes of the unorganized and newly organized were usually for a reduction in

[13] *History of Labour in the United States*, Vol. I, pp. 395–401.

daily hours of employment on account of the speeding-up carried over from the period of unemployment. It might not be until a year thereafter that the strikes turned towards a rise of wages. The organizers therefore could not appeal for membership merely to obtain the union shop—they must appeal for substantial economic gains of higher wages and shorter hours, which, they argued, could not be obtained until labor was organized.

During the past forty years the "proletariat" of non-property owners has grown so large in comparison with property-owners that labor, in all countries, has not only obtained the suffrage and the power to organize labor unions but has learned how to use that suffrage and that power. Looking back over the long history of our first two volumes we see how weak and spotty were the concerted movements of that class. But looking back over the forty years of the present volumes we see how this newly liberated and enfranchised class has become such a serious problem that it seems to bring on a reaction towards Fascism and Nazism.

I learned, in 1904,[14] one of the methods of this emerging Fascism in preventing the organization of labor. In Chicago there were eight or ten of these great firms, each with several thousand employees. I visited the employment office of Swift and Company. I saw, seated on benches around the office, a sturdy group of blond-haired Nordics. I asked the employment agent, How comes it you are employing only Swedes? He answered, Well, you see, it is only for this week. Last week we employed Slovaks. We change about among different nationalities and languages. It prevents them from getting together. We have the thing systematized. We have a luncheon each week of the employment managers of the large firms of the Chicago district. There we discuss our problems and exchange information. We have a number of men in the field, some of them officers of labor organizations. They keep us informed about what is going on. If agitators are coming in or expected, and there is considerable unrest among the labor population, we raise the wages all round about 10 per cent. It is wonderful to watch the effect. The unrest stops and the agitators leave. Then when things quiet down we reduce the wages to where they were.

[14] Cf. Commons, John R., "Labor Conditions in Meat Packing and the Recent Strike," *Quarterly Journal of Economics* (1904), XIX, 1–32.

A strike, however, did actually occur in 1904. I affiliated with the strikers of different nationalities and attended their meetings. A Jewish interpreter translated into three or four languages the speeches of their "agitators," that is, their officers. The companies yielded. But here came in the blond Nordics. The Scotch workers, whom I knew quite well, pulled the Irish president of the union out of bed and compelled him to call a second strike, on the ground that the packing companies were discriminating and refusing to take back some of the strikers. A second strike is always lost, as my observation goes. And so the union was destroyed until the government, during the war, resurrected it with a federal administrator. After the war the companies converted it into an "employee representation" system.

The year 1904 marked indeed, a recession from the automatic recovery of 1898 to 1902. After the reaction that followed 1929 I made a study of the profits of the Swift company, whose acquaintance I had made in 1904. I had found, in 1904, that the packing companies were among the first to introduce the trolley system of conveyors, so that, for the Swift company, the steer traveled through some two hundred hands from the killing floor to the several bins and refrigerators, at a scale of wages from fifteen to fifty cents per hour. The labor-cost was forty-two cents per carcass, whereas, under the primitive system of country slaughter houses, the labor-cost was probably $3.00 per carcass. After 1921 I discovered that the margin for profit on the total sales of the company ranged from a profit of about 3 per cent on sales in a period of general prosperity, to a loss of one-half of 1 per cent in a year of depression. In other words, out of each dollar paid by consumers or retailers the company received only three cents, the average for ten years being about 1½ cents. Yet the company paid regularly 6 per cent on its common stock. The explanation is the huge turnover—sales about a billion dollars per year, purchases of cattle about $400 to $500 million per year, and common stock $200 million. Extending these computations to federal income tax reports, I found that for 50,000 to 60,000 firms the margin for profit (net income) of the Swift company was, strangely enough, quite representative of the average margin for all corporations making income-tax returns.[15]

Here, indeed, is a further aspect of the technological big-scale

[15] *Institutional Economics*, 1934, p. 564.

industry which is developing during the past forty years. The labor-cost for single establishments is greatly reduced yet the *rates* of profit on stock are stabilized and the rates of wages are pretty well controlled, but the *margins* for profit on sales are highly fluctuating, according to the rise and fall of prices and sales in prosperity and depression. The items that mostly fluctuate are the prices, the margins for profit, the speculative values of the stock exchanges, the gross sales, and the unemployment.

Afterwards I observed, when investigating the feasibility of unemployment insurance, that it was generally the big firms that caused more unemployment than the little firms. The latter had a narrow or neighborhood market, and neither expanded excessively in a period of general prosperity nor reduced seriously their employment in a period of depression. But a big firm, controlled by the bankers from New York, with a nation-wide and world-wide market, imported large numbers of workers from all parts of the country and then, on the first sign of depression, dropped thousands of them upon the charities and taxes of a small community. The absentee bankers were not concerned with the fate of the workers, but their interest was in the speculative rise and fall of stock prices. After 1922, when prosperity returned, this stock speculation became a mania culminating in the collapse of 1929, and the immediate laying off of workers.

Hence it may rightly be said, in this "new era" of technology and nation-wide corporations, that an important labor problem is the stock market. In our former volumes we dealt with a period of employer capitalism, where the employer and the wage-earner were rather closely connected in the same localities. But this is a period when the owners of industry are absentee stock and bond holders, not concerned about the workers whose fortunes and misfortunes they do not see, and acting concurrently on the advice of bankers who control industry mainly from New York. How to prevent excessive stock speculation becomes, How to prevent pulling in laborers from the farms and local industries at higher wages in a period of rising speculation, and dismissing them suddenly with no wages back to the farms or to the local charities on the forecasts of falling speculation. Industry has markedly changed, during these forty years, from neighborhood relations of employers and laborers to absentee relations of millions of investors and millions of laborers, with the banker as their middleman.

I was rather closely acquainted, during several of these years, with a very companionable business lawyer who was constantly on the road between a banking syndicate in New York and some thirty manufacturing establishments in Wisconsin controlled by that syndicate. I learned from him the mechanism by which the absentee investors, through their absentee bankers, determined the labor policy in Wisconsin.

The only way, apparently, by which Wisconsin, or any other state which was endeavoring through labor legislation to develop its own labor policy, could do so effectively, was by repealing the old laws making it a criminal offense for employers to violate the labor laws and to substitute civil suits for forfeitures which would hit the dividends and pocket-books of absentee bankers and investors. This change, in which I participated in the year 1911, in drafting the Industrial Commission law, from treating the employer as a criminal to treating the bankers and investors as gentlemen and economists, was quite contrary to all the moral and religious traditions of the American people. It was formerly and generally held that violations of law were matters of *individual* responsibility. Only individuals could commit crimes and be punished. Corporations were invisible entities. But punishing thousands of pocket-books which are hundreds of miles away by an equitable suit for debt is more effective than arresting and prosecuting a foreman or superintendent in a local trial by jury. This is another lesson that is being learned from the new era of technology and nation-wide corporations with their narrow and speculative margins for profit. The penalties for violation of labor law begin to change from the individualistic punishment for crime to the economic loss of profit.[16]

Profit is as legitimate as wages, and to make more profit for hundreds of stockholders by obeying the laws protecting labor is a more laudable ambition than escaping a prosecution for misdemeanor in violating the laws. It encourages willing obedience and prevention of injury to labor instead of resentful antagonism and disregard of labor.

This change of attitude on the part of employers was the most notable lesson I learned from my two years of experience as a member of the Industrial Commission of Wisconsin and additional

[16] Cf. Commons, John R., and Andrews, John B., *Principles of Labor Legislation*, 1916; Commons, *Institutional Economics*, 1934, pp. 840 ff.

years of membership on the minimum wage advisory committee of the Commission. Employers themselves have occasionally commented upon it to me. They have attributed their own changed attitude towards labor to the change in attitude of the state itself from prosecution for crime to collaboration in working out, along with representatives of labor, improvements in labor conditions.

This collaboration of the state with organizations of employers and organizations of labor has been a notable and yet the most difficult development in the past forty years, culminating, in 1933, in a national experiment under the National Industrial Recovery Act. In our first two volumes nothing was said of the civil service or administration of labor laws. Everything then was politics, labor parties, conflicts of employers' organizations with labor organizations, etc., but no effective administration of labor laws. My first serious experience with a civil service law was during my membership in the Industrial Commission of Wisconsin. The legislature had insisted that in the administration of this comprehensive law there should be "no pets" and that the staff should be selected according to the provisions of the civil service law enacted, in 1905, on the initiative of Governor La Follette. I have recited elsewhere the history of this experience in introducing civil service and collective bargaining into state administration.[17]

We do not delude ourselves, in this study of forty years of labor problems, that either the mere letter of the improving laws or the statistics and factual material which we have compiled can tell us fully what has actually occurred. Each one of us has participated too much in drafting and administering labor laws, as well as in private conflicts of classes, to pretend that the reader or student may gain herefrom a complete understanding of just what the laws and statistics mean unless he also goes through a similar experience.

The state governments and state courts, during these forty years, have seen much of their authority taken from them by the federal government and federal courts. With nation-wide corporations marketing their products in all the states on the strength of the new big-scale technology, this was to be expected and seemed inevitable. Jurisdiction over railways had already been transferred at the beginning of our period. Capitalists had

[17] *Institutional Economics*, pp. 840 ff.; Commons, John R., *Myself*, The Macmillan Company, 1934.

been continuously appealing to the federal courts and receiving protection against the labor laws of the states. This transfer of jurisdiction from state to nation culminated in the code-making authority of the National Industrial Recovery Act of 1933.

At the beginning of these forty years, in 1898, the Supreme Court of the United States rendered a notable decision in the Utah case of *Holden* v. *Hardy*, which seemed to open up a wider range for state labor legislation than the federal court had previously permitted. But this scope was limited by later decisions. It became necessary, therefore, in drafting a labor law, and in its administration, to consider what might be expected from the personnel of the Supreme Court of the United States. This involved a new kind of investigation by students of labor problems, and each of the authors of this book has been called in at times to advise legislative committees in drafting laws and lawyers in drafting briefs. My first contact of this kind with the lawyers came in 1907 in drafting the Public Utility law of Wisconsin and my second, in 1911, in drafting the Industrial Commission law. This participation in the investigation of court decisions has become a large new field for economists, but it is only one aspect of the perplexing industrial revolution of the past forty years.

WORKING CONDITIONS

By *Don D. Lescohier*

SECTION I

THE WAGE EARNERS

CHAPTER I

POPULATION

The important effects of changes in the size, rate of growth, and sex and age composition of its population upon a nation's economic and social development are not realized by most Americans. We look out over our broad land, with its millions of farms, thousands of mines, hundreds of thousands of manufacturing and mercantile establishments, and its wide open spaces, and say, "Here is space and opportunity for an enormous population. The future like the past can absorb untold millions of additional people." This assumption is unquestionably correct, but it is not certain what effects continued growth in the size of the population would have upon the welfare of our people. Would it be followed, for instance, by more or by less unemployment, by higher or by lower prices, by improved or by deteriorated standards of living?

One thing is certain, however; change in the size of a population is a dynamic social and economic force. The history of labor conditions in the United States since 1890 has been altered by the changes which have occurred in the size and composition of the American population. The growth of population has been one of the forces which has produced social change, and not merely a concurrent development. Current trends of population phenomena are vital factors producing what is to come.

The present chapter, and the two which follow, are devoted, therefore, to the depiction of population changes during the last forty years and to suggesting the significance of those changes. They form a setting or background for the subsequent analysis of working conditions and industrial relations.

Growth of Population

The population of the United States nearly doubled between 1890 and 1930, increasing from 62,947,714 to 122,775,046. The rate of increase was approximately 2 per cent per year for the first two decades, and 1.5 per cent per year the second two decades.

Though the percentage rate of increase declined, the number of people added to the population increased each decade during

the forty years except that between 1910 and 1920, when the war and the influenza epidemic put abnormal checks upon population growth.

Our present immigration laws, combined with a declining birth rate and practically stationary death rate, indicate that further reductions in the rate of population increase, and probably rapid reductions, will occur in the next two decades.

The censuses since 1890 were not taken at exact ten-year intervals. Only nine years 8½ months intervened between the 1910 and 1920 censuses. Corrected to a ten-year interval the percentage rate of increase for that decade was 15.4 per cent. Ten years and three months intervened between the 1920 and 1930 censuses. Corrected to a ten-year rate the percentage increase was 15.7 per cent, practically the same rate of growth as in the preceding decade. Between 1910 and 1920, the growth of population was checked by the war and the influenza epidemic; during the next ten years by stricter immigration laws and a rapidly falling birth rate.

TABLE I

CONTINENTAL POPULATION OF THE UNITED STATES, 1890–1930 [1]

	NUMBER OF PEOPLE	INCREASE SINCE PRECEDING CENSUS	PERCENTAGE OF INCREASE SINCE PRECEDING CENSUS	CORRECTED TO A 10-YEAR INTERVAL
1890 census	62,947,714	12,791,931	25.5	. . .
1900 "	75,994,575	13,046,861	20.7	. . .
1910 "	91,972,266	15,977,691	21.0	. . .
1920 "	105,710,620	13,738,354	14.9	15.4
1930 "	122,775,046	17,064,426	16.1	15.7

Of the two sources of population growth, immigration and natural increase, immigration is the smaller and also the one more susceptible of social control. The total number of immigrants entering the United States from 1891 to 1930 was 22,325,970. Figures on emigration were not compiled until 1908. From 1908 to 1930, 4,015,381 immigrant aliens departed, against an immigration of 11,636,376 during the same years. The re-emigration during these 22 years equalled 34.5 per cent of the immigration.[2] It is probable that the re-emigration rate between 1890 and 1907

[1] *Abstract of the Fifteenth Census*, 1931, compiled from pp. 14–15.

[2] Compiled from annual reports of United States Commissioner of Immigration, United States Department of Labor, Washington.

was not much different. Something over 7,000,000 of the 22,325,970 immigrants returned to their own countries during the 40 year period, leaving a net immigration for the four decades approximating 15,000,000.[3] These and their children have been added to our population.

But the 7,000,000 or more who returned were also part of our population for varying periods of time, in many cases for years, before returning to their homelands. All of the immigrants, therefore, played a part in the economic development, labor problems, and social situations of the country during the period.

The foreign born population of the United States grew rapidly between 1890 and 1910. There was an increase of over a million in the 'nineties (cf. Table II) and over three million more between 1900 and 1910. Immigration continued in large volume to 1914, but because of the war the decade 1910–20 showed a growth of only 405,000 in the foreign born population (cf. Table II). This was followed by an increase of less than 300,000 between 1920 and 1930. Had the 1900–14 rate of increase in foreign born population continued to 1930 there would have been over 20,000,000 foreign born residents in this country in 1930 instead of but 14,204,149.

Between 1900 and 1910 the rate of increase of the foreign born whites was nearly one-half greater than that of the total population, but from 1910 to 1920 it was less than one-fifth that of the whole population, while from 1920 to 1930 the increase was of negligible importance from an economic point of view.[4]

In 1890, 14.7 per cent of our population were foreign born; in 1900, 13.6 per cent; in 1910, 14.7 per cent; in 1920, 13.2 per cent; and in 1930, but 11.6 per cent.[5] The percentage of foreign born in our population was above 13 per cent from 1860 to 1920. It reached its peak in 1890 and again in 1910, 14.7 per cent. The 1920 census showed a decline in foreign population and the 1930 census the lowest proportion of foreign born since the census of 1850. Our present immigration laws, the very small immigration

[3] The 1930 census reported 14,204,149 foreign born residents (cf. Table II). A large number of the immigrants who came in after 1890 had died by 1930.

[4] *Immigrants and Their Children*, Census Monograph VII, 1920, compiled from Table 1, p. 5; *Abstract of the Fifteenth Census*, 1931, Table 23, p. 80.

[5] The percentages here given will be found to be slightly different from those in some of the earlier census publications. Some of the earlier figures were revised in the 1930 (Fifteenth) census. After careful checking with earlier censuses the writer has reached the conclusion that some of the 1930 "revisions" are simply errors.

TABLE II

POPULATION OF THE UNITED STATES, 1890–1930. CLASSIFIED BY RACIAL GROUPS [6]
(This table cannot be added across horizontally)

CENSUS YEAR	TOTAL POPULATION OF UNITED STATES	NEGRO POPULATION	TOTAL WHITES	FOREIGN BORN	NATIVE BORN OF FOREIGN OR MIXED PARENTAGE (2D GENERATION OF IMMIGRANTS)	TOTAL FOREIGN STOCK 1ST AND 2D GENERATION	NATIVE WHITES OF NATIVE PARENTS (3D AND SUBSEQUENT GENERATIONS)	INDIANS, ORIENTALS, AND NON-WHITE IMMIGRANTS
1890	62,947,714	7,488,676	55,101,258	9,249,560	11,503,675 [a]	20,753,235 [a]	34,475,716	357,780 [b]
1900	75,994,575	8,833,994	66,809,196	10,341,276	15,697,121	26,038,397	40,949,362	351,385 [b]
1910	91,972,266	9,827,763	81,731,957	13,515,886	18,964,953	32,480,839	49,488,575	412,546 [c]
1920	105,710,620	10,463,131	94,820,915	13,920,692	22,795,246	36,715,938	58,421,957	426,574 [c]
1930	122,775,046	11,891,143	108,864,207	14,204,149	26,082,129	40,286,278	70,136,614	2,019,696 [d]

[a] Includes whites only for 1890. Inclusion of non-whites would probably increase the figure about 50,000. This figure compiled from Table 26, p. 82.
[b] Does not include an estimate of Mexicans. These were estimated for 1910 and 1920 but enumerated separately for the first time in 1930 (cf. Table 22).
[c] Estimated number of Mexicans not included. They are included in whites.
[d] Big increase due to separating Mexicans from whites in Census of 1930.

[6] Compiled from *Abstract of the Fifteenth Census*, 1931. Tables 22 and 23, p. 80, and Table 26, p. 82.

of the depression years of the nineteen thirties and the large number of deaths in the rapidly aging foreign born population will bring the absolute numbers of foreign born in the American population to lower levels by 1940 than have obtained for a generation.

Though the number of foreign born in the population has been stabilized for 20 years at a figure between 13,500,000 and 14,250,000, the number of children and grandchildren of the foreign born has been increasing steadily. In 1890 the foreign born were almost as numerous as persons of foreign and mixed parentage. The enormous immigration of the 'eighties had not yet had time to register its full effects upon births. Ten years later the excess of children of foreign and mixed parentage over the numbers of the foreign born themselves had increased by five millions and by 1930 children of foreign and mixed parentage were nearly twice as numerous as the foreign born—26,000,000 against 14,000,000 (Table II).

It is impossible to compute the number of grandchildren of immigrants. These are enumerated by the census as "native whites of native parentage." This decreases by millions the *measurable* contribution that immigration has made to the growth of the American population since 1890. There were 19,533,043 more foreign born and their children in the United States in 1930 than in 1890. Including the grandchildren of immigrants, over one-third of our growth in population since 1890 was directly due to immigration.

Natural Increase

Each census has revealed that birth rates have been higher among our foreign born than among our native population. The 1920 census found that native white mothers averaged three children born compared with 3.6 for negroes and four for foreign born whites. The 1930 census report on birth statistics shows higher rates than for native born whites for all major immigrant peoples except the Scandinavian and British immigrants.[7]

The lower child mortality among native born whites has partly counterbalanced the higher birth rates of the negroes and most of the immigrant groups, and has enabled the American mothers to contribute a much larger proportion of adults to the population

[7] *Immigrants and Their Children*, Table 83, p. 184; Bureau of the Census, *Birth, Stillbirth and Infant Mortality Statistics*, Washington, 1930, Table DA, p. 8.

than would be indicated by the births.[8] The children and grandchildren of immigrants, however, conform to American rather than immigrant birth rates, and also conform more closely to American survival rates. Immigrant birth rates will have little effect upon our rate of natural increase in the immediate future, partly because of the greatly reduced volume of immigration, partly because of the rapid spread of birth control knowledge in Europe during recent years,[9] and partly because of the powerful influence of American points of view upon the birth rates of the foreign born population and their children.

There were 5,552,987 more families in the United States in 1930 than in 1920.[10] But there were only 11,444,390 children under five years of age in 1930 compared with 11,573,230 in 1920, a decrease of 128,840.[11] In proportion to the population, there were more married people and fewer children in 1930 [12] than at any time in the 40 year period. Obviously it is decreasing fecundity within marriage that is cutting down our natural increase. The birth rate in the registration area of the United States dropped almost steadily from 25.1 per 1000 of population in 1915 to 18.9 per 1000 in 1929—a decrease of almost 25 per cent in 15 years.[13] It was 17.8 in 1931 and 1932.

In 1890 and 1900 children under five years of age constituted more than 12 per cent of the population. In 1910 the proportion dropped to 11.6 per cent; in 1920 to 10.9 per cent, and in 1930 to 9.3 per cent.[14] The effect of the falling birth rate will be accentuated in the future by the relative decrease in the number of families which can come from the present diminishing supply of children.

In all but ten states, the rural birth rates are now much lower than urban. This is due to the migration of young people from the rural districts to the cities, and the consequent rise that is occurring in the average age of the rural adult population. Meanwhile the

[8] *Ibid.*, Sections on Infant Mortality.

[9] Kuczynski, Robert R., *The Balance of Births and Deaths in Western and Northern Europe*, Institute of Economics of the Brookings Institution, Washington, D. C., 1928 and 1931.

[10] Fifteenth Census, *Population*, Vol. VI, 1933, Table 15, p. 11.

[11] *Ibid.*, Vol. II, Table 7, p. 576.

[12] In 1890, 53.9 per cent of all males 15 years of age and over in the United States were married; in 1930, 60 per cent. The percentages for females were 56.8 and 61.4. *Ibid.*, Table 4, p. 842.

[13] *Birth, Stillbirth and Infant Mortality Statistics*, Table C, p. 4.

[14] Fifteenth Census, *Population*, Vol. II, Table 1, p. 566.

birth control movement is reducing the fecundity of the young people in both cities and rural districts. The average size of families in the United States was 4.9 in 1890, and the median size 3.40 in 1930.[15] The figures are not exactly comparable, but indicate roughly the change in the size of families.[16] There were 8,197,010 families out of a total of 20,968,803 in 1930 which had no children under 21 years of age.

Louis Dublin has pointed out that,

> "according to the mortality and marital conditions prevailing in 1920, out of every thousand females born, 788 will eventually marry. In other words, we must count on 788 married women to give birth to one thousand daughters in order to replace the thousand from whom they sprang. To put it another way, each thousand married women must have 1268 daughters to replace themselves under present (1920) mortality conditions. Likewise each thousand married men must be the fathers of 1350 sons in order to replace themselves. Combining our figures, we find that 1000 families must, on the average, have 2618 children . . . to replace the original quota from which the parents sprang." Since "about one marriage in six is either sterile or does not lead to living issue . . . the remaining families . . . must bring into the world an average of not 2.6 but 3.1 children." [17]

The number of daughters per 1000 married women was unquestionably lower in 1930 than in 1920.

The death rate was practically stationary between 1921 and 1930—ranging from 11.3 to 12.8 per 1000 of population.[18] The rapid decline in births is therefore bringing the birth and death rates ever closer to equality.

In a 1932 publication, Mr. Dublin said:

> "The census of 1930 seems destined to mark an epoch in the biological history of our population. We have now reached the point at which the reproductive function barely balances the mortality . . . our fecundity and mortality in 1930 had practically reached the point of equilibrium, whereas in 1920

[15] Twelfth Census of the United States, 1900, *Population*, Part II, Table LXXXVIII, p. cix; Fifteenth Census, *Population*, Vol. VI, Table 5, p. 7.

[16] Fifteenth Census, *Population*, Vol. VI, Table 29, p. 21.

[17] Dublin, Louis (ed.), *Population Problems*, Houghton Mifflin Co., New York, 1926, pp. 10–11.

[18] *Birth, Stillbirth and Infant Mortality Statistics*, 1930, Table F, pp. 8, 9. (Covers original birth registration area only, but very close to facts for whole country.)

we still had a real margin of 5.4 per thousand in our true rate of natural increase." [19]

Our natural increase during the last decade was maintained only by the abnormally large number of young married people in the population due to the heavy pre-war immigration and to the higher birth rate, both in American and immigrant families, in the pre-war decades.[20] The proportion of people over 45 years of age among our immigrants when they enter this country has doubled in recent years as compared with the pre-war period. The proportion of older people in the resident population is increasing also. In 1930, 17.3 per cent of the whole population were over 50 years of age compared with 15.5 per cent in 1920 and 12.8 per cent in 1890.[21] The higher birth rates of earlier decades have provided more adults that are approaching old age than the present birth rate is providing children to replace them.

Population increase in the next decade or two will, therefore, be checked by low immigration, a higher percentage of old people in the population, a decrease in the number of families, the sharply falling birth rate, and a stationary or increasing death rate. This is a picture of the immediate future. Some of these trends may change materially before another quarter century rolls around.

Urbanization

Increasing urbanization is another significant population change. In 1930, there were six million more people living in cities than lived in the entire United States in 1890—a total of 68,954,823 residing in urban areas.[22] There were another 23,662,710 living in country towns, mining and lumbering villages, and other *non-farm* rural areas; a number more than half as large as the population of 1890. Only 30,157,513 of our 122,775,046 people were living on

[19] *Statistical Bulletin*, Metropolitan Life Insurance Co., September 1932, p. 4. Mr. Dublin estimated that the birth rate will drop from 18.9 per 1000 as reported in 1930, to about 15.76 per 1000 as the aging of our present reproductive population on the one hand and the shortage of children on the other cut down the number of people of child-bearing age, while the death rate will rise from the 11.4 per 1000 of 1930 to 15.97 because of the aging of the present abnormally large adult population.

[20] Interesting American discussions of this subject will be found in Dublin, L., and Lotka, A. J., "On the True Rate of Natural Increase," *Journal of American Statistical Association*, September 1925; Thompson, Warren S., and Whelpton, P. K., "A Nation of Elders in the Making," *The American Mercury*, April 1930; Kuczynski, Robert R., "Population Growth and Economic Pressure," *The Annals of the American Academy of Political and Social Science*, July 1930.

[21] Fifteenth Census, *Population*, Vol. II, Table 1, p. 566.

[22] *Ibid.*, Table 4, p. 9.

farms.[23] Over one-seventh of this farm population were negroes—39.4 per cent of the negro population.[24] Only 29.2 per cent of the native whites and 13 per cent of the foreign born were in agriculture.[25]

In 1900 but 18.8 per cent of our population lived in cities of over 100,000 people; in 1930, 29.6 per cent. In 1900, 8.5 per cent lived in cities of 1,000,000 or more; in 1930, 12.3 per cent.[26] Cities of all sizes from country towns to the great metropoles have been increasing in size. Between 1920 and 1930, the farm population decreased 1,201,127 though country towns and little cities increased 3,515,333.[27] During 1931–33 there was a movement back to the farm; largely of unemployed persons seeking support. Whether this will increase the proportion of the total population living in rural areas cannot be determined until the census of 1940.

In 1890 we had three cities of over 1,000,000 population; in 1930 we had five.[28] New York, and its boroughs, including Brooklyn, had in 1890 approximately five millions of people; in 1930 substantially fifteen millions. Detroit was a city of 205,876 in 1890; of 1,568,662 in 1930. Chicago jumped from 1,099,850 to 3,376,438 in the 40 years. Los Angeles grew from 50,395 to 1,238,048. Every city that was large in 1890 grew rapidly during the next 40 years.[29] In 1890 there was one city with a population between 500,000 and 1,000,000. In 1930 there were eight. In 1890 there were 7 cities of 250,000 to 500,000 population (exclusive of the New York City boroughs); in 1930 there were 24. In 1890 there were 17 between 100,000 and 250,000; in 1930 there were 56.[30] And the vast majority of the cities below 100,000, all the way down to the country towns, experienced substantial growths during the period. Urbanization was proceeding at a rapid pace.

The checks upon immigration after 1914 increased the suction of the urban vortex upon the American rural population. The demand for labor in the cities due to the combined effects of war activity, the withdrawal of millions of men and women for war service and the sudden check to immigration, speeded up the

[23] *Ibid.*, Table 2, p. 8.
[24] *Ibid.*, Table 10, p. 34 and Table 4, p. 32.
[25] *Ibid.*, Table 10, p. 34.
[26] *Ibid.*, Table 4, p. 9.
[27] *Ibid.*, Table 2, p. 8.
[28] Fifteenth Census, *Population*, Vol. II, Table 4, p. 9.
[29] *Ibid.*, Vol. I, Table 11, pp. 18–19.
[30] *Ibid.*, Table 8, p. 14.

migration to the cities. But in the next decade, 1920–30, with the war over, the movement still continued.

Professor William S. Rossiter in a census monograph [31] stated that the increased settlement of immigrants in cities between 1900 and 1920 was largely due to the changes which occurred in the national origins of our immigration. In his opinion such peoples as the Russian Jews and Italians have a greater affinity for urban life than the Germans, English, and Scandinavians. But it is probable that during the period 1915 to 1929 the high wages and expanding industrial employment would have held in the cities the vast majority of incoming immigrants regardless of race or country of origin. The cities had more to offer immigrants than the country. There was, naturally, a greater readiness on the part of the native agricultural population than of immigrant agriculturists to migrate to the cities. Those immigrants who went by choice to the rural sections and established themselves there were, on the whole, those with a predeliction for country life. Otherwise they would not have chosen rural life when they entered the United States. They had not been in the United States long enough to become infected with the typical American restlessness,[32] and they were quite contented with farm life.

Study of the migration of our native population from the country to the cities reveals that the net migration of *farmers*, even from our native agricultural population, has not been as large as popularly believed. The number of farmers in the United States was practically the same in 1930 as in 1910, and only about 400,000 less than in 1920. The number of hired hands working on farms was practically unchanged in 1930 as compared with 1910, but about 450,000 larger than in 1920. But the number of boys working at home on their parents' farms dropped nearly 1,000,000 from 1910 to 1920 and another 50,000 to 1930; and the number of girls about 600,000 between 1910 and 1920, and 100,000 between 1920 and 1930.[33] It has been the youth from farm families who have migrated

[31] *Increase of Population in the United States, 1910–20*, Census Monograph I, 1922, p. 110.

[32] In 1930 but 67.3 per cent of the American people were living in the states in which they were born. In 1910 the figure was 66.5 and 1890 66.9. Typically, over the past 40 years, a third of the American people have migrated to other states. The migration from the South to the North has been particularly large since 1910. Fifteenth Census, *Population*, Vol. II, Tables 1 and 3, p. 139; cf., for further details, *ibid.*, Chap. IV.

[33] Fifteenth Census, *Population*, Vol. V, Table 1, p. 10.

from rural sections to the cities in largest numbers. The migration of farmers and farm hands to the cities has been larger, of course, than the census figures indicate, since a reverse movement is in operation almost constantly. Even during periods of heavy city-ward migration many people move out from the cities to the country. There has been a change in some of the personnel on our farms, therefore, as well as in the size of the agricultural population.

The rapid growth of population in this country (and throughout most of the world) during the 40 years ending in 1930, furnished a *needs* basis for economic expansion. Millions of new buildings were required—houses, stores, factories, schools, club houses, hotels, garages, public buildings. More railway, steamship, and highway transportation facilities had to be provided. Public utilities, manufactures, mining, forestry, trade, banking, insurance, and other forms of economic activity necessarily expanded. The trend was reinforced by the upward trend of prices, in itself a sufficient cause to bring a period of economic expansion. The rising standards of living which accompanied the expansion called for the development of a vast variety of new commodities and services. "Business as usual" meant almost continuous expansion, temporarily interrupted at times by depressions, but ever headed toward new records. Depressions appeared to be periods of maladjustment in the developmental processes rather than interruptions of economic advancement.

The potential economic results of one population change in recent years will be suggested. Between 1921 and 1930 school attendance in the United States increased sharply. There were 5,400,335 more youths under 21 years of age and 689,993 more adults 21 years of age and over attending school in 1930 than in 1920.[34] This increase in school attendance from 1920 to 1930 largely came from the natural increase of the preceding decade. But in 1930, as we have seen, there were fewer children under five years of age than in 1920, the birth rate was declining and the contribution of immigration to the school population had fallen to very low figures. These facts indicate for the next decade a much smaller increase in school population. Such increase as may occur in adult education will not counterbalance the decreasing rate of growth in the child population. There will not be as strong a

[34] Fifteenth Census, *Population*, Vol. II, Table 1, p. 1091 and Table 12, p. 1102.

demand for new schools and new homes. There will not be as rapid increase in the demand for manufactured products used by children, such as clothes, toys, and school books.

As the American economic system emerges from the depression of the early thirties, it will be confronted by new conditions due to the slowing down of population growth and the changing age composition of the population. Older people's demands differ both in quantity and choice of commodities from young people's demands. The changes occurring in our population structure, indicate, therefore, probable changes in the volume and types of goods demanded. The "technological unemployment" problem of the 1920's, partly due to new machinery and methods, partly to the dying out of old plants or industries, has been aggravated in recent years by the changes in demand which are resulting from changes in population growth and population composition.

CHAPTER II

IMMIGRATION

The present chapter discusses the development of American immigration policy and its relation to American labor problems. The numbers of immigrants who entered the United States during the four decades are shown in the table below.[1] The reader will note that the year 1921 is omitted in this tabulation.[2] The year was skipped in order to obtain a full decade in which the quota legislation was in effect.

It will be noted that the immigration of the "quota decade" (1922–31), was less than for any ten-year period since 1890. The number of immigrants per year 1922–31 was 529,627 fewer than the annual volume of immigration 1901–10. Immigration under the quota laws has been lower than it was during the 'nineties. The ten years in which maximum immigration occurred was 1905–14, when the total immigration was 10,021,940, or an average of 1,002,194 per year.

VOLUME OF IMMIGRATION INTO THE UNITED STATES IN FOUR DECADES 1890–1931 [3]

DECADE	NUMBER OF IMMIGRANTS IN DECADE	ANNUAL AVERAGE	INCREASE OR DECREASE IN ANNUAL AVERAGE
1891–1900	3,678,564	367,856	. . .
1901–1910	8,695,386	869,539	501,683
1911–1920	5,735,811	573,581	−295,958
1922–1931	3,399,120	339,912	−233,669

Whether immigration would have reached the pre-war figure during the post-war years if the quota laws had not been enacted is

[1] For source material on the history of immigration the reader is referred to "A Century of Immigration" (1820–1923), *Monthly Labor Review*, January 1924. The annual reports of the United States Commissioner General of Immigration bring these data down to date. Cf. also *A Century of Population Growth from the First Census to the Twelfth, 1790–1900*, United States Census Monograph, 1909; Rossiter W. S., *Increase of Population in the United States, 1910–1920*, Census Monograph I, 1922.

[2] The number of immigrants in 1921 was 805,228. This was the largest number of immigrants received in any single year since 1914.

[3] Compiled from annual reports of United States Commissioner of Immigration. The year 1921, omitted in this tabulation, brought in 805,228 immigrants.

uncertain. There seems to have been a marked decline in migration throughout the world since the war.

> "Both in the case of oversea and overland migration," says an official report of the International Labour Office issued in 1923, "both in emigration and immigration, there has been a marked decline after the war, which became more marked in 1921. Repatriation is the only aspect of migration which continues as strongly as ever. . . . This decline in migration has been universal. . . . It seems to result from causes which go very deep, and which are greater than any particular event or tendency." [4]

These decreases in migration may be but temporary. Some competent authorities believe that the population movements temporarily suspended in the nineteen 'twenties will be renewed. But down to 1934 no such resumption of migration had occurred.

Denmark, Great Britain, Italy,[5] Netherlands, Sweden, and Switzerland started or expanded schemes for assisting overseas settlement after the war, but the general trend of emigration legislation in European countries down to 1932 was in the direction of further restrictions on emigration rather than the opposite.[6] Neither changes in government policies nor basic economic forces produced a resumption of the pre-war volume of migration down to 1934. Great Britain's emigration during the 1920's was less than half the pre-war volume; Italy's and Poland's was hardly a third of pre-war. The emigration from a total of 16 European countries during the 'twenties was only about one-third of the pre-war emigration.[7] The total emigration from Europe to all countries outside of Europe was less by hundreds of thousands than the pre-war emigration to the United States alone.

There were major forces tending to prevent resumption of migration on a pre-war scale. Governmental regulation was a powerful factor in the situation. Measures more or less severe were adopted in practically all countries to prevent the voluntary development of migratory movements. This was equally true in

[4] *International Labour Review*, April 1923, p. 538.

[5] Italy reversed her policy in 1927. The policy referred to is indicated in *International Labour Review*, May 1922 and August 1922. The new policy which practically forbids emigration is outlined in *International Labour Review*, June 1931.

[6] Cf. *International Labour Review*, 1923 ff. Each monthly issue contains statistics on migration and notes concerning the legislation and policies of the various countries of the world.

[7] *International Labour Review*, October 1931, p. 445.

emigration and in immigration countries. But legislation alone does not account for the great decrease in migration. There were deeper causes. The declining birth rates in Europe, greater difficulties in earning a living in the new countries, the decreased demand of both industry and agriculture for immigrant manpower because of technological improvements, and the domination of economic nationalism, with its tendency to put up restrictions on emigration in order to keep labor in its homeland and to put up restrictions on immigration to protect the jobs of domestic wage earners, contributed to the decline.

It is uncertain, therefore, how large an immigration the United States would have received in the post-war years if our quota laws had not been enacted. The numbers who came would certainly have been larger than the immigration of the 'twenties. The large number kept out by the quota laws proves that. The border patrol of the immigration service organized in 1924, apprehended in less than seven years 109,839 aliens being smuggled into the United States and captured 2612 smugglers.[8] How many aliens succeeded in evading the immigration authorities is uncertain.

American Immigration Legislation

The modern immigration policy of the United States began with the federal law of 1882.[9] State legislation was enacted as early as 1788,[10] when Pennsylvania and South Carolina passed laws to prevent the importation of convicts into those commonwealths, and New York to prevent the immigration of paupers. In 1819 a federal statute was enacted limiting the number of passengers on vessels and specifying the amount of provisions per passenger to be carried. Six subsequent federal laws regulated the carriage of passengers from Europe to the United States before the enactment of the immigration law of 1882, which became the basis for all subsequent legislation, except the quota and naturalization laws.

Agitation for the restriction of immigration, in some cases to

[8] United States Commissioner of Immigration, *Annual Report*, 1931, Washington, Government Printing Office, p. 60.

[9] An Act to Regulate Immigration (1882), Chap. 376, 22 United States Statutes at Large, 214 (47th Congress, 1st Session).

[10] Reprints of parts of many of the early state statutes will be found in Abbott, Edith, *Immigration, Select Documents and Case Records*, The University of Chicago Press, 1924. Cf. for more detailed treatment, Endicott, William C., Jr., *Immigration Laws, State and National*, State Department, 1887; Second Special Report of the United States Commissioner of Labor, *State Labor Laws*, 1896; Stimson, Frederick J., *Handbook to the Labor Law of the United States*, Scribner's Sons, New York, 1896.

prevent the entrance of convicts, paupers, and diseased people, in others because of religious prejudice against Roman Catholics or a desire to protect American labor against immigrant competition, flared up from time to time from the colonial period onward; reaching maximum intensity in periods like the 1840's, when the enormous immigration of Irish due to the Irish potato famines caused the nativistic sentiment to crystallize in the Know Nothing Movement; and like the early 1880's, when, with the unemployment of 1873–78 freshly in mind, the American people saw the volume of immigration rise from 138,469 in 1878 to 788,992 in 1882.

The first federal laws of a definitely restrictive character were against the importation of Chinese coolies.[11] The acts of 1862 and 1869 made vessels used in the coolie trade forfeit, and gave United States naval vessels the power of search for violations of the act.[12] The law of 1875 made it a felony to contract to supply coolies and also forbade the immigration of convicts and the importation of women for immoral purposes. The legislation against coolies was the first attempt at government protection of American labor against immigrants.

A decision of the United States Supreme Court, on March 20, 1876, held that the systems of immigration control of New York, California, and Louisiana were unconstitutional. The court went a step further, and said:

> "We are of the opinion that this whole subject has been confided to Congress by the Constitution; that Congress can more appropriately and with more acceptance exercise it than any other body known to our law, State or national; that, by providing a system of laws in these matters applicable to all ports and to all vessels, a serious question which has long been a matter of contest and complaint may be effectively and satisfactorily settled." [13]

It was agitation by organized labor which caused Congress to carry out the suggestion of the Supreme Court through the enact-

[11] Chap. 27, 12 United States Statutes, 340, February 19, 1862; Chap. 24, 15 United States Statutes, 269, February 9, 1869; Chap. 141, Section 4, 18 United States Statutes, 477, March 3, 1875.

[12] Cf. for the discussion of the Chinese problem by American labor, Commons, John R., and Associates, *History of Labour in the United States*, Macmillan, New York, 1918, Vol. II, pp. 149, 150; Lescohier, D. D., *The Knights of St. Crispin, 1867–74*, Bulletin of The University of Wisconsin, No. 355, May 1910, pp. 35–37.

[13] Jenks, J. W., and Lauck, W. J., *The Immigration Problem*, Funk and Wagnalls, New York, 6th ed., 1926, p. 374.

ment of the immigration law of 1882 and the contract labor law of 1885. The immigration law added to the classes already excluded lunatics, idiots, and persons who would become public charges. It provided for a head tax of 50 cents to defray expenses of immigration inspection and to relieve immigrants in distress. The contract labor law barred immigrants coming in with definite promises of employment. But these laws lacked adequate enforcement provisions. Between 1882 and 1891 the government tried to handle the matter by making contracts with state boards to supervise immigration matters. In 1891 the federal immigration bureau was established.

The enormous immigration of 1880–84 facilitated the efforts of employers to obtain immigrants as strikebreakers and wage levelers. Large numbers of immigrants were imported from Europe to work at wages below those American union labor received.[14] The Knights of Labor led the movement in the 'eighties to obtain legislation prohibiting the immigration of contract laborers, and the anti-contract labor law passed by Congress on February 2, 1885, was due almost entirely to their efforts.[15] The law in the form enacted could not be enforced effectively because it applied only to the importer of contract labor and not to the laborer himself, and lacked administrative provisions adequate for its enforcement. It was revised February 23, 1887, to provide that the contract laborer could be sent back to the country from whence he came. Under an act of October 9, 1888, he could be seized and deported within one year of the date of entrance if he got into this country. Since 1887 the contract labor law has been an important feature of American immigration control.[16]

In 1889 the United States Senate provided for a standing committee on immigration and the House for a select committee on immigration and naturalization. In 1890 these committees were authorized jointly to make an inquiry relative to immigration,

[14] Complaints against the importation of cheap labor were not new. To quote but one from an earlier period, in 1832, Seth Luther said manufacturers sent "Agents to Europe, to induce foreigners to come here, to underwork American citizens." *Address to the Workman of New England* (a pamphlet).

[15] Commons, John R., and Associates, *History of Labour in the United States*, Vol. II, pp. 372–373.

[16] For a digest of the contract labor acts and early decisions under them, cf. Report of the U. S. Industrial Commission, 1901, XV, Chap. 11. Cf. also article by Hall, Prescott, *Harvard Law Review* (1898), II, 525. The original contract labor law of 1885 and the amendatory act of 1887 are reprinted in Hall, Prescott, *Immigration*, Henry Holt, New York, 1906, App. III.

and to investigate the workings of the various laws of the United States and of the several states relative to immigration. The committees did not recommend any radical changes in the immigration laws. But during that very year 1890, one or more political parties in 23 states demanded additional regulation of immigration.[17]

Congress responded, in 1891, with a law which strengthened and codified the immigration legislation. It added to the excluded classes: paupers, persons afflicted with loathsome or dangerous contagious diseases, polygamists, and persons whose passage had been paid by other persons (unless it was shown that they were not otherwise objectionable). Advertising to encourage laborers to emigrate was forbidden, and steamship companies were allowed to publish statements concerning only sailings and passenger rates. Provision was made for the return of debarred aliens and the courts were deprived of the power to reverse the decisions of immigration officers when they refused admission to immigrants. The courts could reverse a decision to let an immigrant in, but could not reverse a decision to keep an immigrant out.

The 1891 act established the federal immigration service. It created the office of Superintendent of Immigration, a title later changed to Commissioner General of Immigration, and put the Immigration Bureau into the Treasury Department.[18] In 1893 the administrative set-up for the immigration service was more carefully worked out,[19] and in 1894 provision was made for the appointment of commissioners of immigration for the several ports.[20] The act of 1893 provided for the inspection of immigrants abroad before embarkation. The steamship companies were required to fill out, verify, and file with the United States consuls at ports of departure and before the sailing of the vessel, a detailed manifest covering all the points of information required by American immigration laws or administrative regulations.[21] This law also set up the system of general and medical inspection at the immigration ports; boards of special inquiry; contract labor inspectors; and deportation procedures.

[17] Jenks and Lauck, *op. cit.*, p. 377.

[18] Act of March 3, 1891, C. 551, 26 Stat. at Large, 1084. Held constitutional in *Ekin* v. *United States*, 142 U. S. 651 (1892); Act of March 2, 1895, C. 177, 28 Stat. at Large, 780.

[19] Act of March 3, 1893, C. 206, 27 Stat. at Large, 569.

[20] Act of August 18, 1894, C. 301, 28 Stat. at Large, 391.

[21] For details, cf. Report of United States Industrial Commission, 1901, XV, 660.

The legislation of 1891–94, clarified and interpreted by many court decisions, defined the qualifications for admission and the administrative procedures for the next decade. It was a decade when the country's immigration policy was a live issue. Bills adding illiterates to the excluded classes were passed by one house of Congress seven times during the ten years. In 1895 the Immigration Investigating Commission made its report [22] and in 1901, the United States Industrial Commission, after extensive investigations, both by its own experts and by the taking of testimony, published a 957 page report covering the whole immigration question.[23] In 1902, a general meeting of the commissioners of immigration at the various ports was held to obtain their ideas concerning necessary changes in the laws. A bill prepared by the immigration officials and legal experts of the Treasury Department, experts of the United States Industrial Commission and several private citizens was passed and approved March 3, 1903.[24] Under another act, passed February 14, 1903, the Department of Commerce and Labor was created, and the Immigration Bureau transferred to it. This transfer of the bureau from the Treasury Department to Commerce and Labor, effective July 1, 1903, gave official recognition to the fact that immigration is largely a labor problem.

The immigration law of 1903 applied to all aliens and not simply to immigrants. Inadmissible persons had been escaping inspection by coming in as cabin rather than steerage passengers. The head tax was raised to two dollars and made payable for all aliens except from North America and Cuba. The list of debarred classes was amplified, both by increasing the descriptions of physical and mental types debarred; the list of criminal, immoral, and pauper types; and adding anarchists and persons believing in the overthrow of the United States government or of all government by violence. The illiteracy test was not included, however, and remained out of the law for another 14 years.

The act of 1903 [25] was of great importance. It codified and revamped the immigration laws on the eve of the greatest migra-

[22] Immigration Investigating Commission, *Report to Secretary of the Treasury*, Washington, Government Printing Office, 1895; cf. pp. 38–50 for recommendations.

[23] Report of U. S. Industrial Commission, *Immigration and Education*, XV, pp. ix-cxvii and 1–840.

[24] Act approved March 3, 1903; 32 United States Statutes at Large, Part 1, 1213.

[25] The act was amended in some of its details; March 22, 1904, 33 Stat., Part 144; April 28, 1904, 33 Stat., Part 1, 591; February 3, 1905, 33 Stat., Part 1, 684.

tion to America that has ever occurred. In the next 11 years, nearly 11,000,000 immigrants entered the country. Immigration became a "problem" occasioning widespread popular discussion. The native population feared that the preponderance of Italians, Greeks, Poles, Jews, and other South and Eastern European peoples, non-English speaking, and in religion predominantly Catholic or Jewish, would endanger American institutions and lower American standards of living and culture. Vigorous agitation kept the immigration question before Congress and resulted in the immigration laws of 1907 and 1910.

The immigration acts of February 20, 1907, and March 26, 1910,[26] are of interest primarily for their regulations expanding and defining more completely the excluded classes. They are not of particular interest from the point of view of this history [27] except for the clause in the 1907 law which provided for the creation of the United States Immigration Commission. This commission, after exhaustive investigations, recorded in the 41 volumes of its report,[28] declared that

> "The development of business may be brought about by means which lower the standard of living of the wage-earners. A slow expansion of industry which would permit the adaptation and assimilation of the incoming labor supply is preferable to a very rapid industrial expansion which results in the immigration of laborers of low standards and efficiency, who imperil the American standard of wages and conditions of employment." [29]

They recommended that the Division of Information in the immigration service set up a system of distributing immigrants to sections of the country where they could get permanent employment, that the Secretary of Commerce be empowered to determine whether skilled labor of particular kinds might properly be imported under contracts of employment, and that further restrictions be placed upon the immigration of unskilled labor. They urged

[26] The reader will find a good summary in Jenks and Lauck, *op. cit.*, pp. 380–384.

[27] Immigration act approved February 20, 1907, 34 United States Statutes at Large, 898; Immigration act approved March 26, 1910, 36 United States Statutes at Large, 263.

[28] The reader may be interested in two books based upon this report which reach diametrically opposite conclusions concerning what the report shows: Jenks and Lauck, *op. cit.*, and Hourwich, Isaac, *Immigration and Labor*, G. P. Putnam's Sons, New York, 1912.

[29] United States Immigration Commission, Report, 1911, Washington, Government Printing Office, Vol. I, p. 45.

that the reduction be sufficiently severe "to produce a marked effect upon the present supply of unskilled labor," and that as far as possible the aliens excluded be those who came to this country with no intention to become American citizens or to maintain a permanent residence, and who, because of their personal characteristics, would least readily be assimilated.

The commission recommended as means to this end a literacy test, a quota plan, the exclusion of unskilled laborers unaccompanied by wives or families, a material increase in the amount of money required to be in possession of the immigrant, a material increase in the head tax, and lower head taxes for men with families than for men without families.[30]

The immigration law of 1917 [31] was the direct result of the report of the Immigration Commission. It still stands as the *selective* law of the country, being supplemented and not supplanted by the quota laws passed to restrict the number of immigrants. The quota laws passed in 1921 and subsequent years are selective only in the sense that they control the proportions of each race and nationality in the total immigration. The 1917 law defines the personal and economic standards which the immigrants must meet and it would be difficult to add new classes of undesirables to the list enumerated in Section 3 of the act. The 1917 law also included a literacy test consisting of a reading knowledge of some language, proved by reading 30 to 40 words in that language. Quota immigrants must be admissible under the 1917 law, and the system of inspection and certification provided by that law is not changed by the quota legislation.

Both the literacy test and the quota laws were results of two ideas widespread in the United States throughout the past 40 years; viz., that the enormous immigration was keeping down wages and depressing the standards of living of American wage earners, and that the change in the racial composition of our immigration endangered the continuity of American political and cultural traditions and standards.[32] Both of these views were

[30] *Ibid.*, Vol. I, pp. 40–49. The reader will find a good summary of the Commission's recommendations in Jenks and Lauck, *op. cit.*, 5th ed., pp. 405–410.

[31] An Act to Regulate the Immigration of Aliens to, and the Residence of Aliens in, the United States, Chap. 29, United States Statutes at Large, 874, approved February 5, 1917. This law is reprinted in full in Jenks and Lauck, *op. cit.*, App. A.

[32] This fear has been recurrent from the colonial period onward. In a letter to Richard Jackson, it was said by Benjamin Franklin: "I am perfectly of your mind, that measures of great temper are necessary with the Germans: . . . not being

prominent in the conclusions of the Industrial Commission of 1901 and the Immigration Commission of 1911. The Industrial Commission said:

> "Thus the decade from 1880 to 1890 marks a turning point in the character of immigration. Up to that time it was mainly the inhabitants of Western Europe, including England, Scotland, Wales, Ireland, Germany, Sweden and Norway, who furnished nearly two-thirds of the immigrants. Since that time immigration from Eastern and Southern Europe has rapidly increased, and in the 5-year period from 1895 to 1899 constituted 54 per cent of the immigration." [33]

The report showed that the foreign born tended to concentrate in the cities, especially the Hebrews, Poles, and Irish; that illiteracy among the foreign born was more than twice as great as among the native born; that this greater illiteracy of the foreign born was due entirely to the high percentages of illiterates among the South and East Europeans; that the Northwestern Europeans brought in three or four times as much money per capita as the new immigration; and that

> "labor organizations are handicapped by the mixed nationalities, languages and religions which make it impossible even to bring them together on a mutual understanding." [34]
>
> "One of the factors which conceals the effect of immigration and at the same time cooperates with it is machinery and division of labor. This, by displacing the skilled mechanic, makes room for the unskilled immigrant." [35]
>
> "The so-called sweat-shop legislation of American states is legislation directed against tenement-house work. . . . Practically all the work in tenements governed by these laws is carried on by foreign born men and women, and by the latest arrivals and lowest conditioned of the foreign born." [36]

Nevertheless the idea that "We want people to fill up these states and territories, we want land cultivated, that wealth and

used to liberty, they know not how to make a moderate use of it. . . . In short, unless the stream of their importation could be turned from this to other colonies, as you very judiciously propose, they will so outnumber us, that all the advantages we have will not in my opinion be able to preserve our language, and even our government will become precarious." Skaggs, William H., *German Conspiracies in America.*

[33] Report of the United States Immigration Commission, 1901, Vol. XV, p. xix.
[34] *Ibid.*, Vol. XV, p. xxiii; cf. also Part III.
[35] *Ibid.*
[36] *Ibid.*, p. xxix; cf. also Part III.

plenty may abound; we want the resources of these agricultural states developed" [37] was not dead. At the beginning of the twentieth century it still exerted a powerful influence upon public opinion. So did the idea that America should be an asylum for the oppressed and unfortunate of all nations. But fear had been aroused by the increase in the volume of immigration after 1900, and even more by the change in the national origins and the personal characteristics of the bulk of the immigrants. At the turn of the century, national opinion was vexed by the conflicting desires to allow free immigration for national development and asylum for the oppressed and at the same time to keep out undesirables and to protect American wage earners.

It is not strange that the tests of desirability and undesirability became somewhat confused. For different interests in America had different concepts of what constituted desirability in immigrants. There was little difference of opinion concerning convicts, paupers, prostitutes, mental defectives, anarchists, and polygamists. But as soon as the tests passed into the economic and political fields there were sharp conflicts of opinions and interests. Employers, during the period of industrial development after 1898 wanted labor—abundant labor, cheap labor, strong backed labor, in large measure common labor, and always docile labor. The wage earners, not denying that some immigration was necessary, wanted protection against labor that would undercut wages, flood the labor market, and be difficult to organize.

The case against the new immigration was stated in the United States Senate as early as March 16, 1896, by Senator Lodge of Massachusetts, in an argument for the enactment of the literacy test. He said in part:

> "There is no one thing which does so much to bring about a reduction of wages and to injure the American wage earner as the unlimited introduction of cheap foreign labor through unrestricted immigration. Statistics show that the change in the race character of our immigration has been accompanied by a corresponding decline in its quality. The number of skilled mechanics and of persons trained to some occupation or pursuit has fallen off, while the number of those without occupation or training, that is, who are totally unskilled, has risen in our recent immigration to enormous proportions." [38]

[37] Republican Party platform, 1868.

[38] *Congressional Record*, March 16, 1896, 54th Congress, 1st Session, pp. 2817–2820.

The demand for *numerical* restriction became more and more vociferous from the 'nineties onward. The Massachusetts Commission on the Unemployed stated in 1895 that

> "Under present conditions the United States is attempting to solve the question of unemployment for Europe as well as for itself. . . . Much of the recent immigration is due, not to a real and permanent demand for labor in this part of the country, but rather to depressed and abnormal conditions abroad." [39]

In a letter to Representative Watson in 1902, Samuel Gompers said:

> "The organized workers of the country feel that the existing immigration laws, while not without their value, are of trifling effect compared with the needs and the just demand of American labor. . . . The strength of this country is in the intelligence and the prosperity of our working people. But both the intelligence and the prosperity of our working people are endangered by the present immigration. Cheap labor, ignorant labor, takes our jobs and cuts our wages." [40]

The American Federation of Labor, at its 1897 convention, demanded restriction by a vote of 1858 to 351, and consistently repeated the demand at subsequent conventions. In the first session of the 57th Congress (1902) there were 5082 petitions in favor of restriction of immigration, some coming in from every state. In addition to the Knights of Labor and American Federation of Labor, many of the important national unions consistently demanded sharp restrictions on the number of immigrants. The Immigration Restriction League, organized in 1894, carried on an active propaganda. On the other hand, such organizations as the Immigration Protective League, also organized in the 'nineties, and the Liberal Immigration League, opposed further restrictions.

The first hope of the proponents of numerical restriction was the literacy test. Who originated the idea is uncertain. It was advocated by Senator H. C. Lodge in 1891.[41] A Senate committee recommended it in 1893, but rather as a check against "the alarming increase within the last few years of illiterate immigrants" [42] than as a definite numerical restriction. From 1895 until it became

[39] Massachusetts Board to Investigate the Subject of the Unemployed, Boston, Wright and Potter, 1895. House Document No. 50, Part V, pp. xxvii–xxviii.

[40] Quoted by Hall, Prescott, *Immigration*, Henry Holt and Co., New York, 1907, p. 125n.

[41] *North American Review*, January 1891, CLII, 27–36.

[42] Senate Reports, 52d Congress, 2d Session, No. 1333 (1893).

a law in the act of 1917, the literacy test was constantly pressed upon Congress. In 1902 a list of 4444 petitions for it was published by a Senate committee, besides 14 pages of endorsements of restriction and the educational test.[43] The test was passed by Congress in 1897, but vetoed by President Cleveland. It was again vetoed by President Taft on February 14, 1913, and President Wilson on January 28, 1915, and January 29, 1917. It was passed over President Wilson's veto in 1917. In his 1915 veto message he said in part:

> "In two particulars of vital consequence this bill embodies a radical departure from the traditional and long-established policy of this country. . . . It seeks to all but close entirely the gates of asylum which have always been open to those who could find nowhere else the right and opportunity of constitutional agitation for what they conceived to be the natural and inalienable rights of men; and it excludes those to whom the opportunities of elementary education have been denied, without regard to their character, their purposes, or their natural capacity. . . . Those who come seeking opportunity are not to be admitted unless they have already had one of the chief of the opportunities they seek, the opportunity of education. The object of such provisions is restriction, not selection." [44]

There is no doubt that Wilson stated the situation correctly. Congress intended to restrict immigration, rather than to improve selection. But debarments under the literacy test have never been large. It resulted in some emigration countries providing educational facilities to prepare emigrants for passing the literacy test.[45] But the war and then the quota laws so reduced the immigration of illiterates that the literacy test never had much chance to function. Illiterates constituted 21.4 per cent of the vast immi-

[43] Senate Documents, 57th Congress, 2d Session, No. 62, *Regulation of Immigration*, 1902, pp. 327 ff.; cf. Hall, *op. cit.*, pp. 262–280 for a good history of the controversy before 1906.

[44] The messages are printed in the *Congressional Record*, February 1, 1917, pp. 2691–2694, and reprinted in Davis, *Immigration and Americanization*, Ginn and Company, New York, 1920, pp. 376–380.

[45] "The American Act of 1912, instituting a literacy test, for immigrants, drew the attention of the Italian Emigration Department to questions of education. On the initiative of this department, evening schools and holiday schools were opened in many districts for the benefit of emigrants who were wholly or partially illiterate. In 1920, 790 such schools were opened, especially in the Abruggi, Campagna, Calabria, and Sicily. These schools were attended by 28,000 pupils, of whom 1,500 sat for the examination." *International Labour Review*, May 1922, p. 817. Cf. also, Moore, Lillian R., "European Emigration Conditions as Affecting the United States," *Monthly Labor Review*, May 1922, pp. 213–216.

gration of 1914. A total of 260,152 illiterates entered that year.[46] The proportion of illiterates in 21 immigrant peoples ranged from 20 per cent to 62 per cent, though some of these were relatively unimportant groups. Among ten immigrant peoples illiteracy was from only 0.4 of 1 per cent to 3.6 per cent. The literacy test was a plan that would have definitely discriminated between nationalities, and against the South and East European nationalities, but was not enforced against any considerable immigration, except in the fiscal years 1920 and 1921 and in those years it kept out less than 2000 persons each year. The number of immigrants admitted in 1921 was 805,228. Obviously, so far as restricting numbers is concerned, the literacy test has been unimportant. A test of 40 words is easily passed.

The Quota Laws

The end of the World War found public opinion intensely hostile to the resumption of large scale immigration. The war years had witnessed an almost hysterical discussion of the menaces of free immigration. From coast to coast the "Americanization movement" had convinced the people that the assimilation of the foreign born already within the country, particularly the non-English speaking, constituted a national problem of the first importance.

There were approximately 14,000,000 foreign born living in the United States when the war broke out, a large fraction of whom could not speak English. Many of these were illiterate. The war aroused an almost hysterical fear that a considerable percentage of the foreign born were either indifferent or hostile to the interests of this country. Official and unofficial propagandists united in developing a nationwide interest in the protection of America against dangers believed to inhere in free immigration and unassimilated masses of foreign born residents. Americanization and immigration were discussed from coast to coast in clubs, lodges, churches, schools, and industries. The subject was "front page copy" in newspapers and magazines, especially from 1917 to 1919. A flood of books and pamphlets appeared; a number of universities established departments of Americanization, and state and munic-

[46] Among them, 103,548 came from Southern Italy; 32,052 from Poland; 21,204 Hebrews; 14,825 Russians; 13,122 Ruthenians; 9001 Lithuanians, and 8906 Greeks. United States Commissioner of Immigration, Annual Report, 1914, Table VII, p. 42.

ipal educational departments rapidly developed immigrant education facilities.

In 1915, the Bureau of Naturalization changed from a policy of simply protecting the country against the naturalization of undesirables to one of encouraging aliens to become citizens and of facilitating their preparation for naturalization. The University Extension Division and a new Division of Americanization in the United States Bureau of Education vigorously promoted educational work for immigrants in the states and cities. The Army and Navy, National Council of Defense, the Committee on Public Information, and the Federal Board of Vocational Education also pushed education of immigrants in English, civics, and "Americanism."

On April 3, 1918, a national conference was held in Washington called by the Secretary of the Interior, on *Americanization as a War Measure.* Nineteen states were represented by their governors, and two by other state officials. Twenty-seven states were represented by members of their Councils of National Defense. There were representatives of industries, railroads, chambers of commerce, municipal Americanization organizations, Y. M. C. A.'s, educational institutions, the Red Cross, loyalty leagues, and miscellaneous organizations. Samuel Gompers was almost alone as a representative of labor.[47] The Smith-Bankhead bill, introduced into the House of Representatives in the fall of 1919, would have appropriated $12,500,000 a year to be distributed to the states to pay one-half the cost of immigrant education and the education of illiterates, and $750,000 a year more to pay half the cost of training teachers for this work. The states were to appropriate an equal amount to obtain the federal assistance.[48]

The interest in immigration did not die out at the end of the war. The part of the public whose interest was due to frenzied war emotions dropped the matter. But a multitude of people throughout the country continued their immigrant assimilation programs, and most of these favored rigid numerical restriction of immigration until the foreign born already in the country should be Amer-

[47] *Americanization as a War Measure*, Bulletin No. 18, 1918. Department of the Interior, Bureau of Education, Washington, 1918.

[48] Cf. for detailed statement of the arguments for the bill and summary of immigrant education work in progress in the United States in 1919, Hearings before Committee on Immigration and Naturalization, House of Representatives, 66th Congress, 1st Session on H. R. 9949 and H. R. 10404, October 1919.

icanized. Those concerned about the assimilation of immigrants therefore joined hands with labor in resistance to free immigration after the war. This resistance received support from an unexpected quarter. While the industrialists as a class continued to favor free immigration as in the pre-war period, many became almost hysterically frightened by "Bolshevism" in the early post-war period and were ready to sacrifice the advantages of a renewed flow of cheap labor for protection against the influx of "radicals." Other industrialists had been so impressed by the civic point of view that they were ready to subordinate their industrial interests. Mr. William Faux, president of the Logan Coal Company, expressed the views of this group:

> "My preference is that the immigration law should be more drastic than at present. I do not believe it necessary for the United States to make all the goods in the world. . . . We have got enough immigrants of Southern Europe to last for the next fifty years if we are to maintain Americanism." [49]

The House of Representatives passed a bill practically suspending immigration for a period of 14 months. The Senate substituted the Dillingham per centum limit plan, which finally prevailed, and the so-called "three per cent quota-law" was signed by the President May 19, 1921.[50] It was continued in operation until June 30, 1924. This law limited the number of aliens who could be admitted to 3 per cent of the number of persons of such nationality resident in the United States according to the Census of 1910. Nationality was determined by country of birth. The law applied only to Europe, Asiatic Turkey, Persia, Asiatic Russia, Africa, and Australasia. The Orient was covered by previous legislation relative to immigrants from that area and the 1907 "Gentlemen's Agreement" with Japan.

The purpose of the 1921 law was to limit immigration from Southern and Eastern Europe, without interfering with the normal movement from the Northern and Western European countries.

[49] *American Industries*, February 1923, p. 14.

[50] President Taft's veto of the literacy test caused Senator Dillingham to introduce a bill on June 2, 1913, which was the forerunner of the quota law of 1921. It provided that the number of aliens of any nationality who might be admitted into the United States should not exceed 10 per cent of the number of persons of such nationality resident in the United States at the time of the Census next preceding, with a minimum of not less than 5000 for each specific nationality. The bill did not apply to immigrants from the Western hemisphere. Cf. Jenks and Lauck, *op. cit.*, 1926 ed., pp. 385 ff., for more details about this bill.

Prior to the war about 750,000 immigrants a year were admitted from the former area, but under the Dillingham act only 158,200 could be admitted. From western and northern Europe about 180,000 per year were entering the United States before the war. The new law permitted 198,000. During the first year of the 3 per cent law, southern and eastern Europe used 95 per cent of their allotted quota and northwestern Europe but 50 per cent of theirs.[51]

During the three years in which this law was in effect there were 466,000 immigrants admitted in excess of the quota, principally because of the heavy immigration from non-quota countries, particularly Mexico and Canada. The annual average of immigration under the 3 per cent law was 513,123, or approximately one-half of the annual average of the ten years just before the war. The proportion of common laborers in the immigration was only a fifth of what it had been in the pre-war period, and of servants but 40 per cent. The number of skilled workers dropped a third. The proportions of children, housewives, and old people increased. Immigration was influenced more strongly than before by the desire of immigrants to preserve the unity of their family groups. A large number of families sent for those members who had been residing in Europe.

A bitter struggle was precipitated by the 3 per cent law. For some it worked too well; for others not well enough. The industrialists as a class and the immigrant nationalities whose inflow was most sharply reduced fought for the repeal of the quota law or an increase in the percentage. The proponents of numerical restriction demanded that it be made more stringent, and that the incoming immigrants be made to conform to the composition of the American people in the nineteenth century instead of in 1920. The latter won. Public sentiment was overwhelmingly in favor of further restrictions.

In 1924, the second quota law went into effect. It fixed the number of immigrants from any country at 2 per cent of the number of persons from that country resident in the United States in 1890. This shifted the census base back to the period previous to the main influx from southern and eastern Europe. Countries of northern and western Europe were allotted 84 per cent of the

[51] Cf. for discussions in Congress at this time Hearings of House Committee on Immigration, 68th Congress, 1st Session, December 1923 and January 1924.

annual quota. During the next two fiscal years, the total immigration was slightly under 300,000 per year; or but three-fifths as large as under the 3 per cent law. The inflow of skilled workers dropped to a third of pre-war figures and one-half of what it was under the 3 per cent law. The number of common laborers admitted was but one-eighth of pre-war figures and a little over one-half the number under the 3 per cent law; of servants a little more than one-fifth pre-war figures and a little more than one-half of the 3 per cent law inflow; while the influx of business and professional workers was cut nearly in half. The number of farmers was not affected.

Another effect of the 1924 legislation, however, was to exclude the Japanese as definitely as earlier legislation excluded the Chinese. The law forbade immigration of persons ineligible to citizenship. The clause was inserted, of course, for the purpose of excluding the Japanese, to whom the farmers and labor groups of California had been bitterly opposed for about 25 years.

This plan remained in force until July 1, 1929, the total number of immigrants under the 1924 law reaching a peak of 335,175 in 1927 and then dropping steadily to a minimum of 279,098 in 1929. It was then modified by the enforcement of the "national origins" provision of the 1924 law. This provided that the 1890 base should be discarded, and that the quotas should be based upon the national origins of the population of the United States in 1920; it also provided that the total quota should be 150,000 and that each country's quota should be the same percentage of 150,000 as their people constituted of the population resident in continental United States in 1920. Readers interested in the quotas allotted to the different countries will find them in the Minutes of the Committee on Immigration and Naturalization.[52]

The system of consular inspection abroad, which was made a part of the quota law in 1924 and became effective August 1, 1925, is the most effective device yet discovered to cut the volume of immigration when unemployment is prevalent. Under this plan

[52] Immigration quotas under 1924 Act under the National Origins Provision, Hearing No. 69.2.1 before Committee on Immigration and Naturalization, 69th Congress, 2d session. Cf. also, Ragsdale, Martha, *The National Origins Plan of Immigration Restriction*, 1928; Address of Hon. Henry H. Curran, Commissioner of Immigration at Ellis Island, New York State Conference of Charities and Correction, Proceedings, Twenty-Sixth Session; Immigration Laws of the United States to July 1, 1925, publication of the Bureau of Immigration, United States Department of Labor.

experienced and qualified surgeons of the United States Public Health Service and trained inspectors of the Immigration Service are sent abroad as technical advisors to United States consuls. Their duties are to assist the consuls in examining prospective immigrants applying for visas, and to aid them in determining the candidates' admissibility under our immigration laws before the visas are issued. This does not do away with the inspection upon arrival but the inspection abroad enabled the consuls to practically stop immigration in 1931 and 1932, when the number of immigrants dropped to 97,139 in 1931 and 35,576 in 1932. They refused visas on the ground that the would-be immigrants were liable to become public charges. As a result, the 1932 immigration was the lowest since 1831.

America's immigration legislation has now been brought to a point, therefore, where rigid numerical restriction as well as protective selection is well worked out, and where there are administrative means of reducing immigration as near zero as we wish in periods when unemployment is prevalent in this country.

CHAPTER III

THE NATION'S WAGE EARNERS

Because of immigration the employable part of the population increased faster than the total population between 1890 and 1930. The number of people gainfully employed more than doubled. It increased from 23 millions in 1890 (23,318,183) to nearly 49 millions (48,829,920) in 1930.[1] The percentage of persons ten years of age and over in gainful occupations increased from 49.2 per cent in 1890 to 53.3 per cent in 1910 and then dropped back to 49.5 per cent in 1930. The higher percentage in 1910 was due largely to the heavy immigration of employable people between 1900 and 1910.

The growth of the employable population was checked after 1915 by the reduction in immigration, first due to the war and then to the quota laws, a decline in child labor, and increased attendance of youths at vocational schools, high schools, and colleges. Increased employment of women partly balanced these checks to the growth of labor supply.

It is obvious, however, that the slowing down of population growth did not produce a labor shortage or a probability of such a shortage. Labor saving machinery and the advancement of industrial techniques prevented that. An increased amount of technological unemployment rather than labor shortage was evident in the years immediately preceding the depression of 1930. The depression unemployment of 1930–33 was aggravated by the idleness of a large number of workmen who had been displaced by new technology, either before the depression began or during the depression itself. For the years under consideration the major significance of the changing population situation is not found in a tendency toward labor shortage. Instead, the check to growth constituted a partial, though inadequate, adaptation of population growth to the declining ratio of labor needed to production accomplished.[2]

[1] Fifteenth Census, *Population*, Vol. V, Table 1, p. 37.

[2] The subject of technological unemployment is discussed more fully in Chapters VII and VIII.

Women in Employment

The gainfully employed population of the United States in 1930 was 78 per cent male and 22 per cent female.[3] In agriculture and transportation, more than nine out of each ten persons engaged were men and boys; in manufacturing 86.6 per cent were male; and in trade 84.2 per cent were male. But in the professions only 53.1 per cent of the gainfully employed were males; in clerical work 50.6 per cent; and in domestic and personal service only 36 out of each 100.[4]

The increase of women and girls in gainful employments was a notable feature of the period. Their numbers rose from 4,005,532 employed females ten years of age and over in 1890 to 10,752,116 in 1930.[5] Though a decline in child labor and increased school attendance reduced the percentage of males ten years of age and over who were employed from 79.3 per cent in 1890 to 76.2 per cent in 1930, the percentage of females who were employed increased from 17.4 per cent in 1890 to 22 per cent in 1930.

TABLE I

GAINFULLY EMPLOYED PERSONS, 1890–1930, TEN YEARS OF AGE AND OVER[6]

(1) Year	(2) Total Persons 10 Years of Age and Over	(3) Total Number of These Gainfully Employed	(4) Per Cent of Population 10 Years Old and Over	(5) Males Gainfully Employed	(6) Females Gainfully Employed
1890	47,413,559	23,318,183	49.2	19,312,651	4,005,532
1900	57,949,824	29,073,233	50.3	23,753,836	5,319,397
1910	71,580,270	38,167,336	53.3 [a]	30,091,564 [a]	8,075,772
1920	82,739,315	41,614,248	50.3	33,064,737	8,549,511
1930	98,723,047	48,829,920	49.5	38,077,804	10,752,116

[a] The 1910 percentage, 53.3, is probably too high. The excess of 3 per cent over 1900 and 1920 was due in part to the methods of enumeration used in 1910. But the heavy immigration of adults 1898–1914 accounts for an extra large employable population between 1900 and 1920.

Domestic service was the only major field in which the number of women exceeded men in 1930, the proportion being 64 women to 36 men. This included hotels and restaurants as well as homes. In clerical occupations the numbers of the two groups were approxi-

[3] Fifteenth Census, *Population*, Vol. V, Chap. 2, Table 1, p. 37. The table gives the percentage of males as 76.2. This seems to be an error.

[4] *Ibid.*, Table 2, p. 39.

[5] *Ibid.*, Table 1, p. 37.

[6] Compiled from Fifteenth United States Census, *Population*, Vol. V, Table 1, p. 37.

mately equal, men constituting a trifle less than 51 per cent of the total. In the professions there were 47 women to each 53 men. But in the industrial occupations the picture was very different. Only 16 out of each 100 workers in merchandising activities were women; only 13.4 of those in manufactures; 8.7 in agriculture, and 7.3 in transportation. In the manufacturing field the ratio of women workers to men was larger in both 1920 and 1910 than in 1930; in trade and the professions it was about the same in 1920 and smaller in 1910; but in domestic service there was a big gain in women workers in 1930 over both of the preceding censuses.

Women and girls comprise a larger proportion than formerly of the employed population of the United States for two reasons: there is a larger proportion of females in the population than there was twenty years ago, and a larger percentage of women have gone into gainful occupations. The heavy immigration between 1910 and 1914 was two-thirds male. In 1920 there were 104 males to each 100 females in our population. Among the foreign born whites the ratio in 1920 was 121.7 males to each 100 females. In 1930, after 15 years of low immigration, the ratio for the whole population was 102.5 males to 100 females and in the native born population 101.1 males per 100 females.[7]

Unless the immigration laws are relaxed the whites in the United States will move slowly toward an equality in numbers between the sexes, and may approach, in time, the situation which obtains among the negroes, where the number of males was but 99.2 to each 100 females in 1920 and but 97 to each 100 in 1930. In the negro population the number of males has been slightly below that of females since 1840, since its increase has depended entirely upon its birth and death rates. The tendency of a population depending entirely upon natural increase for its growth to develop an excess of females is largely due to the higher death rates among males. On the average their occupations are more dangerous than those of women, and a larger number of men than women live under conditions where proper care of their health is difficult.

An increasing importance of women in the gainfully employed population is to be expected in a country undergoing the population changes which have been occurring in the United States, particularly since 1915. On the other hand the increase in the number of girls attending high schools and colleges between 1910

[7] Fifteenth Census, *Population*, Vol. II, Table 1, p. 97.

and 1930 partly counterbalanced the tendency to go into employment and the 1930 census indicated that popular opinion had over-estimated the increase in the numbers of employed women and girls.

The greater tendency of women to live in cities tends to increase the importance of women in urban employments. It is men who carry on the non-agricultural industries outside of cities, such as mining, lumbering, road and railroad construction, and fishing. In American cities, all classes of population except the foreign born show an excess of females, due to the concentration in the cities of the females who migrate from their childhood homes. The rural sections, both agricultural and non-agricultural, show an excess of males.

In 1930, one-fourth (24.8 per cent) of the women of the United States *fifteen* years of age and over, were gainfully employed.[8] Nearly 30 per cent (28.9 per cent) of the employed women were married.[9] The proportion of women over fifteen who were employed increased a third in the forty year period; [10] the proportion of the employed who were married more than doubled, increasing from 13.9 per cent to 28.9 per cent.[11] In 1890 there were only 515,260 married women in employment; in 1930 there were 3,071,000.[12] The employment of married women increased twice as fast as that of women in general. In 1890 one employed woman out of seven was married; in 1930, one out of three.[13]

The proportion of married women was high in 1930 in all but the professional and clerical groups. One is not surprised at the figure for agriculture, 34.6 per cent married, for many married women are farm operators. But manufacturing runs almost as high, 32.4 per cent married; while public service, trade, and domestic service are all above 35 per cent. Among professional women, however, the proportion married was only 19.3 per cent in 1930 and among clerical workers, a large number of whom are young girls, but 18.3 per cent.[14] During the 1920–30 decade the absolute

[8] Fifteenth Census, *Population*, Vol. V, Table 1, p. 272.
[9] *Ibid.*
[10] *Ibid.;* and Twelfth Census (1900), *Population*, Part II, p. lxxxi, Table XLIV; and Eleventh Census, *Population*, Part II, p. cxxi.
[11] Fifteenth Census, *Population*, Vol. V, Table I, p. 272.
[12] *Ibid.*, and Eleventh Census, *Population*, Part II, Table 90, p. 408.
[13] Eleventh Census, *Population*, Part II, p. civ and p. 408; Fifteenth Census, *Population*, Vol. V, p. 272.
[14] Fifteenth Census, *Population*, Vol. II, Table 2, p. 272.

numbers of women in manufactures[15] and agriculture declined, while the number in domestic service increased sharply. Between 1910 and 1920 there was a 22.7 per cent decrease in women in domestic service; between 1920 and 1930, a 61.5 per cent increase. There was both a considerable shifting and a widening of the occupational distribution of women workers in the twenty years ending in 1930.[16] Women were enumerated in all but 30 of the 534 occupations listed by the 1930 census. In some occupations like those of dressmaking, milliners, and laundresses (outside of laundries) there was a decrease in the numbers in the occupations. But, on the whole, new inventions and improved methods in industrial processes have opened up a steadily widening range of new opportunities. For instance, the greatly increased use of small electrical appliances in homes and public buildings furnished a large amount of employment for women, whose quick, deft fingers were peculiarly fitted for bulb making, certain intricate processes in the manufacture of radios, telephones, fans, permanent hair-wavers, and other electrical articles. Many of the assembling and finishing processes in aeroplane and furniture manufacturing have become women's occupations. The new rayon industry seems peculiarly adapted to their skills, and because of the comparative lightness of aluminum, it is now possible to employ more women in the manufacture of cooking utensils than in former years. The rapidly extended use of such conveniences as the telephone and typewriter increased the employment opportunities for women both in their manufacture and in their operation.

Inventive genius has not only made possible such new commodities and industries as are mentioned above, but has so altered the process of manufacturing in some of the older industries as to cause revolutionary changes in the character of the jobs involved. Hand processes are now being done by machines; skilled workers are replaced by semi-skilled; craftsmen by the machine tenders. When repetitive routine and dexterity of fingers become the essential qualifications, skilled craftsmen are often replaced by relatively unskilled women. This has resulted in an increased proportion of

[15] Though the number of women in manufactures declined, the number of women in *factories* increased 115,510. The decline in manufactures was due to the partial dying out of small manufacturing shops, such as dressmakers, milliners, and tailors. The factories which took over their business increased their labor forces but not sufficiently to balance the decline in numbers in the shops.

[16] See note 14.

women in the glass and tobacco industries and in the railroad repair shops. The modern conveyor system, eliminating as it does the lifting and pushing of heavy weights, has further extended the employment possibilities for women. In a wide range of occupations such feminine qualities as neatness, quickness, dexterity, discrimination for line and color, good taste in dress and manners, aptitude to learn, have opened opportunity for women workers, and in some lines, such as office work, the expansion of labor force has largely been in women workers. There were nearly 600,000 more women employed as office clerks in 1930 than in 1910. There were five times as many hairdressers and manicurists.

The 1930 census showed that men were increasing in numbers more rapidly than women in 17 important occupations, including "the territory formerly held by women as compositors, linotypers, and typesetters"; and textile mill operatives and musicians. Women were gaining more rapidly than men in 26 occupations, including college presidents and professors, real estate agents, auto factory operatives, telegraph operators, barbers, hairdressers, and manicurists. In most of these occupations men still outnumber women, but a larger percentage of women is coming in with the growth of the occupations. Women are gaining rapidly in white collar occupations generally, which reflects in part the educational advantages opened to women in this country.

Women have been disappearing from some of the occupations which they invaded during the war. In transportation and communication they have been able to occupy an important place only in telephone operation and, to a less extent, office work. The female street car conductors, switchmen, and flagmen have disappeared. They have lost factory jobs where heavier machinery called for men's strength.

More stringent child labor laws [17] combined with increased popularity of secondary and college education for girls have raised the average age of female employees. The proportion of girls under 15 years of age to the total number of females employed dropped from 10.2 per cent in 1890 and 7.9 per cent in 1910 to 1.9 per cent in 1930.[18] The increased employment of married women and the reduction in the employment of young children

[17] Fifteenth Census, *Population*, Vol. II, Table 2, p. 115.

[18] For more detailed information the reader is referred to Dempsey, Mary V., *The Occupational Progress of Women, 1910 to 1930*, United States Women's Bureau, Bulletin 104, 1933.

TABLE II

Gainfully Employed Children Aged 10 to 15 Years, 1890–1930 [19]

Year	Number			Percentage of Total Population of Given Ages			Percentage of All Gainfully Employed Persons by Total and by Sex		
	Total	Boys	Girls	Total	Boys	Girls	Total	Boys	Girls
1890	603,013 [a]	400,586	202,427	17.2 [a]	. . .	. . .	. . .	. . .	. . .
1900	1,750,178	1,264,411	485,767	18.2	26.1	10.2	6.0	5.3	9.1
1910	1,990,225 [b]	1,353,139	637,086	18.4	24.8	11.9	5.2	4.5	7.9
1920	1,060,858	714,248	346,610	8.5	11.3	5.6	2.6	2.2	4.1
1930	667,118	460,742	206,376	4.7	6.4	2.9	1.4	1.2	1.9

[a] Figures for 1890 probably low as classification was 10 to 14 years instead of 10 to 15 years.
[b] Figures probably exaggerate facts. Same thing possible for 1900 returns. Cf. Chap. I of Vol. IV, Thirteenth Census.

[19] United States Bureau of the Census, *Abstract of the Fifteenth Census*, 1932, p. 339; Thirteenth Census, Vol. IV, *Population, Occupation*, Table 28, p. 70 (cf. discussion in Chapter I relative to possibility that figures are excessive); Eleventh Census, *Population*, Part II, p. cxxi, Table on Occupations by age periods.

have been important factors increasing the percentage of female employees 20 years of age and over from 71.68 per cent in 1890 to 84.5 per cent in 1930. This compared, in 1930, with 92.1 per cent of male workers 20 years of age and over.[20]

Child Labor

The change in child employment is shown in Table VI—a decline from 1,264,411 employed boys 10–15 years of age in 1900 to 460,742 in 1930 and a drop in the number of girls from 485,767 in 1900 to 206,376 in 1930. Taking into account the fact that our population doubled in the 40 year period, in 1930 there were approximately 2,400,000 children in school who would have been at work if the 1900–10 situation had continued to 1930. Nearly all of the reduction has occurred since 1910. It is in the last 20 years that the battle against child labor has yielded its important results.[21]

Negro children have not benefited from the progress to the same extent that white children have. In 1920 the proportion of negro children employed was nearly four times as great as among the whites, and in 1930 the difference was five to one.[22]

The Immigrant Labor Supply

The immigrant factor in the industrial labor supply became so important between 1900 and 1914 that in many industries the manual occupations were almost entirely filled by immigrants. The report of the United States Immigration Commission (1911) records that more than one-half of the 619,595 industrial workers studied by the commission in 1908–09 were of foreign birth, and that only one-fifth of the total number of wage earners in 21 principal branches of industry were native whites. Almost three-fifths were of foreign birth; 17 per cent were the children of immigrants and the other 5 per cent negroes.[23]

This picture had changed a great deal by 1930. The reduction in

[20] *Ibid.*, p. 115; and Eleventh Census, *Population*, Part II, p. cxxiii.

[21] For more detailed information about child labor, 1920–30, cf. *Child Labor, Facts and Figures*, U. S. Department of Labor, Children's Bureau, Publication No. 197, Washington, 1933.

[22] In 1920 the percentage for employed negro children 10–15 years old was 18.5; of native whites 5.3; in 1930 the percentages were 16.1 and 3.3. Fifteenth Census, *Population*, Vol. V, Table 5, p. 117, and Fourteenth Census, *Population*, Vol. IV, Table 5, p. 377.

[23] Jenks, J., and Lauck, W. J., *The Immigration Problem*, Funk and Wagnalls Co., 6th Ed., 1926, Chap. IX, gives a good summary of the findings of the Commission on this point.

immigration from 1914 onward resulted in a steadily increasing proportion of industrial jobs passing into the hands of the native born though large numbers of these native born were the children of immigrants. In mining 20 more workers per hundred were native born in 1930 than in 1910; in manufactures and transportation seven more per hundred; and in commercial pursuits, five more per hundred. The contention of American labor, so vigorously pressed upon Congress for two generations, that immigration was keeping American wage earners out of a wide range of occupations seems to have been validated by the country's experience since 1914. American-born wage earners occupied in 1929 a large number of jobs of kinds that were predominantly in the possession of immigrants up to 1920. It is uncertain whether this has materially lessened the difficulties of American labor in finding work. Improved technology was introduced so rapidly after the check on immigration that by 1925 the machine had become almost as severe a competitor as the immigrant had been.

Examination of the immigration statistics [24] shows that during the period 1914–21 there was a decline of 1,544,000 in the number of skilled laborers entering the United States compared with the seven years before 1914; and that another shortage of 1,136,000 was registered in the first seven years under the quota laws. Moreover, the proportion of males in the immigration dropped from an average of 60 per cent in the pre-war period to a little over 50 per cent in the 'twenties, which was due principally to the large number of wives and mothers in the post-war immigration, in part made possible by quota preferences. The seven years 1914–21 showed a decline of 2,578,000 and the first seven quota years a decline of 1,619,000 in the number of gainful workers brought in by immigration.

Machinery, the negroes, the mountain whites of the South, and female labor, were the sources from which employers drew substitutes for the excluded immigrant labor. An examination of any major industry, such as the Detroit automobile industry, will discover the presence of all of these substitutes for the former fresh supplies of immigrants.

The large scale infiltration into northern industry of southern negroes deserves more than passing notice. It began during the war decade. In 1910 there were but 1,025,674 negroes in the

[24] United States Commissioner of Immigration, Annual Reports.

northern states. Johnson says that previous to the war migration from the South added about 10,000 a year to these numbers.[25] During the war, with European immigration sharply reduced, many industries expanding rapidly and war industries being developed, there was a strong demand for common labor. Northern industrialists sent their labor agents into the South. The northern negro press, emphasizing the higher wages in the North, freedom from lynching, and protection by the courts, reinforced the efforts of the labor agents (not with any particular intention to do so).[26] The boll weevil was driving tens of thousands of negroes out of the counties where they had lived. By 1920 the number of negroes in the North had increased 447,551 over 1910, and by 1930 another 946,920 had been added to the negro population of the North.[27]

The negro population of Detroit increased 611 per cent in the 1910–20 decade; of Cleveland 308 per cent; Chicago 148 per cent; and New York 66 per cent. About three-fourths of the negro population of the North in 1920 were in ten urban industrial areas: Indianapolis, Detroit, Toledo, Cleveland-Youngstown, Kansas City, Pittsburgh, Columbus-Cincinnati, St. Louis, Chicago, Philadelphia, New York. The total negro population of this group of cities was approximately 1,140,000.[28]

Negroes came in numbers to the area reaching from Chicago and St. Louis eastward to Detroit and Cleveland. Their region of "exodus" centered in Louisiana, Mississippi, Tennessee, and Texas. New York, New Jersey, Pennsylvania, and contiguous areas drew from Alabama, Florida, Georgia, the Carolinas, and Virginia. The negroes came principally from rural areas, from sugar cane, cotton, tobacco, lumber, and turpentine. Their living and working habits had been formed by an agricultural environment.[29] Their swift transplantation to highly industrialized areas

[25] Johnson, Charles S., *The Negro in American Civilization*, Henry Holt, p. 16.
[26] Cf. Kerlin, Robert T., *The Voice of the Negro*, Dutton, New York, 1920.
[27] Fifteenth Census, *Population*, Vol. II; compiled from Table 15, p. 39.
[28] Computation made by Professor M. M. Work of Tuskegee. Johnson, *op. cit.*, p. 17, 16.
[29] From 1890 to 1910, approximately 60 per cent of the negro male gainful workers were in agriculture. From 1910 onward the percentage dropped rapidly until in 1930 but 40.7 were in agriculture. A third less negro males were in rural life. During the same years the number of negro males in manufactures increased from 7 per cent in 1890 to 17.7 per cent in 1910 and 25.2 per cent in 1930. Similar changes occurred for negro women. In 1890, 43.8 per cent of them were employed in agriculture, but in 1930 only 26.9 per cent. In 1890 but 2.8 per cent of them were in manufactures and in 1930 only 5.5 per cent. In domestic service the story is different. The percentage of males dropped from 21.8 per cent in 1890 to 8.5 per cent in

involved radical readjustments. Their manner of living and their modes of thinking had to be recast. The readjustment from the modus vivendi of agricultural peasants to that of industrial wage earners involved as great changes in their lives as in those of European peasant immigrants to the United States.

The negro, like the immigrant, created for the northern industrial workers the problems which arise when new competitors accustomed to low wages and low standards of living come in. But, unlike the immigrant, the negro's competition also brought with it a race problem. When competition for jobs became acute in 1921 the white workers had the race prejudice on their side. Unless negroes would work for much lower wages than whites, employers were certain to give the whites preference. And the negroes, whenever the situation involved any considerable amount of employment, did not dare to undercut white wages lest race riots and lynchings result. The negroes' color marked out a group whose economic conduct could be observed; the nation wide race prejudice in the United States supported the white workers in preventing negroes from getting a competitive advantage in job-seeking. The negro could not, therefore, drive whites out of industries by undercutting them in the way that successive waves of white immigrants had done in textiles, meat packing, coal mines, steel mills, and many other American industries. Though the negroes brought with them a rural psychology and an habituation to low wages and low standards of living, their consciousness of dangers involved in too strong competitive pressure upon the whites caused them to adjust themselves more rapidly to the demands of white workers upon employers than was true in the case of the European immigrants.[30]

When the negroes first came North they did not, of course, get as high wages as whites in most of the industries. They were brought North by employers seeking cheap labor. As Johnson aptly said, "the condition of employment for them, just as in the case of women, whether peacefully or as strike breakers, is

1910 and 1920 and increased to 11.6 per cent in 1930. For females, the percentage was 52 in 1890, only 42.4 in 1910, 50.3 in 1920, and 62.6 in 1930. Recognizing a possible margin of error by enumerations in connection with this item, it is nevertheless apparent that there was a sharp increase of negro women in domestic service 1920–30. Compiled from United States Censuses, 1890–1930, Volumes on *Population* and *Occupations*.

[30] Cf. National Urban League, *How Unemployment Affects Negroes*, New York; March 1931. Johnson, *op. cit.*, Chaps. III, IV, VII, VIII.

smaller pay." [31] Since there was no acute depression during the years when the heaviest migrations occurred, the white wage earners were not concerned at first because negroes were employed at lower wage scales. It reinforced their sense of racial superiority. But as soon as unemployment began to increase the situation was different. Johnson reached the conclusion that for unskilled work in the North there is little difference between wages paid to negroes and to non-union whites; that for skilled work in the North the negro is paid practically the same wages but does not get free access to the work; and that on piece work in the North the negro is paid the same rates but is not allowed free access to the jobs on which workers can earn the highest pay. In the South, on all grades of work there is ordinarily a dual wage scale but the negro has freer access to the work than in the North.[32]

It should be noted in this connection that the economic problems of the negro women have been particularly difficult. They have been impeded in getting employment by both race and sex. They have had far less success than negro men in breaking into urban industrial and commercial employments. The proportion of employed negro women is almost twice as large as that of white women, but they are confined to a much narrower range of employments, principally in domestic occupations and in southern agriculture, but with a sprinkling in professional, commercial, and industrial work.

But the opportunities of negro males also have been circumscribed in recent years. Since 1923, there have been declining opportunities for work in cotton fields. There has been a contraction of negro employment in the coal mines of West Virginia, Alabama, Tennessee, Illinois, and Pennsylvania. The southern lumber industry has been less prosperous, and negroes have been losing out there as well as in iron and steel and construction. Technological and depression unemployment have been causing whites to reach out for jobs, such as carpentering in the South, which were formerly held by negroes. In textiles, the oil fields, and food industries a similar process has been under way. And the negro labor forced out of employment has more difficulty in securing new opportunity than does white labor in times when there are more than a minimum number of whites out of work.

[31] Johnson, *op. cit.*, p. 58.

[32] *Ibid.*, p. 55. Cf. also Daugherty, Carroll R., *Labor Problems in American Industry*, Houghton Mifflin, 1933, pp. 336–345.

Occupational Redistribution of Labor Supply, 1910–1930

The occupational redistribution of the American people which occurred during the 20 years 1910–30, was one of the most interesting aspects of that great developmental era.[33] Disregarding the many industries and occupations the growth of which corresponded roughly to the growth in population and the economic system, one can pick out many striking expansions in employment which are distinctly characteristic of the period. It is these expansions which account for the fact that the numbers unemployed were far fewer in the late 'twenties than the numbers displaced by technical progress and the dying down of some industries.

There were nearly 220,000 more people working in banks and brokerage houses; 378,000 more employees of insurance companies; 115,000 more real estate agents; 519,000 more retail merchants; and 443,000 more bookkeepers and accountants. These reflect the tremendous growth in selling and buying which went on during the period. Detailed analysis of the retail merchant classification finds about 55,000 new dealers in automobiles and accessories; 12,000 additional candy stores and 33,000 new book stores; over 100,000 new groceries; 180,000 more filling stations; and a decrease of 6000 jewelry stores.

There were 1,129,000 more salesmen and saleswomen in 1930 than in 1910; 1,542,609 more professional people, and 425,000 more public employees, not including teachers. The number of teachers approximately doubled. Half a million more people, mostly women, found employment in a school system enlarged to care for a third more population with better educational facilities. The number of trained nurses increased more than four times as much as the number of doctors and dentists. There were 212,000 more trained nurses and 12,000 fewer midwives.

A wide range of mechanical occupations characteristic of the period showed large increases. Factory officials increased from 125,000 in 1910 to 313,000 in 1930. There was an increase of 138,000, nearly 300 per cent, in the number of technically trained engineers. There were more than 200,000 additional garage mechanics and 160,000 additional electricians. There were 488,000 machinists and millwrights in 1910; 895,000 in 1920; and 761,000

[33] Fifteenth Census of the United States, *General Report on Occupations*, Table 2, p. 574; Fourteenth Census, *Occupations*, IV, 42; Thirteenth Census, *Occupations*, Vol. IV, p. 53 ff.

in 1930. The war years inflated this occupation above peace time needs. Air-transport mechanics were not listed in 1910. There were 638,000 in 1930. Painters and varnishers jumped from 335,000 to 525,000; largely as a result of the building boom of the 'twenties, and the growth of the auto and electrical equipment industries. Plumbers and other skilled building tradesmen nearly doubled in numbers. In iron and steel, the number of employees jumped, in spite of technical progress, from 369,000 up to 651,000.

The commercial auto transportation industry had a rapid development. There was an increase of 935,000 in drivers of trucks and busses, which more than absorbed the decrease of 335,000 in teamsters and 140,000 in deliverymen. There was an increase of employees in transportation as a whole of nearly a million and a quarter persons in twenty years.

A surprising number of people were absorbed into occupations of secondary importance. There were 88,000 more male barbers and 91,000 more female in 1930 than in 1910; 75,000 more employees in dry cleaning, and 105,000 more in restaurants; 45,000 more elevator operators; 196,000 more janitors; 43,000 more porters; and similar tens of thousands taken on as attendants in dance halls, pool rooms, bowling alleys, libraries, motion picture theaters, and various sorts of offices; as cleaning women, janitors, porters, chiropractors, credit men and collectors, bootblacks, and a long list of other miscellaneous occupations. The numbers in other occupations, like dressmakers, tailors, and midwives, decreased substantially.

SECTION II

WORKING CONDITIONS

CHAPTER IV

THE REWARD OF LABOR

The years from 1900 to 1930 witnessed a rise in the standard of living of American wage earners so unprecedented that it attracted comment throughout the world.[1] The years 1930–33 saw a collapse of that scale of living as spectacular as its rise. As a matter of fact not all types of wage earners and not all industries or localities shared fully in the benefits of the period of progress. Millions of wage earners still lived close to the poverty line. Some, like the bituminous coal miners and workers in lumbering, sawmills, tobacco manufactures, and cotton and woolen textiles, lagged behind throughout the period; others, like the automobile workers, metal workers, and the building trades gained more ground than most other wage earners and at earlier dates. The printers did not obtain as large wage increases during the war years as many other crafts, but continued to get increases throughout the 'twenties, reaching an advanced position by 1929. These are illustrative of the fact that the broad outlines of the picture conceal many internal differences and contradictions.

It is the purpose of this chapter to trace the history of wages and their purchasing power during the period 1890–1933. Tables of wages and index numbers will not be used more than is absolutely necessary. The important thing is to know what happened to the economic welfare of America's wage earners during the period, and why. A careful check of the various indexes and wage series did not reveal important differences.[2] None of them is absolutely

[1] Cf. for instance, Stamp, Sir Josiah, *Some Economic Factors in Modern Life*, P. S. King and Son, London, 1929; Muir, Ramsay, *America the Golden*, Williams, 1927; Adam, H. G., *An Australian Looks at America*, Allen and Co., 1928; Köttgen, Karl, *Das Wirtschaftliche Amerika*, Berlin, 1926; Austin, Bertram, and Lloyd, W. F., *The Secret of High Wages*, F. W. Unwin, London, 1926; Siegfried, André, *America Comes of Age*, Harcourt Brace, New York, 1927.

Less enthusiastic pictures of the American wage earner's lot in the 'twenties will be found in Gregory, T. E., "Is America Prosperous?" *Economica*, March 1930, pp. 1–13, and in *Amerikareise deutscher Gewerkschaftsführer*, 1926.

[2] Brissenden, Paul F., *Earnings of Factory Workers, 1899 to 1927*, Census Monograph No. X, 1929; Coombs, Whitney, *The Wages of Unskilled Labor in the Manufacturing Industries of the United States, 1890–1924*, Columbia University Press, New York, 1926; Douglas, Paul H., *Real Wages in the United States, 1890–1926*, Houghton Mifflin, 1930; Fisher, Waldo E., and Bezanson, Anne, *Wage Rates and*

correct, for they are all compiled from original data that are incomplete and, in spots, inaccurate.

It must not be forgotten that the thing the wage earner is interested in is consumption and savings, not statistical trends. Index numbers showing higher "real wages" per hour in a year of depression are of slight comfort to wage earners walking the streets or working part time. The following pages attempt to picture what happened to wages during the last 40 years in terms of reality rather than statistics.

It is necessary to use rather sweeping *wage-averages* to draw any picture at all. These conceal fully as much as they reveal about wages. Let it be remembered that there are thousands of kinds of jobs in the United States—no one knows exactly how many, not even the Census Bureau. Let it be remembered further that in every one of these occupations there is a considerable range between the lowest and the highest wages paid, and that the average wage is apt to be but one-half to three-fourths as high as the highest wage paid. The average wage roughly approximates the wages received by a large number of the persons employed but is not necessarily the exact wage received by anybody. Its use in this historical analysis is justified by the two facts that average wages, classified by industries and occupations, roughly indicate the standard of welfare attained by workers in the various occupations at given dates, and that changes in average wages from year to year reflect pretty accurately the changes in economic welfare of wage earners for the periods in question.[3]

Various types of averages are used by statisticians to depict wages, depending upon the types of data available. For instance, in the case of the building trades, they have to use hourly *rates;* for the bituminous coal miners, hourly or daily *earnings;* and for most railroad employees, weekly or annual earnings. In some cases the figures can be corrected by allowances for unemployment, in others they cannot. Generally this correction can be but approximated. Moreover the averages conceal wide differences in the

Working Time in the Bituminous Coal Industry, 1912–22, University of Pennsylvania Press, 1932; National Industrial Conference Board, *Wages in the United States 1914–30*, and, annual reports for 1931, 1932; U. S. Bureau of Labor Statistics, *History of Wages in the United States from Colonial Times to 1928*, Bulletin 499, Washington, 1929.

[3] Readers interested in checking more closely the nature and value of these averages are referred to the publications of Brissenden, Douglas, and National Industrial Conference Board listed in previous footnote.

time lost in different plants, in different occupations, and by different individuals, in the same industry. For instance, it was pointed out in a careful study of the coal industry that while the bituminous miners averaged 220 days of working time in 1920, "Slightly more than 2 per cent of the employees worked less than 100 days; 23.5 per cent, 100 to 179 days; 21.3 per cent, 180 to 219 days; 46.6 per cent 220 to 299 days; and 6.5 per cent, 300 days or more," and that these "sharp differences in working time occur not only between fields but to the same degree in a single field. One mine with natural advantages and good business connections may secure contracts for its entire output while neighboring mines, unable to meet competitive prices, may be shut down over one half of the time." [4] Similar differences existed between manufacturing plants in the same industry, contracting concerns, and other types of businesses.

A census report on manufacturing wages shows, for instance, that in 1899 the average annual wage of 39 manufacturing industries was $498. But in only 11 of the 39 industries was the annual average wage within $50 of the general average, whether above or below. There were six in which the average was below $400 and three in which it was above $600, and the averages of the various industries ranged from a minimum of $306 in woolen manufactures to a maximum of $657 in petroleum refining. A similar dispersion around the average is shown in the table for each manufacturing census down to 1925, the last year covered by the table.[5]

The same study shows that in 23 industries employing large numbers of women, men's wages ranged from 150 per cent to 300 per cent of women's wages. On the average (in the 1899, 1914, 1923 Manufacturing Census) men's wages were 187 per cent of women's, and the differential between them was found "to remain fairly constant over considerable periods." So long as the proportions of women and men employed did not change materially, the change in the average level of wages of the industry reflected rather accurately the changes which occurred in the wages of the men and of the women.[6]

In an industry, however, in which there were changes in the

[4] Fisher and Bezanson, *op. cit.*, p. 17.
[5] Brissenden, *op. cit.*, pp. 96–97.
[6] *Ibid.*, pp. 29, 30, 85; 110, Table 44.

composition of the labor force, such as the use of a larger proportion of women in tobacco manufactures; or of unskilled and semiskilled workers in steel and meat packing; or where technological changes were proceeding rapidly, the average earnings of the employees in the industry were modified by these changes independently of changes in the wage scale. The tobacco industry furnished a striking illustration. While average real earnings in manufactures increased about 30 per cent between 1899 and 1927, in the manufacture of cigars, cigarettes, and tobaccos, they did not rise above 1899 in any year and were below 1899 in 23 of the 29 years. The proportion of unskilled labor in the industry more than doubled, the proportion of "woman and child labor" rose from 42 per cent in 1899 to 59 per cent in 1919, and many of the processes were mechanized.[7]

Another common type of situation has not been revealed by changes in wage averages. By technological improvements an automobile factory reduced its labor force nearly 400 (20 per cent) in a period of two years. The average wages of those retained did not change materially, but the total wages earned in the establishment did, and the wage earners displaced suffered severely. Three years later, because of the growth of its business, this company increased its labor force beyond the previous maximum size. Some of the 400 got back into its plant. Again, the average daily earnings per employee were not materially different than in preceding years. But the significance of the company in terms of labor welfare and community welfare was entirely different.

The average of an industry is often carelessly quoted as if it was the average wages of *men* employed in the industry. It is not. It is the average of the wages of all persons employed; men, women, and children, old and young, skilled and unskilled. In the case of some industries, like coal or iron and steel, it closely approximates the average wages of the men employed; in others, like cotton mills or candy factories, it is not representative at all of the wages of adult males.[8]

This point must be kept in mind when considering the adequacy of wages to finance families. The assumption is frequently made that the average wage of an industry is the wage with which heads of families must support their families. The National Indus-

[7] *Ibid.*, pp. 53, 58, 397, 398.

[8] Brissenden, *op. cit.*, pp. 394–396, Table E, Data for Cotton Manufactures, Woolens, Knit Goods.

trial Conference Board was probably correct when it said that "If it were possible to segregate the total earnings of married men from those of other workers, it would doubtless be found that their average earnings exceeded by a considerable amount the average earnings of all workers." [9] Married men are on the average more mature, experienced, and skilled; and a larger percentage of them have attained to the higher paid occupations and positions. It is doubtful if an industry could be found in which the average wages of married men did not exceed the average wages of the industry.

Furthermore, throughout this period, 1890–1932, a large percentage of wage earners' families have had more than one source of income. A study of 12,096 families made by the United States Bureau of Labor Statistics in 1918–19 indicated that the husband typically earned about 90 per cent of the family income; the wife, children, and miscellaneous sources accounting for the other 10 per cent.[10] Again there is the widest possible range in situations when individual cases are considered. In millions of families there is but one wage earner; in millions of others the wife or children earn far more than the 10 per cent shown by the average. There does not seem to have been any material change in the general situation since 1890, and the facts cited for 1918–19 are probably not wide of the mark for any part of the 40 year period. While the average size of families has decreased and a larger proportion of the women, both married and unmarried, are employed, there has been a marked decrease in child labor and a phenomenal increase in high school and college attendance, which partly balance the increase in women workers.[11] Typically, wage earners' families have supplemented the husbands' incomes with other earnings, but just as typically the husbands' earnings have been their chief reliance for support.

Labor's Earnings, 1890–1907

There was little change in the rates of pay of American wage earners from 1890 to 1898, though there were many belts tightened between 1893 and 1897 because of unemployment and slack work. Whitney Coombs' study indicates that the wages of unskilled

[9] National Industrial Conference Board, *Wages in the United States, 1919–29*, New York, 1930, p. 9.

[10] U. S. Bureau of Labor Statistics, *Cost of Living in the United States*, Bulletin 357, p. 4. Cf. also Brissenden, *op. cit.*, p. 7; National Bureau of Economic Research, *Income in the United States*, New York, 1929, Vol. II, p. 296.

[11] Douglas, *op. cit.*, pp. 482–487.

factory laborers were between eight and nine dollars per week throughout the 'nineties, with the lowest rates of the decade about 1894.[12] Paul Douglas found that average earnings in a group of non-union and slightly unionized manufacturing industries ranged from 14 cents to 15 cents an hour during the 'nineties, being lowest in 1894–95, and in unionized manufacturing occupations, from $.324 to $.338, with the same dip in 1894–95.[13] These findings check closely with the index numbers of hourly wages published by the United States Bureau of Labor Statistics, which stood at 69 for 1890 and 70 for 1899 (1913 = 100), dipping downward slightly during the middle of the decade.[14] Average wages in cotton mills (men, women, and children) during the 'nineties approximated $6.50 per week; in boot and shoe factories, $10.00 per week; in bituminous coal mines (men and boys), $10.00; in iron and steel (men), $14.25 for nearly 70 hours' work; in the skilled and organized metal trades, a little over $17.00 per week; factory stone cutters, a little over $19.00; and building trades, $17.00 to $18.00. These are all full time weekly earnings.[15] Douglas' estimate of annual earnings of factory employees shows a fluctuation between $412 and $467 per year during the 'nineties. This average includes men, women, and children, of course.[16]

The comparative stability of wage *rates* during the 'nineties did not bring about an equal stability of earnings, however. Unemployment was three times as bad in the middle 'nineties as it had been from 1890 to 1892.[17] Labor suffered heavily from idleness and part time work. All industries and occupations were affected, though some suffered worse, e. g., building, bituminous coal, railroads, and iron and steel.

The year 1899 was a turning point. The wage stability of the 'nineties was followed by three decades of changing wage levels. The rapid rise in the cost of living from 1898 to 1920; the remark-

[12] Coombs, *op. cit.*, p. 99; cf. also Ralph Hurlin's figures in Douglas, Paul, *op. cit.*, p. 175; cf. also Abbott, Edith, *The Wage of Unskilled Labor in the United States, 1850–1900*, The University of Chicago Press, Chicago, 1905, reprinted in *Journal of Political Economy*, June 1905, pp. 321–367.

[13] Douglas, *op. cit.*, pp. 101, 96; cf. also Wright, Carroll D., *Practical Sociology*, Longmans, Green and Company, 1899, pp. 215–218, 227–233 on wages in 1891.

[14] "Index Numbers of Wages per Hour, 1840–1920," *Monthly Labor Review*, February 1921, XII, 322.

[15] Douglas, *op. cit.*, computed from pp. 96, 101, 114, 115, 137, 143.

[16] *Ibid.*, p. 463.

[17] Hurlin, Ralph G., "Three Decades of Employment Fluctuation," *The Annalist*, October 24, 1921, pp. 387–388; Douglas, *op. cit.*, Chaps. XXIII, XXIV.

able improvements in productive efficiency; the spectacular rise of the automobile, electrical, public utility, and construction industries; and the rising level of wants, all contributed to a rising wage level. Immigration and the increasing domination over working conditions in manufactures by the employer groups retarded the upswing.

At the end of the 'nineties the average wages of American factory employees approximated $450 a year.[18] The cost of living started upward in 1898–99 but wage rates did not rise appreciably for another two years. Some wage increases occurred during 1900, of course, but most of labor's gain in purchasing power in 1899 and 1900 came from increased employment. Only one-half as many workers were idle 1899–1900 as in the immediately preceding years. Coombs' figures show common labor weekly wages at $9.05 in 1901,[19] a gain of only $.25 to $.30 a week over 1899. Douglas found average *earnings* in all industries about $.50 a day higher in 1900 than in 1898, some of which increase was due to improved employment; and average weekly earnings of railroad workers almost unchanged. They stood at $11.49 in 1901, only a few cents better than in the three preceding years.[20] His full time weekly earnings average for the building trades for 1901 was $18.57, an increase of $.92 over 1899.

A report of the United States Commissioner of Labor shows the average earnings of 25,440 heads of families (husbands) to have been in 1901, $621.12. The majority of these men were skilled workmen. Approximately one-half of them lost an average of 9.43 weeks during the year; the balance had steady employment.[21] The report does not give the average earnings of all wage earners in manufactures or other industries. It is a study of individual wage earners and their families, but in manufacturing the average wage would have been from $100 to $125 a year less than the figures given for these heads of families, due to the inclusion of women and child workers. The report shows that the average earnings of men in the mining industries was a little below the figure given and in transportation a little above the $621.12.[22]

[18] Douglas estimated them at $448 in 1899, and Brissenden $446. Douglas, *op. cit.*, p. 463; Brissenden, *op. cit.*, p. 45.

[19] Coombs, *op. cit.*, p. 99.

[20] Douglas, *op. cit.*, pp. 137, 168, 210.

[21] United States Commissioner of Labor, *Eighteenth Annual Report*, 1903, Summary Table, p. 70 and Table IIB, pp. 264–282 and Table IIG, p. 289.

[22] *Ibid.*

From 1902 to 1907 the cost of living increased about 17 per cent. This had been preceded by a 7 per cent increase between 1898 and 1901. Living costs rose, therefore, nearly one-fourth between 1898 to 1907. The wages of unionized workers increased on the average but 14 per cent; non-union wages even less.[23] Brissenden found that the average annual earnings of manufacturing employees increased from but $446 in 1899 to $483 in 1904. He estimated that, *in terms of 1914 dollars* the purchasing power of average wages in manufactures fell from $603 in 1899 to $582 in 1904.[24]

The building trades (union) increased their hourly rates, however, faster than the cost of living rose during these years and their *real weekly earnings* were higher in 1907 than in 1898 in spite of a reduction of five hours (10 per cent) in their working week.[25]

Though wage rates lagged behind the rising prices, labor benefited between 1901 to 1907, with the exception of one year, 1904, from improvement in employment. Unemployment reached low levels in 1901–03 and 1905–07. Steadier work enabled a large number of wage earners to raise their standard of living. It became popular in certain quarters to say that labor was suffering from the cost of high living rather than the high cost of living.

Hurlin's computations show a rise in unskilled laborers' average weekly wages from $9.24 per week in 1901 to $10.44 in 1907. Coombs' figures are slightly lower for both dates, but include only factory workers.[26] These averages reflect a wage structure in which unskilled labor was being paid from $8.00 to $12.00 a week in 1901 and from $9.00 to $13.50 in 1907, with the majority earning rates intermediate between these extremes. In Douglas' so-called "payroll manufacturing industries," largely non-union, average weekly earnings advanced from $9.47 in 1901 to only $10.55 in 1907, and in his six union manufacturing industries

[23] For cost of living trends 1890–1907 cf. Bulletin 77, U. S. Bureau of Labor; also Douglas, *op. cit.*, Chap. II.

[24] Careful checking revealed that this census average wage is very close to actual money earnings and runs about 20 per cent below full-time earnings throughout the 29-year period studied by Brissenden. It follows that the fluctuations in the average earnings figure reflects faithfully the changes which occurred in full-time earnings for the period as well as average actual earnings. Cf. Brissenden, *op. cit.*, pp. 52, 53, 96–97.

[25] Douglas estimated an increase of $4.16 per week in their full time weekly earnings which raised their "real wage" index from 94 to 99 (1914 = 100). Douglas, *op. cit.*, Chap. VII, especially pp. 135, 136, 137.

[26] *Ibid.*, p. 175, gives a comparison in parallel columns of the Hurlin and Coombs averages.

from $18.34 to but $19.64.[27] Brissenden estimated a more rapid rise in wages between 1901 and 1907 than did Douglas or Coombs. His index of money earnings for all manufacturing industries rose from 82 in 1901 to 101 in 1907, but he found wide variations between the increases in different industries.[28]

1908–1914

The cost of living dropped a little in the depression of 1908 and did not resume its upward trend until the latter part of 1909. In manufactures wages fell enough to balance the decline in living costs. It must be remembered that the plentiful employment of the years 1900–07 had stimulated immigration to record volume. Nearly six million immigrants entered the United States from 1899 to 1907. At least two million immigrants were added to the labor supply between 1896 and 1907. More immigrants entered the United States in 1907 than during any other year in American history. The panic of late 1907 and the acute depression of 1908 found the American labor market glutted. In addition, so many people had migrated from the country to the cities that the nation was concerned lest agriculture languish.[29]

The economic collapse of 1907–08 therefore came at a time when labor was in a peculiarly difficult position to resist wage reductions. But cuts were not as severe as might have been expected. For one thing it was a short depression. For another the public were aroused by the rapid rise in the cost of living. Both Coombs and Hurlin found average common labor rates close to $10.40 per week in 1907–08.[30] They rose but little in 1909 and 1910. Douglas estimated a shrinkage of average annual earnings in manufactures from $522 in 1907 to $475 in 1908 with recovery to $518 in 1909.[31] Brissenden's estimate of average annual earnings in manufactures in 1909 was $557.[32] Wage rates did not drop appreciably in the transportation and mining industries during the depression of 1907–08 but employment fell off sharply. The building trades continued to push their hourly rates upward but lack of work

[27] *Ibid.*, pp. 124, 118.
[28] *Ibid.*, pp. 176, 201.
[29] The appointment of the Country Life Commission by President Theodore Roosevelt in 1908 was a typical expression of the state of the public mind on this matter.
[30] Douglas, *op. cit.*, p. 175.
[31] *Ibid.*, p. 392, Table 147, Column 1.
[32] *Ibid.*, p. 45.

reduced their annual earnings for 1907–09 below those of previous years.[33] On the whole both money and real incomes were lower during 1908–09 than in the immediately preceding years.[34]

In the period 1910–14, the cost of living continued to rise steadily. By 1914 it was about a sixth higher than in 1906–09. Wages, on the whole, did not keep pace with the rise in living costs. In manufactures and building the approximation was fairly close; in transportation, gas, electric, and telephone companies, and bituminous coal mining, wage increases lagged and equalled only about two-thirds of the increase in living costs. Employment was good, however, up to 1914, so that annual wages did not lag behind living costs quite as much as did wage rates.[35] In 1914, however, depression approximately tripled the numbers unemployed. At least a million workers were laid off and a larger number put on short time. Though wage rates were not materially affected, annual earnings were.

Summarizing the relative trends of wages and living costs for the two decades before the war, Professor Mills pointed out that the gain of wages upon living costs "was at a rate of one half of 1 per cent each year, representing a slow but sustained improvement in well being. The corresponding figure for employees of manufacturing plants is one-tenth of 1 per cent a year. The earnings of these workers barely kept ahead of living costs during this period." [36]

It is safe to say that the wage earners were not conscious of the gain that Professor Mills describes. Undergoing the vicissitudes of repeated periods of unemployment, experiencing in many occupations a less rapid rise of wages than of living costs, they could see that while some groups, like the building mechanics, had made distinct progress, other groups, like the iron and steel workers, employees in meat packing plants, cotton mills, sawmills, tobacco and clothing factories, had not held their own against the rapidly rising cost of living.

The average wage earner was distinctly conscious that this was

[33] *Ibid.*, p. 137, Table 41, Column 1; p. 455, Table 168; cf. also Bradford, Ernest S., *Industrial Unemployment: A Statistical Study of Its Extent and Causes*, Bulletin 310, U. S. Bureau of Labor Statistics.

[34] Cf. also Nearing, Scott, *Wages in the United States, 1908–10*, Macmillan, 1911; *Social Adjustment*, Macmillan, 1911, Chap. IV.

[35] Douglas, *op. cit.*, p. 211; Brissenden, *op. cit.*, pp. 58, 59, 61, 176, 201.

[36] Mills, Frederick C., in *Recent Economic Changes*, National Bureau of Economic Research, New York, 1929, Vol. II, pp. 625–626.

a period when it was hard to save, hard to make payments on a home, hard to give children music lessons.

Ethelbert Stewart pointed out that from 1906–11 the purchasing power even of union labor as a whole was above what it was in 1912 and 1913.[37]

Douglas states that *real* hourly earnings in manufactures were practically stationary 1900–14, averaging from 20.3 cents per hour to 20.9 cents in every year except 1911 when they were 19.9 cents.[38] The picture from 1900 to 1914 is of a labor situation in which the cost of living was rising almost steadily, wage earners struggling, in some cases successfully, in others vainly, to keep their wages rising with the cost of living, a steady and large inflow of immigrants tending to retard wage increases, but a rapidly expanding industrial system and the easy profit margins of a period of expansion making increases in money wages attainable. Such improvement in welfare as labor was able to attain after 1900 came from more plentiful employment rather than from wage rates.

The question whether immigration was preventing wages from rising reasonably was one of the vital problems before the United States Immigration Commission during its investigations in 1908–09.[39] Summarizing its findings the Commission said:

> "It has not appeared . . . that it is usual for employers to engage immigrants at wages actually lower than those prevailing at the time in the industry where they are employed. . . . It is hardly open to doubt, however, that the availability of the large supply of recent immigrant labor prevented the increase in wages which otherwise would have resulted during recent years from the increased demand for labor. . . . The recent immigrant, in other words, has not actively opposed the movements toward better conditions of employment and higher wages, but his availability and his general characteristics and attitude have constituted a passive opposition which has been most effective." [40]

The Early Cost of Living Surveys

The public became acutely conscious of the difficulties created for the average family by the rapid rise of living costs after 1900.

[37] Stewart, Ethelbert, "Are Average Wages Keeping Pace with the Increased Cost of Living?" *Monthly Labor Review*, January 1926.

[38] Douglas, *op. cit.*, p. 111, Table 25.

[39] Reports of the United States Immigration Commission, 42 volumes, particularly Vols. VI–XXV.

[40] Reports of the Immigration Commission, Washington, 1911, Vol. I, pp. 540, 541.

A report of the United States Commissioner of Labor, 1903, on the cost of living showed that the absolutely necessary costs of family support were absorbing, for a large part of the families studied, a larger sum than could be earned by the head of the family, and that most of these families had to obtain a substantial part of their income from boarders, lodgers, or the earnings of wife or children.[41]

Beginning with the publication of Louise More's *Wage Earners' Budgets* in 1907, a number of private studies of wages and living costs appeared in quick succession, producing a marked effect upon public opinion.[42]

These early studies attempted to compute, upon the basis of current retail prices, the necessary cost of living for a family of five at the subsistence level or slightly above. Chapin's study was largely for the purpose of defining a normal family budget in order to calculate proper poor relief expenditures per family. Mrs. More reached the conclusion that in 1906 in New York City "at least $728 a year was essential for absolutely minimum necessities and comforts." Dr. Chapin put the figure at $900 in 1909. All of the budgetary studies of this period set the necessary costs only slightly above a bare subsistence level, providing but little for medical care, insurance, church, union and lodge dues, carfare, and recreation.[43] These budgetary studies made little if any impression upon current wage levels, but they paved the way for

[41] U. S. Commissioner of Labor, *Eighteenth Annual Report*, 1903.

[42] More, Louise B., *Wage Earners' Budgets*, Henry Holt, 1907; Chapin, Robert C., *The Standard of Life in New York City*, Russell Sage Foundation, 1909; Ryan, John A., *A Living Wage*, Macmillan, 1910; Streighthoff, Frank H., "The Standard of Living among the Industrial People of America," Hart, Schaffner and Marx *Prize Essays*, Boston, 1911; Byington, Margaret, *Homestead: The Households of a Mill Town*, Survey Associates, New York, 1911; *Family Budgets of Cotton Mill Workers*, Vol. XVI of *Report on Condition of Woman and Child Wage Earners*, U. S. Bureau of Labor, 1911; Nearing, Scott, *Financing the Wage Earners' Family*, New York, 1913; Kennedy, J. C., *Wages and the Family Budget in the Chicago Stockyards District*, Chicago University Settlement, 1914. Cf. also magazine literature of the period.

[43] The concrete effects of the wage levels which obtained for common labor were graphically described by the investigators of the Chicago Board of Education in October 1908.

"Five thousand children who attend the public schools of Chicago are habitually hungry. . . .

"I further report that 10,000 other children in the city—while not such extreme cases as the aforesaid—do not have sufficient nourishing food; . . .

"There are several thousand more children under 6 who are also underfed, and who are too young to attend school.

"The question of food is not the only question to be considered. Many children lack shoes and clothing. Many have no beds to sleep in. They cuddle together on hard floors. The majority of the indigent children live in damp, unclean or over-

the use of family budgets in wage adjustments during and after the war. It was apparent, however, that the annual wages of a large proportion of the wage earners were insufficient to meet these budgets.

The Reverend John A. Ryan's *Living Wage* (1910) was more than a scientific analysis. It was a powerful indictment of any wage system that provided less to families than a living wage, and set up as a minimum for a living wage food and clothing adequate for health and efficiency, some "holiday clothes" so that a workman could participate in churches, lodges, and social life with self-respect; at least five rooms to a family; the right of children to go to school until 16 years of age; the right of a wife and mother to give all her time to her home and family; and enough income to take care of sickness, savings for old age, insurance, spiritual, and recreational needs. The Encyclical Letter of Pope Leo XIII on the *Condition of Labor*, issued May 15, 1891, laid down the proposition that wages "Must be enough to support the wage earner in reasonable and frugal comfort," and the positions taken in *A Living Wage* were entirely consistent with the official position of the Catholic Church.[44]

Many of the Protestant churches took similar positions. At the first meeting of the Federal Council of Churches of Christ in America, Philadelphia, December 1908, there was adopted a Social Creed, closely similar to the declaration of social ideals which the General Conference of the Methodist Episcopal Church had adopted in May of that year. Among other things the Creed stated that the churches "must stand for" "a living wage as a minimum in every industry, and for the highest wage that each industry can afford" and "For the most equitable division of the products of industry that can ultimately be devised." This declaration, revised and strengthened at Chicago in 1912, in 1919, and again at Indianapolis in December 1932, has represented the consistent position of the Protestant churches since 1908.[45]

The wages and working conditions of women were widely dis-

crowded homes, that lack proper ventilation and sanitation." Report of Minutes, Board of Education, City of Chicago, October 2, 1908, p. 4.

[44] The Pope's letter, some 36 printed pages, is published in full in George, Henry, *The Condition of Labor*, United States Book Company, New York, 1891. The letter is an attack upon Socialism and Henry George's book is a reply to the letter from George's particular point of view.

[45] *Social Ideals of the Churches*, Federal Council of the Churches of Christ in America, New York, 1933; cf. also *The Protestant Churches and the Industrial Crisis*, Edmund Chaffee, Macmillan, 1933.

cussed during this decade. The agitation for minimum wage legislation was at its height. Public opinion was aroused. Efforts were incessant to shorten women's hours of labor and raise their wages.[46] The controversy over women's wages increased public interest in the wage situation as a whole.

Summarizing the period from the late 'nineties to the war, it is apparent that the increases in money wages followed previous upward movements of the cost of living and that the characteristic problem for Labor throughout the fifteen years was one of obtaining successive wage increases to meet the continuing rise of living costs. On the whole, Labor probably gained a little ground; but in some industries, as has been pointed out, wage increases fell far short of the increased cost of living. Underlying the specific wage situations of the period was the increasing demand for labor on the one hand, due to rapid industrial development, and on the other the rapidly increasing supply of labor due to the tremendous immigration between 1900 and 1914.

The War Period

The war years skyrocketed the cost of living. The rise in the five years 1915–20 was two and one-half times that of 1894–1914, i. e., the annual increase in wage earners' cost of living during the price inflation of the war period was about 10 times as rapid as during the previous 20 years.[47] What happened to wages, particularly to real wages? To answer the question it is necessary to follow the year to year movement. For wage earners live by years and weeks, not by decades; and during the war each year brought new situations.

The period of rapid change did not begin until late in 1915. Employment continued slack during the early part of the year, but improved steadily during the latter part. Both prices and

[46] Cf., e. g., U. S. Bureau of Labor Statistics, *Report on the Condition of Woman and Child Wage Earners in the United States*, 19 volumes, 1910–12, *Summary of the Report*, Bureau of Labor Statistics, Bulletin 175.

Cf. Summary of Early Agitation on Women's Wages, Armstrong, Barbara N., *Insuring the Essentials*, Macmillan, 1932, Part II, Section VI; Butler, Elizabeth B., *Saleswomen in Mercantile Stores*, Charities Publication Committee, New York, 1913; Van Kleeck, Mary, *The Artificial Flower Makers*, Charities Publication Committee, New York, 1913; *Women in the Bookbinding Trade*, Charities Publication Committee, New York, 1913; Odencrantz, Louise, *Italian Women in Industry*, Charities Publication Committee, New York.

[47] Cf. Cost of Living Index of U. S. Bureau of Labor Statistics, published currently in *The Monthly Labor Review;* the research reports of the National Industrial Conference Board on the *Cost of Living in the United States;* Douglas, Paul H., *Real Wages in the United States*, Part I, especially pp. 41 ff.

wages showed an upturn in the latter part of the year. The cost of living jumped nearly 13 per cent [48] from December 1915 to December 1916. Douglas estimated that wages in *all industries* rose an average of $1.32 per week, or 9 per cent, during 1916. He found that a group of manufacturing industries which did not benefit much from war orders experienced a decline in real wages in spite of the fact that they were unionized, while another which included important "war industries" obtained average increases in real wages of 8 per cent, though they were predominantly non-union industries.[49] Brissenden concluded from his census data that real earnings in manufactures increased nearly 16 per cent from 1915 to 1916. The Douglas and Brissenden conclusions are not entirely consistent, but were done by different methods and covered different groupings of industries. It is highly probable that Brissenden's method exaggerates labor's gain in real wages.[50] Douglas and Brissenden agree, however, on the significant point that in 1916 the experiences of workers in different industries, occupations, and localities, so far as purchasing power is concerned, were radically different. Brissenden's tabulations show a decline in real earnings in some industries, small gains in others, and large gains in a third group.[51] These variations between industries in gains or losses in real wages were due principally to the extent to which the industries did or did not benefit directly from European war orders. Douglas contrasted wages in two groups of manufacturing industries, one a group of "union" industries, the other a group of "payroll" industries not devoid of unions but predominantly non-union. The rise in wages obtained during the war by the latter group averaged twice as large as those obtained by this particular group of union industries.[52] But the payroll industries were the textiles, clothing, hosiery, boot and shoe, lumber, iron and steel, and meat packing industries—all war industries. The union group included printing, stone cutting, planing mills, and bakers; all of which served essentially domestic markets.

The coal miners and railroad workers were among the benefi-

[48] Index of U. S. Bureau of Labor Statistics, which is used throughout this chapter, published in *Monthly Labor Review*, May 1914, p. 167; January 1920, pp. 17, 167; October 1920, p. 65; November 1921, p. 76; May 1922, p. 68. Cited and compared with Day index, *ibid.*, on p. 55.

[49] Douglas, *op. cit.*, pp. 120, 127.

[50] Cf. Methods described by Brissenden, *op. cit.*, Chaps. VIII–IX.

[51] *Ibid.*, pp. 219, 201.

[52] Douglas, *op. cit.*, pp. 96, 97, 101, 102.

ciaries of the war order upswing of business in 1916. Bituminous coal miners' full time weekly earnings rose from an average of $17.40 per week to $19.56 or 12 per cent and they got in about a month more of employment than in 1915. The railroad workers, however, obtained increases in their average annual money earnings of but 6 per cent in 1916, which resulted in a decrease of approximately 6 per cent in their real incomes. In all forms of public utilities labor's purchasing power declined. The building trades, still suffering from the decline in construction precipitated by the depression of 1914–15, obtained but slight increases in hourly rates and their average full time real earnings dropped nearly 5 per cent.[53] For the time being, collective bargaining was less important than the strategic position of an industry in the war-order market as a determinant of wages.

From 1916 to 1917, the cost of living jumped 20 per cent (23 points of index numbers). It was now nearly 40 per cent higher than in December 1914, and 76 per cent above 1899. Brissenden's calculations indicate an average loss in purchasing power for factory workers of 7 per cent from 1916 to 1917, which probably underestimates the facts. The experiences of workers in the various industries were again entirely different. Brissenden's figures show for employees of woolen mills a loss in *real wages* of 15 per cent; of tanneries 13.5 per cent; of paper and pulp 9.8 per cent, and of knit goods 8.2 per cent. But in cotton manufactures and men's clothing he found that increases in wages equalled the rise in the cost of living; in boots and shoes, automobiles, and tobacco they exceeded the cost of living 3 per cent to 5 per cent; and in railroad car shops, 19 per cent.[54]

Douglas found that the increase in earnings both of the bituminous miners and of the "payroll industries" (war industries) about equalled the increase in the cost of living in 1917; that in railroad transportation and in industry in general the gain in wages was about two-thirds as much as in the cost of living; and that in the industries not benefiting directly from the war the gain in wages was less than half the increase in the cost of living. The same was true of the building trades.[55]

[53] Douglas, *op. cit.*, pp. 143–144, 325, 339, 140; Brissenden, *op. cit.*, Chap. IX; Lauck and Sydenstricker, *op. cit.*

[54] Brissenden, *op. cit.*, p. 219.

[55] Douglas, *op. cit.*, pp. 97, 101, 140, 143, 175, 325, 339; Brissenden, *op. cit.*, Chap. IX.

Hanna and Lauck found that from 1911–12 to December 1917, the wages of printers rose only 11 per cent; of electrotypers and construction steam fitters, 17 per cent. But railroad blacksmiths in the Southeastern district secured 29 per cent higher wages; navy yard machinists at Philadelphia 31 per cent more; iron and steel employees at blast furnaces 77 per cent; at common labor occupations, 80 per cent; and at the open hearths, 87 per cent.[56] Commenting in 1918 upon the situation they said:

> "In some trades there have been wage advances that a little while ago would have appeared wildly incredible. In others, the advances have been very moderate, little if any greater, than had occurred during a period of equal length in the preceding years of peace.
>
> "The great advances have taken place in those lines of industry for the products of which the war has created a special demand, such, for instance, as those of the iron and steel industry, the metal trades, coal mining and shipbuilding. In some industries, such as printing, the war made no special demands; in still others, such as building, the war had a depressing effect. In these cases, wage rates show no great upward movements, although almost everywhere there has been some advance."

A large number of workers from trades in which wage advances were small went into war industries. For common labor and semi-skilled workers this represented real opportunity. But for skilled mechanics, unless their skill was transferable, it meant choosing between the wages paid by their own crafts and those of unskilled or semi-skilled workers in war industries. On this basis, such craftsmen as printers and glassblowers found it hard to benefit themselves by changing to war industries.

The cost of living rose 31 per cent from December 1917 to December 1918. Wages also rose sharply; responding to the combined effects of the war demand for labor and the reduction in labor supply caused by military service and low immigration. But in most industries wage increases did not equal the rise in living costs. Douglas estimates that full time *weekly* earnings in all industries combined rose 23 per cent during 1918 and Brissenden that the average *annual* earnings of 12 selected industries rose 23 per cent.[57] Brissenden's other estimate, that "the purchas-

[56] Hanna, Hugh S., and Lauck, W. Jett, *Wages and the War*, Doyle and Waltz, Cleveland, 1918, p. 28.

[57] Douglas, *op. cit.*, p. 211; Brissenden, *op. cit.*, computed from Table 43, p. 108.

ing power of actual labor incomes" in manufactures as a whole increased 5.4 per cent from 1917 to 1918, is of questionable reliability.[58] The methods and data upon which this estimate is based are less dependable than the calculations for the 12 industries.

In 1918 the chaos in the labor market grew worse. Wider differences developed between the wage levels of the different industries and occupations. Some gained more than the increase in the cost of living; the majority fell short. Labor was migrating freely between industries seeking the points where wages were rising fastest. Labor scouts from war industries infested the streets of industrial centers stealing labor from each other. "Employers began bidding against each other for skilled workers, and soon found themselves obliged to resort to the same tactics to secure any kind of labor. . . . This meant that wage-rates were adjusted largely on the basis of the maximum demands of employees as modified by the maximum concessions which could be wrung from employers." [59] The relative standardization (this does not mean equality) of wages before 1914 had disappeared and wider differentials in wages existed not only between industries and localities but between plants in the same industry. The same occupation was paid much higher wages at one place than at another. Hence the averages cited conceal the story rather than tell it. They reveal changes in the welfare of labor in general, but fail to depict the wide diversity of the situations in which different groups of workers found themselves.

Brissenden reports that the annual money earnings of automobile workers were no higher in 1918 than 1917. Douglas' computation of hourly rates shows wide diversities between the manufacturing industries in increases from 1917 to 1918, which range from 6.4 per cent in newspaper printing, 10 per cent in book and job printing, and 11 per cent in planing mills, to 32 per

[58] Brissenden, *op. cit.*, Table 109, p. 219. For the 12 industries cf. pp. 108 and 186. It is impossible, by examination of the wage data published by the United States Bureau of Labor Statistics and in state labor market reports, like those of New York, Massachusetts, Illinois, and Wisconsin, or the annual reports on wages issued by the state of Ohio, to confirm a figure showing bigger increases in the labor incomes of manufacturing employees than in their cost of living 1917–18. It can be shown for particular industries, occupations, or localities. The writer questions the reliability of the statistical methods used by Brissenden which resulted in Table 109. These methods referred to are those in Chapters VIII and IX. It is certain that for the vast majority of wage earners the increases in wages in 1918 were less than the increases in prices.

[59] Lauck, W. J., and Watts, C. S., *The Industrial Code*, Funk & Wagnalls, 1922, p. 5.

cent in the metal trades and 42.5 per cent in meat packing; with most of the industries showing increases between 20 per cent and 27 per cent. Brissenden's computation of annual earnings in 12 industries reveals a much bigger increase in annual earnings in some industries than Douglas found in hourly earnings for those industries. For instance, while hourly earnings increased 26 per cent in cotton manufactures, Brissenden estimates that annual earnings increased 41 per cent. This was due to increased steadiness of employment and overtime. In the shoe industry a 17 per cent increase in hourly rates resulted in 1918 in a 30 per cent increase in annual earnings.[60] But in the majority of the industries analyzed by both statisticians, the increases shown by the two methods range between 20 per cent and 30 per cent.

One of the most interesting changes in the wages structure of the nation during the war boom was the decrease in the differential between the wages paid skilled and unskilled labor. The much greater differential in the United States than in European countries had long been a matter of observation. The sudden cutting off of immigration by the war, the concurrent increase in the demand for common labor, partly due to the inability of industry to increase its mechanical equipment with sufficient rapidity to take care of the additional handling of materials and products made necessary by the war, caused the demand for and wages of common labor to rise rapidly between 1914 and 1920.

The National Industrial Conference Board reports that their index number for unskilled labor stood at 45.7 in 1914 (1923 base) and 121.1 in 1920; while their indexes for skilled and semi-skilled labor stood at 39.2 and 103.8 in the respective years.[61] The differential widened again in the 1920's and during the depression of the 1930's. The index number for common labor earnings was lower in 1933 in comparison with skilled labor than in any year since 1914.[62]

Data on salaried and clerical workers are less complete than for the manual occupations. Douglas' chapter on the subject is the most complete analysis available. He found that clerical and office

[60] Douglas, *op. cit.*, pp. 96, 101; Brissenden, *op. cit.*, p. 108.

[61] National Industrial Conference Board, *Wages in the United States, 1914–30*, p. 110, Table 37. Cf. also U. S. Bureau of Labor Statistics, "Changes in Union Scales of Wages and Hours of Labor, 1913–20," *Monthly Labor Review*, October 1920, pp. 75–92.

[62] National Industrial Conference Board, *op. cit.*, and *Supplement to Conference Board Service Letter*, May 1934.

help in both manufactures and railroads lost substantially in purchasing power during the war years—a loss of 10 per cent from 1916 to 1917 among office employees in manufactures and of 14 per cent in railroad offices, with a further drop of 5 per cent for clerks in manufactures in 1918 and a recovery of about the same amount in the railroad offices.[63]

Government employees were even worse off. The average real earnings of postal employees began to drop in 1898 due to the increase in the cost of living. Their wages were almost unchanged from 1895 to 1908 while the cost of living was rising steadily. Their salaries were raised in 1909 and were then nearly stationary until 1913; and were again practically stationary to 1917. The increases obtained during the war years were less than the current increases in living costs. In 1895 the real wages of postal employees were 16 per cent higher than in 1914. They dropped 26 per cent from 1895 to 1907; recovered 8 per cent in 1908 and remained 18 per cent below 1895 until 1913. A further slight gain in 1914 and 1915, largely due to the depression drop in living costs, was followed by rapid decline in their real wages during the war years until they were 47 per cent lower in 1918 than in 1895 and 26 per cent lower than in 1914. Small increases in their salaries combined with the drop in the cost of living from 1921 onward enabled them to gradually recover by 1925 the losses in real earnings suffered after 1914. But the 16 per cent drop from 1895 to 1914 had never been recovered up to 1934.

The drop in real incomes for government employees resident in Washington was even greater. The index number of their purchasing power stood at 140 in 1894; 125 in 1898; 106 in 1907; 111 in 1908–09; then fell almost steadily to 100 in 1914; 77 in 1918; and 70 in 1920. In 1926 their real incomes were still 9 per cent lower than in 1914; 20 per cent lower than in 1903–09; and 48 per cent lower than in 1894.[64]

Government Intervention

The struggle between employers for labor supply, the high labor turnover, and the chaotic wage situation forced the intervention of the government in the interests of the nation's war-time economic program. There were established:

[63] Douglas, *op. cit.*, Chap. XIX at p. 364.
[64] *Ibid.*, pp. 378, 376.

"the War Industries Board, the Labor Policies Board, and the National War Labor Board. The first two agencies were primarily concerned with policies of control and administration. The function of the latter was fundamentally judicial. It had to do with the interpretation and application of the principles and standards which had been officially adopted as a guide to the adjustment of wages and conditions. The principles, which were mandatory upon the War Labor Board in making decisions, were originally agreed to by labor as represented by the American Federation of Labor, and by capital acting through the National Industrial Conference Board. Afterwards, these principles were officially proclaimed by President Wilson on April 8, 1918, and thus made binding upon all government departments and procurement agencies for the duration of the war." [65]

It was agreed that pre-war standards of real wages were to be maintained. This meant that wages should be adjusted periodically in accordance with fluctuations in living costs.

Family budgets now came into practical use in wage determinations. Down to 1915, when the City of New York compiled family budgets of unskilled laborers working for the city for the express purpose of establishing new wage rates,[66] they had been of little practical significance so far as wages were concerned. In September 1917, an arbitration board appointed to adjust the wages of street railway employees at Oakland and San Francisco, California, had prepared a detailed budget for a wage earner's family of five. In December 1917 an arbitration board at Seattle based its award of wages for street railway employees upon a budget which, they said, "May be called a minimum comfort budget and is slightly higher than a minimum health budget. The standard set may, therefore, be said to have been two steps higher than the minimum subsistence level." [67]

It became apparent in these and other wage controversies of 1917 and early 1918 that all family budgets previously constructed would have to be revised before they would become usable in wage disputes. The cost of living had increased so much, and the upswing of the prices of different commodities had gone at such

[65] Lauck, W. Jett, *The New Industrial Revolution and Wages*, Funk and Wagnalls, New York, 1929, pp. 42–43.

[66] Bureau of Personnel Service, New York, *Report on the Increased Cost of Living for an Unskilled Laborer's Family in New York City*, 1917.

[67] Cf. *Standards of Living; A Compilation of Budgetary Studies*, Bureau of Applied Economics, Washington, D. C., 1920; Lauck, W. Jett, *The New Industrial Revolution and Wages*, Chap. II; Stecker, Margaret L., "Family Budgets and Wages," *American Economic Review*, XI, 3, September 1921.

different rates of speed, that new price quotations had to be obtained for each item. Equally important the question of what constituted a reasonable budget, in terms of commodities and services, had been raised. The subsistence budgets of More, Chapin, Kennedy, and the New York Personnel Bureau, had been succeeded by the "health and comfort" budgets of Seattle, Tacoma, and San Francisco, based not upon common laborers but upon the living standards of skilled workers, and by the budget prepared by Professor Ogburn for the National War Labor Board in 1918 through "a study of the workers in the ship yards in the New York District who receive the higher incomes." [68] "Such budgets," said Margaret Stecker, "are not representative of a minimum standard in the sense of indicating a level below which no American family should fall; rather they picture an ideal average standard, below which the minimum must fall." [69]

Employers objected in 1917–18 to the introduction of the earlier budgets as evidence. Most of them had been made in New York, and very few cities were represented in the studies. The employers insisted that if family budgets were to be considered at all in wage adjustments, they be those of the type of workers involved in the dispute and for the localities in which the disputes occurred. Furthermore, they insisted that the fact be recognized that cost of living changes differ both in time and amplitude in different sections of the country.

Family budgets were constructed for families of five. When used for relief purposes, it was easy in the case of each family to adjust the allowance to the size of the family. But when the budgets were used for wage fixing, such adjustments were impossible. Wages are the same whether a workman is single or married, has no children or ten. The attempt to set a budget-wage on the basis of a family's needs meant, therefore, the establishment of a family wage for all adult male employees, regardless of family responsibilities.[70]

[68] National War Labor Board, *Memorandum on the Minimum Wage and Increased Cost of Living*, Washington, 1918.

[69] Stecker, *op. cit.*, p. 453.

[70] In certain European countries they have tried to circumvent this difficulty by the so-called "family wage system." Employers operating under the plan pay a certain basic wage to all employees and, in addition, pay a sum equalling a certain per cent of their payrolls into a central fund administered by an employers' association. Employees with families are paid an addition to their basic wage out of this fund, the addition being determined by the number of their dependents. Cf. Waggaman, Mary, "The Movement for Family Wages," *Monthly Labor Review*, Octo-

It was evident that a reliable, scientific index had to be constructed. In the fall of 1917, Mr. V. Everit Macy, chairman of the Shipbuilding Wage Adjustment Board, which had recently made its initial determination of wages for the shipyards on the Pacific Coast, requested President Woodrow Wilson to have such an index prepared, and the Commissioner of Labor Statistics was instructed to formulate a cost of living index based on pre-war conditions and to publish currently during the war the changes in the cost of living as revealed by the index. Special funds were supplied by the President for the purpose.

> "The Commissioner of Labor Statistics immediately made an investigation of the cost of living of representative families of industrial workers in the principal cities and industrial centers of the country. This comprehensive cost-of-living and budgetary survey covered 12,096 families in 92 localities. Average family budgets were evolved from the data obtained, and future changes in prices of food, clothing, fuel, light, housing, and sundries weighted in accordance with the relative importance of different items in these average budgets. A continuing basis of measuring changes in living costs was thus obtained.
>
> "These results or indices were accepted as official by all wartime wage adjustment agencies. In addition to original awards on wage controversies, the general policy was also adopted of making changes in wages after the lapse of a stipulated time in the future, usually by six-month periods, on complaint of one or both of the parties, based on variations—as a rule upward—in living costs. Some awards carried clauses providing for automatic changes in wage-rates each six months, should there be important increases or decreases in the cost-of-living index." [71]

Labor did not care to be bound too closely to its own budgetary exhibits or those prepared by the government. The unions contended that in many cases rates of pay before the war were too low and demanded that wages be increased to a point where the health and efficiency of the workers would be maintained. "The maximum productive efficiency of these classes of workers, it was held, would thus be maintained, even tho it were necessary to

ber 1921, October 1923; "Family Allowance Systems in Foreign Countries," *Monthly Labor Review*, May 1926; "Wages and Allowances for Workers' Dependents," *International Labour Review*, September 1924; Vibart, Hugh H. R., *Family Allowances in Practice*, 1926.

[71] *Ibid.*, pp. 43–45; cf. also, "Cost of Living in the District of Columbia," *Monthly Labor Review*, U. S. Bureau of Labor Statistics, October, November, December 1917.

raise their rates of compensation much higher than would be indicated by increased living costs." This idea received formal sanction by the National War Labor Board in 1918, when they said:

> "1. The right of all workers, including common laborers, to a living wage, is hereby declared.
>
> "2. In fixing wages, minimum rates of pay shall be established which will insure the subsistence of the worker and his family in health and reasonable comfort. . . .
>
> "At special executive sessions of the War Labor Board, held in Washington in July, 1918, the matter was thoroughly considered in all its aspects. Experts from all parts of the country, including those who the previous year had assisted in the preparation of the Seattle and San Francisco 'minimum standards of health and comfort,' testified. The Board also had budgetary studies prepared by their own staff, which showed the rate of wages required to enable unskilled workers to maintain either a 'subsistence standard' of living or a level of 'health and reasonable comfort.' The resultant rates were so much higher in amount per hour, however, than those prevailing at the time, that the Board feared the dislocating effect upon production of practically applying the principle during the war period.
>
> "After prolonged discussion and consideration, it was finally decided, for reasons of expediency, not to apply this principle in a general or arbitrary way, but only to sanction it in specific cases where wages were abnormally low and where the physical maintenance of labor for war production was being impaired." [72]

It is apparent that during the war years, when the cost of living was advancing so rapidly, it was practically impossible for labor to attain sufficient increases in wage *rates* to finance a higher standard of living. Such increases could be obtained only by workmen in occupations where there was serious labor shortage. In general, labor had its hands full pushing wages up fast enough to equal the increases in living costs. During a sharp price inflation, as definitely as during the prolonged depressions of the 'nineties and of the nineteen thirties, Labor as a whole found itself unable to obtain wage rates high enough to raise living standards. But the plenitude of employment during the war inflation enabled more persons per family to obtain work, enabled all of them to work more steadily, and provided a great deal of overtime pay.

[72] Lauck, W. Jett, *The New Industrial Revolution and Wages*, pp. 47–49, summarizing part of Executive Proceedings of the National War Labor Board, Washington, July 1918.

Family incomes increased more than wage rates, and living standards rose for a multitude of families. But not for all families. Those families with but one wage earner, and particularly those in industries which the government listed as "non-essential," did not benefit commensurately.

CHAPTER V

THE REWARD OF LABOR 1918–1933

The termination of the war in the fall of 1918, and the brief post-war business stagnation, slowed down the upward movement of prices. But in 1918–19 the cost of living rose 13 per cent, and in the next year, 15 per cent. These increases brought living costs to an all time peak (on a gold basis) in the spring of 1920, when retail prices were more than double those of 1914 and nearly three times as high as during the 'nineties.[1] The high cost of living, which precipitated so many wage disputes during the war years, was an even more important cause of labor unrest in the two years which followed the war. Military and industrial demobilization and the readjustment of industry to peace-time conditions were undertaken in a time when costs of living were unprecedented, and both industry and labor were eager to throw off government controls and fight for their "rights." Immigration was of moderate volume, the business situation characterized by a tremendous industrial and speculative boom which speeded industrial production to capacity in many lines, and by a tremendous wave of buying, on cash and on credit, of both consumers' and producers' goods, by both domestic and foreign customers. It was a period of unbridled optimism, of boom psychology.

Wages continued to chase the cost of living. In the year after the war ended, the rise of the two was about equal; in the next year, 1919–20, wages outran living costs, continuing to rise in many lines for months after the upward trend of prices had been stopped. In both 1918–19 and 1919–20 manufacturing wages rose more than the cost of living. In the building trades, the rise in 1918–19 approximated the rise in consumers' prices, though in many cities wages rose more than prices. But in 1919–20, the building trades obtained an average increase of 34 per cent, more than twice the increase in the cost of living. The railroad workers, whose wages rose only about 6 per cent 1918 to 1919 got 20 per cent more the following year. Unskilled labor, however, fell short

[1] Cf. Douglas, Paul H., *Real Wages in the United States, 1890–1926*, Houghton Mifflin Company, 1930, Chap. IV.

both years. An increase of but 10 per cent in 1919 was followed by only 7 per cent in 1920.

The struggle over the principles to govern wage adjustments, so characteristic of the war years, was even more bitter in the early post-war years. Three demands of labor were particularly prominent: first that wages be adjusted to the increase in the cost of living; second that living wages be established at levels determined by scientific investigation and without being limited to increases adjusted solely to the cost of living; and third, that wages be increased with increases in per capita output, regardless of whether those increases were due to greater efficiency of labor, new technology, or better management.

Arguments for "a living wage" were necessarily based upon family needs as defined by studies of family budgets. The preparation in 1919 of a family budget for government clerks in Washington by the United States Bureau of Labor Statistics, upon request of a congressional committee on the reclassification of government employees' salaries, furnished a more reliable base for living wage computations than had existed theretofore. In the first place it was an official finding of the federal government. The work was carefully done in 1919 and revised in 1920. It showed the necessary cost of "a standard of health and decency" for a family of five, with food adequate for health, "housing in low rent neighborhoods and within the smallest possible number of rooms consistent with decency" but with adequate light, heat, and toilet facilities; upkeep of household equipment but no allowance for new equipment; clothing adequate for warmth, "but with no further regard for appearance and style than is necessary to permit the family members to appear in public and within their rather narrow social circle without slovenliness or loss of self respect," and an absolute minimum for car fare, medical and dental care, churches, labor or beneficial organizations, simple amusements, and a daily newspaper.[2] This official budget was constantly cited in subsequent controversies in private industry particularly in railroad and mining disputes.[3] It was Labor's contention that while the cost of living method of wage adjustments was acceptable as a wartime measure it was not fair in ordinary times, and would

[2] *Monthly Labor Review*, December 1919, pp. 22–29; June 1920, pp. 1–18.

[3] Cf. for further details, Lauck, W. J., *The New Industrial Revolution and Wages*, p. 62.

leave the laboring classes, if permanently adopted, without hope of economic advancement.[4]

Different government boards took different positions on the subject of the living wage. The Federal Electric Railway Commission appointed by President Wilson unanimously endorsed it in principle. But this was a dictum, not an award.[5] The United States Railroad Labor Board in its 1920 awards completely disregarded it. The advances in pay which they allowed in 1920, averaging about 27 per cent, were based strictly upon changes in the cost of living. The Anthracite Coal Mining Commission refused to recognize either the living wage idea or the claim of the miners that they were entitled to a higher wage because of increased per capita output.[6] The Bituminous Coal Commission, however, after pointing out that the advance in the cost of living would permit only a 14 per cent increase in the rates of pay, awarded a 31 per cent increase on the living wage principle.

The productive efficiency argument for wage increases, to wit, that every worker should have a living wage and higher grade employees additional differentials based upon their greater output and/or higher quality of output, was advanced in 1913[7] by the Brotherhood of Locomotive Firemen and Enginemen, and worked out more comprehensively in subsequent railroad arbitrations. The trainmen pointed out in 1915 that the railroads had made extraordinary gains in operating efficiency which increased the employees' labors and responsibilities, increased the amount of traffic carried per employee, and reduced the railroad's operating costs; that the gains resulting had been drained off in large measure by financial interests; and that the railroad employees had not

[4] *Ibid.*, p. 58; *Proceedings before the United States Bituminous Coal Commission*, Washington, Department of the Interior, 1920.

[5] *Report of the Federal Electric Railway Commission*, Washington, Government Printing Office. This board included representatives of the United States Treasury, Departments of Commerce and of Labor, National Association of Railway and Utility Commissioners, American Cities League of Mayors, the Investment Bankers' Association, and individual citizens.

[6] Lauck, W. Jett, *The New Industrial Revolution and Wages*, pp. 63–65 and Chapter VII; *Proceedings Before the Anthracite Coal Mining Commission*, Scranton, Pennsylvania, 1920; *Award of the Anthracite Coal Mining Commission*, Washington, Government Printing Office, 1920.

[7] Briefs submitted by Presidents W. S. Carter and Warren S. Stone, and W. Jett Lauck, Economist, in behalf of Brotherhoods of Locomotive Engineers and Locomotive Firemen and Enginemen; *Western Arbitration of 1914–15*, U. S. Board of Mediation and Conciliation, Washington, 1920, Report.

Cf. also Stockett, J. Noble, *The Arbitral Determination of Railway Wages*, 1918, Chap. IV; Lauck, W. J., *The New Industrial Revolution and Wages*, pp. 32–40, 160–199.

received a proper share of the benefits arising from their increased per capita efficiency.

The railroads did not accept the contention of the unions, and the latter renewed the argument in the controversies before the United States Railroad Labor Board, 1920–22. But, as the unions' economist said, "No practical consideration was given to these theories either before the war or during the depression of the years 1920–21." [8]

Henry Ford was perhaps the only *large* industrialist who accepted the theory in the pre-war period. His $5.00 wage for common labor established as early as 1914 was based upon the theory that a proper utilization of the best equipment and methods would enable an employer to pay high wages and that labor should benefit from industry's efficiency even if that efficiency is due primarily to management's methods of operation. The subsequent acceptance of the principle by some employers is discussed later in this chapter under the caption "The Economy of High Wages."

Depression of 1920–1921

The business deflation of 1920–21 brought two basic concepts of wage policy into head-on collision; the old theory of employers that when prices fell wages must be cut to restore a previous relationship between prices received and wages paid, and the theory of labor that in a time of falling prices, the elimination of waste and reduction of profits should absorb the price deflation and wage rates be maintained to support consumer purchasing power and living standards.

From 1920 to 1921 the cost of living dropped 14 per cent. Unemployment increased fivefold over 1920, about 21 per cent of the wage earners being idle. Something over four million wage earners were out of work. Douglas estimates that daily earnings in bituminous coal increased nearly 8 per cent but the miners averaged 71 days' less work in 1921 than in 1920, a reduction of about $360 or 26 per cent in their annual income—twice the reduction in the cost of living.[9] The full time weekly earnings of unskilled laborers dropped $5.61 per week or 22 per cent and they worked only three-fourths of the time in 1921. In the unionized manufacturing industries tabulated by Douglas, average hourly earnings increased slightly (4 per cent) but about a fifth of the employees were idle and many thousands

[8] Lauck, *op. cit.*, p. 161.

[9] *Ibid.*, pp. 96, 143.

on part time. In his group of non-union manufacturing industries average hourly earnings dropped nearly 17 per cent and unemployment was severe. Brissenden estimated an 18 per cent decline in the real earnings (annual) of manufacturing employees from 1920 to 1921. The 12 industries he tabulated separately manifested as widely varied changes in average annual money earnings on the falling market as they had on the rising market. Some workers suffered small decreases in earnings: e. g., woolen manufactures, 5.5 per cent; silk, 9 per cent; and shoes, 7 per cent. Others suffered colossal reductions; in paper and pulp, 34 per cent; in automobiles, 40 per cent; manufacturing railroad cars, 44.5 per cent; iron and steel, 53 per cent. In other industries, the drop in per capita earnings was of medium severity, as in leather manufactures and men's clothing, 15 per cent; cotton manufactures, 21 per cent; and tobacco manufactures, 25 per cent.[10]

The changes in real earnings were of course in definite relationship to the reductions in money incomes. In industries where the drop in money earnings was small, real earnings actually increased, for those who retained their employment, e. g., in woolen, silk, knit goods, and shoe manufacturing. But in many industries wage earners' real incomes were reduced 25 per cent to 50 per cent: e. g., paper and pulp mills, car shops, automobile manufacturing, and iron and steel. In railroad transportation the average annual earnings of those employed decreased $185 (over 10 per cent) and more than three hundred thousand were idle.[11] In building, hourly rates increased 3½ cents an hour, which gave a substantial increase in real wages to those who had work but about three hundred thousand (27 per cent) of the building workers were idle.

The National Industrial Conference Board said of the wage developments of 1921, "At that time, average hourly earnings in manufacturing industry fell off approximately 12 cents, and average weekly earnings were reduced by about seven and a half dollars. The reduction in weekly earnings was in part evidence of reduced hourly employment, indicated by the fact that in 1921 the average hours actually worked per week fell to the lowest annual average for the ten year period." [12]

[10] Brissenden, Paul F., *Earnings of Factory Workers, 1899 to 1927*, Census Monograph No. X, 1929, pp. 219, 108.

[11] Douglas, *op. cit.*, p. 440.

[12] *Wages in the United States, 1914–29*, National Industrial Conference Board, New York, 1930, p. 202.

The resistance to reductions in money wages during the depression of 1921 came both from labor and from powerful social groups. The American Federation of Labor officials declared:

> "The American trade union movement believes that the lives of the working people should be made better with each passing day and year. The practise of fixing wages solely on the basis of the cost of living is a violation of the whole philosophy in progress and civilization and, furthermore, is a violation of sound economic theory and is utterly without logic or scientific support of any kind." [13]

The railroad brotherhoods in the 1921 controversies demanded *living wages* plus efficiency differentials.[14]

President Harding declared in May 1921:

> "In our effort at establishing industrial justice we must see that the wage-earner is placed in an economically sound position. His lowest wage must be enough for comfort, enough to make his house a home, enough to insure that the struggle for existence shall not crowd out the things truly worth living for. There must be provision for education, for recreation and a margin for savings. There must be such freedom of action as will insure full play to the individual's abilities." [15]

The National Catholic War Council declared just after the armistice:

> "The general level of wages attained during the war should not be lowered. In a few industries . . . wages have reached a plane upon which they can not possibly continue for this grade of occupations. But the number of workers in this situation is . . . extremely small. . . . The overwhelming majority should not be compelled or suffered to undergo any reduction in their rates of remuneration, for two reasons. First, because the average rate of pay has not increased faster than the cost of living; second, because a considerable majority of the wage-earners of the United States, both men and women, were not receiving living wages when prices began to rise in 1915." [16]

Forced to accept the indictments made by the Waste in Industry investigation of the Engineering Societies,[17] harassed by

[13] Executive Council Report, American Federation of Labor *Proceedings*, 1921, pp. 68–69.

[14] Combined Request of all Railroad Brotherhoods and Other Labor Organizations before U. S. Railroad Labor Board, 1921.

[15] From public address of President Warren G. Harding, New York City, May 23, 1921, quoted by Lauck, W. Jett, *The New Industrial Revolution and Wages*, p. 116.

[16] Quoted in Lauck, W. Jett, *The New Industrial Revolution and Wages*, pp. 54–55.

[17] *Waste in Industry*, by Committee on Elimination of Waste of Federated American Engineering Societies, McGraw-Hill Book Company, New York, 1921.

labor's rebellion against wage reductions, and facing the prospect of a labor shortage due to the passage of immigration restriction laws, employers and bankers reluctantly eased up on their "wage liquidation" plan.

In 1922, after pointing out that the country seemed to be entering "an era of gradually increasing business prosperity which will be liberally shared by the carriers" the Railroad Labor Board said,

> "When this accomplishment is safely under way, it will then be possible for the Railroad Labor Board to give increased consideration to all the intricate details incident to the scientific adjustment of the living and saving wage, with enlarged freedom from the complications of the 'relevant circumstances' of the abnormal period which is now approaching its end." [18]

But in 1923 the Board did nothing, and labor demanded that the Board be abolished.

1922–1933

From 1899 to 1915, gains in real wages were slight, the gains of good years being about canceled by the losses of bad years. Some improvement in real wages occurred during the latter part of the war. During the decade of the 'twenties American labor became substantially better off than before the war.

There are abundant evidences of the increase in the standard of living of a multitude of wage earners during the years 1923–29. The number of bath tubs per one thousand non-farm homes doubled; of homes wired for electricity increased fourfold. The sale of electrical appliances totaled $1,637,307,035 in 1927. Three and one-half times as many passenger automobiles were in use in 1928 as in 1919. The number of users of electricity increased from 3,100,000 in 1913 to 17,600,000 in 1928. These are but a few illustrations of the expansion of consumption.[19] Public services such as schools, parks, water and sewer service, increased remarkably. The monthly average of savings deposits in New York banks increased from 3093 millions to 4419 millions between 1923 and 1929.[20] In 1930 they reached 4573 millions and in 1931, 5114 millions. Some of the increase in the last two years was due,

[18] Decision No. 1074 (Docket 1300), Effective July 1, 1922, having to do with clerks, freight handlers, express handlers, station men, etc.

[19] Cf. Wolman, Leo, in *Recent Economic Changes*, National Bureau of Economic Research, New York, 1929, Vol. I, Chap. 1, "Consumption," also pp. xv–xvi.

[20] *Survey of Current Business*, U. S. Department of Commerce, Annual Supplement, 1932.

probably, to the decline in investing, which diverted funds from commercial to savings banks.

Brissenden was so deeply impressed by this progress that he said:

> "It seems quite certain that the manufacturing wage earner has achieved permanently higher levels of real wages. History probably will record the last decade as the one to witness quite unprecedented gains in the purchasing power of wage earners. The gain between 1914 and 1927 was at the rate of nearly 4 per cent a year. . . . His real earnings in 1925 were 37 per cent higher than his real earnings of 1899 and 43 per cent higher than in 1914. In 1927 the buying power of his earnings was 34 per cent above 1899 and 40 per cent above 1914." [21]

This was true, of course, only of those who had employment.

The estimates of the National Industrial Conference Board and Professor Douglas were more conservative. The former found real weekly earnings of all employees in the 26 industries which report to them 20 per cent better in 1920 than in 1914; 31 per cent better, 1923; 28 per cent better in 1924; 30 per cent in 1926; 33 per cent in 1927; 35 per cent in 1928; and 40 per cent in 1929.[22] The real earnings of males averaged 3 to 5 points higher than those of the total forces. Since nearly one-half of the wage earners of the country are employed in manufactures and the influence of manufactures upon general wage levels is very strong, the record of progress in this field is particularly significant.

If one turns to the data upon the wages of railroad workers, mercantile employees, building workers, anthracite mining or metalliferous mining, one finds much the same story. The differences are in degree, not in the direction of the trend of real wages. Practically all classes of workers experienced some gain; the least fortunate large group being the bituminous coal miners.

Labor's increases in real earnings were a result of lower prices rather than higher wages. There were some industries in which wages increased materially, such as printing, the hosiery industry, and the skilled workers in electrical power plants and distribution. But in most industries wage levels were stable or fell slightly. The cost of living stabilized roughly at the level to which it had fallen by the third quarter of 1921, and fluctuated within narrow

[21] Brissenden, Paul, *Earnings of Factory Workers, 1899–1927*, pp. 56, 54.

[22] National Industrial Conference Board, *op. cit.*, p. 104; cf. also Douglas, *op. cit.*, pp. 246, 550; cf. also Brissenden, *op. cit.*, Chap. IX, "Changes in Real Earnings."

limits about that level. It was 20 to 30 per cent below 1920, and approximately equivalent to the cost of living at the end of 1918.[23]

On the railroads, average earnings of unskilled workers dropped from $23.66 in 1920 to $17.64 in 1922 and remained close to $18.00 to 1930. Trainmen's earnings, on the other hand, after dropping from an average of $48.46 in 1920 to a little below $43.00 in 1921–22, started upward in 1923 and recovered 1920 levels by 1929.[24] For the whole period 1921–29, they averaged approximately $45.00 or $3.50 less than in 1920. On the whole the money wages of railroad workers were lower in the 'twenties than in 1920, and their gain in real income was entirely due to the decline in the cost of living.

There was again a considerable disparity between different industries in the movements both of wage rates and of actual earnings. The National Industrial Conference Board reports that average hourly wages were lower throughout the decade than in 1920 in 20 of the 26 manufacturing industries from which they obtain reports, and the composite average for the entire 26 industries was slightly lower in 1929 than in 1920. It dropped from $.605 in 1920 to $.485 in 1922 and ranged between $.540 and $.580 from 1923 to 1929.[25]

The printing industry was the only one of the 26 industries they studied in which wages rose steadily throughout the 'twenties. The newspaper and magazine branch of the industry progressed uninterruptedly from an average wage of $.77 in 1920 to $.99 in 1929, and the book and job branch climbed from $.83 in 1920 to $.95 in 1929, with a temporary slump of five cents an hour in 1922. Most of the other industries which paid higher hourly rates in 1929 than in 1920, like the electrical goods manufacturing, hosiery and knit goods, machines and machine tools, and lumber and mill work, paid rates below the 1920 level for from two to five or six years during the 'twenties, beginning with 1921. Weekly earnings held up a little better than the hourly rates. Ten industries reported higher average weekly earnings in 1929 than in 1920 compared with six reporting higher hourly rates. The difference in the

[23] Cf. for graphs comparing wages, cost of living, and real wages 1914–27, Brissenden, *op. cit.*, p. 94; cf. also Bureau of Labor Statistics, *Monthly Labor Review*, February 1930, p. 256.

[24] National Industrial Conference Board, *Wages in the United States, 1914–1930*, New York, 1931, p. 181.

[25] *Wages in the United States, 1914–29*, p. 19.

averages was caused by the fact that depression came in the spring of 1920 and not until late fall in 1929.[26]

In three other industries wages were substantially the same in 1929 as in 1920 but in 13 of the 26 industries weekly earnings were lower in 1929. The deficiency was as high as $9.00 (20 per cent) in iron and steel, and $5.50 (25 per cent) in the southern cotton mills. In both cases there was a substantial decline in hourly earnings; the result was not ascribable to low employment. In the majority of the industries in which wages declined during 1920–29, the drop ranged from one to three dollars a week, or 5 per cent to 10 per cent.

Taking the 26 industries covered by the Conference Board the average weekly earnings were $33.23 in 1920 and $32.58 in 1929. This checks with Brissenden's table on annual earnings, 1920–27, and Douglas' computation of wage trends in the 'twenties.[27] The gains of one-half of the 26 industries covered by the Board therefore nearly balanced the losses of the other half. Against the 20 per cent loss of the steel workers and 25 per cent of the southern cotton mill hands stands the $10.00 a week increase (33 per cent) of the newspaper and magazine workers and the 18 per cent gain of the book and job printers.

Unskilled Labor

Unskilled labor did not fare as well as skilled. The average weekly wage of unskilled workers in 1920 is given by the National Industrial Conference Board at $27.09; in 1929 at $25.49; a net loss of $1.60 per week against a loss of but $.65 for skilled and semi-skilled workers.[28] Compared with their wage levels, the number of reductions in wages for the unskilled was three times as great. There were eight industries in which the skilled workers were earning more in 1929 than in 1920; only four in which the unskilled were earning more, and two of these were the two branches of the printing industry. In these the unskilled workers' gains were much smaller than the skilled's.

In the iron and steel industry the facts were reversed. Skilled workers earned 38 per cent less in 1921 and 26 per cent less in 1928–29 than in 1920. The unskilled earned 34 per cent less in

[26] *Ibid.*, pp. 39, 40–42, 45–48.

[27] Brissenden, *op. cit.*, pp. 108, 110; Douglas, *op. cit.*, pp. 96, 101, 108.

[28] Variations of less than $1.00 a week in either direction are disregarded. Cf. Tables 12, 13, pp. 46, 47, of *Wages in the United States, 1914–29.*

1921 and 15 per cent less in 1928–29. Skilled labor's reductions also exceeded unskilled by nearly 10 per cent in the southern cotton mills, and by about 5 per cent in the foundry industry. The more typical situation is illustrated by the electrical manufacturing industry, where skilled workers were earning about the same wages in 1929 as in 1920 but the unskilled 16 per cent less; the machine tool industries where skilled labor gained twice as much as unskilled; paper and pulp, where reductions in the wages of skilled labor were only one-half those for unskilled labor; and gas and electric plants where gains were made by the skilled but not by the unskilled employees.

A striking contrast is found in the hosiery and knit goods industry. Largely because of the strength of the full fashioned hosiery workers' union, the wages of the skilled workers started sharply upward in 1924 and rose rapidly, until in 1929 they were over $14.00 higher than in 1923, and nearly $14.00 higher than in 1920. Unskilled workers in the industry received but small increases during the years mentioned and their wages were nearly $3.00 a week lower in 1929 than in 1920. Their peak year was 1928, when their earnings were slightly above 1920. The skilled workers in this industry had wages above 1920 from 1924 through 1929; the unskilled's wages equalled 1920 only in the one year 1928. In the other years they were from approximately three to eight dollars below the $23.30 of 1920.[29]

Considering unskilled labor in manufactures as a whole the National Industrial Conference Board shows wages below 1920 throughout the next decade, but highest in the springs of 1925 and 1927 and in 1928–29.[30] They dropped steadily and rapidly, of course, from 1930 to 1933, reaching the lowest levels since 1915.

The average wages of women in the 26 industries showed a remarkable stability from 1920 to 1929, their average weekly earnings being but little below the 1920 level, except in 1921 and 1922.[31] In ten industries out of the 26 their weekly earnings were higher in 1929 than in 1920; in four others approximately the same. In the other industries they were from one to three and a half dollars less—substantial reductions, of course, from the 1920 average of $18.16 per week.[32]

[29] *Wages in the United States, 1914–29*, p. 130.
[30] *Ibid.*, p. 107.
[31] *Wages in the United States 1914–30*, pp. 100–101, 105.
[32] *Ibid.*, p. 48; cf. also Brissenden, p. 110.

Geographic Differences

The geographic differences in wages so characteristic of the situation 40 years earlier had not disappeared with the improvement in transportation and communication and increased mobility of labor achieved by 1930. Wages in the building trades still varied widely from city to city. In 1929, bricklayers' wages in different cities ranged from $1.25 per hour in Omaha to $1.875 in New York and $1.75 in several cities. Carpenters ranged from $.70 in Atlanta to $1.625 in Chicago and $1.65 in New York. Building laborers ranged from $.30 an hour in Atlanta and $.35 in Louisville to $.875 in Cleveland; $.975 in Chicago, and $1.03 in New York. The other occupations showed similar differences.[33] Wide differences were found by Brissenden for average money earnings when tabulated by states.[34] These differences were accounted for in part by differences in the industrial structure of the different states. Fisher and Bezanson showed that one of the significant problems of the bituminous coal industry was the varied wage scales of the various mining fields, determined in part by their geological characteristics, in part by such factors as unionization and distance to and character of markets.[35]

Real Wages

It is easy to overestimate the gains made by labor in periods like the 'twenties. The wage earner has to buy food, clothing, and shelter; pay doctor bills and carry insurance; in each and every year. He lives by the week, not by the decade. The high earnings of a good year are commonly consumed in part paying the debts left over from preceding years. It takes several good years to enable a family to re-establish itself after prolonged unemployment. Not only debts, back taxes, and delinquent interest on homes have to be liquidated; but worn-out clothing, furniture, kitchen utensils, and similar semi-durable commodities have to be replaced. Consequently the realistic observer of wage trends recognizes that the gains revealed at times by wage statistics are not as substantial in terms of advances in living standards as they appear to be.

Though there were only seven years between 1899 and 1927 in which average real wages in manufactures were lower than in

[33] Brissenden, *op. cit.*, p. 162.
[34] *Ibid.*, p. 107.
[35] *Wage Rates and Working Time in the Bituminous Coal Industry*, Chaps. II and III.

1899, there were 13 years in which they were lower than the year before. On four occasions two successive years yielded lower purchasing power to labor than the years which preceded them. The 13 years when real incomes fell each forced wage earners to lower their living standards and accumulate debts that had to be liquidated in succeeding years. It was only in the period 1923 to 1929, therefore, that real wages were both enough higher and sufficiently continuous at the higher levels to permit wage earners to definitely shift to a higher level of living and maintain that level long enough to establish it.[36] The loss of that higher living standard in the depression of the early 'thirties, if permanent, will constitute the major setback experienced by labor throughout American history.

The Economy of High Wages

The 'twenties developed a new point of view on wages. The concept did not originate in that period, but became respectable, even orthodox. Between 1905 and 1915, the iniquity of low wages was the theme about which wage discussions vibrated. During the war years, the adjustment of wages upward to meet the high cost of living and to establish a true "living wage," captured current interest. In the depression of 1920–21, bitter controversies centered around the conflicting efforts of organized labor to keep 1920 wage rates in spite of the drop in prices and of the bankers and industrialists to "deflate" wages in order to cut the cost of production and protect dividends.[37]

When business emerged from its slough of despond in 1922 and production leaped to record heights in 1923, the "economy of high wages" was heralded as the sound economic doctrine, although there are few instances where employers showed enough faith in the doctrine to put it into practice voluntarily. Briefly the theory was:

> "Instead of believing that every cent paid as increased wages must come from the investor's return or else from ultimate

[36] Brissenden, *op. cit.*, pp. 54–63. Cf. also National Industrial Conference Board, *Wages in the United States, 1914–29*, New York, 1930, Chaps. II–IV; Douglas, *op. cit.*, Chaps. XIII, XVII, XVIII, XXII.

[37] Cf. Green, William, *Unions Reduce Industrial Waste*, pamphlet, American Federation of Labor, Washington. "Labor firmly believes that if the cost of production of commodities must be lowered it should be accomplished through the promotion of efficiency in workmanship and management, the elimination of waste and the introduction of economy processes. This belief is contrary to the old accepted rule of reasoning which held that a lowering of the cost of production could only be brought about through a reduction in wages."

consumers, . . . where an appropriate increase in productivity can go along with an increase in wages, the consequent increase in purchasing power results not only in higher standards of living and better states of health but also increases in the quantities and varieties of goods which can be sold. These increased quantities, by helping to carry overhead and by making specialized operations possible, tend further to reduce cost and so again to increase wealth." [38]

In a speech delivered in the early part of 1923, Secretary of Commerce Hoover said, in part:

"We must get our minds away from the notion that prewar standards of living and volume of business would be normal now. *Normalcy is a vastly higher and more comfortable standard than 1913.* . . .

"I wish to impress again that I am not confusing the natural increment that would arise from increased population, or not confusing the increased dollar figures due to higher prices, but that this is an actual increase of commodities and services per capita in the population. It is due to the increased skill, the advancement of science, to temperance, to the improvement of processes, more labor saving devices—but most of all it is due to the tremendous strides made in industrial administration and commercial organization in the elimination of waste in effort and materials. . . .

"The result has been a lift in the standard of living in the whole of our people, manual worker and brain worker alike. This is the real index of economic progress." [39]

Samuel M. Vauclain, President of the Baldwin Locomotive Works, expounding a view which had become conventional by 1928, said:

"The wage earners constitute the great majority of our population. These people are the spenders of the nation, and upon their ability to spend freely the general business of our country depends. Manufactured products of all kinds must be furnished them as well as the necessary staples of life. It is the wage of these people that makes good times or bad, dependent on what they are earning over and above the actual necessities of life." [40]

[38] *Recent Economic Changes*, p. 523.

[39] Press Release by Department of Commerce, Speech of Herbert Hoover, delivered May 8, 1923.

[40] Vauclain, Samuel M., "Speeding up for Prosperity," *Nation's Business*, May 1928.

Cf. also Williams, Henry H., *Industrial Management*, June 1927, p. 324; U. S. Bureau of Labor Statistics, *Monthly Labor Review*, November 1927, pp. 45–48; *Forbes Magazine* for December 1, 1927, p. 9; National Industrial Conference Board, *Wages in the United States, 1914–26*, New York, p. 3.

Labor was emphasizing the same point of view but supporting it by a different analysis. They seized upon the acknowledged increase in the per capita productivity of American labor to justify substantial and continuing increases in wages. At the 1925 convention of the American Federation of Labor a resolution was passed which stated in part:

> "We urge upon wage earners everywhere: that we oppose all wage reductions and that we urge upon management the elimination of wastes in production in order that selling prices may be lower and wages higher." [41]

In another publication, President Green said that

> "if the cost of production of commodities must be lowered it should be accomplished through the promotion of efficiency in workmanship and management, the elimination of waste and the introduction of economy processes." [42]

Again, in 1927, after pointing out that originally "organized labor struggled for higher money wages," then "for higher real wages" he declared that "it no longer strives merely for higher real wages; it strives for *higher social wages*, for wages which increase as measured by prices and *productivity*." [43] This was organized labor's "new" wage policy of the 'twenties. It did not go unchallenged. The National Industrial Conference Board said:

> "Labor's argument, briefly stated in general terms, holds that since, in the final analysis, it is labor which applies and makes effective the improved agencies of production, it is rightly entitled to share in the increased wealth created. While it is undoubtedly true that the most brilliantly conceived mechanical aid to production is worthless without human direction, it is still open to question whether this makes a case for labor's demand. . . . Production efficiencies have for the most part been evolved through careful research and experimentation on the part of highly skilled engineering staffs, and this work has been financed by the employer without any assurance that it would bring him a return. It seems reasonable, therefore, that

[41] American Federation of Labor, *Proceedings*, Atlantic City Convention, Washington, 1925.

[42] Green, William, *Unions Reduce Industrial Waste*, American Federation of Labor, Washington, Pamphlet.

[43] *Organized Labor's Modern Wage Policy*, Research Series No. 1, American Federation of Labor, Washington, 1927. Cf. also Kuczynski, Jurgen, and Steinfeld, "Wages in Manufacturing Industries, 1899 to 1927," *American Federationist*, July 1928; same authors—*Wages and Labor's Share in the Value added by Manufacture*, Research Series No. 4, American Federation of Labor, Washington, 1927.

when this investment turns out profitably the credit and the profits which result should accrue to the employer and to the investors who supplied the capital for the experiment, and who would not have been likely to undertake it except for the prospect of profit." [44]

It is uncertain how representative the high wage philosophy was of the view of American industrialists. There can be little doubt that a large number accepted it seriously previous to 1931, and, equally, that another large number had little understanding of it or faith in it. The idea of paying more for labor than they had to pay was inconsistent with the whole habit of thought of the capitalist group. The thinking of the employer group during the 'twenties might be summarized by saying that they believed strongly in other employers paying high wages.[45]

The naïveté with which large numbers of employers, as well as labor leaders, many leading government officials, and some economists accepted between 1915 and 1935 the doctrine that high wages would insure national prosperity and maintain employment at a high level is a matter of surprise. Disregarding the enormous purchasing power of the middle and well-to-do classes, and in many cases of farmers, they built a theory of prosperity based upon high wages. Two facts are obvious, that high wages spur employers to the use of labor displacing mechanical equipment, and that high wages, in times when monetary or other forces are causing a downward trend of the price level, may cause costs of production to exceed market prices and force reductions in output and employment. Experience shows that high wages, if coupled with abundant employment, lead to larger consumption by the wage earners. But if they are not balanced by commensurate incomes for the farming, professional, and small business groups, they may by raising prices decrease the consumer demand of these other classes (measured in terms of goods and services consumed) and within a short time cause a shrinkage of employment and of wage earners' consumption. High wages, like short hours, must be advocated for other reasons than their effect upon prosperity and employment. They

[44] National Industrial Conference Board, *Wages in the United States, 1914–26*, New York, pp. 11–12.

[45] The actual distribution of the national income in 1928 and estimated distribution among families in 1932 has been analyzed by Louis Bader. He estimated that nearly 17,000,000 *families* out of 30,400,000 had family incomes below $2000 in 1932. Bader, Louis, "The American Family Income and Prosperity," *Journal of the American Statistical Association*, September 1933.

may or may not have a wholesome effect upon business activity, depending upon the balance of the economic situation.

Wages During the Depression of the 'Thirties

The first impact of the depression of the 'thirties did not affect the wages structure. It cut the earnings of millions through unemployment and part-time work before it affected wage rates. It was not until the last quarter of 1930 that appreciable downward changes in manufacturing wages occurred. The drop was about one cent an hour from the 1929 average of 59 cents an hour.[46]

The next year, 1931, saw a slow but progressive decline in hourly earnings, which dropped about three cents before the end of the year. Weekly earnings, on account of unemployment, dropped much faster. While the average weekly earnings of 1929 in the industries reporting to the National Industrial Conference Board were above $28.50; and for 1930, $25.74; they were but $22.64 for 1931. The rapidly expanding depression cut hours from an average above 48 per week in 1929 to 44 in 1930, and a little over 40 in 1931. They were only 38 in the last four months of 1931.[47]

In 1921 wage cuts were advocated early in the depression to liquidate labor costs. In 1930–31 they were opposed both by the government and by leading employers, in the hope that the maintenance of wage earners' incomes would furnish a market for products and help business recovery. In 1921 they were inaugurated long before business had reached a dangerous position; in 1931 they became common only after a large number of businesses had taken heavy losses. Realization of the reluctance of a large number of employers to cut wages caused wage earners and the public to accept them calmly when they did come, perhaps too calmly. It is not strange that the ultimate necessity of cutting wages aroused doubts whether high wages would in themselves guarantee a market for industry. Apparently the theory had been accepted too readily and too much importance given to the purchasing power of labor. For when the purchasing power of millions of farmers and investors holding delinquent securities was seriously reduced wage earners' purchases could hardly sustain the market. As things were in the world of 1930–34, high wages *alone* could

[46] *Wages in the United States, 1914–1930*, p. 45.

[47] National Industrial Conference Board, *Wages in the United States in 1931*, New York, 1932, pp. 32, 33, 6–15.

not guarantee prosperity. But it was equally clear that they were an essential factor of prosperity.

The downward trend of wages in 1931 and 1932 proceeded very irregularly. Wages fell at different times and in different amounts in the various localities, industries, and plants. For one thing employers felt the burden of proof for wage cuts rested definitely upon them. They had not forgotten the living wage argument of the war and early post-war years. They sensed the importance of maintaining purchasing power and realized the opposition of the public to the cutting of wages. The President took a very firm position in opposition to wage cuts. In a series of conferences with different industrial groups in the fall of 1929 he pressed upon them the importance of maintaining wage scales. In his public speeches throughout 1930 he took a similar position.

In the fall of 1929 nearly four times as many employers reported increases in wages to the Bureau of Labor Statistics as reported wage reductions. During 1930, the facts were reversed. Wage increases were reported by only 125 concerns, while 900 reported wage decreases. Nearly all of these cuts were below 10 per cent. The United States Steel made its first cut of 10 to 15 per cent of salaries in August 1931 and a month later announced a 10 per cent cut for 220,000 wage earners. The rest of the steel industry quickly followed.[48]

The cuts in steel played an important part in precipitating an epidemic of wage cuts in the fall of 1931. During the first six months of the year few general reductions were made by the larger industries, although some of them were nibbling at piece rates and hiring rates, precedent to the large bites which shook the morale of labor later in the year. But cuts were reported by 3586 concerns with 654,687 employees before the year ended. In 1932 the size of the cuts increased, reaching an average of 17.6 per cent by October 1932. In the last six months of 1932 the number of cuts was declining but the size of the cuts was increasing. Concerns which had delayed making cuts made more drastic ones than those of 1931. It was also true that the prestige of the high wage theory had waned; labor had come to expect cuts; and widespread unemployment had made labor helpless to resist cuts. Wage cuts had been received by most of the wage earners by the end of 1932.

[48] *Bradstreet's Weekly*, October 3, 1931, p. 717.

The attack on public salaries, heretofore local and scattered, became a widespread movement early in 1932. On January 13, 1932, Governor Pollard of Virginia proposed a 10 per cent cut in the salaries of all state officials, including teachers and public school officials. The next day Governor Emmerson of Illinois called a special session to consider reduction in state and municipal salaries, and Governor Roosevelt of New York announced that he would forward to the legislature of New York a proposal of the Mayors' Conference that municipalities postpone all salary increases.[49] Four bills to reduce federal expenses were introduced into Congress, and the cut was finally enacted in June 1932, during which month there was also another epidemic of wage-cutting in private industry.

The National Industrial Conference Board found average weekly earnings in manufacturing to be $28.69 in June 1929; $26.26 in June 1930; $23.07 in June 1931; and $16.88 in the second quarter of 1932. Each year average weekly earnings fell substantially, until in 1932 they were approximately 59 per cent of 1929 wages. In addition, nearly one-half of the employees in these industries were entirely idle. The industries were providing but 59 per cent as high a wage for less than 60 per cent of their former number of employees. It is in these terms alone that one can visualize the reduction in wage earners' incomes during the depression.[50] The Wisconsin Industrial Commission reported average weekly earnings of factory workers in the month of March at $26.95 in 1929; $25.75 in 1930; $22.69 in 1931; $17.47 in 1932; $13.24 in 1933; and $18.45 in March 1934. Weekly earnings in 1933 were less than half what they were in 1929 and hardly more than half as high as in 1930. Part of this reduction was due to wage reductions and part to short time. And four out of every ten workers were entirely idle.[51]

In Ohio the total amount paid to wage earners in 1929 was $1,492,141,261; in 1932 but $606,713,713; a reduction of nearly 60 per cent. During the eight years 1923–30 wage earners' incomes never fell below 1193 millions of dollars, and averaged above 1300 millions. In 1931 they dropped to approximately 878 millions

[49] *Editorial Research Reports*, I, 50, 1932.

[50] *Wages in the United States in 1931*, p. 69; *Supplement to Conference Board Service Letter*, April 1933, National Industrial Conference Board, p. 1.

[51] *Wisconsin Labor Market*, Industrial Commission of Wisconsin, Madison, April 1934, p. 5, Table 8; p. 3, Table 1.

and in 1932 to the 606 millions. Office employees' incomes dropped nearly 100 millions or over a third 1929–32 and the earnings of salespeople (not traveling) were almost cut in half. The salaries of superintendents and managers dropped a third. Their actual cuts may have averaged as high as those of wage earners but they suffered far less from unemployment. In 1929 their salaries constituted 6.5 per cent of the total wage and salary payments of reporting industries; in 1932, 9.4 per cent; a change largely due to carrying the managerial staff through the depression.[52] In manufactures the shrinkage was even greater. There was a decline of 270 millions or 25 per cent in wage earners' incomes in Ohio from 1929 to 1930; another loss of 235 millions (21 per cent) in 1931; and of 188 millions more (17 per cent) in 1932—a total shrinkage of 693 millions or 69 per cent in wage earners' incomes, 1929–32. Office workers in manufactures (Ohio) were not affected much in 1930. Their total incomes shrank only $130,000, less than 1 per cent. Salaries of executives dropped more; over 3 per cent. Salespeople's incomes were cut almost in half. They suffered more seriously in 1930 than any of the other groups. But they took most of their deflation in that one year. The other groups lost heavily during the succeeding years.

Striking contrasts with manufactures obtained in the mercantile and public utility industries of Ohio. The total incomes of all employees in trade were but slightly lower in 1930 and in "transportation and public utilities" they were higher. The shrinkage in wage earners' incomes in mercantile establishments was less than 28 per cent down to 1932; and in public utilities but 40 per cent. The total disbursements for wages and salaries in mercantile establishments declined 32 per cent, 1929–32; in public utilities, 35 per cent.

The Ohio figures are the only ones available giving a picture of the changes in average annual earnings for a large industrial area during the depression years. In Ohio manufactures, wage earners received average annual incomes of $1598 in 1920 and of $1252 during the depression of 1921. In 1929 their annual incomes were $1499; in 1930, $1365; in 1931, $1185; and in 1932, $960; an average decline approximating $180 a year for three

[52] Croxton, Fred C. and Frederick C., "Average Wage and Salary Payments in Ohio, 1918–32," *Monthly Labor Review*, January 1934, compiled from p. 150, Table 4.

years in succession. These are very close to the average incomes received by wage earners in all the Ohio industries (combined) in the respective years.[53]

The widespread and drastic wage cuts of 1931–33, the prevalence of but part-time work for those who had jobs at all, and the extremely low living standards of the millions of families who subsisted on relief during the depression period, combined to accustom American wage earners from 1931 onward to much lower standards of living than they had enjoyed from 1900 onward. There was no time between 1890 and 1930 when living standards of wage earners were demoralized like they were between 1931 and 1934, except from 1893 to 1896. It will be pointed out that standards of living in the 1930's even for relief families, were higher than were standards for comparable groups between 1893 and 1896. That is true. The nation had registered some progress between 1890 and 1930, and not all of the new items added to the American standard of living were eliminated, even for the unemployed, during the depression of the 'thirties. But the reductions both in incomes and living standards were serious.

It remains to be seen whether when prosperity returns the industrial population will accept wages geared to the standards of living that obtained during the depression or whether they will insist upon the re-establishment of the standards of living of the 1920's and further progress from those standards.

[53] *Ibid.*, pp. 153, 154.

CHAPTER VI

THE HOURS THEY WORK

In 1822 the journeymen millwrights and machinists of Philadelphia "met at a tavern, and passed resolutions that ten hours of labor were enough for one day, and that work ought to begin at 6 A. M. and end at 6 P. M., with an hour for breakfast and one for dinner." [1] In 1825 the Boston house-carpenters struck for a ten-hour day.[2] The battle for shorter hours was on. By 1840 the building trades had obtained a 60-hour week in most of the United States and shorter hours in some cities.[3]

Thousands of labor disputes have centered around the "hours" issue. It has been as important a cause of controversy as wages. Its discussion has been entangled with wages, machinery, speed and efficiency; with health, fatigue, and accidents; with restriction of output, unemployment, and business depressions.[4]

It is a curious fact that the first argument of American labor unions for shorter hours was that wage earners must be competent as citizens. "Work from 'sun to sun' was held to be incompatible with citizenship, for it did not afford the workman the requisite leisure for the consideration of public questions and therefore condemned him to an inferior position in the state." [5] The sporadic short-hour strikes which occurred down to 1834 were succeeded in 1835 by a general movement for the ten-hour day. The citizenship argument continued to be labor's major contention, but the fact that long hours are injurious to health was advanced.[6] In

[1] McMaster, John B., *History of the People of the United States*, Appleton, 1914, Vol. V, p. 84.

[2] Commons, John R., and Associates, *History of Labour in the United States*. Macmillan, New York, 1918, Vol. I, p. 158.

[3] *History of Wages in the United States from Colonial Times to 1928*, U. S. Bureau of Labor Statistics, Washington, Bulletin 499, October 1929, pp. 154–157.

[4] Cf. Report of the United States Industrial Commission, Washington, 1900–01, 19 volumes, Testimony on hours in most of the volumes, *Conclusions of Commission*, Vol. XIX, pp. 763–793; Frankfurter, Felix, and Goldmark, Josephine, *The Case for the Shorter Work Day*, Brief for Defendant in Error, reprinted by National Consumers' League, New York, 1916; Cahill, Marion C., *Shorter Hours*, Columbia University Press, New York, 1932; National Industrial Conference Board, Series of reports on relation between hours and health and on wages and hours.

[5] Commons, John R., and Associates, *History of Labour in the United States*, Macmillan, 1918, Vol. I, p. 170.

[6] *Ibid.*, p. 384.

later years, when the factory system was more fully developed, the health argument took first place.[7]

In 1852 the "make-work" argument appeared in the call for a Massachusetts Ten-Hour State Convention, which declared that if hours were shortened there would be more jobs, and this would result in higher wages as well; [8] an argument which later gave rise to the famous union doggerel:

> Whether you work by the piece,
> Or work by the day,
> The longer the hours,
> The shorter the pay.

Ira Steward, in the eight-hour movement which he launched in the early 'sixties, developed a new short-hour philosophy. Fundamentally, his doctrine was based upon the premise that progress in technology was steadily increasing the per capita productivity of labor, and that an increase in labor costs, due to reducing hours but not wages would stimulate inventions and the utilization of inventions and thereby make possible still further increases in productivity. The other basic element in his theory was that shorter hours would give people leisure in which to consume and to develop more wants, thereby causing the standard of living to rise, and labor to demand still higher wages, with resultant further stimulation to technical progress. Thus technical progress would expand output and rising standards of living and increased wages would furnish a market for the enlarged output. Steward, of course, sought to accomplish his objective through a universal eight-hour law enacted by Congress and the state legislatures rather than through strikes and trade agreements.[9]

It became apparent in the 'sixties and 'seventies that Steward's plan for getting the eight-hour day through legislation was but a dream. Labor now turned from Steward's philosophy to the "make-work" argument. In his address to the American Federation of Labor in 1887 Samuel Gompers declared that "so long as there is one man who seeks employment and cannot obtain it, the hours of labor are too long." [10] In 1889, after pointing out that

[7] The modern statement of the health argument is developed at length in *The Case for the Shorter Work Day*, Brief for Defendant in Error, *Bunting* v. *The State of Oregon*, Supreme Court of the United States, October Term 1915. Reprinted by the National Consumers' League, New York City.

[8] Commons and Associates, *op. cit.*, Vol. I, p. 546.

[9] *Ibid.*, Vol. II, pp. 88–91.

[10] American Federation of Labor, Proceedings, 1887, p. 10.

there were hundreds of thousands of wage-earners who had been rendered superfluous by "the ever increasing inventions and improvements in modern methods" he said that the only way they could be reinstated in employment would be by reducing the hours of labor.[11] It is obvious that two ideas were involved, that of dividing up the work and that there was but a limited amount of work to be divided. Both of these ideas have continued to hold a dominant place in the thinking of the American labor movement down to 1935. Steward's concept was revived in the high wage and mass consumption philosophy so prevalent during the nineteen twenties, but the make-work concept again submerged it during the early 1930's.

The nineteenth century struggle for shorter hours established the ten-hour day in the majority of industries and occupations before 1890.[12] While some industries, like cotton manufactures, sawmills, iron and steel plants, and bakeries, still worked most of their employees 11 to 13 hours and in some cases seven days a week, the majority of manufacturing, construction, mining, and mercantile concerns worked ten hours per day and 58 to 60 hours per week, with overtime during busy seasons. The cigar makers brought their hours below 50 per week in at least 15 states and below 53 hours in most of the country by the early 'nineties. They were one of the first trades to obtain twentieth century standards of hours.[13]

In striking contrast, the *average* week in the steel industry in the 'nineties was 65 to 66 hours. This average included thousands of "turn men" at the blast furnaces and open hearths who worked 72 to 84 hours per week; a situation which continued, with minor modifications, until 1923, when the eight-hour day was adopted in the continuous operations.[14]

The eight-hour day had a curious history in the iron industry, which preceded steel manufacturing. In the youth of the industry, a day's work consisted of five "heats," which took close to 12 hours. "As improvements were made in furnace construction

[11] *Ibid.*, 1889, p. 16.

[12] For account of agitation for shorter hours previous to 1890, cf. Commons and Associates, *op. cit.*, Vol. I, Part IV, Chap. IV, "The Ten Hour Movement"; and Vol. II, pp. 140, 250, 285–286, 375–386, 391, 485; Cahill, *op. cit.*, Chap. II; First Annual Report of the Commissioner of Labor, Washington, 1886, App. A, "Occupations with Number and Wages of Employees by Industries," pp. 295–410.

[13] *History of Wages in the United States*, pp. 423–424.

[14] *Ibid.*, pp. 239–245.

and better methods were discovered" the prevailing day "gradually shrunk to one of ten hours or less." The day's work was being shortened, but without any conscious movement on the part of labor for shorter hours.[15] In the sheet mills, as the working day shortened there were periods of mill idleness between shifts. "To avoid these periods of idleness, the manufacturers tried to introduce an eight-hour day. This was resisted by the union." In the 1883 convention of the Amalgamated Association of Iron and Steel Workers, it was reported that a Pittsburgh concern "were about to force the eight-hour day upon their men." [16] "The executive committee ruled that under no circumstances should a mill go on three turns." The reason was that the men feared a reduction in earnings. It took longer than eight hours to get out the tonnage which was considered a full day's work.[17]

Two lodges of the union had their charters revoked in 1884 because they allowed their mills to install the eight-hour day, and five more in 1885. At the 1885 convention the eight-hour day, extensively sought by other labor unions, was a serious problem for the Amalgamated. Aside from its other advantages, the eight-hour day meant job opportunities for more of their members. But it tended to reduce daily earnings, and was in violation of the union's rule against the three shift system. The 1885 convention, after prolonged consideration, rescinded the rule. In a short time all sheet and tin mills were operating on the eight-hour, three-shift basis.[18]

Concerning other types of rolling mills, either in iron or steel, the Amalgamated took no definite stand. Manufacturers changed their mills back and forth between the two and three shift system without encountering definite union resistance.[19] By 1890–92 the attitude of the officers of the Amalgamated definitely favored the eight-hour day, but the rank and file were indifferent.[20] As the steel industry became increasingly important the attitude which had grown up in the iron mills seemed to carry over to steel. The men did not struggle for shorter hours. It was also true that the majority of the workers in the steel mills were unorganized. The union did not have the power there that it had had in iron.[21]

[15] Fitch, John, *The Steel Workers*, Survey Associates, New York, 1910, p. 93; cf. for concise history of hours controversies 1890–1907, pp. 91–97, 104–106, and Chap. XIII.

[16] *Ibid.*, p. 93.

[17] *Ibid.*, pp. 93–94.

[18] *Ibid.*, p. 94.

[19] *Ibid.*, p. 95.

[20] *Ibid.*, pp. 95–97.

[21] *Ibid.*, pp. 97–98.

And the loss of the Homestead Strike of 1892 put the employers into complete control.

The 12-hour day prevalent in the non-union steel mills in the early 'eighties (except the sheet mills) soon became universal.

By 1886, according to Andrew Carnegie, "every ton of pig iron made in the world, except in two establishments, was made by men working in double shifts of twelve hours each, having neither Sunday nor holiday the year round." [22] The exceptions were the Lucy and Isabella furnaces in Pittsburgh, owned by the Carnegie Company.[23] Both of these eight-hour experiments were given up before 1890.

Throughout the 'eighties the Amalgamated had fought Sunday work, and successfully. Most of the steel workers in unionized mills, except at blast furnaces, had Sunday off; not working from Saturday night until Monday morning, except to make repairs or do other work that was unavoidable.[24] But during the week, the majority worked a twelve-hour day; a large number a ten-hour day; and a considerable number eight hours. After 1892 the situation changed rapidly. Both the 12-hour day and seven-day week were rapidly extended. Charles M. Schwab declared in 1899 that "Any one who is familiar with steel knows that a great deal of work must be carried on continuously. There is no other way to do this. It is a practice throughout the world." [25] Either an eight-hour-three-shift system or a 12-hour-two-shift system was inevitable. In 1907–08, Fitch could find few eight-hour workers in Pittsburgh except in the Bessemer departments. The yard laborers and machinists were about the only groups left on the 10-hour day and they worked a great deal of overtime.[26] By May 1910, 30 per cent of the steel workers worked seven days a week. The next two years, however, saw about half of these returned to the six-day week.[27]

In the 'nineties the 12-hour day was, therefore, the accepted rule in steel mills. It continued to be so until 1923. America's greatest manufacturing industry was 20 years behind most of

[22] Carnegie, Andrew, "Results of the Labor Struggle," *The Forum*, I, 544, 1886.
[23] Fitch, *op. cit.*, p. 167.
[24] *Ibid.*, p. 168.
[25] Testimony before United States Industrial Commission, *op. cit.*, Vol. XIII, p. 462.
[26] Fitch, *op. cit.*, pp. 170–171.
[27] *Labor Conditions in the Iron and Steel Industry*, Senate Document No. 110, 62d Congress, 1st Session, Washington, 1913, Vol. III, p. 160.

the lesser industries in establishing a twentieth century work day.

The installation of the eight-hour day in the continuous operations in 1923 cut the average hours of workers at blast furnaces from 72.1 per week in 1920 to 59.7 in 1924; at Bessemer converters from 70.3 to 52.3; at the open hearths from 68.7 to 58; and in plate mills from 68.8 to 57.2.[28]

More typical of the situation in manufactures generally were the 59–60-hour week of iron molders in most sections of the country (1890–91); the 60-hour week of cabinet makers, with 54- or 56-hour weeks in some states, like Maryland and Missouri (1890); the 60-hour week which had predominated for machinists from 1850 to the early 'nineties, with shorter weeks, generally 56 hours, beginning to appear about 1870 and becoming standard hours in a number of states by 1890 to 1895. In California, a step ahead of the procession, machinists had a 55–56 hour week by 1870 and a 51-hour week by 1890. In Pennsylvania, union machinists in manufacturing and repair shops secured a 48-hour week in 1900.[29] But in the printing trades, leaders in the agitation for short hours, the employers fought determinedly to maintain the ten-hour day and it was not until 1898 that the printers' unions were able to get a 9½-hour day and 57-hour week,[30] though an average week of 50 hours was reported for California in 1892; of 48 hours for Montana in 1893; and below 58 hours in several other states previous to the agreement of 1898.[31]

One of the worst "hours" situations in the 'nineties was in railroad transportation. Trainmen worked 70 hours a week (seven ten-hour days) in most of the country. This had been the standard week since the early days of railroading. In Massachusetts, for instance, a 70-hour week had prevailed since 1840. In Indiana (1890) the standard week of locomotive engineers was 77 hours; in Virginia (1898), 84 hours. Ohio, however, had a 60-hour week for conductors and engineers by 1890, with brakemen averaging 67. In New Hampshire the 60-hour week was in force by 1894, and possibly in other states. The record is not complete.[32]

[28] *Monthly Labor Review*, November, December 1931, January 1932, summarizes hours in nine divisions of the steel industry, 1914–31. Cahill, *op. cit.*, pp. 206–216, furnishes concise history of the agitation for the eight-hour day in steel.

[29] *History of Wages in the United States*, pp. 298–304, 314, 457.

[30] Cf. *ibid.*, Part III, Chap. V.

[31] *Ibid.*, pp. 337, 338.

[32] *Ibid.*, pp. 432–434.

The rather scanty data upon the hours of coal miners indicate both that the 60-hour week was accepted as standard in most of the important coal areas in the 'nineties and that actual hours varied considerably. A 54-hour week was reported for Pennsylvania in 1890; average hours of 52–53 per week for Montana in 1893; and of 48 for Ohio in 1893.[33] In most cases, hours were not reported at all. Hours of operation are so irregular and part time so common in the coal industry that standard hours have little practical significance in a majority of the mines. Generally, miners work less than full time hours.

In iron mining, the 72-hour week which prevailed down to 1853 in the mining fields of New York and New Jersey was cut to a 60-hour week, and that was the prevailing week in most of the country through the 'nineties, except in New Jersey, where a 45-hour week was established in 1882. Here and there, in limited areas, iron mines operated a little less than 60 hours.[34]

The short-hour movement apparently started in the building industry; and it is in that industry that the shortest hours have prevailed for nearly a century. The general trends of "hours" changes in the different building crafts have been similar but not identical. The history of the plasterers may be cited as typical. They worked 60 hours a week from 1840 (or earlier) to 1870; made considerable progress in reducing their hours below 60 between 1870 and 1884, so that 54 hours became the prevalent week between 1885 and 1890, with the trade working 50 or 52 hours in various cities; progressed steadily toward the 48-hour week during the 'nineties, with hours ranging in different sections from 48 up to 54 but the 48-hour week becoming steadily more common; and by 1899 had established the 48-hour week. In Boston the 44-hour week was established in 1898 and the 40-hour week in 1915. New York plasterers had the 44-hour week from 1891 to 1925, when they dropped to 40.[35]

In all industries, there were wide differences in the hours worked in different states and cities. The range was greatest in industries which catered to local markets, like the building trades, bakeries, printing establishments, and cigar making, except as national unions brought about a degree of uniformity through their campaigns for shorter hours. This had resulted in considerable standardization in the building trades and cigar making by the 'nineties

[33] *Ibid.*, pp. 331–332. [34] *Ibid.*, pp. 333–334. [35] *Ibid.*, pp. 202–205.

and in printing by the early 1900's. But in industries which sold their products in national markets, particularly if carried on by fairly large employers, considerable uniformity in hours came about for other reasons. The employers desired to equalize their labor costs with those of competitors in other localities. The emphasis of these employers was upon the importance of their employees working *as long as* the employees of their competitors. In such industries, therefore, the short hour movement was retarded by the effort to bring about uniformity. In cigar making and building the reverse was true. The hours of boiler makers, machinists, textile employees, iron and steel workers generally, and furniture makers, are typical of those where employer resistance tended to bring about increased uniformity at a 60 to 56-hour rather than a shorter week.[36]

On the whole, hours were longer in the 'nineties in the South than in the North; in the states which were largely rural, like Kansas or Georgia, than in the states which were more industrialized, like New York or Connecticut; where labor was more plentiful as on the Atlantic seaboard; where negroes or immigrants were used in large quantities, as in the Southern sawmills, steel mills, and textile plants; and where unionism was weak, as in bakeries, textile mills, and wood working establishments.

Both in 1890 and in 1905–07, the United States Bureau of Labor Statistics found bakers working about five hours per week longer in the South than in the North.[37] Similar differences obtained in all lines of industry. On the Pacific Coast, distant from the centers of population, labor was in a strategic position and hours were shorter than in the rest of the country in most industries and occupations. Negro labor in the South worked 63–70 hours [38] a week almost universally. Immigrant labor in the textiles, meat packing, and steel industries was helpless to bring about shorter hours.

Another situation rather common in the 'nineties and down to the war, was differences in hours for different groups of employees within the same industry. Skilled, and particularly organized workers, often worked a shorter day than the unskilled and unor-

[36] *Ibid.*, pp. 239–245, 288, 304–307, 363–399, 456–472.

[37] *Ibid.*, pp. 149–151.

[38] Evidence on the points mentioned in this paragraph is scattered through the Nineteenth Annual Report of the U. S. Department of Labor, 1904, and *History of Wages in the United States.*

ganized. This was typically true in the building industry, where laborers worked longer than mechanics; in iron and steel manufactures; and in the railroad industry.

The diversity of hours characteristic of the 'nineties persisted throughout the 40-year period, but decreasingly. While hours of labor in 1930 ranged in different occupations and localities from as low as 30 per week to as high as 84, the number of employees working less than 44 hours or more than 60 hours was comparatively small. Industries and occupations which reached the eight-hour day and 48- or 44-hour week stabilized at that level in nearly all cases. The major exceptions were the building and men's clothing industries which dropped to a 40-hour week in the larger cities. In many major industries the downward trend of hours was at least temporarily arrested by the employers at the 8½ or nine-hour day and 52- to 57-hour week. The lumber, hosiery and underwear, silk and rayon, foundry and metalliferous mining industries may be mentioned as illustrations.[39]

The New York Bureau of Labor Statistics reported the changes in working hours which occurred in that state during the 'nineties. While the facts in New York state undoubtedly varied somewhat from those in other states, New York reflects the general situation in the industrial states. There was a slight decline in the proportion of employees in manufactures working eight hours or less (from 9.3 per cent in 1891 to 8.1 per cent in 1894), an increase from 16.6 per cent to 22.1 per cent in the percentage of factory hands working nine hours a day; a decline from 72.2 per cent to 66.1 per cent in the number employed ten hours a day, and an increase from 1.9 to 3.7 per cent in the number working over ten hours. It is doubtful whether these reports were from identical establishments. It is not likely. Therefore, small changes in the percentages cannot be relied upon. As the Bureau remarked: the "really significant lesson is the reduction of hours from ten to nine a day." And this change was not large.[40]

But the shortening of hours in New York state, so far as it occurred, was confined almost entirely to New York City. Out-

[39] U. S. Bureau of Labor Statistics, *Wages and Hours of Labor in the Lumber Industry in the United States*, Bulletin No. 586, 1932; *Wages and Hours of Labor in Foundries and Machine Shops*, Bulletin No. 570, 1931; *Wages and Hours of Labor in the Hosiery and Underwear Industries*, Bulletin No. 591, 1932; *Wages and Hours of Labor in Metalliferous Mines*, 1924 and 1931, Bulletin No. 573.

[40] Bureau of Labor Statistics of the State of New York, *The Eight Hour Movement*, Eighteenth Annual Report, 1900, pp. 1–246; at pp. 13, 15.

side of the city, the state showed an increase in ten-hour employees, and a decrease in both the eight-hour and nine-hour groups. Beyond question, little if any shortening of hours occurred in the small and medium sized cities of the country during the depression of the 'nineties. In some of the larger cities manufacturing, as well as building trade workers made some progress. But on the whole the gains were negligible. Depressions are not periods favorable to reductions in hours of labor. Employers are afraid of any change that might increase labor costs, and the workers are in no position to make demands.

This remained true down to 1933. During each depression, including that of 1930–33, there was a great deal of part-time work and of dividing up the work among a more-than-necessary force. This was particularly true, 1930–33. But there is no evidence indicating that there was a decrease in standard working hours during the depression years.

Hours do not change as gradually within any industry as do wages. They shift from one plateau to another, and ordinarily each new standard work day prevails for a period of years. Douglas shows that in meat packing, for instance, a 60-hour week prevailed from 1890 to 1917; a 52-hour week in 1918; a 48-hour week from 1919 to 1921; and hourly levels ranging from 49.7 to 52.3 from 1922 to 1926, when complete employer control was substituted for the government-union fixing of hours of the war period.[41]

At the beginning of the century, like lightning flashes illuminating the industrial landscape, the testimony of many witnesses before the United States Industrial Commission revealed the hours situations in 1900. The success of labor organizations in effecting reductions in the hours of labor was frankly admitted by Theodore Search, president of the National Manufacturers' Association.[42] That success was related in detail by Samuel Gompers and other labor leaders.[43] Extended discussion of hours-of-labor legislation, for male as well as female employees, and particularly of laws applicable to railroad workers and to persons employed by the government and on government contracts, focused attention on

[41] Douglas, Paul, H., *Real Wages in the United States, 1890–1926*, Houghton Mifflin, New York, 1930, p. 114.

[42] Testimony of Theodore C. Search, United States Industrial Commission Report, 1900, Vol. VII, pp. 132 ff.

[43] Testimony of Samuel Gompers, *ibid.*, p. 623. For other labor leaders, cf. index of Vol. VII.

the responsibility of government to regulate working hours. The importance of long hours as a cause of railroad accidents was stressed. Vigorous advocates of a legal eight-hour day for railroad employees and equally vigorous opponents of such legislation presented their views.[44] Various witnesses, representing both labor, employers, and the public, stressed the fact that machinery had made possible the maintenance of large output without working as many hours as were necessary with hand processes.[45]

The termination of the depression of the 'nineties encouraged labor organizations to renew vigorously their drive for shorter hours. Professor Douglas found an average decrease of three hours per week between 1897 and 1907, to an average of 51 hours per week, in union factories in the metal, stone cutting, printing, planing mills, and bakery industries. Concurrently, their average weekly wages rose from $17.62 to $20.12. But in eight industries where the majority of the employees were non-union,[46] the week decreased but one hour. In 1907 they worked ten hours per week longer than the employees in the union plants (60.6 hours v. 50.8) for $9.85 per week less wages. Their wages averaged only $11.27 per week.[47] When due allowance is made for deficiencies in skill and for the larger proportion of female employees in these non-union industries, the disparity in wages and hours is still too great to be explained by other considerations than effective collective bargaining in the one case and its absence in the other.

The general trend of hours in manufactures from 1900 onward is illustrated by the shoe and textile industries. The shoe industry is a "consumer's goods" industry. It uses a variety of raw materials—leathers, cloths, nails, threads, dyes, and others; it is highly mechanized and uses both hand operated and semi-automatic machinery; includes a wide variety of skilled, semi-skilled, and unskilled occupations; employs both men and women in large numbers; is carried on by both large and small companies, but in moderate and small sized plants, in contrast with the giant plants of the electrical, automobile, steel, and meat packing industries.

[44] *Hours of Labor;* cf. indexes of volumes on Transportation, Report of United States Industrial Commission, Vols. IV, IX, 1900.

[45] *Labor in Manufactures and General Business*, Report of U. S. Industrial Commission, 1900, Vol. XIV, index, "Hours of Labor"; also Final Report, 1901, Vol. XIX, pp. 763–793.

[46] Cottons, woolens, hosiery and knit goods, clothing, boots and shoes, sawmills, iron and steel, meat packing. Douglas, *op. cit.*, p. 114.

[47] Douglas, *op. cit.*, pp. 112, 114, 118, 124.

Some of the plants are unionized; a large number non-union. While the average hours worked in the different occupations in the industry have differed throughout the 40-year period, the *trends* of hour changes in the different occupations have been similar. At the end of the 'nineties, shoe workers as a whole averaged 58–59 hours per week; by 1907, 55–56; by 1914, 54; 1918, 52; and from 1922 onward, 49.[48]

Cotton and woolen manufacturers are producers of raw materials. Part of their output is used by clothing, tent and awning, automobile, and many other kinds of manufacturers. The balance passes through the hands of merchants directly to the ultimate consumer. The industry is therefore intermediate between those, like the shoe industry, which produce for the consumer, and the producers' goods industries, like machinery manufacturing or the glass bottle industry. Always a substantial percentage of the labor force have been women, and child labor has been until recently an evil of these industries.[49] A large amount of immigrant labor has been employed in the northern mills; many mountain whites in the southern. Negroes are used in the southern mills only in occupations "which partake of the status of domestic service, such as sweepers and porters and janitors." [50] Unions have never been strong in textiles. On the other hand, a number of large companies have exercised widespread influence upon working conditions; though subject at all times to the limitations imposed by intense competition.

Hours of weavers (male) in the woolen and worsted industry in Massachusetts were 60 per week until 1892 and 58 from 1893 to 1909; 56 in 1910 and 1911; 54 to 1918; and then reduced to 48. So far as the evidence reveals these were typical of the industry in Massachusetts, and of the trend in the other states.[51] In cotton textiles, the weavers were a year later than those in woolen textiles in getting the 48-hour week; and the 48-hour week was changed back to a 49-hour week by 1926 and a 50-hour week by 1928.

In woolen and worsted manufactures, taking all occupations

[48] *History of Wages in the United States*, pp. 261–271; *Wages and Hours of Labor in the Boot and Shoe Industry, 1910 to 1932*, U. S. Bureau of Labor Statistics, Bulletin No. 579, March 1933, p. 3, Table I.

[49] *Report on Condition of Woman and Child Wage Earners in the United States*, Senate Document No. 645, 61st Congress, 2d Session, 1910, Vol. I, Chap. II.

[50] Carpenter, Niles, in Johnson, Charles S., *The Negro in American Civilization*, Henry Holt, New York, 1930, p. 385.

[51] *History of Wages in the United States*, p. 418, Tables L58, L59.

and all states into consideration, hours were stabilized at from 54 to 57 hours per week, 1910–18; dropped to an average of 48.3 by 1920 and ranged from 48 to 50 hours per week, 1920 to 1930.[52] In cotton goods the movement was similar but the average hours a little longer. They ranged from 59 to 56, 1910 to 1918; dropped to approximately 52 by 1920 and approximated 53 through the 'twenties.[53]

The series of reports on wages and hours in various industries which have been issued by the United States Bureau of Labor Statistics [54] show that the changes in hours cited for the shoe and the textile industries are typical of what was happening in manufactures between 1900 and the war, except in industries where unions were winning shorter hours than obtained in industry in general and in the steel industry where a ruthless employer group maintained the 12-hour day for an army of workers until 1923.

The building trades, however, made steady progress toward the 40-hour week. In 1931 the average working hours of union building tradesmen were 41.3 per week.[55]

1916–1920

Sharp reductions in working hours occurred during the war. Douglas estimated an average decrease for *all* industry from 53.5 per week in 1914 to 50.4 in 1920.[56] This average includes manufactures, building, coal mining, transportation, seamen, farm labor, unskilled labor, and government service. The National Industrial Conference Board reported a drop in *actual hours worked* in manufactures from an average of 50.7 in 1914 to 48.5 in 1923.[57] The Census reported that from 1914 to 1919 the percentage of manufacturing wage earners working 48 hours or less increased from 11.8 per cent to 48.6 per cent; and that the percentage working 54 and over decreased from 74.7 per cent to 29.6 per cent.[58]

[52] U. S. Bureau of Labor Statistics, *Wages and Hours of Labor in Woolen and Worsted Goods Manufacturing, 1910–30*, Bulletin 533, p. 3.

[53] U. S. Bureau of Labor Statistics, *Wages and Hours of Labor in Cotton Goods Manufacturing, 1910–30*, Bulletin 539, p. 3.

[54] The entire series is listed in the successive bulletins published by the U. S. Bureau of Labor Statistics, e. g., Bulletin 594.

[55] U. S. Bureau of Labor Statistics, *Union Scales of Wages and Hours of Labor*, May 15, 1931, Bulletin No. 566.

[56] Douglas, *op. cit.*, p. 208.

[57] National Industrial Conference Board, *Wages, Hours and Employment in American Manufacturing Industries, July 1914 to January 1924*, New York, 1921, Research Report No. 69, p. 21.

[58] Fifteenth Census of the United States, 1929, *Manufactures*, Vol. I, p. 42.

Douglas found an average drop of five hours per week in manufactures; one hour for the union building trades; two hours for unskilled labor, and three for coal miners. He estimated a 13 per cent drop in the average hours of all railroad employees from 1918 to 1919, the only change between 1915 and 1920. His method of computing the railroad hours leaves the reader uncertain, however, of the reliability of the figure given.[59]

1920–1930

The trend toward shorter hours in manufactures did not continue through the 'twenties. There were decreases in some trades and industries but there were also increases in important industries. Companies which had continued down to 1920 to operate 57–60 hours per week in many cases reduced hours to 54 or 51 hours. On the other hand there was some shifting back from the 48- to the 51- or 54-hour week. These are the facts revealed by a comparison of the census of manufactures for 1919 with that for 1929. In the construction, railroad, and mining industries there does not seem to have been any lengthening of the working day comparable to what occurred in parts of the manufacturing field.

The outstanding event of the 'twenties, so far as hours of labor were concerned, was the practical abolition of the 12-hour day and "13 out of 14" days system for "turn" men in the steel industry, which cut the average hours at the blast furnaces from 72.3 in 1922 to 59.7 in 1924 and at the open hearths from 70.8 in 1922 to 58.0 in 1924.[60]

The number of factory wage earners working eight hours per day and 48 or 44 hours a week more than quadrupled between 1914 and 1919, rising from 11.8 per cent to 48.6 per cent. The decade of the 'twenties, on the other hand, saw only minor changes in the situation as a whole. The 60-hour week continued to disappear, the percentage dropping from 12.1 in 1919 to 7.4 in 1929. The percentage working 48 hours or less declined during the decade, dropping from 48.6 to 45.5. The decrease in the percentage of workers enjoying the eight-hour day reflects the increased domination of manufactures by the employer group, a definite characteristic of the decade.

[59] Douglas, *op. cit.*, pp. 116–136, 150, 166–167, 180.

[60] U. S. Bureau of Labor Statistics, *Wages and Hours of Labor in the Iron and Steel Industry, 1931*, Bulletin 567, December 1932, p. 3.

The total number working *less than 54 hours* a week increased, however, from 25.2 per cent of the labor force in 1914 to 70.4 per cent in 1929. The reduction in hours during the 'twenties came in two ways, by reductions of a half hour or hour a day, and by Saturday half holidays. There was a very definite spread of the 5½ day week, and, in some industries and occupations, of the 5-day week. The Census of 1930 shows that in 1929 89,880 manufacturing establishments with 3,649,051 employees worked 44 to 48 hours per week; 43,327 establishments with 2,754,717 employees worked over 48 and up to 54 hours per week; and 37,816 establishments with 1,976,109 employees over 54 hours per week. The average number of employees per establishment in the concerns which operated on an eight-hour basis was 40; of the second group (8½ to 9 hours) was 64; in the third group (over 9 hours) was 52. The first group included 42.5 per cent; the second 33 per cent; and the third 24.5 per cent of the employees in manufactures.[61]

The net result of the changes in hours which occurred between 1890 and 1930 was to reduce the average week's work by approximately a day, i. e., by about eight hours. In some occupations, like building trades, railroad trainmen, and the continuous operations in the steel industry, the reduction was more than eight hours per week; in others, like the textiles, the shoe industry, and most of the metal-working establishments, the reduction in hours per week was less than eight hours. It is roughly true, then, that the forty years saw a shift from a typical ten-hour day in manufactures to a typical 8–9-hour day.[62]

The replacement of more than two million workers between 1915 and 1930 by automatic and semi-automatic machinery made shorter hours a major issue during the depression of the 1930's. The California State Unemployment Commission reported that "There was, with two or three exceptions, general agreement among those testifying on the desirability of a shorter working day and week as a means of relieving the existing unemployment by taking up the slack of idle labor. The majority of the speakers favored a six-hour day and a five-day week." [63]

William Green, President of the American Federation of Labor, after pointing out the steady displacement of labor by new methods

[61] *Ibid.*, Vol. I, p. 51, Table 5.

[62] Fifteenth Census of the United States, *Manufactures*, Vol. I, p. 42, 1929.

[63] California State Unemployment Commission, *Abstract of Hearings on Unemployment*, April and May 1932, San Francisco, p. 87.

from the war years onward, declared vigorously for a five-day week, and "that the hours of labor should be so reduced as to square fairly with the increasing power of the individual's efficiency and productivity. If a man can do the same work now in four days that he did two decades ago in six, then why should he be required to work the same number of days, only to stagnate the economic situation and to create further chaos?" [64]

D. P. Robertson, President of Locomotive Firemen and Enginemen, took exactly the same position, declaring for a "Gradual shortening of the work-day and work-week to meet the increasing productivity of the employees." [65] Obviously, these labor leaders, consciously or unconsciously, had carried the work-fund concept even further; they were advocating a limitation of the total output of industry by reducing hours to counterbalance the increases in productivity due to advancing technology. This was, of course, but one manifestation of the idea so widely held during the depression of the 'thirties that the depression was due to excessive production. Both the agricultural and the industrial programs of the government from 1933 to at least 1935 were largely based upon the same idea.

The shortening of hours to spread employment was advocated from the beginning of the depression by the government, by important business groups and by many economists as an emergency measure to relieve unemployment. This can hardly be considered an endorsement of short hours as a permanent policy. It was certainly not so intended by such organizations as the United States Chamber of Commerce and the National Manufacturers' Association. It was an acceptance of the principle that the limited amount of work currently available ought to be divided among as many of the workers as possible. The hours limitations imposed by the industrial codes under the National Industrial Recovery Act were likewise of but temporary significance, the law itself being enacted for but a limited period. The agitation in the 1930's for the establishment of the thirty-hour week, either by legislation, trade agreements, or codes, was but the current descendant of the ten-hour movement of 1820–70 and of the eight-hour movement developed by Ira Steward and George E. McNeill between 1860 and 1885.

[64] Conference of Progressives, *Proceedings*, Washington, March 11 and 12, 1931, p. 105. Cf. also *Proceedings* of American Federation of Labor conventions 1931 to 1935.

[65] Conference of Progressives, *op. cit.*, p. 110.

Labor's theory of short hours had been carried further by the 1930's than during the nineteenth century but its essential elements were evolved during the nineteenth century controversies: to wit, that the available work should be divided among all the workers through shorter hours; that higher hourly earnings can be paid as hours are shortened, thus maintaining or advancing the workers' standards of living, if the basic reason for reducing hours is increasing per capita productivity; and that the worker is entitled to increased leisure as one of the benefits due him from the increased efficiency of industry.

CHAPTER VII

UNEMPLOYMENT, 1890–1921

Unemployment is a complex result of complex causes. It includes a variety of different types of worklessness. Some of the causes of unemployment are personal, some political, some economic. Some arise in the forces of nature.

The United States has passed through five periods of serious unemployment since 1890: the unemployment of 1894–95 and 1896–97, of 1908, of 1914, of 1920–21 and of 1930–35. The experiences of these bitter years and the advancement of economic research have made the nation conscious of unemployment as a definite social problem about which something must be done.

The Communist Manifesto of 1848 predicted that unemployment would wreck capitalism. It was a central idea in Marx's *Capital.* During the depression of the 'thirties socialists and communists stated confidently that the collapse had come. More significant, unemployment was recognized, 1931–34, by all classes in American society as the most destructive by-product of modern capitalism. The farmers learned that it meant reduced markets, lower prices, and a multitude of sons and daughters coming home from the cities to be supported, often bringing families with them. The taxpayers found that it meant millions and then billions for relief. The sale of merchants and manufacturers dwindled until tens of thousands went into bankruptcy. Even larger numbers cashed their investments at ruinous figures and surrendered their life insurance trying to save their businesses. A multitude of concerns closed their doors. Landlords found business property, homes and apartments vacated as tenants crowded into smaller quarters or left the community. Cities and counties by thousands reached the verge of bankruptcy, as both relief burdens and tax delinquencies rose. Debts which had not caused concern became an incubus. Wage earners by millions consumed their savings, lost their homes, reduced their standards of living, endured both physical and psychical misery. Thousands of farmers, professional people and business men found themselves in the same plight. Unemployment relief became the major non-military public

expenditure. The nation learned that unemployment, itself an effect of other causes, can crush a nation.

In 1920–21, and much more in 1930–35, the nation became "unemployment-conscious." The 40 years' discussion inaugurated by the Massachusetts reports of 1893–95 reached a dramatic climax in far reaching efforts to cope with unemployment during the Herbert Hoover and Franklin Roosevelt presidencies. The evolution of the American point of view from the "lazy rogues" concept so prevalent in the late nineteenth century to the national-responsibility concept that made possible the Reconstruction Finance Corporation, Federal Emergency Unemployment Relief, gigantic public works programs, and efforts to stop foreclosures on wage earners' homes is one of the most striking developments in American history.

Unemployment in the 'Nineties

There are no satisfactory statistics of unemployment during the 'nineties. The Census of 1889, which showed 4.8 per cent of the wage earners in manufacturing and 8.8 per cent of those in the building trades unemployed, was taken before the depression of the 'nineties. The Census of 1899, which showed 6 per cent of those in manufacturing and 12 per cent of those in building to be idle, was taken after the depression was over. We know that unemployment was very much worse in the bad year 1891 than it was in 1889; that conditions were better in 1892, and then extremely bad from 1893 through 1896; with gradual improvement in 1897 and 1898. The Census figures of 1899 were collected after a year and a half of revival had reduced unemployment to a fraction of what it was in 1894–96. The National Bureau of Economic Research describes 1893 as a year in which the country gradually declined into "extreme depression," 1894 as a year of "deep depression," "severe stagnation," and "widespread unemployment"; 1895 as a year of gradual improvement, followed in 1896 by "return to state of intense depression, severe unemployment"; and 1897–98 as a period of recovery.[1] It was during the prosperous year 1899 that the Census found one wage earner in 16 idle. Between 1893 and 1896, unemployment was certainly from two to three times as severe as in 1889 or 1899. Professor Douglas, using admittedly

[1] Thorp, Willard, and Mitchell, Wesley, *Business Annals*, National Bureau of Economic Research, 1926, pp. 138–139.

unsatisfactory data, *estimated* unemployment in manufacturing and transportation during the 'nineties as follows: [2]

PERCENTAGE OF WAGE EARNERS IDLE, MANUFACTURING AND TRANSPORTATION INDUSTRIES

1890	5.1%	1895	11.9%
1891	5.6	1896	15.3
1892	3.7	1897	14.5
1893	9.6	1898	13.9
1894	16.7	1899	7.7

The Unemployment Discussion of the 'Nineties

Constructive thinking on unemployment may be dated for the United States from the Massachusetts reports of 1893–95.[3]

The depressions of 1837, 1857, 1873, and 1893 had demonstrated that at times there was not work enough to go around. Seasonal idleness in agriculture, lumbering, fishing, construction, and manufacturing were familiar to every one. The displacement of workers by machinery had been the occasion of continuous and often bitter discussion since about 1809. And yet the typical American point of view at the end of the nineteenth century was that "any man who really wants a job can get it." The public had not yet clearly visualized the industrial character of unemployment and showed little interest in the subject. The General Secretary-Treasurer of the Boot and Shoe Workers' Union declared in 1899 that nobody was present at the state's hearings on unemployment at Lynn in 1894 "except representatives and members of the working class, and representatives of the poor department of the city. The property owning class were not there." [4] Bliss reported that the opinion was common in the United States that the number of unemployed had been exaggerated and sympathy for men without work was largely misplaced.[5]

[2] Douglas, Paul, and Director, Aaron, *The Problem of Unemployment*, Macmillan, 1931, p. 26.

[3] Twenty-fourth Annual Report of the Massachusetts Bureau of Labor Statistics, Wright and Potter, Boston, 1893, pp. 3–267; Massachusetts Board to Investigate the Subject of the Unemployed, Report, Part I, "Relief Measures," Part II, "Wayfarers and Tramps," Part III, "Public Works," Part IV, "Causes of Unemployment," Part V, "Final Report," Wright and Potter, Boston, 1895, House Document No. 50. Cf. by way of contrast: Final Report of Massachusetts Special Commission on Stabilization of Employment, Boston, 1933.

[4] Eaton, Horace M., Testimony, Report of the Industrial Commission, 1900, "Labor, Manufactures, and General Business," Vol. VII, pp. 372–373.

[5] Bliss, W. D. P., *What Is Done for the Unemployed in European Countries*, U. S. Bureau of Labor Bulletin, No. 76, May 1908, pp. 741–934.

The classification of the unemployed made by the Massachusetts Bureau of Labor Statistics in 1893 is indicative of the views of the period. They divided them into casual workers, seasonal workers, superfluous workers, and workers of low efficiency "who at the recurrence of the dull season or in times of depression are the first to be thrown out." [6] Though the report did not overlook the fact that depressions and dull seasons throw people out of work its emphasis was upon the unemployed rather than upon unemployment. The fact had not been grasped that: "The first question must be, Not what is to be done with the unemployed individual, but why he is unemployed." [7] The significant advance of the last 40 years has been the change of attitude that directs attention nowadays to the prevention of unemployment rather than to remedial treatment of the unemployed.

Organized labor was vigorously asserting in the 'nineties that the way to mitigate unemployment was to shorten hours.[8] The Bureau avoided discussion of this proposal, so bitterly opposed by the employers of the period, and merely suggested that such a change, if it would accomplish the purpose, "must be of gradual adoption." [9] Instead they discussed the feasibility of farm and industrial colonies for the unemployed, municipal workshops, municipal public works, public employment offices, and training institutions to develop skill on the part of the unemployed. All of these, it will be noted, were designed to relieve the needs of the unemployed rather than to combat unemployment.

There was much interest at the time in the idea of labor colonies and co-operative communities, in which the unemployed might obtain both subsistence and upgrading pending their reabsorption into ordinary employments, an idea which was revived in the 1930's in a variety of private co-operative undertakings for the benefit of the unemployed and of farmers.[10] The basic idea was that if a group of workers could be assembled, some of whom could make shoes or clothes, others build houses, do blacksmithing,

[6] Massachusetts Bureau of Labor Statistics, Twenty-fourth Annual Report, pp. 249–250.

[7] Beveridge, W. H., *Unemployment: A Problem of Industry*, Longmans, Green & Company, London, 1909 and 1930, p. 3.

[8] Cf. discussion later in this chapter.

[9] Massachusetts Bureau of Labor Statistics, Twenty-fourth Annual Report, 1893, pp. 242 ff.

[10] Reference is not made here to the general co-operative movement, but to co-operatives organized to meet the emergency situation.

farming, or the other necessary kinds of work, the community could be fed, clothed, and sheltered by mutually satisfying one another's needs and consuming one another's output. Many such colonies had already been established in England and on the Continent, some of them voluntary and others of a compulsory character.[11]

The Bureau raised the objections to such colonies which European experience had revealed; that most of the people willing to go into such colonies would not be fitted by skill or by temperament to make successes of the projects, that the difficulties of superintendence of such groups were almost insuperable, and that a superabundance of untrained labor and a shortage or improperly balanced assortment of skilled workers would be almost inevitable.[12]

Another proposal discussed by the Bureau was likewise urged during the depression of the nineteen thirties, that cities take over idle factories and workshops and operate them to furnish work for the unemployed.[13] The Bureau objected that such an undertaking would be subject to the abuses that frequently attach themselves to political management, and that cities could not create work and materially enlarge opportunities for employment unless they should undertake work of no utility merely to provide employment.[14] They did not consider, apparently, the possibility that the products of municipal factories might be distributed to others of the unemployed as relief rather than offered for sale in the open market, an oversight natural enough at a time when neither city or state governments looked upon relief as a definite public responsibility.

The principal remedy they recommended for the unemployment situation was "more extended and thorough industrial training than the community now offers," both for agricultural and shop work. They were much impressed by the lack of industrial capacity disclosed by the unemployed who had been aided in Boston and other cities during the winter of 1893–94 and by the small proportion of skilled workmen among those who asked for help. They noted that the skilled were the last to be dropped from the payrolls, were more versatile in adapting themselves to other

[11] Cf. Massachusetts Bureau of Labor Statistics, *op. cit.*, pp. 23–53; Bliss, *op. cit.*, pp. 814–818, 897–932; Beveridge, W. H., *The Problem of Unemployment*, 1930 ed., Chaps. VIII, IX.

[12] *Ibid.*, pp. 242–244.

[13] *Ibid.*, pp. 247–248.

[14] *Ibid.*, p. 248.

employment, and more resourceful and self-reliant in seeking new jobs.[15]

Experience has demonstrated that efforts to provide training for the unemployed have been almost futile so far as the meeting of the problem of unemployment is concerned. The experience of foreign countries, particularly England, has proved that industrial training can be used to upgrade a small percentage of the unemployed and help them to compete for jobs more effectively, but cannot reduce materially the numbers unemployed.[16] The progress made in industrial and agricultural education in the United States during the past forty years has been of great importance [17] but it has not counteracted in any appreciable way the forces which cause unemployment.

The Report of the Massachusetts Board to Investigate the Subject of the Unemployed (1895) added little in the way of new ideas. The Board made a careful study of three important subjects: relief activities and methods in Massachusetts and several large cities outside of the state, as well as in Great Britain, Germany, and Switzerland; the problem of "Wayfarers and Tramps," and the proposal to use public works to relieve unemployment. Their report on the causes of unemployment merely summarizes the testimony of witnesses from eight of the state's industries and contains no real analysis of the problem.

Neither the Bureau nor the Board recommended the establishment of public employment offices, both being of the opinion that politics would prevent such offices from being efficient aids to handling the employment problem. A fifth of the Bureau's report of 1893 described in detail a wide variety of free and fee-charging employment offices in Massachusetts and the public offices of Ohio, England, and France. But the study did not bring them to the view so widely held after 1900, that public employment offices are an essential part of a modern nation's economic machinery.[18]

The most important contribution made by the Board, perhaps, was its report on Wayfarers and Tramps. The unemployed transient, whose needs forced state and federal programs for transients

[15] *Ibid.*, pp. 250–252. Cf. also Final Report of Massachusetts Board to Investigate the Subject of the Unemployed, p. xxxix.

[16] E. g., Hill, A. C. C., and Lubin, Isador, *The British Attack on Unemployment*, The Brookings Institution, Washington, 1934, Chap. VII.

[17] Cf. Chapter XIV for discussion of industrial training.

[18] Bureau of Labor Statistics, *op. cit.*, pp. 255–263; Board to Investigate the Subject of the Unemployed, *op. cit.*, Part 5, pp. lx–lxii.

in the 'thirties, was a pressing problem in the 'nineties.[19] Some communities provided missions or lodging houses for homeless men and practically all busily passed them along from town to town. Work-tests were used in many cities to separate the "worthy" from the "unworthy." The railroads were troubled by a large number of men stealing rides on freight trains, and the "wayfarers" were being demoralized by their fruitless moving about in search of employment. The essential difficulty in the situation was the "irresponsible conduct" of the many tramps. They made it almost impossible for "strangers honestly desiring work" to procure it. To facilitate the separation of the wayfarers from the tramps they recommended severe work-tests and a state labor colony where tramps and vagrants under 30 years of age would be compelled to work under restraint. This policy, they believed, would drive tramps out of Massachusetts. "The one thing which the professional tramp will not face is the requirement of hard labor." [20]

In order, on the other hand, that wayfarers might be encouraged in their endeavor to find work they recommended that the various cities establish municipal lodging houses where migrating workmen could earn their lodging and meals. "Under the present system the wayfarer is treated as if he were beneath respect and it is not remarkable if he soon becomes so." [21] Sixteen years later a New York commission studying the same problem reached a similar conclusion. "Just as vagrancy leads directly to crime, so unemployment leads directly to vagrancy. The most stringent measures need to be taken to prevent men from remaining long in the ranks of the unemployed, lest they drop into vagrancy and crime." [22]

The experiences of emergency relief committees in various Massachusetts cities during the 'nineties in the handling of both direct relief and work relief might have furnished valuable guidance to similar committees throughout the country in subsequent depressions. But the American people have failed to learn from their experiences in previous depressions. In most of the United States soup lines, emergency lodging houses, unscientific outdoor

[19] Cf. Chapter X for details.

[20] Report on Wayfarers and Tramps, p. xi.

[21] *Ibid.*, pp. ix–xii.

[22] *Unemployment and Lack of Farm Labor*, Third Report to the Legislature of the State of New York by the Commission appointed under Chap. 518, Laws of 1909, April 26, 1911, p. 27.

relief, wood yards, relief work, and the indiscriminate lumping together in common treatment of paupers and the unemployed were characteristic of 1930 just as they were of 1890. Not until 1934 did the Federal emergency relief organization press upon the states the importance of separating the two groups for separate treatment.[23]

Relief work was used to relieve unemployment in the 'nineties, but on a very small scale and only on a local basis.[24] There was much doubt whether public funds ought to be used to provide work for the unemployed and, if so, whether the public work ought to be done by governmental bodies directly or let out to contractors. The Massachusetts Commission of 1895 did not take a definite position on this issue. They recommended, however, that such work be done by local labor with materials purchased within the state. In 1897, however, Professor John R. Commons wrote a series of 13 articles surveying the experiences of American and European cities with public works and concluded that it would be better both for the wage earners and the taxpayers if municipal construction was done under the "day work" or public plan.[25] Commons argued that the municipality, when doing the work itself, could control the time of the year when the work would be done, employ its own citizens rather than gangs of immigrants brought in by contractors, and be sure that the workmen were paid fair wages and worked reasonable hours.

The California legislature, in March 1897, passed an act, popularly known as "The Dague Tramp Bill," intended "to provide for the employment of the unemployed, and of vagrants under sentence" which vividly revealed the outlook of the 'nineties. It was not signed by the governor. The bill provided that each County Board of Supervisors divide the county into "employment districts" under "workmasters." Any unemployed person who could show that he was without means of support and in immediate need of the necessaries of life would be designated "as the 'Honorable Unemployed' and be entitled to employment on the County Farm, or the public highways," receive board, lodging, and thirty-five cents per day of eight hours' labor. The Board of Supervisors could pay at a higher rate at their discretion. This

[23] Cf. Chapters IX–X.

[24] Cf. Chapter XII for further details.

[25] Commons, John R., "A Comparison of Day Labor and the Contract System in Municipal Works," *American Federationist*, 1897.

workman was free to quit and could be discharged if his labor or conduct prove unsatisfactory. All persons convicted of vagrancy would be sentenced to work at the same places, but at wages of only ten cents per day.[26]

Labor's Unemployment Program in the 'Nineties

Organized labor's plan was to spread employment by shorter hours of labor. Samuel Gompers said in his presidential address in 1893 that in 1890 the American Federation of Labor

> "resolved to gradually enforce the eight hour work day. . . . The only method by which a practical, just and safe equilibrium can be maintained in the industrial world for the fast and ever increasing introduction of machinery, is a commensurate reduction of the hours of labor." [27]

George W. Perkins, President of the Cigar Makers' International Union, declared in 1900,

> "It is a positive and absolute necessity that the hours of labor be curtailed to that point where all men have an opportunity to work. That is, chiefly and primarily, the object of shortening the hours of labor, to give an opportunity to work." [28]

Horace M. Eaton, of the Boot and Shoe Workers' Union said,

> "I believe in short-hour legislation. I believe it is only possible upon national plans. If the Constitution does not permit it now it should be amended so that it could permit it." [29]

He then quoted with approval an unnamed person:

> "all of this improvement in machinery, and consequent displacement in labor, together with the centralization of industries that is going on, brings us ultimately to choose between three things: First, we may shorten hours of labor to distribute employment equally; second, we may attach property to support idle labor; third, we may have a revolution."

The contentions of the labor leaders did not go unchallenged. Professor John R. Commons pointed out in his testimony before

[26] *An Act to Give Employment to the Unemployed, Widely Known as The Dague Tramp Bill*, Charles H. Kerr and Company, publishers, 56 Fifth Avenue, Chicago. The author was ex-State Senator R. A. Dague of Los Angeles, California.

[27] Proceedings, American Federation of Labor Convention, 1893, Presidential address.

[28] Report of the United States Industrial Commission, 1900, Vol. VII, pp. 174, 178.

[29] *Ibid.*, Vol. VII, pp. 372.

the Industrial Commission in 1900 that if hours were reduced but output maintained it would afford no more employment, and that if hours, per capita production and wages were all reduced in the same ratio a larger number of workers would be needed but the national payroll would not be increased. In neither of these cases would wage earners' consumption be increased and depression conditions mitigated. On the other hand, if hours and per capita production were reduced, but daily wages remained the same, a larger number of laborers would be hired, and the national wages' bill increased. But this would increase the cost of production and the selling prices and would probably result in a decline of sales with consequent laying off of men and a re-creation of the unemployment which had just been eliminated.[30]

In 1896 Gompers stressed an additional point, destined to be emphasized by enemies as well as friends of organized labor during the nineteen-twenties. He attributed industrial crises and depressions in large part to "the lack of opportunity of the workers to consume more largely of the product of their labor" and declared that the depression of the 'nineties had been less disastrous as a result of the success of organized labor in maintaining wage scales.

> "Whatever else the enemies of our movement may urge against it, no one can dispute but that the organizations of labor have very largely, if not entirely, prevented a great reduction in wages, which would otherwise have taken place." [31]

Commenting upon this argument in his testimony before the Industrial Commission, Professor Commons said:

> "The explanation of prices based on this principle is this . . . the wealthy classes, having large incomes, invest in too many enterprises . . . and finally are producing more goods than there is a market for, and the collapse necessarily comes. Apparently the remedy would be either for the wealthy classes to spend it in luxury instead of in mills and factories, or for the working people to get such high wages that they . . . would use it in building their houses, consuming it rather than putting it into the bank or investing it in new enterprises. Thus if the working classes could have a greater consuming

[30] *Ibid.*, 1901, Vol. XIV, pp. 36, Testimony of John R. Commons, November 12, 1900.

[31] American Federation of Labor Convention, Proceedings, 1896, Washington, Presidential address.

power the multiplication of industries and overproduction would be impossible." [32]

Aside from their efforts to shorten hours and maintain wage rates, the only action upon unemployment taken by the American Federation of Labor during the 'nineties was the passage of a resolution at the 1893 convention endorsing the principle of the Coxey's Good Roads Bill [33] and the endorsement of bimetallism.

The Coxey armies were the protest of the unorganized against the current unemployment. Industrial armies, some 40 of which endeavored to get relief from their sorry plight, appear to have started in California where bands of unemployed workmen marched to various towns demanding work or relief. The dramatic march to Washington of Coxey's Army made them of short-lived national significance.[34]

The organization of the Coxey Army was a direct result of the efforts of Jacob Coxey and Marshall Browne during the winter of 1893–94 to find some means of pushing through Congress two bills which Coxey had devised to relieve the economic stresses of the country. Coxey was a Massilon, Ohio, business man with extensive farming interests. Browne had been printer, painter, cartoonist, editor, rancher, politician, and labor agitator, principally around San Francisco. The two met at the silver convention in Chicago in 1893, and became fast friends.

Coxey proposed that the Secretary of the Treasury be required to issue $500,000,000 in legal tender notes to be expended upon the construction of good roads throughout the United States, the work to be done under the direction of the Secretary of War, and the money spent at the rate of two millions per month. This, he believed, would give work to all of the unemployed at a wage of a dollar and a half for an eight-hour day, would put more money into circulation, and would establish the eight-hour day then being demanded by labor organizations by bringing the government into competition with employers who worked their men longer hours.

It was pointed out to him that this bill would benefit the rural

[32] United States Industrial Commission, Report, 1901, Vol. XIV, pp. 36, Testimony of John R. Commons, November 12, 1900.

[33] Cf. Proceedings of American Federation of Labor Convention, 1893, Resolution 106.

[34] Cf. McMurry, Donald L., *Coxey's Army*, Little, Brown and Company, Boston, 1929, Chap. IV, for a description of the interesting characters who officered Coxey's Army.

districts more than the cities. To overcome this difficulty he prepared a non-interest-bearing bond bill, which authorized any state, territory, county, township, or municipality which needed public improvements to issue non-interest-bearing bonds to the extent of half the assessed value of the property within it, and to deposit these bonds with the Secretary of the Treasury as security for a loan of legal tender notes. These notes would furnish money for the construction of streets, roads, schools, courthouses, sewers, and similar projects. The principal of the loan would be paid off in 25 annual installments to be raised by taxation, and the legal tender notes would be retired *pari-passu* with the retirement of the bonds.

Coxey decided to mobilize an "army" to march on Washington, starting Easter Sunday, 1894, from Coxey's home in Massilon. He expected 100,000 men to invade Washington and force the consideration of his bills by Congress.[35] But scarcely a hundred ragged men—not one with an overcoat—marched out of Massilon and only a few hundred joined them on the way to Washington.

While Coxey's Army was plodding from Ohio to Washington, living off the hospitality of the country, and aided by the efforts of labor unions and the Populist party, larger armies in the West were traversing distances which made Coxey's journey from Massilon to Washington seem insignificant. Fry's Army, which left Los Angeles for Washington on March 16, 1894; Kelly's, which left San Francisco at the beginning of April; the Chicago Army led by Doctor Randall, a dentist; and Hogan's Montana Army were the most important. The largest and best organized of the western armies were Fry's and Kelly's which adopted formal constitutions and demanded that the government furnish work for all unemployed citizens, that foreign immigration be prohibited for ten years, and that no alien be allowed to own real estate in the United States.[36] Each recruit obligated himself to support the constitution of the United States and of the Industrial Army, to obey orders, not to violate the law, to refrain from riotous conduct, to respect the rights of property, and not to bring disrespect upon the Industrial Army.

Fry left Los Angeles with about 600 men on March 16, 1894.

[35] Stead, W. T., "Coxeyism," *Review of Reviews*, X, 49; *Pittsburgh Press*, March 22, 24, 1894.

[36] For details see McMurry, *op. cit.*, p. 128.

They boarded a freight train and went eastward on a series of trains to Texas, and then worked their way toward Washington. About half of Fry's Army eventually reached there at various dates in the early summer. Kelly's Army left San Francisco on April 1, and reached Sacramento with about 700 men. His journey eastward was strewn with vicissitudes, and his army finally broke up in Ohio.

Hogan's 500 men, mostly miners, after vainly endeavoring to get free transportation to St. Paul, broke into a roundhouse at Butte, steamed up an engine, coupled on to a freight train, and started East. They were captured and arrested by United States infantry.

The "on to Washington" movement reached its height in May 1894; by the middle of June it was played out. There were never many more than a thousand members of the armies in Washington nor more than ten thousand on the road. Congress refused to listen, and Coxey's bills never got out of committee.

But the demands of the unemployed armies were incorporated later into the platforms of the People's Party and allied organizations, and into the platform of the Democratic Party after it swallowed Populism in 1896. Money inflation, the fundamental tenet of Coxey and the industrial armies, was the center of the Populist and Democratic party platforms in the middle 'nineties; government employment on public works was advocated by the Populist platform of 1896; and the advocacy of good roads found a place in the Republican platform of 1900, though this cannot be attributed to Coxeyism.

The United States Industrial Commission, 1900–1901

Following the dramatic events of the 'nineties, one would have expected the United States Industrial Commission (1900) to give considerable attention to the problem of unemployment. They almost ignored it, although two witnesses before the Commission declared that unemployment was the most serious of all our industrial problems and the one which went to the root of all other social problems.[37] The Commission's final report stated that "regularity of employment is undoubtedly the most important

[37] United States Industrial Commission, Report, 1901, XIV, pp. 34, Testimony of John R. Commons; Vol. VII, pp. 372, Testimony of Horace M. Eaton, General Secretary-Treasurer, Boot and Shoe Workers' Union.

privilege for which workingmen can ask," [38] but devoted only 16 of its 1134 pages to the unemployment problem. Such neglect of the subject by a Federal Industrial Commission reporting less than 35 years ago is almost unbelievable.[39]

Unemployment in the Upswing

The 15 years preceding the outbreak of the World War were characterized by an enormous expansion of American industry. Several million immigrants and a steady flow of labor from American farms were absorbed into manufactures, transportation, construction, mining, lumbering, and commercial industries. The upward swing of business from 1898 to 1920 was interrupted only by the mild depression of 1903–04; the sharp panic and acute depression of 1907–08; the mild depression of 1910–11; and the short though severe depression of 1914.

Facts of Unemployment, 1900–1914

Statistics on unemployment were somewhat better after 1900. New York began to gather statistics of unemployment among trade unionists in 1897 and continued this series to June 1916. Massachusetts gathered comparable figures from 1908 to 1923. The United States Geological Survey began to gather data in 1897 on the number of days lost by coal miners. The Interstate Commerce Commission's annual reports have furnished the numbers employed on the railroads. Professor Douglas estimated unemployment for the years 1889–1927 by estimating the number of workers in the national labor supply and in the respective industry supplies year by year and then subtracting the estimated numbers employed from the supply, and assuming that the balance represented the approximate numbers who were idle. His estimates of unemployment in the manufacturing and transportation industries are given in Table I on page 128.

Except for the two years 1908 and 1914, unemployment remained at relatively low levels from 1900 through 1914. Douglas' estimates indicate unemployment as low in 1902–03, 1905–07, 1910 and 1912 as during the war boom of 1916–20, and but slightly higher in 1900, 1904, 1911, and 1913 than during the war years. Average unemployment appears to have been lower from 1900

[38] United States Industrial Commission, Report, 1902, Vol. XIX, p. 746, final report.

[39] *Ibid.*, pp. 746–757.

ESTIMATED PERCENTAGES OF UNEMPLOYMENT IN MANUFACTURING AND TRANSPORTATION, 1890–1927 [40]

(Obtained by subtracting estimates of numbers employed from estimates of the total labor supply of the specified industries)

YEAR	ESTIMATED PERCENTAGE OF UNEMPLOYMENT	YEAR	ESTIMATED PERCENTAGE OF UNEMPLOYMENT
1890	5.1	1909	5.1
1891	5.6	1910	3.7
1892	3.7	1911	5.6
1893	9.6	1912	4.0
1894	16.7	1913	5.4
1895	11.9	1914	12.9
1896	15.3	1915	12.4
1897	14.5	1916	3.5
1898	13.9	1917	3.5
1899	7.7	1918	3.5
1900	6.3	1919	4.0
1901	4.5	1920	4.3
1902	3.5	1921	21.2
1903	3.5	1922	15.4
1904	7.1	1923	4.4
1905	4.0	1924	8.3
1906	3.5	1925	5.1
1907	3.5	1926	4.5
1908	12.0	1927	5.6

through 1913 (if 1908 is excluded) than between 1923 and 1927.[41] It was a period of active employment, tremendous immigration, rapid expansion of American industry, national prosperity.[42] The panic in the fall of 1907, accompanied by failures, bank suspensions, collapse in the stock market, and rapid displacement of workers from their jobs brought disaster at the end of a year in which both imports and exports reached record figures, immigration was the largest in American history, and the volume of business had exceeded any previous year.

The next year, 1908, resembled 1894 and 1896. Widespread business failures, stagnation in industry and trade, lowered commodity prices, and unemployment three times as severe as the

[40] Douglas, Paul H., *Real Wages in the United States, 1890–1926*, Houghton Mifflin, p. 445.

[41] Cf. also Bradford, Ernest S., *Industrial Unemployment*, United States Bureau of Labor Statistics, Bulletin 310.

[42] E. g., Mills, Frederick C., *Economic Tendencies in the United States*, National Bureau of Economic Research, New York, 1932, pp. 1–185; Thorp, W. L., and Mitchell, W. C., *Business Annals*, National Bureau of Economic Research, New York, 1926, pp. 138–141.

average for the preceding five years, again aroused nation-wide discussion of the unemployment problem.

Public employment offices were advocated increasingly. The reports of the Minnesota Commissioner of Labor for 1891–92, which discussed Europe's experiments with public employment offices and the extensive report published by California in 1895 [43] had given a more favorable picture of the possibilities of such offices than did the Massachusetts reports. Some progress had been made in the establishment of public employment offices. There were 12 state offices in Ohio, Missouri, and Illinois in 1900 and four municipal offices.[44] Two federal reports and the depression of 1908 did much to promote the movement.[45] The New York Commission of 1911 both recommended a state-wide system of employment offices and presented a bill for the creation of such a system which was enacted (in substance) by the New York legislature.[46]

It is apparent that public opinion had not yet grasped fully the preponderant significance of industrial and economic factors as contrasted with the peculiarities of individuals as causes of unemployment. The International Conference on Unemployment at Paris in 1910 revealed that European thinking was still deficient in this respect.[47] Investigations in Illinois caused the *Chicago Tribune* to remark that the American people "persist in looking upon joblessness as a reflection upon the individual whereas it is a reproach to the nation" [48] while the secretary of the Illinois Commission found it necessary to point out that the current unemployment was not "spasmodic nor spectacular, nor unusual, nor peculiar to this year, nor due to the change of administration, nor to any of the causes to which it is usually attributed" but to the fact that wherever men are gathered in great industries there

[43] Minnesota Bureau of Labor, Third Biennial Report, St. Paul, 1892; California Bureau of Labor Statistics, Seventh Biennial Report, Sacramento, 1895.

[44] For further details cf. *Monthly Labor Review*, January 1931, pp. 11–12.

[45] Conner, J. E., *Free Public Employment Offices in the United States*, U. S. Bureau of Labor, Bulletin 68, January 1907, pp. 1–115; Bliss, W. D. P., *What Is Done for the Unemployed in European Countries*, U. S. Bureau of Labor, Bulletin 76, May 1908, pp. 741–934.

[46] Unemployment and Lack of Farm Labor, Third Report of the Commission appointed under Chap. 518 of the Laws of 1909 to inquire into the question of employers' liability and other matters, Albany, April 26, 1911, pp. 13–21.

[47] First International Conference on Unemployment, Paris, 1910, Proceedings, summarized in *Journal of Royal Statistical Society*, London, December 1910, LXXIV, 67–70.

[48] *Chicago Tribune*, December 9, 1913.

is a "great reserve army of workers without jobs; men who must eat; men who must live over those times at their own cost, that our great industries may continue." [49]

New York's report of 1911, however, was the conclusive demonstration for the United States of the essentially industrial character of unemployment.

> "We find in the industrial centers of this state, at all times of the year in good times as well as in bad, wage-earners, able and willing to work, who cannot secure employment. . . . The records of charitable societies show that from 25 to 30 per cent of those who apply to them for relief every year have been brought to their destitute condition primarily through lack of work. Private employment offices can find work on the average for but one out of four of those who apply to them. . . . The census of 1900 found 25 per cent of those engaged in manufacturing and mechanical pursuits in New York state unemployed at some time during the year; over one-half of these were unemployed from one to three months, 37½ per cent from three to six months." [50]

Besides cyclical unemployment

> "there are an infinite number of irregular variations in the demand for labor, caused by the invention of new machinery, the introduction of new processes, business failures, the reorganizations of firms and corporations, the institution of economies in method, the decaying of trades, the change in location of plants and industries, and other changes. These irregular causes of unemployment are constantly operating; they are necessary accompaniments of industrial progress. . . . We want to know not so much how many are without work, as how many *need to be* without work. . . . The problem must be approached from the standpoint of the industry." [51]

The Commission made four principal recommendations. Their demand for an adequately financed system of public employment offices has already been mentioned. The others were comparatively new; the vocational guidance of children so that they would get into occupations where they would have the maximum opportunity of steady employment; the postponement of as much public construction as possible to the dull parts of the year and also to dull years; and the establishment of a monthly labor market bulletin to publish reliable current information upon the state of em-

[49] Henderson, Charles R., *American Labor Legislation Review*, May 1914, p. 225.
[50] *Unemployment and Lack of Farm Labor*, p. 2.
[51] *Ibid.*, pp. 8, 31.

ployment. Three of these recommendations were carried out. New York established employment offices, started a good labor market bulletin, and developed vocational guidance in connection with its schools and (in recent years) the junior division of its employment service. Public works planned to balance the fluctuations of employment in private industry had not been worked out in any state or by the federal government down to 1935.[52]

Meanwhile important attacks upon unemployment were developing among private citizens. In 1910, at the Paris conference on unemployment, an International Association on Unemployment was organized. In December 1912, an American section of the International Association was formed by a group of people mostly members of the American Association for Labor Legislation, which brought the two associations into close affiliation. The American section was formed "To co-ordinate the efforts made in America to combat unemployment and its consequences, to organize studies, to give information to the public, and to take the initiative in shaping improved legislation and administration, and practical action in times of urgent need." [53]

The chairman of the American section, Charles R. Crane of Chicago, suggested to the mayor of Chicago the appointment of the Chicago Unemployment Commission of 1912–13. The most significant recommendation in its report [54] was that the public employment office "be so organized as to assure: (a) adequate funds to make it efficient in the highest possible degree; (b) a mode of appointment of the salaried directors which will protect it against becoming the spoil of political factions and parties; and (c) a board or council of responsible citizens representing employers, employees, and the general public, to direct the general policy and watch over the efficiency of the administration, this board or council having the power to employ and discharge all employees subject to proper regulations of the civil service commission." Twenty years later, in spite of repeated efforts of Chicago citizens, none of these recommendations had been made effective either in Chicago or in the vast majority of American cities.

On February 27–28, 1914, under the joint auspices of the

[52] *Unemployment and Lack of Farm Labor*, pp. 13–21.

[53] "Employment," *American Labor Legislation Review*, December 1914, Vol. IV, No. 4, p. 600.

[54] Report of the Mayor's Commission on Unemployment, Cameron, Amberg Company, Chicago, March 1914.

American section and of the Association for Labor Legislation the First National Conference on Unemployment met in New York City, with delegates from 25 states and 59 cities—trade unionists, employers, economists, and government officials. Ten months later, December 28–29, 1914, the Second National Conference convened in Philadelphia.[55] From these two conferences emerged the Practical Program of the Association for Labor Legislation on unemployment. This program, reprinted from time to time in modified form, has sounded the keynote of the American attack upon unemployment from 1914 to 1933.[56] The emphasis has been upon prevention. Without disregarding the need for unemployment insurance to ameliorate the condition of the unemployed and employment offices to facilitate job finding, American experts on unemployment have stressed the importance of attacking the economic and political situations, practices, and forces which result in unemployment. It is significant that the first publication of the "Practical Program" appeared under the title *The Prevention of Unemployment.*

The "Program" presented a detailed plan for a system of federal-state-local public employment offices; urged the control of both regular and emergency public works to relieve unemployment; advocated the regularization of industry by employers, the workers, and the consumers; and recommended unemployment insurance. It also urged as useful supplementary measures industrial training, the improvement of agricultural life to attract more people to the land, a constructive immigration policy, raising the age for compulsory education and limitation of the hours of labor of persons under 18 years of age, reduction of excessive working hours, and constructive care of the unemployable.

The appearance of the reports just discussed and Wesley Mitchell's *Business Cycles,*[57] opened up the discussions which culminated in the policies inaugurated by the government during the depression of the early 'thirties.[58]

[55] *American Labor Legislation Review*, May 1914, Vol. 4, No. 2, and June 1915, Vol. 5, No. 2.

[56] *Ibid.*, June 1915, Vol. 5, No. 2, pp. 176–191, and December 1930, Vol. 20, No. 4, pp. 406–409.

[57] Mitchell, Wesley, *Business Cycles*, University of California Publications, 1913.

[58] These reports were followed by many others, which appeared in all sections of the country, which molded public opinion and increased the public's information upon unemployment but, in most cases, did not add new concepts to the discussion. A few typical studies are listed:

O'Hara, Frank, *Unemployment in Oregon*, Report to the Oregon Committee on

The War Interlude

The war diverted popular attention from the unemployment problem. The widespread unemployment of 1914 and early 1915 was followed by a sharp pick up of employment in the fall of 1915 and through 1916; and by the feverish activity of 1917–18, when millions of workers were absorbed by the war-machine and industry and agriculture were endeavoring to expand their output. The high labor turnover that accompanied the unsettlement of the industrial situation directed popular attention to the employers' problem of labor management rather than the wage earners' problem of unemployment, while the rapid rise of the cost of living made wages rather than unemployment the immediate problem for the workers. But little increase in unemployment resulted from demobilization and the short post-war depression of 1918 and early 1919, and it disappeared in the boom of 1919–20. Prices and wages rose to new high levels, and production broke previous records. The United States seemed to be "sitting on the top of the world." The sharp reaction of 1920, with tumbling prices, bankruptcies, and general deflation, threw millions out of work again. Serious unemployment lasted from 1920 to 1922. The nation again became unemployment-conscious.

The Collapse of 1921

Unemployment appears to have been much worse in 1921 than during the depression of the 'nineties. More than a fifth of the employees in manufacturing and transportation, more than a third of those in the construction and coal mining industries were idle.[59] Approximately "4,000,000 workers or nearly one-seventh of all persons employed at the crest of the 1920 boom" [60] were thrown out of employment. The workers in mines, railroads, construction, and manufacturing were particularly hard hit, while in agriculture, finance, public utilities, and wholesale trade the layoffs were more moderate. The depression did not last long enough to affect em-

Seasonal Unemployment, Keystone Press, Portland, Oregon, September 1914; New York State Department of Labor, *Idleness of Organized Workers in 1914*, New York Labor Bulletin, March 1915; U. S. Bureau of Labor Statistics, *Unemployment in New York City*, Bulletin No. 172, April 1915; U. S. Bureau of Labor Statistics, *Unemployment in the United States*, Bulletin No. 195, July 1916; Mayor's Committee on Unemployment of New York City, Report, New York, 1917.

[59] Douglas, Paul H., *Real Wages in the United States, 1890–1926*, pp. 445, 455, 457, 460. Cf. also *Business Cycles and Unemployment*, McGraw-Hill Book Co., 1923, Chaps. IV and V.

[60] *Business Cycles and Unemployment*, p. 86.

ployment much in retail trade, personal service, professional work, or public employment.[61] It appears that unemployment was much worse among employees of large establishments than of small ones in the same industries,[62] a fact probably explained by the greater tendency of large establishments to cut production sharply and protect the market prices of their products rather than to maintain their output and try to market it at lower price levels. This is one of the outstanding contrasts between manufactures as a whole and agriculture; the former has reduced output and employment when the market began to weaken, while agriculture has maintained output and employment and been forced to accept lower prices. The Agricultural Adjustment Administration was endeavoring in 1934–35 to apply the same policy in agriculture that the large manufacturer has applied in industry.

The Conference of 1921

In September 1921 a Conference on Unemployment was called by President Harding, the first conference on unemployment ever called by the federal government. The Conference

> "advanced the proposal that an exhaustive investigation should be made of the whole problem of unemployment and of methods of stabilizing business and industry so as to prevent the vast waves of suffering which result from the valleys in the so-called business cycle." [63]

The interest of the Conference, and of the extensive investigations made at its request by the National Bureau of Economic Research and co-operating organizations [64] was centered in the prevention of unemployment through grappling with the basic conditions which cause unemployment, particularly the business cycle. The Conference recognized that it had a twofold task—to suggest procedures that would bring about economic recovery and

[61] *Ibid.*, pp. 86–96.

[62] *Ibid.*, p. 97.

[63] Hoover, Herbert, in *Business Cycles and Unemployment*, McGraw-Hill, New York, 1923, p. v. This book contains the recommendations of the President's Conference and some of the results of their investigations.

Cf. also President's Conference on Unemployment, Report, Washington, Government Printing Office, 1921. The following publications had their origin in discussions and committee work in the Conference, but were not published as part of the report of the Conference: Hurlin, Ralph G., and Berridge, William A., *Employment Statistics for the United States*, Russell Sage Foundation, New York, 1926; National Bureau of Economic Research, Inc., *Recent Economic Changes in the United States*, McGraw-Hill, New York, 1929.

[64] *Ibid.*, p. v.

to propose plans that would tend to stabilize employment for the future. So far as the emergency situation was concerned, they saw a need to relieve the unemployed and a need to relieve business. The former task they committed to the local communities, urging that they set up emergency committees to work out community plans, which ought to include efficient public employment agencies, co-ordination of direct relief under a central head, the promotion of both private and public repair and modernization work, and a temporary expansion of municipal public works. The only responsibility they laid upon the state and federal governments was to speed up their construction programs to provide more employment.

To relieve business, they recommended downward readjustments of freight rates and taxes; that tariffs be fixed for a period of time so that business men could make their plans; that world armaments be reduced and limited to reduce financial burdens; that waste elimination and regularization of industry be pushed vigorously; that efforts be made to stabilize monetary exchange rates; and that agriculture's unfavorable position be improved.

Looking forward to the long time program the emphasis of the Conference was upon the thorough study of ways and means to mitigate the recurrent fluctuations of business, both seasonal and cyclical, but particularly of the latter. Unemployment, they pointed out, is always one of the major results of business depressions. "The problem of preventing or mitigating unemployment is therefore part of the larger problem of preventing or mitigating alternations of business activity and stagnation." [65] Unemployment could not be overcome by a direct attack. It could be overcome only by isolating and grappling with the scores, perhaps hundreds, of things which affected the degree of activity of the nation's and the world's business; by solving monetary, taxation, foreign trade, transportation, stock market, and a host of other problems.

Obviously, such a task would be one not quickly accomplished. The President's Conference, as it clarified the forces which bring large scale unemployment upon a nation and pointed the way toward at least partial control of those forces, made equally clear that they saw no hope of doing away with unemployment in the near future. The question naturally emerged, "What then are we

[65] President's Conference on Unemployment, Report, p. 158.

going to do for the unemployed?" At least some members of the Conference saw that unemployment insurance might become the necessary answer to that question, but the Conference did not go into the question. One of its important committees, however, declared that any system of unemployment insurance which would promote the regularizing of employment should be given very careful consideration.[66]

The analysis of unemployment by the President's Conference and the scientific organizations that assisted it, marked a new era in American thinking on the subject. The New York report of 1911 had demonstrated that unemployment was an industrial problem; the report of the Conference of 1921 demonstrated that it was a by-product of the functioning of the whole modern economic system.[67] Six major aspects of the unemployment problem occupied attention from 1922 to 1931. Three of the six: employment statistics, regularization, and technological unemployment will be discussed in the next chapter. The other three: public works, employment offices, and unemployment insurance, and in addition unemployment relief, are discussed in subsequent chapters.

[66] *Ibid.*, pp. 166–167.

[67] Important private contributions to the subject had helped pave the way to the analysis made by the President's Conference. In addition to Mitchell's work with Business Cycles, the following American studies published before 1921 may be mentioned:

Rubinow, I. M., *Social Insurance*, Henry Holt, New York, 1913; Kellor, Frances A., *Out of Work*, G. P. Putnam, 1904 and 1915; Lescohier, Don D., *The Labor Market*, Macmillan, New York, 1919; Parker, Carleton, *The Casual Laborer*, Harcourt, Brace and Howe, New York, 1920; Mills, F. C., *Contemporary Theories of Unemployment and Unemployment Relief*, Columbia University Studies, New York, 1917; Mitchell, John, *The Wage Earner and His Problem*, P. S. Risdale, 1913; Van Kleeck, Mary, *Artificial Flower Makers: A Seasonal Industry*, Russell Sage Foundation, 1913; Barnes, Charles, *The Longshoremen*, Russell Sage Foundation, New York, 1915.

CHAPTER VIII

UNEMPLOYMENT, 1922–1935

The preceding chapter mentioned the unemployment figures gathered by New York and Massachusetts from trade unions. In 1914 New York began the publication of employment figures obtained directly from employers, and in October 1915, the United States Bureau of Labor Statistics started a similar series for the country as a whole but with a rather small sample. Wisconsin inaugurated employment statistics in July 1920, Illinois in August 1921, Massachusetts and Iowa in 1922, and other states in subsequent years. The vigorous statements of the President's Conference on Unemployment (1921) concerning the inadequacy of American statistics gave a strong impetus to the collection of employment figures by state labor administrations and federal reserve banks and to the enlargement of the Bureau of Labor Statistics sample. The Bureau's coverage was again sharply increased in 1933–34 as a result of a civil works administration project.[1] A Committee of the American Statistical Association worked out standardized methods for the collection, tabulation, and publication of such figures, and the state and federal departments already publishing employment data all adopted the standardized procedures.[2]

These employment statistics measured the changes in the numbers employed, not in the numbers unemployed, in a carefully selected sample of the concerns in each important industry within the area covered. Changes in the numbers employed by an industry reflect the growth or decline of the industry as well as the fluctuations of employment due to cyclical, seasonal, or other temporary forces. It may happen that the particular concerns included in the sample are neither increasing nor decreasing in size at a time when elsewhere new plants are springing up or other

[1] Joy, Aryness, "Recent Progress in Employment Statistics," *Journal of the American Statistical Association*, December 1934.

[2] Hurlin, Ralph G., and Berridge, William A., *Employment Statistics for the United States*, Russell Sage Foundation, New York, 1926, is the official report of this committee.

plants are decreasing in size. The employment statistics furnish no method whatever of measuring basic (chronic) unemployment nor of computing fluctuations in employment in the large number of concerns not furnishing reports to the bureaus. Hence the fluctuations in the curve of employment shown by these statistics cannot be accepted as infallible indications of current changes in the numbers employed and unemployed in the several industries, much less in all industry. But, in spite of these limitations, they give a pretty accurate indication of the *trends* of employment, and when they indicate that employment has receded by a certain percentage, one is justified, ordinarily, in concluding that the changes shown are characteristic of employment in general.[3]

But the data published was still unsatisfactory in 1935.[4] A severe but competent critic declared in 1928 that "Neither on the total volume of unemployment, nor on its distinctions among industries, nor on its geographical distribution, nor on its duration, is there any *direct* evidence worthy of serious consideration." [5]

Unemployment, 1922–1929

The decade of the 1920's started with the serious world-wide depression of 1920–21, which was followed by nine years of great prosperity, marred only by the short depressions of 1925 and 1927 and the depressed condition of certain branches of agriculture. It ended in catastrophic collapse in the fall of 1929. The world's economic affairs were still in serious condition when this study was completed in 1935.

The prosperity, unprecedented profits, price stability, and record breaking output of the 'twenties [6] should have been accompanied, judging from previous experience, by maximum employment. There is a great deal of evidence to indicate that there was a higher percentage of unemployment throughout the

[3] Some of the studies in which these statistics were utilized are *Cycles of Unemployment in the United States, 1903–22*, William A. Beveridge, Pollack Publication No. 4, Boston, 1923; Douglas, Paul H., *Real Wages in the United States*, Houghton Mifflin, 1930, Chap. XXIII; Douglas, Paul H., and Director, Aaron, *The Problem of Unemployment*, Macmillan, 1931, Chap. II.

[4] Cf. Isador Lubin's critique: *Unemployment in the United States*, Hearings before Committee on Education and Labor, U. S. Senate, December 11, 1928, to February 9, 1929, Washington, Government Printing Office, 1929, pp. 506–512. Cf. for views of other witnesses, *ibid.*, pp. 179–188, 190–191.

[5] Berridge, W. H., *ibid.*, p. 190.

[6] National Bureau of Economic Research, *Recent Economic Changes*, McGraw-Hill, New York, 1929, Vol. I, Chaps. I, II. Mills, Frederick C., *Economic Tendencies in the United States*, National Bureau of Economic Research, New York, 1932.

'twenties, except in boom years, than during the years which were prosperous in the two decades 1900 to 1920.

The United States Bureau of Labor Statistics estimated the average number of employees in the manufacturing industries at 8,983,900 in 1919 and 9,065,600 in 1920. The 1919 figure probably equaled the maximum employment of the war period; in 1920 manufacturing employment probably set an all time record down to the present time (1935).

The cataclysmic drop of 1921 saw 2,165,900 employees laid off. The reader must remember that these are annual averages, and these figures mean that the equivalent of 2,165,900 workers were laid off for the whole year, causing a shrinkage of almost exactly a billion dollars in manufacturing wage earners' incomes from 1920 to 1921.[7] In 1922 there were 1,472,900 less employees in manufactures than in 1920 and the annual payroll was down $875,000,000 from the 1920 figure.

The manufacturing labor force was unquestionably expanded to its approximate maximum in 1918–20, and again in 1923 and in 1929. The fact that the numbers employed approximated 8¾ to 9⅑ millions of people in four of the eleven years, 1919–29, makes it appear that these figures can hardly be considered as abnormally high employment. After the sharp collapse from 8,725,000 in 1923 to 8,084,000 in 1924, there was a recovery of only two to four hundred thousand above the 1924 figure during the four years 1925–28. In other words, after 1923 employment in manufactures remained about 700,000 below the 1919–20 figures until 1929, when it jumped about half a million, only to decline by over a million in 1930 and then fall rapidly as the depression progressed to a minimum of 5,374,000 in 1932, a figure nearly three million lower than during the middle twenties and approximately 3¾ millions below 1920. (Cf. Table I [8] on page 140.)

Meredith Givens, after examining all of the existing data on employment, estimated that in 1920, at the peak of the post-war boom, when employment was probably at an all time peak, there were an average of *at least* 1,401,000 workers out of employment.

[7] All of the figures in this discussion were taken or computed from United States Bureau of Labor Statistics, *Trend of Employment*, May 1934, p. 8, and *Labor Information Bulletin*, February 1935, p. 19.

[8] Cf. also Berridge, W. H., *Employment and Unemployment in Recent Economic Changes*, National Bureau of Economic Research, McGraw-Hill, New York, 1929, Vol. II, pp. 462–478.

TABLE I

ESTIMATED NUMBER OF WAGE EARNERS EMPLOYED IN ALL MANUFACTURING INDUSTRIES AND ESTIMATED WEEKLY WAGES, 1919 TO 1934 [9]

YEAR	NUMBER OF EMPLOYEES, ANNUAL AVERAGE	INCREASE OR DECREASE FROM PRECEDING YEAR	WEEKLY PAYROLL ANNUAL AVERAGE	WEEKLY PAYROLL INCREASE OR DECREASE FROM PRECEDING YEAR
1919	8,983,900	. . .	$198,145,000	. . .
1920	9,065,600	+ 181,700	238,300,000	+$40,155,000
1921	6,899,700	−2,165,900	155,008,000	− 83,292,000
1922	7,592,700	+ 693,000	165,406,000	+ 10,398,000
1923	8,724,900	+1,132,200	210,065,000	+ 44,659,000
1924	8,083,700	− 641,200	195,376,000	− 14,689,000
1925	8,328,200	+ 244,500	204,665,000	+ 9,289,000
1926	8,484,400	+ 156,200	211,061,000	+ 6,396,000
1927	8,288,400	− 196,000	206,980,000	− 5,081,000
1928	8,285,800	− 2,600	208,334,000	+ 1,354,000
1929	8,785,600	+ 499,800	221,937,000	+ 13,603,000
1930	7,668,400	−1,117,200	180,507,000	− 41,430,000
1931	6,484,300	−1,184,100	137,256,000	− 43,251,000
1932	5,374,200	−1,110,100	93,757,000	− 43,499,000
1933	5,778,400	+ 404,200	98,623,000	+ 4,866,000
1934	6,600,000	+ 821,600	126,000,000	+ 27,377,000

These were composed of 487,000 persons attached to manufacturers, 230,000 from the construction industry, 170,000 from transportation, 274,000 from mines, quarries, and oil wells, and 240,000 from public service, mercantile, and miscellaneous occupations. No attempt was made to compute a figure for agriculture and the unemployable were not included.[10] "Throughout the whole period (1920–1927)," said Givens, "it is surprising to find a persistent and large volume of unemployment even in the very active years, 1920, 1923, and 1926." [11] Employment in general did not recover to 1926 levels, until the temporary pick up in 1929 which preceded the crash in October of that year.[12]

Unemployment never drops to zero. The assumption of the Brookmire Economic Service that there was no unemployment in 1910, 1912, 1917, 1920, 1923, and 1926 was an absurdity.[13]

[9] Compiled from United States Bureau of Labor Statistics, *Trend of Employment*, May 1934. Table 2, p. 8; and *Labor Information Bulletin*, February 1935, p. 19.

[10] *Recent Economic Changes*, Vol. II, p. 478, Table 37.

[11] *Ibid.*, p. 478.

[12] Cf. Table 1, *supra;* and the employment indexes published by the United States Bureau of Labor Statistics, New York, Illinois, Wisconsin, and the Philadelphia Federal Reserve Board.

[13] *Recent Economic Changes*, Vol. II, p. 468.

TABLE II

ESTIMATED AVERAGE MINIMUM VOLUME OF UNEMPLOYMENT, 1920–27 [14]
(In thousands)

	1920	1921	1922	1923	1924	1925	1926	1927
Total employees attached to non-agricultural pursuits	27,558	27,989	28,505	29,293	30,234	30,941	31,808	32,695
Minimum number of unemployed:								
Manufacturing	487	2,554	1,761	432	924	578	552	727
Construction	230	248	230	220	350	345	280	422
Transportation and communication	170	598	580	251	340	184	144	152
Mines, quarries, oil wells	274	470	520	329	326	308	323	380
Public service, mercantile, miscellaneous	240	400	350	300	375	360	370	374
Minimum total unemployed	1,401	4,270	3,441	1,532	2,315	1,775	1,669	2,055

[14] Prepared by Meredith Givens, *Recent Economic Changes*, Vol. II, p. 478.

There is always a margin of unemployment in the United States amounting to more than a million men and women, a margin which is permanent and which can be increased but perhaps not decreased materially. One or more wage earners out of every 40 are always out of work.[15] Givens' figure of 1,401,000 rather than the Brookmire zero figure is the base upon which the increases in unemployment which occurred during the 'twenties and 'thirties must be piled. Givens estimated that there were at least 1,775,000 people out of work in 1925 and a letter of the Secretary of Labor to the United States Senate estimated that the numbers unemployed increased 1,874,050 between 1925 and January 1928, giving a figure of 3,650,000 as the minimum estimate of unemployment at the beginning of 1928.[16] The year 1928 and the early part of 1929 witnessed one of the biggest building booms in the history of the country. Manufacturing employment was practically the same as in 1927. It is probable that on the whole unemployment declined during the year, and it fell to still lower levels during the first nine months of 1929. There were between 2,500,000 and 3,000,000 people idle when the stock market crashed and the laying off of labor began in the late fall of 1929. The 'twenties was a period, therefore, in which basic unemployment seems to have increased, and in which the numbers employed did not increase in anything like the same proportion as the national output.[17]

The employment story of the 'twenties is not told, however, by the figures showing the average numbers of people employed and unemployed. Important changes in the industrial structure of the nation were in progress which resulted in the redistribution of an important fraction of the population, both occupationally

[15] Davis, James J., *United States Daily*, March 7, 1928; *Waste in Industry*, pp. 275–277; Lescohier, Don D., *The Labor Market*, Macmillan, New York, 1919, Chap. II; Beveridge, W. H., *Unemployment a Problem of Industry*, Longmans, Green 1930 ed., Chap. V; *Unemployment and Lack of Farm Labor*, p. 2; Douglas, Paul H., and Director, Aaron, *The Problem of Unemployment*, Macmillan, 1931, Chap. II; Lubin, Isador, Testimony in *Unemployment in the United States*, Hearings before the Committee on Education and Labor, United States Senate, December 11, 1928, to February 9, 1929, Washington, Government Printing Office, 1929.

[16] *Recent Economic Changes*, Vol. II, pp. 469–478 especially Table 37, p. 478; *Unemployment in the United States*, Hearings before the Committee on Education and Labor, United States Senate, December 11, 1928, to February 9, 1929, Washington, Government Printing Office, 1929, p. 507.

Cf. also Douglas and Director, *op. cit.*, Chap. II.

[17] Cf. *Recent Economic Changes*, Vol. I, Chaps. II, III, IV, Vol. II, Chap. VI; Jerome, Harry, *Mechanization in Industry*, National Bureau of Economic Research, New York, 1934.

and geographically.[18] Mention has already been made of the slowing down of population growth in the post-war era.[19] The total population increased at a rate of 1.4 per cent per year, 1922–29, and manufacturing wage earners 1 per cent, but farm population decreased 1.3 per cent per year and *net* immigration an average of 14.1 per cent per year.[20] The manufacturing population increased less rapidly than the total population during a period when the agricultural population was steadily decreasing. Mills concluded from his census studies that during *each two year period* from 1923 to 1929, 49 men out of every thousand employees withdrew from or were forced out of the industries in which they were working as compared with 21 men out of every thousand during a *five* year pre-war period.[21] These were separations from industries, e. g., petroleum refining, not from plants, and these workers had to find employment in entirely different industries and generally in different occupations.

The United States Census Bureau, after pointing out that the number of wage earners in manufactures decreased 1.8 per cent between 1919 and 1929 said:

> "With reduced personnel, industries nevertheless turned out a 38 per cent larger physical volume of goods in 1929 than in 1919. The reason was to be found in greater plant mechanization and in the more economical administration of both human and material production facilities. The new machinery installed in manufacturing establishments not only was considerable in amount, but, in general, was more nearly automatic in operation than was that which it replaced. . . . Productivity per wage earner increased 40 per cent between 1919 and 1929."

The horsepower used per 100 wage earners increased from 326 to 486 during the decade.[22] The Committee on Recent Economic Changes reported that the use of power had increased three and one-half times faster than the growth of population 1922–29.[23]

[18] For an analysis of the changes in occupational distribution of the population within a single typical state, cf. Lescohier, Don D., and Peterson, Florence, *The Alleviation of Unemployment in Wisconsin*, Wisconsin Industrial Commission, Madison, 1931, Chap. I.

[19] Chaps. I–III.

[20] Mills, Frederick C., *Economic Tendencies in the United States*, National Bureau of Economic Research, New York, 1932, p. 418.

[21] *Op. cit.*, p. 422.

[22] Fifteenth Census of the United States, *Manufactures*, 1929, Vol. I, p. 41.

[23] Report of Committee on Recent Economic Changes of the President's Conference on Unemployment, *Recent Economic Changes*, Vol. I, p. xi; cf. also Lescohier and Peterson, *The Alleviation of Unemployment in Wisconsin*, pp. 11–13.

The unemployment problems of wage earners were more complicated, therefore, than statistics on shrinkages in employment during the several years would indicate. A large number of those who were listed in the statistics as employed had been squeezed out of their previous occupations and had found new ones. In other words, the public were not wrong in their impression that a large number of wage earners were displaced by technological and other changes in industry 1922–29.[24]

The compensating factor in the situation was the increase in the number of persons employed in the service industries—especially trade and finance, public service, professional service, and domestic and personal service. The non-manufacturing industries, exclusive of agriculture and other extractive industries, increased from 35 per cent of the gainfully employed in 1920 to 42 per cent in 1930.[25]

This growth of trade, service occupations, and professional employments was, of course, in part a by-product of the progress being made in manhour productivity in industry, transportation, mining, and agriculture. The Committee on Recent Economic Changes commented upon the "almost insatiable appetite for goods and services" which manifested itself during the period 1922–29 when per capita productivity was being increased so rapidly.[26] The increased productivity of the industries turning out ordinary commodities set free more labor, capital, and enterprise for selling and for service occupations.

Technological Unemployment

The term "technological unemployment" is too narrow to describe the severances of employment which occurred during the nineteen twenties because of changes in industrial and economic processes. Hundreds of thousands lost their jobs because of new machinery or new processes, but better plant lay-outs, increased regularization of employment accompanied by the permanent discharge of a minority of the force or of a failure to replace people who left voluntarily, mergers, the elimination by large companies of their inefficient plants or parts of plants, and transfer of their business to more productive units, and similar changes terminated the jobs of another large number.

[24] Mills, *op. cit.*, pp. 422, 423.

[25] These figures do not include clerical employees. Compiled from Census on Occupations, cf. Mills, *op. cit.*, p. 419.

[26] Report of Committee, *Recent Economic Changes*, p. xv.

This was not the first time that American labor had felt the powerful impact of rapid mechanization. The introduction of machinery during the 'seventies and 'eighties had caused widespread concern. Much of the machinery installed at that time had enabled employers to replace skilled workers by ordinary laborers, youths, women, or children. Established trades were threatened by machinery, the division of labor, and green hands.[27] The mechanization of the shoe industry during the Civil War had been the principal cause for the meteoric career of the powerful order of the Knights of St. Crispin, which attempted to prevent the replacement of skilled workmen by machines.[28]

The World War, with its labor shortages and high wages, started a period of mechanical advancement which reached its peak between 1923 and 1928 but continued into the depression of the 'thirties.[29] The problem was the subject of widespread discussion in labor, industrial, scientific, and government circles.[30]

There can be little doubt that many current observers overestimated the effects of mechanization upon unemployment between 1923 and 1933. The available evidence indicates, however, that mechanical improvements were applied more generally and installed more rapidly during the fifteen years which followed

[27] United States Commissioner of Labor, *Hand and Machine Labor*, Thirteenth Annual Report, 2 volumes, 1898; Report of U. S. Industrial Commission, 1900–01, 19 volumes; Clark, Victor, *History of Manufactures in the United States, 1607–1928*, Carnegie Institution, Washington, 1928.

[28] Lescohier, Don D., *The Knights of St. Crispin, 1867–74*, Bulletin of the University of Wisconsin, Economics and Political Science Series, Vol. 7, No. 1, pp. 1–102, Madison, Wisconsin, May 1910.

[29] Lescohier, Don D., *What Is the Effect and Extent of Technical Changes on Employment Security?* American Management Association, New York, 1930; Scheler, Michael B., "Technological Unemployment," *The Annals of the American Academy of Political and Social Sciences*, March 1931, p. 18.

[30] E. g., Davis, James J., "Unemployment as a Result of Over-Development of Industry," *Monthly Labor Review*, October 1925; Lubin, Isador, "Measuring the Labor Absorbing Power of American Industry," *Journal of the American Statistical Association*, March 1929, supplement; Slichter, Sumner, "Unemployment, The Price of Industrial Progress," *The New Republic*, February 8, 1928; Hobbs, Franklyn, "Statistics on Machine Age Refute Common Theories," *Steel*, January 22, 1931; Baker, Elizabeth, "Unemployment and Technical Progress in Commercial Printing," *American Economic Review*, September 1930, p. 442; Stern, Boris, "Technological Displacement of Labor and Technological Unemployment," *Journal of American Statistical Association*, March 1933, supplement, p. 42; "Technological Change as a Factor in Unemployment" (three papers and discussion), "Papers and Proceedings of Forty-fourth Meeting of American Economic Association," *American Economic Review Supplement*, March 1932, pp. 25–62; Thomas, Woodlief, "The Economic Significance of the Increased Efficiency of American Industry," *American Economic Review Supplement*, March 1928, p. 122; Douglas, Paul H., "Technological Unemployment," *American Federationist*, August 1930.

the war than between 1900 and 1914. "Taking account of the area, industries and occupations affected," said Frederick C. Mills, "it is a safe conclusion that the rate of technological change was high in post-war years, in relation to previous experience." [31]

Fundamentally, the mechanization of the post-war period (and earlier periods) was of two kinds, that which increased output and that which directly displaced labor. Either kind ordinarily reduced unit costs and made possible lower selling prices or higher unit profits. Either kind could increase the demand for labor eventually if it reduced the prices of products which enjoyed an elastic demand; either kind, on the other hand, could reduce the demand for labor, either in the industry where introduced or in other industries, if it was accompanied by price rigidity, inelastic demand, or was introduced with sufficient rapidity in some plants to undermine the competitive position of other plants.

During the early part of the 'twenties the primary interest of persons concerned with industry was whether or not the restriction of immigration would produce a labor shortage sufficient to check American industrial progress. The proponents of rigid restriction said that mechanization was proceeding with sufficient rapidity to compensate for the decreased rate of growth of the labor supply. By the middle of the decade concern over labor shortage had disappeared and fear that labor-displacing technology was being introduced too rapidly began to be voiced in many quarters.[32]

Some of the labor saving technology introduced into American industry between 1916 and 1930 counterbalanced reductions in hours and enabled a given number of workers to turn out the same output as they had done when the larger work week was in force. Another portion of the new technology increased output without reducing employment by throwing larger quantities of goods on the market at lower prices. In a large number of such cases it is doubtful whether the expanded output would have been produced if the new methods with their low unit costs had not been available.

For instance, 2,000,000 tons of scrap were remelted by the iron and steel industry in 1900 and 25,000,000 tons in 1929. This enor-

[31] Jerome, Harry, *Mechanization in Industry*, p. xxv.

[32] Cf. Professor Jerome's interesting discussion of the effect this change of viewpoint exerted upon the National Bureau of Economic Research's study of mechanization, Jerome, *Mechanization in Industry*, Chap. I.

mous increase in the use of scrap, which formed the "raw material" base for 45 per cent of the steel output of 1929, cut in half the number of blast furnaces needed for the 1929 production and reduced by 15,000 the number of blast furnace men that would have been needed if the methods of 1900 had been in use.[33] Jerome found that if the 1929 steel tonnage had been turned out by 1890 methods it would have required 1,250,000 men instead of 400,000. It would not be correct to say that the new methods displaced 850,000 men. The expansion of steel, automobile, rubber tires, electrical goods, and other products was in part due to the cheapening of the processes by which they were produced, and in the total and the long run the advancement of technology in a wide variety of industries increased rather than decreased the total demand for labor.

There is no dispute concerning the sharp increase in productivity per man hour during the 'twenties. The amount varied widely from industry to industry and even from plant to plant within the same industry. Weintraub estimated an increase in output per man hour in manufactures as a whole of 48 per cent, 1920–29.[34] Jerome estimated an increase of 28 per cent for steam railways during the same period, measured in terms of annual output per 300 day worker. He found increases of 20 per cent in bituminous coal mining, 74 per cent in mining copper ore, and 82 per cent in mining iron ore. In anthracite, he found a decrease in output per man hour of 5 per cent.[35]

There has been some difference of opinion concerning the extent to which the technical progress of 1920–29 displaced workers from employment. King, for instance, contended in 1932 that "the cumulative effect observable in 1929" of labor displacement "was that technological unemployment was almost negligible in amount." Recognizing that many workers had been forced out of their jobs by new technology, he contended that under the conditions which obtained in the 'twenties "the forces giving rise to technological unemployment tend, at the same time, to create a demand for new goods, and that the production of these new

[33] Jerome, *op. cit.*, p. 62.

[34] Weintraub, David, "The Displacement of Workers, through Increase in Efficiency and Their Absorption by Industry, 1920–1931," *Journal of American Statistical Association*, December 1932, pp. 383–400.

[35] Jerome, *Mechanization in Industry*, p. 5. Cf. also Mills, Frederick C., *Economic Tendencies*, pp. 290–297.

goods normally calls for a volume of labor roughly equaling the quantity displaced." [36]

There is no doubt that the displacement of labor by new equipment was less serious than it appeared. The introduction was always gradual. The observer often imagined erroneously that a displacement of labor which he saw in one plant was going on concurrently throughout the industry. Jerome found that typically several years were required for commercial experimentation with a new machine or process, that several years more elapsed before it came into common use, that once in use it competed during years of slackening use with new types of equipment that were rendering it obsolete.[37]

The field investigations made by the National Bureau of Economic Research indicate that a large percentage of the technological changes produce small decreases, if any, in the number of workers required, and that comparatively slight changes in equipment are by far the most common.[38]

On the other hand it is a well-established fact that the rate of mechanization and other improvements varies sharply from time to time, and that technical changes proceeded with unusual rapidity in the 'twenties.[39] High wages, restricted immigration, moderate prices for capital goods and an abundance of loan capital tended to promote and facilitate improvements. Moreover, the advanced stage of mechanization reached in such industries as iron and steel, automobile, cotton, rubber and shoe manufacturing put pressure on the less mechanized industries like iron foundries, wood working, and garment manufactures to improve their technology lest they be forced to exchange high cost goods for low cost goods. Much of the task of bringing the more backward industries, plants and operations up to the technological level of the more advanced industries and processes remained to be done when the depression of the 'thirties broke. This fact constituted the hope of the capital goods industries for active business when the depression had run its course.

[36] King, Willford I., "The Relative Volume of Technological Unemployment," *Journal of the American Statistical Association*, March 1933, supplement, p. 39. Cf. criticisms of King in subsequent pages of the same publication. Cf. also Douglas, Paul H., "Technological Unemployment," *American Federationist*, August 1930.

[37] Jerome, *op. cit.*, p. 20.

[38] *Ibid.*

[39] Jerome, *op. cit.*, pp. 21–22; Mills, in Jerome, *op. cit.*, p. xxix; Lescohier, *What Is the Effect and Extent of Technical Changes on Employment Security?*

It must also be remembered that in addition to new technology, in the sense of new machines and processes, there were other efficiency changes in American industry during the 'twenties which affected employment. Many large corporations closed down their less efficient plants or units and transferred their business to other plants, generally leaving stranded labor forces in communities where the plants had been closed. The intense competition of the 'twenties forced a large number of plants out of business, or to reduce their operations. Electrification and the tendency to increase the size of individual machine units, the extension of automatic feeding through the serialization of machines, and similar changes affected the employment of untold thousands of workers.[40]

The effects of a given technical change upon employment depended in large part upon whether or not it resulted in expanded output and sales or whether the cost reductions effected were absorbed by the concern into their profits (or partly in profits and partly in higher wages) rather than being passed on to the consumer in lower selling prices. If the product had a highly elastic demand and the producers passed the economies on to the consumer in lower prices, employment ordinarily was maintained or increased because of enlarged output. If the commodity was subject to inelastic demand or if the producers preferred to maintain their prices rather than to expand output, the improvement resulted in unemployment or in an uneconomic expansion of output which always culminated in layoffs. The automobile industry during the 'twenties followed the former policy; the steel industry the policy of price maintenance as far as it could.

As Mills has pointed out, the actual effects of mechanization in a period like the 'twenties, were a blend of all of the possible consequences.[41] Profits were increased by many of the technical improvements, wage rates were increased or reductions avoided in many cases, often prices were lowered and output increased, and a considerable number of workers lost their jobs, many of them their

[40] Detailed facts concerning the different industries will be found in the following publications: Jerome, Harry, *Mechanization in Industry;* Stern, Boris, *Technological Displacement of Labor and Technological Unemployment;* Baker, Elizabeth, *Unemployment and Technical Progress in Commercial Printing;* Mills, F. C., *Economic Tendencies in the United States*; United States Bureau of Labor Statistics, studies of Wages, Hours, and Productivity, in a series of bulletins dealing with the brick, pottery, glass, blast furnace, printing and other industries, beginning with Bulletin 356.

[41] Jerome, *Mechanization in Industry*, p. xxix.

occupations. The construction, installation, and care of the new equipment of course absorbed less labor than the new equipment displaced. Not infrequently the effect of new methods was to increase the demand for some kinds of workers and decrease the demand for other kinds of workers in the same plants.[42] Jerome said of the steel industry: "The evidence is unmistakable that recent progress has eliminated unskilled labor to a much greater extent than other grades." [43] In the tobacco industry the demand for cigar makers was undermined by the mechanized cigarette industry, largely employing unskilled girls. In the New York City printing industry the demand for pressmen was increased by equipment that displaced pressmen's assistants.[44]

There was a new insistence upon the responsibility of employers to reduce to a minimum the losses workers suffer when displaced by new technology. Efforts to transfer or find new jobs for the displaced, the use of shorter hours, the slowing down of the process of change and dismissal wages, were pressed upon the attention of employers as policies they should adopt to reduce the costs of technological progress to labor.[45]

The American Section of the International Chamber of Commerce, after calling attention to the fact that "the possibility of ultimate reabsorption in industry is of little solace to skilled industrial workers who have been displaced from their normal occupations because of technological changes" and that there was evidence to indicate that in many cases "the interval of unemployment before such workers can be relocated in satisfactory jobs has been long enough to cause privation or financial distress," said that management could "cushion the burden of transitory unemployment and . . . moderate the intensity of technological displacement" by advance planning of changes for a gradual transition rather than an abrupt shift to use of mechanical equipment, "the change being made, wherever possible, to coincide with periods of prosperity when other work for displaced employees would be readily available." [46]

Employers accepted the responsibility to a greater degree,

[42] Baker, *Unemployment and Technical Progress in Commercial Printing.*

[43] Jerome, *op. cit.*, p. 63, cf. also Chaps. II–IV.

[44] Baker, Elizabeth, *Unemployment and Technical Progress in Commercial Printing*, pp. 456–458.

[45] Cf. "The Insecurity of Industry," *The Annals, op. cit.*, Part II; Slichter, Sumner, "Lines of Action, Adaptation and Control," *American Economic Review*, March 1932 supplement, pp. 41–54.

[46] *Employment Regularization in the United States of America*, American Section of the International Chamber of Commerce, Washington, D. C., 1931, p. 27.

probably, than formerly. The transfer of displaced workers to other jobs was done extensively. The writer knows of various cases in Wisconsin in which concerns releasing employees found jobs for them with other companies in the state. There is no reason to believe this practice was confined to Wisconsin. In 1925, Hart, Schaffner and Marx Company of Chicago because of new methods found itself able to produce its normal volume of product with a smaller force of cutters and notified the Amalgamated Clothing Cutters that the size of the cutting force ought to be permanently reduced. After negotiations, the company offered to the union a fund of $50,000, to which the cutters added $25,000 from their unemployment insurance fund, and $75,000 was distributed at the rate of $500 each to 150 cutters who gave up their jobs. "The plan was received with general satisfaction, as yielding a fuller volume of employment to those who remain, as tiding the released cutters over the period of adjustment to new jobs—and as affording the company relief from the disadvantages of overcrowded sections." [47] Similar payments were made by a number of other concerns, generally to employees who had been a long time in their service and on an individual rather than a group basis.[48]

Regularization

The promotion of employment regularization through better industrial management gripped the interest of employers from 1923 onward more than ever before. The American Management Association, the United States Chamber of Commerce, and the Industrial Relations Committee of the Philadelphia Chamber of Commerce are typical of the employers' organizations which published careful studies of the techniques of production and employment regularization.[49] The New York, Massachusetts, California, and Wisconsin unemployment commissions are typical of governmental

[47] Report of the General Executive Board; Proceedings of the Seventh Biennial Convention of the Amalgamated Clothing Workers of America, May 10–15, 1926, Montreal, Canada, p. 102.

[48] E. g., Cf. Clague, Ewan, and Couper, W. J., "The Readjustment of Workers Displaced by Plant Shutdowns," *Quarterly Journal of Economics*, Cambridge, February 1931, pp. 309–346.

[49] Feldman, Herman, *The Regularization of Employment*, Harper and Brothers, New York, 1925, 427 pp. (published under auspices of the American Management Association); *Balancing Production and Employment through Management Control*, Chamber of Commerce of the U. S., Washington, March 1930; *Program for the Regularization of Employment and the Decrease of Unemployment in Philadelphia*, Philadelphia Chamber of Commerce, 1929; Lewisohn, Sam, Draper, Ernest, Commons, John R., and Lescohier, Don D., *Can Business Prevent Unemployment*, Knopf, New York, 1925.

bodies that discussed in some detail the advantages and techniques of increasing the number of wage earners with dependable steady jobs.[50]

Experimentation with Regularization began before the war. Considerable success was attained by some companies. Quite a number became nationally famous for their regularization work. The methods used by different concerns differed with the nature of the industry, the general condition of business at the time, and the ingenuity and particular capacities of the executives in charge. Starting with the hypothesis that unemployment was in part due to neglect on the part of management of efforts to steady employment, each company diagnosed for itself the causes of its own fluctuations and sought remedies for its particular problems.

Business Cycle Research

The publication of Wesley Mitchell's *Business Cycles* [51] in 1913 had a significant effect upon the study of unemployment, particularly in the post-war period. Mitchell demonstrated that depression unemployment was due to forces more basic than the management of individual businesses, and that the alleviation or prevention of such unemployment called for social controls. American thinking had grasped the fact by 1911 that only a small proportion of unemployment was due to the personal deficiencies of the unemployed; by 1921 that unemployment was partly due to defects in business management, and partly to deep underlying forces in the business world which sweep along individual concerns and whole industries as relentlessly as they do individual workmen. The attention of those interested in preventing unemployment was directed to such questions as the probable effects of stabilization of the price level upon regularity of production and employment. More recently the possibilities of mitigating fluctuations in produc-

[50] New York Committee on Stabilization of Industry for the Prevention of Unemployment, *Preventing Unemployment;* Reports to the Governor, *Less Unemployment through Stabilization of Operations*, April and November 1930; Special Commission on the Stabilization of Employment, State of Massachusetts, Preliminary Report, House Document No. 1100, Wright and Potter, Boston, December 1931; California State Unemployment Commission, Report and Recommendations, State Building, San Francisco, November 1932; Lescohier and Peterson, *The Alleviation of Unemployment in Wisconsin;* U. S. Department of Commerce, *Bibliography on Industrial Plans for the Regularization of Employment*, Washington, 1931.

[51] Mitchell, Wesley, *Business Cycles*, University of California Press, Berkeley, 1913.

tion and employment through national economic planning has been under consideration. Business cycle research has become one of the important activities in the effort to control unemployment.

Rigidity of Wages

The theory was widely advocated by English and European economists during the prolonged period of unemployment in England starting with the depression of 1921 that rigidity of wages kept up costs of production in periods when the price level was falling and was an important cause of unemployment. They contended that wage earners forced themselves out of employment by refusing necessary downward revisions of wages.[52] The same idea was enunciated by a number of American economists during the depression of the 'thirties, who contended that recovery was close to impossible until the wage structure had been readjusted to the reduced price level.[53] There can be no doubt that price rigidities interfered with some of the necessary economic readjustments during the depression of the 'thirties. But other price rigidities than wages, generally ignored by most of these economists, were important factors in the situation. Moreover each of the respective type of rigidities tended to cause a necessity for one or more of the others, thereby decreasing the elasticity and adjustability of the economic structure as a whole.

First may be noted rigidity of selling prices. The agricultural implement industry reduced its prices 6 per cent and its output 80 per cent between 1929 and 1933; the motor vehicles industry, prices 16 per cent and production 80 per cent; the steel industry, prices 20 per cent and production 83 per cent. In the food industries as a whole, where prices were decreased 49 per cent, production decreased only 14 per cent, and in agricultural commodities, where prices fell 63 per cent, output dropped only 6 per cent. Examination of the prices charged in many service industries, such as hotels, barber shops, and amusement places, will reveal a

[52] Pigou, A. C., *Unemployment*, Williams and Norgate, London, 1914, Chap. VI. Cf. also "Wage Policy and Unemployment," *Economic Journal*, September 1927; Keynes, J. M., "The Question of High Wages," *Political Quarterly*, January 1930; Beveridge, W. H., *Unemployment, a Problem of Industry*, Longmans, Green, London, 1930 ed., pp. 359–372; Clay, Henry, "The Public Regulation of Wages in Great Britain," *Economic Journal*, September 1929.

[53] E. g., Slichter, Sumner, *Towards Stability*, Henry Holt, New York, 1934, Chap. IV; Hansen, Alvin, *Economic Stabilization in an Unbalanced World*, Harcourt, Brace, New York, 1932, pp. 155–157, 164–167, 366–368.

similar price rigidity during the earlier part of the depression. Comparison of price and wage changes will show for important industries that wages were reduced more than selling prices.

Similar rigidities obtained in rents, interest rates, and profit expectations. Rents, particularly on long time leases, were not reduced substantially until well into the depression and after wage reductions and unemployment were widespread; there was no proportionate readjustment of interest rates to the falling price level at any time during the depression, particularly on long time loans; and the business men in the different industries struggled desperately to preserve the profit and dividend rates which they had set up in their minds as reasonable expectations for their industries. American experience during the depressions of 1920–21 and the 'thirties demonstrated clearly that price rigidities impede economic recovery and force more serious deflations than would be necessary in an economy in which the different prices were completely elastic, but it did not demonstrate that wage rigidity is the primary cause of unemployment. It must not be forgotten that if high rents, interest or profit expectations cause land or capital to be unemployed they thereby cause labor to be unemployed just as certainly as the laying off of labor because of rigid high wages would cause land and capital to become unemployed.

There is another point commonly overlooked by these "rigid wage" theorists. Interest rates, rents, and artificially maintained prices exercise their full potential effects upon an economic situation. But maintained wage rates do not mean necessarily an equivalent maintenance of labor costs, and it is labor costs rather than wage rates which affect the employer's unit costs. The introduction of better technology, organization of work, or supervision can cut labor costs even when wage rates are rigid. And that is exactly what happened in the early 1930's. The continued trend toward improved technology was a matter of frequent comment during the part of the depression when the wage structure was relatively rigid, i. e., from November 1929 to the latter part of 1931. And it reappeared in 1933 and 1934 in such industries as iron and steel, automobile and other large industries when the government endeavored to get the employers to raise wage levels when they went under the code system of manufactures.

The theory of wage rigidity has some truth, but it is a part of a picture of price rigidities. It was maintenance by manufacturers of

rigidity in the prices of what they sold that caused the agriculturalists to adopt output restriction under the Agricultural Adjustment Administration (1933 ff.) in order to both raise and make more rigid the prices of agricultural products. Both the industrial and the agricultural policies increased unemployment.

The Debacle of 1930–1935

The conviction that a generation of wiser and more careful business men might have weathered even the post-war years with less disaster was an important forward step. It directed attention forcibly to the questions (1) how far could the regularization of production and employment within the individual concern or industry reduce unemployment; (2) by what methods can the speculative excesses that have characterized boom periods be prevented; (3) whether it would not be possible to control credit in the interest of the public welfare instead of bankers' profits. The depression of the 'thirties brought the business cycle problem into the foreground.

The stock market crash of October 1929 precipitated an unemployment situation which got worse almost steadily for three and a half years. The statistical office of the American Federation of Labor estimated that in January 1930 there were 3,216,000 wage earners out of work; by midsummer 500,000 more. In the next six months three and a half million were laid off; the number out of work rising to 7,160,000 by January 1931. It remained close to that figure up to July 1931. The last half of the year, however, saw another 3,000,000 added to the army of the unemployed. There were 10,197,000 out of work in January 1932; about 2,000,000 more were dropped from their jobs by July, and 900,000 more by the beginning of 1932; when the total number idle was about 13,100,000. The peak was reached in March 1933, when 13,689,000 wage earners were walking the streets.[54]

It is not possible to demonstrate whether or not this constituted a more serious unemployment situation than obtained in the depressions of the 1830's, 'seventies, or 'nineties. But it is certain

[54] *American Federationist*, October 1933. The estimate for January 1930 is certainly conservative, and there is good reason to believe that the figures given are all well within the truth. The estimates are based upon the available government data, both federal and state.

Cf. also Kreps, Theodore J., "Estimates of Unemployment during the Past Four Years," *Journal of the American Statistical Association*, March 1934, supplement, pp. 81–85.

that the American people were more deeply concerned about the unemployment in the 1930's than they were in any previous depression. Never in American history did industry, relief organizations, and local, state, and federal government rise and grapple with an unemployment emergency as they did in the 1930's.

Before the reverberations of the stock market crash had subsided, President Hoover set to work to avert experiences like those of 1873 and 1893. He summoned to Washington the responsible leaders of industry and labor. From the employers he asked an agreement to maintain wage rates and employment; from the labor leaders he asked promises to discountenance strikes and demands for wage increases. Both groups agreed to co-operate heartily with the President. On November 19, in a conference with the railroad executives, he was assured that they would proceed with a full program of construction and maintenance. Three days later the American Railway Association sent to the President their "assurance of their very sincere and earnest spirit of co-operation in the work you have undertaken." [55]

Leaders in the field of public utilities promised an aggregate of $1,810,000,000 of construction and repair work for 1930, and the construction industries and farm organizations promised similar hearty co-operation.[56] A permanent committee of representatives of key construction industries was appointed to educate the public in the idea that it was a favorable time to build, to survey the possibilities of new building and repair work, and to aid in the financing of construction projects.[57]

These early steps were followed by a drive on the part of the federal government to convince the public that "Any lack of confidence in the economic future or the basic strength of business in the United States is foolish." [58] The President said in his message of December 3, 1929, that the

> "long upward trend of fundamental progress" had given rise "to over-optimism as to profits, which translated itself into a wave of uncontrolled speculation in securities. . . . I am convinced that . . . we have re-established confidence. Wages should remain stable. A very large degree of industrial unemployment

[55] *The Commercial and Financial Chronicle*, Vol. 129, Part II, pp. 3262, 3417.
[56] *Ibid.*, pp. 3261, 3262.
[57] *Ibid.*, Vol. 130, Part I, p. 701.
[58] The daily press and such magazines as *The Literary Digest* and *Time* for the period November 1930 through 1931 abound with such propaganda.

and suffering which would otherwise have occurred has been prevented. Agricultural prices have reflected the returning confidence."

In his address to the United States Chamber of Commerce he said,

"We have been passing through one of those great economic storms which periodically bring hardship and suffering upon our people. While the crash only took place six months ago, I am convinced that we have now passed the worst and with continued unity of effort we shall rapidly recover." But "By a strange irony of fate, at the very moment when President Hoover was addressing the Chamber of Commerce of the United States and pointing out how successfully and how expeditiously the collapse of last autumn had been dealt with, a new crash was impending and was, in fact, already under way, though the President appeared to be unaware of it." [59]

In September 1930, American consuls in foreign countries were ordered not to issue visas to emigrants to the United States unless the applicants could prove they had means of support and would not become public charges. On December 20, 1930, President Hoover signed a bill for $116,000,000 for emergency public works during the fiscal year ending June 30, 1931. Of this $80,000,000 went to highway construction; $22,500,000 to rivers and harbors; and the other $13,500,000 to a number of smaller items.[60] Accompanying this bill came a statement by the President that

"it is the policy of the Federal Government . . . that contractors on government work shall pay not less than the prevailing wages in their various districts both on existing contracts and those hereafter to be let."

The drouth of 1930 seriously complicated the economic difficulties of the farmers. At the President's request the Red Cross agreed to appropriate $5,000,000 and raise $10,000,000 more for immediate relief to distressed rural families. On June 15 Congress appropriated to the Federal Farm Board $500,000,000 to provide a revolving fund from which the board could make loans to co-operatives for storage and other purposes "to prevent surpluses of farm products 'from unduly depressing prices' of farm commodities." [61] In the fall, Congress again made an appropriation

[59] *Commercial and Financial Chronicle*, Vol. 130, Part II, p. 3235.
[60] *The Statutes at Large of the United States of America*, Vol. 46, Part I, p. 1030.
[61] *The Congressional Digest*, December 1930, p. 305.

for farm relief; this time $45,000,000 for seed and fertilizers for the 1931 crop and feed to carry farm animals through the winter.[62]

When 1930 ended the outlook was worse than at its beginning, but the President's message to Congress in December showed that he still believed that his program would carry the country out of its difficulties.

> "As a contribution to the situation," he said, "the Federal Government is engaged upon the greatest program of water way, harbor, flood control, public building, highway, and airway improvement in our history. This, together with loans to merchant shipbuilders, improvement of the navy and in military aviation, and other construction, the Government will exceed $520,000,000 for this fiscal year. This compares with $253,000,000 in the fiscal year 1928." [63]

In October 1930 the President had appointed the President's Emergency Committee for Employment, of which Colonel Arthur Woods was made chairman. Early in 1931 the committee reported that an important part of its work up to that time had been

> "the accelerating of public building work through the cutting of red tape and the elimination of obstacles to speedy construction. The Committee's object is to encourage and urge the immediate construction of public buildings which normally would be spread over a period of years, concentrating as much as possible of the normal building program of public works for the next few years into the next few months." [64]

Early in February Congress passed the "Employment Stabilization Act of 1931." [65] This legislation provided for a Federal Employment Stabilization Board, with the secretaries of Agriculture, the Treasury, Commerce, and Labor sitting as members. Its duties were "to advise the President from time to time of the trend of employment and business activity and of the existence or approach of periods of business depression and unemployment in the United States," which information the President would transmit to Congress at his discretion with recommendation that Congress enact emergency appropriations, to be expended upon authorized construction to aid in preventing unemployment.

President Hoover opposed any sort of federal relief for unem-

[62] *United States Statutes at Large*, Vol. 46, Part I, pp. 78, 254, 1032.
[63] *The Congressional Digest*, January 1931, p. 3.
[64] *Ibid.*, January 1931, p. 5.
[65] *United States Statutes at Large*, Vol. 46, Part I, p. 1084.

ployment other than work relief. In 1921, when Secretary of Commerce, he said to President Harding's Conference on Unemployment:

> "In the other countries that have been primarily affected by unemployment as a result of the war, solution has been had by direct doles to individuals from the public treasury. We have so far escaped this most vicious of solutions that can be introduced into government." [66]

His condemnation rested equally upon the subsidizing of outdoor relief and upon unemployment insurance. At the dinner of the Indiana Republican Editorial Association at Indianapolis, June 15, 1931, he said of unemployment insurance:

> "We have had one proposal after another which amounts to a dole from the Federal Treasury. The largest is that of unemployment insurance. I have long advocated such insurance as an additional measure of safety against rainy days, but only through private enterprise or through the co-operation of industry and labor itself. The moment the government enters into this field it invariably degenerates into the dole. . . . The net results of governmental doles are to lower wages toward the bare subsistence level and to endow the slacker." [67]

In December 1931, President Hoover outlined a program to improve credit facilities for home building. He recommended that a home loan discount bank be established in each federal reserve district, to be under the direction of a Federal Home Loan Board, which would determine the capital of each at a figure between $5,000,000 and $30,000,000. These banks would not loan to individuals directly but only to loaning institutions to take up some of their paper secured by mortgages and thus replenish their funds and put them in a position to make additional loans. The plan provided for the participation of building and loan associations, savings banks, deposit banks, and farm loan banks under conditions laid down by the Federal Home Loan Board.[68]

At the same time, after stating that he believed that "unity of action on the part of our bankers and co-operative action on the part of the Government" were essential to bring about an early restoration of confidence, he proposed that an institution be cre-

[66] *The Congressional Digest*, August–September 1931, p. 196.
[67] *Ibid.*, August–September 1931, p. 196.
[68] *Ibid.*, December 1931, p. 303.

ated with credit backing of at least $500,000,000 to discount banking assets and make possible immediate liquidity of bank reserves if necessary.[69]

The practical result of this recommendation was The Reconstruction Finance Corporation. The law creating it was signed by the President on January 22, 1932,[70] and the organization was functioning within six weeks. This was Mr. Hoover's supreme effort to get the workman back to his job, the farmer back to reasonable prosperity, the banking system to function normally, and business on a sound basis. It constituted the most constructive effort ever made by the American government up to that time to lift the country out of a depression. The fundamental theory underlying it was that the prosperity of the individual depends upon the soundness and the normal functioning of the whole mechanism of banks, building and loan associations, mortgage loan companies, insurance companies, railroads, and other strategic types of business, and that the way to protect the livelihoods of the people was to bolster up the mechanism that furnished them with employment.

The Reconstruction Finanace Corporation was given capital stock of $500,000,000, subscribed in full by the United States government. The management of the corporation was vested in a board of directors consisting of the Secretary of the Treasury, the governor of the Federal Reserve Board, the farm loan commissioner (ex officio), and four other persons appointed by the President, and the corporation was created for a ten-year period unless sooner dissolved by an act of Congress.

The President, when signing the bill, said:

> "It brings into being a powerful organization with adequate resources, able to strengthen weaknesses that may develop in our credit, banking and railway structure, in order to permit business and industry to carry on normal activities free from fear of unexpected shocks and retarding influences.
>
> "Its purpose is to stop deflation in agriculture and industry and thus to increase employment by the restoration of men to their normal jobs. It is not created for the aid of big business or big banks. Such institutions are amply able to take care of themselves. It is created for the support of the resources liquid, to give renewed support to business, industry and agriculture.

[69] *Ibid.*, December 1931, p. 301.
[70] Cf. *Federal Reserve Bulletin*, February 1932, p. 94, for Act.

It should give opportunity to mobilize the gigantic strength of our country for recovery." [71]

In July 1932, Congress broadened the lending powers of the Corporation. It was precluded in the initial legislation from making loans that would relieve some of the more serious aspects of the depression. The new legislation authorized $300,000,000 to be made available out of the funds of the Corporation

"to the several states and territories, to be used in furnishing relief and work relief to needy and distressed people and in relieving the hardship resulting from unemployment, but not more than 15 per centum of such sum shall be available to any one state or territory." [72]

In this section the government abandoned the fundamental Hoover point of view that the task of relief is a local task. It completely reversed the position of 1930–31 that the federal government should not underwrite direct relief to the unemployed. This reversal was forced by the demands of the country, and even more by the fact that a number of states were in difficulties and thousands of local governments approaching bankruptcy because of the costs of unemployment relief.[73] The new legislation came from Congress, not from the Presidential leadership.

The act authorized the Reconstruction Finance Corporation

"to make loans or contracts with states, municipalities, and political subdivisions of states, to aid in financing projects authorized under Federal, state, or municipal law which are self-liquidating in character; . . . loans to corporations formed wholly for the purpose of providing housing for families of low income, or for reconstruction of slum areas, which are regulated by state or municipal law as to rents, changes, capital structure, rate of return, and areas and methods of operation, to aid in financing projects undertaken by such corporations which are self-liquidating in character; . . . and loans to private corporations engaged in the construction or alteration of bridges, tunnels, docks, viaducts, water works, canals and markets devoted to public use, such loans to be self-liquidating in character."

[71] *The Commercial and Financial Chronicle*, Vol. 134, Part I, p. 779.

[72] *United States Statutes at Large*, Vol. 47, Part I, p. 709.

[73] It should be noted in this connection, however, that the difficulties in some of the states were due largely to the refusal of legislatures to impose new taxes, particularly income taxes, or to raise the rates of taxation. In other words, the unbalanced budgets of some of the states were due to the refusal of state governments to raise taxes rather than to their inability. The struggle of the various interests in the states over kinds of taxation tied the hands of legislative bodies in the midst of a major emergency. Cf. Chapters IX and X for further discussion of this subject.

The act also added to the funds already voted to promote federal public works under the Employment Stabilization Act, $322,224,000; of which $120,000,000 was earmarked for emergency construction on the federal-aid highway system, and the balance allocated to various other forms of federal construction.[74]

The Reconstruction Finance Corporation was organized on February 2, 1932. At the close of March, the corporation had already authorized 974 separate loans to 935 institutions aggregating $238,739,939.06. By June 30 the loans authorized had reached an aggregate of $1,054,814,486.59. In addition $85,000,000 had been allocated to the Secretary of Agriculture.[75]

During the next quarter the Corporation authorized 3109 loans to financial institutions aggregating $359,588,446.61; loans of $35,455,171.22 for relief and work relief; $53,105,000 for self-liquidating work projects, and $51,500,000 to promote agriculture.

During the fourth quarter, 1882 loans to banks and other financial institutions, insurance companies, railroads, and agricultural credit corporations aggregated $214,843,326.42.[76]

The Hoover program for economic recovery stressed the rehabilitation of banks and financial institutions; the increase in public construction to furnish as much employment as possible; and the stimulation of both private industries and local governments to meet the emergency through local efforts. Federal unemployment relief was forced upon the President by the country. The unprecedented efforts put forth by the President were negatived by the steadily increasing severity of the depression. The repudiation of the Hoover program by the people at the polls in November 1932 was, it is safe to say, not a disapproval of what had been done so much as resentment that more had not been accomplished.

The inauguration of President Roosevelt was awaited breathlessly. The nation was on qui vive. Would the new President grapple with the situation? Would he act vigorously? Would he have any new ideas? Meanwhile, in the months between the election and the inauguration conditions got rapidly worse. Addi-

[74] Many details of the Reconstruction Finance Corporation amending act are omitted from this discussion, particularly those applying to agriculture. They lie outside the scope of this history.

[75] Cf. *Federal Reserve Bulletin*, April 1932 and August 1932.

[76] All of the figures quoted are from the Federal Reserve Bulletins, April 1932–February 1933.

tional wage earners were laid off during the winter of 1932–33 at the rate of about 200,000 per month. Bank failures increased apace. Bankruptcies became common. Gloom settled more heavily upon the nation.

The new President responded to the popular hope. In rapid succession he attacked the banking, the agricultural, and the industrial situations. A radical reorganization of the American economic system was attempted. The country gasped, and responded. But the story of that effort is incomplete. It cannot be written now. It is the task of a future historian. When this work was completed in 1935 a substantial increase in factory employment had taken place, the construction industry was showing signs of revival, the transportation industry was busier than it had been for four years, and the farmers in a much stronger position. Whether the increase in employment and prosperity was as large as the enormous government expenditures should have produced cannot be determined for some years. If the Roosevelt program of recovery through increasing public debts and restricting output actually brings about an economic recovery the human race will have learned something new.

CHAPTER IX

PUBLIC WORKS TO RELIEVE UNEMPLOYMENT

The use of public works to relieve unemployment is a policy hallowed by age. It has been done frequently and over long periods in Europe, Great Britain, the United States, and other parts of the world. "Work relief," *small, local* projects providing common labor jobs for small numbers of the unemployed, and "public works," consisting of more or less important public projects done at a particular time in order to provide work for the unemployed, have been the standard types. The use of a vast amount of public work to partly counterbalance a business depression and bring about a business revival had been untried until recent years. The first genuine endeavors of this kind in the United States were made in the Hoover public works program of 1930–32 and the six times larger federal effort inaugurated by President Roosevelt in 1933, by which $3,300,000,000 of public works was provided by the government to help bring about economic recovery.

Work Relief

When unemployment was thought of as a personal more than as an industrial problem, work relief fitted naturally into the relief picture. It embodied the views that it is fairer to the taxpayers for the unemployed to work for their relief and better for the unemployed to work than to receive relief gratuitously. England crystallized this point of view in Article VI and Article I of the Outdoor Relief Regulation Order of 1852:

> "Every able-bodied male person, if relieved out of (outside of) the work house, shall be set to work by the guardians,[1] and be kept employed under their direction and superintendence so long as he continues to receive relief. . . . One half at least of the relief so allowed shall be given in articles of food or fuel, or in other articles of absolute necessity."

The earliest type of work relief for the unemployed, both in Europe and the United States, appears to have been work pro-

[1] The "Guardians" were the poor relief officials.

vided by townships, villages, or cities, such as stone-breaking yards, provided to test whether persons asking for relief were "worthy" or just loafers,[2] and necessary public work which was accelerated by putting the unemployed on it together with the regular force of public employees. This frequently resulted in getting the work done more quickly and reducing the employment of the regular public employees. Peter was robbed to help Paul.

In 1886 the British Local Government Board laid down the principles that the work should not involve the stigma of pauperism, be work that anyone could perform whatever his previous vocation and which did not compete with that of laborers in private employment, and work which was not likely to interfere with people returning to their regular employments.[3]

The Local Government Board suggested as meeting these requirements such work as spade work on sewage farms; laying out of open spaces, recreation grounds, new cemeteries; increased cleansing of streets, laying out and paving new streets, making footpaths along country roads, and making extensions of sewer and water systems. This work was to be paid for at a rate something less than the wages ordinarily paid for similar work, in order to give the men a definite motive to get back into their regular occupations at the earliest possible date.

In practice, the principles laid down were not found practical. The only work which could be provided for a miscellaneous group of unemployed persons was work in which no standard of competence could be required, and in which men could not be held to an obligation to earn their wages. In effect the payment was relief rather than wages.[4] From the unemployed's point of view, it was relief provided by a particularly disagreeable method.

Foreign countries have also had experience with relief work financed by private funds, a procedure common in major American depressions. Mention of one British experiment of this kind will suffice. In 1903–04 the Mansion House Fund financed work to be done outside of London by heads of families resident in London.

[2] E. g., *American Labor Legislation Review*, May 1914, pp. 264–267.

[3] Beveridge, *Unemployment, A Problem of Industry*, Chap. VIII; cf. also the series of Government reports on *Distress from Want of Employment*, issued in England in the 1890's.

[4] Beveridge, *op. cit.*, p. 156; cf. also Bosanquet, Helen, *Past Experience in Relief Work, Unemployed Relief* [*Works*], London, Stepney; Webb, Sidney and Beatrice *The Prevention of Destitution*, pp. 102–104.

The separation of the man from his home and London was considered a "test" which would make the relief work less attractive than ordinary work without making it either dishonorable or insufficient to provide maintenance. The men who took the work got lodging, board, and pocket money; their families got adequate support in proportion to the number of dependent children. The work was mainly spade work in farm colonies. Men once set to work were allowed to remain, subject to good behavior, and with privilege to visit their families and seek ordinary employment only once or twice a month. The men were carefully selected from a surprisingly large number who offered themselves. It was, perhaps, one of the best managed private relief work schemes ever tried out.

Four months after the termination of the scheme, upon which £4,500 were spent, it was found that 26 per cent of the men had recovered more or less regular employment; 36 per cent were in casual or irregular employment; and 38 per cent were on relief.[5]

American Experience with Work Relief

In 1893–94 private citizens in Boston raised $136,568.70 by subscription to provide work for the unemployed. They gave 7460 persons employment at 80 cents per day, no one person being given sufficient work to earn more than two weeks' wages at his regular employment.[6]

Josephine Shaw Lowell, after observing American and British experiments with work relief, said in 1894:

> "'Relief work' seems the natural remedy but relief work is a very dangerous thing. It tempts the industrious because it is called work, and is usually highly paid as compared to regular work, to leave the latter, which is permanent, and to depend on the relief work, which soon fails them; and it tempts the unstable and the lazy because it is not continuous and they are allowed to work in a slack and unworkmanlike manner. Relief work, to be a benefit and not an injury, must therefore be continuous, hard and underpaid." [7]

[5] Beveridge, *op, cit.*, pp. 159–160; cf. for Beveridge's analysis of the results of work relief in England, *ibid.*, pp. 181, 185–186. Cf. also Morley, Felix, *Unemployment Relief in Great Britain*, Houghton Mifflin, New York, 1924.

[6] Cf. for further details Report of Citizens' Relief Committee of Boston, 1894, 62 pp.; Report of Massachusetts Board to Investigate the Subject of the Unemployed, Wright and Potter, Boston, 1895.

[7] Lowell, Josephine Shaw, "Methods of Relief for the Unemployed," *The Forum*, February 1894, Vol. XVI, pp. 655–662.

She noted as the outstanding evils of work relief in the 'nineties the tendency of a part of the unemployed to depend permanently upon relief works and charity; and of those temporarily unemployed to sink into the class of chronic dependents: "those who have struggled and suffered to protect themselves against want are discouraged by finding themselves no better off than their thriftless neighbors." She stated that $30,000,000 was spent in Chicago in 1890–91–92, to provide temporary work, and that this attracted both searchers for work and "aimless wanderers" to Chicago in large numbers. While this last effect was checked somewhat in later depressions by refusing work to transients there can be no doubt that the criticisms are about as pertinent to the experience of American cities in 1908, 1914, 1921, and 1930–33, as to the situation in the 'nineties.

Work relief provided by private agencies has often been characterized by abuses worse than on public projects.[8] The Mayor's Committee of New York, 1914–15,[9] established a more commendable project. A total of 22 workrooms for the unemployed in New York City were operated under the general auspices of the Mayor's Committee and active management of social workers, churches, the Salvation Army, the Y. M. C. A., Y. W. C. A., and settlement houses. The first workrooms were started by a few churches in the city, notably St. Bartholomew's. The first workroom under the Mayor's Committee was opened on January 28, 1915. This was rapidly followed by others until they were giving employment to as many as 5000 persons daily, from funds raised and administered by the committee.[10]

The general plan followed in all of the workrooms was to give employment for five days a week to those who could not be placed for the time being in regular employment. The hours of employment were from 10 A. M. to 3 P. M., so that there would be time both before and after the working time to seek regular employment. The workers were paid fifty cents a day for men and

[8] Cf., e. g., Klein, Philip, *The Burden of Unemployment*, Russell Sage Foundation, New York, 1923, Chap. III. Beveridge, *op. cit.*, Chap. VIII. California State Unemployment Commission, *Abstract of Hearings on Unemployment*, San Francisco, 1932, pp. 56 ff.

[9] Cf. Colcord, Joanna, *Community Planning in Unemployment Emergencies*, Russell Sage Foundation, 1930, pp. 31–33; *How to Meet Hard Times*, published by Mayor's Committee on Unemployment, New York, 1917, pp. 77–90; Klein, Philip, *op. cit.*, Chap. II.

[10] Report of the Mayor's Committee on Unemployment, New York City, June 1916.

sixty cents for women, and a nourishing noon meal. This was in no sense considered as a wage. It was relief. Those in charge tried to accept only those who would be benefited by the kind of opportunity provided by the workrooms, and continuous effort was made to encourage and assist the workers to secure regular employment.

The men rolled bandages and made other surgical supplies, caned chairs, did cabinet making, cobbling, furniture repairing, and similar tasks. The women made women's and children's garments by hand, including blouses, petticoats, small dresses, kimonos, and boys' blouses. A Rummage Committee collected old paper, discarded furniture, and other household supplies in astonishing variety, the paper and other marketable waste being sorted and baled. Furniture with a salable value was repaired by the unemployed. The revenue from the sale of paper, furniture, and miscellaneous articles ($1103.92) was used to employ more persons in the unremunerative branches of the work.

Except for the material collected by the Rummage Committee, the sale of which did not compete with any established industry, nothing made in the workrooms was sold in the market. The surgical supplies were sent to the belligerent nations in the European War and to certain New York hospitals for charity patients. The men in the workrooms cobbled their own and one another's shoes, and flytraps made for the health department were used in the "swat the fly" campaign. Garments made in the women's workrooms were disposed of mainly through the Children's Aid Society, a large percentage of them going to the families of the women who worked on them. Hospitals, settlements, and relief societies also received a share.[11]

Minneapolis offered employment clearing lowlands along the banks of the Mississippi of standing timber, it being the intention to flood these lands. There were 344 men employed for a total of 2233 days; 71 men refused the work when offered. They were paid 20 cents an hour for eight hours' work, and the average cost of 881 cords of wood was $6.99 a cord. During the progress of the work, owing to dissatisfaction with the results accomplished, the men were put on a piece work basis. The cost per cord dropped to $2.63, and the percentage of men refusing to work doubled. Great difficulty was encountered in getting men who knew their families

[11] *Ibid.*, pp. 26–29.

would be cared for by outdoor relief to work with any degree of efficiency.[12]

The practical difficulties encountered in relief-work programs in 1930–33 do not appear to have differed materially from those in earlier depressions—(1) funds inadequate to provide work for any large fraction of the unemployed; (2) inability to provide work for more than a week or two out of a month, and but a part of the year; (3) that wages on relief work, if cut below the market rate, pulled down the wage rates in private employment, and if not below the market rate encouraged people to seek the public work where the standard of efficiency required was lower than in private employment; (4) inability to take care of single men, transients, white collar workers, and women, on relief works; (5) the unwillingness of the unemployed to work unless paid in money and the desire of those providing the work to consider it as relief and pay in grocery orders or other forms of goods.[13]

The New York Commission of 1911, looking back over the experience of New York, Massachusetts, England, and Germany with work relief said that "the provision of public work for the sole purpose of caring for the unemployed has almost always proved disastrous. In periods of great emergency such provision is often necessary, but all experience seems to show that its administration is fraught with great difficulties and the relief which it affords is paid for in widespread demoralization." It did not recommend the work relief policy.[14]

Unemployment Projects

Mayor Wood of New York City in 1857 sent a message to the common council recommending the issuance of public construction bonds for the alleviation of unemployment.[15] He further suggested that the persons employed on these works be paid one quarter in cash and the balance in cornmeal and potatoes. Similar action may have occurred earlier. Certainly almost every depression since that time has seen cities and states relieving unemployment

[12] Mayor's Report, New York, 1916, p. 80.

[13] E. g., cf. California State Unemployment Commission, *Abstract of Hearings on Unemployment*, San Francisco, 1932, pp. 56–70.

[14] New York Commission on Employers' Liability and other Matters, Third Report Unemployment and Lack of Farm Labor, Albany, 1911, p. 13.

[15] Massachusetts Board to Investigate the Subject of the Unemployed, Report, 1895, Part IV, pp. 7–8.

by public works. Many American cities furnished both ordinary relief work and employment on public construction products during the unemployment emergency of 1893–96. The Massachusetts report of 1895 [16] stated that 21 of the 30 cities of Massachusetts and 13 of the 41 larger towns gave emergency employment on public works, at wages of one to two dollars per day. Only simple work was undertaken; the amount which could be furnished was inadequate for the applicants; the workers hired could not be given steady employment; and the results were not economical.[17] Cities in many other states tried similar experiments in the 'nineties, but there is scant record of their experiences.[18]

The Massachusetts investigators found themselves confronted with five propositions relative to the use of public works to relieve unemployment: (1) that the state or municipality establish factories or engage in industrial enterprises to give employment; (2) that state farms for the unemployed be established; (3) that the state should increase its ordinary public works, and regularly distribute a part of them to the winter season; (4) that the public works should in all cases be done directly by the public authorities and not by contractors; and (5) that all public works be done by residents.[19]

They discarded the proposal of state factories as "too radical," and of farm colonies as "too expensive" and properly the work of "philanthropic societies." They favored the performance of public works directly by public authorities, and the performance of work by local labor, but warned that a part of the reason why labor demanded these regulations was to facilitate control over the work by labor unions. The work under consideration in these proposals was both relief work and regular public works.

The demand that the federal government undertake work projects to relieve unemployment was pressed upon Congress during the 'nineties by Jacob S. Coxey of Massilon, Ohio, and the industrial armies of the period. The march on Washington of Coxey's Army was for the definite purpose of promoting federal legislation to provide public works for the unemployed.[20]

Mention has been made of the Dague bill passed by the California legislature to furnish work on county farms and highways. *The Arena* magazine carried 11 articles between 1897–1901 favor-

[16] *Ibid.*
[17] *Ibid.*, Part I, pp. xxv–xxxiii, 58–107.
[18] *Ibid.*, Part IV.
[19] *Ibid.*
[20] Cf. Chapter VI.

ing federal public works planned to relieve unemployment. These articles, principally written by B. O. Flower and Lionel Sheldon, together with editorials in the magazine, urged the absorption of the unemployed on public works financed by federal note issues, and emphasized particularly the construction of levees on the Mississippi and the reclamation of desert areas.[21]

The first important official recommendation of planning public works for periods when they will relieve unusual unemployment appeared in the report of the New York Commission in 1911. They urged that public work be postponed, as far as possible, to those times of the year and to those years when private industry was least active, allowing the public work to act as a regulator of the labor market and to lessen the amount of idleness.

> "Great works like the building of the barge canal, improving the highways of the State, or building the aqueducts for New York City should be so planned that the least number of contracts will be let during prosperous years when employment is good and cost of materials high." "To create work especially for the unemployed has proved disastrous wherever it has been tried. But to shift necessary public work to times when labor is abundant and materials cheap would mean a saving to the State as well as provision against a large amount of unemployment." [22]

Ninety-one cities in twenty-one states reported that they provided special work for their unemployed during the winter of 1914–15.[23] It is doubtful if this record is complete. The Second National Conference on Unemployment, December 1914, declared that "a careful arrangement of public works to be increased in the slack seasons and lean years of private industry would help equalize the varying demand for labor. Public works must be systematically distributed." [24] From this time onward, the idea attained the status of a "movement," which has had the definite support of the labor organizations, engineering societies, and experts on unemployment; the definite opposition of a large number of prac-

[21] E. g., Flower, B. O., "How to Increase National Wealth by the Employment of Paralyzed Industry," *The Arena*, XVIII, 1894, 200.

[22] New York Commission on Employees' Liability and other Matters, Third Report, *Unemployment and Lack of Farm Labor*, Albany, 1911, pp. 67–68.

[23] Andrews, J. B., "American Cities and the Prevention of Unemployment," *American City*, February 1916; Mallery, Otto, *Business Cycles and Unemployment*, p. 237.

[24] *American Labor Legislation Review*, June 1915, p. 174.

tical politicians; [25] and division of opinion on the part of industrialists and contractors.

The Idaho legislature of 1915 passed an act giving every person who had resided in the state six months a right to 90 days' public work a year, at 90 per cent of the usual wage if married or having dependents, otherwise at 75 per cent.[26] This was an unusual type of public works legislation, though one which has been demanded by labor groups on other occasions.

Pennsylvania, in 1917, passed an act creating a fund of $50,000 to provide increased opportunities for employment in useful public works during periods of extraordinary unemployment caused by industrial depression. The fund was put into the hands of an Emergency Public Works Commission, consisting of the governor, auditor general, state treasurer, and commissioner of labor and industry. When the commissioner of labor deemed extraordinary unemployment to exist, it was his duty to notify the governor, who could authorize the commission to make such disposition of this fund among the several departments as would be best adapted to "advance the public interest by providing the maximum of public employment in relief of the existing condition of extraordinary unemployment consistent with the most useful, permanent and economical extension of the works aforesaid." While the sum of money appropriated made this hardly more than a gesture, it indicated the direction in which public sentiment was moving. The fund was expended during the depression of 1921 and not replenished. When Governor Pinchot came into office he reorganized the state government and abolished many boards and commissions, among them the Emergency Public Works Commission.[27]

[25] E. g., Frank O'Hara of Oregon, speaking at the Second National Conference on Unemployment on the efforts made in that state to redistribute public work so as to take up more of the unemployment of dull periods, said: "When it was suggested that a plan should be worked out whereby the construction of roads and streets and sewers and public buildings should be rationally distributed through a series of years in such a way as to provide for at least as much work in the dull years of the industrial cycle as in the busy years, and if possible more, the idea was favorably received by the engineers, but, as a general thing, it was rejected by the practical politicians. 'The people want what they want when they want it' was the objection." *American Labor Legislation Review*, June 1915, p. 241.

[26] *American Labor Legislation Review*, June 1915, p. 183.

[27] In 1933 the Pennsylvania legislature passed another public works planning bill which was vetoed by Governor Pinchot. Under this bill the Planning Board would have made six-year plans, both financial and physical, for state public works in Pennsylvania, and municipalities were authorized to set up local boards with the same duties and powers. House No. 1566, Session of 1933, "Establishing a State Public Works Planning Board and Defining Its Powers and Duties."

On January 2, 1919, the Division of Public Works, United States Department of Labor, sent the following telegram to governors of states:

> "What measures do you propose to recommend in order to stimulate the development of necessary public works by state and cities during the period of demobilization and transition? Do you intend to create an emergency public works commission for this purpose? Several states are planning such commissions. The federal government desires to keep each state advised of the methods adopted by others to prevent unemployment and to ease the transition from war to peace. In default of such a commission please name an official or authorized individual with whom the federal government may keep in constant touch concerning plans for the encouragement and coordination of state and federal public works. We are withholding the mailing of important papers pending your reply."

In 1918–19, a large amount of public work was available since only the most necessary projects had been carried through during the war. The federal Department of Labor listed 6285 projects to cost $1,700,000,000.[28] During 1921–22 most of the cities of the country undertook special projects, though few of them had previously made efforts to reserve necessary improvements for a depression period or accumulated in advance any fund to finance such work. They financed these undertakings in most cases by special bond issues.

President Harding, in September 1921, called together representatives of labor, business, and governmental bodies in a Conference on Unemployment. This conference unequivocally recommended that municipal, state, and federal executives expand their school, street, road, public building, and repair work to the fullest extent in order to make available a larger amount of employment.[29] Reports from 209 out of the 327 cities of 10,000 or more population stated that these cities had set up or had machinery for carrying out the recommendation and would co-operate to the best of their ability.[30] Mr. Otto Mallery reported that an unprecedented amount of winter work was undertaken, that the volume of public works exceeded any year since 1914 in paving,

[28] Commons, John R., and Andrews, John B., *Principles of Labor Legislation*, p. 340.

[29] President's Conference on Unemployment, Report, Washington, 1922, p. 15.

[30] President's Emergency Committee for Employment, Report No. 5, *Community Plans and Action*, p. 1.

sewers, and school buildings, and broke all records in the laying of water pipes. In some cities, like Philadelphia, public works expenditures exceeded any previous year. In Detroit extra forces kept the streets "disgracefully clean," and an extraordinary expansion of public works was promptly executed. On the other hand, some large cities, notably New York and Chicago, executed much less public works in 1921 than in 1920.[31]

The work actually started appears to have exceeded the boom year 1920 by about 13 per cent. Construction for the year necessarily fell far below bond sales. The letting of contracts for a public project typically lags many months behind bond sales, and additional time is required to get the work into actual operation. But the enormous sale of public bonds in 1921 for public works indicated what was happening. In the last quarter of 1921 they were $560,000,000, compared with $209,000,000 and $253,000,000 in the last quarters of 1920 and 1919, which in turn exceeded previous years. In the first half of 1922 sales were $725,000,000 against $518,000,000 and $349,000,000 for the first half of 1920 and 1919 respectively. The total for 1921 was $1,383,000,000 or nearly double that of any previous year and over three times the sixteen year average.[32]

The President's Conference on Unemployment (1921) advocated strongly the cessation or postponement of public construction work in boom periods to help level out the business cycle and recommended the systematic accumulation of reserves by business men in times of prosperity for use in plant expansion and improvement in times of depression as an excellent method of controlling the crest of the boom and ameliorating the depression. They pointed out that

> "Holding back public works and private construction for periods of depression not only gives employment to large numbers of workers when it is most needed, but creates a demand for raw materials for construction. It maintains the buying power of those directly or indirectly employed, it creates a market for goods, and it enables workers directly or indirectly employed to buy the products of other industries. Finally, construction work in a period of industrial depression, when costs are lower, is economical." [33]

[31] *Business Cycles and Unemployment*, pp. 242 ff.
[32] *Ibid.*, p. 241.
[33] *Ibid.* Report and Recommendations of a Committee of the President's Conference on Unemployment, *Business Cycles and Unemployment*, pp. xxvii–xxix;

In 1923 the federal government attempted to hold back public work for a subsequent depression period. On March 17, Secretary of Commerce Hoover, because "labor in the construction trades and in the manufacture of materials is not only at full employment, but there is actually a shortage in many directions," [34] recommended to President Harding that he direct the different divisions of the government to initiate no new work that was not eminently necessary to carry on the immediate functions of the government and slow down work in progress

> "so much as comports with real economy in construction, until after there is a relaxation in private demands. . . . The extensive data submitted with this memorandum show that the capacity of the construction industry in the next few months at least will be fully utilized by the demands for private construction and the work of state and local governments already under contract or critically necessary for maintenance."

The reaction of large numbers of business men to the proposal was soon evident. *The Manufacturer's Record* says under date of April 5, 1923:

> "In a telegram to President Harding published last week . . . the *Manufacturer's Record* took an emphatic stand against the suggestion of Mr. Hoover to President Harding that all but absolutely essential government work, national and local, should be held in abeyance until general business construction has slackened." "Some business men strongly commend our position on the subject. Others are strong in their condemnation and uphold Mr. Hoover in the position he has taken." "We have seen no reason whatever . . . to change our views." "If the power of the Government or of the banking interests is to be used at times to halt prosperity and building activities, merely because prices of materials or wages are regarded by officials as too high, then we will have fallen under the domination of a paternalism greater than this or any other country has ever known." "Economic laws should be left to work out the movements of trade and commerce and business."

Manufacturers opposed Mr. Hoover's recommendation for a variety of reasons. Some claimed that the government would be setting "an example of drastic deflation by stopping all public construction," and that it would have a tendency to destroy con-

ibid., Chap. XIV, "The Long Range Planning of Public Works," is a detailed analysis of the problem as of 1921.

[34] *Monthly Labor Review*, May 1923, pp. 184–185.

fidence.[35] The Jones and Laughlin Company opposed any reduction in the program of improvement of inland waterways.[36] The American Cotton Association declared that

> "There is no question that certain interests are preparing to put on a second deflation. The same publications that have been the mouthpiece for deflation from the time it was started in 1920 on through, have been systematically arranging for deflation through articles and editorials." [37]

The R. D. Skinner Company stated its deep interest in the reservation of some government work "specifically for times of business depression" but declared that

> "this does not mean the checking of all government work during times of rising prices. The deliberate cutting out of Government improvement work seems entirely too drastic a step, but it also seems reasonable to strive for a scientific adjustment between the improvement work to be undertaken in depression periods and the work to be carried on at the peak of high prices." [38]

Industrialists holding opposite views pointed out that it was financial wisdom for the government to cut down on its construction work during periods of inflated prices; that the government might help to steady the fluctuating prices of labor and materials; that the use of public work to level up depression periods was wise public policy; that Mr. Hoover was correct in his statement that there was already a shortage of many kinds of construction labor; and that the policy recommended would tend to check "a runaway market" and "violent and disastrous reaction on the rebound." [39]

The federal government, as a result of Mr. Hoover's recommendation, sharply reduced its construction program, but the municipal governments carried forward a very large amount of work.

On January 9, 1924, a meeting of the Federated American Engineering Societies approved the plan of advance planning of public works saying that "a co-ordinated functioning of all public works agencies would be able to stabilize business and employment." They appointed an Advisory Council on Public Works, including members from a number of important engineering

[35] Birmingham Clay Products, *The Manufacturer's Record*, April 5, 1923, p. 6.
[36] *Ibid.*, p. 6.
[37] *Ibid.*, p. 7.
[38] *Op. cit.*, p. 7.
[39] *Ibid.*, pp. 9–11.

societies.[40] This proved to be a significant event for the engineering societies have consistently and vigorously supported the proposal since that time, appearing before Congress repeatedly in support of public works planning bills.

On January 12, 1925, in an address before the Associated General Contractors of America, after stating that shifting of part of our public works to dull periods would "moderate the alternations of employment and unemployment," President Coolidge said that "most forms of government construction could be handled in conformity to such a policy, once it was definitely established." [41] But during the next month, when large appropriations were made for public buildings, Mr. Coolidge did not press Congress to reserve some of this work for such dull periods.

On January 11, 1928, the Jones bill to create a prosperity reserve and to stabilize industry and employment by the expansion of public works during periods of unemployment and industrial depression was introduced in the United States Senate.[42] The money would not have been released until the President found and communicated to Congress that the volume (measured in value) of contracts for construction work in the United States had for a three months' period fallen 10 per cent below the average of the corresponding months in the preceding three years. It was not enacted.[43]

In 1929 the Division of Building and Housing of the United States Department of Commerce made a canvass of the opinions of some 5000 public and quasi-public officials to ascertain the extent to which they endeavored to control the volume of public construction in the interests of either cyclical or seasonal regularization of employment. More than 2000 officers—city, county, and state engineers and school superintendents, city comptrollers, city and regional planning commissions, secretaries of builders' exchanges and of local building trades councils, local chapters of the Associated General Contractors and university and college presidents—replied to the questionnaires of the Department of

[40] *American Labor Legislation Review*, June 1924, p. 159.

[41] *Ibid.*, March 1925, p. 51.

[42] S. 2475, 70th Congress, 1st Session, as amended April 18, 1928. Cf. also Report No. 836, the report of the Senate Committee on Commerce, on this bill. An illuminating analysis of the arguments for the Jones bill will be found in: Mallery, Otto, "Prosperity Reserves of Public Works Needed to Combat Unemployment," *American Labor Legislation Review*, March 1928.

[43] Andrews, John B., *American Labor Legislation Review*, March 1928, p. 74.

Commerce. In the vast majority of cases they displayed only slight interest in such control and had little experience in its use.[44]

The first definite step in such planning by the federal government occurred on February 10, 1931, when President Hoover signed Senator Wagner's bill creating the United States Employment Stabilization Board "to arrange the construction of public works so far as practicable in such manner as will assist in the stabilization of industry and employment through the proper timing of such construction." [45] The Board included the Secretaries of the Treasury, Agriculture, Commerce, and Labor, and its purpose was to bring about the advance planning of public improvements "under such control as may enable speeding-up of such expenditures during periods of dull business, and slowing down during prosperity, in order that a reserve of employment may be built up." The Board was given authority to supervise the advance planning of federal expenditure on public works, and to promote similar planning by state and local governments and private corporations. Its reports show that bills for the establishment of similar boards and policies were prepared by the unemployment commissions of California, Connecticut, and Massachusetts in 1931 and 1932.[46]

The federal act provided that "whenever, upon recommendation of the board, the President finds that there exists, or that within the six months next following there is likely to exist, in the United States or any substantial portion thereof, a period of business depression and unemployment," he might transmit to the Congress by special message such estimates as he deemed advisable for emergency appropriations to be extended upon authorized construction to aid in preventing unemployment.[47] It will be noted that Congress refused to comply with the procedure set up in the earlier bills, under which Congress would have made appropriations for emergency public works and allowed the President to decide when such appropriations should be released. Under the Wagner law Congress retained control of the appropriations and decided when funds should be released for unemployment relief works.

[44] Planning and Control of Public Works, *op. cit.*, p. 160.

[45] Employment Stabilization Act of 1931, Public Acts No. 616, 71st Congress, February 10, 1931.

[46] Advance Planning of Public Works by States, Federal Employment Stabilization Board, Department of Commerce Building, Washington, D. C.

[47] Section 5. Cf. also the *American Labor Legislation Review*, XXI, 96, March 1931.

Construction, 1919–1928

From 1919 to 1928 an unusually high level of construction activity was a striking characteristic of the American business situation. Construction increased without interruption (except for a slight drop in 1927) from 1919 to 1928, declined moderately in 1929, more sharply in 1930, and precipitously from 1931 to 1933.[48] The year 1928 was the largest construction year in our history down to 1933. It exceeded the combined totals for 1919 and 1920, both good years, measured by previous construction activity in the United States.

Throughout the 1919–28 period, residential construction was the largest single category. The drop of approximately $900,000,000 in construction in 1929 was a decline in residential building. Public construction is estimated to have increased steadily between 1923 and 1928 from $1,993,000,000 in 1923 to $3,599,000,000 in 1928 and to have constituted from 35 to 40 per cent of the total volume of expenditures for all private and public construction.[49]

The figures compiled by the Federal Employment Stabilization Board for the period 1925–32 do not check exactly for the years 1925–28 with those in the Wolman report.[50] This is due principally to the inclusion of estimates for buildings costing less than $5000 in the federal figures and to minor differences in methods of compilation.[51]

Wolman stated that the various methods used to estimate the numbers employed on public construction led to the conclusion that somewhat more than 800,000 persons were employed in public construction in 1928.[52] On this basis the number employed in 1923 would have been about 500,000 with considerably smaller numbers previous to that date. One of the effects of the construction activity of the 1920's was to draw into public construction some hundreds of thousands more workers, and at the same time to draw into private construction another large number of additional workers. When the collapse in construction occurred in

[48] Detailed figures for the different types of construction will be found in Wolman, Leo, *Planning and Control of Public Works*, Chap. V.

[49] *Ibid.*, and p. xxi.

[50] *Planning and Control of Public Works*, pp. 105, 107, 108.

[51] Amidon, Beulah, "Back to Work," *Survey Graphic*, July 1933, Vol. 22, pp. 353–356; *Engineering News-Record*, July 28, 1932.

[52] Wolman, *Planning and Control of Public Works*, p. 115.

1929–30 over half a million more construction workers were affected than by the depressions of 1918 or of 1920–21. In fact, construction workers were affected but little in 1921. Building was fairly active because of the construction delayed during the war and construction activity played an important part in the quick recovery from the depression of 1921.

Interest in a large public works program was keen in the early 'thirties partly because it was hoped that public works might start a business recovery, partly because there was no hope for a quick recovery of private construction, and partly because of the unemployment of more than a half million construction workers. The suggestion in 1930 that the federal, state, and local governments act in concert in the planning, timing, and launching of public works [53] was followed in 1931 and 1932 by demands that the federal government subsidize state and local public works efforts. This was done through the aids to local public works by the Reconstruction Finance Corporation, next by the Civil Works Administration, and finally by the Public Works Administration.

Down to the depression of 1921, the federal government contented itself with exhortations to the state and local governments to relieve unemployment through expanding their public works. In the autumn of 1921, Congress passed a special $75,000,000 appropriation to aid the states in expanding road construction. This was the only federal aid provided previous to 1932, and was, of course, only a small expansion in the regular system of federal-state co-operative road construction. In the depression of the 1930's, as in earlier depressions, the practical emphasis was upon accelerating work that would have been done in later years. The point of view concerning permanent policy was changing, also. It was seen that public works planned to relieve depression situations must be based essentially upon the principle of accelerating public works during depressions, and then allowing a period of reduced public works to follow during the next prosperity period rather than that of withholding work during prosperity periods for the next depression.

During a prosperity period there are plenty of people who maintain that there will be no more depressions. Taxpayers are reluctant to permit the accumulation of large reserve funds to be

[53] Report of Committee on Recent Economic Changes, in Wolman, *Planning and Control of Public Works*, pp. xx–xxi.

expended at a later date, and hesitate even to authorize projects to be done at some future, indefinite date. Moreover, during the prosperity period the people want their needs for public works satisfied and are able and willing to pay for them. It is almost necessary, therefore, to accelerate public works during the depression for the purpose of relieving unemployment, finance them by going in debt, and then pay for them during the subsequent prosperity period. It is essential, if this policy is to work successfully, that the debts contracted during the depression be paid off before another major depression. The depression public works of the Hoover and Roosevelt régimes were financed by bonds with too long periods of maturity. They are apt to come due in the midst of another depression. They will not be paid off before another major depression comes.

The Roosevelt public works programs were at once the largest public works efforts ever launched in any country and definitely for the purpose of helping to end in a short time a severe and prolonged depression. The $3,300,000,000 appropriation of 1933 approximated the average *annual* expenditures on public works of the federal, state, and local governments of the United States in the five years before the depression. It meant that a full year's work, measured by public works of the late 'twenties, was to be done *at the cost of the federal government alone*, during a year of deep depression, and under national, centralized control instead of under the decentralized controls of federal, state, city, county, town, and village governments. Since public works normally amount to from 35 per cent to 40 per cent [54] of the total volume of construction, public and private, in the country, this huge federal appropriation of 1933 represented less than half of one year's normal construction. Since private construction was down to about 15 per cent of normal the federal public works program of 1933 could not bring even the construction industry back to normal. As a matter of fact the difficulties in getting the huge program under way were insurmountable, and the appropriation became a two-year rather than a one-year program. It was the dragging of the Public Works program which forced the government to furnish employment through the Civil Works Administration.

The $4,880,000,000 appropriation of 1935 had just passed Con-

[54] *Ibid.*, p. xxi.

gress when this study was completed. There seemed to be little probability that the work provided by it could be condensed into less than a two-year program.

Municipal Public Works

The bulk of the unemployed live in cities. A high percentage of all public works is constructed within cities. Much of the federal and state work is on buildings located in cities, road construction being the principal exception. If planned public works become a useful device for reducing depression unemployment, much of the result must be accomplished by cities. Two studies have been of particular significance, Wolman's study of large cities, and the Wisconsin study of small cities. Many of the findings of the two investigations were strikingly similar.

One of the most significant practical difficulties retarding efforts to use planned public works for unemployment relief had been overlooked by earlier reports. Wolman pointed out that as economic and social units, most large American cities had outgrown their political boundaries and cited Chicago as a typical example.

> "Within the city of Chicago there are some thirty-one distinct and independent local governments. In addition there are at least six semi-independent tax levying agencies, the tax levies of which are spread by some of these local governing bodies. . . . In Cook County outside of Chicago, there are approximately 380 local independent and semi-governmental agencies. . . . These independent and semi-independent local governments with tax levying powers include the county government, the sanitary districts of Chicago, the Chicago Board of Education, the Chicago Library Board, . . . twenty independent park districts" and similar units. "The administration of the functions of local government in Chicago and Cook County is thus divided among the 415 or more of the independent and semi-independent governments, each having a tax levy and borrowing powers." [55]

Otto Mallery found that municipal officials have a hard time insulating themselves against the current enthusiasm or pessimism of their business associates, which makes it difficult for them to have the "vision to build when the business man is not building and to slow down when the business man is in high gear." [56]

[55] Wolman, *Planning and Control of Public Works*, pp. 161–162. Further discussion of the Chicago situation and that of other cities will be found in the chapter.
[56] Mallery, Otto T., *American Labor Legislation Review*, June 1924, p. 158.

The Wisconsin report, which covered the experience of Wisconsin cities and counties during the period 1920–29, emphasized the drag of taxpayers' unwillingness to see public debts increased in depression years when taxpayers' personal incomes are low and falling. "The list of delinquent taxpayers increases, and there is a general outcry against overtaxation. . . . Projects that are financed in part by assessments are especially unpopular. . . . There is opposition also to increasing expenditures for projects that are financed by current taxation." [57]

A second important finding was the fact that the need for public improvements tends to outrun the rate of their construction even in good times. State and municipal officials are constantly under pressure to provide public buildings, streets, roads, water, and sewer systems, and other improvements at the earliest possible date. The easiest time to raise taxes and get approval for bond issues is when taxpayers feel prosperous.

Three facts stood out in the Wisconsin Study: (1) that vigorous efforts were made in the first year of the depression to expand public works but the total amount of work which could be provided was not sufficient to check materially the course of the depression, and (2) that it would have been impossible to delay most of the public works of the 'twenties, for the people wanted them and were willing to pay for them then, either by taxation or by borrowing, and (3) that when the boom ended, the borrowing power of most of the cities was pretty nearly used up and taxpayers, with their own incomes falling, were demanding tax reductions and that the municipality should not go further into debt.

Three public works problems, so far as unemployment is concerned, are emerging in the United States and promise to be important political issues in the decade beginning with 1935. Public works have long been used, and recently on a tremendously enlarged scale, as emergency relief for the unemployed. The past fifteen years have witnessed a drive for the use of public works as a counterbalance for business cycles, with reductions in boom times to check business inflation and promotion of public works in depression periods to stimulate business revival. The third want which is emerging is the use of public works to absorb, even in

[57] Lescohier, Don D., and Peterson, Florence. *The Alleviation of Unemployment in Wisconsin*, pp. 55–56.

good years, that part of the male population not given work by private industry. England, Germany, and the Scandinavian countries have already maintained considerable numbers of their people by public works during periods of unemployment more prolonged than even major depressions produce. Once into the task of supporting a part of the population by public work, it is extremely difficult to withdraw.[58]

[58] Hill, A. C. C., and Lubin, Isador, *The British Attack on Unemployment*, The Brookings Institution, Washington, 1934; Beveridge, *Unemployment, A Problem of Industry;* Ratzlaff, C. J., *The Scandinavian Unemployment Relief Program*, University of Pennsylvania Press, Philadelphia, 1934; Carroll, Mollie Ray, *Unemployment Insurance in Germany*, The Brookings Institution, Washington, D. C., 1929.

CHAPTER X

THE LABOR MARKET

Mention was made in Chapter VII of the growth in state and municipal employment offices between 1890 and 1914. Before going further into the history of these offices attention should be given to the private offices, many of which antedated the public ones and continued in operation throughout the period of development of the public offices. These were of three principal types: those operated on a commercial basis; philanthropic offices, such as those of the Y. M. C. A. and welfare societies; and industrial offices, operated either by employers' associations or by labor unions, designed to give service to their own members.

The commercial agencies have flourished in many countries. In the United States, during the past 40 years, most of them have handled only manual labor, principally the unskilled. These have been characterized by serious abuses which are not found in the agencies for the placement of teachers, social workers, and other types of professional workers, and for the furnishing of high-grade office help to business concerns.[1]

During the past 30 years, the best organized and most powerful of the private employment agencies have been those which have supplied certain railways and large contractors with common labor. They have had central offices in such labor centers as New York, St. Paul, Minneapolis, Chicago, and St. Louis, and branch offices or representatives in other cities. In the railroad end of their business, they made contracts with one or more roads which provided that the agency would keep the railway supplied at all times with such section, extra gang, and other construction labor as it needed; and provide an adequate commissary service for the laborers. On the other hand, the railways agreed to hire no laborers of the types specified except through the agency; gave the agency exclusive rights to operate commissaries along its lines; and provided for the transportation of the laborers hired to the point of employment.

[1] Some of these agencies, however, are as bad as the typical manual labor agencies. Cf. "Another Fee-Charging Employment Agency Swindle," *American Labor Legislation Review*, September 1930, p. 304.

During the period of heavy immigration preceding the war, the agencies made arrangements with padrones or other leaders among the immigrants to assemble laborers of their respective races and bring them to the agencies. The padrone's commission was sometimes paid directly to him by the agency "splitting" the cash fees charged the men given jobs, but as frequently consisted of a job as foreman over the gang and the privilege of bleeding them for interpreters' fees, commissions for getting them jobs, for keeping them from being discharged, and other petty grafts.[2]

The agencies catered, of course, to seasonal demands for labor from many other lines of industry; particularly work outside of cities such as the construction of roads, dams, and similar projects, lumbering, and harvest work. Their own description of their business has been "moving labor," and "shipping men."

The business has been predominantly of an interstate character. It proved to be impossible for the individual state to regulate the agencies. When a state enacted a good law, the agency made it ineffectual by shipping men to distant points. For example, men sent from Minneapolis or St. Louis to Montana or the Canadian Northwest who did not find conditions at the job as represented by the agency found it difficult to return and obtain redress. The federal government has not yet enacted regulatory legislation.

The first regulatory act in the United States, that of Massachusetts in 1848, required a license fee of $1.00 issued by the mayors of municipalities. The second, in Maine in 1883, also fixed a $1.00 municipal license fee, but forbade an agency from charging applicants unless they actually furnished them jobs. Minnesota, in 1885, established a $100 municipal license fee, required the posting of a $10,000 bond and provided that damages could be collected from private agencies in case of fraud. Forty-four states have enacted regulatory legislation, but most of it is crude. Wisconsin and Minnesota are the only states with stringent regulatory laws. Idaho prohibits such agencies entirely.

The older laws provide for the licensing of the agencies by municipalities;[3] the more recent laws for licensing by the State Industrial Commissions or Labor Departments. License fees

[2] E. g., Minnesota Bureau of Labor, Twelfth Biennial Report, 1909–10, pp. 24–29; cf. also footnote 5.

[3] New York's difficulties with this type of law were related in 1930 by Frances Perkins. Cf. "State Regulation of Private Employment Agencies," *American Labor Legislation Review*, September 1930, p. 301.

range from $2.00 to $200.00, the majority being between $10.00 and $100.00, and most of the states require the agencies to furnish bonds ranging from $1000 to $5000 to guarantee compliance with the state's laws. Wisconsin's Industrial Commission may refuse a license when it considers another agency in a city to be unnecessary. Oregon requires that the application be endorsed by ten freeholders, and Texas that the applicant shall have been a citizen of the state for three years.

The provisions of the regulatory laws indicate the abuses that have characterized the business.[4] They forbid fraudulent advertising, misrepresentation, and other forms of fraud. They forbid agencies from collecting fees from both the employer and the employee and prohibit fee splitting between the agencies and employers. Some states have endeavored to regulate the fees charged. Oregon, for instance, established graduated fees approximating 5 per cent of the wages paid on the job. Most states have forbidden *registration* fees. Some require the filing with the Industrial Commission of schedules of the fees charged. A number of states have required the agencies to post notices of strikes and lockouts or to stamp the information on the introduction cards given to men sent out to jobs where disputes are in progress.

The fee-fixing provision of the New Jersey statute was declared unconstitutional on May 28, 1928.[5] The law required all fee schedules to be approved by the Commissioner of Labor. The commissioner refused to grant Ribnik a license on the ground that the fees proposed to be charged were excessive. The New Jersey courts sustained the commissioner, but the United States Supreme Court, by a six to three decision, construed the law as conferring "upon the commissioner of labor power to fix the prices which the employment agent shall charge for his services" and said there

[4] Lescohier, D. D., *The Labor Market*, Macmillan, 1919, pp. 145–158; Hammond, M. B., *Regulation and Control of Private Employment Agencies*, Bulletin 192, U. S. Bureau of Labor Statistics; Report of the Commission on Immigration of Massachusetts, 1914, House Document No. 2300; Report of the Commission of Immigration of the State of New Jersey, 1914; Report of Bureau of Industries and Immigration of New York State Department of Labor, 1911; abstract of Report of Immigration Commission, 1911, Vol. II, 443–449, *ibid.*, pp. 321 ff.; also pp. 375–386; also pp. 391–408; Annual Report of U. S. Commissioner of Immigration for 1911, pp. 121 ff.; also Annual Report for 1907, pp. 70–71; Fourteenth Biennial Report, Minnesota Department of Labor, 1913–14, pp. 170–182; Kellor, Frances, *Out of Work*, G .P. Putnam's Sons, 1904, pp. 1–178.

[5] *Ribnik* v. *McBride*, 48 Sup. Ct. 545.

was no more reason why he should enjoy this power with respect to employment agents than with respect to druggists, butchers, or grocers.

This decision was of widespread significance. Approximately 30 states had laws with fee-fixing provisions. Eleven fixed specific fees to be charged; ten limited the fees to a percentage of wages; and eight, including New Jersey, required the fees to be approved by a state official. Fearing an influx of irresponsible employment agents as a result of the decision, the New Jersey legislature promptly enacted a law of the Wisconsin type, which gave the Industrial Commission power to refuse a license for an employment office on premises unfit for such use, or to a person whose character made him unfit, or when the commission found that there were already enough employment agents in the community in question.

The state of Washington enacted a law,[6] initiated and passed by popular vote, which made it unlawful for any employment agent "to demand or receive either directly or indirectly from any person seeking employment any remuneration or fee whatsoever for furnishing him or her with employment or with information leading thereto." This law was held unconstitutional by the United States Supreme Court in a five to four decision on June 17, 1917, as "arbitrary and oppressive" and an undue restriction on the liberty of the appellants, and therefore a violation of the Fourteenth Amendment.[7]

Mention was made of the fact that these private agencies antedated the public offices. They have continued in operation in competition with the public offices, and during the decade of the 'twenties they throve as never before. The war years accustomed a large number of employers and of workers to patronize employment offices, and when the United States Employment Service virtually collapsed in 1919–20 the commercial agencies sprang up like mushrooms in many labor centers. In Minneapolis, for instance, the number of private agencies increased from 38 to 64 during the year after the federal service was hamstrung.

Many private organizations not interested in making money also stepped into the breach, especially to aid in soldier and sailor re-employment. Independent committees fostered by local cham-

[6] Chapter 1, Laws, 1915, State of Washington.
[7] *Joe Adams* et al. v. *W. V. Tanner*, 37 Supreme Court Reporter, 662.

bers of commerce, War Camp Community organizations, Red Cross chapters, the Y. M. and Y. W. C. A. soldiers' and sailors' bureaus, and social service agencies of various sorts rushed into the breach. They helped many thousands of individuals to find jobs, but, looking at it in the large, their efforts resembled the firing of a shotgun at a passing flock of blackbirds more than a systematic organization of the labor market.

Private employment offices managed by employers' associations have existed for a long time in America for three principal reasons. Detroit, with its swift expansion in automobile manufacturing and in various manufacturing and service industries which were supplementary to it, established an employment office to sort the labor flowing into Detroit and distribute it to the manufacturers belonging to the local association. This included not only consideration of physique and other qualifications for the particular work, upon which the personnel managers of the particular concerns would pass judgment finally, but also the matter of unionism. For most of the employers in this group were definitely anti-union in their attitudes. This type of office was not peculiar to Detroit. It existed in many other cities down to the end of the period covered by this history.

In another and smaller city in the Middle West,[8] the employers' employment office was never visited by an applicant for work. The office, which was maintained by about three-fourths of the employers in the city, was simply a small office in a downtown building which kept a card catalogue of all the people who had worked for all the employers in the association. The record ran back many years and, so far as practicable, the entire history of each worker was on his card, largely in code symbols. A person looking for work applied at the individual plants instead of at a central employment office. The employment manager at a plant, if he was interested in an applicant, went into another room and telephoned the central office before reaching a decision. He found out who the person had worked for, his work record and wages on previous jobs, his conduct in the shop, whether he had taken part in strikes or was a member of a union, and any other information he desired. If he hired the applicant he notified the central office, and thereafter added his experiences with the man to the secret record.

[8] The author speaks from personal knowledge and investigation.

The employer group said that this was not a blacklisting device. It was only a means of enabling employers to avoid undesirable employees. But it effectively closed the doors of those plants to unionism, to union workers who had ever been active in their organizations, and to any workmen who had struck or quit jobs because of what they considered grievances. Once a workman in these industries got a bad record at the central office, he had to leave town or get into a job not covered by the employment office.

A third type of employers' office, as operated in two Middle Western cities, functioned primarily as a centralized means of transferring individuals belonging to the labor supply of a definite group of plants to others of the plants when the men or women were laid off for lack of work. These offices enabled a group of plants to pool, to some extent, their supply of labor and assist some of their workmen to obtain steadier work than they could do from a single company or by peddling their labor when laid off. These offices, like the one previously described, were also used to scrutinize pretty carefully new people admitted into the industries concerned, and were definitely anti-union in character.

The unions, as a rule, have not set up formal employment offices. The business agent, secretary or other designated official of unions working under agreements with employers have received orders from the employers for men needed and notified unemployed members of the organization. Sometimes this was done in a quite systematic manner; in other cases it operated in a haphazard fashion. Non-union workers were as definitely deprived of any chance to obtain these jobs as were union workers to obtain jobs through a great many of the employers' offices.

The Amalgamated Clothing Workers set up an excellent office in Chicago. The union obtained from the employers in the agreement of 1919 definite acceptance of the principle of the preferential union shop. This agreement provided that the employers give members of the union preference in hiring and discharge. The union did not at first appreciate the complexity of the problem arising out of the wide variety of crafts and nationalities in their union [9] and did not set up adequate machinery to fulfill the employment functions they had assumed under the agreement.

[9] Stewart, Bryce, *Unemployment Benefits in the United States*, Industrial Relations Counsellors, New York, p. 404.

Union members and employers were both dissatisfied. In 1922 the employers declared that

> "the power to select and allocate labor in all branches of the industry must be restored to the employers in order that there may be complete relief from the burden and the inefficiency which have characterized the union's attempt to deal with this problem." [10]

The union succeeded in retaining its employment prerogative, on condition that it obtain outside assistance in reorganizing its employment department. Mr. Bryce Stewart, director of the Canadian Employment Service, was brought to Chicago to take charge of the union employment office. This soon became one of the most effective employment offices in the United States. It demonstrated that when a local industry is large enough to justify the use of an employment office devoted entirely to that industry, the employment office can render more satisfactory service than a general employment office serving many industries and all classes of workers. When clothing workers wish to leave the industry their office is of no help to them. But persons wishing to enter the local clothing factories find at the employment office definite information concerning the possibility or impossibility of getting work in the industry at that time. Its principal function, however, is to facilitate the transfer of the workers within the industry from plant to plant as necessary. It enables the industry to operate with a minimum labor force, and it enables each worker to have the maximum steadiness of employment. When the office was started, each worker was specialized for a single operation; and each employer insisted, to the limit of his ability, in getting skilled specialists for his vacancies. The workers did not want to learn other jobs than their own specialties, and the employers did not want to train them. The employment office has helped to change this and so has the unemployment insurance plan in the industry, which has made it to the employers' advantage to keep each individual worker employed as steadily as possible. A part of the clothing workers have learned to do two or more operations, and the employers have learned the value of a versatile labor force and accepted some responsibility for teaching alternative skills. The results accomplished along this line have not equaled expectations, however.

[10] *Ibid.*, p. 404.

Public Employment Offices

As stated previously, the first public employment exchanges of a permanent character in the United States were established in 1890 by Ohio in five cities of the state. California had a labor exchange in San Francisco from April 1868 to April 1872, which was supported for a few months by private subscription and then by funds appropriated by the legislature. But it passed into private hands in April 1872.[11]

Twelve public offices were established between 1890 and 1900 and 15 more between 1900 and 1907. Widespread unemployment in 1907–08 and an increasing public realization of the evils connected with fee-charging employment agencies, caused a vigorous demand in many parts of the country during 1908–09 for adequate public employment offices. Twenty new offices were established, 1907–09. But the public's memory is short. The experiences of 1907–08 were soon forgotten.

The first clean-cut advocacy of public employment offices by an important American commission is found in the New York report of 1911 which included a bill for the creation of such a service.[12] But only six offices were added between 1909 and 1913. The unemployment of 1914 renewed the public's interest. In the next three years 40 offices were added, making a total of 96 in the country when the war broke out.[13]

Before the war, the agitation for public employment offices arose largely out of the evils of unemployment. Each time that industrial revulsions threw unusual numbers of people out of work, there was a demand for public employment offices as means of relief. A few perceived the need for an organized labor market and that employment work can be efficiently done only by a centralized employment system, but little progress along that line was achieved until the war period, and then but temporarily.

[11] Readers interested in the early history of public employment offices are referred to Lescohier, D. D., *The Labor Market*, Macmillan, 1919, Chap. VII; Conner, J. E., *Free Public Employment Offices*, United States Bureau of Labor Statistics, Bulletin 68, January 1907; Herndon, John G., *Public Employment Offices in the United States*, U. S. Bureau of Labor Statistics, Bulletin 241; United States Bureau of Labor Statistics, "Public Employment Services," *Monthly Labor Review*, January 1931, pp. 10–32.

[12] *Unemployment and Lack of Farm Labor*, Third Report by the Commission appointed under Chap. 518 of the Laws of 1909 to inquire into the question of employers' liability and other matters, April 26, 1911, 245 pages, Albany, pp. 11, 12.

[13] A list of the offices in operation and a map showing their location as of 1914 will be found in *American Labor Legislation Review*, May 1914, p. 359.

Two new influences began to affect the situation about 1910. The nation began to realize the evil of excessive labor turnover and many persons began to realize that employment offices should not be looked upon as relief agencies but as a regular part of our business machinery with the continuing function of finding men to fill the places in industry which become vacant from time to time.

Though the number of offices had been growing from 1890 down to the war and "the theory of placement work as a state function was . . . gaining ground steadily, the system in practical operation could not be credited with conspicuous success. Some individual offices were efficiently operated and gained reputation and standing; in others the superintendent made no effort to do more than the minimum amount of routine which a political sinecure involved. The whole system was chaotic and planless, handicapped by political considerations, public indifference, and more important, wholly inadequate salaries and appropriations." [14]

The largest state appropriation for public employment offices until 1906 was $25,000 for the entire state of Massachusetts, $23,000 of which was spent in establishing and maintaining the Boston office during its first year.[15]

The state offices, during the period before 1917, fell far short of their possibilities, but they made definite contributions to the technique of public employment service and laid a foundation upon which an adequate national system of offices could be based. Important lessons were revealed by their errors and faults as well as by their achievements. No unbiased person could read the reports of the Association of public employment officials from their first meeting in 1913 to the present without being impressed both by the candor of the discussions and the expanding vision and improving technique of many of the state services.[16]

The Wisconsin offices have had a degree of state-wide co-ordination since 1911. The Wisconsin offices have never been without centralized state supervision and control. For three years they had a state superintendent. Then, from 1914 to 1934, a member of the Industrial Commission acted as superintendent and in 1934

[14] *Monthly Labor Review*, January 1931, p. 13.

[15] Harrison, Shelby, and Associates, *Public Employment Offices*, New York, Russell Sage Foundation, 1924, p. 124.

[16] The proceedings have been published in Bulletins of the United States Bureau of Labor Statistics and for the 1920 and 1926 meetings in reports entitled *International Association of Public Employment Services*, Department of Labour of Canada, Ottawa.

a state superintendent was appointed. Ohio, during the war, developed a more complete unification of its offices than was attained by any other state down to 1934. Its 22 exchanges were in daily telephone contact with a central clearing office at Columbus, and orders and men were transferred from one exchange to another with the aid of this central office. New York, Massachusetts, and a few other states have developed more or less of centralized supervision. But no state had in 1934 an adequate coordination and integration of its state system of offices, and no state was operating a central clearing house comparable to that used by Ohio during the war.

Ohio started with the idea of joint financing of the offices by the state and municipal governments in its law of 1890. This finance plan proved impracticable because both the state and the city governments tried to run the offices. In 1904 the state of Ohio took over the entire expense of operating the employment offices. In Wisconsin, on the other hand, joint financing has proved successful for over 20 years. Wisconsin's practice has differed from Ohio's in two important particulars, however. In Wisconsin the state has paid the salaries of the office staffs. This has tended to centralize control over the staff in the hands of the state. And Wisconsin has had since 1911 at its principal office, Milwaukee, a Citizens' Advisory Committee, which has functioned to a large extent as a board of directors for the office. The two policies of joint financing and the advisory committee have grown up together. In Wisconsin the localities in which offices have been located have been required to provide suitable quarters and office equipment, as well as to pay for light, heat, telephone, and janitor service.[17] Wisconsin has insisted upon the local contribution to the costs in order to keep the communities vitally interested in and continually critical of the offices. The State Industrial Commission has adhered consistently to the view, based upon Wisconsin experience, that when city and county governments make annual appropriations to the employment offices, they reconsider each year whether or not the offices are worth what they cost. There has been comparatively little friction between the state and the local governments such as was experienced with the Ohio cities, 1890–1904.

[17] Except during 1918 and early 1919, when the federal government paid the salaries in order to get the five state offices under the control of the federal government. During that period the state paid incidental expenses, such as office supplies and long distance telephone calls.

The Citizens' Committee on Unemployment, which acts as a board of directors for the Milwaukee office, long recognized as one of the best public offices in the United States, was an indigenous development. In the spring of 1911 there was considerable unemployment in Milwaukee and local agitation resulted in the organization of a citizens' committee composed of representatives of the Merchants' and Manufacturers' Association, the Federated Trades Council, the Municipal Common Council, and the County Board of Supervisors. As one of its activities it conducted a free employment office, which during three months preceding September 1911, placed nearly twice as many people as the state office then in existence. The state Industrial Commission decided to reorganize its office and, in order to get funds sufficient to support an office adequate for the needs of Milwaukee, asked the city council and county board to contribute toward the support of the office. The city contributed $3000 and the county $2000 per year, and the Citizens' Committee became an advisory committee to the Commission in matters relating to the conduct of the Milwaukee office. It has functioned ever since, retaining its original name. But its powers have been greatly increased. It is a board of directors more than an advisory committee. Once a month it meets to audit the accounts, approve the expenditures of the office, and discuss the various problems which arise in the conduct of the office. There are 20 members, five from each of the groups listed above, and they attend the monthly meetings with remarkable regularity.

The Milwaukee committee was the first of its kind in this country,[18] and its successful functioning has led to the establishing of similar committees in Canada, England, and European countries. The Russell Sage Foundation, in its report upon public employment offices (1924) says of the Milwaukee committee,

> "Of the older local advisory boards the Citizens' Committee of Milwaukee is perhaps the most outstanding. . . .
>
> "By virtue of the interests, the prestige, and the business ability represented in its personnel, as well as by the unflagging application of its members to their task, the Citizens' Committee of Milwaukee has carried on not merely an impartial but also a business like and confidence-inspiring management of its public employment office. The power of the committee to with-

[18] So far as the writer has been able to ascertain, it was the first such advisory board in the world.

> hold or secure appropriations from the city and county has made an administration free from political or other partisan dominance and on the whole unassailable." [19]

It may be added that during the depression of the 1930's the committee was of major importance among the agencies dealing with the Milwaukee unemployment situation.

Massachusetts was a pioneer in the development of specialized departments within the employment office. At Boston, the need for separate handling of skilled and unskilled workers, of minors and of women, was early recognized; and, in the case of minors, the need for combining vocational guidance with placement work. Massachusetts also has the distinction of working out a record system which has formed the basis of the public employment office records of American states, and of being the first state to develop definite relations between its public employment offices and the employment managers of industrial establishments.

One of the most significant departmental specializations in Massachusetts was the pioneer work done at Boston on vocational guidance of minors seeking employment. In the historical development of vocational guidance for minors in the United States, progress has been made along two distinct but not unrelated lines, to the extent that systematic guidance has been achieved at all. A little has been done by public employment offices, and a great deal more by the schools. There is still sharp difference of opinion among experts and laymen alike, whether the function should be performed in the employment office or the school, or both.[20]

A series of studies made before 1915 revealed that the vast majority of children leaving school drifted aimlessly into work, often after long periods of idleness following their leaving of school, and that only 2 to 5 per cent of these children got into occupations which promised them proper training and a worth-while economic outlook as adults.[21] Boston had in 1915 the only public

[19] Harrison, Shelby, *Public Employment Offices*, pp. 213–214.

[20] Cf. King, F. A., "The Challenge of the Junior Worker," Proceedings of Eighth Annual Meeting of International Association of Public Employment Services Department of Labour, Ottawa, 1920, pp. 110–112; Wyatt, J. M., "Junior Employment Service in Canada, An Opportunity," *ibid.*, pp. 113–115; Collier, Virginia Macmakin, "Problems Involved in Organizing a Junior Employment Service," *ibid.*, p. 116.

[21] Cf. Ueland, Elsa, "Juvenile Employment Exchanges," *American Labor Legislation Review*, June 1915; and reports footnoted in this article; New York Commission on Employers' Liability and Other Matters, 1911, *op. cit.*, pp. 13, 14.

employment office in the United States which had had enough experience with a special department for juveniles to indicate the possibilities of such a department. In the Boston office a clerk chosen because of his interest in boys was assigned all boys under 21 years of age who applied for work. "This is no systematic vocational guidance," said a contemporaneous writer, "but it is a conscious attempt nevertheless to give the youth who is beginning to work very different treatment from the routine which must be accorded the adult experienced workers." [22] By 1915, Indiana and Los Angeles had established separate departments for boys, and four philanthropic juvenile employment bureaus had been established in Cleveland, Cincinnati, New York, and Boston.[23] A junior section was established in the New York state employment service in 1918, and a number of the larger cities of the country established junior departments before 1920, including Milwaukee, Philadelphia, Pittsburgh, and Minneapolis. In many cases this was tied in with the office having charge of granting work certificates, and there was a degree of co-operation between the employment offices and the schools. A junior division was established in the war-time United States employment service, and constituted one of the better departments of the service. It is still uncertain, however, whether the public employment service should attempt to assume a major rôle in the vocational guidance of minors. The eventual allocation of responsibilities and functions between the schools and the employment offices remains to be worked out.

Organization of the Labor Market

It is apparent, as one examines the history of public employment offices in the United States that the American people have been slow to realize the need for a *system* of employment offices. In the United States chaos has ruled where order alone could meet the needs of our economic situation. Commercial, fee-charging agencies; philanthropic and semi-philanthropic ones; employers' association offices; union services to their members; state and municipal exchanges; have existed side by side—competing, duplicating, working at cross purposes. However efficiently managed as individual units, our state and municipal employment offices have not provided a systematic organization of the labor

[22] Ueland, Elsa, *op. cit.*, p. 216.

[23] *Ibid.*, pp. 216–223.

market any more than the private agencies have. The maximum developments of the state offices, reached just after the war, when twenty-one states were doing some sort of employment work, still left a large part of the country without public offices. Even in states like Wisconsin, with twelve offices in 1919, or Illinois with twenty-two, there was little co-ordination of the work of the local offices into state systems, let alone a national system. The efforts of the state officials to establish effective co-operation were largely futile. They resulted in some benefits, but they did not meet the situation of an unorganized labor market effectively.

Two of the efforts of the state employment officials to promote employment service deserve notice, however, before the efforts of the federal government are considered. In 1904, state officials in the western part of the upper Mississippi valley formed the Western Association of Free Employment Bureaus, a very loose organization. In the winter of 1914–15, it was recast along broader lines into the National Farm Labor Exchange, composed of representatives of state employment offices, state agricultural departments, and the United States Departments of Agriculture and of Labor. The members met annually at Kansas City, generally in April, to bring about a co-ordination of the efforts of employment offices in the group of states interested in the big wheat harvest. The organization had no administrative powers or functions and was simply a means of exchanging information, effecting personal contacts, and making joint plans for the harvest. Its period of maximum usefulness ended about 1922. Thereafter, the Kansas City headquarters of the farm division of the United States Employment Service played a dominating part in the handling of the harvest.

The organization, in December 1913, of the American Association of Public Employment Offices was intended

> "to improve the efficiency of the public employment offices now in existence; to work for the establishment of such offices in all states; to secure cooperation and closer connection between the offices in each state and among the states; to promote uniform methods of doing business in all the public employment offices; to secure a regular interchange of information and reports among the various offices; to secure a proper distribution of labor throughout the country by the cooperation of municipal, state and federal governments." [24]

[24] U. S. Bureau of Labor Statistics, Bulletin 192, pp. 8–13.

This organization, later known as the International Association of Public Employment Services, played a significant part in the development of public employment offices in the United States and Canada but was in no way adapted to bring about the organization of the isolated offices into a unified system.

The federal government made its first efforts to set up a system of employment exchanges under a law of 1907 which gave the Bureau of Immigration and Naturalization power "to promote a beneficial distribution of aliens admitted into the United States among the several states and territories desiring immigration." Little was accomplished under this law, but after the creation of the Department of Labor on March 4, 1913, more definite efforts to develop an employment service were undertaken. The Bureau of Immigration now became a bureau of the Department of Labor.

The check on immigration during the European War left the immigration service with little to do. Serious unemployment due to the outbreak of the war in late 1914 and early 1915, followed by the war boom and the demands of war industries for labor, created a greater sense of need for a national employment service than had existed theretofore. The organic act creating the Department of Labor gave it the duty to promote measures to assist workers to find "profitable employment." The natural step was for the Department of Labor to transfer many of its immigration officers more definitely into employment service.

The country was divided into eighteen (originally sixteen) zones with employment headquarters in each zone, manned by an immigration inspector, sometimes styled "superintendent of employment." Some of these zones had branch offices, but neither a state's size nor its employment needs seemed to determine the number of districts or offices in it. Missouri comprised two districts and Pennsylvania one, while Texas contained three districts and nine branch offices. New York state had but one branch office—at Buffalo. The state of Washington had more branches than there were main headquarters in all the states along the Atlantic Ocean, and California had more offices than all of the states drained by the Mississippi River. California and Washington each had fourteen of these federal offices; New York had three and Illinois four.

It is only by courtesy that one could call these *employment* offices; it would be a falsehood to speak of them as a federal employment *system.* Their methods of operation violated most of

the canons of good employment practice, and they made little effort really to serve either employers or employees in general. They posted notices of positions open in such public places as libraries and post offices, with utter disregard of the number who might go to the job, and equal disregard whether anyone applied for it. The inexperience of the immigration inspectors in employment work, their inability to use the telephone and telegraph freely, their inadequate office forces and equipment, and the small number of offices, made any real service impossible.

The next step taken in the development of this pitiful federal employment office effort was to make every post office an employment office. It was the plan that "applications for work and for workers were distributed throughout each community reached by the postal service and then gathered up by the carriers and forwarded to the nearest branch of the employment service." [25] The eagerness with which this suggestion was received by thousands of people is a striking tribute to American ignorance of the country's employment needs and of the fact that employment work, properly done, is a business. Post offices, experience has shown, can be efficiently used as a means for directing employers and employees to the public employment offices, but not as placement agencies. Attempted co-operation with the Departments of Agriculture and of the Interior likewise yielded but limited practical results.[26]

America's entrance into the World War forced the nation to organize the labor market. The excessive labor surplus of 1914–15 quickly disappeared and employers in many lines were complaining of real or fancied labor shortages before the spring of 1917 arrived. Then America entered the war. Thousands of employers were immediately thrown into a veritable panic at the prospect of losing to the army and navy millions of experienced men of all grades.

The disorganization which had characterized our labor market during peace times and between 1914 and 1917 degenerated into veritable chaos during the early part of the war period. Employers stole men from each other; labor scouts infested the centers of labor distribution; private employment agencies reaped a harvest. Government departments competed with each other for labor—

[25] *Monthly Labor Review*, January 1931, p. 15.
[26] Cf. *Monthly Labor Review*, January 1931, p. 16, for further information.

ordnance stole men from shipbuilding, shipbuilding from aviation, shells from powder. Turnover increased by leaps and bounds. Month by month the chaos of the employment market grew worse.

When the United States entered the war the Bureau of Immigration had employment offices (so called) in 41 cities and "branches" in 52 cities in 37 states. In 1917 the Secretary of Labor asked for an appropriation of $750,000 with which to establish and operate a national employment system which would be adequate to meet war needs. Congress granted only $250,000 but the President shortly after allotted $825,000 from his security and defense fund. With this money, on January 3, 1918, the Secretary of Labor ordered the separation of the Employment Service from the Bureau of Immigration and its expansion and operation as the United States Employment Service under the general direction of the Assistant Secretary of Labor and under the management of John B. Densmore of Montana, formerly a solicitor of the Department of Labor. Mr. Densmore had to face the task of building a machine and operating it at the same time. The Service had to begin to function immediately even though it had neither organization, equipment, nor staff. It was expected to deliver results in thirty days that in normal times it would have been given years to attain. And the director and all of his chief staff members were absolutely without previous experience in employment work! Politics, even in time of war, prevented the appointment of one of the several outstanding employment experts of the country to head the Service.[27]

The first plan of organization adopted provided for two Assistant Directors—one in charge of field work and quasi-official bodies and the other in charge of administrative work—divisions of Information, Women, Investigation, Statistics, Service Officers, and Farm Service. The country was divided into thirteen administrative districts on February 23, each consisting of from two to five states, with a District Superintendent in each district and a State Director of Employment in each state. In addition to the state organizations, specialized "divisions" were created for special purposes—the Public Service Reserve, the Boys' Working

[27] Cf. on U. S. Employment Service—Lescohier, D. D., *The Labor Market*, Chap. IX; Smith, Darrell H., *The United States Employment Service*, p. 130, Johns Hopkins Press, 1923; Harrison, Shelby, and Associates, Public Employment Offices, *op. cit.*; Kellogg, Ruth, *The United States Employment Service*, University of Chicago, 1933.

Reserve, the Farm Service Division, the Women's Division, and the Negro Division.

It became clear to the Service, after a few months of experience, that the secret of success was going to be found in a centralized administration at Washington and decentralized operation with the states as the unit. The District Superintendents had proved to be a "fifth wheel," and steps were taken gradually to eliminate them and to center responsibility for the field organization on the federal directors in the several states.[28] Four new divisions were created to supplant the previous organization: (1) Control, (2) Operations, (3) Information, (4) Organization. The farm and harvest work and the women's work were directly supervised by the Director General.

The *organization* division had charge of personnel, advisory boards, the work for juniors, and general field supervision, while clearance and the work for soldiers and sailors was under the *control* division. At this time there were roughly 350 offices in operation manned by about 1700 people, with a central staff of 300 at Washington. This form of organization produced a higher degree of centralization of authority at Washington, and a more logical consolidation of functions. The Service expanded by the rapid establishment of new offices and by the absorption of existing state and municipal offices, either by co-operation or by assuming actual control over them. Between January 3 and April 23, 1918, 72 new offices were opened. On May 7, 1918, this total had reached 280; by August 27, 560; and by October 21, 832 offices. Twice as many offices were established in nine months as were opened in England during the first four years of their national employment system. This was approximately ten times the number functioning when the Employment Service was recognized as a distinct unit in the Department of Labor in January.

Strenuous efforts were made to utilize agencies outside of the Service. An announcement of February 18, that 98,000 third- and fourth-class postmasters and rural carriers had been made "labor agents" of the Service says:

> "These new agents . . . together with 2000 agents of the Department of Agriculture whose services will be available,

[28] Reorganization of August 5, 1918. Cf. Report of Director General of United States Employment Service, United States Department of Labor, Government Printing Office, Washington, 1919, pp. 24–25.

furnish connecting links between the farms and the sources of farm labor supply. They place the United States Employment Service in direct touch with virtually every farmer in the United States."

Efforts were also made to use the newspapers of the country. On April 19, 1918, letters were addressed to daily newspapers in cities of 20,000 or over, asking their aid by establishing newspaper farm labor agencies, each paper accepting the proposition to devote not less than four inches of space in each issue to the local needs of farmers for help. By June 30, 1918, 200 daily newspapers were serving with the Farm Service Division under this plan.

The manufacturers of motion picture films, the National Grange and other agricultural organizations, the councils of defense, and farmers' telephone lines were all used to promote the farm labor end of the work. Co-operation was also effected with the United States Department of Agriculture, which rendered notable assistance through its farm labor specialists and county agricultural agents.

Unfortunately, the inexperienced executives at Washington, in their eagerness to effect contact with experienced employment men, appointed a considerable number of the private employment agency men into the federal service, with the result that not a little of the business of the federal system leaked into the offices of the private agents. Private agencies were working on orders that came into the federal offices and which, in some cases, never got to the placement desks. Confidential information leaked out of these federal offices and was common talk among the private agencies. The federal service was brought into discredit in many cities by the results of this error.

The Public Service Reserve had its own separate national set-up, with a federal director for each state, and 15,000 enrollment agents to seek out workers who could be transferred from less essential to more essential industries, and in some cases as technicians in the military service. It was created to enroll workers with special types of skill who would be willing to leave their positions to accept war work if called. It was, in other words, an enlistment for civilian war service. The Boys' Working Reserve, similarly organized, though on a smaller scale, was of the same type, but operated among boys, most of whom were in school, and particularly to assist farmers in getting help. It claimed to

have enrolled 250,000 high school boys in 1918 for farm work. In some states special training camps for the boys were set up.[29]

The Employment Service stated in May 1918 that the railways in the East and the shipyards were going to use the Service exclusively. But they did not do it. On June 4 and 11 the Service declared that the harbor workers would all be hired through the Service. But it was not until President Wilson announced on June 17 that on and after August 1, 1918, all employers "engaged wholly or partly in war work, whose maximum force, including skilled and unskilled laborers, exceeds 100" were required to hire all of their common labor through the United States Employment Service, that employers began to depend upon the Service and to discontinue competitive solicitation.

On July 9, 1918, the Service announced the policy of establishing state advisory boards, community labor boards and state organization committees throughout the country to assist in the management of the Service. Employers and employees were represented on all of these boards.

The State Advisory Board was represented in each community where an office was established by a Community Labor Board. These consisted at first of a representative of the employers, a representative of the workers, and a representative of the Employment Service, but two women members were soon added, one representing the employers and the other the employees. These boards performed the same service for their localities that the State Advisory Board performed for the state. Appeals from their decisions went to the State Advisory Board, and from there to the Director General of the Service and the War Labor Policies Board. A thousand boards had been organized by September 1918, and on October 29, there were 1386 in operation.

The creation of the Community Labor Boards was the most promising step taken by the Service to bring both the employer and the employee to an understanding of the necessity for labor exchanges and their proper place in the nation's economic life. The Boards struck at the very roots of that prejudice against public employment offices which has been so serious an obstacle to their development. They discovered and in turn began to emphasize to the public the fact that employment work takes a

[29] Annual Report of the Director General, U. S. Employment Service, 1918, pp. 10–14; Annual Report, *idem*, 1919, pp. 12–13.

high degree of skill. They were a barrier to the politician's desire to use the office as "plums" for his least efficient hangers-on. They compelled the employment offices to assume that neutrality between capital and labor which is so essential to their success.

Unfortunately, the Community Labor Boards did not get into operation until the Service had been operating eight or ten months, and only a couple of months before the armistice was signed. They had hardly started to function when the war ended. Their personnel had not yet fully comprehended their task when the labor situation began to change from labor shortage to labor surplus. Our lack of labor market preparedness before the war made it impossible for us to develop an adequately equipped service quickly enough to meet the war-time labor emergency.

When the war ended the National Manufacturers' Association opposed the continuation of the Service, believing it prolabor. They claimed that the Service was manned largely by union men or sympathizers, and discriminated against non-union labor. They definitely feared that the Service would decrease employers' control over the labor market.[30]

This contention was pressed so vigorously by the Manufacturers' Association that on April 25, 1919, Secretary of Labor Wilson issued a press statement in refutation from which we quote in part:

> "We are authorized by our organic act to promote the welfare of labor and to advance its opportunities for profitable employment. No distinction is made as between the union and the non-union worker in the organic law, and no distinction has been made by the Department of Labor or by its Employment Service in the handling of labor affairs or in the placement of workers, except those distinctions that employers and employees have themselves, by their mutual contracts, made absolutely necessary.
>
> "The one great example that has been used by our critics, in connection with the allegation that we are a union labor department and a union labor service, is that when the demand for ship workers and shipbuilders came from Seattle, our employees in the interior of the country said to those who were applicants for employment that 'it is not advisable to go to Seattle unless you are either a union man or willing to join the union' and we are held up as a trade union department because

[30] Cf. testimony in following Congressional hearings: Congress, Joint Committees on Labor; National Employment System, hearings on S688 and 1442, and House Report 4305, Parts I and II, 715 pp., Washington, 1919, 66th Congress, 1st session.

we made that statement . . . the employers and the employees in the shipbuilding industry in Seattle had come to an agreement that all people employed in those yards should be members of their respective unions. In other words, they had a closed shop agreement, and if we had, at our instance, caused any man to leave the interior of the country and go to Seattle who was neither a trade unionist nor willing to become a member of the union, only to find when he reached there that he couldn't secure the employment that we had said was available, then we would have been justly subject to criticism and ought to have been denounced from one end of the country to the other.

"Now, on the Atlantic Coast the situation was entirely different. The employers and the employees had no closed shop agreement, and we placed more workers in the shipbuilding yards of the Eastern coast by far than we placed at Seattle, and we placed them there without any reference to whether they were unionists or non-unionists."

The other objection made by the employers was to the strike policy of the U. S. Employment Service, stated by the secretary in the same press release, as follows:

"If there was an industrial dispute in existence, we would not be the agency through which labor could be furnished to that industrial dispute. We take this ground with respect to industrial disputes:

"That there is a sufficient supply of labor there if a strike is going on. The labor is competent to perform the work that is required, as has been evidenced by the fact that it has been doing it, and to send workers from some other community, however near or far, into a community where there is already a sufficient supply of labor of the necessary skill, is simply to create a complication, a surplus of labor, one of the things that is to be avoided, and where a labor dispute is on, it is not a question for our Employment Service to deal with; it is not a matter for it to handle. It is a question for our Conciliation Service to deal with, and when the Conciliation Service has successfully handled the problem, then you have the workers there, ready to go on with the work. That has been our attitude with regard to industrial disputes."

The state employment services did not follow this policy. They notified the applicant for work that a strike was on and they sent him to the employer if he wished to take the job as a strikebreaker, stamping the "send-out card" with the words in large letters, "Industrial Dispute On."

Private employment agencies fought the national employment

service by various sorts of political pressures in order to protect their own business interests. Much inefficiency and waste characterized the Service during the war period and this had weakened the enthusiasm of many who believed in a national service. Too many of the officials of the Service had been selected on a political rather than a merit basis. Neither labor nor agriculture made any serious effort to support the Service as it was in 1919. By June 30, 1920, only 269 offices continued in operation. Haste and inexperience made the first genuine effort to establish a national employment service a failure. The second opportunity was not to come until 1933.

Between 1921 and 1930, the United States Employment Service, operating on a budget ranging from $200,000 to $225,000 a year,[31] functioned in but three matters that are worthy of mention. In January 1921, the Service began the publication of the *United States Industrial Employment Survey Bulletin*, which carried a large amount of statistical material and comments upon the employment situation. The statistical material was not carefully compiled and exposure of many errors in it resulted in the discontinuance of the statistical data in June 1922. Since then, under a slightly changed title, it has been published as an "information" bulletin, containing the comments of correspondents in all parts of the country upon the current employment situations but devoid of statistical information on employment, which is published instead by the United States Bureau of Labor Statistics in the *Monthly Labor Review*.

The Farm Labor Bureau of the Service, with its central headquarters at Kansas City, Missouri, has performed an important service, particularly in the wheat and cotton harvests, but also in connection with other kinds of harvest and land clearing activities. This has been the most effective work done by the United States Employment Service, so far as direct placement is concerned.

The third activity has been the subsidizing of state services. Down to the time of the Doak reorganization (discussed below) this arrangement, while giving but small financial assistance to any state, nevertheless worked satisfactorily so far as it went.

[31] Their expenditures for 1918 were $804,137.56; 1919, $5,691,196.07; 1920, $399,999.63. From 1921 to 1923, the appropriation was $225,000 a year. In 1924 it was cut to $210,000; in 1925, to $206,284; in 1926 and 1927, $205,000; and from 1928 to 1930, $200,000. This is exclusive of special appropriations made for the District of Columbia, first made in 1927.

The cash subsidies to the states ranged from about $80,000 to a little over $100,000 a year, in addition to the franking privilege.

Throughout the decade 1920 and 1930, vigorous efforts were made to induce Congress to enact a law creating an adequate federal-state employment service. The Kenyon-Nolan bill, later known as the Wagner bill, was presented to Congress year after year from 1919 onward and was finally passed in the spring of 1931, only to be vetoed by President Hoover. Experts on the subject had been practically unanimous in their support of the Wagner bill, which provided in substance that the federal government would set up a supervisory organization on a nation-wide basis, subsidize the states in the maintenance of the actual employment exchanges, and set up standards and regulations for the local exchanges. The director general of the Service was to organize "a Federal Advisory Council composed of an equal number of employers and employees for the purpose of formulating policies and discussing problems relating to unemployment, and insuring impartiality, neutrality, and freedom from political influences in the solution of such problems." [32]

[32] The Wagner bill as introduced in the Seventy-First Congress, 2d Session (1930) (S3060—Union Calendar No. 511) and vetoed by President Hoover, contained the following major provisions:

Sec. 1. Creation of United States Employment Service as a bureau of the Department of Labor.

Director General, appointed by President; salary, $8500.

Sec. 2. All other employers to be under civil service.

Sec. 3. To set up "a national system of employment offices; . . . to assist in establishing and maintaining systems of public employment offices in the several states and the political subdivisions thereof. . . . Assist in co-ordinating the public employment offices throughout the country by furnishing and publishing information as to opportunities for employment, by maintaining a system for clearing labor between the several states," and (the following was struck out by the Judiciary Committee) "by establishing and maintaining uniform standards, policies and procedure, and by aiding in the transportation of workers to such places as may be deemed necessary. . . . It is hereby declared to be the policy of Congress that the service authorized by this Act shall be impartial, neutral in labor disputes, and free from political influence."

Secs. 4–5. If state legislature accepted the terms of the Act and empowers a state agency to co-operate with the federal service, $4,000,000 a year would be appropriated, 75 per cent of which would be apportioned among the several states in the proportion which their population bears to that of the United States, to be available for the support of employment offices in the states. The state appropriation had to be at least 25 per cent as great as the federal, and not less than $5000.

Secs. 8–9. Report of its employment service plans, and reports upon its operations and expenditures had to be filed with the Director General as he prescribed.

Sec. 10. In states without state offices purely federal offices could be established.

Sec. 11. Federal employment service council, and federal director to require state councils.

Sec. 13. Required post-office system to give franking privilege to all federal and federal-state offices.

The veto message of President Hoover stated that the Wagner bill would be "a serious blow to labor during this crisis"; that it abolished "the present well developed Federal Employment Service, and proposed after certain requirements are complied with, to set up an entirely new plan by subsidies to the states from the Federal Treasury."

> "This bill proposes, as I have said, to destroy the Federal Employment Service in the Department of Labor, which has developed out of many years of experience, and to substitute for it 48 practically independent agencies, each under state control, the Federal Government paying for them as to 50 per cent and based not upon economic need of the particular state but upon mathematical ratio to population. On the other hand, the existing Federal Employment Service is today finding places of employment for men and women at the rate of 1,300,000 per annum."

Continuing, the President declared that the existing service cooperated with the service already established by some thirty states, that "It applies its energies to interstate movements" and "concentrates upon the areas in need," that the special divisions for agriculture and veterans would be abolished under the new service, and that the subsidy to the states would merely relieve them of one-half of their employment service "without any additional service on their part."

It is not likely that any veto message of an American president ever exceeded this one in misstatements of fact. It is inconceivable that a president could be so misled that he would call the United States Employment Service as it existed on March 7, 1931, "a well developed" federal service; that he could have believed that the existing service would be wiped out overnight and before the new one was established when the states were spending over $1,000,000 a year to support the existing offices; that he could have described the federal-state service provided for in the Wagner bill and which had been before Congress for twelve years as one in which there would be 48 practically independent agencies with the federal funds simply used to relieve the states of part of their expenses when the bill specifically provided that the states must conform to federal regulations to get subsidies at all. Full credit must be given, in Mr. Hoover's justification, to the skill of the United States Attorney-General and Secretary of Labor Doak in persuading the President to these views. The Secretary of Labor knew,

though probably the President did not, that the 1,300,000 placements per year credited in the message to the United States Service were, in the vast majority of cases, made by the state services. Only $50,000 of federal money compared with $1,261,000 of state money went into the offices which made those 1,300,000 placements. But, to the writer's personal knowledge, adequate information to disprove practically all of the statements in the message was laid before the President.[33] He must accept the responsibility for the veto.

At the time the Wagner bill was vetoed 24 states were maintaining state employment services, in all cases under the jurisdiction of Departments of Labor or Industrial Commissions. In 11 other states the United States Employment Service had representatives, handling farm labor almost exclusively. Nine states had laws providing for services but were not appropriating money for the service, while a few of the 24 states were working on such limited funds that they were virtually on the mail order system, which is but a shade better than no service at all. Even if the old United States Employment Service had been summarily terminated, practically all of the employment service then existing in the country would have gone on undisturbed.

The "Doak" Employment Service

The veto of the Wagner bill was followed by immediate action to bolster up the "well developed" federal employment service. Before the end of March, Secretary of Labor Doak announced an expansion and reorganization of the United States Employment Service. His annual report for 1931 says of this development:

> "Recently the Department of Labor reorganized and expanded its free public employment service. Since the close of the World War the Federal Government undertook to aid in the co-ordination of public employment agencies in the different states and to extend its services to interstate employment. The appropriations throughout the past years always were small; but, even with the limited funds available, considerable good was accomplished.
>
> "The last Congress appropriated the sum of $883,780 for the United States Employment Service, and this has enabled us to

[33] For detailed treatment of the veto of this bill and of the "Doak" plan set up after the veto cf. Kellogg, Ruth M., *The United States Employment Service;* also Trafton, George, "The Wagner Bill and the Hoover Veto," *American Labor Legislation Review*, March 1931, p. 85.

affect a reorganization and greatly to widen the scope and effectiveness of its activities. Today, in addition to the co-operative offices, we have a Federal Employment Service in each state in the Union and in the District of Columbia. We are doing all that in us lies to co-ordinate all public employment agencies—state, municipal, and civic—and to make available to the work seekers a service which will no longer compel them to seek out private agencies and pay them a fee to secure them work. The aim also is to make available quickly to every kind of employer the specific type of worker that he needs. I think I may say that with the present Employment Service organization there no longer exists any reason why an employer or employee in this whole land of ours need apply to a private fee-charging agency for a worker or for work." [34]

After pointing out that the Service had been in active operation for but four months before the end of the fiscal year the secretary said, "In that time the Federal, State and Municipal offices have succeeded in connecting over 600,000 workers with jobs in industrial or agricultural pursuits. Of this total number the Federal Service secured employment for nearly 300,000 men and women workers."

John R. Alpine, the new director appointed to head up the expanded Service, said that the federal directors in the several states "keep in touch with state and municipal officials, with employers and employees, with civic organizations, and with all other individuals and groups that can assist them in performing the duties placed upon the state directors." [35]

The statements quoted read well. There is just enough truth in them to be misleading. By 1932, this reorganized Service had 101 general placement offices, 22 farm labor offices (inherited from the older Service), and 30 offices for veterans, 23 of which had existed before the reorganization. All of these were strictly federal. The placement offices duplicated existing state services in many cities. In some cities they were across the street or in other locations close to the state offices. In 1932 "in addition to these over 400 special agents were located in strategic points throughout the United States." [36] Examination of the location and work of these special agents or "contact men" reveals that their appoint-

[34] United States Secretary of Labor, Annual Report Fiscal Year ended June 30, 1931, pp. 2–3.

[35] *Op. cit.*, p. 37.

[36] United States Secretary of Labor, Annual Report Fiscal Year Ending June 30, 1932, p. 3.

ment seems to have had more significance for the impending national election than for the United States Employment Service.

All of the employees of the "reorganized" service were freed from civil service requirements. Why? No provision was made in the plan for integration of the state and federal services. Why? Federal-state co-operation was the plan upon which all of the experts in the country were in favor; and which had been found successful by even the impoverished United States Service of the 'twenties, and was working with conspicuous success in Canada. It is not strange that a group of unbiased, competent investigators, who spent twelve weeks in a field study in sixteen states, should sum up the results of this "reorganization" thus:

> "No unbiased observer could fail to be dismayed by the lack of performance, the waste of public money, the inefficiency, even the bad faith, to be found in these offices at a time when there is special need for the kind of service the public was led to believe would be supplied." [37]

The report [38] of the investigators referred to furnished a vivid picture of what a federal employment service created for political rather than economic purposes can be. The facts we cite are taken from it.

> "On the whole it seems certain that politics and the spoils system have had much to do not only with the determination of cities in which offices were to be located but also in the selection and appointment of staff in spite of statements made by Mr. Alpine to the contrary." [39]

> "The United States Employment Service is found to have been 'reorganized' in the first place with a vision limited and faulty, staffed on the whole with men and women inexperienced in the work to be done, subject to political manipulation, inadequately supervised and supplied with record forms quite out of keeping with those sanctioned by trained personnel." [40]

The figures compiled and published by the Doak Service concerning its placements are utterly unreliable. Miss Kellogg amply

[37] Kellogg, Ruth M., "Instead of a System," *The Survey*, March 1933, p. 165; Kellogg, Ruth M., *The United States Employment Service*, University of Chicago Press, 1933; Hearings on the Wagner Bill (S2687) before the Senate Committee on Commerce, March 24–31, 1932.

[38] Kellogg, Ruth M., *The United States Employment Service*, p. 186. Miss Kellogg spent 12 weeks in the field studying the Doak service as it worked in 16 states and gathered reports from other states by mail.

[39] Hearings on the Wagner Bill (S2687) before the Senate Committee on Commerce, March 24–31, 1932, p. 130. Cf. Kellogg, *op. cit.*, pp. 96–103.

[40] Kellogg, *op. cit.*, p. 116.

demonstrated the fact,[41] though it needed no demonstration to state officials and others familiar with what was going on in the state and federal services. The actual placements of the offices financed by the federal government continued to be an insignificant part of the total placements by all public employment offices. But the cost to the federal government jumped from the $200,000 of 1930 to $938,780 in the fiscal year ending June 30, 1932. Since most of the federal offices and officials were housed in federal buildings and paid no rent, most of this expenditure went for salaries. In fact, Miss Kellogg found that the total salary roll for the year was $888,900.[42]

Examination of the data gathered by Miss Kellogg reveals many interesting facts. In the state of California, with seven offices and 15 on the staff, the director was allowed $960 for travel during the year. In the District of Columbia, with two offices and no travel required they were given a personnel of 29 and $960 for travel. The same travel allowance was assigned to the large states of New York and Pennsylvania; only $900 to Texas and $780 to Illinois and Ohio, $420 to Minnesota and $360 to Wisconsin. What were these state directors expected to do? If to supervise the local offices, how could it be done on such travel allowances? Why was Maryland allowed to incur travel allowance nearly double its appropriation? Why were states along the border of the South like Maryland, the Virginias, Kentucky, and Tennessee so heavily staffed and financed as compared with the solidly democratic states in the South and many of the dominantly republican states of the North?

The reactions of the states which had developed reasonably good state services to their experiences with the "reorganized" employment service were succinctly stated in a telegram to Mr. Alpine from the Wisconsin Industrial Commission at the end of November 1932.[43]

> "Your letter of November 15 discharging two faithful civil service employes with long and satisfactory service records constitutes climax to intolerable situation. You state that because of budget cut there is no other way ignoring the fact that the present budget is twice what it was in 1931 when it

[41] *Ibid.*, pp. 116–128.
[42] *Ibid.*, Table XI, pp. 129–130.
[43] Cf. Kellogg, *op. cit.*, Chap. VI, for summary of the reactions in a number of other states.

was ample to include these two clerks. Apparently you prefer to retain the recently appointed state director for Wisconsin and his three office assistants who are not civil service employes and have no placement experience although their negligible activities have led only to duplication and confusion. It is to be regretted that you did not see fit to use the additional appropriations to develop and coordinate the activities of existing public offices instead of to employ untrained official supernumeraries and to set up competing offices in the same city and even within a block of each other. The only aid Wisconsin has received from the federal government has been salaries of two clerks and the franking privilege. If the salaries of these two clerks are no longer to be paid by the federal government the disadvantages of continuing official relations with you far outweigh the advantages. Therefore unless these two clerks are reinstated we shall surrender the franking privilege December first.

"(Signed) WISCONSIN INDUSTRIAL COMMISSION" [44]

The United States Employment Service of 1933

The enactment of the Wagner-Peyser Act, approved by the President June 6, 1933,[45] finally established a national employment service in the United States. The United States Employment Service is a division in the Department of Labor. Approximately three-fourths of its appropriation is for subsidies to state offices affiliated with the federal service and conforming to its standards. This plan, rather than a strictly federal service, had received the almost unanimous support of persons working for a national employment service during the preceding 20 years.[46]

The Wagner-Peyser Act appropriated $1,500,000 for the first fiscal year and contemplated appropriations approximating $4,000,000 per year thereafter. The appropriation for the year ending June 30, 1935, was $3,700,000; of which not more than $165,000 could be expended for personal services in the District of Columbia; not less than $200,000 allotted to the Veterans' Placement Service, and not more than $3,000,000 apportioned to the states.[47]

[44] *Ibid.*, p. 146.

[45] 48 Stat. 113, approved June 6, 1933.

[46] E. g., Lescohier, Don D., *The Labor Market*, Chap. XI; Harrison, Shelby, and Associates, *Public Employment Offices*, Chaps. VII–XII.

[47] Public Act No. 143, 73d Congress, making appropriations for the Departments of State and Justice and for the judiciary, and for the Departments of Commerce and Labor. for the fiscal year ending June 30, 1935, and for other purposes.

The new service differed from the war-time service in several important particulars. The director and two associate directors appointed were qualified by training and experience for their positions. The law creating the service had been carefully thought out. The policy was adopted of selecting the entire personnel on merit, both in the federal and state branches of the service. Washington, at the time this was written in 1934, was giving merit examinations to the staffs in the state offices except in states where the employees had been selected under state civil service rules. These examinations covered the persons already working in the offices as well as applicants for positions. The federal service prepared a manual "Specifications for Positions in State Employment Services" in order to establish national uniform requirements for like positions in the several states and to equalize salaries in each kind of work throughout the country.[48]

Terrific pressure was put upon the Service by congressmen in the 73d Congress to hold the positions in the service open to political appointments. Complete exemption from political influences had not been won up to 1934, but the standards of appointment, both at Washington and in the states, was higher than at any previous time.

In addition to merit selection the state services were required by the agreement to set up programs for the training of their personnel, such programs to be in operation on or before October 1, 1934.

A national advisory council was appointed to help the service work out its policies, maintain neutrality between the employers and labor, and put efficiency before political considerations. The agreement between the federal and state services required the establishment of similar State Advisory Councils, and suggested local councils wherever and whenever the state advisory council deemed advisable.

The federal subsidy to the state service was given only to states which entered into a formal written agreement with the United States Employment Service, which bound the state to compliance with federal regulations and standards, including supervision of salaries, selection and training of personnel, standardized record

[48] *Specifications for Positions in State Employment Services Affiliated with United States Employment Service*, Bulletin No. VI, Division of Operations, United States Employment Service, June 1, 1934.

systems, clearance, premises used for offices, and the acceptance of the policy that in strikes persons sent out on employers' requests be given notice that a strike or lockout existed.[49]

In July 1934, 19 states and a total of 167 local offices were affiliated with the National Employment Service.[50]

When the Federal Emergency Administration of Public Works, better known as the Public Works Administration, was set up in 1933, it adopted "a labor policy providing that (1) opportunities for employment on public works be distributed among the unemployed and not made an opportunity for a mere exchanging of jobs; (2) work opportunities be equitably distributed geographically; (3) preferences under the law should be safeguarded; and (4) migration of laborers in quest of work should be prevented." To carry out these principles, they adopted a rule which required that labor "so far as possible be selected from lists of qualified workers submitted by local employment agencies designated by the United States Employment Service." [51] This assignment came at the very beginning of the new national service. There were only 135 free public-employment agencies in the United States. Work on the public roads program alone had to be done in approximately 2200 counties. It was obvious that a large number of new public employment offices would have to be established. "Since no funds were available for this emergency activity, the special Board for Public Works allocated $500,000 to the United States Employment Service for the national and state administrative costs of furnishing temporary service," while the Federal Emergency Relief Administration "agreed to pay the operating costs of local offices where such should be needed." [52]

A National Re-employment Service was then set up as a temporary division of the United States Employment Service, to continue in operation only so long as its services were needed in connection with the public works program. It was announced at once that wherever a free public employment service was already

[49] Form of Agreement between the ——— State Employment Service and the United States Employment Service for Co-operation under the Wagner-Peyser Act (48 Stat. 113) for the Fiscal Year Ending June 30, 1935, United States Employment Service, Washington, D. C.

[50] *Directory of State Employment Offices*, United States Employment Service, Washington.

[51] *Monthly Labor Review*, U. S. Bureau of Labor Statistics, October 1933, pp. 800–801.

[52] *Ibid.*, p. 801.

in existence no re-employment service office would be established. A state re-employment service director was appointed in each state. In each county where public works were to be carried through there was organized a county re-employment committee, "Comprising the chairman or a leading member of the county relief committee, a representative of labor, an employer, an outstanding civic leader, and the county engineer or other representative of public construction interests." [53]

The Director of the United States Employment Service, by thus creating an emergency employment service adequate to meet the emergency need, protected the new permanent service from the disturbing influence of the emergency task, and enabled it to proceed with an orderly development of its permanent organization and policies. This was, perhaps, the most important decision during the first year of the new National Service.[54]

[53] *Ibid.*, p. 801.

[54] Cf. for current discussion of the new federal-state employment service: Hopkins, Jess T., *The Emergence of a New Public Employment Service*, Public Employment Center of Rochester, New York, 1935; United States Employment Service, *Twelve and One-half Million Registered for Work, 1934*, Washington, Government Printing Office, 1935.

CHAPTER XI

UNEMPLOYMENT RELIEF—LOCAL AND STATE

By *Florence Peterson*

During the past 40 years there have been five depressions which were severe enough to cause an acute unemployment relief problem. The problem was handled in each of these depressions in a manner characteristic of the stage of development which the consciousness of social responsibility had reached; this consciousness being manifested in governmental action, private philanthropy, and group attitudes. Prior to the depression of the 'nineties there had been little thought of need for mass relief. The economic cataclysm of 1873–78 aroused no general sense of social responsibility. Each of the five depressions since 1893–94 has revealed a definite advance in the sense of social responsibility and in relief administration. But progress has been slow. It was not until the third winter of the 'thirties depression (1931–32) that the traditional concept that the care of the poor is entirely a local responsibility was definitely discarded. It was a year later before the government attempted far-reaching, constructive programs of relief.

The Depression of 1893–1896

In 1893–96 the unemployed experienced for the first time the services of organized charity, but the sporadic activities of hastily organized temporary agencies were the predominant means of providing relief. Whether these were special committees appointed by mayors and using city funds, or self-appointed groups raising their own money, their chief idea seemed to be that relief-giving should be visible and audible. Every city had its soup lines and mass distribution of groceries—the system practiced by the Caesars two thousand years before! The newspapers were eager to devote pages to describing the distress and suffering but, unfortunately with the same zeal, also rushed into indiscriminate charity activities drawing crowds to their doors for handouts and "sending wagons blazoned with their names into crowded tenement streets

calling aloud the names of those for whom they had charity packages." [1]

No state appropriated money for relief purposes and very few cities provided funds for direct relief although a number engaged in additional public works. Detroit furnished 450 acres of land and seed for 945 family gardens, the then famous Pingree potato patches; Indianapolis established a city commissary; other cities undertook park and sewer projects where wages were paid either in cash or groceries.[2] New York City gave no money for relief, although it appropriated $1,000,000 for public improvements. Due to political management, however, there was some question whether this materially mitigated actual distress. A police investigation in New York in January 1894 indicated that there were about 54,000 families and single persons in actual need, 22 per cent of whom were women and girls. For the relief of these, there was raised by private contributions $3,000,000 to $4,000,000. While the regular social agencies increased their services by 42 per cent, a large part of this money was expended by specially created organizations.[3]

The Depression of 1907–1908

The relief administration of the 1907–08 depression showed greater evidence of professional social work. While some cities repeated the programs followed in 1893–94, there was a tendency away from the spectacular, demoralizing handouts of groceries and work-tickets by hastily improvised civic organizations. There was a greater use of the existing relief agencies, both public and private, which expanded their programs to care for the greater numbers.[4]

The Depression of 1913–1915

Though the outbreak of war in Europe brought about an early business recovery from the depression of 1914 there was real distress during the winters of 1913–15. A police census in New York reported

[1] Kellogg, Charles D., "Relief of Unemployed in United States During Winter 1893–1894," *Journal of the American Social Science Association*, No. 32, 1894.

[2] Massachusetts Board to Investigate the Subject of the Unemployed, *House Document No. 50*, Wright and Potter, Boston, 1895, Part I, pp. 171–172.

[3] Charles D. Kellogg, *op. cit.*

[4] Klein, Philip, *The Burden of Unemployment*, Russell Sage Foundation, New York City, 1923, p. 6.

96,000 families unemployed and in need. In Chicago one out of every 28 of the city's population was on relief. Boston's free employment bureau had a daily average of 1500 applicants with only 50 jobs. Practically no city funds were used for outdoor relief although city after city opened up municipal lodging houses, with woodyard work-tests for the thousands of roaming men.[5] Home relief was left to private social agencies and churches. The crudities of relief methods were vividly pictured by John A. Kingsbury who was at the head of welfare work in New York City.[6]

A mob of men entered one of the New York churches one night without permission. Police were called and several arrests made. Their defenders said, "While the public passed resolutions and investigated unemployment, the unemployed, led by the more radical, adopted their own plan for immediate action—an appeal to the churches for food and shelter." [7]

There were two significant developments from this depression. One was an awakened interest in the need for public employment offices.[8] Every local citizens' committee realized the need for such an agency and in several cities, e. g., New York, public employment offices were opened up for the first time. The appointment by Mayor Mitchel of New York of a Mayor's Committee on Unemployment of which Judge Gary of the United States Steel Corporation was made chairman was another significant development. While the report of this committee revealed nothing new or startling [9] it recognized that unemployment and its alleviation was a problem in the solution of which business men, wage earners, social workers, and political leaders had to participate jointly. The report carried the message, startlingly true in 1930: "Always industrial crises find American communities unprepared to deal with the crucial social problems which they develop."

Depression of 1921–1922

Relief for the unemployed during the depression of 1920–22 was complicated by labor troubles, strikes, and lockouts. Many com-

[5] Cf. *American Labor Legislation Review*, May 1914, pp. 264–267.

[6] Kingsbury, John A., "Our Army of the Unemployed—A Momentous Problem of Relief and Industry," *Review of Reviews*, Vol. 49, 1914, p. 433.

[7] *The Survey*, March 14, 1914, p. 735; March 28, 1914, p. 793.

[8] Cf. Chapter XII.

[9] Mayor's Committee on Unemployment, *How to Meet Hard Times*, published by the Committee, January 1917, New York City.

munities were torn with factional strife. The wealthy, reluctant to make contributions, often said that the workers should have saved and not bought so many silk shirts during the war prosperity. Unions hesitated to admit that their power was declining and that some of their members were in need. The press was absorbed in the current hysteria over communism due to the Russian Revolution and the fear that the Third International was carrying on secret propaganda in this country, and did not play up the plight of the unemployed as in previous depressions.

In Minneapolis, for instance, the city council was controlled by labor but the mayor represented the employer group and their Citizens' Alliance—an "open shop" organization. It was impossible for the mayor and council to work together on a constructive relief program. In other cities the private relief agencies, financed by the wealthy, could not meet on common ground with public agencies responsible to mayors sympathetic to labor.[10] The situation was alleviated somewhat during the first winter through the ability of the unemployed to help themselves. For, in spite of the silk shirts, the wage earners had accumulated savings to an unprecedented degree, due not only to the relatively high wage rates of the war and post-war period, but to the fact that more persons per family had been working. "Four million unemployed wage earners averted acute distress last winter (1920–21) by drawing upon their savings." [11]

In spite of factional disputes which caused delay in meeting the situation, some efforts were made by city councils and private groups. The amount of city public works during the winter of 1921–22 broke all previous records.[12] "In general, American cities in 1921–22 made the greatest effort on record to expand public works during an unemployment period." [13] Social work agencies also expanded their work as is indicated in Table I on page 222.

For the first time in the history of the United States the federal government took cognizance of a widespread unemployment situation. In September 1921, President Harding called a conference of representatives of employers, labor, and the public "both

[10] Klein, *op. cit.*, pp. 141 ff.

[11] Statement of the American Association for Labor Legislation, *The Survey*, September 16, 1921, p. 683.

[12] Cf. also National Bureau of Economic Research, *Business Cycles and Unemployment*, McGraw-Hill, New York, 1923, pp. 241–243.

[13] Cf. Chapter XII.

TABLE I

RATIO OF RELIEF DISBURSEMENTS BY FAMILY SOCIAL WORK AGENCIES IN CERTAIN CITIES DURING 1920–21 TO DISBURSEMENTS IN 1916–17 [14]

Portland	861.3	Providence	236.2
Worcester	693.2	Minneapolis	225.5
Erie	580.4	Kansas City	218.3
Cincinnati	439.5	Boston	217.0
Columbus	401.4	Spokane	214.5
Des Moines	354.6	New York	207.9
Cleveland	345.6	Newark	195.1
Rochester	335.3	Philadelphia	194.3
Akron	330.5	Hartford	180.7
New Orleans	303.9	Chicago	176.5
Pittsburgh	303.0	Washington	170.8
Buffalo	291.9	Cambridge	167.8
Grand Rapids	267.6	Bridgeport	146.3
St. Louis	251.2	St. Paul	120.6
Milwaukee	237.7		

to alleviate the present situation and to develop better relations between employers and workers." [15] The conference was in charge of Secretary of Commerce Hoover and the keynote was "how to improve business," most of the discussion dealing with taxation, tariff, railroads, and foreign relations. So far as the need for immediate relief was concerned, the responsibility was thrown back to the individual communities and the leadership in handling the problem was turned over to the mayors. The federal government urged the mayors to organize committees whose functions would be:

1. Study of the situation and formation of general plans.
2. Publicity for existing needs and efforts to relieve them.
3. Administration of specific activities such as employment service and relief.
4. Stimulation of individuals, firms, agencies, and municipal departments.

After more or less pressure a good many mayors appointed committees in conformity with Secretary Hoover's suggestion. They seem to have accomplished little in the way of immediate relief or of constructive plans for the future.

[14] "Increased Costs and Relief Giving" by J. B. Dawson. *Report of Conference of Social Work, 1922*, University of Chicago Press, Chicago.

[15] President's Conference on Unemployment, 1921, Government Printing Office, Washington, D. C.

"The fact of discontinuity, added to the factors entering into the appointment of personnel, the difficulty in obtaining continuous appropriations, and the necessity of actively maintaining visible party enterprises, militates against the usefulness of a mayor's committee, not only in respect to scholarly research, long-time planning, and purposive publicity, but also in respect to undertaking any permanent leadership in coordination, any successful administrative task, or any disinterested pressure on groups or individuals." [16]

That the proponents of the effort believed it was eminently successful is evidenced by President Harding's statement in a letter to the Conference on Unemployment the following spring.

"The successful inauguration and stimulation of the great simultaneous movement in the community . . . has . . . greatly succeeded in the mitigation of what otherwise would have been great suffering. . . . The demand for aid to the unemployed from the federal Treasury disappeared." [17]

The Approach of the Depression—1929–1930

Charity organizations became increasingly aware of a growing unemployment situation months before the stock market crash of November 1929. The previous winter, the social agencies of many large cities had expended more money than ever before in their history,[18] a natural result of the growing technological unemployment of the 'twenties. A study of 36 cities during the years 1916–26 had revealed "a continuing upward trend of relief. The depression of 1921–22 caused a peak in the curve but the tendency to increase the amounts expended was resumed in the later years. . . . The increase in relief expenditures, corrected for cost of living and changes in population, was 171 per cent between 1916 and 1925." [19] Table II shows that during a year of comparative industrial prosperity (1924) the percentage of city populations who were dependent upon charity was surprisingly high.

Poor Laws

In spite of these warnings, the general public was not aroused to action. Archaic poor relief laws remained on the statute books and

[16] Klein, *op. cit.*, p. 47.
[17] *The Survey*, June 15, 1922, p. 387.
[18] *Ibid.*, June 15, 1929, p. 351.
[19] Hurlin, Ralph, "The Mounting Bill for Relief," *The Survey*, November 15, 1926, p. 207.

TABLE II

NUMBER OF FAMILIES RECEIVING RELIEF FROM FAMILY WELFARE AND RELIEF AGENCIES PER THOUSAND POPULATION DURING 1924 [20]

Akron	9.13	Indianapolis	5.62
St. Paul	9.01	Cleveland	5.18
Grand Rapids	8.79	Buffalo	4.90
Minneapolis	8.22	Rochester	4.82
Canton	7.98	Omaha	3.97
Toledo	7.87	Detroit	3.75
Des Moines	7.04	Dayton	3.46
Kansas City	6.82	Duluth	3.13
Milwaukee	6.02		

no constructive plans were made to care for the increasing number of unemployed. State laws [21] for the care of those unable to support themselves were essentially the same as had existed under Queen Elizabeth in England over 300 years ago. Their general character is revealed by their nomenclature: "pauper laws," "support of the poor," "poor relief," "care of the indigent." Almost without exception, persons in need were assumed to be mental, physical, or moral defectives for whom the almshouse was the logical retreat but for whom in some instances home relief might be given.[22] Frequently, a maximum allowance was prescribed by law for home relief; in Alabama $8.00 per month per person (counties of 60,000 population excepted), Iowa $2.00 per week per person exclusive of medical care. In Minnesota no cash allowance was permitted. Texas laws provided for no home relief. The provisions of the Illinois law can be cited as typical (Chap. 107, Sec. 20):

> "The overseers of the poor shall have the care and oversight of such persons in their town or precinct as are unable to earn a livelihood in consequence of any bodily infirmity, idiocy, lunacy

[20] Includes mothers' pensions, blind pensions, and outdoor (home) relief. Taken from Clapp, Raymond, "Relief in 19 Cities," *The Survey*, November 15, 1926, p. 209.

[21] American Public Welfare Association, *Poor Relief Laws; A Digest*, Public Administration Service No. 37.

[22] New York was the first state to make any notable changes. Its Public Welfare Law of 1930 divided the state into county and city public welfare districts and the duty of public welfare officials was to "administer such care and treatment as may restore those unable to maintain themselves to a condition of self-support. So far as possible families shall be kept together and whenever practical relief service shall be given the poor person in his own home." Public Welfare Law, Secs. 77, 78, Laws of 1930.

or other unavoidable cause and are not supported by their relatives or at the county poorhouse, subject to such restrictions and regulations as may be prescribed by the county board or by the town."

In six states (Arkansas, Kentucky, Oregon, Tennessee, West Virginia, Louisiana) the courts and police handled cases of dependency; in Louisiana the police jurors not only administered relief but financed it from 10 per cent fines and forfeitures of bonds in criminal cases. In three states (Maine, Mississippi, New Hampshire) overseers of the poor were legally privileged to bind out to labor every person who needed public support. Persons who received public outdoor relief were deprived of the right to vote in 10 states.[23] In some other states the poll tax virtually prevented unemployed persons from voting.

Because of the heterogeneous types of settlement laws [24] among the various states, persons oftentimes found themselves stranded with no one legally responsible for their care. They were citizens of the United States but not of any state. A family might have moved across a state boundary line from a state whose laws specified that legal residence was lost upon 30 days' absence [25] into a state where legal settlement was not gained until after a year's continuous residence. And as the pressure upon local governments became more acute, settlement laws were made more stringent.[26]

The financing and administration of public relief was left entirely to local governments except in New England, where the states assumed the care of families who had no legal settlement

[23] Delaware, Maine, Massachusetts, New Hampshire, New Jersey, Rhode Island, South Carolina, Texas, Virginia, West Virginia.

[24] The legal term "settlement" as respects pauper laws indicates a person's right to support from the government in case of need. In Rhode Island a person must have lived in the state 10 years before gaining settlement, 7 years in town in New Hampshire, 5 years in town in Maine, Massachusetts, New Jersey; 4 years in town in Connecticut; 3 years in county in South Carolina. In most of the other states, one year's residence exclusive of time during which public or private relief has been received entitles one to relief. See "Statutory Provisions Relating to Legal Settlement," Carl A. Heisterman, *The Social Service Review*, March 1933, University of Chicago Press, Chicago.

[25] South Dakota (Chap. 251, Laws of 1931) and Minnesota (Chap. 385, Laws of 1933) stated, "legal settlement shall be terminated and lost . . . by wilful absence of 30 days from this state."

[26] In 1931 California raised the period of time required for gaining legal settlement from one to three years; Colorado and Montana from 60 days to 6 months in the county. North Carolina added the requirement of three years in the state, and Oregon added one year. "Statutory Provisions Relating to Legal Settlement," *op. cit.*

within the state. The public welfare law of New York (1930) also provided that the state was responsible for the support of any person who had not resided in any public welfare district in the state for as long as 60 days prior to application for relief. Some gestures toward state supervision had been made but they were generally limited to state departments gathering statistics, furnishing forms, or acting in an advisory capacity.

In 33 states the county was the responsible unit of government for the care and financing of the needy. The county poor commissioners were generally men of no particular training or aptitude for the work; frequently they were given the jobs as a reward for long service on the county board. They made little pretense of visiting families or keeping records. The names of those who received relief were listed in the published minutes of the county board and sometimes given pitiless publicity in local papers.

The township (or incorporated city or village) was the financial and administrative unit in 15 states although, in some of these, counties were permitted to assume the responsibility if they chose to do so. Thus, Illinois had 1500 taxing and administrative poor relief units, Ohio over 1500, Wisconsin over 1200. The small taxing area limited the spread of the financial burden so that towns which had the greatest relief costs often had the least tax income. This was particularly true of townships contiguous to industrial cities. These towns often included a large number of wage earners who had moved out from the city to escape high rents. In the rural areas the administration of relief was likely to be in the hands of elective officials who were busy with other public or private activities and were not expected to devote much time to poor relief. In the cities where machine politics was in control, relief was put into the same category as patronage; the success of the political party oftentimes depended upon whom was given relief and how much.

Fortunately for them, the major portion of needy persons did not have to depend entirely upon archaic poor laws and their haphazard administration. It was the private agencies, particularly in the cities, which assumed most of the care of the poor up to 1930. An outgrowth of the individualistic philanthropy of churches and lodges, the private social agency had developed into a highly efficient mechanism staffed by trained personnel whose code of

professional ethics and practices was the result of scientific study and experimentation. These private agencies were supported by voluntary gifts, and membership on the policy-making boards was naturally drawn from among the larger contributors.[27] While the technique of family service was apparently non-partisan, the basic policies and attitudes were colored by the ideology of the wealthy contributors, the recipients and their sympathizers having little or no representation.

Division of the relief task between public and private agencies varied greatly in different localities. In Detroit, 90 per cent of the relief was administered through public agencies; in Kansas City, Missouri, 94 per cent through private.[28] The next few years was to witness a radical realignment in functions and personnel of public relief agencies.

Sporadic Efforts of Local Communities—1930

Although a few communities made some plans to take care of a severe winter of unemployment, the prevailing attitude during the summer and fall of 1930 was "do nothing." Enterprising advertising and business concerns had dotted the highways with posters which proclaimed "America *Is* Prosperous"; President Hoover had confidently stated that "Prosperity is just around the corner." Leaders in local communities typically deemed it unnecessary and unwise to give too much recognition to the needs of the unemployed. Private charitable organizations expanded their programs as best they could, retrenching on all their other services in order to buy more milk and bread for the hungry. Even so, they frankly admitted that they were unable to cope with the situation; that they were turning hundreds away with nothing and reducing the budgets of those they were helping. Unemployed men, women, and children, not getting any relief at home, took to the road. Flophouses and jails were opened in small villages as well as large cities, where the migrants were given a meal and a night's lodging

[27] While private agencies made gestures toward having representative boards, in actuality very few existed. Particularly in the '20's, during the heyday of the Chamber of Commerce movement, were they dominated and sometimes financed by Chamber of Commerce efforts. In Kansas City, Missouri, a bureau of the Chamber of Commerce collected funds for the federated social agencies; in St. Paul, one-half of the members of the Board of Directors of the Community Chest were appointed by the St. Paul Association of Commerce. The Labor Council, on the other hand, refused to be represented. Klein, *op. cit.*, p. 141.

[28] Clapp, Raymond, "Relief in Nineteen Cities," *The Survey*, November 15, 1926, p. 209.

and then told to move on.[29] Toward winter the situation became so desperate that public officials and private agencies were forced to expand their meager programs, and some efforts were made to co-ordinate relief activities into integrated community-wide services. But this met with limited success.

Industrial leaders and financiers in New York City organized an Emergency Unemployment Committee [30] and provided a fund of $6,000,000 to be used for wages on a work-relief program. Private agencies combined in an effort to co-ordinate their activities with that of the Emergency Committee and to discourage the hysterical multiplication of bread lines. Mayor Walker, on the other hand, refused to co-operate with these groups but distributed packages of food to needy "friends" through the city police stations. The cost of this food distribution was met by a levy on city employees' salaries.[31]

In Philadelphia there were 80 bread lines, soup kitchens, and other handouts in addition to the regular city-wide social agencies. Three-fourths of the families which patronized these individual and neighborhood undertakings where no investigation was made were also receiving help from the regular social agencies. Needless to say, there was waste of money and effort as well as demoralization and pauperization of the recipients. The city council, which had not given public funds for relief purposes since 1879, now appropriated $150,000. This small sum was used up in a few weeks.[32]

Before the depression Detroit had organized a Public Welfare Department and during 1929–30 it took care of 14,000 families at a cost of four and a half million dollars. Mayor Frank Murphy established an agency of his own in the mayor's office. While running for office, he had promised to find work for all the idle. A hundred thousand immediately turned up and the mayor's committee after desperate effort was able to get temporary jobs such

[29] Wilson, Robert S., *Community Planning for Homeless Men and Boys; The Experience of 16 Cities in the Winter of 1930–31*, published by Family Welfare Association of America, New York City, 1931; Hearings Before Committee of Manufactures, United States Senate on S5121, Government Printing Office, Washington, 1933.

[30] Later known as the Gibson Committee. See Matthews, William H., "The Job-Line That Cost $28 Million," *The Survey*, November 1933.

[31] *The Survey*, December 15, 1930.

[32] Neighborhood Relief in Philadelphia, 1930–31, published by the Community Council of Philadelphia, Philadelphia.

as apple vending,[33] holiday post-office and clean-up jobs for a small fraction of those in need. At the close of this fiscal year (June 1931) the city had expended twelve and a half million dollars.[34]

The governor of Illinois organized a Commission on Unemployment and Relief in October 1930, which was responsible for raising approximately five million dollars in Cook County (Chicago) and $600,000 in other parts of the state. This financed only a small part of the cost of caring for the 50,000 most needy families in Chicago and the private agencies had to continue to carry the heavy load.[35]

Before the winter was over, practically every county, city, and village in the country was forced to undertake special public works programs, some by bonding themselves to the legal limit, others by raising the tax rate.[36] Too frequently, however, these work programs financed through city and county governments were not made an integral part of the community's relief program so that a dollar expended did not always mean a dollar's worth of relief received. It was the rare situation where work-relief programs were entirely divorced from political patronage. Jobs were frequently given, not to those who needed them most but to those who controlled the most votes.[37]

In October 1930 President Hoover organized the "President's

[33] For a brief description of the "picturesque apple campaign" which had sprung up all over the country see *Literary Digest*, December 6, 1930.

[34] Norton, William J., "The Relief Crisis in Detroit," *The Social Service Review*, March 1933, University of Chicago Press.

[35] First Annual Report of the Illinois Emergency Relief Commission, 10 South La Salle Street, Chicago.

[36] See Chapter XI on Public Works; also Colcord, J. C.; Koplovitz, Wm.; Kurtz, Russell; *Emergency Work Relief*, published by Russell Sage Foundation, New York City, 1932.

[37] In April 1931, New York City appropriated ten million dollars for a work-relief program. Jobs were supposed to be distributed through the offices of the Department of Public Welfare to legal residents and voters of at least two years who were heads of families with dependents. Investigation revealed that the Tammany district leaders practically lived at the Borough Halls where selection of workers was made, and that in one district alone 90.9 per cent of those given jobs were Democrats, 8.7 per cent Republicans, and .4 per cent Socialists. The ratio of enrolled Democrats to Republicans in that district was 4 to 1. Letters sent out to voters in another district read:

"It is the purpose, aim, and object of the Yucatan Democratic Club to strive to foster the welfare of its members, with special emphasis on the relief of those who are unemployed and special efforts toward securing them positions in city government; the appropriation recently made by the Board of Estimate in which $20 million was made available for the unemployed, is positive proof that the City Government under Tammany Hall administration, is determined that no deserving member of the Party shall suffer acute want." Northrup, W. B. and J. B., *The Insolence of Office*, G. P. Putnam's Sons, New York, 1932.

Emergency Committee for Employment" and appointed as chairman Colonel Arthur Woods, who had served in the same capacity in 1921. The work of this committee was along the same lines as that of its predecessor; i. e., organizing state and local committees, inducing employers to stagger employment and create jobs, and encouraging public construction.[38] New York had organized a state committee as early as March 1930; Ohio, Illinois, Pennsylvania, and Wisconsin soon followed. By February 1931, there were 34 state committees on employment. Some of these proved to be as ineffective as similar committees ten years previous; others gradually evolved into permanent advisory boards for unemployment relief. Practically all accepted the current belief that relief needs should be met by local funds, whether private or public. As ineffective as most of them were so far as tangible accomplishment was concerned, they did focus the attention of the public on the problem of unemployment and its alleviation.

The States Get into Action—1931

Early in 1931 New Jersey and Ohio passed enabling acts whereby cities and counties were permitted special bond issues for relief purposes. New York was the first state to provide substantial funds to help local communities meet their relief bills. Their first relief law, effective September 23, 1931, created a state Emergency Relief Administration and appropriated twenty million dollars to be used prior to June 1, 1932. This money was raised through a 50 per cent increase in the state income tax. By the terms of this law cities and counties were reimbursed up to 40 per cent of their total expenditures for home relief and work relief. Cash payments to families were prohibited except as wages for work done. Wisconsin's relief act increased the state income tax approximately 100 per cent for one year in order to reimburse local units of government $1.00 per capita of population plus 25 per cent of their previous year's expenditures for poor relief. Ohio levied for five years an additional excise tax on certain utilities and permitted counties to divert gasoline and license taxes to relief. Pennsylvania appropriated ten million dollars from the state treasury.

[38] For further information see pamphlets issued by the President's Emergency Committee for Employment, Government Printing Office, Washington: *Outline of Industrial Policies and Practices in Time of Reduced Operation*, January 1931; *Industrial Plans for the Regularization of Employment; A Survey of Unemployment Relief in Industry; Emergency and Permanent Policies of Spreading Work in Industrial Employment.*

Rhode Island authorized the state treasury to buy the notes of the local communities which needed additional funds for work relief. New Jersey provided funds from the sale of a state bridge. Illinois, which had raised another ten million dollars by private subscription during the winter of 1931, early in 1932 provided twenty million dollars by a diversion of gasoline taxes.[39]

During the fall of 1932 Pennsylvania imposed a sales tax and appropriated twelve million dollars for direct relief and work relief. Governor Pinchot had estimated that sixty million dollars would be needed within the year. New York approved a bond issue of thirty million dollars; New Jersey borrowed from the teachers' pension and annuity funds pending the submission of a twenty million dollar bond issue; Delaware appropriated two million dollars from the general fund; West Virginia passed a law permitting counties to transfer road money to relief purposes. Thus state after state was forced to share the cost of unemployment relief. Frequently there were constitutional limitations, not only concerning the incurring of state debts, but against income or sales taxes or against raising money in any way for relief. For instance, the Pennsylvania constitution expressly forbade the state to make any appropriations to local communities for charity purposes. The courts stretched the police powers of the state and sanctioned a relief appropriation as a means of state self-preservation and protection. The Washington State Supreme Court also held an act for unemployment relief to be constitutional under the power of the state to suppress insurrection. In only ten states could the legislature incur debt by its own action, in 15 a majority vote of the electorate was necessary, and in 23 a constitutional amendment was required.[40] When appropriation bills for relief had to go through so many long and devious channels, many of them were backwashed, frequently carrying their political supporters with them. In the meantime the needy unemployed went hungry or begged from neighbors.[41]

[39] For a summary of state unemployment relief laws from January 1, 1931, to December 31, 1932, see Haynes, Rowland, State Legislation for Unemployment Relief, The President's Organization of Unemployment Relief, published by United States Department of Commerce, Washington, 1933. For a summary of state and federal relief laws in 1933 see *Unemployment Relief Legislation*, Public Administration Service No. 34, published by American Public Welfare Association, Chicago, 1933.

[40] Monthly Report of the Federal Emergency Relief Administration, December 1933, Government Printing Office, Washington.

[41] Clague, Ewan, "When Relief Stops, What Do They Eat," *The Survey*, November 15, 1932.

Nation-Wide Drive for Private Contributions—1931

In spite of the fact that preceding months had shown that neither local public funds nor private contributions were sufficient for the increasing unemployment relief bills, national political and industrial leaders still hoped that the problem could be locally met with local resources. In August 1931, the President's Emergency Committee for Employment was replaced by the President's Organization on Unemployment Relief, the change in name implying a recognition that immediate relief was the paramount issue instead of studies on how to alleviate depressions and improve business, which had been the chief activity of the former committee. This federal organization was to stimulate and assist the local Community Funds in their annual fall drive. A tremendous campaign was put on, nationally and locally. Hollywood stars, political bigwigs, educational and industrial leaders, were drafted to take part in radio programs, public booster meetings, and newspaper publicity. Appeals were made to the sympathies of persons with moderate means who still had jobs; fears were injected into the minds of the rich that private contribution was the only escape from "communistic" federal aid.

The vigorous drives succeeded in raising about one hundred million dollars in 400 organized centers—an increase of only 14 per cent over the previous year. Only 35 per cent of the Community Funds were used for direct relief,[42] the remainder going to character building and service agencies such as hospitals and nursing, Y. M. C. A., Y. W. C. A., and child welfare work. It was apparent that private contributions would not suffice since relief requirements rose 200 per cent to 400 per cent in both rural and urban communities during the winter of 1931–32.

Curtailment in Relief Allotments

In spite of the tremendous increase in total costs, relief to individual families was becoming more meager and in some cases was cut off entirely. During the summer of 1931 funds had become so low in Detroit that it became necessary to summarily deprive some 25,000 families of all relief. For those who remained on the relief lists, grocery budgets were reduced materially and the payment of rents was discontinued altogether.[43] Philadelphia wit-

[42] *The Survey*, February 1, 1932.
[43] Norton, *op. cit.*

nessed three stoppages in organized relief: six weeks during the summer of 1931, two weeks in April 1932, and three months during the summer of 1932 when 52,000 families were suddenly thrown back on their own resources. For months previous to this stoppage the family grocery allotment had been reduced to an average of a little over $4.00 a week and no provision was made for fuel, clothing, rent, or miscellaneous items. During the time relief was stopped a study revealed that only 37 per cent of the families were getting three meals a day, and these meals consisted mostly of coffee and one staple. The remainder lived on one or two meals procured from neighbors or from earnings on odd jobs.[44] A number of times it was announced that relief was going to stop in Chicago but at the last moment means were found to carry on, due perhaps to the belligerent attitude of the unemployed, who were better organized in Chicago than anywhere else in the country. In February 1932, with the relief agencies of Chicago about to close their doors on 100,000 destitute families in Chicago, the state legislature in its third special session finally passed a twenty million dollar appropriation for relief.[45]

These incidents were typical of the difficulties faced in cities in all parts of the country. Though most communities were able to avoid complete cessation of relief, there was a severe retrogression in relief standards during the winter of 1931–32. Few of the larger agencies gave as much as $1.00 per person per week; in some cities the amount fell as low as 50 cents per week. The minimum had formerly been $2.00 per person per week.[46] The President of the United States in a number of public addresses had proclaimed that "Nobody shall starve." Most of the relief agencies were working pretty close to the starvation standard. The Illinois Emergency Relief Commission in their manual to local relief administrators said,

> "The commission . . . has defined its aim as the maintenance of a standard of living which will prevent suffering. . . . Clothing has a place in the relief program only as a preventive of physical suffering. Comfort, appearance, decency or even school

[44] Clague, *op. cit.*

[45] Glick, Z. Frank, "Illinois Emergency Relief Commission," *Social Service Review*, March 1933, University of Chicago Press.

[46] Testimony of H. L. Lurie, Director of Bureau of Jewish Social Research, New York City, Hearings before Committee of Manufactures, United States Senate, 72d Congress, 1st Session, Government Printing Office, Washington, 1933.

> attendance are not primary aims of the commission. . . . Rents, hospital care, school supplies, have been specifically denied by the commission." [47]

Kerosene lamps displaced electricity for lighting, wood for coal and gas for cooking and heating. It was the exceptional case where rents were paid for families on relief. In most instances the family had to be threatened with eviction before the relief agencies even started to dicker with landlords. In many communities evictions were permitted and families were kept constantly moving. In Philadelphia, where no rent was paid, it was found that 30 per cent of the families on relief were so-called "combined families" where two, three, and four families lived under the same roof as one household.[48] Wisconsin was the only state which early adopted a state-wide policy of reimbursing landlords. While their "shelter-allowance" was by no means equivalent to a reasonable rent, it was enough to cover taxes and repairs on property and to avoid evictions.[49]

City commissaries became increasingly popular because of their cheapness. Some mayors proudly boasted that their cities were able to feed their unemployed at an average of eight cents to ten cents per day per person. Frequently it was discovered, after a few months' trial, that commissaries were not justified even on a basis of dollar economy, and in any case that families were demoralized by the degradation and publicity of standing in line for their weekly groceries.[50]

[47] Illinois Emergency Relief Commission, *Relief Guidance and Control*, Chicago, 1932.

[48] Dr. Jacob Billikopf, Hearings, *op. cit.*

[49] *Standards of Work Relief and Direct Relief in Wisconsin*, published by The Industrial Commission, Madison, Wisconsin, 1932, p. 16.

[50] In Oklahoma a John H. Leavell had originated a commissary plan whereby unemployed could be fed for six cents a day. In January 1933 the Pennsylvania Relief Commission issued orders to all county relief boards to adopt the "Leavell Plan" and establish commissaries for their unemployed. There was instant opposition from the social welfare administrators and the orders were not generally followed. (*The Survey*, March 1933, p. 125.) Detroit attempted to feed whole families en masse and opened up ten "Welfare Cafeterias" in different parts of the city. At the peak they fed 6000 persons or less than 10 per cent of the relief case load at a cost of 13 cents per day each. Grocery orders supplied to other persons during the same period cost about 14 cents per day per person. The proponents, however, contended that the chief saving was not so much in the actual cost of food but as a deterrent for asking for relief. Thirty per cent of the families transferred from home relief to cafeteria feeding failed to show up. Later a check-up showed that at least half of those who eliminated themselves were in dire need and suffering in silence rather than expose their plight in the public cafeterias. After a few months' trial, the family cafeteria plan was discontinued. *The Survey*, January 1933, p. 39.

See also Colcord, Joanna C., *The Commissary System*, Russell Sage Foundation, New York City, 1932

As is usually the case, certain groups suffered more than others. Single men were everywhere discriminated against. In some cases they were sent to county almshouses to live with the derelicts typically inhabiting such places; usually they were simply ignored and had to resort "to the road." In the southern states the negroes and Mexicans suffered neglect, as did the coal miners in West Virginia and Illinois.

During the first two winters of the depression, local governments had attempted to provide for at least a portion of the unemployed by giving them part-time jobs on public works. Funds became increasingly difficult to raise due to legal limitations against further borrowing, increasing tax delinquencies, and the antagonism of the general public against the high cost of government as voiced through rapidly growing Taxpayers' Leagues. Food relief was therefore substituted for cash work relief as being the cheapest way to keep the unemployed alive. Cleveland, for instance, had borrowed and spent almost a million dollars for work relief in 1930. This program was practically abandoned the next year because it "cost three times as much as direct relief and was entirely ineffective as a means of reducing direct relief." [51]

The reason for the greater expensiveness of work relief, in addition to the cost of materials and administration, were:

1. More families apply and relief administrators enforce less rigid eligibility requirements.
2. Creditors, landlords, and merchants regard cash wages received from work relief the same as they do regular wages. They insist that they be paid and the family must have a larger income than if it was supported at a subsistence level by direct relief.
3. The families use work-relief wages for things not provided by a relief budget thus maintaining a higher standard of living.
4. Families cannot buy as economically as do relief agencies, which buy in wholesale quantities for a commissary or through the controlled purchase plan whereby retailers give a discount to the relief agency's families.
5. It is much more difficult to keep work-relief out of politics. The legislators who vote for a work program feel that they have a vested right in the giving of jobs which results in many being employed who are not in actual need and enlarges the total number who draw income from the relief funds.

[51] Statement of Raymond Clapp, director of Welfare Federation, *The Survey*, December 15, 1931, p. 322.

The third winter of the depression came to a close with an almost complete exhaustion of private contributions, local public funds diminishing to an alarming degree, and state governments struggling to assume some of the responsibility. In the field of administration, while some efforts were being made toward community planning and integration of relief services, the prevailing situation was one of chaos and confusion, haphazard experimentation by persons and groups whose zeal exceeded their knowledge of social welfare administration, and frequent absence of cooperation between regularly organized relief agencies in the same community. Job relief was being displaced by food relief to an increasing extent and family budgets were being cut to a minimum dangerous to the health as well as the morale of the recipients.

Federal Government Forced to Act—1932

While local communities were struggling as best they could with their mounting relief burden, a minority group in Washington was battling for federal action. President Hoover had said in his message to Congress in December 1931, "I am opposed to any direct or indirect government dole," and the majority of the congressmen were in agreement although there was a good deal of confusion as to just what the term "dole" meant.[52] Senators Costigan and La Follette submitted an appropriation bill for three hundred seventy-five million dollars for relief, to be administered by the chief of the Children's Bureau. It was believed by the proponents that this amount would be sufficient for two years. At the Hearings, social workers and representatives of the unemployed from all parts of the country testified that existing relief was not adequate and that local funds were insufficient.[53] After a more heated discussion than the Senate had experienced in several years the bill was defeated by 13 votes.

[52] In England the unemployed insurance was sometimes popularly referred to as "dole." In this country, because of the prevailing opposition to such insurance, the word became a term of approbrium which might refer to any kind of relief assistance the speaker happened to oppose. President Hoover confined the term "dole" to federal assistance and not to relief by local governments or private funds. When the first New York State relief bill was passed, Governor Roosevelt referred to cash allowance as a "dole" in contrast to food allowance. Others referred to all government supported relief as being dole in contrast to private charity. Social workers were inclined to use the term dole in a situation where relief or job relief was given out promiscuously without careful investigation of actual need. The more radical of the unemployed contemptuously referred to the dole as meaning inadequate and meager relief.

[53] Hearings before Senate Committee of Manufactures, 72d Congress, 1st Session, Bills S.174 and S.262, Government Printing Office, Washington, 1932.

Meanwhile groups of unemployed had decided that local displays of indignation were not effective enough and were turning their eyes toward Washington. When Congress convened in December they were greeted by a hunger march of 1600 men and women. Bluecoats armed with tear gas guns and hand grenades swarmed about the capitol. But there was no flare-up or violence; and after presenting their list of demands the hunger marchers departed. Neither this nor any of the hunger marches which followed equaled in size or spectacular appeal those of 1893–94, but they aroused both the sympathy and the fears of the public.[54]

In an attempt to allay further agitation for federal aid and also to dispose of some surplus agricultural commodities which the Farm Board had on hand, Congress on March 7, 1932, directed that forty million bushels of wheat be turned over to the American Red Cross to distribute to the poor and needy. Later, another forty-five million bushels of wheat and five hundred million bales of cotton were given the Red Cross. This flour and cotton was distributed among four and a half million families [55] and not only saved many persons from actual starvation, particularly in outlying communities where there was little or no organized relief, but lightened the financial burden of the organized relief agencies.

Agitation for and against federal relief grew more vociferous as the weeks passed, with each faction eying the coming national elections. In June the Democrats in the House passed a two and a quarter billion dollar public works and relief bill. It was hailed by the opposition as "the most gigantic pork-barrel ever proposed to the American Congress." [56] The Senate was giving serious consideration to various billion-dollar public works relief bills. In the meantime the presidential conventions [57] were being held. The fight over the relief bills became a part of the political tug of war. Opponents of federal aid congratulated Hoover's stand "for

[54] The largest was that led by the Reverend James R. Cox of Pittsburgh which included 10,000 persons in 1000 automobiles. *Time*, January 18, 1932, p. 10. The most dramatic as well as the most tragic march on Washington this country has ever seen was the Bonus March of war veterans during the summer of 1932, when 20,000 idle and ragged veterans camped in and around the capital city for two months and were finally dispersed by federal troops. *Time*, January 27, 1932.

[55] Payne, John B., Chairman American Red Cross, at Hearings before Committee of Manufactures, United States Senate, 72d Congress, Government Printing Office, Washington, 1933, p. 427.

[56] Referred to as the Garner bill, *Time*, June 6, 1932, p. 11; June 13, 1932, p. 14.

[57] Republican platform stated: "Unemployment Relief . . . problem of state and local responsibility. The party is opposed to the Federal Government entering directly into the field of private charity." *Time*, June 27, 1932.

national solvency"; those in favor of federal aid for the unemployed, recalling how the government was helping banks and railroads, proclaimed that their fight was of "Main Street versus Wall Street." A conference of all factions resulted in the passing on July 21 of the Emergency Relief and Construction Act of 1932 which provided for three hundred million dollars for loans to states and cities for unemployment relief purposes and loans for self-liquidating public works.[58]

[58] H. R. 9642, Public No. 302, 72d Congress. An Act "To relieve destitution, to broaden the lending powers of the Reconstruction Finance Corporation, and to create employment by providing for and expediting a public-works program."

CHAPTER XII

UNEMPLOYMENT RELIEF—FEDERAL AND STATE

By *Florence Peterson*

Relief under the Reconstruction Finance Corporation

Loans to the states under the Reconstruction Finance Corporation act were to be made upon application of the state governors and bore an interest rate of 3 per cent beginning in 1935. For states whose constitutions forbade any borrowing, loans were to be deducted from future federal highway appropriations. Municipalities could also borrow upon the certification of the governor. All moneys loaned to the state were to be administered by the governor or upon his responsibility "in furnishing relief and work relief to needy and distressed people and in relieving the hardships resulting from unemployment." [1] Such, in brief, were the general provisions of the act, which left broad powers of interpretation to the Reconstruction Finance Corporation administration. As was to be expected, there was an immediate rush to the grab bag, each governor asking and hoping for a large, lump sum which, under the general clause "in relieving hardship resulting from unemployment," he might use for almost anything.

The Reconstruction Finance Corporation very wisely adopted the policy of being more than a fiscal agent for the distribution of the funds. It set up a relief department and employed a limited staff of people who had had experience in social work. Before a loan was granted, the governor had to prove that there was actual need and that the available resources of the state and local communities including private contributions were not adequate and could not be made adequate. The Corporation adopted the policy of making allotments sufficient for periods of only one to three months so that frequent check-up of past performance and future plans could be made in each state.

Even with these safeguards there was much to be desired in the

[1] H. R. 6942, Public No. 302, 72d Congress.

results obtained through this first federal relief act. This was due, primarily, to the inherent weaknesses and omissions of the law itself. The money went to the political head of the state with no regulation about how it should be administered. Few states had a state department of welfare or its equivalent. In some cases the governors appointed special committees to administer the relief funds. Many of these appointees were politicians with no background for this type of work. In other cases the money was turned over to highway departments and became highway aid more than unemployment relief. The federal administration was not empowered to establish any standards, either as to adequacy of relief to the family or methods of administration. Even in states which chose to establish state-wide constructive programs, the month-to-month basis of allotments made planning impossible. The law made no provision for the care of the ever increasing number of transients and they continued to be neglected as they had been in the past. In spite of these handicaps, the federal funds resulted in a distinct lift in the adequacy of relief as federal funds eased the burdens of local communities. This was particularly true in the rural sections and southern states. Industrial centers like Detroit reported that federal funds enabled them to resume their work programs with cash wages.[2]

It was expected when the law was passed that the first three hundred million dollars allotted to relief would be sufficient for two years. At the start, the chairman of the Corporation had said: "It is available for two years from the date of the Act. We believe it is fair to say that Congress intended it to meet the demands upon the federal government for that period of time unless extraordinary conditions should arise." [3] The extraordinary conditions arose during the succeeding months in the accelerated rate of increase in relief needs. By January 1933 almost one-half of the three hundred million dollars had been distributed and it was estimated that there would be little or no balance by June first. Illinois and Pennsylvania had received the lion's share; New York had not yet asked for anything.[4]

[2] *The Survey*, March 1933, p. 123.

[3] Pomerene, Atlee, *Address before National Citizens' Committee for the Welfare and Relief Mobilization of 1932*, Government Printing Office, Washington, 1932.

[4] Croxton, Fred C.. Director Emergency Relief Division, Reconstruction Finance Corporation, Hearings before Senate Committee of Manufactures, 72d Congress, 1st Session, Bills S. 174 and S. 262, Government Printing Office, Washington, 1932.

A comparison of these three states will illustrate the wide variation in relief needs and availability of local resources which existed in different sections of the country. In December 1932 there were 250,000 families in New York state receiving public aid. The state had raised by bond issue fifty-five million dollars during the year and the cities and counties had appropriated and expended forty-five million dollars.[5] Illinois, with 60 per cent as large a population as New York, had practically as many families on relief. The funds raised by private contributions which had been carrying the burden were exhausted February 1, 1932. The $18,750,000 raised by the state bond issue was used up by July.[6] Illinois was forced to apply to the Reconstruction Finance Corporation and was the first state to get a loan. When, later, the state legislature permitted Cook County (Chicago) to float a bond issue of seventeen million dollars for relief they could get no bids. The Reconstruction Finance Corporation took the bonds and continued to make loans to Illinois sufficient to meet their six million dollars a month costs.[7] During the fall of 1932 it was estimated that 99 per cent of the families on relief in Chicago were supported by federal funds.[8]

TABLE I

PERCENTAGE OF POPULATION RECEIVING RELIEF IN THREE STATES IN DECEMBER 1932

STATE	FAMILY[a] POPULATION	FAMILIES ON RELIEF	PER CENT FAMILIES ON RELIEF TO FAMILY POPULATION
New York	3,153,124	250,000	8.0
Illinois	1,929,396	245,000[b]	12.7
Pennsylvania	2,235,620	319,100	14.2

[a] 1930 Census.

[b] Estimate based upon Third Interim Report, Illinois Emergency Relief Commission, November 15, 1932, Chicago. Exact figures not available.

The ten million dollars which the state of Pennsylvania appropriated in December 1931 was completely exhausted by the following June. While the legislature was disputing over ways and

[5] Hopkins, Harry L., Chairman of The Emergency Relief Administration of the State of New York, Hearings, *op. cit.*, p. 80.

[6] Third Interim Report Illinois Emergency Relief Commission, November 15, 1932, Chicago.

[7] Statement of Samuel A. Goldsmith, Hearings, *op. cit.*, p. 91.

[8] Third Interim Report Illinois Emergency Relief Commission, November 15, 1932, Chicago.

means to provide more money and the governor was besieging the Reconstruction Finance Corporation for immediate help, all relief was shut off. In August the legislature appropriated twelve million dollars to be raised by a general sales tax and in September the Reconstruction Finance Corporation started making loans sufficient to meet their monthly expenditures which amounted in December 1932 to $4,500,000 for 319,100 families.[9]

State Action During 1933

During the winter of 1933 the battlefield for unemployment relief was definitely transferred to the state and federal legislative halls. The fall drives for private contributions provided no increase in voluntary funds and the financial plight of cities and counties prohibited any material increase in their contributions. Local governmental expenditures had been cut to the bone, in many cases to the serious detriment of educational and community welfare activities. Many had borrowed to their legal limit and the mounting number of tax delinquencies and forfeitures discouraged further raising of taxes on real estate.

Most of the state legislatures met and the Reconstruction Finance Corporation again warned the several governors that:

> "It is plainly the intent of the Emergency Relief and Construction Act of 1932 that funds shall be made available by the R. F. C. not in lieu of but merely supplemental to local and state funds and private contributions." [10]

Mr. Newton D. Baker, appointed by President Hoover to be chairman of the National Citizens' Committee for the Welfare and Relief Mobilization of 1932, urged the states to action. He was not only anxious that additional funds be procured but that the states would meet their responsibility toward better administration.

> "The magnitude and spread of the current relief problems has exposed the weakness of our system of unsupervised local public-welfare administration with its frequent inequalities of resources and needs. It has also revealed the virtues of clearly enunciated and controlled state policies equipped with fiscal teeth. I am convinced that the admixture of state appropriation with R. F. C. loans will not only increase the total available relief

[9] Report of Executive Director, State Emergency Relief Board of Pennsylvania, Harrisburg, Pennsylvania, December 1933.

[10] Letter in files of Reconstruction Finance Corporation, Washington, D. C.

funds of the communities but will ensure higher and more equable relief standards and more effective handling of all the funds in the common pool." [11]

In spite of constitutional difficulties many states during the 1933 sessions of the legislatures not only provided funds but established or improved state administration of unemployment relief. New York reorganized its state administration and provided for a consolidation of local direct relief and work relief programs. A bond issue of sixty million dollars was passed, subject to referendum, and the laws amended to permit municipalities to raise money for relief on ten-year notes and bonds instead of three-year loans. California voters at a special election amended their constitution to permit the state to borrow for relief purposes and a twenty million dollar bond issue was authorized. Special provision was also made for the establishment and maintenance of unemployment relief camps.

Maine passed a constitutional amendment to permit a bond issue of two million dollars. In Pennsylvania an amendment to the constitution was authorized to be submitted to the voters providing for a bond issue of twenty-five million dollars. Additional appropriation bills were passed to make the state's total appropriation for relief of distress in the state forty-five million dollars. The voters in Texas approved a constitutional amendment permitting a twenty million dollar bond issue and created a state Rehabilitation and Relief Commission empowered to establish county boards of welfare and employment.

Other states which had no constitutional prohibitions against borrowing and which authorized bond issue were: Nevada $100,000, New Hampshire $600,000 for the year 1931 and $1,200,000 for 1934, Rhode Island $3,000,000, Washington $10,000,000, Minnesota $1,500,000. Indiana appropriated $1,000,000 from the general fund and Michigan $12,000,000. The Michigan law created a state welfare commission to supervise and regulate county welfare commissions, and diverted part of the highway funds to relief purposes. Illinois provided $25,000,000 through a sales tax, and Ohio $2,000,000 by a diversion of gas taxes and all proceeds from an additional 1c. tax on "liquid fuel." [12] A number of states

[11] Baker, Newton D., "The State Key to Relief," *The Survey*, January 1933, p. 1.
[12] *Unemployment Relief Legislation*, Public Administration Service No. 34, American Public Welfare Association, Chicago, 1933.

which made no appropriations nevertheless organized state administrative machinery to supervise local administration of relief and to distribute federal money.

The year 1933 marked the first time in the history of our country when the majority of the states assumed a measure of financial responsibility for the care of their needy and set up state machinery to supervise and regulate local administration.

With conclusive evidence that the three hundred million dollar Reconstruction Finance Corporation fund would be exhausted before the close of the fiscal year, Congress was compelled to make further plans. Early in the session Senators La Follette and Costigan presented a bill "to provide for co-operation by the Federal Government with the several states in relieving the hardship and suffering caused by unemployment, and for other purposes." [13] This bill provided for five hundred million dollars to be raised through a bond issue. Administration was to be in the hands of a Federal Emergency Relief Board appointed by the President; the Chief of the Children's Bureau was to be the executive officer. Forty per cent of the fund was to be prorated among the states on a population basis, the balance to be distributed on a basis of need. Relief was to be administered "within each State under rules and regulations adopted by the State authorities." [Section 4(b).] The federal board was authorized to make special provision for the relief of transient unemployed.

The greatest good which came from this bill was the two weeks' hearings at which nationally known social workers, municipal finance experts, and economists appeared.[14] The 500 pages of testimony include the most significant composite of unemployment and unemployment relief data available in this country. The bill, introduced a few weeks before the close of the Congress, was never voted upon.

Federal Emergency Relief Administration—1933

At the close of the fourth winter of the depression (1932–33), it was estimated that there were 17,000,000 people in the United States subsisting on relief. The fact that the exact number was not known is evidence in itself of the absence of even the most

[13] S. 5125, 72d Congress, 2d Session.

[14] Hearings before a Subcommittee of the Committee of Manufactures, United States Senate, 72d Congress, 2d Session, Government Printing Office, Washington, 1933.

rudimentary record keeping. A couple of months later (May 1933) it was ascertained that there were 4,250,000 families or nearly 19,000,000 persons receiving relief from public funds.[15] By and large, the country over, relief was being administered to these millions of people in accordance with poor laws laid down by Queen Elizabeth and applicable to a pioneer or rural population. Here and there was a state administration which exercised some effective control over its local units and a few cities and counties had established progressive welfare administrations. In general, however, unemployment relief funds, when they seeped down to the small local units where they reached the people actually in need, were administered by third-rate politicians who handed out relief in accordance with their own ideas or notions. Financing of relief, during the entire three-year period, had been a series of patchwork undertakings. First

> "was the naïve belief that private effort plus a little patch of local public funds could cope with the distress occasioned by national economic breakdown. The second was that local public effort plus a patch of state money by way of stimulus could do the job. The third was that a federal patch added to local and state would turn the trick. . . . The trouble with the R. F. C. administration was that it had no real power once the money left its hands and no moral indignation over the plight of the unemployed. . . . There had been no incentive to explore unmet needs or to formulate state plans, and little program beyond the exigencies of hunger." [16]

It was apparent from the beginning that President Roosevelt agreed with the minority bloc of the old Congress that federal unemployment relief should not be in the form of loans but should be outright grants. Further than this, it was his intention that there should be strong federal control over state and local administration and that the federal relief program should be an integral part of the entire national recovery program. To the sponsorship of Senators La Follette and Costigan was added that of Senator Wagner to the new bill. The act provided five hundred million dollars under the control of a Federal Relief Administrator to be appointed by the President and responsible to him, of which two hundred fifty million dollars was to be granted to the several

[15] Monthly Report of the Federal Emergency Relief Administration, December 1933, Government Printing Office, Washington, p. 1.

[16] Springer, Gertrude, "The New Deal and the Old Dole," *Survey Graphic*, July 1933, pp. 347 f.

states on the basis of one-third of their relief expenditures each three-month period. The second two hundred fifty million dollars was to help states without adequate resources, and to "aid needy persons who have no legal settlements in any one state or community and to aid cooperative and self-help associations for the barter of goods and services." [17]

Ten days after passage of the Act, President Roosevelt appointed Harry L. Hopkins as the first Federal Relief Administrator. Mr. Hopkins had been executive director of the New York State Emergency Relief Administration where he had been instrumental in establishing the most variegated, far reaching, and constructive state program in the country. Many of the activities incorporated into the federal program were a result of the laboratory experience of New York state. Almost immediately the new Federal Emergency Relief Administration issued *Rules and Regulations* [18] calculated to define the extent and limitations to which federal funds could be used, methods and standards of state and local administration, adequacy of relief, and provisions for medical service.

Federal emergency relief funds were required to be administered by public agencies after August 1, 1933. This ruling prohibited the turning over of Federal Emergency Relief funds to private agencies and compelled the unemployed to apply to a public agency for relief if supported from public funds. Thus, in a few sentences, was terminated a conflict in policy which had existed for a hundred years, and which had been especially acute since the depression of 1873. Because of the general suspicion which had attended the administration of relief by public officials, the citizens of the United States had been encouraged by professional social workers to subsidize private charity organizations.[19] Now the public agencies were put into almost complete

[17] H. R. 4606, Public No. 15, 73d Congress. An Act to provide for co-operation by the Federal Government with the several states and territories and the District of Columbia in relieving the hardship and suffering caused by unemployment and for other purposes. Approved May 12, 1933.

[18] Issued by the Federal Emergency Relief Administration, Washington, D. C., 1933.

[19] Abbott, Edith, "Abolish the Pauper Laws," *The Social Service Review*, March 1934, pp. 4–5, University of Chicago Press, Chicago. Antagonism toward support of public relief began with the influence of Robert Malthus' teachings who contended "that the poor were responsible for their own misery and destitution. Therefore 'all [public relief] should be denied him, and he should be left to the uncertain support of private charity . . . that he had no claim or *right* on society for the smallest portion of food, . . . if he and his family were saved from feeling the

control of relief. Each local relief administration was required to have at least one trained and experienced investigator on its staff. In the larger public welfare districts the standard was set at not less than one supervisor, trained and experienced in the essentials of family case work and relief administration, to supervise the work of not more than 20 investigating staff workers. This compelled the public agencies to become professionalized and partly removed the blot of incompetency and crudeness which had hitherto been considered synonymous with public outdoor relief. Unfortunately, state and local politicians in many states did their best to prevent this regulation from being effectively carried out and to keep the control of relief in their own hands. The struggles over this issue in Texas, Louisiana, Arkansas, North Dakota, and Wisconsin are conspicuous examples.

Adequacy of relief was changed from a negative standard of merely preventing starvation to a positive standard of providing relief sufficient to maintain physical well-being. The amount of relief to be given was required to be based on "an estimate of the weekly needs of the individual or family including an allowance for food sufficient to maintain physical well-being, for shelter, the provisions of fuel for cooking and for warmth when necessary, medical care, clothing sufficient for emergency needs, and other necessities." Nevertheless, the fact that 70 per cent of the relief dollar was going for food six months after this ruling, indicates that relief was still pretty much a bread and butter matter. Table II on page 248 shows the relative proportions of the relief dollar, of the wage earner's dollar (Bureau of Labor Statistics), and of the general consumer's dollar spent for food.

natural consequence of his imprudence he would owe it to the pity of some kind benefactor, to whom, therefore, he ought to be bound by the strongest ties of gratitude.' This Malthusian belief in the superior virtues of private over public relief was influential in this country in the periods following the depressions of 1873 and 1893. After the crisis of 1873, corruption was widespread in the distribution of public relief in the days of municipal graft and dishonesty. The charity organization societies which were founded in this decade . . . adopted the doctrine that the outdoor relief system would not be reformed, and therefore, nothing could be done except to abolish it. In many large cities in this country outdoor relief was abolished."

See also Johnson, Arlien, *Public Policy and Private Charities*, The University of Chicago Press, 1934.

For an insight into the struggle between public and church relief agencies in Chicago, which was typical of similar situations throughout the country, see Edward L. Ryerson's article, "Out of the Depression," *The Survey*, January 1934.

TABLE II

DISTRIBUTION OF AVERAGE CONSUMERS', WAGE EARNERS', AND RELIEF RECIPIENTS' DOLLARS FOR ITEMS OF LIVING COSTS

	FOOD	HOUSING [a]	CLOTHING	OTHER
Average consumers' expenditures [b]	25.7%	18.2%	11.1%	45.0%
Wage earners' cost of living [c]	38.2	23.9	16.6	21.3
Unemployment relief [d]	70.0	19.0	8.6	2.4

[a] Includes fuel and household expenses.
[b] "The American Consumer Market" by Virgil Jordon, *The Business Week*, May 18, 1932.
[c] *Study made in 1918 of Family Budgets of Wage Earners and Small Salaried Persons*, Bulletin 357, U. S. Bureau of Labor Statistics, p. 5.
[d] Monthly Report of the Federal Emergency Relief Administration, December 1933, p. 62, figures for November.

Many public relief agencies had assumed no responsibility for medical care of their clients. Some of these went without necessary care; others imposed upon the good-will of physicians or applied to private charity organizations. Many communities had a city or county doctor who served as the catch-all for all indigents. The low salaries customarily paid these doctors attracted the less proficient members of the profession, who were considered good enough for the indigent poor, even for major surgical and medical service. The new regulations permitted an unemployed person to have the physician of his choice and required the relief agency to provide him with medical and emergency dental care, including medicines and bedside nursing. This was a real departure in general policy.

During the preceding years of the depression wage rates had been steadily declining. For unskilled labor in some communities they had dropped from 40 cents an hour down to 15 cents and 18 cents. Many public relief officials adhered to the principle that relief work should pay *less* than the going rate of wages in the community in order to discourage asking for relief work. The new rulings said on the question of wages:

> "On and after August 1, 1933, grants made under the Act can be used in paying work-relief wages *only* at or above 30c. an hour. The local prevailing rate of pay for the type of work performed should be paid if it is in excess of 30c. an hour. . . . No one shall be allowed to work more than 8 hours in any one day nor more than 35 hours in any one week. . . . If the work-relief project is in an office no one shall be allowed to work more than 8 hours in any one day or more than 40 hours in any one week."

The Federal Emergency Relief Administration in Action, 1933–1934

It was not to be expected that the federal rules and regulations would be promptly and uniformly put into operation. In many instances it took more than offers of financial aid or even threats of federal compulsion to discard deep-seated, traditional customs and practices. The vested interests of the politicians and other groups were like impregnable walls against changes and reforms. The southern planters were opposed to having *their* share croppers receive such unheard of wages as 30 cents an hour; the northern farmers, who generally controlled the county boards, were reluctant to help pay for the cost of adequate relief to the city unemployed. Politicians, big and little, were first amazed and then openly rebellious against having such large sums of money pass through other hands. With many, resistance or indifference was simply a matter of ignorance. A professional social worker was a kind of being they had never before met and of whom they were suspicious. In such cases, a few months' work on common problems generally removed antagonisms. But many of the elected officials, state, city, county, and township, looked upon public relief funds and their administration as opportunities for spoils and patronage.

While these conflicts of interests still existed in 1934 and the federal administration had made concessions and compromises to political pressures, there had been a general lift in the quality of administration throughout the country. To do this federal funds were withheld temporarily in several states until they effected a "clean-up." In two cases in 1933, Kentucky and Georgia, the Federal Administrator took over complete control of relief administration.[20]

It was President Roosevelt's intention that the Federal Relief Administration should be an integral part of his general recovery program and should co-operate and correlate its activities with the other agencies of government seeking economic recovery. Local relief administrators were asked to serve as enrollment agents for the Civilian Conservation Corps and to provide persons on a work-relief basis for the Re-employment Offices established by the Department of Labor. Approximately two million dollars a month from the federal relief fund was made available to the

[20] Federal Emergency Relief Administration, Monthly Report, December 1933, p. 3.

states and local school districts to employ teachers and to prevent the closing of rural elementary schools when local and state funds were exhausted and for certain types of adult education.[21]

When large areas in certain states suffered severe drought during the summer of 1933, relief funds were used to supply feed for livestock and seed for planting. Work opportunities were provided in co-operation with the Public Works Administration and Bureau of Public Roads, which furnished necessary materials, to allow these farmers to work out the cost of relief received.

Federal Surplus Commodities

In order to effect a closer union between industrial and agricultural relief the Federal Surplus Relief Corporation was organized on October 4, 1933, for the purpose of purchasing surplus agricultural products and distributing them to persons suffering hardship caused by unemployment. The officers and members of this Corporation were the Secretary of Agriculture, Federal Emergency Administrator of Public Works, and the Federal Emergency Relief Administrator, who acted as director. Hogs, cattle, sheep, wheat, corn, oats, beans, eggs, butter, cheese, and apples were purchased by the Corporation to the amount of $23,833,500 up to January 1, 1934.[22] Some criticism has been made of the surplus commodity program. Certain agricultural economists questioned its effectiveness in raising agricultural prices and whether the farmer or the meat packer profited most. Local relief administrators contended that it was a reactionary step in method of giving relief—a throwback to the old commissary plan, and completely destroyed the balanced budget. They questioned whether the same purpose, i. e., increased consumption of agricultural products to relieve farm distress, could not have been obtained by requiring relief agencies to issue more generous food allowances through the regular channels or by increasing the amount of cash relief and permitting the family to buy more food. There is no doubt, however, that farmers were much benefited during the 1934 severe drought when the Federal Surplus Relief Corporation bought large quantities of starving cattle at fair prices. This meat was canned and distributed to relief families.

[21] *Ibid.*, p. 7.
[22] *Ibid.*, December 1933, pp. 39–45, 92.

Resettlement and Rehabilitation

One feature of the recovery program was designed to rehabilitate those groups in the population whose prospects were permanently impaired and ruined due to basic weakness in our economic and agricultural planning. Such groups included not only "stranded" populations in exhausted lumber districts, coal mining, and other mineral industries; e. g., copper, lead, zinc, and petroleum; but large numbers of farm families marooned on eroded and worn-out lands inherently too poor to afford a living. In the early spring of 1933 one out of every six rural families in the United States was on public relief.[23] Furthermore, the crop reduction program of the Department of Agriculture, which assisted some farmers by bringing them higher prices, deprived others of even a bare subsistence. Rexford Tugwell, Assistant Secretary of Agriculture, frankly said: "It has been estimated that when lands now unfit to till are removed from cultivation, something around two million persons who now farm will have to be absorbed by other occupations." [24]

To bridge the gap between the losses and gains of the various recovery programs and to bring some permanent constructive relief to such groups of persons, the Federal Surplus Relief Corporation on December 15, 1933, was granted twenty-five million dollars by the Public Works Administration for the purchase of marginal lands and resettlement of people living on these lands.[25]

Self-Help and Co-operative Associations

Self-help and barter exchanges grew up in different parts of the country beginning with the second winter of the depression, when the unemployed faced the grim reality that it would be many months before normal industry would want their services. The type and functioning of each differed with the locality and the kind of leadership.[26] Some were promoted and sponsored by the

[23] U. S. Department of the Interior, Division of Subsistence Homesteads, Circular No. 1, published November 15, 1933, Washington, D. C.

[24] Powell, W., and Cutter, A. T., "Tightening the Cotton Belt," *Harper's*, February 1934.

[25] Federal Emergency Relief Administration, Monthly Report, December 1933, p. 45.

[26] For a concise description of a number of plans see U. S. Department of Labor, *Monthly Labor Review*, March, April 1933. For an appraisal of such self-help plans see Leighton, G. R., "Doing Business Without Money," *Harper's*, July, August 1933; Bakke, E. Wight, "Producers' Exchanges," *Survey Graphic*, July 1933; Burgess, J. Stewart, "Living on a Surplus," *Survey Midmonthly*, January 1933.

local relief agencies, others were organized and run entirely by the unemployed. Some emphasized production of goods by members with a real barter system of exchange; others used scrip and depended upon the co-operation of merchants and persons not members of the organization in their processes of exchange. Since food was the primary necessity of life, the co-operation of farmers was essential, and most of the associations provided arrangements whereby the unemployed exchanged their labor for farm produce. All of them depended upon some cash and donations.

In spite of the almost insurmountable difficulties in establishing such an atavistic form of self-maintenance in our price economy, the movement had gained some success and much popular acclaim by the spring of 1933. Its sponsors frankly admitted that no barter plan could provide full maintenance for even the very small proportion of the unemployed so engaged; but they maintained that even though the members had to remain partially on relief self-help plans built morale and were worthy of government assistance. There was sufficient public sentiment aroused to get incorporated into the Relief Act a provision for federal aid for such co-operatives. Soon after the passage of the Act some of the co-operative associations collapsed or gradually died, while others could not persuade the state relief commissions to apply for funds for them in spite of the frank encouragement of the federal administration. Some, however, proved to be successful, going concerns, and became an integral part of the economic and social fabric of the communities in which they were located. By January 1, 1934, there had been granted a total of $263,344 to 28 self-help and co-operative associations located in 13 states.[27]

Transient Program

The number of men, women, and children who were roaming the country in search of work or help became so large that the general public as well as social workers became alarmed. California claimed that there were an average of 1200 a day entering the state; that there were 100,000 homeless men in the state in December 1932, and that at least 20 per cent of them were under 21 years of age.[28] Railroads complained of the increasing numbers riding

[27] Monthly Report of Federal Emergency Relief Administration, December 1933, p. 9.

[28] Testimony of S. Rexford Black before Committee on Manufactures, 72d Congress, Hearings on S. 5121, p. 2.

the freights and meeting with accidents and of their inability to handle the situation.[29] Because of existing state residence laws, public funds could not be used to give relief to transients and they were entirely dependent upon the uncertain and inadequate care of private charity. When this was lacking, the floor of the city jail and begging were their only recourse. A few constructive efforts were made before 1933 especially in California. There the state provided funds for the establishment of labor camps.[30] During the year 1932 there were said to be 28,000 transients in California forestry camps and 600 in highway camps.[31]

Responding to a growing sentiment that the federal government should assume some responsibility for these transients, Senator Cutting added an amendment to the Costigan-La Follette relief bill providing fifteen million dollars for transient relief.[32] The bill was defeated. A bill introduced by Senator Couzens during the same session would have appropriated twenty-two million dollars to the army for citizens' military training camps into which 8800 so-called vagrant boys could be put.[33] This received the support of neither army or welfare officials.

The 1933 Federal Relief Act gave the Administrator authority to make grants to states "to aid needy persons who have no legal settlement in any one state or community," and definite plans were formulated in July 1933 whereby the federal government assumed the financial responsibility for the care of needy persons who had been in a state less than 12 months. Each state, however, had to set up a transient program which would conform to the federal

[29] R. S. Mitchell, agent for the Missouri Pacific Railroad, gave the following figures on amount of trespassing and accidents on his railroad. See *ibid.*, p. 36.

Year	Transients on Mo. P.R.R.	Accidents, Killed or Seriously Injured
1928	13,745	274
1929	13,875	259
1930	23,892	335
1931	186,028	372
1932	149,773	305

[30] Cf. California State Unemployment Commission, *Abstract of Hearings on Unemployment*, State Building, San Francisco. August 1932, pp. 48–56; *Report and Recommendations*, November 1932, pp. 447–448; Black, S. Rexford, *Report on the California State Labor Camps*, published by same Commission, July 1932.

[31] Testimony of S. Rexford Black before Committee on Manufactures, 72d Congress, Hearings on S. 5121, p. 2.

[32] Hearings on S. 5121, 72d Congress, 2d Session, *op. cit.*

[33] Lovejoy, Owen R., "Uncle Sam's Runaway Boys," *The Survey*, March 1933.

requirements. Even with the financial inducement offered, states and local communities were slow to co-operate, displaying their customary indifference and antagonism toward non-residents. But largely because of the prodding of the Federal Administrator, there were 261 transient centers and 63 transient work camps established by December 31, 1933, at a total cost of $3,775,555.[34]

Census of Unemployment Relief Families

A census was conducted under the direction of the Federal Emergency Relief Administration of all resident families and resident non-family persons receiving relief from public funds during the month of October 1933.[35] The census showed 3,134,678 relief cases involving approximately 12,500,000 individuals. Significant facts revealed by the census data were:

1. Forty-two per cent of all the persons receiving relief were children under 16 years of age, though only 31 per cent of the population were in that age group.[36]
2. The proportion of unattached single persons receiving relief was much greater than their proportion of the population.
3. A larger proportion of negroes were on relief than their proportion of the population.

Civil Works Administration

On November 9, 1933, the Civil Works Administration was created by order of the President for the purpose of "increasing employment quickly" and four hundred million dollars was taken from the Public Works fund and turned over to the Federal Relief Administration with the expectation that four million unemployed men and women would be put to work at once. A few days after announcement of the new plan, the governors, mayors, and relief administrators of all the states met at Washington. Many important details had not yet been worked out but the representatives of the several states were told to go home and get started with all haste—detailed instructions would come later.

[34] Federal Emergency Relief Administration, Monthly Report, December 1933, p. 11.

[35] *Unemployment Relief Census*, October 1933, Federal Emergency Relief Administration, Washington, 143 pp.

[36] A sample study of 7500 families in eight cities by the U. S. Public Health Service indicated that in 1932, compared to the birth-rate of all families having incomes of less than $1200, the average annual birth-rate was 53 per cent higher among those who were receiving relief. Sydenstricker, Edgar, "Sickness and the New Poor," *Survey Graphic*, April 1934, p. 162.

Of the three million families on public relief prior to Civil Works Administration, more than one million had members working for the aid they received. The term "work relief" had been officially interpreted to be "wages or other compensation paid for work where the recipient and the amounts paid are both determined on the basis of the actual existing need. Wages in return for such work may be paid in cash or in kind." [37] Work relief implied that persons were employed on a basis of actual existing need and were privileged to earn only enough to pay for their minimum needs. While the rate of pay might vary according to type of work, hours were so adjusted that the weekly income was just enough to cover minimum budgets.

The Civil Works Administration frankly referred to its work as an employment program as well as a relief program. One-half of those employed came from relief rolls; for the other half the door was thrown open to all unemployed regardless of financial stress or immediate need. This brought on a wild scramble of some ten million unemployed for two million jobs. Those not taken from relief rolls were theoretically to be chosen on the basis of qualification by the National Employment and Re-employment Service. But with an average of five persons for every job, too frequently the successful candidate had to have "pull" as well as ability.

In the spring of 1933 wage rates for common labor in private as well as public employment had dropped as low as 15 cents and 18 cents per hour in many sections of the country. During the summer National Recovery Administration codes brought these rates up to 30 cents and 40 cents per hour. The minimum rate for work relief established by the Federal Administrator the previous July was 30 cents per hour. The minimum Civil Works Administration rates were 40 cents in southern states, 45 cents in the middle states, and 50 cents in northern states. Wages for skilled labor were $1.00, $1.10, and $1.20, respectively.

Soon after Christmas adverse rumblings started, growing in number and seriousness each day. Graft, political favoritism, false expense accounts, dishonesty, and collusion in purchasing materials, piled up at such a rate as to make the Federal Administrator frankly admit that he was "tremendously disconcerted" and to

[37] An interpretation made by the Reconstruction Finance Corporation in 1932 and generally adopted throughout the country. Chairman Atlee Pomerene, *Address before Welfare and Relief Mobilization Conference*, September 15, 1932, United States Printing Office, Washington.

appeal to the Attorney-General and War Department for assistance in cleaning up.

Also it became evident that the cost was much more than originally planned. Average weekly wages were higher than the estimated $12.00 per man per week (due to the unexpectedly large proportion of skilled and white collar workers) and local communities were not financing as much of the material and tool expenses as had been planned. Whereas the federal government had been spending forty million dollars per month for direct and work relief, Civil Works Administration alone was now costing the federal government over two hundred million dollars per month. Quick action was necessary. On January 15 weekly hours were reduced, a few weeks later wage rates, then quotas were reduced, and finally a complete demobilization on March 31, 1934.[38]

TABLE III

STATUS OF GAINFUL WORKERS [a] IN UNITED STATES, APRIL 1934

	GAINFUL WORKERS	EMPLOYED	UNEMPLOYED	NOT EMPLOYABLE
Total	50,500,000 [b]	39,280,000	10,600,000 [c]	620,000 [d]
Receiving public relief	7,200,000 [e]	350,000 [f]	6,250,000	600,000 [g]
Not on public relief	43,300,000	38,930,000	4,350,000	20,000 [g]

[a] The Census "persons reporting a gainful occupation."

[b] Number shown by 1930 Census plus estimated increase of 430,000 per year due to population growth by immigration and by children coming of working age minus deaths and superannuations.

[c] American Federation of Labor estimate for April 1934.

[d] Estimate is 1200 larger than the number listed in classes C, D, E, and F in 1930 Unemployment Census. These classes are generally assumed to be unemployables, and the American Federation of Labor excludes these classes in their unemployment figure. This estimate of unemployables equals 1.2 per cent of the gainful workers which would seem to be a reasonable portion of gainful workers who are incapable of work because of sickness and other personal disabilities.

[e] Forty per cent of relief population. The Federal Emergency Relief Administration reported 4,500,000 relief families in April 1934 and the total number of persons receiving relief as 18,000,000. It is reasonable to assume that there was the same percentage of gainful workers in the relief population as the general population, since the slightly larger size of families among relief families was offset by a greater proportion of non-family (single) persons on relief rolls than in the general population.

[f] March 1934 Federal Emergency Relief Administration report (p. 13) indicates that between 10 and 20 per cent of relief families were receiving partial relief. The above estimate assumes that 10 per cent of the relief families were receiving partial relief due to part-time employment or insufficient wages.

[g] Based on assumption that practically all of the unemployables were receiving public relief.

The spectacular, hastily planned and ill-organized CWA collapsed of its own weight and the previous direct and work-relief

[38] Peterson, Florence, "CWA, A Candid Appraisal," *Atlantic Monthly*, May 1934.

plans were re-established with some slight modifications. On future work-relief programs the "prevailing" wage rates were paid with a minimum of thirty cents an hour. On November 19, 1934, this minimum wage was abandoned and local work-relief administrations were instructed to pay the prevailing rates even though these rates were under thirty cents.[39]

Federal Relief Act—1934

On February 15, 1934, the President signed Public Relief Act No. 93, 73d Congress, which appropriated $950,000,000 "for carrying out the purpose of the Federal Emergency Relief Act of 1933 and for continuing the Civil Works program." No automatic allotments to states were specified, nor were statutory limitations as to the uses to be made of the fund set up in the act. The money was to be spent "for such projects and for purposes and under such rules as the President in his discretion may prescribe." Another new feature was the provision that the Federal Administrator could ignore a state governor entirely and make grants directly to any public agency within a state.

Since it was necessary to use half of this grant to finish up the CWA program, the President, early in the fiscal year, appropriated additional money for unemployment and drought relief from the fund made available to him by the General Deficiency Act passed during the closing days of Congress.[40] The total disbursements under this legislation were for the first eleven months of 1934, $1,245,359,551, and in November 1934 there were 4,223,074 families and 770,601 single persons, a total of 19,017,815 persons or about 15 per cent of the entire population on relief. In the latter months of 1934, about 78 per cent of the relief costs of the nation were being borne by the federal government, about 13 per cent by the local communities, and about 9 per cent by the state governments.[41]

Aid for College Students

In November 1934, the Federal Emergency Relief Administration announced that it would furnish aid to approximately 95,000

[39] United States Bureau of Labor Statistics, *Monthly Labor Review*, March 1935, pp. 636–637.

[40] Public Acts—No. 412—73d Congress, Title II, Approved, June 19, 1934.

[41] United States Bureau of Labor Statistics, *Monthly Labor Review*, March 1935, pp. 635–645.

needy students in 1465 colleges in the 48 states, the District of Columbia, Hawaii, and Puerto Rico at an estimated cost of $1,414,595 per month, the money to be alloted to the state emergency relief administrations for transfer to the educational institutions involved. The students were to be employed in socially desirable work on and off the campuses, such as research, clerical, office, library, museum, and laboratory work, or such off-the-campus activities as community education, health or welfare projects. This program was for students who would have been unable otherwise to continue their college work, and the maximum sum which a student was permitted to earn was set at $20.[42] This constituted one of the most interesting innovations in relief policy of the entire depression period.

Conclusion

The nation, at the end of 1934, had on its hands a most gigantic relief problem. In spite of a considerable increase in employment during 1934, the relief lists were close to maximum figures. The President in his messages to the 1935 Congress and in radio addresses announced his intention of bringing relief to an end by (1) substituting employment on public works for the genuinely unemployed and (2) returning the unemployable to the state and local communities for relief. At the same time he announced a social security program to remove the aged and the dependent children from relief entirely by putting their care on a pension and security basis.

[42] *Ibid.*, February 1935, pp. 292–293.

CHAPTER XIII

UNEMPLOYMENT INSURANCE: PRIVATE PLANS [1]

The shortcomings of the American system of public and private relief as a means of caring for the unemployed have just been depicted. Experience has demonstrated through a series of industrial depressions that even efficiently administered relief is demoralizing and uneconomical. During the last thirty years a growing body of public opinion has insisted that unemployment is a social situation beyond the individual's control and responsibility; that compensation during unemployment should come to the individual as a right and not as a charity; and that the cost of such compensation is a proper part of the cost of production. It is the purpose of the present chapter to summarize briefly the developments in the United States during the past forty years of private efforts to substitute some sort of unemployment insurance for relief.

Unemployment insurance began in the United States,[2] as in European countries,[3] with private plans. Stewart states that "the beginnings of unemployment benefit plans in the United States are found in the self-help efforts of trade-unions, whose first out-of-work benefit scheme, of which a record was discovered, dates back to 1831." [4] He also notes that "the United States is one of the few countries in which employers have experimented with unemployment funds without the stimulus of legislation." [5]

[1] The author wishes to acknowledge his indebtedness to Stewart, Bryce M., *Unemployment Benefits in the United States*, Industrial Relations Counsellors, New York, 1930, for much of the material and statistical data used in this chapter. Cf. also Whitney, Anice L., *Operation of Unemployment Insurance Systems in the United States and Foreign Countries*, United States Bureau of Labor Statistics, Washington, 1934.

[2] Stewart, Bryce M., *Unemployment Benefits in the United States*, Chap. IV.

[3] For the European systems of unemployment insurance, cf. Gilson, Mary Barnett, *Unemployment Insurance in Great Britain*, Industrial Relations Counsellors, 1931; Kiehel, Constance A., *Unemployment Insurance in Belgium;* Industrial Relations Counsellors, 1932; Spates, T. G., and Rabinovitch, *Unemployment Insurance in Switzerland*, Industrial Relations Counsellors, 1931; Carroll, Mollie Ray, *Unemployment Insurance in Germany*, The Brookings Institution, Washington, D. C., 1929; Stewart, Bryce M., *Some Phases of European Unemployment Insurance Experience*, Academy of Political Science, New York, 1932.

[4] Stewart, *op. cit.*, p. 80.

[5] *Ibid.*, pp. 93–94.

The first employer plan was established by the Dennison Manufacturing Company of Framingham, Massachusetts, in 1916. Down to 1929, but 13 company plans had been established and an equal number by international labor unions. All of the company plans and seven of the union plans were in operation in 1929. More important, there were also in 1929 twenty-four joint employer-union plans and more than a score of out-of-work benefit schemes operated by local unions, the oldest type of unemployment benefits, both in Europe and in America.

Down to the depression of the nineties, there seems to have been little public interest in unemployment benefits in the United States. It was discussed in four state reports during that decade. The Massachusetts Board to investigate the subject of the unemployed called attention in 1895 to out-of-work benefits paid by Massachusetts unions.[6] Reports of the New York, Michigan, and Kansas labor bureaus evidenced the existence of similar union plans in those states. They probably existed also in other states.[7] A federal report in 1899 on Benefit Features of American Trade Unions[8] found unemployment benefits to be one of the several types of benefits paid by American labor unions. Articles appeared in a number of magazines between 1896 and 1900, in most cases inspired by the beginnings of the European unemployment insurance legislation in Switzerland, Belgium, and Germany.[9]

The major interest of those advocating unemployment insurance in the United States has centered from the 'nineties onward on compulsory state or federal unemployment insurance laws,[10] but the entire American development, prior to the enactment of the

[6] Massachusetts Board to Investigate the Subject of the Unemployed, Report, Boston, Wright and Potter, 1895, Part I, "Relief Measures," p. xxxii.

[7] New York Bureau of Statistics of Labor, Twelfth Annual Report for the Year 1894, Albany, 1895, p. 229; Michigan Bureau of Labor and Industrial Statistics, Thirteenth Annual Report, Year Ending February 1, 1896, Lansing, Michigan, 1896, p. 269; Kansas Bureau of Labor and Industrial Statistics, Fourteenth Annual Report, 1898, Topeka, Kansas, 1899, pp. 177 ff.

[8] Bemis, E. W., "Benefit Features of American Trade Unions," United States Bureau of Labor, Bulletin, Vol. 4. May 1899, pp. 361–400.

[9] E. g., Brooks, J. G., "Insurance of the Unemployed," *Quarterly Journal of Economics*, Vol. 10, April 1896, pp. 341–348; Monroe, Paul, "Insurance against Non-Employment," *American Journal of Sociology*, Vol. 2, May 1897, pp. 771–785; Willoughby, W. F., "Insurance against Unemployment," *Political Science Quarterly*, Vol. 12, September 1897, p. 476.

[10] Stewart lists 20 bills introduced into the legislatures of 7 states between 1916 and 1929. Bills were also introduced in Ohio, Maryland, Massachusetts, and Wisconsin between 1930 and 1933. For the history of official investigations and of the bills introduced down to 1929, cf. Stewart, *Unemployment Benefits in the United States*, pp. 570–580.

Wisconsin Unemployment Reserves and Compensation Law of 1932,[11] consisted of private plans.

Trade-Union Plans

The unemployment benefit plans of American trade-unions have never covered any considerable number of wage earners. The Massachusetts report shows less than $50,000 to have been paid out in union out-of-work benefits in that state in 1893–94; the New York report $106,801 in 1894; and the Michigan and Kansas reports negligible sums. The United States Commissioner of Labor found only 10 out of 530 local unions paying out-of-work benefits in 1908. Little growth occurred in the next 20 years. In 1928, according to Stewart's estimates, there were approximately 34,700 trade-union members out of the 4,331,251 in the United States who were protected by some form of union unemployment benefits.[12] But 12 of the 106 national and international unions affiliated with the American Federation of Labor in 1929 had any systematic provision, either through an international or a local plan, for unemployment relief of their members.[13] The Bakery and Confectionery Workers International Union provided unemployment relief in 19 of their 206 locals, and the printing trades in 26 of their 1601 locals. Obviously the century which has elapsed since the first trade-union out-of-work benefit plan was started in the United States has demonstrated that the problem is not going to be solved by union plans, not even for the members of unions.

The principal success attained by the unions seems to have been in their local plans, but it has been something of an up and down success. The local unions tend to

> "organize their out-of-work funds as occasion requires and abandon them when the need is over. Only a few of all those which have ever been started are in operation at any given time. An industrial depression such as that of 1893 or 1921, technological changes such as the members of the Typographical Union encountered in the early nineties and as the other printing trades have met since the World War, a local situation such as that created by the removal of several large printing establishments from New York City in 1927, frequently seem to call

[11] Cf. Chapter VII of the Labor Legislation portion of this book for discussion of Wisconsin act.

[12] Stewart, *op. cit.*, pp. 88–90. For detailed analysis of union plans, cf. Stewart, Part II, pp. 227–361.

[13] Stewart, *op. cit.*, p. 90.

the attention of union members to the need for relief. Later, however, as the demand for unemployment benefits grows less acute and other calls for funds are made on the membership, the unemployment benefits may be given up and not resumed by that particular local until a new emergency arises." [14]

Joint Agreement Plans

Unemployment compensation plans jointly financed by employers and unions working under trade agreements have covered more wage earners and with more adequate benefits. Twenty-six such plans were set up between 1894 and 1929, with widely different provisions. The earliest was established in 1894 in the wallpaper industry. This plan grew out of the extreme seasonality of the industry. After a long seasonal shutdown in 1894 the union demanded a guarantee of 11 months' employment. In 1896 they asked for a guarantee of 12 months' work. And in 1897 the 12 months' guarantee was renewed in addition to a wage increase. The union found, after some experience with the scheme, that they had asked for too much. They had cut themselves out of any kind of a vacation. The guarantee was cut to 50 weeks. In 1912 it was cut to 45 weeks at full pay and 5 weeks at half pay, which was the standard until 1929, when the guarantee simply promised 40 weeks of continuous employment at full time rates. The men agreed to work the full 40 weeks, and the manufacturers promised to try to provide employment for the whole year.[15]

The second joint plan was not effectuated until May 1921, when the Cleveland Garment Manufacturers' Association and the International Ladies Garment Workers' Union entered into an agreement, which went into effect June 1 of that year. Like the wallpaper industry arrangement, it was a guarantee-of-employment scheme. "In its original form, the plan obligated each employer to guarantee to his regular employees 20 weeks of full employment in each six months, or in lieu of this, to pay two-thirds of the minimum wages for the period by which he fell short of the 20 weeks, except that no manufacturer was liable for more than 7½ per cent of his direct labor payroll during each six months' period." In the spring of 1922, the guarantee was changed to 41 weeks in each calendar year, and in 1923 the maximum was raised to 10 per cent. Subject to modifications in its details, this

[14] Stewart, *op. cit.*, p. 89.
[15] *Ibid.*, pp. 363–371.

plan was still in operation [16] in 1929. These two were the only joint plans of the employment guarantee type. The other 22 plans, established between 1923 and 1928, were genuine employment compensation plans.

Six of the "joint" unemployment benefit plans were set up in the clothing industries—more than in any other branch of American industry.[17] The earliest was the Cleveland Ladies Garment Industry plan just discussed. The next, and the first joint plan constituting a genuine unemployment benefits plan, was started in the Chicago Men's Clothing industry in 1923 under an agreement between the Amalgamated Clothing Workers of America and the Chicago manufacturers.

Chicago was second at the time only to New York as a center for the manufacturing of men's clothing. A larger proportion of the output in Chicago was manufactured in large shops, there was less farming out of work to contractors, the market was more stable, and both the employers and the workers were better organized.[18] It was better adapted than any other market producing men's clothing on a large scale to experiment with an unemployment plan managed jointly by a union and a group of employers' associations.

The Chicago unemployment plan included three features: a preferential union shop; an excellent union employment department from which the employers were obligated to obtain their labor so long as the employment office filled their orders promptly; [19] and the unemployment benefit plan. The success of the latter depended in no small measure upon the union's keeping down, even reducing, the supply of labor in the industry. The preferential shop on the one hand and the control of job-filling by the employment office on the other were essential to keeping the labor supply at a minimum without crippling the employers by lack of an adequate labor supply. The union considered an efficient employment service so essential to their plans that they brought Bryce M. Stewart, Director of the Canadian Employment Service, to Chicago to organize and direct their employment

[16] Stewart, *op. cit.*, pp. 374–386. Cf. Mack, W. J., "Safeguarding Employment: The Cleveland Plan of Unemployment Compensation," *American Labor Legislation Review*, March 1922, pp. 25–30.

[17] For detailed history of these plans, cf. Stewart, *op. cit.*, pp. 371–425.

[18] Cf. Stewart, *op. cit.*, p. 401.

[19] *Ibid.*, pp. 404–405, for brief account of the employment department.

department. Stewart later became the manager of the insurance office as well.

The establishment of the unemployment benefit plan at Chicago was the direct outgrowth of plans made by the Amalgamated Clothing Workers at their Convention in Boston in May 1920. A resolution adopted at that time said in part:

> "There is no reason why the industry, which pays a permanent tax to the various insurance companies in order to indemnify the employer in case of an emergency, should not likewise have a permanent fund for indemnification for lack of work. . . . It is our opinion that such a fund should be created by the weekly payment of the employers of a given percentage of the payroll of our members, which shall not be deducted from the payroll but paid into the fund in addition to the payroll." [20]

Demands for an unemployment fund were submitted to the employers in Baltimore, Boston, Rochester, and Chicago in the summer of 1920.[21] In a memorandum submitted to the Chicago board of arbitration in 1920 "it was held that the cost of unemployment benefits should be borne by the industry, which would mean that 'to the degree to which unemployment is ineradicable, the cost will be shifted to the consumer like any other cost of production.'" [22] It was further argued that such a plan would encourage employers to exert themselves to reduce unemployment and would penalize such employers as failed to do so.[23] This argument is of particular interest as it was the basic principle of the Wisconsin unemployment insurance law passed in 1932.[24]

The Chicago employers did not agree to the union proposal until 1923, when the union again asked for a wage increase and the establishment of an unemployment fund; and the employers

[20] Stewart, *op. cit.*, p. 405.

[21] Wolman, Leo, *Proposal for an Unemployment Fund in the Men's Clothing Industry*, Amalgamated Education Pamphlets, No. 5, Amalgamated Clothing Workers of America, New York, 1922.

[22] Wolman, *op. cit.*, p. 21; Stewart, *op. cit.*, p. 405.

[23] Wolman, *op. cit.*, pp. 21–22.

[24] For history of earlier attempts to obtain unemployment insurance legislation in the United States, cf. Stewart, *op. cit.*, pp. 97 and 570–580.

Readers interested in the development of this argument in connection with the Wisconsin law, cf. Commons, John R., "Unemployment, Compensation or Prevention," *Survey*, Vol. 47, October 1, 1921, p. 6; Commons, John R., "Unemployment Prevention," *American Labor Legislation Review*, New York, March 1922, pp. 15–24; Commons, John R., *Unemployment Insurance Conference*, National Civic Federation, Social Insurance Department, New York, January 31, 1922; Commons, John R., "Unemployment, Prevention and Insurance," in Edie, Lionel, *The Stabilization of Business*, Macmillan, New York, 1924, pp. 164–205.

accepted, after negotiations, a plan somewhat different from that proposed by the union. The employers insisted that the workers as well as the employers contribute to the fund, and that each employer's contributions be segregated in a "house fund," with his responsibility confined to his own employees. Most of the members of the union, but not all, wanted the contributions of all the employers pooled in a common "market fund" and the claim of an unemployed worker to rest against that fund rather than merely against the individual employer. In the end, all the funds of the smaller "contractor" shops were pooled in a common fund, which, "in view of the irregularity of employment and the high mortality rate among the contracting shops," was the only feasible plan for them, but each "inside manufacturer" had his own fund.[25]

Theoretically, each fund was administered by a different board of trustees. But this would have meant more than 300 boards of trustees. In practice, but five boards were appointed, and they all had the same chairman. The actual administration of the funds and accounts was centralized in one office, which was under the direct control of the trustees and financed by the employers and the union as a part of the general administrative expense.[26]

Between May 1, 1923, and 17, 1930, there were paid into the funds in contributions and earned income $6,420,251.82. Reserves were invested in securities of the United States government. Benefits paid out during the same period totaled $5,209,141.21. The balance on hand at this date was $709,753.86. The number of beneficiaries in the first dull season was 26,426; in the eleventh season was but 14,087. "This falling off was due mainly to the large number of workers leaving the industry." [27]

Similar plans were started in the men's clothing industry in Rochester, New York, on May 1, 1928, and in New York City on September 1, 1928. Meanwhile, between April 1923, and January 1926, out-of-work benefit funds supported jointly by members of the Amalgamated Lace Operatives of America and their employers were established in five cities.[28] Unemployment benefits began in the Cloth Hats and Caps Industry at St. Paul, Minnesota, in October 1923, and spread to New York, Philadelphia, and Chicago in 1924; and to Boston, Baltimore, and Milwaukee in

[25] Stewart, *op. cit.*, p. 407.
[26] Cf. Stewart, *op. cit.*, pp. 409–412, for details.
[27] Stewart, *op. cit.*, p. 414.
[28] *Ibid.*, pp. 425–437.

1925.[29] Two New York City locals of the straw hat industry obtained agreements in 1924 and 1925 for funds supported entirely by the employers, who contributed an amount equal to 3 per cent of their payrolls into an unemployment fund covering involuntary unemployment and paying $10 a week for not more than 6 weeks in a year.[30] Two cleaners and dyers unions obtained unemployment benefit funds, the one in Chicago in 1925, the other in St. Louis in 1927.[31]

The joint plans have covered more wage earners than either the union or company plans. They covered some 63,500 workers in 1928.[32]

Company Plans

The first employer voluntarily to establish an unemployment benefits plan for its employees was the Dennison Manufacturing Company, Framingham, Massachusetts, in 1916. The first benefits were not paid out under it until March 1920. The Columbia Conserve Company, Indianapolis, began its plan in April 1917, an employment guarantee plan. Thirteen additional company plans were established by 1930.[33] Six plans were paying benefits during the depression of 1920–21, and 13 during all or part of the depression of the early 1930's.[34]

The various company plans differed widely. The Columbia Conserve Co. guaranteed full salary for 52 weeks, including vacations, to all employees elected by their fellows to the salaried group. This included all regular employees, excluding extra help hired at

[29] *Ibid.*, pp. 437–454.
[30] *Ibid.*, pp. 454–460.
[31] *Ibid.*, pp. 460–462.
[32] *Ibid.*, p. 93.
[33] *Ibid.*, p. 96, Table 4, and p. 97, footnote 34a. For detailed description of the 15 plans, cf. pp. 463–569.
[34] The Wisconsin law of 1932 permitted the Industrial Commission to exempt employers from the provisions of the compulsory act if they submitted private plans at least equivalent in benefits to their employees to the provisions of the compulsory act. The law went into effect on July 1, 1934. By October 1934, over 2100 "exempted plans" had been approved by the Industrial Commission, and about six-sevenths of the employees covered by unemployment insurance in Wisconsin were under such "exempted plans," the employers depositing their reserves with trustees approved by the state instead of with the treasurer of the state. As a matter of fact, the provisions of these exempted plans differed but little from those of the compulsory act. They gave the employers who adopted them a feeling of freedom and autonomy in the management of their unemployment funds. The real interest of Wisconsin employers was probably revealed by the fact that only 3 voluntary unemployment insurance plans were in actual operation in Wisconsin before the compulsory act became effective.

times on an hourly basis. Every wage worker had to be considered for the salaried group before he (or she) had been with the company nine months, and could be so considered after one month's service.[35] The salaried group endeavored to reduce the employment of hour help to a minimum, and vigorous efforts were made by the company and the employees' works council to work out plans that would permit the rush work of the summer season to be handled without much hiring of seasonal, hour workers.

The Dennison plan, on the other hand, was an out and out unemployment benefit. In 1916 the board of directors set aside $20,000 towards an unemployment fund.[36] Further appropriations and accruals raised the fund to $147,237 by the end of 1919. In that year a works committee was organized to represent the employees and "the company referred to it consideration of the problems attendant upon unemployment and the spending of the unemployment fund for purposes of relief." They did not promise to continue to appropriate to the fund.

The Dennison scheme was very liberal both in its definition of unemployment and in the benefits paid. This was possible because the plant was so highly regularized that but little time was lost, even in bad years. Both unemployment due to lack of work and loss of wages due to transfer to a less lucrative job were compensable. From 1921 to 1928, the waiting period was but one-half day. In 1928 it was made one full day in a week or two in a month. No compensation was paid for shutdowns "ordered or requested" by civil or military authorities or due to "votes, decisions or actions" of the employees themselves, "individually or collectively." Employees became eligible by six months of continuous service.

"Up to the middle of 1930 employes with dependents got 80 per cent of their weekly earnings based on their preceding six weeks' average," [37] and those without dependents 60 per cent of their earnings. When claims began to increase in 1930 "a weekly maximum of $24 was set for those with dependents and of $18 for others." [37] Workers on layoff who obtained temporary work received benefits sufficient to bring their earnings from their outside work up to their regular wages until such time as the company was able to offer them their regular jobs again. The extent of

[35] Stewart, *op. cit.*, pp. 478–481.
[36] *Ibid.*, pp. 463–478.
[37] *Ibid.*, p. 465.

regularization at the Dennison plant may be judged from the fact that from 1920 to 1929 the benefits paid out never reached 1 per cent of the payroll in any year.[38]

The Crocker-McElwain plants embodied principles intermediate between those of the employment-guarantee plan of the Columbia Conserve Company and the unemployment-benefits plan of Dennison's. It covered only employees who had been for five years in the service of the company. The year was divided into thirteen periods of four weeks each, and the employee guaranteed his regular rate for each four-week period. If a man was laid off during a four-week period he was paid his full wage for that four-week period. When the plan was started in 1921, 28.3 per cent of the employees at Crocker-McElwain and 19.6 per cent of those at the Chemical Manufacturing Company (also under the plan) were five-year employees. By 1928 these percentages had increased to 56.8 and 54.2; one of the results the company hoped to attain through the plan.[39]

Examination of the provisions of these company unemployment insurance plans reveals that they resembled the other types of plans set up by employers, i. e., pension, stock ownership, profit sharing, sick benefits. In general the benefits were reserved for employees who belonged to the company's "regular" force, in some cases several years' service being required for eligibility. The seasonal and short time employees who need such insurance worst were barred from participation. The companies would not guarantee the continuation of the plans, reserving the right to terminate them at will or upon specified notice. So even the workers covered could not depend upon the fund as "an anchor to windward" when depression should come. In several cases the usefulness of the plans as a means of tying workers to the company was a more important criterion of their success than the usefulness of the plans as relief for unemployed workers. The small number of employers who took any interest in the setting up of such funds made certain that they would not become of significance except as experiments.

Neither union, joint nor company plans, did more up to 1932 than prove the necessity for state or federal legislation on the subject. The enactment of the Wisconsin unemployment insur-

[38] *Ibid.*, p. 469.
[39] *Ibid.*, pp. 498–510, at p. 502.

ance law in 1931, the fact that such legislation had been considered by many state legislatures, and the effort of the federal government in 1935 to force such legislation throughout the country by the enactment of the Economic Security Bill all indicate that private unemployment insurance plans in America would terminate soon or would function, as in Wisconsin, under public permission, regulation, and minimum standards.

CHAPTER XIV

APPRENTICESHIP, EMPLOYEE TRAINING, AND VOCATIONAL EDUCATION

The rapid and continuing changes which have been occurring in industrial technology have compelled modifications in the processes of training workers; both in the methods of preparing youths for vocations and the methods of retaining and upgrading adult workers. The American situation, during the past 40 years, has been characterized on the one hand by a more rapid introduction of modern technology than has occurred in any other nation and on the other by a more or less steady inflow of skilled mechanics from Europe.

The rapidity of American technological progress was due in part to the fact that the country was undergoing rapid growth in population, which called for the establishment year by year of new plants in a wide range of industries. These new plants were equipped with the most recent types of machinery, conveyor systems, and plant layouts. The older plants were forced into at least some degree of modernization to meet the costs of production in the newer plants. New industries were springing up, also, and some of these, like the automobile, electrical, and public utility industries, were both gigantic and ultra modern in their methods. Industries operating at high unit costs found it increasingly difficult to compete in a market dominated by these modernized industries. The division of labor and splitting of occupations into tasks therefore proceeded apace.

But these modern industries have not called for unskilled labor primarily, nor can they dispense with that well trained labor which has been called "skilled labor" for centuries. They require men and women of some intelligence and education, and with a certain specialized skill, to operate the major portion of the machinery and to do the major portion of the tasks in modern American industry. The field of employment for semi-skilled workers expanded at the expense of the common labor field. The demand for genuinely skilled workers expanded as well, in spite of the fact

that some of the older trades have been partly wrecked by being split into tasks. The demand for highly skilled machinists, toolmakers, and other sorts of skilled workers in metals has increased. Supervision of a vastly larger number of semi-skilled workers has called for a larger number of minor executives with knowledge in excess of that of semi-skilled workers. New trades, like the electricians, electro-engravers, acetylene welders, expert automobile, radio, and aeroplane mechanics, and aviators, appeared and absorbed large numbers of people. In some of the older industries, like printing, building and rubber, new crafts sprang up. Industry has been discarding some of the old skills and reducing the value of others, but it has not been wiping out the need for skilled and semi-skilled workers. It has, however, made the future value to the workman of specific skills less secure, and increased the value of those general capacities that facilitate adaptation on the part of the worker to different kinds of work.

Industry, labor, and public and private educational authorities have struggled with the problem of adapting trade and vocational training to a rapidly changing industrial system since long before 1890. We find labor beginning to demand "Practical Education," as early as 1830.[1] Complaints on the part of employers that the unions were preventing them from training an adequate supply of labor and on the part of the unions that employers were shirking their responsibility, began early in the nineteenth century.[2] Both statements were true in specific situations. As a matter of fact, however, the force most demoralizing to apprenticeship in America throughout the past century was the dependence of employers upon immigration for their supply of skilled mechanics. This combined with the subdivision of trades into tasks and the greater tendency of American workers to move around, caused employers to believe that it did not pay to train apprentices. But this was not all.

The essence of apprenticeship was the simultaneous education of the adolescent in good habits and in good craftsmanship. The decay of apprenticeship was inevitable when the machine process

[1] New York *Workingman's Advocate*, September 18, 1830; Boston *Courier*, August 28, 1830; *Documentary History of American Industrial Society*, Vol. V, pp. 188–189.

[2] Commons and Associates, *History of Labour in the United States*, Macmillan, New York, 1916, cf. Index for specific citations; Douglas, *American Apprenticeship and Industrial Education*, Columbia University, 1921.

made possible the use of mass-child labor, and when the division of occupations into detail tasks no longer demanded a careful industrial training for each worker.[3] Industrial and social education, always distinct functions, were now divorced. The public and parochial schools of the United States concentrated upon the academic and ethical aspects of education. Those "master workmen" who still professed to train their boys in the mysteries of trades provided less and less character and mind training. The schools tended to lose contact with industry; and apprenticeship to lose contact with citizenship.[4]

The peculiar position of America, undergoing rapid economic development amid apparently unlimited natural resources and with a continuous influx of skilled labor from Europe, induced a certain careless optimism concerning the necessity for definite processes of training and upgrading workmen, both youths and adults. But after 1900 there was an awakening, resulting after 1910 in a revival of industrial training, accompanied by a new philosophy of education in which the citizen was no longer conceived as one being in his private life and another in the factory. General intelligence, a social outlook, and conformity to current mores were recognized by industrial leaders to be no less necessary than skill and technology.

A survey of the developments in the training of labor during the past 40 years requires examination of what has happened in the following fields: apprenticeship, training by industrial firms and by corporation schools, training under voluntary co-operative school schemes where the youth works part time and attends school part time, full time trade schools, evening schools and public vocational or continuation schools.

Between the issuance of the 1902 report upon industrial education of the United States Bureau of Labor Statistics [5] and the 1910 report, seven states (Connecticut, Maine, Maryland, Massachusetts, Michigan, New Jersey, and Wisconsin) appointed commissions to study plans of industrial education either wholly or

[3] *History of Labour in the United States*, Vol. I, p. 339.

[4] For analysis of the nature and technique of apprenticeship, cf. Scrimshaw, Stewart, *Apprenticeship*, McGraw-Hill, 1932.

[5] *Trade and Technical Education*, Seventeenth Annual Report of U. S. Commissioner of Labor, 1902, 1305 pp. Previous to this, the Eighth Annual Report, 1892, presented results of an investigation pursuant to an Act of Congress upon the various industrial school systems and technical school systems in the United States and foreign countries.

partly supported at public expense. Eight states made provision for the maintenance of public industrial training and in many cities not covered by such state legislation provisions for some industrial training were worked into the public school system. More significant still, vocational guidance was introduced widely and turned the attention of both parents and children to the need of preparing children more definitely for their future work.[6]

The United States Commissioner of Labor said in 1910:

> "The widespread interest in industrial education is evidenced by the serious consideration and study given to it by various national organizations standing for many different interests. Among the bodies that have given consideration to the subject are the following: The American Federation of Labor, the National Association of Manufacturers, the National Education Association, the National Society for the Promotion of Industrial Education, the National Society for the Promotion of Engineering Education, the National League for Industrial Education, the Southern Industrial Education Association, the General Federation of Women's Clubs, the American Foundrymen's Association, the National Metal Trades Association, the National Association of Builders, the American Institute of Electrical Engineers, the American Society of Mechanical Engineers, American Home Economics Association, the International Typographical Union, the Young Men's Christian Association, and the Young Women's Christian Association.
>
> "From the above list it is seen that industrial education has been the subject of thought and discussion by manufacturers, labor leaders, educators, scientific societies, economists, and social workers." [7]

The interest of employers, particularly in the manufacturing and transportation fields, was at first engaged by the possible usefulness of trade schools and corporation schools as substitutes for the older apprenticeship system, which seemed on the one hand to be dying out and on the other to require in most trades a degree of co-operation with labor unions objectionable to the employers. The latter, as the years have passed, have continued to resist apprenticeship subject to union regulation. They have experimented extensively with labor training carried on exclusively by the employer (corporation schools, classes or apprentice plans) in many cases furnishing both academic and shop training to

[6] Cf. for further details *Industrial Education*, U. S. Commissioner of Labor, Twenty-fifth Annual Report, Washington, 1910.

[7] *Ibid.*, p. 391.

youths enrolled either as apprentices in the shop or as students in a company school. They have promoted trade schools, both private and public, always insisting that such schools shall not be pro-union and, in the case of private schools, frequently causing them to be definitely anti-union in their attitudes.

The National Association of Manufacturers first officially recognized the question of industrial education in its 1904 convention, when a committee on industrial education was appointed to report at the 1905 convention. Since that time a standing committee has been maintained which has issued annual reports upon the subject.

The earlier reports of this committee frankly stated that the interest of the manufacturers was to increase the number of skilled mechanics, and they evidenced clearly their hostility to the rules of trade-unions limiting the number of apprentices.[8] The committee definitely opposed permitting apprentices to enter trade schools at all, unless there was a lack of non-apprenticed students. They maintained that trade schools could turn out a finished workman without the necessity for apprenticeship. Experience soon revealed that this was an error, and beginning about 1908, the Association became definitely interested in promoting co-operative industrial schools in which the students attended schools part time, and worked as apprentices part time, but not under union apprenticeship plans.[9]

In 1910, the Association took a definite stand that "industrial education must consist in skill and schooling and that these two parts are of equal importance—that they must be organically combined—and that each will co-ordinate and supplement the other." After pointing out that neither the ordinary public school nor the "average manufacturing shop or factory" will satisfy this need, they endorsed trade schools as a means of meeting the need and said that

> "such half time trade schools can be so organized and conducted that a superior high skill and a broader shop experience can be secured than the average manufacturing shop can give in its specialized modern factory, because there the object is to make money and not to make skilled, intelligent trained workmen." [10]

[8] *Ibid.*, p. 399, for careful summary of manufacturers' attitude in this period.
[9] *Ibid.*, Chap. V.
[10] *Ibid.*, p. 400.

Continuing, they declared that such a school must have well-equipped, productive shops, "where pupils are taught the best methods of rapid, high grade production by skilled mechanics," these products to be sold to make the school "largely self-supporting" and that such a school should be a substitute (for those aiming to become mechanics) for the high school and should be "persistently aiming to turn out working mechanics with superior mechanical skill and wide shop experience plus good mental training." [11]

> "Nothing" said the Manufacturers' Committee, "is so essential in a trade school as a prevailing shop spirit. Mechanical skill and shop experience must be fundamental. The shop spirit must underlie all and be the basis of all. . . . A trade school cannot be too practical." [12]

> "In this way a class of skilled American mechanics will be produced meriting higher wages than the average mechanic, and the greatest good will come to wholesome organized labor and to individuals through individual merit." [13]

In the earlier reports the Committee had consistently attacked organized labor and its apprenticeship ideas. By 1910 they argued that "rightly organized labor will approve simply because such industrial education will advance every interest involved in the life of the working man and even in a better life of the organization itself." [14]

The fundamental ideas underlying the union emphasis on apprenticeship and the employer emphasis on trade schools of the types recommended in 1910, was not far apart, except in the desire of the unions to have union ideas inculcated during the apprenticeship and of the employers to prevent it.

The American Federation of Labor first appointed a committee on industrial education at its twenty-third annual convention in 1903 though the interest of labor in "practical education" had been voiced by various unions at much earlier dates.[15] This committee considered only the work on manual training and technical education being done by the unions themselves. Committees appointed between 1903 and 1907 did not make any particular

[11] *Ibid.*, p. 401.
[12] *Ibid.*, pp. 402–403.
[13] *Ibid.*, p. 401.
[14] *Ibid.*, p. 402.
[15] *History of Labour in the United States*, Vol. I, pp. 284, 300, 301, 302.

progress, but in 1907 a resolution on trade schools was introduced and referred to the committee on education, which resulted in a recommendation by the committee that

> "the executive council give this subject its early and deep consideration, examining established and proposed industrial school systems, so that it may be in a position to inform the American Federation of Labor what in the council's opinion would be the wisest course for organized labor to pursue in connection therewith."

This resolution was adopted and the study of the subject undertaken. At the 1908 convention, the Committee on Education, after examining the information collected, recommended the appointment of a special committee of at least 15

> "to be composed of a majority of trade union members of this convention, to investigate the methods and means of industrial education in this country and abroad, and to report its findings, conclusions and recommendations to the next annual meeting of the American Federation of Labor."

At the next convention, 1909, President Gompers declared that the labor movement was in favor of true public industrial education but opposed to narrow, specialized training under control of private interests. The special committee, after roundly condemning systems of trade training, at public or private expense, which were anti-union or did not turn out competent workmen, recommended,

> "that there be established, at public expense technical schools for this purpose of giving supplemental education to those who have entered the trades as apprentices;" also schools at which pupils between the ages of 14 and 16 "may be taught the principles of the trades, not necessarily in separate buildings, but in separate schools adapted to this particular education, and by competent and trained teachers. . . .
>
> "In order to keep such schools in close touch with the trades, there should be local advisory boards, including representatives of the industries, employers, and organized labor." [16]

Trade schools did not increase in number as rapidly as expected and desired by the manufacturers. Experience revealed that the

[16] United States Commissioner of Labor, Twenty-fifth Annual Report, 1910, pp. 392–398; Proceedings of Annual Convention of American Federation of Labor, 1907, 1908, 1909.

educators whom the manufacturers declared mistaken in their view that schools could not prepare a boy adequately to enter industry as a skilled worker were in fact correct. Trade school training had to be followed by apprenticeship to turn out first class workmen. Attendance at trade school proved to be a more expensive way to learn a trade than apprenticeship. In addition there was a total loss of earnings for a longer period than was true of apprentices. The effort to turn out products to be sold in the market required that the pupils work on what could be sold rather than upon such work as best fitted them for their trades. The closer the school got to being a shop, the farther it got from being either a school or an apprenticeship. Furthermore, the trade schools were expensive to maintain compared with other types of education and at the time of their foundation there seems to have been little critical study of the needs of industry in relation to industrial training, so that boys were graduated from the schools without any adequate training for the jobs to which they were being sent.

There were a few trade preparatory schools for boys by 1910 which were intended to teach the general principles of trade groups, together with general cultural subjects, but these were too few in number to have offered much solution of the problem of industrial education and in any case depended for the best results upon an adequate system of full-time trade schools to complete the work begun in the preparatory classes.

Some technical high schools were supposed to train for higher posts in industry, doing in public schools what foremanship or improvement classes were intended to do in the corporations, but even within these schools adequate facilities for training seem to have been lacking and advanced work was seldom obtainable by students.

The important developments since 1910 have been in three fields; corporation schools, continuation schools, and state supervised apprenticeship.

Corporation schools, or classes maintained by firms, have usually three distinct purposes. Some courses are for the purpose of upgrading mechanics or artisans. Others are for minor executives. These are largely a development of the scientific management movement, with its stress on functional foremanship. But the first employee-training courses in private firms were apprentice-

ship classes, and began as early as 1872 with the Hoe and Company's formal school for training apprentices in printing. The Westinghouse Machine Company in 1888, the General Electric Company in Schenectady, and Lynn and the Baldwin Locomotive Works in 1901 were followed by the International Harvester Company in 1903 and a long series of railway apprenticeship schools founded between 1905 and 1915, when 108 were in existence. In 1913 the National Association of Corporation Schools was founded, with a membership of 37 schools and during the next five years the number grew to 146. The purpose of these schools was to develop the efficiency of both the individual and the industry as a whole. Ordinarily, the apprentices spent four hours a week in the school, under the instruction of teachers appointed from within the ranks of the corporation. These schools were more common in the East than the West, except the railway schools which were in the large cities along the lines concerned. This system of shop-training and supplementary school-work provided by the employer was limited in the firms concerned to a selected number of the total force of workers and arose directly from the needs of each industry. Some plants, however, maintained general schools for the mass of workers.

While the corporations claimed that their schools were the only adequate means of training employees for their special tasks, and that they were providing a sound substitute for the old apprenticeship system, it must be noted that only a restricted number of large firms found it profitable to undertake such a program, that the numbers reached within the firm were limited, and that however adequate the training might be from a purely technical point of view, it lacked by its very nature the peculiar virtues of a democratically administered education which a public system is expected to provide and which the old apprentice system is supposed to have provided.

Co-operative Schools

The co-operative schools were an attempt at a golden mean of privately administered shop-training combined with public school-training in general education and the theory and principles of mechanics, drawing, and elementary science. The essence of the co-operative school is the combination of instruction on the job, under true working conditions, with the continuation of

general school-training in such a way that the child is educated simultaneously both as a productive worker and as an intelligent citizen. The idea was first proposed by Dean Herman Schneider of the University of Cincinnati in the year 1906, and though his plan was at first rejected by the Bethlehem Steel Works, it was put into effect by twelve other industrial plants in Cincinnati. In 1908 a similar scheme was in practice at Fitchburg, Massachusetts, being a direct outcome of Dean Schneider's experiment. A three-year course was arranged, and indentures signed by both parents and the manufacturer, who agreed to pay wages at a settled rate. The United Shoe Machinery Company entered into an agreement a year later with the Industrial School in Beverly, Massachusetts, for the joint training of shoe workers in school and plant. Signed indentures were not embodied in this scheme, but it was administered by a board of industrial education and controlled by the City Board of Education on which manufacturers were represented. Other co-operative schools followed, in Spartansburg, South Carolina, York, Pennsylvania, and in New York. Sometimes a whole school was devoted to this part time education, as the textile school of Spartansburg, but more often manufacturers co-operated with high schools to take certain pupils on a half-time basis. In New York in 1916 there were 9 high schools and 287 firms co-operating in the training of 486 pupils. The plan has been used in many cities throughout the country.

The fundamental idea involved in this plan found more complete expression, however, in the Wisconsin system of state supervised apprenticeship and vocational education, described later in this chapter.

Continuation Schools

The continuation part-time public schools were as wholly distinct from the co-operative part-time schools as they were from the corporation apprentice schools. The continuation schools were created for the benefit of those children who received no part-time or whole-time education once they had left the elementary grade schools to go to work. Their primary purpose was less vocational than educational. Though some prevocational training has always been an essential part of their program, and a certain amount of trade-improvement teaching is offered, the most emphasized as well as the most convincing argument for their existence has

always been the provision of cultural and social opportunities for children who must "earn while they learn." Ohio was the first state to pass a law for continuation schools, in 1910. But the Ohio law was limited in its application and only permissive in its terms. In 1911 Wisconsin passed the first effective law. It imposed a compulsory duty upon cities of over 5000 inhabitants to establish industrial, commercial, continuation or evening schools on the petition of 25 persons qualified to attend. Where these schools existed all employed minors 14–16 were required to attend for five hours per week, including the apprentices covered by the recent apprenticeship law. At present, 1933, Wisconsin requires youths between 14 and 16 years of age to attend school half time and youths from 16 to 18 years for eight hours per week. The duty to observe the law is placed squarely upon the employer. New York and New Jersey both enacted laws in 1913 for continuation schools, but they were permissive only and less was achieved than in Massachusetts where the Boston Continuation School was founded in 1915. This school is still one of the models for this type of education and was then organized on virtually the same principles as it is today. It was divided into three divisions, general improvement, prevocational and vocational, in which shop work became progressively more important (25 per cent, 50 per cent, 75 per cent), citizenship remained at a steady 25 per cent, while the remainder of the time in the first two divisions was devoted to general education or to vocational guidance.

The Indiana law of 1913 provided continuation schools for apprentices and skilled juvenile workers but ignored the great majority of children in blind alley jobs or other unskilled occupations. In Pennsylvania a compulsory law was enacted in 1913, and by 1916 there were 33,628 pupils attending 8 hours each week. Their time-table was divided 40 per cent to academic subjects, 20 per cent to "fixed vocational subjects applicable to all industries," and 30 per cent to variable vocational subjects, so that general vocational intelligence should be improved while some opportunity was offered for specific industrial improvement. When the Smith-Hughes Act was passed in 1917, extensive experimentation with the education of the child worker had been done and it was clear that only laws like those of Wisconsin and Pennsylvania, which made such education compulsory, could meet the needs of this group of minors.

Under the terms of the Smith-Hughes Act of 1917 federal aid was

> "to be paid to the respective states for the purpose of co-operating with the states in paying the salaries of teachers, supervisors, and directors of agricultural subjects, and teachers of trade, home economics, and industrial subjects, and in the preparation of teachers of agricultural, trade, industrial, and home economics subjects; and for the administration of the Act and for the purpose of making studies, investigations, and reports to aid in the organization and conduct of vocational education."

The sum of $500,000 was appropriated for the payment of salaries to agricultural teachers and administrators, to be increased annually until it reached $3,000,000 in 1926, and to be paid to states according to the proportion of their rural population to the total rural population of the country. Similar sums were appropriated for trade, industrial, and home economic subjects as a group, and allotted to states according to the proportion their urban population bore to the total urban population of the country, with a proviso that a maximum amount of 20 per cent of each state's allotment should be expended on home economics subjects.

To be eligible for these grants the state was required to designate or create a State Board of not less than three members to co-operate with the Federal Board of Vocational Education, and provisions were made for states to accept the act in part or in whole according to their needs.

The Federal Board consisted of the Secretaries of Agriculture, Commerce and Labor, the Commissioner of Education, and three citizens to be appointed by the President, representative of manufacturing and commercial interests, agriculture and labor. The states were required to submit to this board their plans for vocational education before they became eligible for subsidies, such plans to show "kinds of vocational education for which it is proposed that the appropriation shall be used; the kinds of schools and equipment; courses of study; methods of instruction, qualifications of teachers; plans for the training of teachers."

The Act covered only industrial education below college grade to prepare for useful employment "persons over 14 preparing for a trade or industrial pursuit or who have already entered upon the work of a trade or industrial pursuit." The work had to be at

least 50 per cent practical, "on a useful or a productive basis" and the remaining time spent on subjects "given to enlarge the civic or vocational intelligence of workers 14–18." Evening schools had to be restricted to young workers of 16 years and over, while at least one-third of the appropriations for salaries of industrial teachers had to be used for part-time education of children already in employment.

The Smith-Hughes Act was intended to stimulate, improve, and expand the work already begun in the states rather than to start new departures in industrial education. Agricultural education had already progressed far with the stimulus of federal aid. Trade and industrial schools, on the other hand, were few in number. Commercial education was farther advanced than trade education. Apprenticeship had dwindled seriously. Its modern partial substitutes, the corporation schools and co-operative courses were important in local areas but not on a national scale. Day continuation schools were being tried in six states. The Smith-Hughes Act was intended to vitalize and facilitate the adequate training of the nation's workers. The value of the law is to be gauged therefore rather by the growth of vocational schools since the law went into effect than by innovations and new developments resulting from it.

In 1918 the total enrollment in all types of public vocational schools and classes organized under the provisions of state plans as approved by the Federal Board was 48,000. By 1920 this had increased to 260,000; in 1925 it was 740,000 and in 1929, 1,047,947 pupils. The number of pupils in these institutions directly benefited by the Smith-Hughes Act increased from 18,000 in 1918 to 563,496 in 1929. Of these 563,496 pupils, 331,413 were in the Continuation schools; 131,084 in evening classes, 64,838 in all day industrial schools, and 36,161 in part-time trade extension or trade preparatory schools. The tendency at present is for the *rate of increase* in the continuation schools to decrease because the age limits for compulsory education are being raised, and the compulsory education laws are being enforced better, causing more youths to remain in the ordinary elementary and high schools.

There is also a definite tendency on the part of employers to cease employing children. This is not characteristic of all industries, but of a great many. The combined effects of requiring children to remain in school until 14, 15, or 16 years of age; of

compulsory part-time attendance at school of working children up to 16, 17, or 18 years; and of the increasing legal burdens involved in the illegal employment of children (as in the provisions made in many states for additional benefits to such children when injured in industry); have made it less desirable to employ children in a wide range of occupations. The increasing mechanization of routine labor and rising labor efficiency requirements have still further decreased child labor.

Although the Continuation School enrollment increased from 15,000 in 1918 to 331,413 in 1929 there were still 17 states in which no provision had been made for the child worker to continue his education. These states are not conscious of the "vocational education" problem. Ten of the 17 states are in the South, two on the Atlantic, and four in the prairie districts of the Middle West.[17]

The conflict of interest between employers and labor on the question of apprenticeship has been mentioned. Early in the history of the labor movement, it became clear that the effectiveness of a labor organization as a bargainer depended in large part upon the extent to which the organization could control the numbers of workers competing for employment. Apprenticeship handed down from the middle ages as a system of labor training and of control over the practice of an art was seen to be of strategic importance in the control of the labor supply. Throughout the nineteenth century most unions insisted upon the necessity of regulating the ratio of apprentices to journeymen, and employers complained that union regulations were unjustly restricting the numbers of boys learning trades. Investigations of the matter reveal that while the union rules have perhaps unduly restricted the number of apprentices in particular times and places, it has been the unwillingness of employers to train apprentices which has been responsible principally for the decline of apprenticeship.

A survey of American trade-unions made by the United States Bureau of Labor Statistics in 1929 showed the membership of unions to be 4,331,251.[18] Of these unions, 56, with a membership of something like 2,000,000, required as a condition of membership some form of apprenticeship, varying from six months in certain

[17] Alabama, Arkansas, District of Columbia, Georgia, Idaho, Kansas, Louisiana, Maine, Minnesota, Mississippi, North Carolina, North Dakota, South Carolina, Texas, Vermont, Virginia, Wyoming.

[18] United States Bureau of Labor Statistics, *Handbook of American Trade Unions*, Bulletin, 506, November, 1929, pp. 3–4.

branches of the cigar making industry, to 5 years for pattern makers, metal workers, or stereotypers, but in the majority of cases, four years. The majority of unions which report a specific limitation of apprentices demand a ratio of 1:5 journeymen members, while an average of all reporting is roughly 1:7, though many national unions leave the ratio to be fixed by local agreement, which reduces the value of any estimate of the general average. The figure 1:7 would mean that the number of apprentices trained each year could be about 75,000. The possible number of apprentices was certainly about as large in 1920 as in 1929. The Census of 1920 reported only 19,323 boys and girls serving definite apprenticeships. It is evident that the full quota of apprentices allowed by trade-unions has not been reached in recent years, if ever.[19]

The most important development with respect to apprenticeship during the forty years was action by several state governments to aid in the development of apprenticeship through the co-operation of the public education authorities with the unions and with firms who would train apprentices. The Wisconsin apprenticeship law of 1911 was the earliest law providing for such co-operation, and the numbers benefiting under the scheme grew from 250 in 1912 to 2319 in 1928 and 3350 in 1930.

Professor Douglas' study of the ratio of apprentices to the number of persons employed in manufacturing as revealed by the successive censuses showed a decline from a ratio of 1 apprentice to 33 employees in 1860 to 1 to 62 in 1890; 1 to 88 in 1900 and 1 to 98 in 1910.[20] The 1920 Census showed a ratio of 1 to 87 and the 1930 Census 1 to 195. Only one-half as many apprentices are enumerated in the 1930 Census as in the 1920.[21] When one considers the weakness of unionism in the manufacturing field this steady decline in the ratio of apprentices could hardly be charged to labor restrictions.

Nevertheless, though the ratio of apprentices to journeymen had declined so much, by the 'eighties labor was much concerned

[19] The policy of the union regulating the number of apprentices seems to have started in the United States about 1850. For the story of the early efforts of the unions and the conflicts of opinion among their own numbers concerning the policy see *History of Labour in the United States*, Vol. I, pp. 590–595, 613n., Vol. II, pp. 82–84.

[20] Douglas, Paul, *American Apprenticeship and Industrial Education*, Columbia University, New York, 1921, p. 74.

[21] The 1920 Census enumerated 140,400 apprentices among 12,224,345 wage earners; the 1930 Census 77,452 apprentices among 14,110,652 wage earners. Fifteenth Census of Population, 1930, *Population*, Vol. IV, Table 13, p. 25.

about the number of apprentices and demanded uniform apprentice laws throughout the country "that the apprentice to a mechanical trade may be made to serve a sufficient term of apprenticeship from three to five years, and that he be provided by his employer with proper and sufficient facilities to finish him as a competent workman." [22]

There were three reasons for this fear: First, there was a stream of immigrant mechanics coming into the American labor market; [23] second, there were some trades, such as printing, cigar making, and some of the building trades into which apprentices and persons originally hired as helpers were coming in considerable numbers as mechanics; and third, there was a large number of child workers, not true apprentices, who were confused by the mechanics with the apprentices and looked upon as liable to become excessive additions to the labor supply in the different skilled fields.

The attitude of labor has not changed. The unions still consider limitation on the number of apprentices and learners an essential part of trade-union policy. But the unions have not opposed apprenticeship. On the contrary, every union has favored a good system of apprenticeship. The maintenance of high standards of workmanship means higher wages and a stronger competitive position for the craftsman. The union emphasis has been upon the careful selection of apprentices, thorough training, and an adjustment of the number of apprentices to the opportunities of employment in the trade.

Apprenticeship, where it survived, underwent certain changes in recent decades.

> "Modern apprenticeship differs from the earlier apprenticeship training in the fact that the theory of the trade is taught

[22] Report of First Annual Session of the Federation of Organized Trades and Labor Unions of the United States and Canada, 1881, p. 3.

[23] Douglas contends that the immigration factor was not as important in the situation as many writers have believed, pointing out that the proportion of skilled workers who came into this country was not much larger in the 70's and early 80's than between 1900 and 1910 (*op. cit.*, pp. 76–77). The present writer does not believe that this touches the heart of the matter. The fact is that throughout the nineteenth and early twentieth centuries the American employer depended upon Europe for a substantial proportion of his skilled labor and that American craftsmen had to protect themselves against too large numbers of apprentices because a part of the opportunities were taken by the immigrants. It must not be overlooked, either, that a great many men who obtained a partial knowledge of trades working in rural districts and small towns have migrated into the cities to compete with the skilled craftsmen there, and that this type of "immigrant" was as troublesome to the urban mechanic as the immigrant from foreign lands.

> to the apprentice by some special means of instruction, usually in school classes, rather than by being acquired by the apprentice through the individual interest and tutelage of the master of the craft. Moreover, in the old apprenticeship, theory and practice were taught together and were hardly distinguishable; but in modern apprenticeship, the theoretical element, because of the scientific aspect of industrial activity, forms a larger factor in the training. Any trade today requires special scientific theory, and therefore needs special effort on the part of the apprentice to acquire that knowledge." [24]

Many experiments have been tried in the United States in the effort to adopt apprenticeship to modern conditions. In Chicago the Painters District Council No. 14 founded an Apprentice Training School, which was partly supported by the Board of Education. Agreements were made with painters who employed apprentices that they guarantee three years' steady employment and that the apprentices attend the training school one day each week with pay. Under this scheme 275 apprentices were indentured. The use of the buildings was extended to other unions, and the Electrical Workers, Carpenters, Steam Fitters, Sheet Metal Workers, and Machinists soon maintained apprenticeship classes.

Cleveland, Ohio, developed an interesting and comprehensive apprentice-training plan within the public school system. It set up control over the whole flow of new entrants into the skilled trades, and by careful study of industrial conditions and needs the responsible administrators were able to judge the numbers of trained recruits needed by the major industries. No training program was undertaken unless the industry was willing to co-operate, and every phase of each craft was represented in an advisory committee which kept the Board of Education informed on trade conditions, policies, and needs. If the trade was organized the unions and the contractors were represented, and where the trade was unorganized employers and employees were represented. One year of prevocational training was required of each boy, or at least a period of try-out work before a definite objective was selected and an expensive program undertaken. In such occupations as the building trades the co-operative system was adopted, and no boy was entered upon his training until signed indentures were obtained from an employer agreeing to give full training in

[24] Scrimshaw, Stewart, *Apprenticeship*, McGraw-Hill, 1932, p. 3.

the practices of the trade and to allow school attendance for four hours each week.

In New York the demand for a better apprenticeship system among the building and skilled mechanics organizations led to the appointment of a Committee on Apprenticeship in 1925, and the development of apprenticeship schools or classes under the auspices of unions and employers. With the aid of architects, bankers, and supply dealers schools were built and administered by the New York City Apprenticeship Commission.

In 1925 Pennsylvania established a state-aided system of apprenticeship. It was begun in co-operation with nine industrial firms, through the Pittsburgh Personnel Association, and in three years the number of firms co-operating grew to 30, with 140 apprentices, while 50 boys had finished their courses and were employed by the companies which trained them.

Under this scheme the Pittsburgh public vocational schools performed the service of guiding likely boys into the trades through part-time co-operative training, and acted as feeders to an endless chain of apprentices. The usual length of training was three years, and the employer training was expected to provide employment for the fully trained apprentice.

In Boston the Superintendent of Schools was authorized in 1928 to maintain apprenticeship courses at the Boston Trade Schools for pupils over 16 on Saturday mornings during the school year. The carpenters and machinists had been attempting to enforce attendance at night school upon their apprentices but apparently without great success, but on the whole the demand for these apprenticeship classes came not from unions but from large firms who were willing to share in the expenses but did not wish to set up private training schools of their own.

It was the state of Wisconsin, however, which blazed the trail for a modern administration of genuine apprenticeship. By "genuine apprenticeship" is meant a method of training in which a learner, usually a minor, enters employment for a definite period of time under an express or implied contract to learn a trade, craft, or business. It recognizes that "not until there is a definite contractual relationship in the learning procedure can there be real apprenticeship." [25] The Wisconsin apprenticeship law was passed in 1911; and revised in 1915, 1919, and 1923.

[25] Scrimshaw, Stewart, *Apprenticeship*, p. 3.

At first the law required that all apprentices under 18 years should attend school five hours per week. An amendment in 1919 required the school period to extend throughout the first two years of the apprenticeship. In 1923, this clause was again revised to provide for a minimum of 400 hours of school instruction. This minimum of 400 hours for the total apprenticeship is devoted to academic instruction related to the apprentice's trade, and the apprentice is paid for this time at the same rate and in the same manner as for ordinary work in the shop. It was the intention of the promoters of this apprenticeship plan that the school instruction prescribed should be a minimum. Unfortunately, it has too often been made the maximum.

Overtime is not permitted until after the apprentice's eighteenth year, at which time the apprentice may work 30 hours per month in addition to regular hours, which in no case may exceed 55 hours per week.

The statute authorizes the Industrial Commission of Wisconsin to see that the agreements are equitable, and gives it the power to annul any indenture for good cause upon the application of either party. The Commission is charged with the administration of the law and is given "power, jurisdiction and authority to investigate, ascertain, determine and fix such reasonable classifications and issue rules and regulations, and general and special orders as shall be necessary to carry out the intent and purposes . . . of the statutes." This statement is the heart of the law. It is this feature which gives a modern, scientific character to the administration of apprenticeship.

The problem of administration has been in the main sixfold; *first*, to induce the employers to have apprentices in their employ, in other words, to show the necessity for apprenticeship; *second*, to show the parents and the public the value of apprenticeship; *third*, to obtain the co-operation of employees (fellow workmen); *fourth*, to obtain the personal interest of the individual apprentices; *fifth*, to see that such apprentices learn their trades in a *bona fide* way under the conditions demanded by the apprenticeship statute; *sixth*, to see that there shall be proper related academic instruction for the apprentices.

Obviously, it would not be much of a problem to persuade employers to take apprentices if they were allowed to have them upon their own terms. At the outset, therefore, it was necessary

to emphasize the fact that if a sound system of apprenticeship was to be developed, great care had to be exercised to see that the quality and the character of apprenticeship were upheld, rather than that apprenticeship be exploited. With a law of this character and principles so broadly laid down, it was necessary quite early in the work to establish certain requirements which would simplify and at the same time make more practical and effective the administration of apprenticeship. Although there had to be general uniformity in the system, specific requirements and classifications had to be worked out for the various individual trades. For example, the content of school instruction which the law required to supplement trade instruction had to fit the particular situation. A bricklayer apprentice, for example, does not need the same instruction all the way through as a compositor.

The law contemplated that while the theoretical trade instruction should fit the occupation, it had, at the same time, to be interwoven with other subjects necessary to promote the quality of education and general intelligence that public policy required.

In order to carry out the principles of the statute and at the same time to make the application of these principles practical, the Industrial Commission arranged for the appointment of a State Advisory Apprenticeship Board. This Board was made up of three employer members, three representatives of labor, and a representative of the new continuation schools. The Supervisor of Apprentices acted as secretary.[26]

[26] A detailed analysis of the Wisconsin law and its operation will be found in Scrimshaw, Stewart, *Apprenticeship*. Mr. Scrimshaw was the first state supervisor of apprentices in Wisconsin.

SECTION III

EMPLOYERS' POLICIES

CHAPTER XV

BIG INDUSTRY AND LABOR, 1890–1930

In the 1890's American industry was entering a new stage of its development. Geographically the last frontier had been reached. Natural resources no longer appeared inexhaustible. Profits due to exploitation of forests, minerals, and land were diminishing. The automobile age and oil millionaires were not yet on the horizon. Electricity's age of miracles was barely dawning. But the railroad, steamship, telegraph, and daily newspaper had prepared the way for an integrated national economy. The power age had arrived in manufactures and mining. Large manufacturing plants and great trusts had foreshadowed in the 'eighties and early 'nineties the coming of mass production and syndicated industrial control. The new country was changing into a modern industrial nation.

The depression of the 'nineties climaxed the post Civil War downward trend of prices. By 1897, the changes which had been occurring in the world gold situation started American prices upward. From 1897 to 1929, though interrupted by short depressions, particularly by the sharp down swings of 1907–08 and 1920–21, American business surged forward to record height after record height.

Many factors contributed to this great forward movement. Most fundamental were the upward movement of prices, the expansion of credit, rapid advancement in technology and the application of science to production, the continual appearance of new products, the advances made in industrial and business management.

The abundance of capital and the unlimited supply of immigrant labor on the one hand, and the rapid growth of both population and business on the other, called for an unprecedented amount of new construction. The automobile, radio, moving picture, and a multitude of other commodities changed the consumption habits and multiplied the wants of the nation.

The increased importance of large plants, and particularly of large aggregations of capital, was one of the outstanding features of the period. The development of large scale business began, of

course, before 1890. There were at that time many large plants in the United States, particularly in iron and steel. Corporations like the Standard Oil Company and the distilling and sugar trusts of the 'eighties presaged the trend toward large scale business organization. Attempts to mitigate competition by "pools" had occurred in many industries.

The Sherman Anti-Trust Law of 1890 was the public's answer to the efforts of the corporations to centralize control and obviate competition. But the law did not stop the process of consolidation. Corporation lawyers devised new forms of mergers and new devices for evading the Sherman Act. The New Jersey law of 1889 permitting holding companies was but one of many means of evading the Sherman Act.[1]

A number of important combinations were formed before the panic of 1893 temporarily halted the consolidation movement. The revival of prosperity in 1897 was followed by great activity in the formation of combinations. There were 149 important consolidations, with a total capitalization of $3,578,650,000, formed between 1897 and 1900.[2] The creation of the Bureau of Corporations by Congress in 1903, largely to enforce the Sherman Act, registered the growing fear and disapproval of the public. But in spite of the Bureau's efforts, mergers and holding companies continued to be formed, and in 1913 a committee of Congress enumerated 200 important consolidations. The period from 1915 to 1929 witnessed unprecedented activity both in mergers and in the centralization of control over apparently unrelated businesses through interlocking directorates and bank controls. The growth was not at a uniform rate. The consolidation movement shows marked cyclical movements, increasing in periods of prosperity and showing a marked decline during depressions. The National Bureau of Economic Research obtained records of 1268 mergers in manufacturing and mining, 1919–28; the numbers in individual years running as high as 173 in 1920, 207 in 1927, and 221 in 1928; and falling as low as 67 in 1922 and 1923. A total of 4135 concerns were merged, while 3114 were acquired by other concerns.[3]

[1] Sustained in *U. S.* v. *E. C. Knight Co.*, 156 U. S. 1 (1895).

[2] Sisson, Francis H., in *The Menace of Overproduction*, Hamlin Scoville, Wiley, New York, 1930, Chap. XV, p. 117.

[3] *Recent Economic Changes*, National Bureau of Economic Research, McGraw-Hill, New York, 1929. Compiled from Table 12, p. 185. Cf. for more detailed treatment Thorp, Willard L., *The Integration of Industrial Operation.*

The most conspicuous trend toward consolidation in the 'twenties was in the field of public utilities. Holding companies with vast networks of subsidiaries developed. Thorp reported that from 1919 to 1927 the number of public utility companies which "disappeared" increased steadily from 22 in 1919 and 15 in 1920 to 1029 in 1926 and 911 in 1927. In nine years a total of 3744 were absorbed by syndicates and holding companies of various types. Many of these were municipal plants, of which 201 were taken over by private syndicates in 1926 and 182 in 1927.[4]

Labor's interests were affected both by the consolidations and by mass production. The centralization of financial control and operating policy in the hands of financial magnates far from the job put decisions of far reaching importance to the persons employed in widely scattered plants in the hands of persons completely inaccessible to the workers. Impersonality ruled, rather than a sense of personal responsibility for steadiness of employment, wages, and working conditions. Though central executives of some of the great consolidations took vigorous steps to maintain decent conditions for their employees, central executives as a class made their decisions largely upon the basis of cost sheets, reports from minor executives, graphic analyses of business trends, and the prospective effect of their decisions upon dividends.[5] There was typically a lack of realization of the effects in terms of human life of decisions to shut down plants, reduce operations, cut wages, substitute machinery for labor, or throw orders to other plants. Business thinking overwhelmed the sense of employer responsibility to employees. Furthermore, the syndicate's, or large corporation's, local management was always "on the spot." Their efficiency was measured by their ability to turn out profits. Costs in each plant of the corporation were compared with those in the

[4] *Recent Economic Changes*, pp. 185, 187.

[5] A striking example of what accessibility to management means to the workers is recorded in the packing industry. Cattle reached the stockyards at night and seldom reached the killing floors before 9 o'clock, often not until later. The men were required to report for work at seven but got no pay until they started work. Each day they had to kill all the cattle which had arrived to avoid making the companies pay 50 cents per head for keeping the stock overnight. As a result, they went to work at seven in the morning and commonly worked late into the evening, but got only an ordinary day's pay. A committee of the men obtained an interview with the president of one of the companies. He said that he never had known that such conditions existed. From that date, overtime was abolished, the men started work at seven, and the company carried over any cattle not taken care of. (The writer cannot state whether or not this reform continued permanently.) Commons, John R., *Trade Unionism and Labor Problems*, 1905, p. 233.

others. If a local manager increased his costs for the sake of his workers he risked his job.

Impersonality and harshness in labor policies were unquestionably encouraged by the changes which occurred in the character of the American labor supply from 1890 onward and particularly between 1900 and the war period. The millions of immigrants who entered the country in the twenty years before the war were largely from southern and eastern Europe, and differed in race, appearance, and customs from the native American population. The attitudes both of employers and the American public were influenced by this change in the composition of the labor supply. The consciousness of difference diminished human interest in the immigrants. They were not only foreigners, but they were a different kind of foreigners, and such terms as "dago," "wop," and "hunky," popularly applied to them, evidenced the lack of any sense of identity with them on the part of the American public. In Mexico, where capital is foreign and the labor supply native, the government has enacted far reaching labor legislation to protect its native population against unfair and unkind exploitation by foreign capitalists. In the United States, where the capitalists were native and the laborers largely foreigners, and foreigners whom the native population looked down upon, there was no consciousness of kind such as obtains in a country like England where both the capitalists and workers are Englishmen. Under such circumstances, employers were less humane and the protection of laws and labor unions less vigorous than among a unified people. The American people could not have been aroused in the period of rapid immigration to support a program of social insurance for the protection of the wage earners as they supported the President's program of Economic Security in 1935. Twenty years of sharply restricted immigration had permitted the immigrants of the pre-war period and their children to be accepted as a part of the American nation by 1935. A big change occurred in the attitude of the public toward the foreign born between 1910 and the 'thirties. In the earlier period, the indifference and even hostility of Americans to the "new immigration" put the labor forces employed by the big corporations between 1900 and 1917 in a peculiarly defenseless position, while the growing impersonality of management of the larger corporations caused many of the companies to take advantage of their strategic position.

Labor found it almost as difficult to cope with the control over working conditions exercised by large employers operating individual plants as with the power of corporations owning a number of plants. Such employers were on the ground and apparently accessible to the workers. But their position was often well-nigh impregnable. In a large majority of cases, they successfully barred unions from their factories, mines, mercantile establishments, and financial institutions; defied the efforts of labor to participate in determining working conditions; and retained in their own hands an autocratic control over labor conditions which resulted in good conditions only to such extent as labor legislation, public opinion, and their own sense of decency and justice compelled. The co-operation of employers with each other in battling labor was almost as effective as centralized control over an industry.[6]

There can be little doubt that in the manufacturing field the consolidations reinforced resistance to unions and made unsuccessful most of labor's efforts to organize the industry. The large influence of bankers on the directorates of important mergers unquestionably intensified hostility to unions. Bankers as a class have had less understanding of unions and less sympathy for them than industrialists. Bitter as the opposition of a large number of industrialists to unions has been, there have been many whose attitude was sympathetic and who modified the intolerance of their group. This has been true of very few bankers.

Leadership in the anti-union policy was taken by the United States Steel Corporation at the time of its organization in 1901. That leadership has never been transferred. The Homestead Strike of 1892 was the Waterloo of unionism in the steel industry. The subsequent defeat in the 1910 strike completed the process of driving the union out of the steel mills. The effort to revive organization was defeated in the 1919 strike, which was doomed before it began. The corporation's publicity department had convinced the public that it was merely a strike of foreigners and radicals against American industry and the beginning of a concerted effort of "reds" to destroy the American industrial system. It is too soon to determine the permanent results, if any, of the government's effort of 1933 to force the steel industry to recognize unions.

The only big industrial units in which the unions have been able to hold their own have been the anthracite coal fields and the rail-

[6] E.g., cf. Vol. IV, Chapter X of this history.

roads. The electrical, public utility, meat packing, agricultural machinery, automobile, chemical, baking, tobacco, and other large scale manufacturing industries accepted the United States Steel Corporation's attitude and policy in dealing with unions, though none of them went through the terrific battles by which steel established its non-union policy. The Standard Oil Company differed from many of the others in its method of maintaining an "open shop." It has been from the beginning a considerate employer and has enjoyed a greater measure of employee loyalty than most of the large combinations.

> "That corporations break down the personal ties that formerly held together the employer and his men has long been recognized, but this incidental effect is insignificant compared with the direct effect of the consolidated corporations and syndicates of the past ten years. By combining several corporations into one, by operating several establishments of the same kind in different parts of the country, by placing them all on a uniform system of accounting which shows at a glance every month the minutest detail of every item of cost, the modern trust is going farther to alienate classes than did the simple corporation when it displaced the individual employer. The primitive competition of employer against employer is a children's game compared with the modern competition of manager against manager checked up every month by the cold statistics of cost." [7]

The large industries have maintained their non-union policy by three sorts of tactics. In the steel industry they resorted to relentless warfare, including the use of large numbers of armed guards, the domination of local governments so that the public police departments and sheriffs would be at their disposal; blacklisting of strike leaders and "agitators"; eviction of recalcitrant workers from company owned houses (and from those of landlords wishing to be in the good graces of the corporation); and domination of the press and platform in steel centers. With unionism broken, the steel industry resorted to the other two policies.[8] The individual worker was subjugated by keeping over him the fear of dismissal or demotion. He knew that spies were in the mills to discover those "disloyal" to the company. He knew that they were in the community as well, and that careless remarks in his own home, on the

[7] Commons, John R., "Is Class Conflict in America Growing and Is It Inevitable?" *American Journal of Sociology*, XIII, 757, May 1908.

[8] Cf. Fitch, John, *The Steel Workers*, Part III.

street, or in a saloon or lodge, might cost him his job.[9] Consciousness of unending surveillance and of the deadliness of the blacklist broke the spirits of thousands, and the unending inflow of immigrant laborers seeking work in the mills, with the steady process of labor displacement by new types of labor saving machinery, kept ever before them the ease with which they could be replaced.

The other policy worked in the opposite direction. Welfare work was used to tie the individual to the mills. It was not difficult to make the peasant immigrants being brought into the steel district each year by the thousands grateful for the "benevolence" of the great companies.[10]

Ruthless suppression of strikes and the use of spies were both used in many of the other large industries; the one on occasions, the other extensively and persistently. But the companies found cultivation of workers' good-will a more useful policy than efforts to suppress or intimidate. The International Harvester Company, the Bell Telephone Company, and the General Electric Company [11] were typical examples of concerns with well-developed welfare programs which assisted them in maintaining open shop situations.

The defeat of unionism in the meat packing industry was another episode of much significance in the history of large scale industry's labor policies. In the meat industry leadership came from the "Big Five" packing companies at Chicago. Instead of a consolidation, agreements between the five leading concerns in the business enabled the employers to present a united front. Unionism in the industry received a severe setback in the 'eighties,[12] and was again decisively defeated in 1904.[13]

The most important weapons in the hands of the packers were the minute subdivision of labor, the abundant labor supply made available by immigration, and the ability to sort out and eliminate those workers who showed some tendency to labor leadership. Professor Commons pointed out in 1904 that the division of labor grew with the industry, following the introduction of the refrigerator car and the marketing of dressed beef in the 'seventies. As the

[9] Fitch, *op. cit.*, Chap. XV.

[10] Cf. Chapter XVII "Personal Management," pp. 316 ff. for further discussion of welfare work.

[11] E. g., Ripley, Charles M., *Life in a Large Manufacturing Plant*, General Electric Company Publication Bureau, Schenectady, New York, 1919.

[12] Commons, John R., "Labor Conditions in Slaughtering and Meat Packing," *Quarterly Journal of Economics*, XIX, 1–32, 1904.

[13] Cf. Vol. IV, Chap. XI.

number of cattle killed per day increased larger gangs of workmen were organized; and the best men kept at the most exacting jobs.

> "It would be difficult to find (in 1904) another industry where division of labor has been so ingeniously and microscopically worked out. The animal has been surveyed and laid off like a map; and the men have been classified in over thirty specialties and twenty rates of pay from 16 cents to 50 cents an hour. . . . Whenever a less skilled man can be slipped in at 18 cents, 18½ cents, 20 cents, 21 cents, 22½ cents, 24 cents, 25 cents, and so on, a place is made for him and an occupation mapped out. . . . Skill has become specialized to fit the anatomy." [14]

Three objects were gained by this division of labor. Unskilled and immigrant labor could be utilized in large numbers, skilled men became more expert in their work and could be used as pace setters, which promoted the third object of division of labor, namely, speed.

The effects of large scale industry upon wages have varied with time, place, the corporation, and the strength or weakness of labor's bargaining position. It is obvious that the large industries have played an important part in the improvement of machinery, processes, plant organization, and shop management. These improvements have almost continuously increased the productivity of labor in the United States during recent decades. They have made it possible for industries to pay higher hourly wages, whether in the form of hourly rates or piece work earnings. Labor costs have been reduced and at the same time some improvement in wage earners' real incomes effected.[15] Subdivision of tasks so that they could be done by cheaper labor and the development of new machinery for handling, and better organized gang work, enabled the larger corporations to make effective use of the cheap immigrant labor supply. The deliberate importation of new cheap labor supplies by many of the large industries was notorious. When the labor was brought in from outside of the country the methods ordinarily used did not violate the immigration laws. The occasional employer who exposed himself to the heavy penalties of the contract labor law was simply a blunderer.[16] He lacked the finer

[14] Commons, John R., "Labor Conditions in Slaughtering and Meat Packing," *Quarterly Journal of Economics*, XIX, 1904.

[15] Cf. Chapters IV–V on "The Reward of Labor."

[16] Cf. Annual Reports of U. S. Commissioner of Immigration for reports of contract labor cases; also Abbott, E., *Immigration—Select Documents and Case Records*, University of Chicago Press, 1924, pp. 262–268.

technique by which the result was accomplished without the risks. A casual remark of a foreman to some one in his crew to the effect that there was going to be lots of work, or an unofficial news story allowed to creep into foreign language newspapers was sufficient to start many letters across the seas or to fellow countrymen in other sections of the United States, or to negroes in the South. Newspaper publicity of the wages and opportunities in the Detroit automobile industry moved hundreds of thousands of workmen from all over the country to Detroit. They did not need to have promises of jobs, neither the foreigners, the negroes, the southern mountaineers, nor outsiders generally. They just had to have expectations of jobs. Labor is so accustomed to risks that it will move across oceans or continents on hope and without guarantees. Skillful publicity, commonly without the appearance of publicity, brought millions of immigrants to American industrial areas in the years before the war, and millions of negroes and whites from rural areas after 1914.[17]

The subdivision of tasks into smaller and smaller units became so common in manufactures, and later in large mercantile, banking, insurance, and other types of businesses, that illustration would be superfluous. The meat packing, automobile, electrical, clothing, and many other lines of industry made it familiar to Americans everywhere. In some cases it resulted in higher earnings for particular individuals, but on the whole resulted in lower weekly earnings because the splitting up of tasks enabled lower grades of workers to do work that they could not have done if it had been combined with more difficult work. The immigrant, the southern negro, the country lad, and the young girl were able to win places in a system of minutely specialized jobs. The two things, new supplies of unskilled labor and the advance of labor and machine specialization, fitted together like a hand in a glove. They made possible mass production of high quality at low labor costs. They reduced the proportion of highly skilled, well paid jobs, and increased the number of semi-skilled jobs upon which something more than a common labor rate could be earned, not so

[17] For more detailed information concerning the inflow of these labor supplies cf. Report of United States Immigration Commission, Washington, 1911; *Report on the Conditions of Woman and Child Wage Earners*, 61st Congress, 2d Session, Document No. 645, Washington, 1910; Johnson, Charles, *The Negro in American Civilization*, Holt, 1930, Chaps. II, III; Balch, Emily, *Our Slavic Fellow Citizens*, Charities Publication Committee, New York, 1910.

much by skill as by speed. They facilitated wage cutting by making unnecessary decrees to reduce wages by some percentage and substituting the shaving of piece rates or tonnage rates at a thousand points without formally announcing a cut in wages. Slight changes in patterns, processes, machines, or other features of the job were easily made the excuse for reducing piece rates to the desired minimum. And the individual worker was helpless to prevent it.

CHAPTER XVI

SCIENTIFIC MANAGEMENT AND RATIONALIZATION [1]

American industrial management had not awakened in the 'nineties to the possible benefits which might accrue to it from radically improved shop methods. Large plants were still using the same methods of management within the shop as had obtained in earlier decades. Internal management had not improved *pari passu* with the growth of the industrial unit. Business executives were absorbed in problems of markets and prices rather than of internal management. As a class they were not alert to discover new ways of handling materials, laying out plants, using scientific research, and increasing labor efficiency. There was little discussion of management problems. The Technology Division of the New York Public Library found that prior to 1881 there were no American titles on management. In the twenty years 1881 to 1900 there were only 27, but in the following ten years 240, with a rapid increase thereafter. Though there had been several excellent engineering schools in the country since the Civil War period, schools interested in management came later. The Wharton School of Finance was established in 1881, the Babson Statistical Service about 1900, the Harvard School of Business in 1908. Owen D. Young is quoted as saying: "Is one to conclude that Harvard was fearful of an illiterate ministry of religion in 1636 but was not apprehensive of an illiterate ministry of business until 1908?" [2]

Management was not adequately systematized. Decentralized purchasing and storage with frequent overstock or understock of raw materials, accounting systems which were little more than a statement of profits and loss at the close of the year, and an absence of definite written instructions to executives and workmen, were the practices of the day. Establishments had grown larger, machinery more complex and intricate, jobs subdivided and often delicately interrelated, but the type of organization

[1] The writer wishes to acknowledge the valuable assistance of Miss Florence Peterson in the preparation of this chapter.

[2] Beard, Charles, *Whither Mankind*, p. 95.

remained the same. Each foreman and executive was the supreme authority over all the processes and men within his jurisdiction. It remained for an entirely different group of men to find the causes and remedies for the wastefulness and inefficiency within industrial establishments. Engineers discovered the almost unlimited possibilities of improving internal shop management.

The American Society of Mechanical Engineers, organized in 1880, originally confined itself to engineering technique in the mechanical sense. Gradually they realized that something more than machinery and physical equipment were needed to bring about desired production. They did not realize yet that the problem before them was the revision of management as an integrated whole. The existing type of general management was taken for granted; only some new methods and policies within the shop were seen to be necessary. The first need they saw was that of an incentive method of wage payment as a substitute for the direct supervision which was depended upon in the earlier small shops to make laborers work industriously. In 1886 H. R. Towne submitted a premium system which later became known as the Halsey-Towne plan.[3] The standard methods of wage payment heretofore had been the time, piece, and later the profit-sharing plans. The first seemed to encourage the worker to restrict output, the second often incited the employer to cut rates when employees began to earn more than he thought they should, while the third was not entirely satisfactory because the reward was not immediate and did not differentiate between the fast and slow workers, which spoiled the plan as an incentive to effort.

One member of the Society of Mechanical Engineers, Frederick W. Taylor, not only criticized all the prevailing methods of wage payment but recognized the problem to be much too complex and fundamental for any mere wage system to solve. Having been a worker himself, he was familiar with the practice of workers restricting output, both deliberately and unconsciously. But Taylor did not accept the customary view that this was due to the "natural cussedness of labor" which could be overcome only

[3] The Halsey-Towne plan uses a high average time in which a certain job has been performed in the past as its standard and then offers a premium of from one-quarter to one-half of an hour rate for time saved below this standard. The advantages of such a system are that, while it offers the workman an incentive to work faster, since the worker receives only a fraction of the increase he would get under a piece-work system, the employer does not have the same temptation to cut piece rates.

by driving, threats, or bribes. He decided that the cause and remedy lay with management.

> "At that date mechanization of industry was well under way, operations were becoming specialized, workers at machines were more scattered and more difficult to supervise, and planning, supervision and coordination had not developed with specialization. Experience with unemployment during the 'seventies had convinced workers that there was not enough work to go around, experience with the cutting of piece rates had caused distrust of management, and generally, morale and voluntary effort were low. Throughout American industry managements concept of a proper day's work was what the foreman could drive workers to do and the workers' conception was how little they could do and hold their jobs." [4]

After numerous and lengthy experiments in a machine shop in Philadelphia, Taylor was able by 1895 to announce to the American Society of Mechanical Engineers some of his conclusions. His paper, *A Piece Rate System*, with the cautious subtitle "Partial Solution of the Labor Problem," both described his differential rate system of piece work [5] and explained how he thought the "apparently irreconcilable" aim of labor to receive the largest possible wages with that of the employer to receive large output with low labor cost, could be attained.[6] Taylor was disappointed that the engineers overlooked the main thesis of his paper, that of scientifically determining standards by a time-study and rate-fixing department, while they gave most of their attention to the subordinate matter of the kind of piece rates he advocated. He and his associates continued their experiments [7] and by 1903

[4] The Taylor Society, *Scientific Management in American Industry*, H. S. Person, Ed., p. 2.

[5] The principle involved in the differential rate system was to establish as a standard the maximum possible output. If the worker accomplishes this standard he is paid at a certain rate for each piece (usually considerably less than the former straight piece rate); if the worker does not accomplish the standard a lesser piece rate is paid. Because of the increased output resulting from this incentive, a day's earnings under this system was supposed to total from 30 per cent to 100 per cent more than the average for the trade. Cf. Taylor, F. W., *Shop Management*, Harper, New York, 1912.

[6] Copley, F. B., *Frederick W. Taylor*, Harper, New York, 1923, Vol. I, p. 405.

[7] Associated with Taylor during this period were H. L. Gantt who worked out a new task and bonus wage system used in many "Taylor shops"; Carl G. Barth who, with the assistance of Mr. Gantt, invented a slide rule which enables a scientific and quick determination of feeds and speeds; Sanford E. Thompson, known for his time studies in the building trades; H. R. Towne, a pioneer in better management and wage systems. Later associates who, although working out systems of their own, nevertheless accepted much of Taylor's "principles" were Harrington Emerson and F. B. Gilbreth. The latter's chief distinction was his use of the motion picture camera in making time and motion studies and his studies in the bricklaying trade.

Taylor was able to set forth his system as a comprehensive whole in a paper *Shop Management* which he read before the engineering society.

Taylor attacked the problem from two angles, the job itself, and the preparation and supervision of the job. One of the chief hindrances to successful management is the inadequacy and incompetency of its leadership. This is due to "the difficulty of obtaining in one man the variety of special information and the different mental and moral qualities necessary to perform all of the duties demanded." [8] Taylor would solve this by reconstructing the "military plan" of an organization where all orders go from the manager down through superintendents and foremen to the workman to a functional type of management. Under functional management what was formerly considered to be the work of a foreman was divided into eight functions, three of which were transferred from the factory to the office.

In the Planning Department the route clerk, the instruction-card clerk, and the costs-and-time clerk were to see that each job with necessary materials was carefully routed, that definite and detailed written instructions were made out for each job and that the cost of materials and labor necessary for each job were carefully figured. In the factory the "gang boss" would take care of the work between jobs, the "speed boss" supervise the method of performance, the inspector look after the quality of the work, and the "repair boss" see that the machinery was maintained, cleaned, and oiled. In addition to these job control functions he provided for a disciplinarian to handle cases of insubordination, latenesses, absences, and other delinquencies. "This man should have much to do with re-adjusting the wages of the workmen. At the very least he should invariably be consulted before any change is made. One of his important functions should be that of peace-maker." [9] This disciplinarian would also serve as employment supervisor. "The knowledge and character of the qualities needed for various positions acquired in disciplining the men should be useful in selecting them for employment. This man should, of course, consult constantly with the various foremen both in his function as disciplinarian and in the employment of men." [10]

[8] Taylor, F. W., *Shop Management*, p. 96.
[9] *Ibid.*, p. 104
[10] *Ibid.*, p. 119.

In these plans, Taylor planted the germs of functional management at the beginning of the forty years under review. "Each workman, instead of coming in direct contact with the management at one point only, namely, through the gang boss, receives his daily orders and help directly from eight different bosses, each of whom performs his own particular function." [11] The foreman as supreme dictator over job and worker was replaced by set procedure, impersonal standards, and law; worker and foreman were both required to obey rules which governed the way the job should be done. The disciplinarian, precursor of the personnel manager of later years, indicated Taylor's appreciation of the special ability needed in the handling of employer-employee relationships. To use his own words, "No system or scheme of management should be considered which does not in the long run give satisfaction to both employer and employee, which does not make it apparent that their best interests are mutual, and which does not bring about such thorough and hearty co-operation that they can pull together instead of apart." [12]

The second line of attack which Taylor made on the management problem was that pertaining to the individual job and the worker on the job. The royal road to high wages with low labor costs was accurate time study, with the aid of a stop watch, of each unit of operation on each job. This accurate time study would reveal the one best way of performing each motion as well as the best physical conditions, machines, tools, materials, and arrangements necessary to its performance. Taylor's four basic principles of good management were:

> "(a) A Large Daily Task—Each man in the establishment high or low, should daily have a clearly defined task laid out before him. This task should not in the least degree be vague or indefinite, but should be circumscribed carefully and completely, and should not be easy to accomplish.
>
> "(b) Standard Conditions—Each man's task should call for a full day's work, and at the same time the workman should be given such standardized conditions and appliances as will enable him to accomplish his task with certainty.
>
> "(c) High Pay for Success—He should be sure of large pay when he accomplishes his task.
>
> "(d) Loss in Case of Failure—When he fails he should be sure that sooner or later he will be the loser by it." [13]

[11] *Ibid.*, p. 99. [12] *Ibid.*, p. 21. [13] *Ibid.*, pp. 63–64.

The specific method which Taylor advocated for accomplishing these ends was carefully to select a first-class worker for each job, find the maximum amount of work which this first-rate man could do, establish this as "the standard," and then pay all workers who reached this standard from 30 per cent to 100 per cent more per unit of work done (according to the type of work) than the wages per unit paid to workers who fell below the standard.

> "The task idea is emphasized with this style of piece work by two things—the high wages and the laying off, after a reasonable trial, of incompetent men, and for the success of the system, the number of men employed on practically the same class of work should be large enough for the workmen quite often to have the object lesson of seeing men laid off for failing to earn high wages and others substituted in their places." [14]

Phenomenal as seemed to be the results of the Taylor system in the shops where he installed it, it was accepted by a very limited number of financiers and employers. Inertia, the cost of installation, fear of loss of their jobs on the part of executives who owed their positions to family connections and "pull," prejudice of the "self-made man" against the newer generation of professionalized managers, opposition of the public who visualized large numbers of workers thrown out of employment, all played their parts.[15] Even the engineers paid little attention to the new movement until Taylor became president of the American Society of Mining Engineers in 1905–06.

Nevertheless, a number of companies employed him and his associates as consultants and were willing to adopt parts of his system.[16] Outsiders were gradually aroused to its significance. When the Harvard Graduate School of Business Administration

[14] *Ibid.*, p. 74.

[15] All these factors were in evidence when Taylor was introducing his system at the Bethlehem Steel Company. Illustrations of the attitude of the majority of the business men of the day is that of Schwab who, when he took charge of the Bethlehem works in 1901, threw out Taylor's whole system because he "saw no use whatever in paying premiums for fast work; much less in having time study men and slide rule men, 'supernumeraries,' as he called them." When as a consequence, the output of the shop fell off his subordinates surreptitiously reinstated the system. Schwab did not discover the deception, and thereafter conceded its value, until after a fire in the office destroyed the slide rules and time study records and production again took a sharp drop. Copley, F. B., *Frederick W. Taylor*, Vol. II, p. 160.

[16] In the case of none of the firms by which he was employed as a consultant were the circumstances such as to make it possible for him to work out a complete development of his system. The two plants, Tabor Mfg. Co. and the Link-Belt Engineering Co. came the nearest to accepting his system in its entirety. Copley, F. B., *op. cit.*, Vol. II, Chap. II.

was organized in 1908 it accepted the Taylor System as about the final word in management. In 1910 the Amos Tuck School followed Harvard's example and made the Taylor System the basic element of its management courses.[17]

It was the Eastern Rate Case hearings before the Interstate Commerce Commission (1910–11) which brought the ideas of Taylor and his followers to public attention and gave them the name of scientific management. The railroads of the United States operating East of the Mississippi and North of the Ohio applied to the Interstate Commerce Commission for large increases in freight rates basing their claims on the need for larger net incomes and asserting that this need was due to increased operating costs, resulting mainly from higher wages. They contended that the possibilities of further economies in operation had been practically exhausted.[18] The shippers opposed the increased rates and employed Mr. Louis D. Brandeis as counsel. Mr. Brandeis contended that in private competitive business economies in operation had been so great that large increases in wages had been possible with no rise in selling prices. He brought in as witnesses various managers and owners of companies which had installed the Taylor System as well as the engineers associated with Taylor.

One of these engineers, Harrington Emerson, stated that by the introduction of scientific management the railroads of the United States could effect an economy of $300,000,000 a year or not less than $1,000,000 a day. The inefficiency of labor alone under the existing conditions he estimated to be $240,000,000 a year.[19]

Although the Interstate Commerce Commission decided against the railroads, it did so mainly on the ground that, because of large earnings in the past, the railroads could afford to increase wages without increasing rates. The commission did not admit that it was influenced by the testimony on Scientific Management but it was the latter which caught the minds of the public. There followed a flood of loose talk and serious speculation concerning the probable effect of the new movement on the business and social life of the country. Ambitious business men who "desired to get efficient quick, or rather to make their employees get efficient

[17] Copley, F. B., *Frederick W. Taylor*, Vol. II, pp. 288, 298, 353.

[18] Brandeis, Louis D., *Scientific Management and the Railroads*, The Engineering Magazine Co., New York, 1911, pp. 1 ff.

[19] *Ibid.*, pp. 83–84.

quick" [20] installed those parts of the system which would bring to them immediate return with little regard to long time values or the benefits it was also intended to bring to the workers. Self-styled "efficiency-men," who understood very little of the basic philosophy and mental revolution involved on the part of both the employer and employee, rose up to apply quick remedies to the ills of business. In addition to the undeserved criticism which these charlatans brought upon the new movement, it was soon apparent that organized labor was ready to put up a vigorous protest on fundamental principles. A little additional analysis of Taylor's industrial relations philosophy will, perhaps, partly explain labor's reaction.

It must be remembered that Taylor believed himself the prophet of a new industrial régime in which justice, natural laws, and recognized harmony of interests between the employer and the employee would prevail. The distribution of the income of industry between the employer and the employee would be on a basis of absolute justice and determined by scientific methods according to fundamental laws. Industry would be governed by fact and law rather than by force, opinion, or arbitrary decrees of foremen, employers, or unions. Time and motion study would discover the easiest and most productive ways of doing each task; exact knowledge would be substituted for guesswork; every worker would be thoroughly trained and upgraded to the highest class of work of which he was capable; the reward of each individual would be based upon his own achievement, which would promote self-reliance, individuality, and energetic effort; and the arbitrary cutting of piece rates or alteration of a workman's task would be a thing of the past. Wages would be higher, hours shorter, employment more secure, justice and contentment dominant. Unions would be unnecessary since all shop problems would be settled by law and science. Every workman would have a full right to make complaints and have them investigated and settled according to the facts rather than the personal views of anyone. Strikes and industrial warfare would no longer occur because justice would prevail and there would be nothing about which to strike.[21] The fundamental harmony of interests which exists between em-

[20] Copley, F. B., *Frederick W. Taylor*, Vol. II, p. 387.

[21] The best analysis of the labor aspects of scientific management is Hoxie, Robert F., *Scientific Management and Labor*, Appleton, New York, 1915.

ployers and employees (i. e., that both profit if waste is eliminated and maximum efficiency is attained, provided that the product of industry is justly divided between them) would be attained by the rule of law and science, which would establish justice. The resentment which people have against the autocratic rule of foremen and employers would disappear as law replaced personalities as the agency of control.

Taylor was sincere. There can be little doubt of that. The fallacies in his own reasoning, even the engineering fallacies, were not apparent to him. He did not realize, seemingly, that work cannot be reduced to as exact, uniform, and repetitive procedures as he visualized. He did not appreciate fully the differences in *ways of working* as well as in quantities of output that are inevitable among human beings. Most important, he did not comprehend what the human beings in charge of industrial operations would do with such a system as he proposed. But all of these things were revealed rather quickly in the process of installing scientific management, even in Taylor's own installations.

He met immediate opposition in the shops where he installed time study. Instead of overcoming this opposition by convincing the workers that it would result in higher wages, shorter hours, steadier work, protected piece rates and elimination of grievances, he resorted to time-old methods. He either eliminated the troublesome workers or tried to circumvent group opposition by carefully picking one worker out of a gang and winning his co-operation to act as pacemaker by promises that he would receive a "high price" for his work. Two or three others would gradually follow and the recalcitrant or slow were replaced with newly hired men.[22]

While Taylor professed that his standards of output and wages were the irrevocable result of scientific study, he took advantage of the state of the labor market.

> "The precise point between the average and the first-class, which is selected for the task, should depend largely upon the labor market in which the works is situated. If the works were in a fine labor market there is no question that the highest

[22] Taylor's favorite illustration on method and results of piece work was his experience with the job of loading pig iron at the Bethlehem Steel Company. In this case one man out of eight in that gang was physically capable of accomplishing the standard. In the case of the girls inspecting bicycle ball bearings, his methods involved laying off many of the hardest working, and most trustworthy, girls because they did not possess the quality of quick perception followed by quick action. Taylor, F. W., *Shop Management*, pp. 46–56, 85–90.

> standard should be aimed at. If, however, the shop required a good deal of skilled labor, and was situated in a small country town, it might be wise to aim rather lower. . . . In one instance, in which the writer was aiming at a high standard in organizing a works, he found it necessary to import all of his men from a neighboring state before meeting with success." [23]

When working in a labor market in which an abundant supply of immigrant labor was present, he frankly appealed to the individual self-interest of each worker rather than attempting to win the co-operation of labor collectively.

Though Taylor sincerely believed that scientific management was just as beneficial to the worker as to the employer, he realized that it was in direct opposition to the traditional and universal practice of restriction of output and in conflict with the attitudes of organized labor. But his system, he claimed, would make restriction of output unnecessary by assuring the workmen that piece rates would not be cut [24] and that the continued prosperity which was sure to ensue through decreased cost of production would make it impossible for workers to work themselves out of jobs. It is questionable whether any part of Taylor's reasoning was as fallacious as this. Experience has confirmed labor's suspicions rather than Taylor's hopes.

During the early years neither Taylor nor his associates were called upon to install scientific management in any strongly organized shops. Taylor's attitude toward unions had always been that, while it was probably necessary under the old form of management for workers to organize and bargain for fair treatment and wages, he believed that unions would be unnecessary and a distinct handicap in a scientifically managed factory. His whole philosophy was based on the concept of the complete mutuality of interest of employer and employee. "I firmly believe that

[23] Taylor, F. W., *Shop Management*, p. 175.

[24] In evidence of the permanency of piece rates once established, Taylor usually cited that of the machinists at the Midvale Steel Works, one of his first experiences with time study. "It took considerable trouble to induce the men to turn at this highspeed, since they did not at first fully appreciate that it was the intention of the firms to allow them to earn permanently at the rate of $3.50 per day. But from the day they first turned ten pieces to the present time, a period of more than 10 years, the men who understood their work have scarcely failed a single day to turn at this rate. Throughout the time until the beginning of the recent fall in the scale of wages throughout the country, the rate was not cut." But, adds Taylor with seeming unconscious candor, the dull times in 1893 "rendered it necessary to lower the wages of machinists throughout the country. The wages of the men in the Midvale Steel Works were reduced at this time, and the change was accepted by them as fair and just." Taylor, F. W., *Shop Management*, pp. 82–83.

their interests are strictly mutual, and that it is practicable to settle by careful scientific investigation the proper award that labor should receive for the work which it renders." [25]

One of the strong defenses the railroad companies had put up before the Interstate Commerce Commission was that it would be impossible for them to install scientific management due to strong opposition of their union employees. That their contention was not groundless is proved by what happened a few months later. Taylor and his associate, Carl G. Barth, had been employed by the War Department to introduce scientific management in the several government arsenals. A year before, Major Hobbs had attempted to establish piece work at the Rock Island, Illinois, arsenal but was unsuccessful because of the political pressure the workers had brought to bear through their congressmen. When a similar attempt was made in 1911 at the Watertown arsenal the International Association of Machinists openly resisted,[26] this being the first definite action signifying that organized labor was resolved to fight scientific management.

The protest reached the ears of Congress and in August 1911, a special committee was appointed to investigate. This committee consisted of William B. Wilson, a former official of the United States Mine Workers and later Secretary of Labor, William C. Redfield, a manufacturer and later Secretary of Commerce, and John Q. Tilson who acted as umpire. Opportunity was given everybody to be heard, but, through fear of attracting the attention of labor leaders to their establishments, few manufacturers who had installed scientific management would appear at the

[25] Letter to Robert G. Valentine, Copley, *Frederick W. Taylor*, p. 418.

[26] The president of the International Association of Machinists sent the following letter to all his members: "Wherever this (Taylor) system has been tried it has resulted either in labor trouble and failure to install the system or it has destroyed the labor organization and reduced the men to virtual slavery and low wages, and has engendered such an air of suspicion among the men that each man regards every other man as a possible traitor and spy.

"The present effort on the part of Mr. Taylor is to have his system installed in the Government arsenals and navy yards. He has been so successful that the War Department has decided to give the system a trial. . . . We do not know what motives the War Department has in this matter, but we do know that this proposed staggering blow at labor must be met by determined resistance.

"The installation of the Taylor System throughout the country means one of two things, i. e., either the machinists will succeed in destroying the usefulness of this system through resistance, or it will mean the wiping out of our trade and organization, with the accompanying low wages, life-destroying hard work, long hours, and intolerable conditions generally." Copley, F. B., *Frederick W. Taylor*, Vol. II, p. 341.

hearings. Taylor defended his cause [27] but the labor group was too powerful, and on March 9, 1912, the Committee unanimously concluded that none "of the so-called scientific management systems have been in existence long enough to determine with accuracy their effect on the health and pay of employees and their effect on wages and low costs . . . your committee does not deem it advisable nor expedient to make any recommendations for legislation upon the subject at this time." [28]

Encouraged by this report the opponents of scientific management sought legislation making it an offense punishable by imprisonment or fine for any government official to make time studies or pay government employees any premium in addition to their regular pay. Although they did not succeed with this drastic measure they were able by 1914–15 to get riders attached to army, and navy and post office appropriation bills providing

> "That no part of the appropriations made in this bill shall be available for the salary or pay of any officer, manager, superintendent, foreman, or other person having charge of the work of any employee of the United States government while making or causing to be made, with a stop-watch or other time-measuring device, a time study of any job of any such employee between the starting and completion thereof of the movements of any such employee while engaged upon such work." [29]

During this year the United States Commission on Industrial Relations appointed a committee [30] to make a thorough investigation of scientific management in theory and in practice. They concluded, after exhaustive research, that while scientific management at its best had conferred great benefits on industry by its methods of using accurate knowledge, systematization, and coordination, it tended to "enormously add to the strength of capitalism" so that "neither organized nor unorganized labor finds in scientific management any adequate protection to its standard

[27] Copley (*Frederick W. Taylor*, Vol. II, p. 348) describes one of the hearings thus: "At the close of the testimony he (Taylor) was deliberately baited by labor leader opponents. . . . With flushed face he hurled denunciations and made accusations which in the nature of things he could not prove. For a time it looked as if blows would be struck. Chairman Wilson who had no part in the baiting, had to raise his voice to a shout to make himself heard and restore order."

[28] *Ibid.*, p. 349.

[29] U. S. Statutes at Large, Vol. 39, Part I, 64th Cong., First Sess., Ch. 417.

[30] Professor Robert F. Hoxie, Professor of Economics in the University of Chicago, acted as chairman, assisting him were Robert G. Valentine, Industrial Counselor, of Boston, to represent employment management, and John P. Frey, Editor of the *International Molders' Journal*, to represent labor.

of living, any progressive means for industrial education, or any opportunity for industrial democracy by which labor may create for itself a progressively efficient share in efficient management." [31] It was the opinion of the committee that the aims of scientific management and those of labor were "equally vital, equally indestructible, and equally uncompromising." [32] It was not until after the World War that organized labor and adherents of scientific management even began to think that their aims might be harmonized.

Since 1916, relatively little discussion has centered around scientific management. Its basic ideas and procedures have been so widely accepted and applied by so many thousands of engineers and managers that they have become commonplaces of American industrial practice. The rapid advancement of internal shop efficiency in the United States has attracted world-wide attention and caused observers to come from all parts of the world to study the American techniques.

[31] Hoxie, R. F., *Scientific Management and Labor*, Appleton, 1915, App. I.
[32] *Ibid.*

CHAPTER XVII

PERSONNEL MANAGEMENT [1]

Welfare Work

Welfare work, the percursor of functionalized labor management, antedated the Taylor movement but had its major development during the years when scientific management was developing. In practice it was frequently integrated with a more or less complete installation of scientific management, as in the Joseph and Feiss shops in Cleveland, but not necessarily so. Welfare management was defined by the United States Bureau of Labor Statistics as "anything for the comfort and improvement, intellectual or social, of the employees, over and above wages paid, which is not a necessity of the industry nor required by law." [2] It dates as far back as Robert Owen's experiment in England and the efforts of the cotton mills of Lowell, Massachusetts, to supervise the living conditions of their operatives in the first third of the nineteenth century. Although isolated experiments had been undertaken since the beginning of American manufactures, the practice was not general enough to attract attention until the closing decade of the nineteenth century.

Some firms tried to sugar-coat their scientific management by inaugurating welfare activities at the same time, but the majority who installed "welfare" policies were motivated by other reasons. Sometimes it was the expression of the philanthropic aspirations of an influential member of the firm, in which case the type of activity installed was likely to be more influenced by the predilection or hobby of the sponsor than by the needs or desires of the recipients. In other cases, the firms regarded welfare work as a good advertisement or perhaps a way of mitigating an unsavory reputation caused by shady business practices, long hours, or low wages. The desire to combat trade unionism was the motive at times, but welfare activities were characteristic of some companies which recognized unions.

[1] The author wishes to acknowledge the valuable assistance of Miss Florence Peterson in the preparation of this chapter.

[2] United States Bureau of Labor Statistics, Bulletin 250, February 1919, p. 8.

These varied motives and procedures brought forth a variety of results. The main establishment of a company might be the scene of practically every sort of betterment work while the workers in the branch plants received no such attentions. Factory girls were often forced to rest on the floor of washrooms because the rest rooms were for the office force only. Compulsory dental work at the employees' expense sometimes followed the gratuitous examination at the company's or the dentist's expense. The common towel and drinking cup were in use in factories which boasted of otherwise clean and pleasant surroundings, and expensive libraries were installed in factories where most of the employees could hardly read or write, many of them being immigrants.

While these incongruities existed, welfare management in general was characterized by neither these motives nor results. The reason most prevalent was the belief that whatever promoted the loyalty and interest of the worker was an industrial asset and therefore "good business." The National Cash Register Company, in an early company bulletin explaining the reason for their welfare work, said:

> "In 1892 registers worth over $50,000 were returned because of defective workmanship. We decided that more interest would have to be taken in our employes to make them better workers and we then started welfare work and found that it paid in a better product." [3]

American wage earners have been peculiarly susceptible to control and stimulation through welfare and personnel programs installed by their employers. A number of peculiarities of the American labor supply may partly explain this fact. Few large nations have as large a proportion of industrial workers who were raised on farms. A substantial percentage of the immigrant as well as the domestic labor supply came from the country. Inexperienced in industrial life and lacking the degree of class consciousness characteristic of urban labor, they were more easily impressed by employers' welfare policies and more easily won to a personal loyalty to their companies. The immigrants of the past forty years, largely different in race, language, and culture from the American population, were to a considerable extent isolated from American labor as well as American society, and responded naturally, often gratefully, to the apparent benevolence of their

[3] The National Cash Register Company, *Welfare Work*, Dayton, Ohio.

employers. The tendency of American labor, domestic and immigrant, to identify its interests with those of the middle class has been another factor in the situation. The fluidity of social classes in America has tended to make the individual conscious of his individuality rather than his identity with a social group. Company policies which promoted his own betterment, or promised to, had a strong appeal. Finally the weakness both of unionism and of socialism in this country left the great mass of American labor without attachments that would create a hostile attitude toward employers' efforts to win their good will. Programs which promised to add to the wage earner's life a little of the amenities of middle class life have had more appeal to American workers than to those of countries like England or Germany.

The types of welfare activities varied widely, depending largely upon the whims or knowledge of the employer. Medical service was frowned upon by some managers who thought that it tended to make employees exaggerate their ailments and to think too much about themselves. The custom of giving prizes for suggestions was believed by another to take the employee's mind off his work. Some firms discountenanced all activities which did not originate within the establishment; others sent envoys to other concerns to get additional information. Some employers wanted the entire welfare program to be conducted as company activities, other employers subsidized outside agencies to work with their employees, such as the Y. M. or Y. W. C. A.[4]

The most universal feature was the installation of lunch rooms where food was served at cost or, in a few cases, given gratis. Improving the exterior surroundings of the factory, planting shrubbery and gardens, in some cases moving out to the suburbs or country towns where more light and beauty were obtainable (and in many cases lower taxes or free sites), became more general. The first baths established in any factory in this country were installed by the J. H. Williams Company, Brooklyn, New York, in 1893. Ten years later dozens of firms considered bathing facilities a part of their welfare program, a number of them allowing their employees to bathe on company time. Rest rooms for women, smoking rooms for men, recreational facilities for employees and members of their families, libraries, club-houses, and athletic fields were some of the means used to keep employees "contented and loyal."

[4] Tolman, William, *Social Engineering*, p. 67.

Two phases of industrial betterment which were to become dominant activities 20 years later were almost unknown during the early years of welfare management, viz., medical treatment and safety work. In 1903, out of over 100 establishments in New York State which had adopted welfare programs, only two had first aid equipment with doctor or nurse in charge, although a few others had private physicians subject to call.[5] Probably a dozen firms in other parts of the country had resident doctors and nurses.[6] Safety and accident prevention work, other than fire prevention, was almost entirely non-existent up until 1910, though a few years before this the United States Steel Company, the Westinghouse Works in East Pittsburgh, and the Baldwin Locomotive Works had adopted systematic means to prevent accidents by careful machine inspection.[7]

The New York report of 1903 indicates that about 25 per cent of the "welfare plants" of that period had group insurance plans.[8] Most of these were Mutual Benefit Associations, participated in by both employees and employers to cover insurance against sickness, accident, and death. Many of them were similar in organization and provisions to those of a later date.

Administration of welfare work was as varied as the nature of the activities themselves. The National Cash Register Company was the first concern to concentrate their welfare activities under one department. The Westinghouse Air Brake Company and others followed.[9] In concerns which had large numbers of women employees, a "social secretary" looked after their welfare both on and off the job. The first factory club, an outgrowth of a dinner club organized by Hull House, was started at the Western Electric Company, Chicago, in 1894. The tendency was, after a few years' trial of welfare work run by the management for the concern, to urge the employees to participate in or even assume entire control of the work. In 1903 the "Men's Welfare Work League" of the National Cash Register Company was organized to direct their

[5] *Employers' Welfare Institutions in New York*, New York State Department of Labor Bulletin, 1903.

[6] Among them being the National Cash Register Company, Dayton, Ohio, The Cleveland Hardware Company, W. L. Doughlas Company, the Iron Clad Company of Brooklyn, the Colorado Fuel and Iron Works in East Pittsburgh. Cf. Tolman, *Social Engineering*, pp. 48–102.

[7] Tolman, W. H., *Social Engineering*, p. 112.

[8] *Employee's Welfare Activities in New York*, 1903.

[9] Shuey, E. L., "Factory People and Their Employers," Lentillon and Co., New York, 1900.

welfare activities, and given a generous allowance from the firm.[10] In very few concerns was both welfare and employment work under one person or department. This was a development of a later period.

Welfare management was never accepted by the majority of employers. Out of 37,194 firms in New York State in 1904, about 110 had one or more welfare features.[11] Of the 18 million wage earners in the United States in 1908 probably one and a half million came within the scope of welfare management.[12]

Many concerns which started out with extensive welfare programs curtailed them because of lack of response on the part of the employees. Said one prominent industrialist:

> "We have considerably curtailed our work along the line of industrial betterment . . . we are not quite so enthusiastic over it now . . . I feel perfectly convinced that, so far as we are concerned, it was a mistake to have started it, and, while we have never regretted that we made the experiment, we have satisfied ourselves that we shall never again make the attempt. . . . In other words, we shall buy our labor as we buy our material, and we are thoroughly convinced that those who sell their labor will give us as little as they possibly can for what they sell us without regard to whether or not we attempt to go more than our half of the way." [13]

While there is no doubt that many of the failures of welfare management were due to wrong administration and poor judgment concerning what form the welfare activities should take, the most serious handicap was the indifference and antagonism of labor. Too frequently was "welfare" combined with low wages, long hours, and speeding up for the worker to accept his employers' statement that he "had his workers' interest at heart." When employers hired social agents to investigate homes,[14] advise as to

[10] National Cash Register Company of Dayton, Ohio, Bulletin, 1904.

[11] *Employers' Welfare Institutions in New York State*, Bulletin, 1903. These figures are not exactly comparable. The total number of establishments includes all establishments manufacturing products to the value of $500 or more annually. The establishments having welfare programs include all concerns with 30 or more employees.

[12] This included all those engaged in trade, transportation, and manufacturing but excluded those in agriculture, and in professional and domestic service. The number under Welfare Management is given by Tolman, W. H., *Social Engineering*, p. 355.

[13] Tolman, William H., *Social Engineering*, p. 356.

[14] Before Henry Ford installed his Profit Sharing Plan in 1913 he employed 200 investigators "to gather facts and figures with reference to every employe of the company. They consulted every possible source of information—churches, fraternal organizations, the government, family Bibles, pass ports. Everything that

diet, family-budget, and personal conduct, workers felt that their private lives were being invaded and resented such paternalistic care. Organized labor was especially suspicious and antagonistic since they recognized in welfare management another weapon in the employers' hand to win workers away from their trade unions.

At its best, welfare management was the employers' more or less blind groping for a substitute for the former personal relationship between worker and employer in the small shop of a previous age. At its worst, it was an insincere attempt to buy the workers' loyalty for less than the price of a fair wage. With all its error and bungling, welfare management contained some elements of liberal labor policy and those features which responded to a real need were later reincarnated into another form of managerial policy, the modern policy of functionalized labor management covering the whole range of employer-employee relations.[15]

The war period, 1915–20, witnessed a rapid development of labor policies more closely related to welfare work and scientific management than to the autocratic methods of such corporations as the United States Steel Company. Employers faced two serious labor difficulties during the war period: first to procure a sufficient labor force, and second, to get the maximum amount of production out of the workers at hand. The reduction of the usual labor supply by military service, enlarged government service, war industries, and reduction of immigration, led employers to seek new labor markets and they sent out hundreds of agents who combed the country for untapped labor resources. As a consequence, large numbers of women and southern negroes, a large proportion of whom were entirely unfamiliar with factory work, were induced to become wage earners. These unskilled hands had to be taught and be taught quickly. The strange environment had to be made agreeable enough to keep them contented and willing to stay on the job. This involved some drastic changes in both the mental habits of the new workers and in shop conditions. The relative shortage of skilled labor resulted in the keenest competition among employers and caused them to offer inducements of every

would give the truth about a man was scrutinized." Investigation by *Detroit Evening News*, November 24, 1914.

[15] Cf. for a modern survival of the earlier type of welfare work, Herring, H. L., *Welfare Work in Mill Villages*, University of North Caroline Press, Chapel Hill, North Carolina, 1929.

Cf. for further details on welfare work, Boettiger, Louis A., *Employees' Welfare Work*, Ronald Press, New York, 1923.

kind to keep their working forces as stable as possible. The traditional club which the employer had held over the heads of the workers—the threat of discharge—could not be used. Some substitute was needed in the employer-employee relationship to take the place of fear of loss of job. Added to this was the rapid rise in wages which, in some of the old industries at least, could not be absorbed immediately in increased prices of products. Management was being forced to a more efficient utilization of labor.

The general situation was influenced, too, by several legislative actions. During the three or four years previous to the war, many states had passed Workmen's Compensation Acts which placed the responsibility of accident prevention directly on the employer. More stringent protective legislation for women and children, stricter safety laws, and more careful state inspections of work places brought added difficulties in employment methods and working arrangements.

Co-existent with these new problems stalked the specter of general labor unrest and group rebellion expressed in the numerous strikes of the period. More appalling to many employers than a temporary shut-down of the factory were the inroads which the trade unions were making. Organized labor, enjoying an unprecedented prestige and sympathy at Washington during the war, was having its innings and many employers were willing to go to any length to circumvent union organization within their plants. The pressure of these new problems and the accentuated stress of long-standing difficulties forced management to adopt new forms and methods of labor control.

Steps were taken in a wide range of industries to improve welfare activities. They were systematized better, and extended to meet the exigencies and challenge of war conditions. Shortage of housing facilities led many concerns to build "company houses" and dormitories for their employees. The need for labor conservation, together with the popularizing of medical examinations and sickness prevention as a result of army examinations, and the pressures of the new workmen's compensation laws encouraged employers to employ plant doctors and visiting nurses. Seeing the effectiveness of organized community singing, dances, and athletic contests among the soldiers and war workers, employers adopted similar programs. Practically every shop and store of any size had some

form of group recreational activity. Employee's magazines (internal house organs) sprang up by the score [16] and the "long service employee" and "quality-worker" were played up with pictures and flattering write-ups in the employees' magazines, as well as with badges and banquets.

Accepting the challenge of the "Americanization Movement" some of the larger employers set up comprehensive educational programs, even paying their foreign born workers regular wages while attending these classes. The placing of women in departments and on jobs where men had worked formerly necessitated improvements in physical surroundings which, when once established, became the norm even when women were later released. Many of these improvements were required by law but employers, anxious to get and keep women during the shortage of labor supply, frequently went beyond the legal minimum. Thus, installation of electric fans, more conscientious cleaning of windows, floors, and toilet facilities were some of the minor, albeit important, improvements in shop conditions.

Numerous bonus and group insurance plans as a supplement to regular wages were the more direct means used to induce employees to report for work promptly and regularly. Service premiums were offered to discourage drifting from job to job. Profit sharing and employee stock purchasing received a new impetus, the former prompted less by a newly awakened generosity than by a desire to circumvent the payment of war surtaxes. Efforts to give the workers a modicum of self-government resulted in numerous attempts at employee representation plans, some of which were little more than employee athletic committees. Others, however, took some part in adjusting of grievances and determining working conditions.

Personnel Management

The war years changed radically the situation in the American labor market. Previous to the war, with the large inflow of im-

[16] The earliest employee magazine was issued by the National Cash Register Company in 1890 and was called *The Factory News*. Very few concerns followed their example until the World War. A study made in 1921 showed that 91 per cent of the employee magazines then published (total of 334) were started during the years 1917 to 1920. The effect of the depression is revealed by a study made in 1922 which showed that 30 per cent of the magazines published in 1920 were discontinued during that or the following year. After 1921 the employee magazines slowly increased in number again. National Industrial Conference Board, *Employe's Magazines in the United States*, New York, 1925.

migrants, American employers hired labor in a market where there was always a plethora of sellers. During the war the situation was reversed. A seller's instead of a buyer's market existed. The buyers of labor found it expensive, harder to get, and easy to lose. Personnel management was seized upon to reduce labor turnover, improve labor selection, improve the training of workers, and increase per capita productivity.

The first step was the centralization of the function of hiring and firing in the hands of a professional employment personnel department. Under the old foreman system a worker's chance to get a job and to keep it depended entirely upon the whim or personal liking of his foreman. The latter, often understanding more about machines than human nature and aptitudes, was prone to wrong selection of workers for the jobs at hand. Likewise knowing more about manufacturing than about teaching methods, the foreman was frequently incompetent to train new help properly. The training process was often too long as well as costly, and frequently a failure. Even more serious than these negative defects in the labor management set-up were the temptations which autocratic control of the job gave to the foreman. Momentary flare-ups of temper would result in discharge; fees and presents to foremen in payment for jobs were not uncommon; [17] and the practice of foremen building up personal "machines" independent of the management was frequently discovered when a foreman was discharged only to have a large number of his department leave with him.

The war years saw industry meeting these problems by setting up a new division in functionalized management, the labor department or personnel department. This was not a novelty. A few scattered firms had separate departments for hiring, training, and promoting the welfare of their workmen. But says Meyer Bloomfield, writing in 1920:

> "You may ransack the literature of industrial management written ten years ago and you will not find the phrase 'employment management' used or the work of the personnel or employment supervisor mentioned. No college or university school of business training of that day dealt with the problem. And the reason for this is simple. Neither the work of employment management nor the functions of an employment executive were recognized in the scheme of industrial organization as it was commonly carried out.

[17] Cf. Ohio Industrial Commission, *Job Selling*, Bulletin, 1916.

"This is not to imply that industrial managers were unaware of what a sound plan of personnel organization meant to industry. As a matter of fact, there were corporations here and there, engineers, and business executives who had for a long time clearly perceived that a new function was developing in business administration, and moreover, had taken steps to put into practice their perception of this new function. There were men filling various posts on the executive staff who were daily demonstrating the best principles of employment management.

"But industry as a whole, a decade ago, had either no idea of the new service which needed incorporation in the management plan or had not seriously addressed itself to the task. All this is now changed. There is a growing and an important literature on this subject, as the present volume so effectively proves. The profession of employment manager has come into its own. Colleges give courses of training for it and every enterprising employing organization features its employment work.

"This change has been most beneficial both to employer and employed, and it has brought a new human note into industry. From the most hard-hearted business viewpoint, management has everything to gain from a sincere and intelligent attempt to deal with the problem of building up and maintaining the working force in the light of principles and experiences which the movement of employment management is systematizing. From a social or civic viewpoint the movement has as its prime motive the conservation of human energies to the end both of industrial efficiency and of human satisfaction through work." [18]

In the new type of management the employing was not only centralized but selection was as scientific as was possible in those youthful days of psychological and aptitude tests. More or less thorough and impersonal investigation of discharges and quits acted as a deterrent to the hasty ill-advised action of both foremen and workers.

Thus the war period witnessed a distinct movement toward both expansion and integration of industrial relations activities. The former unsystematized welfare work, decentralized hiring and training of employees, discipline control, job standardization, and time-study tended to be brought under the supervision of one executive who came to be known as the "personnel manager." Personnel management, however, was much more than the coordinating of the miscellaneous activities conducted under "welfare" and "scientific" management. Scientific management was

[18] Bloomfield, Daniel (ed.), *Employment Management*, H. W. Wilson Co., New York, 1920, Introduction, p. 1.

based on the assumption that labor was not a commodity—its value determined by demand and supply—but that each laborer is a machine, his value determined by the quantity of his production.[19] Welfare management recognized that the laborer was more than a machine—that he was a social being with a desire for self-expression—but it assumed that he was a child whose work and play must be arranged by a kind paternalism. Personnel management recognized the complexity of industrial relations—that there is no such thing as *the* labor problem but that each day and each situation brings new and different difficulties to be solved—the attempts to approach each problem with a scientific attitude and treat it as an integral part of management, the personnel manager acting as adviser and co-ordinator but every person in the organization sharing in the responsibility for proper handling of labor matters.

It is difficult to determine how far the new type of management was accepted and practiced during the war period. The movement represented more an ideal, a goal, than an accomplishment with definite, codified procedure. There were, consequently, many degrees and variations even among the firms who aspired toward its realization. The type of work varied no more than did the names applied to those in charge of its performance: Employment Manager, Personnel Manager, Industrial Relations Secretary, Employees' Service Director, Labor Manager—even the term Welfare Manager was used in spite of its besmirched connotation. Efforts to define and professionalize the new position culminated in the formation of the National Association of Employment Managers.[20] One thousand industrial concerns were enrolled in this Association and the enthusiasm displayed at their several conventions was indicative of the hopes and aspirations of this new variant of industrial organization.

Then the war and post-war boom collapsed and the glutted labor market of 1921 apparently removed the *raison d'être* for this new function in management. In their frantic efforts to reduce production costs, business executives immediately attacked those

[19] Commons, John R., *Industrial Goodwill*, McGraw-Hill, 1919, Chap. II.

[20] The National Association of Employment Managers was a federation of about ten cities of employment managers' associations as well as representatives of individual firms. It held three annual conventions and was then succeeded by the Industrial Relations Association of America (1919–22) which undertook to broaden the scope of the Employment Managers' group.

recent innovations which had a few months before seemed so necessary and worth while. In a considerable number of concerns, personnel managers were dismissed, shop committees collapsed, service and attendance bonuses were withdrawn, welfare activities were discontinued. The employer again had the whip-hand of a scarcity of jobs. Penalizing and threat of discharge again took the place of rewards and incentives. It was evident that the philosophy of personnel management had not been accepted fully nor its real significance understood.

The fault was not entirely with the employers. The new profession had necessarily enrolled a large number of persons who were deficient both in business experience and in training for this kind of work and many had failed to meet the challenge of the task. Some had played around on the fringe of the industry's basic tasks instead of making themselves a part of the warp and woof of the business organization—they had been more concerned with employee activities than with management-employee relationships. They had failed to come to grips with the vital matters in the industry's labor problems and the workers' interests. Others were too ambitious—in their single-track enthusiasm they over-centralized and over-elaborated their jobs, bringing resentment and criticism from the production and managerial staffs, particularly from the men who felt that they were being robbed of prerogatives necessary to the efficient management of their departments. Many top executives and bankers questioned the costs entailed in this additional "overhead." The net result was that in 1920–21 hundreds of personnel managers were forced to join the ranks of the unemployed; personnel management as an integral function of business management was discarded and discredited in many firms.[21] "To many, both inside and outside the industrial relations movement, it seemed that modern methods of personnel administration had received a blow from which there would be no recovery. And in some quarters there was no evidence of any particular sorrow." [22]

But the personnel movement was not entirely deflated. The number of personnel departments which were retained was perhaps more surprising than the number which were closed out.

[21] Cf. Boettinger, L. A., *The Historical Development of Welfare Work*, Ronald Press, New York, 1923.

[22] Cowdrick, Edward S., *Personnel Practice in 1930*, American Management Association, Bulletin, 1931, p. 1.

During the 'twenties many new departments were started and old ones given more important duties in connection with the training and upgrading of employees, supervision of workmen's compensation, health activities, development of dependable labor supplies, and the sifting out of the less desirable workers.

Significant changes occurred after 1921 in the authority of personnel managers. Discharge in most companies again became the exclusive prerogative of the foreman although in some cases the personnel director retained the right to transfer the evicted worker to another department in the plant. Preliminary selection of labor continued to be made at the central employment office in plants where such offices were retained, but the factory executive was given the final word on acceptance. Labor policies and regulations suggested by the personnel director continued to receive serious consideration in many organizations, but the line organization recovered the actual control of labor policy in nearly all companies.

The reduction of the authority of personnel directors was not a definite loss to good personnel procedure. All of the executives became more conscious of the personnel functions in their hands and the quality of the work of the line executives was improved. A worker is not now apt to be promoted to a foremanship simply because he is the best or fastest mechanic—he must also be a good personnel man. The ever increasing popularity of foreman and executive training courses, provided and financed [23] by the companies, and the increasing number of higher executives who participated in such organizations as The American Management Association [24] evidenced an increased interest of line executives in personnel problems. The tendency was to carry on personnel activities as a vital part of line management, not as a separated

[23] A survey by the U. S. Chamber of Commerce gave the number of courses for foremanship training as 105 in 1925 and 933 in 1927. Dennison, Henry S., in *Recent Economic Changes*, National Bureau of Economic Research, New York, 1929, p. 520. The Y. M. C. A. saw the need for professionalizing the status of foremanship and was instrumental in 1925 in organizing the National Foremen's Association.

[24] The National Personnel Association, which was a merger of the National Corporation Training and Industrial Relations Association of America (formerly The National Association of Employment Managers), changed its name in 1923 to The American Management Association in recognition of the fact that personnel is a problem of general management. In 1930 it had over 4300 members representing 1500 industrial and commercial corporations, 100 trade associations and over 100 university professors. Lange, W. H., *The American Management Association and Its Predecessors.*

function. It became the function of the personnel director to suggest, assist, and facilitate. " In many companies the pendulum swung too far, and there was a large body of subject-matter on Personnel which was neglected. The American Management Association was so impressed by this fact that in 1929 they added a Personnel Division to the other five divisions of their . . . interests." [25]

The reduction in the number of personnel departments in 1921 was followed by the re-establishment of many departments during the 'twenties and the creation of new ones, with new personnel, a new definition of functions, and improved procedure. In 1930 it was apparent that there had been no general abandonment of modern industrial relations policies, and that many concerns had materially expanded their programs after 1921. Most of the competent personnel people of the war period got back into personnel departments and industry manifested a more serious interest in labor administration than during the years before 1920.[26] The depression of 1930 again resulted in many departments being closed out, but it was noticeable at this time that in most concerns the personnel departments were not dispensed with until the depression had continued for two or three years and the position of the companies was becoming desperate.

A study published by the National Industrial Conference Board in 1929 showed that the growth of personnel departments was principally in the larger plants. Information from nearly 4500 plants with over 4,000,000 wage earners revealed that 34 per cent of the concerns with 250 workers or more had personnel departments but only 2½ per cent of the plants with less than 250 employees.[27] This would indicate that about 12 per cent of the total number of wage earners in manufacturing establishments in 1928 came under this supervision of personnel departments.[28]

[25] American Management Association, Bulletin, Presidential Address No. 7.

[26] Cf. Cowdrick, Edward S., *Personnel Practices in 1930;* Willits, Joseph H., *What's Ahead in the Light of Ten Years' Progress*, American Management Association, New York, 1931; Dennison, Henry S., Management, Chap. VII of *Recent Economic Changes*, National Bureau of Economic Research, New York, 1929.

[27] National Industrial Conference Board, *Industrial Relations in Small Plants*, New York, 1929, p. 20.

[28] Calculated from figures given in the Census of Manufacturers in 1923 which gave the total number of wage earners as 8,778,156, 4,102,048 of whom worked in plants employing from 1 to 250 workers, 4,676,108 in plants of more than 250 workers. Since the total number of wage earners in manufacturing industries was less in 1928 than in 1923, the per cent given above is somewhat high.

According to a survey made by the N. I. C. B. among 175 companies regarding lay-off procedure during the 1927 depression, 36 per cent of the companies relied

Further evidence of the increased interest in labor management is seen in the wealth of current literature on the subject, in the response of the universities to the demand for trained personnel directors, and in the willingness of an ever-increasing number of companies to keep and share labor turnover data. During the 5-year period, 1919–24, there were 2750 titles by almost 1400 different authors on personnel administration problems.[29] This was in contrast to 240 titles the first ten years of the century, and a sharp reduction in titles during the period after 1924. The organization of the Personnel Research Federation in 1921 with its bi-monthly "Personnel Journal," represents the first co-operative effort to bring about an exchange of research information relating to personnel.

The United States government arranged during the war for the establishment of special courses in Employment Management at various universities. The first of these was at the University of Rochester in 1917–18. They were generally concentrated courses of six weeks intended for employment managers already in the field. Taking this cue, other universities began to install courses on personnel administration or labor management in their regular curricula. At least 30 colleges and universities now offer such special courses—with the result that business now has available persons with some specialized training for this kind of work.[30]

Many concerns started at that time to keep labor turnover records and several universities [31] co-operated in the gathering and disseminating of comparable data. In 1926 the Policyholders' Service Bureau of The Metropolitan Life Insurance Company put this work on a national basis and soon had about 350 employers in 22 states reporting to them.[32] The service proved so useful that in July 1929 the United States Department of Labor took over

entirely upon their foremen's judgment as to whom should be laid off, 4 per cent held their personnel department solely responsible, 30 per cent made their personnel and line executives jointly responsible, the remaining 30 per cent depended upon combinations of line executives (superintendent and foreman, etc.) to pass final judgment. National Industrial Conference Board, *Lay-off Procedure*, 1930, p. 53.

[29] Rossi, W. H., and Rossi, D. I. P., *Bibliography on Personnel Administration*, 1925.

[30] American Management Association, *Personnel Administration in College Curricula*, Bulletin.

[31] Brown University is co-operating with about 45 employers of Rhode Island; the University of Pennsylvania, Ohio State University, and the University of Michigan with employers in their respective states.

[32] Metropolitan Life Insurance Company, Executive Service Bulletin, Vol. VII, No. 9.

the task of collecting and publishing this turnover data. By January 1930, 450 concerns with 750,000 employees, were co-operating, and separate indices were started for the automobile, boot and shoe, and cotton manufacturing industries.[33] Interest in labor turnover was one of the few labor problems which suffered no abatement after the war enthusiasm had subsided.

During the war years, labor turnover was the major problem which caused employers to resort to specialized administration of labor relations. A hat company as early as 1898 paid a special bonus to steady employees.[34] It is probable that other employers were giving attention to the matter. In 1909 Professor John R. Commons reported a study of a machine shop in Pittsburgh which "in a single year of prosperity (1906) hired 21,000 men and women to keep up a force of 10,000." [35] The federal government made special studies of labor turnover in the iron and steel industries in 1911.[36] In 1914, Magnus W. Alexander of the General Electric Company focused the attention of industry upon the subject by a now famous address to the National Machine Tool Builders Association,[37] in which he showed that in a group of twelve factories in the year 1912 "about six and one-third times as many people had to be engaged during the year as constituted the permanent increase of force at the end of the period." In 1919 Dr. Sumner Slichter published his *Turnover of Factory Labor*, which is the most comprehensive study of factory turnover up to the present time. Slichter made a field investigation of turnover and labor management in 105 factories during the years 1912–15. He found the average rate of labor turnover in them to be almost 100 per cent, varying from 348 per cent down to 8 per cent. These were followed by many additional studies. There was a voluminous literature on the subject by 1920.[38]

No other finding concerning industrial relations so profoundly affected employers' personnel policies from 1915 to 1920 as did the facts published concerning labor turnover. Industrialists began

[33] *Monthly Labor Review*, February 1930, XXX, 335.

[34] *Ibid.*, XXIV, 499.

[35] Commons, John R., "Charities and the Commons," *ibid.*, XXI, 1054.

[36] Senate Document No. 110, 62d Congress, First Session, *Report on Conditions of Employment in the Iron and Steel Industry in the United States*, Washington, 4 volumes, 1911.

[37] Reported in many places; cf. *American Industries*, August 1915, pp. 918 ff.; also United States Bureau of Labor Statistics, Bulletin No. 227, pp. 913–927.

[38] Cf. bibliography of 189 references published by U. S. Bureau of Labor Statistics in April 1927, *Monthly Labor Review*, XXIV, pp. 188–203.

to see that labor turnover was an index of the dissatisfaction of individual workers just as the strike was an index of the dissatisfaction of groups of workers. They realized for the first time that dissatisfied labor had three principal ways of expressing its discontent: by striking, by quitting, and by restricting output. They saw for the first time the dollars and cents significance of labor turnover and, more broadly, of labor discontent. They saw in high grade personnel management a means of coping with all three by discovering and correcting grievances, carefully selecting and training employees, and by creating working conditions which would produce content rather than discontent. In the tight labor market of the war period high labor turnover in their plants became to employers an index of their competitive failure on the labor side of their businesses.

Consequently centralized employment departments were quickly installed, which took away from the foremen the function of interviewing and hiring new employees and took steps to conserve the company's existing labor force by checking hasty action on the part of foremen and employees leading to discharges and quits. Medical service and visiting nurses were employed to check absenteeism and keep the workers on the job. In many concerns, because of the large numbers of apprentices necessarily employed, training or vestibules schools were organized to relieve the burdened foremen and to teach the newcomers more quickly. A variety of plans was devised to counteract loss of morale and high turnover by winning the workers' co-operation and loyalty. Recreational facilities were offered free of charge; systems of profit-sharing and service bonuses were inaugurated. Employers, now in the rôle of suppliant instead of dispenser, used both material and subtle means to win their employees' loyalty and long service.

But the reversal of the labor market situation in 1921 from labor scarcity to labor surplus changed the outlines of the picture. In spite of and because of the increase in lay-offs during the winter of 1920–21, labor turnover was decidedly less than during the war and early post-war prosperity. With little or no effort to hold their workers they saw the quit rate drop from over 10 per cent per month in 1920 to 2 per cent in 1921,[39] which indicated

[39] Turnover study by Policyholders' Service Bureau of Metropolitan Life Insurance Company of about 350 manufacturers including about 6,000,000 employees. See *Personnel Journal*, October 1929.

that the rate of turnover was affected more by economic than by managerial conditions. In general, too, the curtailment of functionalized personnel work did not result in decreased output by the workers. Productivity per worker in manufacturing industries decreased steadily from 1917 through 1919—the very years when most attention was given to labor relations—while it improved during 1920 and 1921, and made an unprecedented increase in 1922.

The changes in structural organization and in the size of industrial, banking, and commercial enterprises in the post-war period, however, encouraged the use of functionalized personnel management. Colonel M. C. Rorty's comment is in point:

> "One of the most significant results arising from improvements in the science of management has been an increasing ability to secure from large units or 'chains' the type of individual efficiency that a few years ago could be secured only in the small organizations working under the direct supervision of a competent employer-owner." [40]

The report of a committee of the Federated American Engineering Societies [41] on *Waste in Industry*,[42] published in 1921 was a challenge and prod to all employers. For a year the cry of politicians, bankers, and employers had been "Back to Normalcy," which meant, in essence, back to pre-war wages and prices. "In 1921 more than 300 articles appeared telling of methods used in cutting wages and speculating as to how far they would fall." [43] Organized labor had put up a strenuous fight, insisting that wage deflation was neither necessary nor helpful to business recovery. The report of this committee on elimination of waste in industry confirmed their stand as it unequivocally placed the major responsibility for high cost of production on the shoulders of management. With the summarizing statement that "over 50 per cent of the responsibility for these wastes can be placed at the door of management and less than 25 per cent at the door of labor" they also showed the high degree of variability in the

[40] *Recent Economic Changes*, p. 864, n. 19.

[41] The Federated American Engineering Societies came into being in 1920 with Herbert Hoover as its first president. Eighty engineers and their associates spent 5 months in an intensive study of 6 typical branches in industry including the building trades, men's ready-made clothing, boot and shoe, printing, metal trades, and textile manufacturing in preparation of this report.

[42] Federated American Engineering Societies, *Waste in Industry*, McGraw-Hill, New York, 1921.

[43] *Recent Economic Changes*, p. 524.

relative efficiency of management within the same industry, the ratio of best to average in one instance being 1:4½.[44]

Faulty labor control was numbered among the causes of waste by this committee. The absence of effective employing methods, and of means for maintaining proper personnel relations; the lack of check-ups on quits and discharges, which resulted in expensive high labor turnover; improper or inadequate wage-rate setting, and the failure to provide opportunities for education and special training were some of the specific changes made. Other contributing causes for which management was more or less responsible was the loss to industry due to ill health, defective vision, and industrial accidents.

Forced to accept the indictments made by such a non-partisan, scientific investigation, harassed by labor's rebellion against wage reductions, and facing the prospect of a labor shortage due to the passage of immigration restriction laws, employers and bankers reluctantly gave up their "wage liquidation" plan. During the years 1923–26 the "economy of high wages" was heralded as a new economic doctrine, although there are few instances where employers showed enough faith in the doctrine to voluntarily put it into practice. This theory is explained in *Recent Economic Changes* (p. 523) as follows:

> "Instead of believing that every cent paid as increased wages must come from the investor's return, or else from ultimate consumers, . . . where an appropriate increase in productivity can go along with an increase in wages, the consequent increase in purchasing power results not only in higher standards of living and better states of health but also increases in the quantities and varieties of goods which can be sold. These increased quantities, by helping to carry overhead and by making specialized operations possible, tend further to reduce cost and so again to increase wealth."

Attention was again turned to the importance of management. As in the period following the revelations of The Eastern Rate Cases in 1911, the dominant part which management holds in the success or failure of business enterprises was again brought to the fore. But with this difference: While there was a decided recrudescence of wage incentive plans, this was, more generally than ten years before, considered as only one factor in better labor management. Scientific selection, careful training and follow-up, interest

[44] *Waste in Industry*, pp. 9–10.

in the physical and mental well-being of the workers, foreman training, provisions for the elimination of injustices due to the partiality or prejudice of minor executives, and standardization of labor policies throughout the establishment were all recognized as important factors in labor management. This required functionalized personnel management. It meant that a new major division had to be added to executive control in business; that along with finance, manufacturing, and sales, the supervision of personnel was to be a major function.

The exigencies of the war period led to another major development in the field of labor management, the establishment of the so-called "shop committees" or "shop councils"; described by their proponents as "industrial democracy" and by labor as "company unions." These will be discussed in the next chapter.

CHAPTER XVIII

"EMPLOYEE REPRESENTATION" OR "COMPANY UNIONS"?

"Man," said Edgar Vincent, "is a phrase-making animal." American employers have fostered what they call "employee representation plans," "works councils," "shop committees," "industrial democracy." Labor scornfully calls them "company unions." The controversy has waxed bitter. Both sides have been eager to name the child. Meanwhile it has grown up.

The situation is paradoxical. More than two million wage earners are now in organizations which were initiated, nursed, protected, and financed by the employers. These strenuously contend that these "Plans" are collective bargaining, and adequate to properly represent and protect the interests of employees. Labor, however, says employee representation is but a new form of personnel management; "a definite device . . . to control and manipulate the labor force and to produce certain results which are considered profitable to the company." [1]

The earliest proposal of works councils in the United States appears to have been in an article on "Shop Councils" by a Mr. Boyles, published by the Society of Political Education, New York, in 1886.[2] Similar councils have been used, in varied forms, in England, Germany, Austria, Norway, and Czechoslovakia, for considerable periods.[3]

The National Industrial Conference Board describes the works council

> "as a form of industrial organization under which the employees of an individual establishment, through representatives by and

[1] Dunn, Robert W., *Company Unions*, Vanguard Press, 1927, p. 4.

[2] *Employee Representation or Works Councils*, Department of Manufacture, Chamber of Commerce of the United States, Washington, 1927, pp. 4–5.

[3] Cf. Reconstruction Committee, "Interim Report on Joint Standing Councils," 1917, reprinted in full in Bulletin of the U. S. Bureau of Labor Statistics, No. 255, Washington, 1919; Miller, Earl J., *Workmen's Representation in Industrial Government*, University of Illinois, Urbana, 1924, Chap. I.

from them among themselves, share collectively in the adjustment of employment conditions in that establishment."[4]

Dunn points out that the distinguishing feature of the works council as contrasted with other types of committees, clubs, and societies fostered by industry is that "it is supposed to have something to say, if only in a vaguely advisory way, concerning some of the working conditions and activities in the plant." [5] But

> "It is initiated by management and does not, like genuine collective bargaining, come as the result of pressure from workers who have organized themselves into a union. With a few notable exceptions, it has in fact no relations with any labor organization, or for that matter, with any management beyond the limits of the one plant or company." [6]

The earliest works councils established in the United States were at the Filene store in Boston and the Nernst Lamp Company in Pittsburgh. Filene's established a committee of employees in 1898 to assist in the administration of an insurance plan and medical clinic. A number of other employees' committees were elected subsequently, but the arbitration board created in 1901 was the first step in their system of store government. In 1905 the Filene Co-operative Association Council was formed, a legislative body representing the Association, one of the oldest and most democratic of non-union plans for joint industrial management in America.[7] The Association, through its Council and the Board of Arbitration, is competent to hear any matter brought to it by an employee, and is given specific jurisdiction in matters of discharge, wage reductions, transfers, promotions, wages, missing sales, shortages, lost packages, breakages, vacation wages, insurance payments, and disputes between employees. They can initiate new store rules, and cancellations or modifications of existing rules concerning discipline, working conditions, or any other matter excepting policies of the business. The employees' association can overrule a veto by the management by a two-thirds vote of its entire membership, and has done so on a number of

[4] *Works Councils in the United States*, National Industrial Conference Board, New York, Research Report No. 21, October 1919, p. 1.
[5] Dunn, *op. cit.*, p. 2.
[6] *Ibid.*, p. 4.
[7] Miller, *op. cit.*, p. 39. For detailed history of Filene plan cf. La Dame, Mary, *The Filene Store*, Russell Sage Foundation, New York, 1930.

occasions. It owns a large block of company stock and nominates six persons to the company's Board of Directors, 11 in number, of whom the stockholders elect four. There are not five other employee representation plans in the United States where the employees have such important powers.

The Nernst Lamp Company plan was launched in 1904. It originated with the vice-president of the company, Mr. H. F. Porter, who invited the employees to elect a "factory committee" composed of persons from the clerical force, the shop, and the foremen, to confer with the management on matters of mutual interest. Porter appointed the factory superintendent permanent chairman of the committee.[8] "There was no attempt here to set up an industrial government of any kind. No administrative authority was granted to the committee. It was merely an organ through which the employees might make known their wants to the management and through which the management might get into closer touch with the men." [9] Its functions were purely consultative and advisory, and the same was true of a committee instituted in the American Rolling Mill Company in 1904.[10] The plan of the Nelson Valve Company, of Philadelphia, in 1907 was the precursor of more elaborate organizations. It provided for a works committee of employees elected by the different departments; another committee composed of foremen; and a joint meeting of the two once a month with the plant superintendent presiding. But its work was confined to grievances, suggestions, and similar matters of secondary importance.[11]

The years 1911–13 saw important developments. The Co-operative Welfare Association of the Philadelphia Rapid Transit Company, started in 1911, and the Employees' Mutual Benefit Association of The Milwaukee Electric Railway and Light Company, 1912, laid the foundations for what labor now terms Company Unions. The Leitch plan of "Industrial Democracy," which became famous during the war years, was first installed at the Packard Piano Company late in 1912 following a strike. The company defeated the strike, "But the workers who came back

[8] Porter, H. F. J., *Origin and Purpose of the Shop Committee*, Bulletin of the New Jersey State Chamber of Commerce, Vol. III, No. 10.

[9] French, Carroll E., *The Shop Committee in the United States*, Johns Hopkins University Press, Baltimore, 1923, p. 15.

[10] Experiments in Industrial Co-operation," *Iron Age*, November 10, 1921, p. 1207.

[11] *The Outlook*, March 13, 1909.

were sullen, production was low, harmony gone. In the midst of this distressing situation the president of the company, Albert S. Bond, chanced to hear John Leitch deliver a lecture on industrial democracy. . . . He accepted at once the four corner stones of Leitch's Industrial Democracy—Justice, Co-operation, Economy, Energy, and the capstone Service." [12] Leitch defined Industrial Democracy as "The organization of any factory or business institution into a little democratic state with a representative government which shall have both its legislative and executive phases." [13] Typically, he organized a house of representatives, composed of the employees; a senate, composed of foremen and union executives; and a cabinet comprising the executive officials; each to have powers, duties, and methods of procedure similar to those of the federal government. This set-up resembled that of the federal government. But in our government both branches of Congress and the Cabinet are responsible to the people at large. In the Leitch plan, the Senate and Cabinet were independent of the people (the workers), being chosen by the management. They resembled a House of Lords and a king's ministry rather than an American Senate and Cabinet. Largely, however, because of the superficial resemblance to the American governmental structure and procedure, the Leitch plan captivated the imagination of not a few employers and wage earners.

The experiment at Packard Piano Company had another effect, however. Installed after an unsuccessful strike, it called the attention of labor to the fact that this so-called Industrial Democracy might be a fancy name for a new method of driving out unions. Experience with the Leitch plan as used by other companies confirmed the suspicion.[14]

The next important development was the introduction of "employee representation" by the Colorado Fuel and Iron Company after the defeat of the bitter strike of 1915. John D. Rockefeller, Jr., after a personal investigation of the situation, offered the employees a plan of employee representation. It was frankly a substitute for trade-union collective bargaining, but represented such a departure from the past procedures of the company that a federal commission said:

[12] Commons, John R., *Industrial Government*, Macmillan, 1921, p. 70.
[13] Leitch, John, *Man to Man, The Story of Industrial Democracy*, New York, 1919, p. 140.
[14] *Ibid.*, pp. 31, 191–192; Commons, *op. cit.*, Chaps. VIII, IX.

"Your commission knows of nothing just like it in force anywhere. The importance of it, as an effort on the part of a large corporation to regulate its relations with its own employees by contracting with them instead of through a trade agreement made with a labor union, justifies your commission in discussing this plan with great care." [15]

Carroll French suggests that

"For a corporation whose traditional labor policy had so long ignored the slightest claims of labor to recognition and had insisted upon individual bargaining, the change to a policy of collective dealing through joint committees of its own men was a big step forward." [16]

But 13 years later the president of the Colorado State Federation of Labor referred to the "infamous Rockefeller Plan" and said,

"The experience of the trade union movement of Colorado with this and other company unions proved that such organizations are intended to direct the trade-union movement into other channels and nothing else" and that "as soon as a worker has reached the stage of real leadership he is given a foremanship or a better place in which to work at increased wages and he is gradually weaned away from the problems of his fellows and assumes the company view point on matters of an economic nature." [17]

Dunn says that

"after more than ten years of experimentation with this scheme of industrial representation, it becomes clear that the Colorado Fuel and Iron Company, formerly an arrogant industrial despot, has become at best nothing more than a benevolent despot. . . . (1) It has been used from the start as a weapon against the United Mine Workers of America. (2) It has been used to effect wage cuts. (3) The workers had no voice in drafting the plan and are still, for the most part, indifferent to it. (4) The workers are afraid to appeal grievances and suffer from the fear of discrimination and discharge in spite of the paper promises of the plan. . . . The best that can be said about this scheme is that it is a medium through which the company ascertains 'what's on the worker's mind'; that a few minor grievances have

[15] *Report of Federal Commission on the Labor Difficulties in the Coal Fields of Colorado during the Years 1914 and 1915*, 64th Congress, 1st Session, Document No. 859, February 23, 1916, p. 6.

[16] French, *op. cit.*, p. 18. Cf. also King, W. L. Mackenzie, *Industry and Humanity*, Houghton Mifflin, New York, 1918, pp. 435–448.

[17] Hoage, Earl R., "Colorado's Experience with Company Unions," *American Federationist*, June 1928, p. 682.

been settled in a perfunctory way; and that the plan has been, to a certain extent, a substitute for the more ruthless blood-and-iron policy of the Ludlow massacre days." [18]

The investigation by the Russell Sage Foundation, the most thorough and impartial study of the plan that has been made, reached the conclusion that many of the miners' representatives were "timid, untrained, and ill-prepared to present and argue the grievances of the miners," and that "The representatives themselves were of the same opinion, and so were most of the miners whom we interviewed." [19]

At the time of its installation, however, the Colorado Fuel and Iron plan stood out like a mountain peak. It covered far more employees than any other plan of the pre-war period; and it was installed by the powerful Rockefeller interests. It was studied more intensively and perhaps copied more frequently than any other plan. It was a full fledged "company union" and set an important example for industrialists seeking a substitute for unions.

Government Promotion of Works Councils

The government inaugurated the second period in the development of shop committees. Early in the fall of 1917 severe strikes in several fields interfered with production vitally important for war needs. The President appointed a mediation commission for the Arizona copper fields, California oilfields, and meat packing industries. On January 9, 1918, the commission submitted its report in which it pointed out that there was a strong resentment on the part of the workers because industry was so autocratic. The report was considered by the War Labor Conference Board, appointed by the Secretary of Labor, which recommended the formation of the National War Labor Board to handle industrial relations problems during the war emergency. This board, established by Presidential proclamation April 6, 1918, became a vigorous proponent of employee representation through shop committees.[20]

[18] Dunn, *op. cit.*, pp. 81–82.

[19] Selekman, B. M., and Van Kleeck, M., *Employees' Representation in Coal Mines.* Russell Sage Foundation, New York, 1924, p. 188. Cf. also Selekman, B. M., *Employees' Representation in Steel Works*, Russell Sage Foundation, New York, 1924.

[20] The War Industries Board, Bernard Baruch, Chairman, *American Industry in the War*, Washington, 1921, p. 357.

The War Labor Board's procedures were governed by a set of principles laid down by the War Labor Conference Board, representing capital and labor. These principles recognized the right of workers and of employers to bargain collectively through their organizations; of the unions to hold the status in industries which they enjoyed and to carry on organization work by peaceful means; and of "establishments where union and non-union men and women now work together, and the employer meets only with employees or representatives engaged in said establishments," "to continue to operate under such a procedure" without the situation being "deemed a grievance." It was this statement under which the War Labor Board and other government boards sought during the war emergency to relieve current industrial difficulties by the establishment of shop committee organizations.[21]

The first award of the National War Labor Board requiring shop committees was for the Pittsfield works of the General Electric Company, in the summer of 1918. This award required the election by the workers of their representative department committees to present grievances and mediate with the company concerning disputes which the shop foremen, division superintendents, and employees had been unable to adjust. "The department committees shall meet annually and shall select from among their number three (3) employees who shall be known as the Committee on Appeals" to meet with the management "for the purpose of adjusting disputes which the department committees have failed to adjust." [22] Similar provisions are found in more than 125 of the awards of the National War Labor Board. In many cases, the plans were worked out in detail and established under the supervision of the Board's examiners, but in other cases the exact form of plan was not specified and employers introduced whatever type seemed best adapted to their concerns, so long as it conformed with the Government's requirements.

> "Employers exhibited differing degrees of receptiveness to the introduction of such plans in their establishments. Many regarded it as a revolutionary step, of doubtful soundness and practicability. To some who were strongly opposed in principle

[21] Wehle, Louis B., "War Labor Policies and Their Outcome in Peace," *Quarterly Journal of Economics*, XXXIII, February 1919, p. 328.

[22] Stoddard, William Leavitt, *The Shop Committee*, Macmillan, New York, 1919, Chap. II; cf. also French, *op. cit.*, pp. 24–26; Miller, *op. cit.*, pp. 44–46; Dunn, *op. cit.*, pp. 36–43.

to labor organization, employee representation appeared to be an opening wedge that would inevitably lead to the domination of their plants by organized labor. This view was strengthened in some cases when labor union members took an active part in the works council. Others questioned the efficacy of any such plan but were willing to put up with it while the war emergency lasted. Whatever this attitude of industrial managements, it was incumbent on them to accept the plan." [23]

The impetus which the National War Labor Board gave to the Shop Committee movement has been described as its "most valuable single achievement." [24] But this board was not alone in giving government impetus to works councils. The United States Shipbuilding Labor Adjustment Board, the United States Railroad Administration, and the United States Fuel Administration contributed their pressure. When the shipbuilding board was organized in 1917 it found shop committees in some of the shipyards and vigorous opposition to them in others. The Board did not make an award requiring them until October 1918, when the award for the Atlantic, Gulf, and Great Lakes Territories provided for committees of all the crafts or callings in each shipyard, elected by their own groups by secret ballot, and constituting jointly a general committee for the whole shipyard.[25] If agreements could not be reached between these committees and the management, disputes were required to go to arbitration. But wages, hours, and the basic conditions of work were fixed by the award and therefore outside review by these committees. Their principal function was to adjust grievances. Moreover, unionization proceeded so rapidly in the shipbuilding industry during the war that at an early date the committees came to be made up almost exclusively of union men.[26] The basis of election, however, was not union membership, and the composition of each committee was determined by the composition of the labor force electing it.

The unions also had important influence upon the shop committees established on the railroads during the period of government management. These committees were set up by The General Board of Railway Wages and Working Conditions, created by the

[23] National Industrial Conference Board, *Collective Bargaining through Employee Representation*, New York, 1933, pp. 8, 9.

[24] Stoddard, *op. cit.*, p. 7.

[25] United States Bureau of Labor Statistics, *History of the Shipbuilding Labor Adjustment Board 1917–1919*, Bulletin No. 283.

[26] *Ibid.*, pp. 66–68.

Director General of Railroads on March 22, 1918, and composed of three railroad and three trade-union officials. All grievances had to be brought before local shop committees, and could be appealed to the four Departmental Boards of Adjustment only when the local boards found it impossible to adjust them. Wehle says, "The most important contribution of the Railroad Administration's labor adjustment system has been its successful promotion of the local shop committee." [27] But it must be noted that these committees were not materially different in their practical functioning from typical union shop committees. The same is true of the local committees established in coal mines under the United States Fuel Administration.[28] Those established by the War Labor Board were different. In most cases they represented unorganized labor and were more similar to the shop committees of employer-initiated plans.

The Whitley Council movement in England was another influence that definitely stimulated interest in works councils in the United States. But the *intent* of the scheme worked out by the Whitley Committee, appointed by the British Reconstruction Committee in 1917, resembled more closely the theory of regulating labor conditions embodied in section 7a of the National Industrial Recovery Act of 1933 than it did the type of works councils developed in the United States under the War Labor Board and the various ones worked out subsequently by American employers. The Whitley Committee proposed a national Joint Industrial Council, with district, local, and shop councils under it, which would work out industrial relations policies in the different industries which were acceptable to the employers and the workers, and largely the result of union influence and which the Councils would see were made effective.

It must not be overlooked that employers continued to develop plans voluntarily during the war years. Such important employee representation plans were established between 1915 and 1917 as those of the Joseph and Feiss Company, Cleveland; the Plimpton Press, Norwood, Massachusetts; Nunn, Bush and Weldon, Milwaukee; Harris Engineering Company, Bridgeport; Davis Coal and Coke Company, Cumberland, Maryland; the William Demuth

[27] Wehle, *op. cit.*, p. 334.

[28] *Monthly Labor Review*, September 1918, p. 186; cf. for further information on the war time shop councils, *Collective Bargaining through Employee Representation*, pp. 3–11.

Company, New York; and Sidney Blumenthal and Company, Shelton, Connecticut.[29]

The situation at the end of the war was succinctly summarized by Mr. Wehle:

> "The local shop committee has been planted so well and so broadly throughout industry by these various governmental adjustment agencies as hardly to seem eradicable. Promoted from the outset by the Shipbuilding Labor Adjustment Board, later by the President's Mediation Commission in the Arizona Copper District and in the packing establishments; firmly established subsequently by the Labor Board in widely divergent fields of industrial activity which had never known its use, and finally made a thoroughly integrated part of a machinery for adjustment extending over the entire American railroad system, the shop committee has secured a strong position." [30]

> "It is none the less true that the joint council movement is a part of a larger evolutionary movement toward democratic industrial management, and is a result of the deeper forces which underlie that movement." [31]

The Reactions of Organized Labor

Down to 1918, however, organized labor seemed uncertain what might be the significance of employee representation to unionism. An editorial in the *American Federationist* in May 1918 (p. 369) approved the National War Labor Board's policy of forcing such committees upon employers who refused to deal with unions. The Executive Council of the American Federation of Labor, on June 10, 1918, used language which might be construed as a partial endorsement of employee representation plans.

> "The Executive Council believes that in all large permanent shops a regular arrangement should be provided whereby:
>
> "First, a committee of workers would regularly meet with the shop management to confer over matters of production; and whereby;
>
> "Second, such committee could carry beyond the foreman and the superintendent, to the general manager or to the president, any important grievance which the workers may have with reference to wages, hours, and conditions." [32]

[29] Miller, *op. cit.*, p. 43; Commons, *op. cit.*, Chaps. XI, XIV.
[30] Wehle, *op. cit.*, p. 336.
[31] Miller, *op. cit.*, p. 68.
[32] "Proceedings of the St. Paul Convention of the American Federation of Labor, 1918, Report of Executive Committee," *American Federationist*, July 1918, p. 581.

Mr. Gompers' comments upon the Bethlehem Steel award show he still retained, in the early fall of 1918, a hope that the shop committees could be stepping stones toward unionism.

> "Through assistance from the outside, the Bethlehem Steel workers may be able to make their shop committees the nucleus of an industrial constitution that will result in just as thorough an organization of that side of production in this plant which concerns employees as has existed on the side of management. A shop committee for the Bethlehem Steel workers may mean the beginning of industrial freedom." [33]

But he pointed out that unless

> "the works committee is properly related to and protected by trade unions, it cannot hope, in certain establishments at least, to discuss questions before the management with that sense of freedom which is essential to the success of joint deliberations."

It appears that at least some of labor's leaders were hoping in the summer of 1918 that shop committees and the employee representation movement would evolve into trade unionism rather than company unionism. Many employers, likewise, were fearing exactly this result.

Addressing the President's First Industrial Conference, October 1919, Mr. Gompers said:

> "We will not abandon the hope nor the effort to convert your shop organizations into union men and union women; but we will do it in our own fashion, our own manner, by persuasion, by intelligent argument, and presentation of experience to demonstrate to them that such an organization or system of organization is perversive of the interests of the wage workers and contrary to any spirit of manhood and independence." [34]

At the 1919 convention, however, the American Federation of Labor left no doubt of its position:

> "We heartily condemn all such company unions and advise our membership to have nothing to do with them"; "we demand the right to bargain collectively through the only kind of organization fitted for this purpose, the trade union." [35]

[33] *American Federationist*, September 1918, p. 810.

[34] Proceedings of the First Industrial Conference called by the President, October 6–23, 1919, U. S. Department of Labor, Washington, 1920, p. 233.

[35] Proceedings of the Atlantic City Convention of the American Federation of Labor, 1919.

The underlying antagonisms between anti-union employers and organized labor were fundamental. As soon as government controls were relaxed the employers embarked upon their open shop drive, with purpose to sweep away unionism; and the unions struggled desperately to hold the wages and status they had attained during the war. Any agreement between the two concerning employee representation plans initiated and shared by employers was impossible. The employers were determined to make the shop councils "American Plan" organizations to be substituted for unions. The unions denounced them as bastard organizations; born of and existing for the employers; "*company* unions" in the fullest sense of the word.[36]

W. Z. Foster, discussing the shop committee plan installed at the Midvale Steel and Ordnance Company late in 1918, declared that

> "Such company unions are invariably mere auxiliaries to the companies' labor-crushing systems. They serve to delude the workers into believing that they have some semblance of industrial democracy, and thus deter them from seeking the real thing. They consist merely of committees, made up for the most part of 'hand picked' bosses and 'company suckers.'" [37]

The union committee in charge of the steel strike in the Colorado Fuel and Iron Company declared that "No collective bargaining exists under the Rockefeller plan, from a trade union standpoint." [38] A union editor writing editorially in 1919, said,

> "There is present in every case subtle efforts to delude the workers into the belief that they are exercising a voice in industry, when as a matter of fact, the employer holds the veto and deciding power. . . . Workers organized in trade unions need not accept without protest the arbitrary ruling of an employer. They have the means and the independence and the machinery with which to make effective protest." [39]

[36] The National Industrial Conference Board says that the term "company union" "should properly be restricted to those plans, found mostly on railroads, which are similar in organization and operation to organized labor unions, except that membership in them is confined to employees of the particular company." *Collective Bargaining through Employee Representation*, 1933, p. 2.

This is *not* the meaning given to the term by organized labor, nor by most writers. It is commonly understood to mean an employee representation plan nominally with powers of collective bargaining but actually under employer domination, regardless of the form of organization and its "paper" constitution and by-laws. It is in this latter sense that the term is used in this chapter.

[37] Foster, W. Z., *The Great Steel Strike*, B. W. Huebsch, New York, 1920, p. 45.

[38] *Amalgamated Journal of Iron, Steel and Tin Workers*, March 11, 1920.

[39] Editorial, "Quackery and Fakery," *Amalgamated Journal of Iron, Steel and Tin Workers*, September 1919.

It was conflict over this matter which disrupted the President's First Industrial Conference, October 1919.[40] The Executive Council of the American Federation of Labor reporting to the Convention at Montreal, 1920, said that in the first President's Conference the employers' delegation "would not accept any resolution on collective bargaining unless it was so worded as to be anti-trade union in spirit and to provide encouragement and support for company unions." [41] Concerning the report of the President's Second Industrial Conference, March 1920,[42] and its recommendation of "joint organization through employee representation" the Executive Council was equally condemnatory.[43] During the convention a resolution was passed instructing the Federation and its constituent bodies to oppose and resist by every means available the efforts to extend company unions.

The strike of the Meat Cutters and Butcher Workmen of America in 1921 against the establishment of employee representation in the packing industry,[44] and the efforts of the Federated Shop Crafts to prevent the Pennsylvania Railroad from going ahead with their plan, during which the crafts appealed both to the Railway Labor Board and the federal courts, illustrate the resistances put up by the unions.[45] On the other hand there appear to have been cases in which the workers concerned displayed a different attitude. French cites the request of employees of the Tidewater Oil Company, Bayonne, New Jersey, for a plan similar to that of the Standard Oil Company.[46] Professor Commons and his staff found a favorable attitude toward the employee representation plans in some of the plants they visited. The National Industrial Conference Board maintains that union labor is not as hostile to company unions as are the American Federation of Labor executives.[47]

Employers as a class took a definitely favorable attitude toward

[40] The controversy in the Conference is illuminatingly discussed from the employer's point of view by Dudley Kennedy in "Collective Bargaining in Practice," *Industrial Management*, February 1920, pp. 149–152.

[41] Proceedings of Montreal Convention of the American Federation of Labor, 1920, Executive Committee Report, p. 85.

[42] Report of Industrial Conference called by The President, Washington, March 6, 1920, p. 99.

[43] Proceedings of Montreal Convention of the American Federation of Labor, 1920, p. 85; Proceedings Second Industrial Conference.

[44] *New York Times*, November 19, 1921.

[45] French, *op. cit.*, Chap. IV; cf. also statement of Samuel Gompers, *American Federationist*, July 1921.

[46] French, *op. cit.*, p. 54, footnote.

[47] National Industrial Conference Board, Research Report No. 50, Chap. XIII.

works councils from 1919 onward. Though 77 plans were abandoned between 1919 and 1922, 317 new ones were started. In their statement of principles submitted to the President's First Industrial Conference the employers' representatives clearly excluded trade unions from their approval and endorsed employees' representatives.[48] In September 1920, the United States Chamber of Commerce published the results of a referendum submitted to its members in which a large majority endorsed open shop dealings with shop committees.[49]

The years 1919–22 saw a marked increase both in the number of employee representation plans and of industries using them. More significant still, it saw large scale industry turn to these plans as its substitute for agreements with labor unions. In 1919 works councils were introduced in the Inland Steel Company (a plan later abandoned); in 19 plants of the International Harvester Company; at Willys-Overland and Goodyear Tire and Rubber.[50] On May 20, 1921 the Pennsylvania Railroad announced its intention of setting up a system of shop committees, and in August they were installed by four of the large meat packing concerns of Chicago.[51] Following the shopmen's strike in the summer of 1922 the company union was in nearly all important branches of industry. It had acquired a firm hold in the iron and steel industries, machinery manufacturing, coal and iron mining, textiles, food products, public utilities, railroads, and meat packing. Out of 225 works councils investigated at that time by the National Industrial Conference Board, 144 were in the metal trades, and predominantly in large establishments.[52]

The rapid installation of shop committee plans in the metal trades, 1919–22, was due largely to pressure by the War Labor Board. By 1926, 48 of the 94 plans which existed in the metal trades had been abandoned. They freed themselves of procedures forced upon them by the government. On the other hand, new plans appeared in metal working establishments, initiated by the employers themselves. The American Guild of the Printing Trades and the Graphic Arts Industrial Federation, with the Loyal League of Loggers and Lumbermen on the North Pacific Coast, which were schemes embracing a number of companies under one plan,

[48] Proceedings of the First Industrial Conference, pp. 80–82.
[49] U. S. Chamber of Commerce, Special Bulletin No. 31, September 1, 1920.
[50] *Railway Age*, June 1921.
[51] New York *Times*, November 19, 1921.
[52] National Industrial Conference Board, Research Report No. 21, pp. 14, 15.

all survived into the post-war period. The number of company unions in public utilities and railroads steadily increased. Steel, oil, meat packing, electrical goods manufacturing, food industries, textiles, rubber manufactures, illustrate the industrial coverage in the 'twenties. By 1926, the number of employees working under such plans was above 1,400,000, compared with a little over 400,000 in 1919. And of these nearly a million worked for companies with more than 10,000 employees.[53]

The growth of employee representation plans after 1919 is the clearest indication of the change in employers' attitudes toward them. In 1919, according to the June 1933 report[54] of the National Industrial Conference Board, 145 concerns had 196 employee representation plans involving 403,765 employees.[55] Most of these plans were less than a year old. In 1922, there were 385 companies maintaining some 725 works councils involving 690,000 workers.[56]

The usefulness of these plans in "easing" wage reductions during the depression was advertised to employers as one of their strong features.[57] By 1924, in spite of 137 more abandonments, 173 new plans brought the total to 815 councils in the plants of 420 concerns covering 1,200,000 employees.[58] By 1924 nearly all of the plans started by the government had been abandoned or superseded by plans drawn up by the employers themselves.

The number of plans in operation continued to grow up to 1926, when 432 companies had 913 plans in operation involving 1,369,078 workers. Small concerns continued to drop out. By 1928, though there were but 869 company unions in the plants of 399 companies, the number of employees covered had increased to 1,547,766. In

[53] Dunn, *op. cit.*, p. 11. National Industrial Conference Board, *The Growth of Works Councils in the United States: A Statistical Summary*, New York, 1925.

[54] National Industrial Conference Board, *Collective Bargaining through Employee Representation*, 1933, p. 16.

[55] National Industrial Conference Board, Research Report No. 21, *op. cit.*, p. 21, and *The Growth of Works Councils in the United States*, Special Report No. 32, 1925, both state that there were 225 councils in 1919 instead of 196. The 1925 report gives a smaller figure for number of employees involved, 391,400; and for the number of companies, 122.

[56] This figure is from the 1933 report. Special Report No. 32 (1925) gives but 240 companies instead of 385. P. 5.

[57] National Industrial Conference Board, *Experience with Works Councils in the United States*, Research Report No. 50, May 1922, Chap. VII. Dunn, *op. cit.*, Chaps. IV–IX. French, *op. cit.*, pp. 56–61.

[58] The 1925 report says 212 companies and 1,177,037 employees. *The Growth of Works Councils in the United States: A Statistical Summary*, National Industrial Conference Board, 1925, p. 5.

1932, after three years of depression, there was an obvious shrinkage. Three hundred and thirteen companies were operating 767 plans covering 1,263,194 employees.

The 1933 report says of the period 1930–33: "Conditions incident to the business depression furnished a severe test of the value of employee representation. . . . [which] had to prove its worth to survive. At the same time works councils that continued to function were called on to deal with the most difficult of all problems concerning working conditions—discharge of employees and reduction of wage rates. If they survived so exacting a trial, they indeed justified their existence." [59] By 1932 the number of concerns having plans had declined 27.5 per cent from the high point in 1926, and the number of works councils, 16 per cent, but the number of employees covered declined only 7.9 per cent. Works councils had steadily increased in popularity with the big companies throughout the 'twenties, and these concerns adhered to them throughout the depression.

The National Industrial Conference Board called attention to the fact that problems of the most difficult character were laid before works councils during the depression.

> "First, when it was necessary to lay off substantial numbers of employees, again, when reductions in wage rates became unavoidable, and still again, when a widespread adoption of the policy of work-sharing raised questions as to the basis on which work should be distributed, the works council shared with management the task of carrying out necessary policies in the most equitable manner possible. In some cases employees of many years' service were laid off, and the wage scales of those who remained were reduced, often successively, which, in addition to curtailed working time, drastically reduced earnings. . . . Works councils provided the means of presenting the facts of the situation before the working force and of helping employees to understand the reason and necessity for policies that might affect them in a serious way. To secure understanding and acceptance of such policies, there must have been built up over a period of years a belief in fair dealing based on experience.
>
> "The smooth operation of works councils during the depression has been due in no small measure to the fact that most of them had been functioning for a number of years and had developed techniques for facilitating efficient handling of their work. Naturally, the stronger and better managed had survived, and the weaker and less resourceful had succumbed. It is sig-

[59] *Ibid.*, p. 14.

nificant that over 85 per cent of the employee-representation plans found to exist in 1932 had been in continuous operation for more than ten years." [60]

The emphasis upon collective bargaining under the National Industrial Recovery Act brought the company unions and trade-unions into the most direct conflict since the beginnings of company unions. It was obvious from the enactment of the National Industrial Recovery Act that big business was determined to fight to the death for company unions. The National Industrial Conference Board made a survey of 3314 concerns in November 1933 to ascertain how they were conducting "bargaining" with their employees.[61] These concerns employed at that time 2,585,740 workers. Of these, 1,146,294 (45 per cent) were reported to be working under employee representation plans; 1,180,580 (45.7 per cent) under individual bargaining, and 240,866 (9.3 per cent) under agreements with labor unions. Four-fifths of the companies using individual bargaining had less than 500 employees; 44 per cent of those with employee representation had over 500. It must be borne in mind that the companies which reported to the Conference Board were predominantly non-union firms. The figures are therefore not representative of American industry as a whole.

The rapid growth of the war years was followed by a continued growth in company unions during the early 'twenties, a decline during the late 'twenties and the depression, and another forward spurt after the passage of the National Industrial Recovery Act. Especially in manufacturing, railroading, and public utilities, the industrial area covered by the employer initiated organizations widened.

"A classification of the collective bargaining plans according to date of adoption shows that about 61 per cent of the employee-representation plans in operation had been started since the enactment of the National Industrial Recovery Act as compared with 41.8 per cent of the union agreements. They claimed that in both the number of companies and number of employees covered, employee representation had gained more rapidly since the Recovery Act than union agreements, and that the number of employees covered by employee representation plans was slightly greater than for union agreements. There were 432,945

[60] National Industrial Conference Board, Inc., *Collective Bargaining through Employee Representation*, New York, 1933, pp. 15–18.

[61] *Monthly Labor Review*, February 1934, pp. 308–311.

workers under employee representation plans in the summer of 1933 and 1,164,294 by January 1934, a gain of 165 per cent." [62]

The benefits of employee representation plans were summarized by the Conference Board in 1933:

"Employee representation has been described as a safety valve, and this description aptly stresses one purpose and accomplishment of the system. Wherever considerable numbers of human beings work together and some of them are given authority over others, friction of a more or less serious character is bound to develop at times. . . .

"It is in this connection that employee representation provides a safety valve. The employee who thinks that he has a grievance has a readily available means of bringing it to the attention of a body that will give him a fair hearing." . . . The very existence of such machinery tends to prevent acts that may lead to grievances. . . .

"It is not surprising, therefore, that executives name improvement in plant morale as the outstanding contribution of employee representation. . . . It appears in a better esprit de corps, which acts as a lubricant for smooth and effective functioning of the organization. It facilitates quick adaptation to special or changing conditions, when passive opposition would bring about the failure of plans. It engenders greater interest in the job, which leads to the offering of suggestions as to short cuts and improvements that in the aggregate may mean considerable savings for the company. The works council provides a meeting place, where management and working force can consider calmly, on the basis of accurate information rather than rumor, their respective positions and problems. . . .

"Does employee representation offer to employees an adequate means of securing what the workers consider to be their rights? The answer must be found in the administration of the plan. The management of a company may be arbitrary in its decisions, or it may go more than half way toward reaching an agreement satisfactory to its employees. Employee representation offers the same opportunity to present collective requests to the management that is offered by the national or international union. Neither agency can expect that the management will agree to all its proposals. The works council does not usually contemplate carrying its demands to the point of calling a strike, if compliance with them is not secured, although it may do so, while the organized labor union is prepared to invoke any instrument of compulsion that is legally available for its purpose. It would appear that in a majority of cases the former

[62] *Monthly Labor Review*, February 1934, pp. 310–311.

offers a better opportunity for amicable adjustment of disputed questions, while the latter is equipped to bring greater pressure to bear on the employer.

"It should be emphasized that both agencies provide collective bargaining. In the one case, the unit of organization is the working force of a particular company, including all types of labor employed there, and the bond of common interest is the desire to work under favorable conditions and to profit from the operations of the company. In the other case, the unit is the trade or occupation, and the aim is to promote the interest of the individual worker by securing the acceptance of certain conditions that must apply wherever labor of this type is employed. In the first case, only questions affecting the particular plant are raised. In the second, a plant may become involved in a controversy to which it is not a party and over which it has no jurisdiction." [63]

These statements by the Conference Board do not, however, fully explain the popularity of employee representation plans among employers since 1921. They have also favored "works councils" because they have been successfully used to undermine, replace, or forestall unions; because of favorable effects upon labor turnover; [64] and because they have enabled employers to carry out the forms of collective bargaining and still have in their own hands the final decision and a power of final veto.

Every investigator, whether pro-employer, pro-labor, or neutral, seems to agree that the company unions have interested a majority of the employers because of their potentialities in combating unionism.[65] Writing in 1920 a well-known personnel manager said,

"After all what difference does it make whether one plant has a 'shop committee,' a works council, a Leitch Plan . . . or whatever else it may be called. . . . They can all be called 'company unions' and they all mean the one big fundamental point—the open shop." [66]

[63] National Industrial Conference Board, *Collective Bargaining through Employee Representation*, pp. 39–42.

[64] *Experience with Works Councils in the United States*, Chap. XII.

[65] E. g., Pro-employer, National Industrial Conference Board reports, 1919–33; pro-labor, Dunn, *op. cit.;* Meyer, James, *Representative Government in Industry*, Doran, New York, 1924, especially Chap. IV; neutral, reports published by Russell Sage Foundation, 1924, *op. cit.;* Miller, *op. cit.;* French, *op. cit.;* Commons, *Industrial Government.*

[66] Kennedy, Dudley, "Collective Bargaining in Practice," *Industrial Management*, February 1920, p. 152.

Cf. also Merritt, Walter G., "Factory Solidarity or Class Solidarity," reprinted from *The Iron Age*, pp. 12, 16, 21; *Iron Trade Review*, LXVI, 565, February 1920.

There can be no doubt that works councils in the United States and the unions represent two antagonistic and competing movements.[67] In the Dutchess Bleacheries, where the folders' union enthusiastically supported the employees' representation plan, Selekman reached the conclusion that two conditions not typical of company union plans explained their attitude; a genuine friendliness of the management to their union, and the fact that the company union had genuine collective bargaining power.[68]

Employers have maintained that employees' representation has constituted a new type of collective bargaining based upon friendship, co-operation, and mutual interests, superseding a trade-union type based upon conflict, class interest, and opposition. Mr. Sam Lewisohn, vice-president, Miami Copper Company, on the other hand, declared that:

> "Employee representation has come from management and therefore is to be regarded as a vehicle to assist management leadership. . . . It is a great mistake to consider this device (employee representation) as a means of balancing the power of management by the power of another group. It should rather be regarded as a mechanism which the management officials utilize to assist them in their function of leadership. It is a technique for making leadership compatible with democratic ideals." [69]

This description of employee representation checks closely with that of labor. As Elva M. Taylor said in a discussion of company unionism on the railroads,

> "To be of any value, collective bargaining must be conducted between equals. This can not be the case when employees are negotiating through an organization whose very existence depends upon the sanction of the carrier." [70]

Dunn maintains that the reason employers have preferred company unions has been that they were not unions at all, but a form of labor management, of group handling.[71]

[67] Miller, *op. cit.*, p. 159.

[68] Selekman, B. M., *Sharing Management with the Workers*, Russell Sage Foundation, pp. 95–96.

Cf. also on Dutchess Bleacheries, Meyers, *op. cit.*, especially Chaps. V–VI, VIII.

[69] Lewisohn, Sam A., *The New Leadership in Industry*, Dutton, New York, 1926, pp. 121, 126–127. Cf. Chaps. VI–VII for discussion of both employee representation and unions.

[70] *American Federationist*, XXXIII, 1926. Cf. for series, pp. 1103–1108, 1201–1217, 1357–1365, 1483–1489.

[71] Dunn, *op. cit.*, pp. 175–176.

He pointed out that the company unions have had to hold their meetings in the shop; permit management representatives to be present during all discussions (in most plans); often been unable to have meetings by themselves to formulate their ideas before meeting with the management; been unable to avoid espionage; and that their representatives have been subject to the fear of discrimination if they opposed the employer.

Practically every plan has contained limitations upon the subjects that come up for consideration or action. In a large percentage of cases they have been unable to discuss wages, hours, overtime, or working rules at all; and where they can, in all but half a dozen companies, the management has held an absolute power of final decision and veto. Thus the vote of the workers on such matters has been in fact merely a recommendation.

The employee representation plans have been deficient in another particular so far as bargaining has been concerned. Union business agents acquire a good deal of economic, industrial, and job information useful in negotiations. The workers' representatives of company unions have had to be on their production jobs practically all the time and in most cases have had but short terms of office. They have remained in a distinctly amateur status as bargainers for their fellows. While the companies have had experts to work up their side of all matters—statisticians, labor managers, economists, lawyers, industrial relations staffs—the members of the company union have been able to obtain no expert services except of persons picked and paid by the management.[72] There has been considerable basis for Dunn's contention that the cardinal principle of a company union has been complete dependence of the scheme and its functioning upon the will of the employer, the workers being kept separated from their fellows working for other employers or even in other plants of their own employer; without power to strike; without funds; without even a meeting place except on their employers' premises.

The following paragraph from a report of the Conference Board almost naïvely confirms Dunn's contentions:

> "The present investigation by the National Industrial Conference Board shows that in the larger proportion of cases employees have exercised good judgment in choosing their representatives. Employers almost without exception spoke in

[72] Cf. also on this point French, *op. cit.*, pp. 67 ff.

words of high commendation of the men elected to the councils. . . . Two companies reported that, had they had the option of choosing the employee representatives, they would have chosen the identical men elected by the employees themselves. Several other employers stated that 'with but few exceptions' or 'in almost every case' they would have chosen the same representatives as did the employees." [73]

Wages

The Conference Board has repeatedly called attention to the effectiveness of employee representation plans for facilitating wage reductions.[74] In this the labor critics have agreed with them. No study, however, has demonstrated that the works councils have been of importance in obtaining wage increases or shorter hours. This has been one of the principal criticisms of them by unionists, who maintain that this is the complete demonstration of the ineffectiveness of company unions as advocates and defenders of important interests of wage earners. Miller mentions a number of companies in which the works committees played an important part in the adjustment of the various individual rates relative to each other and in expressing the views of the workers relative to proposed piece rates for particular jobs. This, however, could hardly be called wage bargaining.[75]

So far as wages are concerned, both French and Miller emphasize the point stressed by the Conference Board, that the councils have facilitated downward revisions during depression periods. As the Board stated it:

"The investigations of the Conference Board show that where employers have discussed with the employee representatives on their works councils the reasons for a proposed reduction in wages, a curtailment of the working force, or a change in work hour schedules, the representatives in a vast majority of cases have appreciated the cogency of the circumstances . . . and have concurred with the employers in the proposed changes. . . . The management was able to prepare the minds of the employees for acceptance of the economies in wages that would sooner or later have to be effected." [76]

[73] Research Report No. 50, p. 126 and chapter on "Character of Employee Representatives"; also French, *op. cit.*, pp. 67 ff.

[74] *Experience with Works Councils in the United States*, Chap. VII; *Collective Bargaining through Employee Representation*, Chap. IV.

Cf. also French, *op. cit.*, pp. 56–61; Miller, *op. cit.*, Chaps. III–IV.

[75] Miller, *op. cit.*, pp. 119–122.

[76] *Experience with Works Councils in the United States*, *op. cit.*, p. 86.

> "In a western motor concern, one department which consisted almost entirely of union employees refused to elect any representatives, and maintained this attitude for over two years. Recently, when a wage reduction was necessary in that plant, those employees refused to accept it and were accordingly discharged. *The employees hired to take their places have manifested an interest in the Council* (italics ours) and have joined the rest of the employees in supporting it." [77]

Selekman demonstrated clearly that the employees working under the Rockefeller plan had no real participation in wage adjustments, the employers contending that the wages they paid had to be determined by those paid by their *large* competitors, particularly the United States Steel Corporation [78] and were therefore beyond the purview of negotiations with their own employees.

Finally, it must be noted that the company union has been fatally defective in its market coverage. One of the essential features of effective unionism is that the agreements made and working conditions established are for a market and all employers in that area are compelled to conform to standard working conditions. In other words, unionism, if effective, tends to equalize the labor costs of competing employers by establishing in all plants approximately the same relationship between the market price of the goods produced and the cost of labor used. The company union, on the other hand, can influence wages and labor costs in but a single company and cannot facilitate the securing of equal wages throughout an industry by imposing the same wages upon all the employers in the industry.

[77] *Ibid.*, p. 142.

[78] *Employees Representation in Steel Works*, Chap. V; *Employees Representation in Coal Mines*, Chap. XIII.

CHAPTER XIX

THE CAMPAIGNS FOR HEALTH AND SAFETY IN INDUSTRY

The first report in the United States on occupational health hazards appears to have been written in 1837,[1] the second in 1841.[2] A Massachusetts state report appeared in 1850.[3] Twenty discussions were published between 1850 and 1880, and 22 more by 1900; 102 in 50 years. In the next 20 years 702 appeared.[4] By the end of the nineteenth century many of the most dangerous occupational poisons and dusts, as well as compressed air illness had become well known to a small group of medical men; particularly phosphorus, lead, and arsenic poisoning. Interest in the industrial health problem grew apace. The publication in 1902 of Dr. Thomas Oliver's "Dangerous Trades" [5] focussed attention upon the industrial diseases. The publication in 1903 of the first federal report on industrial hygiene evidenced the government's cognizance of the problem.[6]

The workers' health was one of the questions which early attracted the attention of state labor bureaus. New Jersey issued a series of reports between 1889 and 1895 on the effect of occupations upon longevity.[7] New Jersey (1883), Wisconsin (1887–88), and Montana (1893) published studies based upon reports of

[1] M'Cready, B. W., "On the Influence of Trades, Professions and Occupations in the United States in the Production of Diseases," *Transactions, 1836–37*, Medical Society of New York, Albany, 1837, III, 91–150.

[2] Bartlett, Elisha, *Vindication of the Character and Condition of the Females Employed in the Lowell Mills*, Lowell, 1841, 23 pp.

[3] Massachusetts House Document No. 50, March 1845; No. 153, 1850 (reprinted in *Documentary History of American Industrial Society*, Cleveland, 1910, VIII, 133–186).

[4] Kober, G. M., and Hayhurst, E. R., *Industrial Health*, Philadelphia, P. Blakiston's Sons and Company, 1924; *American Labor Legislation Review*, June 1912, Bibliography.

[5] Oliver, Thomas (ed.), *Dangerous Trades: the Historical, Social and Legal Aspects of Industrial Occupations as Affecting Health*, London, J. Murray Company, 1902, 891 pp.

[6] Doehring, C. F. W., *Factory Sanitation and Labor Protection*, U. S. Bureau of Labor, Bulletin 44, 1903.

[7] New Jersey Bureau of Statistics of Labor, Annual Reports, 1889 to 1895.

individual workmen upon the effects of their occupations upon their health.[8]

In 1906 the Massachusetts Board of Health appointed health inspectors, who inspected factories, workshops, schools, tenements, and similar buildings. Their reports, like those of the New York inspectors appointed in 1907, emphasized the importance of public control over shop hygiene.[9] By 1907 magazine writers were beginning to popularize the industrial health movement.[10] In 1908 Dr. George M. Kober made a comprehensive report on health hazards in a number of industries, with suggestions for legal and other measures to cope with the situation, for the Committee on Social Betterment of the President's Homes Commission.[11] The same year Frederick L. Hoffman's study of "Mortality from Consumption in Dusty Trades" appeared, destined to have far reaching effects both upon American labor legislation and the American anti-tuberculosis campaign.[12] Within three years laws requiring the removal of dust by exhaust fans or other methods became one of the common provisions of American factory laws.[13] Oliver's second book appeared the same year (1908) and was widely read in the United States, both in medical circles and in labor and health departments.[14]

Nation-wide discussion of health problems was aroused by the publication in 1909 of Irving Fisher's report on "National Vitality" [15]

[8] New Jersey Bureau of Statistics of Labor and Industries, Sixth Annual Report, 1883; Wisconsin Bureau of Statistics, Third Biennial Report, 1887–88; Montana Bureau of Agriculture, Labor and Industries, First Annual Report, 1893.

[9] First annual report of the state inspectors of health, Massachusetts State Board of Health, *Thirty-ninth Annual Report*, Boston, 1907, followed by successive annual reports in subsequent years. Reports of Medical Inspector of Factories, in annual reports of the Commissioner of Labor of the State of New York, beginning with the Eighth Annual Report, 1908.

[10] E. g., Hard, William, "Where Poison Haunts Man's Daily Work," *Munsey's Magazine*, September 1907, XXXVII, 717–721.

[11] Cf. Reports of the President's Homes Commission, 60th Congress, 2d Session, Senate Document 644, Washington, 1909, pp. 25–107.

[12] Hoffman, Frederick L., *Mortality from Consumption in Dusty Trades*, U. S. Bureau of Labor, Bulletin No. 79, November 1908, pp. 633–875, and Bulletin No. 82, May 1909, pp. 471–638.

For bibliography of articles by Mr. Hoffman, within the next three years, indicating the widespread interest in his findings, cf. *American Labor Legislation Review*, June 1912, p. 381.

[13] *Comfort, Health and Safety in Factories;* Digest of Existing Laws, *American Labor Legislation Review*, June 1911.

[14] Oliver, Thomas, *Diseases of Occupation*, London, Methuen, 1908.

[15] Fisher, Irving, *Report on National Vitality, Its Wastes and Conservation*, Bulletin 30 of the Committee of One Hundred on National Health, Washington, Government Printing Office, 1909, 129 pp.

which urged the national government, the states, and the municipalities to vigorous efforts for the protection of the people from disease.[16] Twenty years later a pioneer in the industrial health movement remarked that it was almost impossible to believe that American physicians could have been so ignorant in 1910 about the whole subject of diseases of occupations.

The American Association for Labor Legislation in 1910 assumed leadership of the campaign against occupational diseases. Two years later the secretary of the Association said that when the Association called the First National Conference on Industrial Diseases, in Chicago, in June 1910, "it was possible only to mention the appointment of the first state commission on occupational diseases and to note the completion of an investigation of one industrial poison." [17] The commission referred to was the Illinois Commission on Occupational Diseases; [18] the investigation mentioned was Andrews' memorable study of phosphorus poisoning in the match industry.[19] As a result of the Illinois report that state had the best health laws in the United States by 1911, so far as the hygiene of work places was concerned. It was the only state which had legislation at that time specifically forbidding employers from allowing employees to take food into rooms where white lead, arsenic, or poisonous substance, dusts, or gases were present,[20] while its general regulations concerning cleanliness, ventilation, dust removal, and sanitary facilities were up to the best current standards. Interested by the Andrews report on phosphorus matches, President Taft, in his message of December 6, 1910, said to Congress: "The diseases incident to this are frightful, and as matches can be made from other materials entirely innocuous, I believe that the injurious manufacture could be discouraged, and ought to be discouraged, by the imposition of a heavy Federal tax." On January 6, 1911, the Diamond Match Company assigned its patent on the best available substitute for phosphorus in matches to three trustees, and on January 28, with the consent of the trustees, President Taft cancelled the patent.[21]

[16] *Ibid.*, pp. 126, 127.

[17] *American Labor Legislation Review*, June 1912, Introduction.

[18] Illinois Commission on Occupational Diseases, Report to Governor Charles S. Deneen, Chicago, January 1911, 219 pp.

[19] Andrews, John B., *Phosphorus Poisoning in the Match Industry in the United States*, U. S. Bureau of Labor, Bulletin No. 86, January 1910, pp. 31–144.

[20] *Comfort, Health and Safety in Factories.*

[21] *American Labor Legislation Review*, January 1911, pp. 97–98.

The law recommended was enacted by Congress in 1912. It imposed a tax of two cents per 100 matches on white phosphorus matches beginning July 1, 1913 and forbade the exportation of such matches after July 1, 1914. This ended the phosphorus poisoning problem so far as matches were concerned but it reappeared in other branches of manufactures in subsequent years.[22]

Lead poisoning was the second disease selected for constructive attack. In 1912, the American Association for Labor Legislation and the United States Bureau of Labor Statistics combined their efforts against it, the former pressing for legislation, the latter furnishing the necessary information for regulative laws through a series of studies of lead using industries. In 1914, a similar campaign was undertaken against compressed-air illness, or caisson disease.

The appearance of Dr. Hamilton's and Dr. Oliver's reports on lead poisoning in 1911 made clear that the illness known as "painter's colic" was a deadly lead poisoning not confined to the painters' trade but characteristic of a large number of occupations, and was contracted ordinarily by taking lead into the mouth with food or tobacco.[23] While medical men had discussed lead poisoning in a number of earlier papers, neither physicians, industrialists, nor labor bureau officials had realized the number of industries in which lead poisoning occurred. Like phosphorus, lead has been used widely in new industries, making lead poisoning a perennially new problem.

The contemporaneous report on women and child wage earners called attention to health hazards from a different angle. It emphasized the conditions causing illnesses of women and children in the glass, textile, clothing, and other industries, where the morbidity was not due to poisons but to speed, noise, poor ventilation, excessive hours, and similar conditions.[24]

The Joint Board of Sanitary Control of the Cloak, Suit, and Skirt Industry of Greater New York began in September 1910 the

[22] Ward, Anna F., *Phosphorus Necrosis in the Manufacture of Fire Works and in the Preparation of Phosphorus*, U. S. Bureau of Labor Statistics, Bulletin 405, May 1926.

[23] Hamilton, Alice, *White Lead Industry in the United States*, U. S. Bureau of Labor, Bulletin No. 95, July 1911, pp. 189–259; Report of Illinois Commission on Occupational Diseases, pp. 21–49; Oliver, Thomas, *Industrial Lead Poisoning*, U. S. Bureau of Labor, Bulletin No. 95, July 1911, pp. 1–188.

[24] *Report on Condition of Woman and Child Wage Earners in the United States*, 61st Congress, 2d Session, Senate Document No. 645, 1909.

study and control of health conditions in clothing factories and shops. This board was composed of representatives of the employers and employees and employed a technical staff. The Joint Board was empowered to establish standards of sanitary conditions which the manufacturers and the unions obligated themselves to maintain to the best of their ability and full extent of their power.[25] This was the first time in American industrial history that an employers' association and a union endeavored to establish and enforce healthful working conditions in an industry through a joint "board of health." In various industries unions had made demands for the elimination of conditions dangerous to the workmen's health and employers had acceded to the demands. In many cases, the conditions thus established, or voluntarily established by employers, were superior to the standards set up by the Sanitary Board. But this effort marked a departure in methods of achieving healthful working conditions.[26]

A Second National Conference on Industrial Diseases was called for Atlantic City, June 1912, under the joint auspices of the American Association for Labor Legislation and the American Medical Association. It was attended by practicing physicians, state and federal public health officials, medical inspectors of factories, physiologists, investigators and statisticians, manufacturers, efficiency engineers, insurance experts, labor leaders, economists, and social workers. This was the first time in the sixty-six years of its existence that the American Medical Association had given a place in its annual program to the problem of industrial diseases.[27] The Proceedings of this conference reveal the vigor with which research upon occupational diseases, medical procedures for treating them, and prevention techniques were advanced after 1910.[28]

Health Work by Employers

While the Association for Labor Legislation was mobilizing the medical profession, state and federal labor departments, legisla-

[25] Minutes of Conference, July 29, 1910. Quoted by Cohen, Julius Henry, in *Law and Order in Industry*, Macmillan, New York, 1916, p. 47.

[26] For more detailed discussion cf. Vol. IV of this history, Chapter XXV.

[27] Andrews, John B., *American Labor Legislation Review*, June 1912, Introduction.

[28] Proceedings of the Second National Conference on Industrial Diseases, Atlantic City, New Jersey, June 3–5, 1912; *American Labor Legislation Review*, June 1912, II, No. 2, 417 pp., Bibliography.

Cf. also Reports, New York Factory Investigating Commission, Albany, 1912–15, especially the first report.

tors, and persons interested in labor problems in a drive for the control of health hazards in industry, an independent and equally significant development was occurring in industry itself. Interest in their workers' health had been manifested by many employers far back into the nineteenth century. "Welfare work" in American industries had included from its early beginnings more or less attention to health problems.[29] A federal report issued in 1913 assumed attention to hygienic conditions as a commonplace of good labor management.[30] Dr. Hamilton stated in 1914 that "there is probably no plant in the United States in which some effort is not made to lessen the dangers of lead poisoning." [31] There were by 1912 hundreds of physicians scattered through the country who had definite contractual relations with industrial concerns to take care of persons injured in industrial accidents. In many cases, they gave medical examinations to employees and supervised hygienic conditions in the plants.

On April 4, 1914, a group of medical men who were directors of medical departments in industries formed The Conference Board of Physicians in Industry. This Board later became the adviser of the National Industrial Conference Board on medical problems in industry; [32] a relationship of much practical importance, for the publications of the latter organization have had far reaching influence upon health supervision and policies in American industry.

The United States Bureau of Labor Statistics made a field survey in 1916–17 of "welfare work" in 431 establishments in 31 states and employing approximately a million workers. Their report covers in detail the medical service in 375 of these concerns.[33] They found hospital or emergency rooms in over 70 per cent of the establishments; doctors in 45 per cent and nurses in nearly 50 per cent. Two hundred and sixty-one medical departments reported treatment of nearly 197,000 cases per month. In the more hazardous industries many elaborate emergency hospi-

[29] A concise history of the establishment of medical departments in industries will be found in Lange, W. H., *Trends in Personnel Health Service*, American Management Association, New York, General Management Series No. 85, 1929.

[30] U. S. Bureau of Labor, *Employers' Welfare Work*, Bulletin No. 123, May 15, 1913.

[31] Hamilton, Alice, *Lead Poisoning in the Smelting and Refining of Lead*, U. S. Bureau of Labor, Bulletin No. 141, February 17, 1914, p. 5.

[32] *Health Service in Industry*, Research Report No. 34, National Industrial Conference Board, New York, 1921, p. 1.

[33] *Welfare Work for Employees in Industrial Establishments in the United States*, U. S. Bureau of Labor Statistics, Bulletin 250, February 1919, pp. 14–36.

tals were found with equipment adequate for serious operations and surgeons in attendance. In non-hazardous industries some employers provided sickness care extending beyond occupational illnesses; others believed it inadvisable to do more than furnish first aid, leaving the balance of the medical care of the employee to his family physician and his own financial responsibility.

In 1921 the Conference Board published a study of medical service in 90 plants in New England. They found in these plants, with over 317,000 employees, 37 full-time physicians; 63 part-time physicians, and eight part-time dentists and occulists; and 29 physicians on call. A total of 204 nurses were employed in these establishments. Only 25 of the 90 plants had *compulsory* physical examinations for employees. The bulk of the work of these doctors and nurses was treatment of injured employees. Care of sick employees was important in the case of some companies but only of a first aid character in others. Health inspection of plants was rather common.[34] The 1926 report of the Board stated that due partly to the stimulus of legislation enacted for the protection of the health and safety of the industrial working force and partly to the growing personal interest of employers in the welfare of their employees, medical supervision in industry had had a striking development during the past decade.[35] The report covers an investigation of medical service in 501 establishments employing over a million workers. Not only treatment, plant sanitation, control of poisons, gases, and other damages, and medical examinations, but important work in the health education of employees was included within the duties of these medical departments.

The 30 years following 1900 were marked, therefore, by steady advancement in the protection of the workers' health. The United States Public Health Service and the United States Bureau of Labor Statistics led the health and labor departments of the country in unremitting research upon health hazards and the techniques for controlling them; a great many health regulations were added to American labor law; and the employers, particularly since the workmen's compensation movement began about 1910, rapidly developed organized health service in industry.

[34] *Health Service in Industry*, Research Report No. 34, Chap. II.

[35] *Medical Care of Industrial Workers*, National Industrial Conference Board, New York, April 1926, p. v.

The Safety Movement

The American Safety Movement started about 1907. Massachusetts enacted a law requiring the safeguarding of machinery, hoists, and elevators as early as 1877. New York enacted a safety law for factories in 1887, and added safety inspection to the duties of factory inspectors in 1897.[36] In 1899 the New York Bureau of Labor issued a report on industrial accidents and employers' liability. The Commissioner of Labor of Minnesota prepared a study on industrial accidents and the liability laws for his 1897–98 report but it was never published.[37] A number of the states enacted laws requiring safeguards before 1900 and some established inspection services. Massachusetts, New Jersey, New York, Ohio, and Wisconsin had such laws by 1888, and when the seventh annual convention of the International Association of Factory Inspectors was held in Chicago in 1893, there were 14 states and provinces with factory laws and 110 inspectors.[38] Some of the liability insurance companies inspected factories they insured. Here and there individual employers made a substantial beginning in safety work. But after careful investigation of these early developments, Chaney and Hanna said:

> "The American safety movement really began, however, about 1907. Prior to that time efforts toward accident prevention were isolated, individual in character, and not productive of any general effects upon American industry. Previous to 1907 there seems to have been little consciousness either of the employer's responsibility to prevent accidents or of the practicability of accident prevention. The accident rate was higher, in all probability, between 1903 and 1907 than at any other time or place. Two factors contributed to such a condition: an unprecedented degree of business activity, and the large proportion of inexperienced immigrant labor in American industries. The combination of these circumstances, with the absence of any organized safety effort, produced accident rates of a degree of unprecedented frequency and severity." [39]

[36] Seventeenth Report of the New York Bureau of Labor Statistics, 1899, pp. 561–562.

[37] The writer found the manuscript in a vault in the State Capitol 12 years later.

[38] Report of Eighth Annual Convention of International Association of Factory Inspectors, Independence Hall, Philadelphia, September 25, 1894, Forest City Printing House, Cleveland, Ohio, pp. 5–7.

[39] Cf. Chaney, Lucian W., and Hanna, Hugh S., *The Safety Movement in the Iron and Steel Industry, 1907–1917*, Bulletin No. 234, Bureau of Labor Statistics, June 1918, p. 13.

Between 1907 and 1917 came the awakening. Merciless criticism by magazine writers [40] of the needless bloodshed in industry; the facts revealed by the Pittsburgh Survey; [41] the stimulation of safety work through the vigorous campaigns launched by the United States Steel Company, the Chicago and Northwestern Railroad, the International Harvester Company, and a few other outstanding corporations; the increasing liberality of the courts to injured workmen suing for damages; and the dissemination of information upon safety work and workmen's compensation laws in Europe,[42] all promoted interest both in industry, government, and public opinion in the prevention of industrial accidents.

The centralization of safety work in the subsidiaries of the United States Steel Company marked a turning point in the history of the industrial accident situation in American industry. Beyer states that organized safety departments had existed in the constituent companies for some years.[43] But in most cases this safety work was still in an elementary stage. In May 1906, Judge Elbert H. Gary, addressing a meeting of the casualty managers of the subsidiary companies on the subject of safety said that the Board of Directors would not hesitate to make all necessary appropriations of money to carry into effect every practicable suggestion for the reduction of accidents.[44] Shortly afterward, instructions issued to the subsidiary companies said: "The United States Steel Corporation expects its subsidiary companies to make every effort practicable to prevent injury to employees, . . . Nothing which will add to the protection of the workmen should be neglected. The safety and welfare of the workmen is of the greatest concern." [45]

In April 1908, a central committee on safety was formed, composed of five officers of subsidiary companies with an officer of

[40] E. g., Hard, William, "Law of the Killed and Wounded," *Everybody's*, XIX, 361–371, September 1908; Eastman, Crystal, "A Year's Work Accidents and Their Cost," *Charities*, XXI, 1143–1174, March 6, 1909; "Casualty List of American Industries," *Scientific American*, XCVI, 126, February 9, 1907; Mark, C. H., "Our Murderous Industrialism," *World To-day*, XII, 97–99, January 1907.

[41] Eastman, Crystal, *Work Accidents and the Law*, The Pittsburgh Survey, Russell Sage Foundation, New York, 1910, 331 pp.

Fitch, John, *The Steel Workers*, The Pittsburgh Survey, 348 pp.

[42] E. g., Schwedtman, Ferd C., and Emery, James A., *Accident Prevention and Relief*, National Association of Manufacturers, New York, 1911.

[43] Beyer, David S., "Safety Provisions in the United States Steel Corporation" in Eastman, *Work Accidents and the Law*, App. III.

[44] Gary, Elbert H., *United States Steel Corporation, Safety Sanitation and Welfare*, Bulletin No. 9, December 1922, p. 1.

[45] *Ibid.*, p. 1.

the United States Steel Corporation as chairman. This committee was empowered to appoint inspectors, make investigations, and devise safety methods. It became an important clearing house of information between the 143 manufacturing plants, and the mining and transportation properties, involved. Within the first two years after it was established, approximately 6000 safety recommendations were made, of which 93 per cent were adopted.[46] Trained specialists were employed to study the causes of accidents and devise means to prevent them.[47] The United States Bureau of Labor Statistics reported in 1927 that workers in the steel industry were being killed and injured before 1910 at the rate of 74.7 for every million man-hours of exposure, and that the definite safety policy inaugurated and consistently maintained had resulted in material, though intermittent, decrease in accident rates, until in 1927 the frequency rate had declined to 19.7, a drop of nearly 74 per cent.[48]

The Chicago and Northwestern Railroad was the pioneer in organized safety work in the transportation field. The Northwestern's particular contribution to safety techniques was its demonstration of the effectiveness of safety committees, the method espoused by Ralph C. Richards, head of the Northwestern's work and one of the most capable safety men this country has produced. In an address in 1911, Richards said: "the year ending June 30, 1910, was disastrous to those engaged in the railroad service. . . . Every hour of every day of the three hundred and sixty-five days in the year some one was killed on the railroads . . . and *thirty five per cent* of them were railroad men." As a result the Northwestern inaugurated its safety organization under Richard's leadership in the late summer of 1910. After careful study of the statistics and records of accidents, they set up, on the seventeen divisions of the system, safety committees composed of men and officers from the shops, yard stations, and train services; beneath these shop, roundhouse, yard, and station committees at the various local points; a total of 473 officers and employers. [49] It was the function of these committees to thor-

[46] Beyer, *op. cit.*, p. 246.

[47] *Ibid.*, p. 245.

[48] *Statistics of Industrial Accidents in the United States to the End of 1927*, U. S. Bureau of Labor Statistics, Bulletin No. 490, p. 94.

[49] Richards, Ralph C., *Prevention of Accidents*, Annual Convention of Association of Railway Claim Agents, Montreal, Canada, May 24–26, 1911.

oughly and continuously inspect their respective areas for danger and recommend safety measures.

The example set by such leading employers attracted nation-wide attention. But meanwhile the safety movement was growing from other roots. In 1907 the American Institute of Social Sciences started the American Museum of Safety in New York City. This was patterned upon the museums of safety which had existed for many years in leading European cities. In 1911 the Museum of Safety was incorporated, and began an aggressive educational campaign on accident prevention. Exhibits, lectures, and pamphlet material were used to arouse public interest and disseminate information. In 1912 the Museum was given permission by the New York City Board of Education to carry its educational work into the public schools. Since 1919 the museum has been maintained by the Safety Institute of America.

In 1907 the Association of Iron and Steel Engineers was formed. It was probably the first technical association to appoint a safety committee. Safety constituted a part of each annual program. In 1911 a conference was held on safety exclusively. In 1912 they decided to call a co-operative safety congress, inviting other organizations interested in safety and governmental bodies to meet with them. This meeting, held in Milwaukee, lasted five days and had sections for the federal and state governments, mines, manufactures, iron and steel, transportation, and allied associations.

A resolution was passed to form a national safety organization and a committee appointed to formulate a plan. The committee reported at the Second Annual Co-Operative Safety Congress, New York, September 23–25, 1913. A National Council for Industrial Safety was organized, with Robert Campbell of the Illinois Steel Company as president and William H. Cameron, of the American Steel Foundries as secretary. This was the origin of the National Safety Council, which has promoted safety work both in industry and outside of industry through nation-wide and expanding activities since 1913. When the Council was launched it had but 40 members. By 1917 it had 3300 members, and by 1931, 5255. A large number of these members were corporations, associations, or governmental agencies; though there were also individual, school, and library memberships. The American Society of Safety Engineers, organized in 1916, amalgamated with the Council in 1924.

In 1919 the Council began the publication of the *National Safety News*, and in 1923 the preparation of safety films. It has issued thousands of posters, newspaper releases, and other types of educational material; and pushed safety education in the schools throughout the nation.

The enactment of workmen's compensation laws from 1911 onward—throwing a large portion of the financial costs of accidents directly upon the employers, gave the final impetus to the rapid development of safety work. Industry, government, and public opinion agreed that employers should push accident prevention to its uttermost possibilities. In practice, both government inspection and industrial practice have fallen far short of this goal. But the annual safety conferences held in states like New York and Pennsylvania; the safety schools for foremen and shop men carried on every year in the industrial cities of states like Wisconsin; the incorporation of required instruction in safety in vocational schools, and most of all the establishment of the standard that only a well-guarded plant is respectable, evidences the permanent character of the safety work inaugurated in the United States approximately 30 years ago.

CHAPTER XX

PROFIT SHARING

The United States has had more than 60 years' experience with profit sharing. It started in the plant of the Bay State Shoe and Leather Company in 1867.[1] Fifty plans were established by American employers previous to 1896; of which 33 were permanently abandoned before 1896, five indefinitely discontinued, and twelve remained in operation in 1896.[2] A study made by the United States Bureau of Labor Statistics in 1916 found 60 "true profit sharing" plans in operation, more than two-thirds of which were less than 10 years old.[3] Thirty-three of these 60 were in the manufacturing field and of these seven were abandoned before 1920.[4] Seventy-six per cent of the plans started before 1896 were abandoned after a trial averaging from two to three years. Four of these abandoned plans never paid out any profit sharing dividends; eleven paid but one dividend; five but two; two but three dividends; three but four; six from five to seven; one nine, and one eleven.[5] The Pillsbury-Washburn Milling Company plan, established in 1882, was in 1896 the oldest plan in operation. Obviously, the life history of the early profit sharing plans was a short one.

The record is not much different for the later periods. Emmett's study in 1916 was the most careful study of profit sharing which has been made in the United States up to the present time. He made a thorough field investigation of every plan then known to be in operation. He found only 60 "true profit sharing" plans, i. e., plans where the profits are shared with the wage earners and all or most of the employees participate. "True" profit sharing is profit sharing which benefits the wage earners.[6] Limited profit

[1] The best studies of the early plans are Monroe, Paul, "Profit Sharing," *American Journal of Sociology*, May 1896; Gilman, Nicholas P., *Profit Sharing*, Houghton Mifflin, Boston, 1889.

[2] Monroe, *op. cit.*

[3] Emmett, Boris, *Profit Sharing in the United States*, Washington, 1917, United States Bureau of Labor Statistics, Bulletin 208.

[4] *Practical Experience with Profit Sharing in Industrial Establishments*, National Industrial Conference Board, Boston, 1920, Research Report No. 29.

[5] Compiled from Monroe, *op. cit.*

[6] Profit sharing, in its origin, was of the "true" type. It was started in Paris in 1842 by Edme-Jean LeClaire (also spelled LeClere). He was a painter and decora-

sharing plans cover only a small part of the company's employees; generally those who are in executive, supervisory, sales or other kinds of work where it is believed they can by their efforts directly affect the volume of profits. The underlying philosophy of the two types is different. True profit sharing is based upon the idea that all of the employees of a company should share in its profits, after wages are paid to labor and management, and definite rates of interest and dividends to bonds and stock. "Limited" profit sharing is based upon the principle that only those should share in the profits whose efforts can be seen to directly affect profits. This includes only those whose work it is to reduce costs, increase sales, or improve the company's competitive position.

Ralph E. Heilman said, in an address to an American Management Association meeting in 1925, with respect to this type of profit sharing:

> "I am sure you will agree with me that the higher the rank and the greater the responsibility of those who participate in the plan, the larger is their opportunity to exercise any influence upon profits. For instance, the purchasing agent sitting in the front office may by one important act have more influence on the business than a mechanic will in a year, regardless of how conscientious and faithful he may be in the performance of his duty. . . . In my judgment, profit sharing is better designed to operate successfully when applied to this particular group. . . . Recognizing the inadequacy and defects of the flat salary as a method of compensation for men occupying the executive and supervisory positions, a considerable number of firms have, in recent years, introduced a form of limited or managerial profit sharing, applying it to certain selected individuals occupying certain positions of importance, but not including within the scope of the plan the rank and file of employees or labor in the establishment." [7]

Limited profit sharing is a system of incentives for executives; it is not profit sharing at all in the sense that the term is used in

tor. Starting as a penniless apprentice, he went into business for himself at the age of 26. By 1843, or after about 15 years, he had 300 employees, who were sent to all parts of France. He conceived the idea of profit sharing as a means of getting efficient work from his scattered employees without undue expense of supervision. He left an estate of 1,200,000 francs, and attributed his success to his profit sharing plan. Although the concern is now under another name, it still continues LeClaire's profit sharing scheme, though of course with some modifications.

Cf. for detailed discussion, Gilman, Nicholas Paine, *Profit Sharing*, Chap. III.

[7] Heilman, Ralph E., *Profit Sharing*, American Management Association, New York, 1925, 10 pp. Cf. also, *A Method of Determining Who Shall Participate Under a Managerial Profit Sharing Plan*, American Management Association, New York, 1929.

relation to labor. Emmett's study, as already stated, referred entirely to true profit sharing. Only four of the 60 plans he studied in 1916 dated back to the 'eighties. None were established in the 'nineties until 1897, when prosperity returned. During the decade between 1897 and the economic collapse of 1907, 15 profit sharing schemes were started; and 41 in the period 1910–16. Of these 15 were launched in 1915–16. Some further growth occurred by 1920. Emmett found 26 manufacturing plans in 1916.[8] Including true profit sharing in the non-manufacturing field, there were hardly 80 such plans in actual operation in the United States in 1920. There was but little growth in the number of plans during the decade to 1930.

Sixty years of experience with profit sharing, in spite of the extensive literature written upon it,[9] the almost continuous discussion of it, and the high hopes of its protagonists, has given to the United States an almost negligible number of actual, functioning true profit sharing plans. During the early years of the profit sharing movement "true" profit sharing was the rule; during recent years the growth has been in the "limited" plans, many, perhaps most of which, are not announced publicly. Only a few limited plans were started before 1900. Now (1930) but few plans are launched which apply to the rank and file. The war time boom in wage earners' profit sharing probably represents the peak of the movement. The idea is far from dead, but practical interest in it seems to have declined materially.

Profit sharing [10] is a method of additional remuneration, freely and voluntarily entered into by the employer, by which the employee receives a share, fixed in advance, of the profits of the business. The expression "fixed in advance" means that the basis of

[8] *Practical Experience with Profit Sharing in Industrial Establishments*, Research Report No. 29, National Industrial Conference Board, Boston, 1920.

[9] For bibliography to 1923, cf. *Monthly Labor Review*, United States Bureau of Labor Statistics, April 1923, pp. 167–179.

[10] Much that is not profit sharing at all has passed under the name, even in serious studies of the subject. Bonuses for length of service, steadiness of attendance, and maintained productive efficiency have been called profit sharing. But these have no predetermined relation to either dividends or profits. They are based upon other considerations entirely. Schemes for encouraging employees to purchase stock in the companies they work for rarely constitute profit sharing plans, even in part. In some cases the employers use a part of the profits to pay part of the cost of such stock, but even such partial profit sharing is not common. Plans for sharing with the employees the benefits of economies in operation which have been achieved are not profit sharing, because the amount of the savings dividend bears no definite relation to profit.

distribution is predetermined. The actual amount distributed is contingent, of course, upon the amount of profits earned and ordinarily varies from year to year. But the predetermination of the percentage of net profits to go to the workers is an integral part of any true profit sharing plan. Under profit sharing there is no intention of extending the workers' rights under their labor contracts. They are given the privilege of sharing in net profits when the net profits are in excess of the amounts necessary to pay a given return on outstanding stock, and the right to terminate that privilege at will remains solely in the hands of the employer.

True Profit Sharing

In almost every detail of both the earlier and the later plans there are wide differences in rules and procedure. One of the simplest types of plans was established by the American Manufacturing Company, Falconer, New York (wood novelties) in 1916. Ten per cent of the net earnings of the company were divided among the employees annually, one-third to the foremen and two-thirds to the workingmen. Each employee's share was in proportion to his earnings during the year. The first payment was made on May 1, 1917, on the 1916 earnings. The Ballard and Ballard Company of Louisville, Kentucky, in a plan started in 1886 also divided 10 per cent of the net earnings among the employees, but in addition distributed to each of a limited number of "trusted employees" from 1 to 5 per cent of the net earnings, which brought the total share of profits received by employees up to about 46 per cent.

The Baker Manufacturing Company of Evansville, Wisconsin, has one of the oldest plans now in operation. They started profit sharing in 1899, when they paid the men a 10 per cent cash bonus on their 1898 earnings, and announcement was made that thereafter, when inventory was taken at the first of the year, 5 per cent would be paid on the $200,000 preferred stock held by the stockholders, and the balance of earnings (except 10 per cent, which was put into a sinking fund) divided between the preferred stockholders and the employees on the basis of the ratio of preferred stock to the year's payroll. Eighty-five per cent of the shared profits were paid to the stockholders and employees in common stock and 15 per cent in cash. The men soon organized to buy any company stock which came on the market, and by 1913 owned over one-half of the company's stock. By 1919, the income of

employees due to dividends on stock averaged about one-half as much as their annual wages.

An entirely different plan was started by J. B. Blood Company, Lynn, Massachusetts, in 1909. Three thousand so-called "profit shares" were issued to the employees in such proportions as the company deemed advisable. These shares entitled the owners, at the close of the year, to a proportionate share of not less than one-fourth of the profits of the business. The shares were not transferable nor assignable, and the company reserved the right to withdraw any employee's shares, even if he remained an employee. Ownership of the shares ceased upon death of the employee or his termination of service.

At the Farr Alpaca Company, Holyoke, Massachusetts (1914), those employees who worked continuously through the year were paid a dividend on their wages at the same rate as the stockholders were paid on their stock. The amount forfeited by any employee who failed to complete the year went into a benefit fund for assistance to aged or disabled employees. The W. S. Tyler Company, Cleveland (1915), paid 6 per cent on the capital stock, the balance to be divided among the employees and stockholders as follows: (1) Employees who have been in the service of the company for three or more years receive the same percentage of the total balance as do the stockholders. (2) Those with two years, but less than three, get ⅔ as much; and those with 6 months, but less than 2 years' service, ⅓ as much. The division to the individuals from their respective shares of the profits is in proportion to wages. These illustrate the varied forms taken by profit sharing plans.

Only one of the 60 plans studied by Emmett in 1916 covered all of the employees of the concern. All of the concerns, with this one exception, barred the so-called shifting part of their working organization. Employees had to qualify by periods of service ranging from three months to three years, though in more than one-half of the plans the period was a year or less. The universality of this point of view among employers in all sorts of industries is made evident by the industrial distribution of the plans studied by Emmett. They were in the following industries: manufacturing 26; mercantile 14; banking 8; public utilities 5; building and construction 2; real estate 2; wholesale baking 2; and newspaper publishing 1.[11]

[11] Emmett, Boris, *Profit Sharing in the United States*, U. S. Bureau of Labor Statistics, Bulletin 208, 1917.

The high mortality rate among profit sharing plans raises the questions, Why have employers started profit sharing plans? Why have so many become discouraged in such short times? Why were so many plans abandoned?

The various studies of profit sharing plans agree upon the motives which have caused employers to establish profit sharing. Some of them were actuated by a desire to establish a higher degree of social justice for their workmen. They believed that when a business was particularly profitable the workers as well as the stockholders should benefit. Some of the concerns which have made a success of profit sharing have kept this idea to the front. Professor Monroe reached the conclusion from his study of the early plans "that such a system will succeed only with a select few of employers, those with whom social motives have an extraordinary influence, and with a grade of skilled or intelligent labor." [12] The studies of the National Civic Federation and the National Industrial Conference Board, particularly their analysis of the reasons why various plans failed would indicate that much weight should be given to this statement.

Many employers have hoped to encourage thrift among their employees. In some plans, a requirement to leave all or part of the profit sharing dividend as an investment in the business, at least for a time, has been actuated by this thrift idea. The employees, of course, would be apt to impute other motives to the employer's action in giving them a share of the profits but keeping it in his own possession. The most general expectations, probably, have been that the loyalty and co-operation of the employees would be increased, that labor turnover would be reduced, and that industrial disputes would be avoided.

The testimony of employers has indicated a measure of fulfillment of these hopes, particularly during the early years of a plan, but a fulfillment falling far short of their expectations. Employees' degree of loyalty to a company is a result of their reaction to the whole complex of situations and relations that go to make up their "job," and the establishment of profit sharing would fail, ordinarily, to eliminate or overbalance their discontents about some other aspect of their employment situation. Experience revealed that they were particularly inclined to look upon the profits dividend as withheld wages, and something to which they had been

[12] Monroe, Paul, "Profit Sharing," *American Journal of Sociology*, May 1896.

entitled before it was given them. These considerations were reinforced by the fact that, after all, the size of the profit sharing dividend was not great enough to exercise great pressure. Under almost one-third of the plans studied by Emmett the dividend was less than 6 per cent on regular earnings ($50 to $75 for the average worker); in slightly more than one-third, from 6 per cent to 10 per cent; and for the balance above 10 per cent. Translated into terms of cost to employers in terms of percentage of the total payroll the rates were mostly less, because many employees who earned wages did not come under the profit sharing plan. In more than one-half of the establishments, the cost was less than 6 per cent of the total payroll.

Employee co-operation means to the average employer discontinuance of restriction of output and unstinted effort. It is not easy to bring about. So long as piece rate cutting, periodical wage reductions, and the fear of seasonal and other types of layoffs obtain, workers are bound to maintain defensive attitudes. Profit sharing was not an adequate antidote to these fears, born of experience.

Profit sharing did reduce turnover in many cases, particularly among the older and more experienced employees, but turnover is low among them anyway. The failure of employers to couple their profit sharing with steadiness of employment, and the almost universal practice of confining its benefits only to those employees who had been with the company for a definite period of time, prevented it from producing any marked decrease in turnover among that part of the labor force where turnover is high. And when boom years came and work was plentiful, employees were found to quit in quest of higher immediate wages elsewhere in preference to a profit sharing check (maybe) at the end of the year.

Mr. George W. Perkins, a proponent of profit sharing, stated in 1920:

> "In nine cases out of ten, at some point in the practical application of the plans that have failed, the fact has developed that they were not mutually beneficial; they either did not enhance the efficiency of the men in such a way as to satisfy the employer, or else did not distribute profits in such a way as to benefit and satisfy the employes." [13]

The other 15 cases of the 29 just referred to which were abandoned because of dissatisfaction, were ended because the employers

[13] *Profit Sharing Report*, National Civic Federation, 1920, p. 10.

could not see that they were getting results which balanced the costs of the plan.[14]

The success of profit sharing as an encouragement of thrift is uncertain. No clear evidence on the point is available. Neither can one be certain how effective it has been as a preventative of labor disputes. Many of the profit sharing plans abandoned were brought to an end by strikes. Employees convinced that they ought to get higher wages or shorter hours went on strike regardless of the profit sharing plan. In 29 abandoned plans studied by the National Industrial Conference Board in which the termination was due to dissatisfaction, seven were ended by labor troubles, three by a demand of the workers that they be given immediate increases in wages in lieu of a share in the profits, and four by union opposition.

Eight of the 29 abandoned plans studied by the Industrial Conference Board were brought to an end by diminished profits. This illustrates one of the cardinal weaknesses of profit sharing, noted by all investigators. The workers never know whether there are going to be any profits or not, and when there are not they are apt to think that the books have been manipulated and the profits concealed for the benefit of the stockholders or executives. Mr. J. W. Sullivan, of the International Typographical Union, a lecturer for the American Federation of Labor, and an unusually well informed student of profit sharing, said on this point:

> "Uncertainty is a disturbing factor in profit sharing—uncertainty as to whether there are to be profits from year to year, uncertainty as to what the profits actually may be in any one year, uncertainty on the part of the employees as to the employer revealing his true profits, uncertainty as to the settled proprietorship of the establishment. . . . In this unsettled profit sharing there usually can be no definite hand-in-hand partnership of labor and capital. The two interests work strictly apart, each in its accustomed sphere. . . . A manifest weakness in profit sharing is the legitimate disinclination of employers, especially small employers, to reveal the scale of their profits, probably to be made use of by competitors, money lenders and taxers of every description. Low profits may at times show up the employer as a blunderer; high profits may induce the advent of unwelcome rivals." [15]

[14] *Practical Experience with Profit Sharing in Industrial Establishments*, National Industrial Conference Board, Boston, 1920, Research Report No. 29.

[15] *Profit Sharing Report*, National Civic Federation, 1920, p. 406.

The attitude of organized labor to profit sharing has been hostile. Their general objection was well stated by Mr. Sullivan.[16]

> "A major point with unionists is that profit sharing, as developed in sporadic examples, has had no effect on the elevation of the whole mass of the wage workers. It has not been a part of the world-wide labor movement. Where practiced, it has in many ways narrowed the workman's social vision. He has seen no further than his own workshop; he has concentrated his mind on his own immediate well being; he has not been encouraged to attend the assemblies, to take part in the discussions, to subscribe to the literature, to imbibe the spirit of labor organizations, all of which have led to independent working-class social and economic activities."

The National Civic Federation report of 1916 quotes 22 labor leaders, all of whom voiced definite objections. Samuel Gompers declared that

> "some employers who have inaugurated systems of so-called profit sharing have pared down the wages of their employees so that the combined sharing of profits and their wages did not equal the wages of employees of other companies in the same line of industry" (p. 234).

John F. Tobin, President of the Boot and Shoe Workers Union, stated that in his opinion

> "profit sharing schemes are intended to wean employees away from unions so that they may not be in a position to bargain collectively for wages, hours, and other conditions for which trade unions stand" (p. 234).

J. C. Skemp, Grand Secretary-Treasurer of the Painters, Decoraters and Paper hangers, said,

> "Where the experiment is made in good faith the facts that the employer reserves the right to discharge a workman at any time, that he fixes the worker's share in the profits and that the worker has no voice in the management of the business, rob the plan of any value it otherwise might have.
>
> "The dividend to the workman is merely a gift to be made or withheld at the will or the whim of the employer-disguised charity. As usually employed it is a method of bribing the workman to remain outside of the union of his craft, to discourage demands for better wages, to stimulate output and increase profits for the employer, the workman to receive a small share of his increased earnings" (p. 235).

[16] *Op. cit.*, p. 409.

C. F. Quinn, Secretary-Treasurer of the Pennsylvania State Federation of Labor, perhaps summed up labor's views:

> "It is, as the children have it in their play: Open your mouth and shut your eyes and see what God (the employer) will give you" (p. 238).

And the employers' conclusions, gradually evolving from experience are perhaps summed up in a statement by the vice-president of Ballard and Ballard Company, Louisville, Kentucky, which started profit sharing in 1886, in a pamphlet issued by the Company in 1919:

> "My conviction is that our profit sharing plan is a potent thing for building up loyalty and efficiency among the salaried men, such as heads of departments, salesmen, bookkeepers, and clerks, but that it is not potent among the laboring men and women in the mill . . . the wage earner lives from week to week, based upon his pay at the end of each week, and he is not sufficiently influenced by a five weeks check at the end of the year. Twelve months is too long to wait for a check representing a division of a certain quota of the concern's profits when the check *per se* is not big enough to count either in meeting an emergency or accumulating a competency." [17]

Stock Ownership by Employees

The ownership of stock by employees has become of more practical importance than profit sharing. In some cases, stocks came into the hands of employees through profit sharing distributions, in a large percentage of cases through the purchase of stocks by employees under special purchase plans. Reference is not made to the purchase of stocks in the open market by wage earners. There is no reason why such purchases should be discussed in a labor history. It is their acquisition of stock in companies by which they are employed that is of significance here.

There seems to be no doubt that a much larger number of people than ever before became owners of corporation stocks during the post-war years down to 1929.[18] Analysis of who purchased a 7 per cent preferred stock issue of a public utility company in 1926 dis-

[17] Quoted from *Practical Experience with Profit Sharing in Industrial Establishments*, National Industrial Conference Board, Boston, 1920, p. 25.

[18] Foerster, Robert F., and Dietel, Else H., *Employe Stock Ownership in the United States*, Princeton University, 1926, Chap. I; National Industrial Conference Board, *Employe Stock Ownership in the United States*, New York, 1928, Foreword and Introduction.

closed that the purchasers came from 57 occupations or trades, with as many laundry workers in the list as bankers and brokers, and with clerks, factory workers, and housekeepers far in excess of all others.[19] In another list of 13,800 buyers of corporate stock, genuine capitalists were outnumbered six to one by grocers and butchers and there were 326 laborers among the purchasers.[20] The National Industrial Conference Board described the period 1921–29 as one in which

> "the popular demand for stocks expanded to unprecedented proportions. The purchase of stock in anticipation of speculative gain extended to all ranks of society; there was scarcely a gathering of any sort that did not include stock market developments in its discussions." [21]

The increased purchase of stock by employees during the 1920's was in line, therefore, with a general tendency among the less well-to-do portions of the population to invest their savings, or part of them, in stocks. But the purchase by employees of the stock of the companies they worked for was due principally to definite promotion of such purchase by employers rather than a thirst for such stocks on the part of the employees. Employers who established "stock-purchase by employees" plans sought certain definite benefits for their companies by the sale of such stock. They were willing to incur costs in the form of extra bookkeeping, reductions in the prices charged for the stocks, and special bonuses and contributions of various kinds in order to effect their purpose.[22]

The sale of stock to their employees afforded opportunity for favorable company advertising. The announcements usually stated that the plan was a reward for faithful service, gave employees better opportunities to save safely and at a higher rate of return than in savings banks and other customary forms of wage-earner investments, and was an encouragement of thrift. They hoped that stock ownership would reduce labor turnover, labor disputes, increase the employees' interest in their work, and deepen

[19] McCoy, Joseph S., "The U. S. Legion of Capitalists," *American Bankers' Association Journal*, February 1927.

[20] Cf. National Electric Light Association, Report of Customer Ownership Committee, 1924–25, p. 6.

[21] National Industrial Conference Board, *Employe Stock Purchases and the Stock Market Crisis of 1929*, New York, 1930, p. 4.

[22] Cf. National Industrial Conference Board, *Employee Stock Purchase Plans in the United States*, Chaps. IV–VI. Foerster and Dietel, *op. cit.*, Chap. III.

their loyalty to the company. The use of employees' savings furnished a new source of capital supply on easy terms and from a group of investors not critical of financial statements. The National Industrial Conference Board said that

> "The fact that they repeat their offers year after year is probably the best evidence that they have been satisfied with the results obtained, although they have not always been able to define exactly wherein the benefits lay." [23]

A significant aspect of the matter of stock purchase by employees is that none of the advantages sought by the employers could be realized unless the employees found the stocks to be good investments. Good-will cannot be obtained through bad bargains. Employers cannot afford to sell dubious securities to their employees. It is a regrettable fact that information cannot at present be obtained upon what happened to employees' stock investments between 1930 and 1935. The Conference Board's study of 1930 showed that during the first impact of the depression employers who had sold such stock endeavored by loans and other forms of assistance to help the employees weather the stock market crash.[24]

The policy of stock ownership by employees seems to have started in the Illinois Central Railroad in 1893, when a petition of officers and employees that they be allowed to purchase company stock on easy terms was granted by the company.[25] Three plans were started previous to 1900; 14 between 1901 and 1905; 43 more between 1906 and 1915; and 111 during the war years to 1920. The period of rapid development was from 1921–25, when 162 plans were inaugurated. Seventeen were established in 1926–27,[26] and a few others in 1928 and 1929.

Approximately 800,000 out of 2,736,000 employees working for 315 companies with stock purchase plans were stockholders of their companies in 1927, and the market value of their shares was $1,045,150,140.[27] Approximately 30 per cent of the employees of these companies were stockholders. All of the employees of the Firestone Tire and Rubber Company and 70 per cent of the employees of the International Harvester Company were stockholders

[23] *Employee Stock Purchase Plans in the United States*, p. 141.
[24] *Employee Stock Purchase Plans and the Stock Market Crisis of 1929.*
[25] National Industrial Conference Board, *Employee Stock Purchase Plans in the United States*, p. 1.
[26] *Ibid.*, p. 2.
[27] *Ibid.*, p. 35, Table 4.

in 1927. Similar high percentages obtain in a considerable number of companies and there were a few cases where control of the company was passing into the hands of employee stockholders.[28] But in nearly all cases only a tiny fraction of the company's stock was held by employees.

This is not the place for a detailed discussion of the provisions of employee stock ownership plans.[29] It is their significance in determining employer-employee relationships and their effect upon the welfare and status of American wage earners with which this history is concerned. The interests of the worker as an individual and of wage earners as a class were perhaps not identical in the matter of stock ownership. It is obvious, when 30 per cent of the wage earners who had an opportunity to buy company stock during the 'twenties did so, that the employees of the companies which sold stock were either subjected to strong pressures or attracted by the opportunity for such investments. Both things were true. Some companies put on intensive campaigns which either sold the employees on the desirability of the stock or convinced them that it was the part of wisdom to please their employers in the matter. Others offered stocks which were attractive investments sold on easy terms and enjoyed a considerable response on the part of their employees without putting pressure upon them. Most of the stocks offered employees seemed to them to be safe investments, carried higher yields than the interest paid by savings banks and postal savings, and often higher than the dividends of building and loan associations. The relatively small deductions from their wages each pay day constituted an almost painless method of saving. The stocks formed good collateral for loans. Ownership of stock gave the employees under most plans a right to attend and participate in stockholders' meetings which, though seldom exercised, was pleasant to think about. Few employees, probably, considered the possibility that a period like the early 'thirties might destroy the value of the stock or stop its dividends. They did not realize that stock purchases might freeze their savings. Not a few companies agreed to buy back the stock at par or the market if the employee wished to turn it back. This was the individual side of the matter.

The more basic question, what has been or could be the effects of

[28] *Ibid.*, pp. 37–39.

[29] For details of plans see *Employee Stock Purchase Plans in the United States*, 1928, and the 1929 Supplementary Report, Chaps. II–IV; and Foerster and Dietel, *op. cit.*, Chap. II.

widespread employee stock ownership upon the status of Labor has not yet been answered by experience. During the heyday of stock ownership by employees, i. e., the 'twenties, many were asking the questions: What effect will stock ownership have upon the class consciousness of wage earners? Will it decrease the militancy of Labor? Will it transfer enough control over industry into the hands of the employees to enable them to improve labor conditions through their influence on management?

The answers seem to be, so far as the experiences of 1921–35 reveal them, that widespread ownership by workers of stock in the concerns which employ them would unquestionably diminish the independence and militancy of the labor group, but that there is little probability either that the owners of any considerable number of businesses will allow their employees to buy enough stock to get control or that labor could save enough to buy that much stock. A minority of wage earners were glad to invest in company stock in the 'twenties. They were able to buy a relatively small block of the total amount of corporate stock of their companies. The depression of the 'thirties probably diminished very materially the willingness as well as the ability of wage earners to make stock purchases.

CHAPTER XXI

OLD AGE PENSIONS, PRIVATE PLANS

In 1930 there were more than 6,500,000 persons over 65 years of age in the United States, of whom more than one-third were dependent upon others for support. Twenty-nine states had pension laws, many of them in effect in only parts of the states and all of them crude and unsatisfactory.[1] There were 179,500 aged persons receiving pensions under these laws, 736,000 on relief, and approximately 150,000 receiving pensions under private pension plans, trade-union or industrial.

> "No human spectacle is more poignant than that of old age surrounded by poverty and indifference and given over to neglect and loneliness. . . . The savings of the group who are now old have been largely wiped out, their jobs are gone and when employers add to their personnel it is the young, not the old, to whom they will turn." [2]

The Committee on Economic Security estimated that there were 7,500,000 men and women 65 years of age or older in 1935; that there would be 15,000,000 by 1970; that whereas 6 per cent of the population was in that age group in 1935, 10 per cent would be by 1970.[3]

The problem of old age dependency is a characteristic by-product of the modern social structure. In primitive societies the aged did such tasks in the family, clan, or tribe as their strength permitted and received their share of such subsistence as the group had. Or they were knocked on the head and relieved of old age worries. In handicraft and agricultural societies they were able to work more or less and were supported by their children or family clan. In modern industrial America (and Europe) family ties are weakened by the migration of the young from their birthplaces to other places of residence; children are less dependable as means

[1] Cf. "Labor Legislation," Chapter VII, for discussion of this old age pension legislation.

[2] Committee on Economic Security, *Old Age Security in the Economic Security Program*, Washington, 1935, p. 1.

[3] *Ibid.*, p. 3. Cf. Chapter I, supra, for discussion of age trends in American population.

of support since they are far away and themselves working in less secure occupations; the aged workers are eliminated from the major industrial occupations, often long before they are old; and the aged find themselves less able either to fall back upon their families or to secure employment for their own support.[4]

It has long been urged that the modern industrialist has a definite responsibility toward the aged worker and his dependents; that having used him during his active years, industry owes him, and his wife, life long support rather than merely hour to hour wages. The old age pension and insurance legislation enacted in many foreign countries has recognized this responsibility and required employers to contribute to pension funds for the industrial population.

American employers as a whole had not conceded down to 1935 that they owed this responsibility to the workers as a whole or even to their own employees, but a large number of individual concerns and governmental bodies had set up pension plans for their own employees. It is the purpose of this chapter to sketch briefly the scope, characteristics, and limitations of the plans which have developed in the United States.[5]

The American Express Company established the first industrial old age pension plan in the United States in 1875. This was a non-contributory plan, the employer paying all of the costs. The Grand Trunk Railway of Canada preceded the express company with a contributory plan organized on October 1, 1874.[6] The Baltimore and Ohio Railroad followed with a contributory plan on May 1, 1880. This was a complete failure, because the employees would not contribute to the fund. In 1884 the road established a non-contributory plan.

Latimer says that in the period 1881–1900, with the exception

[4] The American people owes a debt to Mr. Abraham Epstein for his work in illuminating this problem and pressing it upon the attention of the nation. Cf., e. g., his *The Challenge of the Aged*, Vanguard Press, New York, 1928, and his *Insecurity, A Challenge to America*, Harrison Smith and Robert Haas, New York, 1933. Also, Testimony, in Hearings before the Committee on Ways and Means, House of Representatives, Seventy-fourth Congress, First Session on H. R. 4120, January 21–31 and February 1–12, 1935, Washington, Government Printing Office, 1935, pp. 552–583.

[5] Henderson, Charles R., *Industrial Insurance in the United States*, The University of Chicago Press, Chicago, 1909. Chapter IX gives the early history of municipal and state pensions, particularly for policemen, firemen, and teachers, but including also the pensions for Confederate soldiers established by various southern states.

[6] Fifth Annual Report of the Commissioner of Labor, 1889, U. S. Department of Labor, Washington, 1890, p. 28.

of the plans mentioned, such old age relief as was given in American industry "continued under unstandardized procedure." [7] By June 30, 1908, "seventy-two railroads and railroad systems, employing 954,919 persons, 66–69 per cent of the total number of railroad employes in the United States," reported expenditures during the fiscal year on account of pensions. "By 1927, almost 95 per cent of employes on Class I railroads" were covered by pensions, "and of these, 1,414,477 or 87.5 per cent (82.4 per cent of all employes), were on roads maintaining formal pension systems." More than 95 per cent of all pension payments made to railroad employees are made without cost to the employees.[8]

The Consolidated Gas Company set up an informal plan in 1892, and have not yet recast it into a formal plan. All the public utility plans have borne a considerable similarity to those of the railroads, but from the beginning there has been a definite tendency to make them more liberal with respect to age at retirement, service qualifications, and relation of pension allowances to customary earnings.[9]

Banks and insurance companies became interested at an earlier date than manufacturers. A large proportion of their plans have been of a contributory character, and Canadian banks, with their branch banking system, have taken more interest in pensions than those in the United States. Four bank plans were established before 1900, covering 7325 employees, but only 36 banks in the United States and Canada, with 35,791 employees, had pension plans in 1929.[10] Beginning in 1924, efforts have been continuous to have Congress enact legislation to establish a pension system for the employees of the Federal Reserve banks. "Remuneration of these persons is limited to salary, while pay of the personnel in commercial banks is enhanced by bonuses and by the possibility of employees and officers becoming shareholders." [11]

Employers in the manufacturing group began to manifest practical interest in pension systems between 1901 and 1905. A noncontributory plan was established by Alfred Dolge in 1882, but his firm failed in 1898.[12] In 1892 the Solvay Process Company

[7] Latimer, Murray W., *Industrial Pension System in the United States and Canada*, Industrial Relations Counsellors, New York, 2 vols., 1932, p. 23. This is the standard authority on old age pension plans.

[8] *Ibid.*, pp. 26–28, 30.

[9] *Ibid.*, p. 35.

[10] *Ibid.*, Table II, p. 474 and Table III, p. 483.

[11] *Ibid.*, p. 37.

[12] Cf. *ibid.*, pp. 685–687 and App. E for description of this plan.

established a plan which was discontinued before 1899. The first enduring plan in the manufacturing field was that of the Carnegie Steel Company, 1901. The Standard Oil plan started in January 1903, and has become one of the most important of the plans started earlier in the century. Mines and mercantile establishments also started their earliest plans between 1901 and 1905, but approximately 85 per cent of the 421 pension plans started in the United States and Canada between 1874 and 1929 were established after 1910. So far as the non-railroad section of American industry is concerned, 1910 represents for practical purposes the beginning of the pension movement. Moreover, as Latimer points out, most of the plans in existence were in the railroad, public utility, iron and steel, and oil industries, which were the industries that adopted pension plans earliest, along with banks. But in the banking field, the early promise of interest in pensions has ended in a disappointment.

In manufacturing but 139 non-contributory plans were established up to 1929 that were still in operation in 1929. These had 1,227,494 employees in 1929. Nearly 391,000 of these were in iron and steel; approximately 247,000 in chemicals and allied products, and 246,000 in the making of machinery. In mining but 28,181 employees were covered. The public utilities had 666,186 employees under pension plans, and the railroads 1,562,128. Banking, though it was one of the earliest to start pension plans, had but 14,592 employees covered. The total coverage of non-contributory plans in 1929 was for all industries 3,585,492 employees, of whom 43.5 per cent worked for railroads, 34.2 per cent in manufacturing, and 18.5 per cent for public utilities.[13] About 14.5 per cent of American wage earners, exclusive of agriculture, public service, and professional work paid on a wage basis, were covered by these pension plans. Another 159,926 were working under plans in which the employees contributed to the pension funds.[14]

But this does not mean that 14 per cent of American wage earners enjoyed old age protection under these pension plans. Only a very small percentage of the employees who work for concerns which have pension plans can possibly qualify for pensions. Some plans restrict membership to those employees who are members of their sick benefit society, or bar certain classes of

[13] *Ibid.*, pp. 39–41, Table VIII, p. 57, and App. Table I, pp. 470 ff.
[14] *Ibid.*, Table II, pp. 474–477.

employees, such as salesmen, supervisors, and executives, or persons earning above a certain amount per year. But the great majority of the plans admit all of their employees to pension rights. This is not the serious difficulty. The catch is that no one can draw a pension until he has been *continuously in the service* of an employer for from 15 to 25 years, in some cases 30 years; the minimum requirement varying with the different companies. Only a very small percentage of wage earners in manufacturing, mining, mercantile, and banking institutions can attain such lengths of service.[15]

The widespread layoffs incident to years like 1907–08, 1921 and 1930–33 sever the employment connections of large numbers of people. Prolonged seasonal layoffs become terminations for many others. The fact that a large part even of the people who work in particular industries must change employers frequently prevents the accumulation of long periods of *continuous* service with any one employer. The requirement, if complied with, prevents wage earners from changing jobs to better themselves. Its net result has been to limit the benefits of private pension plans in American industry to a very small percentage of the employees who work for such companies.

Some of the plans established in the last twenty-five years did not specify a definite period of service which had to be completed to qualify for a pension. At first thought these appear to have been more liberal. It is doubtful if they were. They all set up definite retirement ages and length of service was controlled by their employment offices. They simply refrained from hiring persons beyond a certain age; rarely higher than 40 years, commonly as low as 35 years, and not infrequently, 30 years. The private pension plans have led almost inevitably to employment "dead-lines." Whether the pensions were worth enough to the few who drew them to balance the denial of employment opportunity to the many who had passed the "dead-line" is open to question.

The number who acquired the necessary lengths of service was smallest in the manufacturing and construction industries, larger in the public utilities, and highest on the railroads, particularly in the unionized crafts on the railroads.

Basing his estimates upon reports received from 218 companies with 3,320,000 employees, Latimer reached the conclusion that

[15] Cf. also Epstein, Abraham, *Insecurity, A Challenge to America*, Chap. XXVI.

between 108,000 and 121,000 persons were drawing industrial pensions on January 1, 1932, and receiving in pensions between $73,400,000 and $85,500,000 annually.[16] "Making allowance for unknown plans and pensioners, it seems probable that the number of pensioners on January 1, 1932, did not exceed 140,000 and that payments in the year 1931 were not more than $97,000,000." [17] This constituted only 14 per cent of the aged wage earners of the country.

There was little reason to believe that the number of company pension plans in existence in 1932 would be sufficiently increased within a reasonable period to constitute a satisfactory coverage of the American industrial population. Apparently it has been impossible to interest only a small minority of employers in setting up voluntarily such things as pensions, group insurance, and profit sharing. There has been nothing in the history of private industrial pension plans, either in the United States, Canada, or European countries, to indicate that the movement was apt to extend over industry generally. In 1927, about 83 per cent of the employees in the railroad industry were working for railroads which had pension plans. There was no other type of industry, unless it was the public utilities, in which private plans promised an important coverage of the wage earners.

Latimer found, however, that a surprising number of new plans were adopted from mid 1929 to the spring of 1932; a total of 69 and an average of 24.35 plans per annum. This annual average had been exceeded only in the war years, when the number of plans established rose to 27 plans per year. During the decade 1921–29, the average was 16.27. But the new plans of the 1929–32 years were mostly in industries little affected by the depression—insurance companies, paper and printing, and savings banks; and 94 per cent of them were of a contributory character.[18]

On the other hand,

> "In the period between July 1, 1929 and April 30, 1932, the rate of discontinuance of plans was the most rapid yet witnessed by the industrial pension movement. Almost 10 per cent of the systems recorded as operating in 1929 were discontinued, closed to new employees, or suspended; these schemes covered, however, less than 3 per cent of the employees. Eight of the com-

[16] Latimer, *op. cit.*, pp. 866–867.
[17] *Ibid.*, p. 867.
[18] *Ibid.*, p. 843.

panies whose plans were discontinued had more than four thousand employees and eight others had two thousand or more, but most of them were relatively small. . . . A large majority of the companies continued to make payments to pensioners, although two reported that the individual benefits had been reduced."

Some of the companies which terminated their plans were in lines of business, like street railways, where their financial difficulties had become serious. Two were abandoned because of mergers with corporations which had no pension systems. In most cases,

"the financial condition of the company rather than the burden of pension payments alone forced discontinuance. It is significant that on the railroads, where more is paid in pensions each year than in other industries, no plan had been given up by 1932, although . . . a number had scaled down the benefits." [19]

In this industry the pension plans have become an established part of the rights and privileges of a powerful body of union men and could hardly be dropped without precipitating difficulties with the unions.

Employers in every case have carefully reserved the right to terminate the plan at will or after giving notice, and a large percentage of the plans have not guaranteed even the continuation of pensions already being paid, except that under contributory plans they contract to return the employee's deposits plus the interest on them. A typical plan says:

"This pension plan has been established voluntarily by the Company; and the Company shall have, and hereby expressly reserve to themselves, the right and privilege to amend, suspend, or annul it at any time at the pleasure of the Company. The plan indicates and embodies the present attitude and intention of the Company in reference to the payment of pensions to the employees of the Company, but it is not understood or construed as ever constituting in any respect a contractual relation between the Company and any such employee."

On January 1, 1909, Morris and Company of Chicago established a contributory plan, which type gave the employees a greater presumption that they were entering into an enduring agreement than did the non-contributory plans. In 1923 the company sold its business to Armour and Company. At the

[19] *Ibid.*, pp. 846–847.

time of the sale employees who had not yet been put on pension had contributed $916,352.27 into the fund, and pensioners had contributed $131,968.79. The Morris Company had contributed an aggregate of $1,249,966, and the fund had earned on investments nearly half a million dollars.

When the Morris Company sold out, many member employees withdrew their contributions with interest thereon, and the reserve fell to $320,000, which would continue the pensions then being paid for but 14 months. There were 400 pensioners. Twenty of them started suit to compel Armour and Company to continue the pensions, basing their claims upon the theory that Morris and Company had entered into a contract which Armour and Company had taken over with the business. Their contentions were completely and categorically denied by the court.[20]

In the early stages of the pension movement, the actuating motives seem to have been largely humanitarian. Concerns which had been in operation for 25 to 40 years found themselves with some old employees no longer able to work and without adequate means of support. They arranged for some special retirement wage for such people rather than see them become dependent on charity or relatives after working many years for the company. These arrangements established a precedent and other employees, as they got old, expected like treatment. In the course of a decade, the pension roll became a substantial cost and the whole question had to be faced as a matter of company policy. The employer had benefited from long years of steady, loyal service, and the employees reaching retirement age had helped maintain the morale of the labor force. Their retirement on pension both satisfied a sense of justice and made possible their replacement by younger workers. It obviated criticism by the active workers that the old workers had been heartlessly cast out when they "were burned up." While this was not the origin of pension plans in all companies, it occurred typically in many.

The employers who followed the pioneers in pension plans often were actuated more definitely by business motives. They have wanted to avoid keeping employees on the payroll who were no longer efficient and to remove the obstruction to change and progress often found in the older group.

[20] *Agnese R. Cowles*, et al., *Appellants* v. *Morris and Co.*, et al., *Appellees*, Appellate Court, First District of the State of Illinois, December 21, 1926.

A company which started its plan in 1926 made the following statement of its reasons for establishing a pension plan:

> "Believing that those who have served this company faithfully for a long period of years deserve the especial consideration of the company, particularly when retirement from active service is apt to work a hardship upon those who have depended for their support upon earnings no longer available, the —— Company have established a system of retirement pensions for employees who have earned or who may earn an honorable retirement on account of age or disability.
>
> "The plan is an evidence of the company's appreciation of the fidelity, efficiency and loyalty of employees who have given to its service the most productive years of their lives. The pensions granted have no relation whatever to the determination of the amount of wages or salaries paid or to be paid by the company. They are granted as a voluntary reward for fidelity and persistency of service, and in the hope that the existence of this pension system may encourage permanently such efficiency and persistency of service among the employees of the company."

Four types of industrial pension plans developed in the United States during the forty years under review: (1) non-contributory, (2) contributory, (3) composite, and (4) savings. Under the non-contributory plan, the entire cost was borne by the employer. The American Cast Iron Pipe Company, Birmingham, Alabama, established a plan of this type in 1917. It covered all employees, and paid pensions ranging from $240 a year to $2400, at the sole cost of the employer. The pension was computed by multiplying the number of years of service by 2 per cent of the average pay earned by the employee during his last ten years of employment. If he had worked for the company thirty years and his average pay during the last ten years had been $1400 a year, his pension would have been 30 x 2 per cent of $1400, or $840 a year. A majority of employers have preferred the non-contributory plan because the employer could retain complete control of its administration, could definitely reserve the right to terminate the plan whenever he pleased, and could not be held to have entered into a contractual relation with his employees, as might appear to be the case under a joint contribution plan.

The contributory plan has the advantage of providing larger pension payments, and constituting a definite method of saving by employees for old age income. The Elgin National Watch Company established a contributory plan in 1918, which was

revised in 1927. The company set $100,000 aside in 1918 as a nucleus for the retirement fund. All employees over 21 years of age were required to pay in from 2.7 per cent to 5.6 per cent of their wages, according to their age and up to a pay maximum of $4000. The company paid annual contributions equal to those of the employees up to January 1, 1928. They then changed the company contribution to 2.26 per cent of the aggregate wages and salaries of all employees.

Employees could be retired after ten years' service; in the case of women at 60 years of age and of men at 65. Retirement was compulsory at 70. The pension was 1½ per cent of the last ten years' average pay times the number of years during which the employee contributed to the fund, but not less than 50 per cent of such pay, if the inclusion of his total years of service would bring the pension up to half pay. This last provision was intended, of course, to enable employees who had been with the company for years before 1918 to get a pension of at least half pay. An employee leaving the company's service before retirement was entitled to withdraw his contributions without interest.

Under the composite plans the employers set up a non-contributory system but permitted employees to increase their pensions by making voluntary contributions to the pension fund. The Leeds and Northrup Company, Philadelphia, have paid a pension equal to 2 per cent of the aggregate pay for the first 5 years' service plus 1 per cent of aggregate pay for each year thereafter, with a maximum of $1800 per year. This has been charged as an operating cost against the current payroll. Employees have been permitted to contribute 3 per cent of their pay into the pension fund, and up to the time the employees were 35 years of age the company paid in an equal amount. After 35 the company's contribution was larger. Under this contributory plan the employee received an annuity equal to 1 per cent of his aggregate pay while with the company. In case of his death, any unpaid balances from the employee's contributions were paid to his dependents. His pension was guaranteed for the length of his life.

The savings type of plans were in most cases not true pension plans. They were subsidized savings plans. The American Lithographing Company, New York, started a plan in 1920 under which employees with one year's service could put in 5 per cent of their

pay, not over $104 per year. The employer credited to the employee's account his share of 5 per cent of the net earnings, prorated over the payroll. At the end of 10 years the employee could withdraw, if he wished, the entire sum credited to him.

It has been the experience of practically all *old* pension plans that the costs of pensions have turned out to be much higher than was anticipated when they were started. The number of pensioners increases steadily for a long period of years.[21] The number of pensioners under formal railroad plans increased from 1832 in 1901 to 34,102 in 1927 and the amount paid out, from $455,858 in 1901 to $19,915,597 in 1927.[22] Even this, judging from European experience was not a long enough period to reach the peak of pension claims. If the number of people working for railroads did not increase, the size of the pension roll would continue to mount nevertheless for at least 40 years. In the 21-year period under consideration, the number of pension plans and the number of railroad employees both increased. But aside from these factors, which account for a substantial part of the increase indicated, it should be noted (1) that the persons who went on the pension rolls lived for a number of years, some of them 15 or 20 years, which caused a continuing accumulation in the number on the pension rolls, (2) that frequently the life expectancy of those who go on pensions turns out to be substantially longer than was expected when the plans were set up, (3) that the persons who go on disability pensions before they reach old age—such as persons who become blind or otherwise unfit for work—are apt to be on the pension roll for many years, (4) the pension plan causes a larger number of workers to stick to their employers in order to qualify for pensions, thus increasing the percentage of employees who eventually go on the pension roll.[23] (5) During the period 1901–29, the rise in money wages increased the per capita cost of pensions. Most pensions were a percentage, how-

[21] "Rapid growth in the number of pensioners and in the amount paid out in pensions each year is characteristic of every known pension plan, whether industrial, municipal or state, public or private, noncontributory or contributory. The rate of increase varies from year to year and differs from organization to organization, but over a period of years following the establishment of any given plan a rise in number of pensioners and in the amount required for pension payments has been the invariable experience." Latimer, *op. cit.*, p. 159.

[22] Latimer, *op. cit.*, p. 161.

[23] For detailed analysis of this point cf. Latimer, *op. cit.*, pp. 163–218.

ever computed, of the employee's earnings during the latter part of his working life, when his earnings were at or near the peak. The railroad pensions just mentioned increased from an average pension of $248.83 in 1901 to $584.00 in 1927. The per capita cost of pensions increased during the period both because of the rise in general wage levels and because the pensions were computed in most cases upon the individual's maximum average earnings.

Experience has demonstrated that American private pension funds have depended too much upon current operating income. There has not been, in most pension schemes, a pension fund set aside and available only for pension uses. Instead, especially in the non-contributory schemes, the employer has agreed in most cases to pay a definite pension and depended upon carrying the pensions on the operating payroll. When adversity cuts the current income, the pension load in many cases becomes difficult to carry. In other cases, though pension "funds" have been set up, ordinarily they have not been isolated from the general operating capital or general reserves of the company and specifically earmarked for pension purposes. They have been bookkeeping reserves rather than actual independent reserves.

A number of things have occurred which have demonstrated that this procedure has been questionable. As was pointed out, the upward trend of the wage level, the fact that pensions were based in whole or in large part upon the higher earnings of the employee's later years, and longevity greater than was expected combined to increase employers' pension obligations far more than the amount they had anticipated. The disturbed economic situations which followed the war demonstrated that a worker who depended for his pension upon an employer's ability to earn money twenty or thirty years later was building his expectations upon shifting sand. The employers, in most cases, protected themselves against the risks of the situation by reserving specifically the right to terminate their pension plans at will or whenever they deemed such action necessary. While large sums had been paid out in pensions, the whole old age pension structure set up by private industry was in extremely shaky condition in the depression of the 1930's. The outlook for thousands of workers in middle and later life, who thought they had old age pensions they could depend upon, suddenly changed.

LABOR LEGISLATION

By *Elizabeth Brandeis*

CHAPTER I

INTRODUCTION

In the earlier volumes of the *History of Labour in the United States*, labor legislation was discussed only somewhat incidentally, when some section of the labor movement attempted to secure some legal regulation of working conditions. Many of labor's political objectives in the earlier years were not labor legislation—as that term is used today. Statutes providing for universal suffrage, free public schools, and free homesteads were labor laws only in the sense that organized labor sought their passage. As for labor legislation proper, the amount secured and even the amount sought by the labor movement was small.

A history of labor in the United States which carried the story only to 1897 naturally devoted little space to labor legislation, for there was little labor legislation to write about up to that date. Not only was the existing legislation confined to relatively few states, but even in these it was decidedly limited in scope. Further, the constitutionality of many of the statutes was in considerable doubt. Court decisions had invalidated a number of the most effectively worded measures. In fact in the 'nineties there seemed to be an increasing tendency to construe labor laws both as class legislation and as unwarranted interference with freedom of contract, two grounds for holding them invalid under state and federal constitutions. This attitude of the courts reflected the attitude of the public. The necessity of regulations to protect the wage earner and the propriety of using the state to provide such protection were little recognized at that time.

Thirty years saw a significant evolution both in the laws enacted and their acceptance by the public and the courts. A history of labor from 1896 to 1932 would be obviously incomplete without a section on the history of the labor laws passed during the period. Such is the content of the following pages. The purpose of this section is to describe the increasing use of governmental activity for the protection of wage earners—as represented by the rapidly growing volume and the constantly widening scope of the statutes passed in their behalf. The story of these laws may be said to be

threefold. First, how they came to be passed, what forces promoted and opposed them; second, how they have been administered, the methods by which and the extent to which they have proved to be effective measures of social control; and third, how they have been accepted by the courts, the extent to which they have been retarded or nullified by adverse decisions as to their constitutionality.

The actual chronology of labor legislation and the court decisions as to its constitutionality are of course matters of readily available official record. Here the task of the historian is merely to assemble and summarize the facts.[1] But to tell the story of how the laws came to be passed and how well they worked out in practice is a very different matter. Material on how specific laws came to be passed is fragmentary in the extreme. The official records in most states reveal nothing—there are no stenographic reports of legislative hearings or legislative debate. Even if such records were available, they would not reveal completely the interplay of forces which actually put the particular measure on the statute book. Even the participants in a campaign to secure a given piece of legislation can only guess at the real explanation for their success or failure. Still in so far as it can be secured, the record of the organized groups mobilized in support or opposition, the amendments secured or defeated, and the length and character of the educational campaign, are highly significant in revealing the actual operation of democratic processes. Wherever available, records of this sort have been studied and utilized.[2]

Perhaps even more difficult to secure is adequate material on the actual operation of labor legislation. When a law is once on the statute book public interest tends to wane. The detailed day to day process of making and keeping it a living reality lacks dramatic appeal and is apt to go on unnoticed. Studies of labor law administration are difficult to make. The official reports are an arid field for the investigator; brief and formal and purposely colorless, they usually reveal little or nothing of real value. The statistics of

[1] The division of the United States into 48 states and sundry territories, however, complicates the presentation of this material and tends to give an unpleasantly statistical character to the chronological account. The writer regrets, but did not know how to avoid, repeated statements of the number of states enacting a given type of law within a given period. To carry the story along for the whole of our widely diversified country laid upon the writer a somewhat onerous burden from which it is to be feared the reader cannot wholly escape.

[2] Probably the best material of this sort is to be found in U. S. Department of Labor, Women's Bureau, *History of Labor Legislation for Women in Three States*, Bulletin 66, Part I, 1929.

inspections made or prosecutions commenced are usually reported, but such quantitative measures signify little. Unfortunately those charged with the duty of enforcing laws are customarily too busy with pressing daily problems to attempt to generalize about what they are doing; and they are often too close to their work to see it in proper perspective.

Yet labor legislation is obviously useless as an instrument of social control unless it can be translated into action through effective administration. Hence he who attempts to write a history of labor legislation cannot escape the obligation of piecing out as best he can the story of its administration. In the following pages the treatment of this subject is necessarily fragmentary. It is based on a few first-class studies of administration in specific states and specific fields, and on the writer's four years of practical experience in administering the District of Columbia minimum wage law and ten years of rather close contact with the work of that banner administrative body, the Wisconsin Industrial Commission. In some chapters it will be noted that the administrative side has been largely or wholly neglected. This is due to a lack of available material.

The reader should understand that no attempt has been made to include in this volume all the types of labor laws passed during our period. This work does not purport to be thus encyclopaedic. A large number of less important statutes of various kinds which belong in the category of labor legislation have been omitted from the story—including mechanics lien laws, anti-truck laws, prison labor laws, and a number of other minor varieties. It seemed preferable to leave these out and concentrate on what may be termed the major fields of labor legislation, notably child labor, maximum hours for men and women, minimum wages, workmen's compensation, and other forms of social insurance. In these fields the attempt has been made to include in the count all the statutes enacted in the whole country, and thus make the study complete.

One major omission in this section may be noted and should be explained; there is no chapter on safety and health legislation. The general movement to promote industrial safety and health is treated earlier in this volume by Professor Lescohier, in Chapter XIX of "Working Conditions." The history of the administration of laws on these subjects is central to the history of all labor law administration and is discussed below at some length in Chapter VIII.

The amount of safety and health legislation is so large and the detail involved in attempting to discuss it so great, that it seemed wisest not to try to give any chronological treatment of its enactment.

This part does not include legislation dealing with labor unions or trade disputes. The most important of these laws and judicial decisions are discussed in connection with the history of the labor movement in the next volume.

In this part Chapter II on Child Labor was written by Elizabeth Sands Johnson for inclusion in this volume. Chapter VI on Workmen's Compensation is a condensed version of a thesis submitted by Harry Weiss for a Ph.D. at the University of Wisconsin. Both Miss Johnson and Mr. Weiss rendered very substantial aid in preparing material for use in the other chapters. Aid in collecting material and checking footnotes was rendered by Sidney Knope, Marianne Sakmann, and Chester Best.

Finally it should be noted that in this part the story ends with December 31, 1932. It is impossible that a work of this character should be entirely up to date when published. Too many changes are bound to occur while the manuscript is in the printers' hands. Hence it seemed wisest to choose a definite stopping place in advance; and the beginning of the New Deal with the revolutionary changes it inaugurated in the field of labor legislation was chosen as appropriate for the purpose. For labor laws, state as well as federal, which belong to the New Deal period, the reader is referred to the many books on labor which describe the contemporary scene.

CHAPTER II

CHILD LABOR LEGISLATION

By *Elizabeth Sands Johnson*

Labor legislation in the United States as in England began with the regulation of child labor. Speaking generally, children were the first workers for whom the protection of the state was sought and to some extent attained, their need for such protection being naturally the most obvious. One or two measures relating to the education of employed children were passed before 1820.[1] In the middle of the century laws relating to child labor were enacted in all six of the New England states and in a few scattered states in other parts of the country.[2] The first state labor inspectors were appointed to enforce child labor laws. One such was appointed in Massachusetts in 1867, in Connecticut in 1869.[3] As early as 1879 there were already seven states which fixed a minimum age at which children might be employed [4] and twelve which set maximum hours for children at work.[5]

Almost from the beginning it was apparently recognized that there was no single solution of the child labor problem, that adequate protection for children necessitated a number of diverse requirements: (1) a minimum age below which they should not be allowed to work; (2) a minimum of education which they should acquire before entering employment; (3) a maximum number of hours for their employment; and (4) some rules to protect them

[1] Connecticut 1813. Otey, Elisabeth L., *Beginnings of Child Labor Legislation in Certain States*, p. 90, Vol. VI of Report on Conditions of Woman and Child Wage Earners in the United States, Senate Document No. 645, 61st Congress.

[2] The first maximum hour law (10 hours a day) was enacted in 1842 in Massachusetts, and the first minimum age provision (12 years) in 1848 in Pennsylvania. Massachusetts Acts and Resolves 1842, Chap. 90; Pennsylvania Laws of 1848, No. 227. Otey, *op. cit.*

[3] Massachusetts Laws of 1867, Chap. 285; Connecticut Laws of 1869, Chap. 115.

[4] Massachusetts, New Hampshire, New Jersey, Pennsylvania, Rhode Island, Vermont, Wisconsin. See Ogburn, William F., *The Progress and Uniformity of Child Labor Legislation*, Columbia University Studies 1912, Vol. 48, Part 2, Table 12, p. 71. The enumerations of child labor laws in the following pages, unless so specified, do not include statutes which affected mining only.

[5] Connecticut, Indiana, Maine, Maryland, Massachusetts, Minnesota, Ohio, Pennsylvania, Rhode Island, South Dakota, Vermont, and Wisconsin. *Ibid.*, Tables 30–34, pp. 108–113.

against especially hazardous or unhealthful occupations. Out of these four elements and the attempts to enforce them there developed as the years went by complex statutes containing long lists of hazardous employments, and elaborate provisions as to documentary proof of age and the issuance and use of employment certificates. To follow the evolution of the modern child labor law means tracing progress on a half dozen different fronts and the reader needs to keep in mind their relation to each other.

Child Labor Legislation of the Nineteenth Century

The Knights of Labor were active advocates of child labor laws—as well as certain other types of labor legislation. The period in which the Knights were at the height of their power and influence coincided with a rapid spread in child labor regulations. In the five-year period from 1885 to 1889 ten states hitherto without such laws passed measures fixing a minimum age for the employment of children [6] and six new states in the same period set a maximum to the hours which employed children might work.[7]

In the 'nineties the importance of the Knights waned rapidly. Their successor, the American Federation of Labor, was not primarily concerned with protective labor laws, and no new advocates of child labor legislation had yet arisen (except in Chicago and New York City where public indignation was aroused over the condition of child workers with resulting improvement in the laws of Illinois and New York). In consequence, progress in the 'nineties did not extend far into new geographical areas or into new standards for child protection. During the decade only seven states enacted their first child labor laws.[8] This made a total by 1899 of 28 states [9] with some kind of protection of child workers. In

[6] *Six eastern and middle western states:* Connecticut, Indiana, Maine, Michigan, New York, and Ohio. *One southern state:* Louisiana. *Three western states:* California, Colorado, and Nebraska. *Ibid.*, pp. 71–76.

[7] *Three eastern and middle western states:* Michigan, New Hampshire, and New York. *Two southern states:* Alabama and Louisiana. *One western state:* California. In 1884 there were already thirteen states with hour regulation affecting at least employment in manufacturing—*eleven eastern and middle western states:* Connecticut, Indiana, Maine, Massachusetts, Minnesota, New Jersey, Ohio, Pennsylvania, Rhode Island, Vermont, and Wisconsin; *one southern state:* Maryland; and *one western state:* South Dakota. See *ibid.*, Tables 30–34, pp. 108–113.

[8] Illinois, Missouri, North Dakota, Oklahoma, Tennessee, Virginia, and Washington. Alabama in the same period repealed its child labor law. Illinois is listed as a state enacting its first child labor law in the 'nineties because its earlier legislation was limited to mining and mendicants and street exhibitions. *Ibid.*, pp. 54–59.

[9] California, Colorado, Connecticut, Illinois, Indiana, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Hampshire,

the decade seven states raised the minimum age to 14 years making a total of nine with this standard by 1899.[10] Some states extended the coverage of their laws to include more occupations. But prior to 1900 the typical child labor law remained limited in scope to children employed in manufacturing; [11] set a minimum age of 12 years; fixed maximum hours at 10 per day; contained some sketchy requirements as to school attendance and literacy; and accepted the affidavit of the parent as proof that the child had reached the legal minimum age.

The Child Labor Movement of the New Century

The turn of the century brought new advocates and new energy into the struggle against the evils of child labor. There was an aroused conscience in the South in the face of the great growth of the child-employing textile industry. At the same time there was a zeal in the industrialized North to establish standards of employment and of administration which would assure adequate protection to children.

Local Beginnings

The new child labor movement first appeared in the South as yet entirely untouched by child labor legislation, where the cotton textile industry was developing at a rapid pace. In the decade of the 'nineties the number of wage earners engaged in the cotton goods industry of the South nearly trebled.[12] That 25 per cent of southern cotton mill workers were children under 16 years of age failed to elicit much attention in 1890 when these children numbered less than 9000. But when in 1900 this 25 per cent meant almost 25,000 [13] children, public spirited citizens became

New Jersey, New York, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Dakota, Tennessee, Vermont, Virginia, Washington, West Virginia, Wisconsin. See *ibid.*, pp. 54–59.

In addition the following ten states had laws protecting children below the ages 10–12–14 years from employment in mines: Alabama, Arkansas, Idaho, Indian Territory, Iowa, Kansas, Montana, New Mexico, Utah, Wyoming. *Ibid.*, Table 16, p. 75.

States with laws limited to immoral occupations, street exhibitions, etc., are not counted here. For discussion of such laws see pp. 431–432 (of this chapter).

[10] Colorado, Connecticut, Illinois, Indiana, Massachusetts, Minnesota, Missouri, New York, and Wisconsin. *Ibid.*, Table 13, p. 71.

[11] In the important mining states separate laws prohibited employment below a certain age in mines. See U. S. Commissioner of Labor, Second Special Report, *Labor Laws of the United States*, Revised, 1896, under various state mining laws.

[12] 168 per cent increase. See Otey, *op. cit.*, p. 46. Statistics reprinted from U. S. Bureau of Census Bulletin 69, 1900, p. 8.

[13] *Ibid.*

aroused. Just how many very young children were in the mills is not definitely known, but testimony is that "many children worked at eight years of age." [14] The fact that so many of the children in the mills were illiterate was a source of much concern.

In 1901 child labor bills were introduced in all four of the South's leading textile states, the Carolinas, Georgia, and Alabama, and active campaigns were waged. These bills had the backing of the state federations of labor who saw not only the wrongs to the children, but also the usurpation of jobs rightfully belonging to adults. The governors of Georgia and Alabama took stands sympathetic to the consideration of child labor legislation. Newspapers carried favorable editorials on the subject.[15] Probably the most vigorous of the new groups working for child labor legislation was the Alabama Child Labor Committee organized under the leadership of Reverend Edgar Gardner Murphy, a Protestant Episcopal minister of Montgomery. He called child labor "an issue which touches the ethical assumptions, the moral standards of our economic progress." [16] This was the first child labor committee organized in the United States.

While the South was working for its first child labor laws, the North was attempting to raise its standards for the employment of children, and above all to make its child labor laws enforceable. In New Jersey in the spring of 1902, the trade unions, the New Jersey Consumers' League, the State Charities Aid Association, and the press attacked the employment of under-age children and the negligence of the inspectors. Boy labor in the glass factories was the object of greatest complaint.[17] The agitation in New York arose also largely from the failures in enforcement. The movement in this state organized itself into the New York Child Labor Committee the membership of which included among others Felix Adler, then professor of political and social ethics at Columbia University; Florence Kelley, secretary of the National Consumers' League, formerly chief state factory inspector of Illinois; and V. Everett Macy, banker and philanthropist. Robert Hunter,

[14] U. S. Industrial Commission Report, 1900, Vol. VII, pp. 229, 234, 494, 503, 529, 551.

[15] Otey, *op. cit.*, pp. 139, 143 ff., 184, 192.

[16] Murphy, E. G., *The Present South*, Macmillan, New York, 1904, p. 142.

[17] Fox, Hugh F., "Child Labor in New Jersey," *Annals*, Vol. XX, pp. 191-195, 1902; Fox, "The Operation of the New Child Labor Law in New Jersey," Proceedings of the National Child Labor Committee, 1905, p. 110.

head worker of the University Settlement of New York City was chairman of the group.

The great influence exerted by the New York Child Labor Committee is suggested in the following quotation from a letter written in 1903 to Robert Hunter by the man who introduced the child labor bills in the New York legislature:

> "At the outset I found it to be the almost universal opinion held by members of the Legislature that the legislation was too advanced, and would never be enacted into law. That the fortunate contrary result was obtained, was due solely to the magnificent campaign waged by you. So thoroughly was the work done that all opposition was silenced through fear of opposing the intelligent public opinion that had been aroused." [18]

In Illinois the Industrial Committee of the State Federation of Women's Clubs and the Cook County Child Saving League were the leading organizations, and Jane Addams was the leading personality in the campaign for the Illinois child labor law of 1903, which contained some pioneer provisions.

While these and other local groups were organizing for action, the American Academy of Political and Social Science at its annual meeting in Philadelphia in 1902 was for the first time devoting a session to the discussion of "The Child Labor Problem." [19] The new interest in the subject of child labor is reflected in the number of articles appearing in periodicals over the country. Poole's *Index to Periodical Literature* lists 69 articles under the caption *Child Labor* from 1902 to 1906 compared with but four articles so listed for the years 1897 to 1901.

The National Child Labor Committee

Aware that the child labor problem was of national as well as of local concern, several of the leading personalities in the local movements [20] summoned, in the spring of 1904, a meeting in New York to consider a national organization to advance the child labor movement. The National Child Labor Committee was

[18] Quoted by Ensign, F. C., *Compulsory School Attendance and Child Labor*, Athens Press, Iowa City, Iowa, 1921, p. 133.

[19] Annals of the American Academy of Political and Social Science, Vol. XX, Part IV, 1902, pp. 155–220.

[20] Edgar Gardner Murphy, chairman of the Alabama Child Labor Committee, and Felix Adler, Mrs. Florence Kelley, and William H. Baldwin, railroad president, of the New York Child Labor Committee. National Child Labor Committee, Proceedings, 1905, p. 153.

organized, with Felix Adler as president and Samuel McCune Lindsay, professor of sociology in the University of Pennsylvania, as secretary. Two salaried assistant secretaries were chosen, A. J. McKelway and Owen R. Lovejoy, both of whom came from the ministry.[21] The membership included many leading citizens of the country—social work administrators, church leaders, several prominent business men, educators, editors, governmental officials, and representatives of the General Federation of Women's Clubs. Fifteen states were represented in the first year's membership, though over a third of the members were from New York.[22] Although the membership was of individuals rather than of organizations, a number of national organizations such as the National Consumers' League, the General Federation of Women's Clubs, and the American Federation of Labor co-operated in the work of the National Child Labor Committee. In 1910 there were 25 state and local child labor committees, representing 22 states, working with the National Child Labor Committee.[23]

The National Child Labor Committee undertook the task of abolishing child labor in the United States, not only with moral zeal but also with a plan. It undertook investigations of conditions in various states, selecting those industries where the child labor problem appeared to be most serious; that is, in glass factories, textile mills, truck gardens, berry fields, canneries, street trades, and night messenger service. Later on it studied such other subjects as administration of child labor laws, tenement work, and stage and motion picture employment.[24] In pursuance of the National Child Labor Committee's educational program the proceedings of its annual conferences were published; reports of investigations and many smaller information leaflets were widely distributed. The observance of Child Labor Day in schools and churches all over the country was fostered every year after 1908. After 1912 the National Child Labor Committee issued a periodical, first called the *Child Labor Bulletin*, after 1918, *The American Child*. Organization and lobbying activities were carried on in states where child labor bills were being put before the legislature.

One of the first steps taken by the new child labor movement

[21] *Ibid.*, p. 153.
[22] *Ibid.*, pp. 154–155.
[23] Sixth Annual Report of the National Child Labor Committee, in Annals, Vol. XXXV, 1910, supplement.
[24] See National Child Labor Committee, Annual Reports.

was to formulate some definite standards for legislation. A model bill was issued in 1904 based on the best features of the Massachusetts, New York, and Illinois laws. In 1911 this bill, in slightly revised form, was published as a proposed "Uniform Child Labor Law" and was recommended to the states by the National Conference on Uniform State Laws.[25] It called for a minimum age of 14 years for employment in manufacturing, and 16 years for employment in mining; a maximum work day of eight hours; prohibition of night work from seven P. M. to six A. M.; and documentary proof of age. In 1904 there was no state with a law measuring up to all five of these standards.

Volume of Legislative Activity in the States Prior to Federal Child Labor Legislation

The volume of legislative achievement in the states in the years from 1902 to the time of the passage of the first federal child labor law in 1916 was tremendous. In the one year of 1903, 11 states [26] passed comprehensive child labor laws. Five of these were southern states,[27] which had previously had no child labor laws whatever. From 1902 to 1909, 43 states enacted significant child labor legislation, either wholly new laws or far-reaching amendments. In 1900 there were still 24 states and the District of Columbia [28] in which there was no minimum age for employment in factories. In 1909 there were only six states [29] without such a standard. As in other fields of labor legislation, the peak years in the enactment of child labor laws were 1911 and 1913 when 30 and 31 states respectively, enacted such measures.[30] In 1915, 25 states took some action in this field.[31]

[25] See National Child Labor Committee, "Uniform State Child Labor Laws." Proceedings of the Seventh Annual Convention, 1911, p. 17, Article by Stovall, Hon. A. T., of Commission on Uniform State Laws.

[26] *Three eastern and middle western states:* Illinois, New York, and Wisconsin. *Six southern states:* Alabama, Arkansas, North Carolina, South Carolina, Texas, and Virginia. *Two western states:* Oregon and Washington. U. S. Bureau of Labor, *Child Labor in the United States*, Vol. VI, Part I, Bulletin 52, 1904, pp. 569–637.

[27] Alabama, Arkansas, North Carolina, South Carolina, and Texas. *Ibid.*

[28] *One eastern state:* Delaware. *Twelve southern states:* Alabama, Arkansas, District of Columbia, Florida, Georgia, Kentucky, Mississippi, North Carolina. Oklahoma, South Carolina, Texas, and Virginia. *Twelve western states:* Arizona, Idaho, Iowa, Kansas, Montana, Nevada, New Mexico, Oregon, South Dakota, Utah, Washington, and Wyoming. See Ogburn, *op. cit.*, Table 12, p. 71.

[29] Arizona, Delaware, Nevada, New Mexico, Utah, and Wyoming. *Ibid.*

[30] *American Labor Legislation Review*, "Child Labor," October 1911, I, 69; October 1913, III, 364.

[31] *Ibid.*, December 1915, V, 694–721.

Development of the Fundamental Provisions of Modern Child Labor Laws—1903 to 1916 [32]

Child labor legislation at the end of the nineteenth century contained most of the elementary principles of modern child labor laws; i. e., regulations affecting the minimum age for employment, the maximum hours of work, and the health, safety, and education of employed children. The task of the first years of the twentieth century was to devise specific standards and methods of administration to translate these principles into actualities. The development of standards proceeded along these lines: (1) provisions for evidence of age that could withstand the circumventions of employers or parents; (2) hour provisions that should bear some relation to the amount of work that children could do with a reasonable degree of safety to their health and welfare; (3) educational provisions that really protected normal children from reaching adulthood handicapped by a lack of the fundamentals of an education; (4) provisions that excluded children from specific occupations in which they would be unreasonably exposed to risk of accident, occupational disease, or to immoral influences; and (5) health provisions that prevented children from engaging in the kinds of work that might undermine their health and physical fitness. Another significant development was the building of a system of official supervision over working children, whereby the qualifications of all children seeking employment were systematically ascertained, and whereby all children were accounted for and none might escape the protection intended for them—that is, the employment certificate system. More important even than a system of employment certificates in bringing about effective enforcement of child labor standards was compulsory school attendance.

Compulsory School Attendance [33]

Advocates of child labor regulation were interested in compulsory school attendance laws, since both kinds of legislation had

[32] Under each heading in this section the development of legislation is given down to 1916. Under a number of headings the story is carried in summary form down to 1932, because developments after 1916 were not especially significant and hence the subject is not treated in the subsequent section of the chapter which deals with the period from 1917 to 1932.

[33] The story of compulsory school attendance laws is carried down to 1932 in this section as it is not treated in later sections of the chapter.

the common aim to insure a minimum of education to all children. Moreover, compulsory school attendance was a very effective instrument for the enforcement of child labor laws. Hence a brief history of compulsory school attendance laws is given here.

The principle of compulsory school attendance for children dates from the Massachusetts law of 1852 which required children between eight and 14 to attend school for 12 weeks a year. By 1895, 28 states and the District of Columbia [34] had passed compulsory education laws, of which the early Massachusetts law was still typical. Evidence is plentiful that these laws were poorly enforced.[35]

In the 'nineties an interest in how to make such measures enforceable led to a demand that attendance be required, not for a specified number of weeks, but for the full period the school was in session.[36] Another reason for this demand was a growing realization of how little progress was being made by children in school. In Connecticut an inquiry made by the Bureau of Labor Statistics showed that in more than half of the schools less than half of the children completed the grammar school course.[37] In Chicago, a far worse situation was shown to exist. Exactly half of the children dropped out of school before reaching even the third grade and 97 per cent dropped out before reaching high school.[38]

The movement for compulsory school attendance of all children for the full time the schools were in session came somewhat earlier than the movement for child labor legislation. The first school attendance law of this type was enacted in New York in 1894.[39] But it applied only to children under 12 years of age, while the minimum age for employment in manufacturing was 14 years.

[34] *Thirteen eastern and middle western states:* Connecticut, Illinois, Maine, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, and Wisconsin. *One southern state:* District of Columbia. *Fifteen western states:* California, Colorado, Idaho, Kansas, Minnesota, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming. U. S. Commissioner of Education, Annual Report, 1895–96, Vol. II, p. 1350; 1896–97, Vol. II, p. 1525.

[35] Ensign, *op. cit.*, pp. 52, 70, 128.

[36] Such a recommendation was made in both New York and Massachusetts as a result of investigations into enforcement problems. See New York Superintendent of Public Instruction, Annual Report, 1893, App., p. 139; Massachusetts Board of Education, Annual Report, 1894–95, p. 549.

[37] Connecticut Bureau of Labor Statistics, Annual Report, 1894, p. 276.

[38] Folkmar, Mrs. Daniel, "The Short Duration of School Attendance," in *Journal of American Social Science Association*, 1898, XXXVI, 68–81.

[39] New York Laws of 1894, Chap. 671.

Massachusetts and two other New England states [40] set up similar requirements for children up to 14 years of age in the next few years. Beginning in 1901 the movement spread rapidly. Within two years nine more states [41] enacted such laws and by 1905 half of the states had taken this step.[42]

In the 'nineties the initiative behind the school attendance laws apparently came from school officials, backed by general community sentiment that all children should have a common school education in the interests of good citizenship. In the early 1900's various civic and philanthropic groups became active. The interest in Illinois, aroused in 1901, grew out of the direct relation between problems of juvenile delinquency and the street life of children, due in a measure to the discrepancy between the limited requirements for school attendance and the 14-year age minimum for employment.[43] The importance of requiring school attendance for the full school session was recognized in 1902 and 1903 by the new proponents of improved child labor laws, the General Federation of Women's Clubs, the consumers' leagues, and the child labor committees.

While the second step in compulsory school attendance—requiring attendance for the entire school session—was being attained in many states, the first step of requiring attendance for even a brief period had not yet been taken by many of the southern states. In 1905, there were still 11 states without any compulsory school attendance whatsoever and all but one of these states were in the South.[44]

[40] Connecticut and Maine. See Report of U. S. Commissioner of Education, 1897–98, Vol. 2, p. 1700.

[41] Colorado, Indiana, Maryland, Michigan, New Hampshire, New Jersey, Ohio, Pennsylvania, and Rhode Island. U. S. Department of Interior, Annual Report of Commissioner of Education, 1902, Vol. 2, pp. 2347–2352 (1903 legislation is given). The Maryland law was limited to the city of Baltimore and Allegany County.

[42] *Fourteen eastern and middle western states:* Connecticut, Illinois, Indiana, Maine, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, and Wisconsin. *Two southern states:* Kentucky and Maryland. *Nine western states:* California, Colorado, Kansas, Minnesota, Montana, Nebraska, North Dakota, Oregon, and Washington. See U. S. Department of Interior, Annual Report of the Commissioner of Education, 1905, Vol. I, pp. 188–192. (The District of Columbia is also listed here but it did not have compulsory education until 1906. See Annual Report of Commissioner of Education, 1906, p. 1247.) For limited character of Maryland law see preceding footnote.

[43] Report of Committee on Educational Legislation of the Chicago Association of Collegiate Alumnae, in Annual Report of U. S. Department of Education, 1899–1900, pp. 2596–2597 (dated and published in 1901).

[44] *One eastern state:* Delaware. *Ten southern states:* Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, Oklahoma, South Carolina, Texas, and Virginia. U. S. Department of Education, Annual Report, 1904, pp. 2269–2275.

Not until 1918 did the last state, Mississippi, pass even a local option law for compulsory education for a limited number of weeks a year.[45] In the next two years this local option measure, along with three others still existing in the South,[46] was superseded by more nearly enforceable measures of state-wide application. Compulsory school attendance for the full time that the schools were in session had by 1919 been extended to all but ten states,[47] seven of them in the South. By 1929 the number of states without such legislation had been cut to eight.[48]

Meanwhile the prevailing upper age limit for compulsory school attendance was gradually raised. The number of states with a limit of at least 16 years (exception for legally employed and certain other children being allowed) increased from seven [49] in 1900 to 33 [50] in 1915, to 42 and the District of Columbia in 1932.[51]

Minimum Age

Up to 1899 only nine states [52] had established a minimum age for employment as high as 14 years; and in that year there were still 24 states (mostly in the South and West) [53] and the District

[45] Mississippi Laws of 1918, Chap. 258.

[46] Florida, South Carolina, and Virginia. See U. S. Bureau of Education Bulletin 13, 1922, p. 17.

[47] *One eastern state:* Delaware. *Seven southern states:* Arkansas, Georgia, Mississippi, Oklahoma, South Carolina, Texas, and Virginia. *Two western states:* Iowa and Utah. See U. S. Department of Labor, Children's Bureau, *Chart of State Compulsory School Attendance Standards Affecting Employment of Minors*, January 1, 1921.

[48] Delaware and Virginia passed compulsory laws for the full school session. See Children's Bureau, *Chart of State Compulsory Education Standards Affecting Employment of Minors*, January 1, 1930.

[49] *Four eastern states:* Connecticut, New Hampshire, New York, and Pennsylvania. *Three western states:* Minnesota, New Mexico, and Wyoming. U. S. Commissioner of Education Report, 1889–1900, Vol. II, pp. 2598–2601.

[50] *Twelve eastern and middle west states:* Connecticut, Illinois, Indiana, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Vermont, Wisconsin. *Six southern states:* Alabama, Arkansas, Kentucky, Louisiana, Maryland, and Tennessee. *Fifteen western states:* Arizona, California, Colorado, Idaho, Iowa, Minnesota, Missouri, Montana, Nebraska, Nevada, Oklahoma, Oregon, South Dakota, Utah, and Washington. Note that two of the states with this standard in 1900 had abandoned it in 1915—namely, New Mexico and Wyoming. See U. S. Department of Labor, Children's Bureau, *Child Labor Legislation in the United States*, Publication No. 10, 1915, Table 5, pp. 320–381.

[51] In addition to the 33 states listed under preceding footnote, *three eastern states:* Delaware, Maine, and Rhode Island. *Four southern states:* District of Columbia, Florida, Mississippi, and West Virginia. *Three western states:* Kansas, New Mexico, and Wyoming. Louisiana law now applied only to Orleans County. See U. S. Department of Labor, Children's Bureau, *Child Labor Facts and Figures*, Publication No. 197, 1930, p. 50.

[52] For reference to states, see p. 405, note 10.

[53] For reference to states, see p. 409, note 28.

of Columbia which had no minimum age requirement whatever for children employed in manufacturing. By the end of the next decade, all the states in the East (except Vermont) [54] and all those in the Middle West had established the 14-year standard. Further west that standard prevailed everywhere except in five of the mountain states, which had so far established no standard at all.[55] One western state, Montana, had set up a 16-year minimum—the first state in the union to adopt this high standard. By 1909 all the southern states had fixed a minimum age for employment, at least in manufacturing, but only four and the District of Columbia [56] had fixed it as high as 14 years for both boys and girls. The typical minimum age in the South in 1909 was 12 years.

The opposition in the South to the 14-year age minimum (or indeed at first to any minimum) came from the cotton textile industry. The South Carolina story may be taken as illustrative. In that state a bill introduced in 1901 provided for a 12-year minimum. Opposition came largely from mill owners. One of them said the bill might be called "a bill to discourage manufacturing in South Carolina." [57] They admitted that they relied much on the labor of children under 12. One mill president stated that 30 per cent of the operatives in the spinning department were under 12. Another speaker "connected with" mills stated that "children between 10 and 12 years old do almost all of the spinning in this state and the passage of this law in the estimation of some manufacturers would stop 20 per cent of the machinery." [58] They claimed that the operatives did not want the law. Petitions from operatives to this effect were presented in the legislature. Such a law, it was said, would tend to break down "the most cordial feeling" existing between management and operatives and be a wedge for the growth of trade unionism.[59] It was declared that the bill was an infringement on the rights of parents and a slander on the cotton mill operatives.[60]

[54] See Ogburn, *op. cit.*, Table 12, p. 71.
[55] Arizona, Nevada, New Mexico, Utah, Wyoming. *Ibid.*, Table 12, p. 71.
[56] District of Columbia, Kentucky, Louisiana, Oklahoma, and Tennessee. *Ibid.*, p. 71.
[57] Otey, *op. cit.*, p. 153.
[58] Report of hearing, Charleston, South Carolina, *Weekly News and Courier*, January 23, 1901, p. 2.
[59] *Ibid.*, p. 2.
[60] Otey, *op. cit.*, p. 153.

In 1903 the mill interests in South Carolina grudgingly gave their approval to a bill providing for a 10-year minimum to be raised to 12 by 1905.[61] This act was seriously weakened by an exemption for orphans or the children of a widowed mother or a totally disabled father, and by failure to provide for its enforcement.

An age minimum as high as 14 years for all children in factories was not seriously considered in the textile manufacturing states of the South until about 1909, so great was the sentiment favoring the employment of young children. The Carolinas, the two leading cotton textile manufacturing states in the South, were the last to raise their minimum age for employment to 14 years, South Carolina in 1916, and North Carolina in 1919.[62]

Where the 14-year age minimum was established in the northern states after 1900, the textile manufacturers offered no such opposition as in the South. In fact, the Pennsylvania Child Labor Association credits the textile manufacturers of that state with "very active . . . support" of the 1905 bill which raised the minimum age from 13 to 14.[63]

This sketch of the growing acceptance of the 14-year age minimum as the standard for entering employment must be supplemented by some mention of the exemptions, which in some states so riddled the standard that it was far from the actual minimum for many children. Most common were the exemptions for work outside of school hours or during school vacations. In 1909 altogether 20 states [64] made such exemptions. Another type was the so-called poverty permit for children whose earnings were needed to support themselves, their widowed mothers, or disabled fathers. In 1909 seven states and the District of Columbia permitted children to work below the minimum age on poverty permits.[65] Six states [66] in 1929 still allowed these poverty exemptions.

[61] South Carolina Laws of 1903, Chap. 74.

[62] South Carolina Acts of 1916, Chap. 361; North Carolina Laws of 1919, Chap. 150.

[63] Pennsylvania Acts of 1905, Chap. 226; Hall, Fred S., Secretary of Pennsylvania Child Labor Association, *The Survey*, Vol. 22, May 29, 1909, p. 322.

[64] *Nine eastern and middle western states:* Connecticut, Illinois, Maine, Massachusetts, New Hampshire, New York, Ohio, Rhode Island, Wisconsin. *Five southern states:* Florida, Kentucky, Maryland, South Carolina, West Virginia. *Six western states:* Idaho, Kansas, Nebraska, North Dakota, Oregon, South Dakota. See Ogburn, *op. cit.*, Table 19, p. 82.

[65] Arkansas, California, District of Columbia, Georgia, Rhode Island, South Carolina, Virginia, and Washington. *Ibid.*, Table 19, p. 82.

[66] California: Deering General Laws of 1931, Vol. II, Act 3624, Sec. 2. Delaware: Revised Statutes 1915, Chap. 90, Article III, Sec. 3179. (Has not been changed. See

Coverage of Child Labor Laws

The question of the scope of child labor laws had up to the twentieth century generally been disposed of by designating employment in "manufacturing and mechanical establishments" or in "factories and workshops." In addition, employment of children in mines was regulated in nearly all of the important mining states. During the 'nineties the work of children in stores had attracted attention, and by 1899 half of the states [67] with a minimum age for factory work had extended it to include mercantile establishments. By that date three states had included such occupations as messenger, telegraph and telephone service, and employment in printing offices and laundries.[68] The new advocates of better protection for working children realized that the evils of child labor were not confined to employment within the walls of factory or store.

The child labor law secured in New York in 1903 exemplifies the movement to widen the coverage of such measures. The large number of children in street and casual employments was revealed by reports of the state department of labor and by investigations made by the New York Child Labor Committee. The department in its 1901 report said, "Attention should be called to the fact that aside from the employment of children in dangerous occupations in factories the evils of child labor are much greater outside than inside our factories, wherein relatively few children are employed." [69] Of the million and a half children of school age, five to 18 years, in the state, 450,000 were out of school. Only one-ninth of the children out of school, it was estimated, were em-

Session Laws 1915–1933.) Michigan: Compiled Laws 1929, Vol. II, Chap. 149, Sec. 8325c. South Dakota: Compiled Laws of 1929, Chap. 5, Sec. 10018. Texas: Complete Statutes 1928 (Penal Code), Chap. IV, Article 1577. Washington: Remington Compiled Statutes, 1922, Title L, Sec. 7621. (Has not been changed. See Session Laws 1923–1933.)

These were the only states with poverty exemptions in their child labor laws. In a large number of other states, the compulsory school attendance laws contained some sort of poverty exemption.

See National Child Labor Committee, *Child Labor Laws and Child Labor Facts*, 1928, New York.

[67] Thirteen out of 24 states with age minimum for factories. *Ten eastern and middle western states:* Connecticut, Illinois, Indiana, Massachusetts, Michigan, New York, Ohio, Pennsylvania, Rhode Island, and Wisconsin. *Three western states:* California, Minnesota, and Nebraska. Ogburn, *op. cit.*, p. 72.

[68] Illinois, Acts of 1897, p. 90; Minnesota Acts of 1895, Chap. 171; and Wisconsin Acts of 1899, Chap. 274, Sec. 1.

[69] New York State Department of Labor, First Annual Report of the Commissioner of Labor, 1901, *Report on Factory Inspection*, pp. 141–142.

ployed in factories, where their work was regulated by law. The other eight-ninths were either idle or at work not protected by law, except as the Mercantile Law, supposedly enforced by the local boards of health, covered children at work in stores. Those at work on the streets, the newsboys, bootblacks, peddlers, delivery and messenger boys, did not come within the scope of legal regulation.[70]

The youth of these workers, the long and irregular hours, and also the moral hazards to children in messenger and street work were disclosed and given publicity during the agitation for a new child labor law. The New York law of 1903, the passage of which was due to the efforts of the New York Child Labor Committee, applied to employment "in or in connection with any (factory), mercantile establishment, business office or telegraph office, restaurant, hotel, apartment house, or in the distribution or transmission of merchandise or messages." [71]

Although the framers of child labor laws in the first decade of the twentieth century perhaps often intended to include *all* children working for wages, they were reluctant to define the scope of their measures by using a single all inclusive term. Instead they lengthened the list of specific industries and occupations to be covered. The earliest law to be drafted to include all occupations was the Pennsylvania Child Labor Law of 1905.[72] It applied to employment in any establishment, which was defined to mean "any place other than where domestic, coal-mining, or farm labor is employed." [73] The Delaware law of 1909 was the first to state directly "No child under the age of fourteen years shall be employed or suffered to work in any gainful occupation." [74] However, this law also excluded agricultural work and domestic service. In fact, these two exemptions continued to be characteristic of practically all child labor laws. For the most part the only regulation of children's work in these occupations has been through the operation of compulsory school laws.[75]

The movement to widen the scope of child labor laws did not

[70] "Child Labor Reform in New York," *Charities*, January 10, 1903, X, 52–58.
[71] New York, Acts, 1903, Chaps. 184, 255.
[72] Pennsylvania Acts of 1905, Chap. 226.
[73] A separate law applied to employment in coal mines. See Pennsylvania Acts of 1905, Chap. 222.
[74] Delaware Laws of 1909, Chap. 121.
[75] Only six states by 1932 had laws applying specifically to agricultural work. (See U. S. Children's Bureau, *Children in Agriculture*, Publication No. 187, 1929, pp. 50–52.) Four of the states (Massachusetts, New York, Ohio, and Pennsylvania) made provision for work permits for agricultural work during school hours similar

go unchallenged. Most outspoken and successful of the industrial groups seeking partial or total exemption from child labor laws were the canners of fruits and vegetables. As early as 1883 children in the fruit canning industry were exempt from hour regulations in New Jersey. The experience of New York illustrates the issues involved.

When the New York legislature was considering the child labor bill of 1903, the State Canned Goods Packers' Association appeared with a provision to permit them to employ children under 14 years of age from June 20 to September 20. The canners' arguments were that the work was not harmful but light, such as stringing beans; that it was carried on in cool open sheds, and was done at piece rates, so that the children would need to work only as long as they wished.[76] In this instance the canners failed to win their point in the legislature, but in 1905 they obtained an opinion from the Attorney-General that cannery sheds were not factories and hence did not come under the child labor law. Following the investigations of the New York Factory Investigating Commission in 1912, the child labor law was amended to include cannery sheds by specifying employment "*for* any factory." [77]

In 1915 seven states [78] still allowed exemptions for work in canneries, and only two limited the exemption to school vacation periods.[79] Three of these still allowed exemptions for work in canneries in 1932.[80]

Another important group which sought, and to some extent obtained, freedom from legal regulation in the employment of children was the theater managers.

to employment certificate provisions for other types of employment. The child labor law of Nebraska specifically applies to work in beet fields. Wisconsin passed a law in 1925 giving the Industrial Commission power to make regulations regarding agricultural child labor in certain industries, such as beet cultivation and work in cherry orchards. Under this law regulations affecting child labor in beet fields were formulated and issued by the Industrial Commission in 1926. The New York child labor law provided in effect for an age minimum of 14 years at farm work, in exempting from the general age minimum provision a child of 12 or over doing farm work for his parent or guardian outside of school hours.

[76] Report of Assembly Hearing, in the Third Annual Report of the New York State Department of Labor, 1903, Vol. 3, Part I, pp. 56–57.

[77] New York Factory Investigating Commission, Second Report, 1913, I, 128, 346.

[78] *Three eastern and middle western states:* Delaware, Indiana, Michigan. *Four southern states:* Maryland, Mississippi, Tennessee, and Virginia. U. S. Children's Bureau, Publication No. 10, Summary Chart I.

[79] Maryland and Michigan. *Ibid.*

[80] Delaware, Mississippi, and Virginia. See U. S. Children's Bureau, Publication No. 197, p. 41 (notes under map).

Hours

Perhaps no less important than a minimum age for employment is the length of the working day permitted children just entering gainful occupations. That some legal limitation is desirable was the opinion of the Massachusetts legislature as early as 1842.[81] By 1889, 19 states[82] had enacted hour regulation for children under certain ages, and by the end of the 'nineties three more states were added to the list.[83] Ten hours was almost uniformly the standard adopted. A weekly limit was usually set at 60 hours.

A further reduction of maximum hours for children was one of the first achievements of the new century. In 1901 California set up a nine-hour day and 54-hour week. In 1903 New York made nine hours and Illinois eight hours the maximum.[84] From 1903 on there was continued progress in the adoption of the eight-hour day. By 1910 it was in effect in nine states and the District of Columbia.[85]

The Massachusetts law of 1913 was hailed by the advocates of child labor legislation as a great victory. It was the first eight-hour law passed in an important textile state. The chief argument of the opposition in Massachusetts was that it would be impossible to employ children under 16 if they could work only eight hours a day. As summarized by the Massachusetts Child Labor Committee the argument ran as follows:

> "Either the machinery and the adults must stop at the end of eight hours or we must discharge the children. We cannot afford to stop the machinery at the end of eight hours, therefore

[81] Massachusetts Acts of 1842, Chap. 60.

[82] *Thirteen eastern and middle western states:* Connecticut, Indiana, Maine, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, and Wisconsin. *Three southern states:* Alabama, Louisiana, and Maryland. *Three western states:* California, Minnesota, and South Dakota. See Ogburn, *op. cit.*, Table 30, p. 108.

[83] Illinois, North Dakota, Oklahoma, and Virginia (Alabama law repealed). *Ibid.*, Tables 30, 33, pp. 108, 112.

[84] California Acts of 1901, Chap. 205; New York Acts of 1903, Chap. 184; Illinois Acts of 1903, p. 187.

[85] *Four eastern and middle western states:* Illinois, New York, Ohio, and Wisconsin. *Two southern states:* District of Columbia and Oklahoma. *Four western states:* Colorado, Kansas, Nebraska, and North Dakota. In Kansas and New York the eight-hour law did not apply to stores. In Colorado and North Dakota there was no 48-hour nor six-day weekly limit. In Wisconsin the eight-hour law affected only the dangerous occupation group. See Ogburn, *op. cit.*, Tables 30, 31, 32, 33, 34, pp. 108–113.

> we shall discharge the children. That will cause untold sufferings among the poor families dependent upon the wages of these children." [86]

According to a report of the State Board of Labor and Industries the textile manufacturers regarded the employment of children under 16 "as a necessity to the building up and maintaining of a competent and adequate labor force for the textile industry." [87] They held that it was "essential that the textile operative should begin his career in the mill at an early age; that if he does not begin before 16 he has either come to look down on mill work or is an indifferent learner." [88] "Many believe that the hand must be trained to the proper dexterity during the muscle-forming years, else the operative will always be clumsy and sluggish." [89] The opposition took little note of health arguments but saw in the labor of children from 14 to 16 years of age character building powers.[90] Some objection was made that families would move to other states where the children could more readily find work.[91]

These arguments no doubt represent the extreme point of view. As early as 1900 the Massachusetts Commission on Industrial and Technical Education had reported that out of 24 cotton mill employers interviewed: one did not employ any children under 16 years of age; 10 did not wish to employ children under 16 years of age; and seven considered "the employment of children of no value to [the] industry." [92] The operation of the new law passed in 1913 did result in throwing some children out of employment, about 3000 according to estimates made by the State Board of Labor and Industries.[93]

In Pennsylvania, another important textile manufacturing state, the state manufacturers' association fought the eight-hour

[86] Conant, Richard, Secretary of the Massachusetts Child Labor Committee, "The Eight Hour Day for Children in Massachusetts Factories," *Child Labor Bulletin*, May 1914, III:90.

[87] *Report to Massachusetts State Board of Labor and Industries on the Effect of the Child Labor Law of 1913*, House 2552, May 27, 1914, p. 16.

[88] *Ibid.*

[89] *Ibid.*, p. 26.

[90] Minority Report of Channing Smith, member representing industry on the Massachusetts State Board of Labor and Industries in the Board's First Annual Report, 1914, pp. 23–29.

[91] *Ibid.*

[92] Massachusetts Commission on Industrial and Technical Education, Report, 1906, p. 107.

[93] *Report on the Effect of the Child Labor Law of 1913*, pp. 22, 23.

day. In 1913 and 1915, according to the manufacturers' statement, they supported practically all other features of a model bill. The hours provision, they said, was "almost the only essential point of difference" between the manufacturers and the proponents of the bill.[94] The legislation passed was a compromise on hours, nine hours a day and 51 a week.

By the end of 1916, 19 states and the District of Columbia[95] had enacted eight-hour laws for children under 16 years of age in both manufacturing and mercantile employments.

Night Work

The evils of night work by children had been recognized and prohibitive legislation enacted in the late 'eighties by two states, Massachusetts and New York, and in the late 'nineties by five other states.[96] In the first decade of the new century the movement to prohibit the night work of children spread rapidly over the country. From seven states in 1900, the number had risen by 1909 to 31 and the District of Columbia.[97] Ten of these states and the District of Columbia[98] met in all respects the modern standards; that is, they applied to children under 16 years of age or older, to manufacturing establishments and stores (if not to all occupations) and to work between seven in the evening and six in the morning. By 1916 the number of states with some night

[94] Testimony of John P. Wood, Vice-President of the Pennsylvania Manufacturers' Association, 1914, U. S. Industrial Relations Commission, Final Report and Testimony, 1916, Vol. III, p. 2951.

[95] *Six eastern and middle western states:* Illinois, Massachusetts, New Jersey, New York, Ohio, and Wisconsin. *Five southern states:* Arkansas, District of Columbia, Kentucky, Maryland, and Oklahoma. *Nine western states:* Arizona, California, Colorado, Iowa, Minnesota, Missouri, Nebraska, Nevada, and North Dakota. U. S. Children's Bureau, Publication No. 10, Table 4, pp. 226–319. For Maryland see U. S. Department of Labor, Bureau of Labor Statistics, *Labor Legislation of 1916*, Bulletin 213, 1917, p. 61.

[96] Michigan, Minnesota, Missouri, Ohio, and Wisconsin.

Ogburn, *op. cit.*, pp. 108–113; U. S. Industrial Commission, Report, Vol. V, p. 37. In addition Indiana prohibited night work for girls under 18 from 10 P. M. to 6 A. M. Acts of 1899, p. 231.

[97] *Eleven eastern and middle western states:* Delaware, Illinois, Massachusetts, Michigan, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, and Wisconsin. *Twelve southern states:* Arkansas, District of Columbia, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Texas, and Virginia. *Nine western states:* California, Idaho, Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, and Oregon. Ogburn, *op. cit.*, pp. 108, 109, 113. In some of these states the prohibition was limited to manufacturing.

[98] *Five eastern and middle western states:* Delaware, Illinois, New Jersey, New York, and Ohio. *Three southern states:* District of Columbia, Kentucky, and Louisiana. *Three western states:* Minnesota, North Dakota, Oregon. *Ibid.*, Tables 30–34, pp. 108–113.

work prohibition (at least for manufacturing) was raised to 37 [99] and the number of states with modern standards was 19 [100] (not including the District of Columbia).

That provisions prohibiting night work were so easily and quickly passed in many states was no doubt due to the fact that relatively few industries were employing an appreciable number of children at night and that these few, with the exception of the glass industry, were not powerful.[101] The most persistent and effective opposition to night work regulation came from the glass manufacturing industry, an industry operating both day and night and which traditionally had depended on "boy labor" for many "helpers" jobs in connection with the work of skilled glass workers. The most successful escape of the glass industry from night work regulation was in Pennsylvania, the leading glass manufacturing state. In 1905 the Pennsylvania Child Labor Committee succeeded in getting a night work prohibition only by allowing exemption to such manufacturing as "necessitate[d] a continuous day and night employment." [102]

Year after year the glass manufacturing interests in Pennsylvania fought the child labor bills. They referred to them as bills for a 16-year age minimum and attacked them as such.[103] Actually the bills specified a 14-year minimum age, with prohibition of night work and qualifications as to education for children from 14 to 16. The popular line of argument used by the glass interests was as follows: "the training required to make good glass workers must, in its preliminary stages, at least, be acquired at an early age"; [104] "the employment of growing boys and girls is essential in the manufacture of glass ware"; [105] the earnings of the older children

[99] All states except *one eastern state:* Maine. *Three southern states:* Maryland, Texas, West Virginia. *Seven western states:* Montana, Nevada, New Mexico, South Dakota, Utah, Washington, and Wyoming. See U. S. Children's Bureau, Publication No. 10, Table 4, pp. 226–319.

[100] *Nine eastern and middle western states:* Delaware, Illinois, Indiana, Massachusetts, New Hampshire, New Jersey, New York, Ohio, and Wisconsin. *Five southern states:* Alabama, Arkansas, District of Columbia, Kentucky, Louisiana. *Six western states:* Arizona, Iowa, Minnesota, Missouri, North Dakota, Oregon. See *ibid.*

[101] Report of the Child Labor Committee of the Massachusetts Consumers' League, Annals, January 1907, XXIX, No. I, pp. 171–172.

[102] Pennsylvania Acts of 1909, No. 182, Sec. 6.

[103] *National Glass Budget*, March 4, 1905, p. 6, column 2. Although this periodical is not an official organ of the glass manufacturers, its sub-titles indicate its special interests, "Weekly Review of the American Glass Industry," "Devoted Exclusively to Glass—Its Manufacture and Distribution."

[104] *Ibid.*

[105] *Ibid.*, February 6, 1915, p. 8, column 4.

are necessary in poor families; and the children are better off with "a light job" in a glass factory than "roaming the streets in idleness or crouching in poverty stricken quarters." [106]

Referring to the 1903 bill which included a general night work prohibition, the president of one of the largest glass companies of the Pittsburgh district declared, "If this bill becomes law nearly every bottle house . . . will be obliged to close on account of the scarcity of competent employees." [107] Glass factories in Pennsylvania were excluded from the night work prohibition until 1915.[108]

An occupation which was the object of special night work regulation for minors above 16 years was messenger service. An investigation of night messenger service, made in 1909 and 1910 by the National Child Labor Committee, revealed conditions calling for remedial action. It was discovered that, in their errand running, night messenger boys became familiar with the vice of night life in the cities and were subjected to its demoralizing influences. The National Child Labor Committee conferred with the general managers of the Western Union and Postal Telegraph Companies who "expressed surprise at the evidence gathered and offered to favor an eighteen year limit for night work." [109] The National Child Labor Committee stood for a 21-year limit. Within the nine years from 1904 to 1913, 17 states regulated night messenger service by special laws.[110] The upper age limit for prohibiting night messenger service was 21 years in seven states and 18 years in ten states.[111]

Educational Standards

The lack of schooling among working children was the earliest child labor problem to call for legislative action in this country. As early as 1813 a Connecticut statute required the management of factories to cause all children in their employ to be instructed in reading, writing, and arithmetic.[112] The first state to prescribe an educational prerequisite for a child's employment was Massachu-

[106] *Ibid.*, February 13, 1915, p. 3, column 1.

[107] *The Pittsburgh Gazette*, February 28, 1903, p. 7, column 3. See also National Consumers' League, Annual Report, 1903, p. 28.

[108] Pennsylvania Acts of 1915, Chapter 177.

[109] National Child Labor Committee, Annual Report, 1910, printed in Supplement of the Annals of the American Academy of Political and Social Sciences, July 1911, p. 187.

[110] *Child Labor Bulletin*, November 1913, II, 46.

[111] *Ibid.*

[112] Ensign, *op. cit.*, p. 34.

setts in 1836, where it was enacted that no child under 15 should be employed in a manufacturing establishment unless he had attended school for at least three months of the preceding year.[113] By 1896, 15 states [114] had school attendance requirements similar to this one in Massachusetts, and several of these required the ability to read and write, either as an alternative to or in addition to school attendance.

The rapid development in compulsory school attendance laws in the first decade of the twentieth century has already been discussed.[115] In most states school attendance was also made a requirement for obtaining an employment certificate.

The chief questions involved were what standard should be set and how it should be applied. The early laws required that a child be able to read and write before being permitted to enter employment. But how was this ability to be tested? Was ability to write his own name and read the heading on the employment certificate adequate? This was all that was required in Pennsylvania up to 1905. In that year it was specified that the child must "be able to read and write simple sentences in the English language"; in 1909 that he "be able to read and write the English language intelligently." These tests were apparently to be applied by those who issued child labor certificates or by factory inspectors.[116] In New York similar standards were set up by the law of 1903, but the school authorities were to certify to the child's ability in these respects.[117]

The Massachusetts act of 1906 was the first to establish a definite (though very low) educational standard. It read: "The ability to read at sight and write legibly simple sentences in the English language . . . shall be construed as meaning such ability to read and write as is required for admission to the second grade." By 1908 proficiency in reading and writing as required to enter the fourth grade was the requirement.[118] This statute was the forerunner of the modern type of educational requirement that the

[113] *Ibid.*, p. 39.

[114] *Eleven eastern and middle western states:* Connecticut, Maine, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, and Vermont. *One southern state:* Louisiana. *Three western states:* Colorado, North Dakota, and South Dakota. See Ogburn, *op. cit.*, Table 50, p. 132.

[115] *Supra*, pp. 410–413.

[116] Pennsylvania Acts of 1905, No. 98. Pennsylvania Acts of 1909, No. 182.

[117] New York Acts of 1903, c. 184.

[118] Massachusetts Acts of 1906, Chap. 284. This act fixed the standards as follows: 1906—requirements to enter second grade; 1907—requirements to enter third grade; 1908—requirements to enter fourth grade.

child have completed a given school grade. Not until 1911, however, did any state definitely require the completion of a school grade, not only in the ability to read and write but in the other subjects studied.[119]

By 1915, 16 states [120] specified the completion of a given school grade as the criterion of satisfactory educational achievement. The fifth and sixth grades were most frequently specified. The highest standard was in Vermont where the completion of the elementary course of nine years was required for children under 16 years of age. School grade requirements customarily did not apply to employment during school vacations, for which special vacation employment certificates might be issued.

Continuation Schools

Required part-time attendance at continuation schools began in 1911. In that year Wisconsin provided for compulsory attendance at continuation schools for employed children as a part of an extensive system of vocational education. The object of these continuation schools was to give general cultural and vocational education rather than strictly trade training. Attendance was required of children working on employment certificates—that is all children employed between 14 and 16—for four hours a week during working hours wherever continuation schools were established. By 1915 all children under 17 were required to attend.[121] During the period from 1910 to 1913 several other states [122] were providing for the establishment of continuation schools but did not make attendance upon them compulsory except where the local school authorities so determined. The first state to follow Wisconsin in making part-time school attendance compulsory for children at work was Pennsylvania in 1915.[123] The provisions were similar, applying to children under 16 years of age.[124]

[119] It should be noted here that Vermont, as early as 1906, enacted a provision that no child under 16 might be employed during school hours who had not completed the elementary school course of nine years. Vermont, Acts of 1906, c. 5252.

[120] *Nine eastern and middle western states:* Indiana, Massachusetts, Michigan, New Jersey, New York, Ohio, Pennsylvania, Vermont, and Wisconsin. *Four southern states:* Arkansas, Kentucky, Maryland, and West Virginia. *Three western states:* Arizona, California, and Iowa. U. S. Children's Bureau, Publication No. 10, Table 2.

[121] Wisconsin Laws of 1911, c. 505, 660. Wisconsin Laws of 1915, c. 420.

[122] Ohio in 1910, and New York, New Jersey, Indiana, and Massachusetts in 1913. See U. S. Children's Bureau, Publication No. 10, *op. cit.*

[123] Pennsylvania, Acts of 1915, c. 177.

[124] The wide extension of continuation schools came after 1917 and is described in a subsequent section of this chapter. See pp. 452–453.

Physical Fitness

Those who drafted the old child labor laws of the 'eighties and 'nineties recognized that it might be harmful to the health of some children to engage in certain kinds of work. A number of state laws provided that the factory inspector require any child, whose health was apparently being injured by his work, to present a physician's certificate of physical fitness; and if this was not procurable the inspector was to have the child discharged. However, it appears that factory inspectors made little use of their authority in this respect.[125] In 1902 and 1903 Mrs. Florence Kelley and others pointed out that the majority of working children were apparently below normal in physical development, but that there was a lack of authentic data on what constitutes normal development. They stressed the need of state supervision over the health of working children.[126]

The New York law of 1903 was the first child labor law in the United States to make normal development, sound health, and physical fitness for the proposed job a requirement for an employment certificate. Whether or not the child was physically qualified was left to the opinion of the officer issuing the employment certificate except in doubtful cases when a local medical officer was to make the decision. By 1910 nine states and the District of Columbia [127] had essentially this requirement for physical fitness.

Experience before 1910 showed that provisions which left it to the issuing officers to determine physical fitness were ineffective.[128] The laxness of the issuing officers in the matter was halted in New York City through the activities of the New York Child Labor Committee and in 1909 a system of physical examination for all

[125] See for example, Fox, "Child Labor in New Jersey," Annals, 1902, Vol. XX, p. 192. Also Mrs. Florence Kelley, "Address before Convention of Factory Inspectors of North America," in Report of New York Factory Inspectors, 1897, p. 719.

[126] Fox, *op. cit.*, p. 193; Frederick Hoffman, *Proceedings* of National Conference of Charities and Corrections, 1903, pp. 140–157.

[127] *Three eastern and middle western states:* Michigan—Acts of 1909, c. 285; New York—Acts of 1905, c. 255; Pennsylvania—Acts of 1909, c. 182. *One southern state:* Florida—Acts of 1907, c. 5686. *Five western states:* Minnesota—Acts of 1907, c. 299; Nebraska—Acts of 1907, c. 260; North Dakota—Acts of 1909, c. 153; Oklahoma—Acts of 1909, c. 632; Oregon—Acts of 1905, c. 208. And in addition the District of Columbia, 35 Stat. L., 1908, p. 420.

[128] Report of the New York Child Labor Committee, *Annals*, 1909, Vol. XXXIII, Supplement 188; *Employment Certificate System in Connecticut*, U. S. Children's Bureau, Publication No. 12, 1915, pp. 21, 41; *Employment Certificate System in Wisconsin*, U. S. Children's Bureau, Publication No. 85, 1921, pp. 60–63, 111–114.

children applying for employment certificates was initiated.[129] The first state to require by law a physical examination of every child before he might receive an employment certificate was Massachusetts in 1910. The Uniform Child Labor Law of 1911 included this provision from the Massachusetts law, and a large number of states enacted a like provision in the next few years. In 1915, 14 states [130] had made a certificate of physical fitness based on an examination of the child by an authorized physician, a necessary requirement for an employment certificate. There was apparently little organized opposition to this provision for physical examinations.

Employment Certificates

Probably more significant than all the other new standards achieved in child labor legislation in the years after 1900 was the development of the employment certificate into an effective instrument for enforcement. It has been rightly said that "the history of the development of the employment certificate is the history of effective child labor legislation." [131] The employment certificate system provides for a period of public supervision over a child's admission to employment, between the time the under-age child is excluded from employment and the time the older minor is freely admitted to employment. This supervision calls for the presentation of proof of age and of guarantees that certain minimum requirements of education and physical fitness have been complied with. Besides serving as an evidence of a child's qualification for employment and as his license, the employment certificate is a means of impressing the employer with the fact that the child so employed is under special protection of the law, and it furnishes to state or local administrative officers the opportunity for special supervision over a child during the period of his first exposure to industrial life.

The first state in which employers were explicitly required to have evidence both of the age and of the schooling of employed

[129] Report of New York Child Labor Committee, *Annals*, Vol. XXXIII, Supplement 188; City of New York Department of Health, Annual Report, 1909, pp. 193–194.

[130] *Eight eastern and middle western states:* Delaware, Massachusetts, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, and Rhode Island. *Two southern states:* Kentucky, Maryland. *Four western states:* Arizona, California, Iowa, and Minnesota. U. S. Children's Bureau, Publication No. 10, *op. cit.*, Table 2, pp. 100–183.

[131] Ensign, *op. cit.*, p. 238.

children was Massachusetts in 1878.[132] Massachusetts was not only the first state to use a formal employment certificate as a permit to employ, but was also the first to work out some of the fundamentals of an effective employment certificate system—documentary proof of age and the promise of employment. Whereas the affidavits of age used in a number of states in 1900 were issued by magistrates or other officers of the peace, employment certificates have usually been issued by the local school authorities. This was true of the Massachusetts employment certificate provisions of 1878 and was true of the states with employment certificate requirements in 1915. After 1915 there was some tendency for the issuing of employment certificates or supervision over their issuance to be given to state authorities. By 1929 there were nine states [133] out of 45 [134] having general employment certificate provisions, in which either state school officials or state officials enforcing the child labor law issued employment certificates.

Through the 'nineties, with the exception of Massachusetts, affidavits made by the parents were the most advanced types of what may be called "evidence of age" that were provided for.[135] In some states the evidence called for was the written statement of a parent, not sworn, and in a few others the child's statement was admitted.

The validity of a parent's affidavit as evidence of a child's age was thoroughly discredited by the findings of the Reinhardt Committee in New York in 1895. According to this committee's report, "a parent who is willing to permit his child to work in a factory at an age under 14 is ordinarily just as willing to perjure himself as to the age of the child. To carry out his purpose he has little

[132] Massachusetts Acts of 1878, c. 257.

[133] State Board of Education—*two states:* Connecticut and New Hampshire. State labor officials enforcing child labor law—*seven states:* Arkansas, Maryland, North Carolina, Oregon, South Carolina, Vermont, and Wisconsin. U. S. Children's Bureau, *Child Labor Facts and Figures*, Publication No. 197, 1930, p. 69.

[134] All except the four following states which were without provision for general employment certificates—Idaho and Mississippi with no employment certificates, and Texas and Wyoming with restricted forms. *Ibid.* p. 70. The District of Columbia is here counted as one of the 45 states.

[135] In 1895, 17 states in all (California, Connecticut, Illinois, Indiana, Iowa, Maine, Massachusetts, Michigan, Minnesota, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Tennessee, Washington, and West Virginia) made some provision for written evidence of age. Massachusetts was ahead of the others in providing for a checking of the parents' affidavits against the age given in the school census. In case of contradiction between the two, a birth certificate was to be submitted. U. S. Commissioner of Labor, *Labor Laws of the U. S.*, 2d Special Report, Revised 1896 (under various state laws).

difficulty in obtaining the assistance of a notary, who is willing, for the illegal fee of twenty-five cents, to be a party to the crime." [136]

New York carried on the most active experimentation in the working out of adequate and reasonable requirements for evidence of age. The 1903 law restricted the acceptable evidence to a birth certificate, a passport, a baptismal certificate, or other religious record.[137] There was criticism from many sources that this rigid requirement worked undue injustice where none of the specified proofs were procurable, but where there was other reliable evidence which showed the child's age. In 1905, the Child Labor Committee agreed to an amendment to admit other documentary evidence where none of those specified in the 1903 act were procurable.[138] In 1907 a further concession was made in the law, that, if no satisfactory documentary evidence of age was procurable, a physician's certificate that a child is at least 14 years of age was acceptable.[139] This certificate was admitted as evidence only in first-class cities, and it was to be issued only after physical examination by two physicians and not before 90 days after application.

Provisions requiring documentary proof of age were very rapidly adopted beginning with 1903. By 1910, 24 states and the District of Columbia [140] had passed legislation to this effect. The standards in most of these states were less strict than in New York regarding the type of evidence that was acceptable when the preferred types were not procurable. The age given on school records was sometimes acceptable and a parent's affidavit was often admitted if no other evidence could be procured. In 1910, 12 states [141] still

[136] State of New York, Report and Testimony taken before the Special Committee of the Assembly appointed to Investigate the Condition of Female Labor in the City of New York, Assembly Document No. 97, Vol. 23, Pt. I, 1896, p. 7.

[137] New York, Acts of 1903, c. 184.

[138] New York, Acts of 1905, c. 518.

[139] New York, Acts of 1907, c. 291.

[140] *Eleven eastern and middle western states:* Connecticut, Illinois, Maine, Massachusetts, Michigan, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, and Wisconsin. *Five southern states:* District of Columbia, Kentucky, Louisiana, Maryland, and Oklahoma. *Nine western states:* California, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, North Dakota, and Oregon. Am. Association for Labor Legislation, *Legislative Review*, No. 5, Summary of Laws in Force in 1910—Child Labor, pp. 46–59. For the District of Columbia see U. S. Statutes, 60th Congress, c. 209, S. 4.

[141] *Three eastern and middle western states:* Delaware, Indiana, and New Hampshire. *Eight southern states:* Alabama, Arkansas, Florida, Georgia, Mississippi, North Carolina, South Carolina, and Tennessee. *One western state:* Washington. *Ibid.*, pp. 46–59.

required only parents' affidavits or statements as evidence of age, and five states had no requirement whatever.[142]

Essential to the satisfactory use of documentary proof of age is the complete registration of births. The National Child Labor Committee and the National Consumers' League took an active part in urging legislation for birth registration. Birth registration had been provided for by law in Vermont as early as 1856, and by 1913 only four southern states [143] were without any laws for birth registration. However, so great were the shortcomings of many of the existing laws or of their administration, that in 1915 when the United States Census Bureau organized the birth registration area, only 11 states were included. By 1930 all states had laws for birth registration and all but two [144] were in the birth registration area.

A further problem in establishing an effective employment certificate system (after determining how to ascertain the child's correct age and the adequacy of his education and physical fitness) is that of keeping account of the child after a certificate has been issued. Without a check up of some kind the child holding a certificate may be idle or in some illegal employment. Massachusetts was far ahead of the other states in recognizing the need of some check on the child who was released from school for work. As early as 1888 a promise of employment was made a requirement for the issuance of an employment certificate.[145] The certificate, however, remained the child's property, and once it was issued, there was no check on the child, who might have left his employer

[142] Nevada, South Dakota, Texas, West Virginia, and Wyoming. *Ibid.*, pp. 46–59.

In 1914 there were 33 states and the District of Columbia which made provision for documentary proof of age. *Thirteen eastern and middle western states:* Connecticut, Illinois, Indiana, Maine, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, and Wisconsin. *Ten southern states:* Arkansas, District of Columbia, Florida, Georgia (only for children under 14½ years), Kentucky, Louisiana, Maryland, Oklahoma, Virginia, and West Virginia. *Eleven western states:* Arizona, California, Colorado, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, North Dakota, and Oregon.

Out of these, 18 and the District of Columbia accepted parents' affidavits of age under certain conditions. *Three eastern and middle western states:* Indiana, Illinois, and Pennsylvania. *Seven southern states:* District of Columbia, Florida, Louisiana, Maryland, Oklahoma, Virginia, and West Virginia. *Nine western states:* Arizona, California, Colorado, Iowa, Kansas, Minnesota, Missouri, Nebraska, and North Dakota. *Child Labor Bulletin*, November 1914, III, 60.

[143] Arkansas, Georgia, North Carolina, and South Carolina. U. S. Children's Bureau, *Birth Registration*, Monograph I, 1913, p. 6, n. 2, p. 7.

[144] South Dakota and Texas.

See U. S. Department of Commerce, Bureau of Census, *Births, Stillbirths and Infant Mortality Statistics for the Birth Registration Area of the United States*, 1930, Introduction, p. 3.

[145] Massachusetts Laws of 1888, c. 348.

or even have failed to present himself to the one making the original promise of employment.

The next step in checking up on children with employment certificates came in 1907, when two states [146] required that the employer return the certificate to the issuing officer when the child left the job. Ohio in 1910 combined the Massachusetts provision requiring a promise of employment with the requirement that the employer return the employment certificate to the issuing officer.[147] This made it necessary for the child to get a new certificate for his next job. Several states in the next few years amended their child labor laws to include both these provisions. Pennsylvania, in 1915, was the first state to provide that the employment certificate be sent directly to the prospective employer by the issuing officer so that it was not put in the child's hands at any time.[148] These provisions for keeping track of employed children spread quite rapidly.[149] By 1932, the states requiring a promise of employment numbered 25 (including the District of Columbia).[150]

Dangerous Occupations Prohibited

The new interest in raising child labor standards included a drive for provisions prohibiting the employment of children of working age in dangerous occupations. Before 1900 a large number of laws prohibited the use of children, usually under 16 years of age, in any vocation injurious to health, dangerous to life

[146] Nebraska and Minnesota. Nebraska Laws of 1907, c. 66; Minnesota Laws of 1907, c. 299.

[147] Ohio Acts of 1910, H. B. 452, p. 310.

[148] Pennsylvania Acts of 1915, c. 177.

[149] By 1915, eight states (Connecticut, Iowa, Kentucky, Maryland, Massachusetts, Ohio, Pennsylvania, and Wisconsin) required both that an employer's promise of employment be obtained before a certificate was to be issued, and that the certificate be returned by the employer to the issuing officer at the termination of the job.

Ten other states made one or the other of these requirements. Promise of employment: California and Indiana. Return of certificate to issuing officer: Arizona, Delaware, Michigan, Minnesota, Nebraska, New Jersey, Virginia, and West Virginia.

U. S. Children's Bureau, *Child Labor Legislation*, Publication No. 10, 1915, Table 2, pp. 102–183, Table 3, pp. 184–225.

[150] *Ten eastern and middle western states:* Connecticut, Delaware, Illinois, Indiana, Massachusetts, New York, Ohio, Pennsylvania, Rhode Island, and Wisconsin. Also New Hampshire required a promise of employment in practice, though it was not so provided in law. *Ten southern states:* Alabama, District of Columbia, Georgia, Kentucky, Louisiana, Maryland, North Carolina, Tennessee, Virginia, and West Virginia. *Five western states:* California, Iowa, Kansas, Missouri, and New Mexico. National Child Labor Committee, *Child Labor Laws and Child Labor Facts*, 1928; for Missouri, Acts of 1929, p. 130, sec. 5.

or limb, or depraving to morals. But these laws (often specific in their application to children in exhibitions) did not designate dangerous industrial occupations, if indeed they were intended to apply to industrial employment at all. They were further unadapted to meeting the actual conditions in industry by being, with few exceptions, separate from the general child labor laws and lacking in any provisions for enforcement.

Scattered provisions were to be found in the factory laws at the opening of the century which prohibited the employment of children under 16 or so in certain occupations, such as operating elevators, cleaning machinery in motion, and handling intoxicating liquors. Practically all the mining states had laws prohibiting the employment of children in mines, but usually setting no higher age limit than for work in manufacturing establishments.[151]

A new attack on the problem of keeping children of legal working age from employment in dangerous occupations began about 1902, but did not arouse as much attention as many of the other child labor problems under consideration at that time. The pioneer state to work out a specific and fairly comprehensive list of what occupations, machines, and processes were dangerous or injurious for children was Illinois.[152] The list included in the Illinois child labor law of 1903 prohibited the employment of children under 16 years of age in some 16 types of occupations and processes, as many as 26 different kinds of machinery being mentioned. To assure its inclusiveness the list included "any other employment that may be considered dangerous to their lives or limbs, or where their health may be injured or morals depraved."

Two significant advances in regulating employment in dangerous occupations came in 1909 and 1910. Pennsylvania in 1909 enacted, in addition to a list of occupations prohibited for minors under 16, another list, quite comprehensive in character, of occupations which were considered so very hazardous that no minor under 18

[151] In 1895 the minimum ages for employment in mines were:

Fourteen-year age minimum—*nine states:* Arkansas, Illinois, Indiana, Minnesota, Montana, Ohio, South Dakota, Washington, and Wyoming.

Twelve-year age minimum—*seven states:* Colorado, Iowa, Kansas, Missouri, New Jersey, Tennessee, and West Virginia.

Pennsylvania had a 14-year minimum for anthracite mines and a 12-year minimum for bituminous mines.

Ten-year age minimum—*one state:* Alabama.

See *Labor Laws of the United States*, 2d special report of U. S. Labor Commissioner, Revised 1896 (under various state laws).

[152] Illinois Acts of 1903, p. 187.

years of age should be engaged in them.[153] The other innovation was the Massachusetts provision of 1910 giving power to the State Board of Health to determine whether or not any particular occupation was hazardous and so prohibited to minors under 18.[154]

Thus by 1911 the three features of what were to become the standard type of regulation in this field had precedent in actual legislation—namely two comprehensive lists of specific occupations which are dangerous or injurious, one for children under 16 and another for minors under 18, and the delegation of authority to administrative bodies to determine what other occupations were dangerous. The Uniform Child Labor law issued in 1911 drew these three features into a single whole. The two lists of occupations were composites of the highest standards in the lists of the various laws in effect at that time.

The new model for prohibiting employment in dangerous occupations had been adopted in four states by the end of 1915,[155] while 21 others [156] had made lists of occupations, including specified machines and processes, prohibited to minors under 16, or under 16 and under 18, and two other states without specific lists had delegated power to make such lists to their industrial commissions.[157] Up to 1932 only nine states including the District of Columbia [158] had adopted all three features of the model bill;

[153] Pennsylvania Acts of 1909, c. 182.

[154] Massachusetts Acts of 1910, c. 404. This idea of giving power to an administrative body to determine that a specific occupation is dangerous and so prohibited was not altogether new in 1910. Massachusetts had had such a provision in the 'nineties applying only to children under 14 (*Labor Laws of United States*, 1896, p. 467), and another since 1901 for determining what acids, the manufacture of which was injurious to a child's health (*Labor Laws of United States*, 10th special report of U. S. Labor Commissioner, 1904, p. 520). In New York in 1903 a bill similar to the measure enacted in Massachusetts in 1910 had been introduced into the legislature (Report of New York Department of Labor, 1903, I, 145, 146). Both the Massachusetts law of 1901 and the New York bill of 1903 provided that this authority be exercised upon application from any citizen of the state, and presumably not on the initiative of the administration.

[155] Arizona, Massachusetts, Ohio, and Pennsylvania. U. S. Children's Bureau, Publication 10, *op. cit.*, Table 1, pp. 29–99.

[156] *Seven eastern and middle western states:* Connecticut, Illinois, Indiana, New Jersey, New York, Vermont, and Wisconsin. *Seven southern states:* Alabama, Arkansas, Florida, Kentucky, Maryland, Oklahoma, and Tennessee. *Seven western states:* California, Colorado, Iowa, Minnesota, Missouri, Nevada, and North Dakota. *Ibid.*, Table 1, pp. 29–99.

[157] Oregon and Washington, *ibid.*

[158] Arizona, Delaware, District of Columbia, Massachusetts, New Jersey, New York, Ohio, Pennsylvania, and Wisconsin.

National Child Labor Committee, *Child Labor Laws and Child Labor Facts*, 1928. Checked for 1929 legislation, U. S. Bureau of Labor Statistics, Bulletin 528; for 1931 legislation, U. S. Bureau of Labor Statistics, Bulletin 590.

25 states and the District of Columbia [159] had delegated power to administrative bodies to extend the list or to determine what were prohibited occupations.

Street Trades Regulation

Children engaged in street trades require special treatment in child labor laws, because they sell on their own account and are not actually employed by anyone. The necessity for regulating street trades arises not so much from the length of the hours or the nature of the work as from the surrounding conditions, especially in large cities. The newsboy or bootblack lacks the supervision of an employer, his parents, or other persons who have an interest in his welfare. The more injurious aspects of the work are the inevitably irregular habits of eating and sleeping, the tendency to play truant and become retarded in school, and the exposure to vices of the street, especially serious where the street trader works at night. The boys very often turn to gambling during the loafing periods that accompany the selling of papers.

Before 1900 there was no regulation of street trades except one city ordinance in Boston passed in 1892.[160] By this ordinance children under ten years of age were prohibited from selling newspapers or working as bootblacks in the streets and public places of Boston, and minors over ten were required to have a license for such work. These licenses were issued by the mayor and aldermen and were revokable for disorderly behavior and for failure to attend school regularly.

The first state law dealing with street trades was passed in New York State as a part of the campaign of 1902 and 1903 for better child labor regulation.[161] The bill proposed at that time by the New York Child Labor Committee contained standards found in street trade laws of a much later period. It would have set a minimum age of 16 years for girls and 12 for boys, prohibited selling after 9 P. M., and required permits and badges for boys from 12 to 14 to be issued under practically the same restrictions as regular

[159] Alabama, Arizona, Arkansas, California, Delaware, District of Columbia, Georgia, Illinois, Kansas, Massachusetts, Missouri, Nevada, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, Utah, Washington, West Virginia, Wisconsin, and Wyoming. U. S. Children's Bureau, *Child Labor Facts and Figures*, Publication No. 197, 1930, pp. 47, 48.

[160] City of Boston, *Revised Ordinances*, 11th Revision, 2d edition, 1894, Chap. II, p. 123.

[161] See pp. 406–407.

employment certificates.[162] These proposals were apparently too advanced for the times. The Society for the Prevention of Cruelty to Children (which had been largely responsible for securing the original child labor law of 1886) joined the opposition, declaring, "This bill would render the unhappy boy's life even more miserable than it is at present. . . . He is first to be dosed with education and then to be branded with a license." [163] The compromise measure passed in 1903 set the age minimum for boys at ten, permitted selling up to ten P. M., and contained thoroughly unsatisfactory administrative provisions.[164] Four years later the New York Child Labor Committee called this law a "dead letter." [165]

Through the first decade of the century little progress was made in street trades legislation. In 1910 only four states, the District of Columbia, and four cities [166] had any regulation of children engaged in street trading. The year 1911 was an important one in this as in other fields of child labor legislation. In this one year four additional states [167] enacted street trades laws, and Wisconsin passed amendments to her law making it superior to any other existing at that time and similar to the New York bill of 1903 before the latter was so disastrously compromised.[168]

The extension and improvement of street trades laws met with opposition from newspaper interests. In Ohio, one of the largest industrial states with no state regulation of street trades, a bill failed to pass in 1918 on the ground that no law was necessary because "the papers themselves were blocking out a permanent plan to 'clean up' the situation." [169] By 1930 no state regulation of street trades had been enacted, though six Ohio cities had municipal ordinances regulating child labor in street trades.[170] The Chairman of the Ohio Council on Women and Children in Industry

[162] New York State Department of Labor, Third General Annual Report, 1903, Pt. II, pp. 137–139.

[163] Quoted in an editorial, "Child Laborers of the Streets," *Charities*, March 7, 1903, X, 206.

[164] New York State Department of Labor, Third General Annual Report, 1903, Pt. II, pp. 87–88.

[165] Reported in *The Evening Post*, New York, April 6, 1907, Financial Section, p. 10, column 3.

[166] Massachusetts, New York, Oklahoma, and Wisconsin. Boston, Cincinnati, Hartford, and Newark. Clopper, Edward N., *Child Labor in City Streets*, 1912, Macmillan, New York, pp. 194–196.

[167] Missouri, Acts of 1911, p. 132; Nevada, Acts of 1911, c. 197; New Hampshire, Acts of 1911, c. 162; and Utah, Acts of 1911, c. 144.

[168] Wisconsin Acts of 1911, c. 479.

[169] "Street Trading in Ohio," *The American Child*, August 1919, I, 128.

[170] See p. 436, note 174.

said in 1923, "The newspapers fight regulation with such venom that one is often puzzled; why such an effort to retain the child labor of 2000 boys? The answer is that they have shifted to the shoulders of the children the burden of collection, the loss of non-payment, and much of the extension of circulations." [171]

Most of the existing legislation in the United States applying specifically to street trades was passed in its essential features in the five years from 1911 to 1915. From 1915 to 1929 there was no increase in the number of states regulating the work of boys at street trades (18 states and the District of Columbia) [172] though some progress was made in raising the standards of the laws.[173]

Municipal ordinances provided street trades regulation for certain cities where state laws did not exist or did not apply. In 1928, 31 [174] out of 287 cities of over 25,000 population had ordinances

[171] "Street Trades Control in Toledo," *The American Child*, August 1923, V, 3.

[172] Street trades regulations in 1915 in—*Eight eastern and middle western states:* Delaware, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Wisconsin; *six southern states:* Alabama, District of Columbia, Florida, Kentucky, Maryland, and Virginia; *five western states:* Arizona, California, Iowa, Missouri, and Utah; *two additional states*, Colorado and Oklahoma, prohibited street trading by girls under 10 and 16 years of age respectively. Indiana had no specific street trades law but regulated street trades to some extent through its compulsory school attendance law.

In 1929, Missouri and New Jersey had been dropped from the list, and Minnesota and North Carolina added.

Sources for information in this paragraph for 1915, U. S. Children's Bureau, *Child Labor Legislation*, Publication No. 10, 1915, Table 6, pp. 382–417; and for 1929 U. S. Children's Bureau, *Child Labor Facts and Figures*, Publication No. 197, 1930, pp. 74–76.

[173] An advance was made in raising the age minimum for boys to at least 12 years, so that two-thirds, instead of barely half, of the states had this standard by 1929—*1915:* 9 states: Alabama, Delaware, Kentucky (14-year minimum age), Massachusetts, New York, Pennsylvania, Rhode Island, Utah, and Wisconsin; *1929:* 14 states: Alabama, Delaware, District of Columbia, Kentucky (14-year minimum age), Maryland, Massachusetts, Minnesota, New York, North Carolina, Pennsylvania, Rhode Island, Utah, Virginia, and Wisconsin.

Night work was prohibited after eight o'clock in 14 instead of nine states—*1915:* 9 states: Alabama, Delaware, Iowa, Kentucky, Maryland, New Jersey, New York, Pennsylvania, and Wisconsin; *1929:* 14 states: Alabama, Delaware, District of Columbia, Iowa, Kentucky, Maryland, Massachusetts, Minnesota, New Hampshire, New York, North Carolina, Pennsylvania, Virginia, and Wisconsin.

Sources, Children's Bureau, Publication 10, *op. cit.*, Table 6, pp. 382–417, and *State Laws and Local Ordinances Regulating the Street Work of Children*, Children's Bureau, Chart No. 15, 1929.

[174] Little Rock, Arkansas; Pasadena, Sacramento, and San José, California; Denver, Colorado; Hartford, Meriden, and New Haven, Connecticut; Chicago and Springfield, Illinois; Portland, Maine; Detroit and Highland Park, Michigan; St. Paul, Minnesota; Manchester and Nashua, New Hampshire; Atlantic City, Elizabeth, Newark, Passaic, and Paterson, New Jersey; Cincinnati, Cleveland, Columbus, Dayton, East Cleveland, and Toledo, Ohio; Portland, Oregon; Pawtucket, Rhode Island; Everett and Seattle, Washington. U. S. Department of Labor, Children's Bureau, *Child Workers on City Streets*, Publication 188, 1928, pp. 54–64.

relating directly to newspaper selling, and 24 of these were cities not affected by state laws. The provisions of the local ordinances were as a rule similar to those of the state laws, though less carefully worked out.[175]

The enforcement of street trades laws is in some ways even more difficult than the enforcement of other child labor legislation. In general, enforcement in the field was thoroughly unsatisfactory, and many of the laws listed above remained dead letters. New York had probably one of the best laws so far as administrative provisions were concerned; yet in 1927 the New York Child Labor Committee, after investigation, declared: "Judging from the number of places reporting badges issued for newspaper selling, one might conclude that this law is generally ignored in many places. When 22 out of 59 cities did not indicate that a single badge had been issued for at least four years, such a conclusion cannot be far wrong." [176] In 12 of the 19 states which had street trades laws in 1929, responsibility was divided among two or more groups of officials. Most frequently attendance officers were given the power to enforce the regulations, nearly as often departments of labor, child labor or factory inspectors, frequently police officers, sometimes probation officers of juvenile courts, and sometimes other officials. It is noteworthy that a few cities, such as Boston and Milwaukee, had outstanding success in the regulation of street trades, due to the building up of an organization of newsboys, newspaper companies, and enforcing officials under the leadership of a man devoting all his interest, time, and energy to this cause.[177]

Movement for Federal Child Labor Legislation 1914 to 1925

The Federal Child Labor Laws

Whether the states should have exclusive jurisdiction in the regulation of child labor or whether the federal government should also act in this field was a question considered long before 1900. A national child labor law had been included in the program of the

[175] U. S. Children's Bureau, *State Laws and Local Ordinances Regulating the Street Work of Children*, 1929, Chart No. 15, p. 2.

[176] "Guarding the Gateway to Industry," *The American Child*, September 1927, IX, 4.

[177] See U. S. Department of Labor, Children's Bureau, *The Working Children of Boston*, Publication 89, 1922 and *Employed Boys and Girls in Milwaukee*, Publication 213, 1932.

Knights of Labor in the 'eighties.[178] The first year in which federal regulation of child labor was proposed in Congress was 1906. At that time the proposal to prohibit interstate commerce in products of mines or factories employing children under 14 years of age did not receive the support of the National Child Labor Committee.[179]

In 1914, however, that organization came out for federal child labor legislation, apparently convinced by the slow improvement in state laws that national action was necessary. For by 1914 only nine states [180] had met all of the standards of the National Child Labor Committee set up ten years before: namely, a minimum age of 14 years for employment in manufacturing, and of 16 years for employment in mining; [181] and for children from 14 to 16, a maximum work day of eight hours, the prohibition of night work from seven in the evening to six in the morning, and documentary evidence of age. As for attainment of the separate standards: in 1914 twenty-two states [182] still permitted children under 14 years of age to be employed in factories under certain conditions; 28 states [183] allowed children under 16 to work more than eight hours a day in factories; 23 states [184] did not measure up to the night

[178] Testimony by Jacob G. Schonarber, representative of the Knights of Labor, U. S. Industrial Commission, Report, 1901, VII, 419, 432.

[179] Lindsay, Samuel McCune, "National Child Labor Standards," *Child Labor Bulletin*, May 1914, III, 27.

[180] Arizona, Arkansas, Illinois, Kentucky, Massachusetts, New York, Ohio, Oklahoma, and Wisconsin. See U. S. Department of Labor, Children's Bureau, Publication 10, under various states.

[181] The 16-year minimum for mining was not part of the model bill of 1904. For this model bill see National Child Labor Committee, "Uniform State Child Labor Laws," Proceedings of the Seventh Annual Convention, 1911, p. 17. Article by Stovall, Hon. A. T., of Commission on Uniform State Laws.

[182] Six states with no 14-year minimum for manufacturing: Alabama, New Mexico, North Carolina, South Carolina, Utah, and Wyoming. Sixteen states with 14-year minimum for work in manufacturing only during school hours: Delaware, District of Columbia, California, Colorado, Georgia, Idaho, Indiana, Maryland, Mississippi, Nevada, Oregon, South Dakota, Texas, Vermont, Virginia, and Washington. See Children's Bureau, Publication 10, *op. cit.*, Table 1, pp. 29–99.

[183] Twenty-eight with no eight-hour day: Alabama, Connecticut Delaware, Florida, Georgia, Idaho, Louisiana, Maine, Maryland, Michigan, Montana, New Hampshire, New Mexico, North Carolina, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, West Virginia, and Wyoming. In addition Indiana permitted nine hours with parents' consent and in Washington the eight-hour day applied only to girls. See *ibid.*, Table 4, pp. 226–319.

[184] California, Colorado, Florida, Georgia, Idaho, Maine, Maryland, Mississippi, Montana, Nebraska, Nevada, New Mexico, Pennsylvania, Rhode Island, South Carolina, South Dakota, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wyoming. *Ibid.*, Table 4, pp. 226–319.

work standard; and sixteen states [185] did not require documentary proof of age for employed children.

The great diversity between states also made it difficult to raise standards in the states with relatively good laws. The high standard states were supposedly at a disadvantage in competition with the lower standard states. For example, while Massachusetts had a 14-year minimum age, an eight-hour day, no night work, and a thoroughgoing employment certificate system, North Carolina, its leading competitor in the cotton textile industry, had a 12-year minimum age, a 60-hour week with no daily limit on hours, a more lenient night work prohibition, and required no evidence of age or schooling other than a parent's statement.

The need for continued effort to secure protection for child workers was re-emphasized by the *Report on the Condition of Woman and Child Wage Earners*, published from 1910 to 1913, which revealed deplorable conditions in certain industries and states.[186] The 1910 Census showed that practically two million children under 16 years of age were gainfully employed in the United States and that 558,000 were in gainful occupations outside of agriculture.[187]

By 1914 there was less fear that federal legislation would be declared unconstitutional because the Supreme Court had approved the use of the power to regulate interstate commerce to protect the public morals by the Mann White Slave Act.[188] The federal child labor law was regarded as analogous, because designed to protect the residents of one state from products produced in another state under conditions of child labor which were deemed immoral.

The chief provisions of the Palmer-Owen bill of 1914 read as follows:

> "That it shall be unlawful for any producer, manufacturer, or dealer to ship or deliver for shipment in interstate commerce the products of any mine or quarry which have been produced in whole or in part by the labor of children under the age of

[185] Connecticut, Georgia, Idaho, Mississippi, Montana, Nevada, New Mexico, North Carolina, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Washington, and Wyoming. *Ibid.*, Table 2, pp. 100–183.

[186] *Report on Condition of Woman and Child Wage Earners in the United States*, 1910–13, Senate Document No. 645, Sixty-first Congress, Second Session, 1910–11, Vols. 6–8 on Child Labor.

[187] U. S. Census, 1910, Vol. IV, *Occupations*, pp. 75, 302 ff.

[188] *Hoke* v. *United States*, 227 U. S. 308 (1912).

16 years, or the products of any mill, cannery, factory, or manufacturing establishment which have been produced in whole or in part, by the labor of children under the age of fourteen years, or by the labor of children between the age of fourteen years and sixteen years who work more than eight hours in any one day or more than six days in any week, or after the hour of seven o'clock post meridian or before the hour of seven o'clock ante meridian." [189]

The making of rules and regulations for administrative procedure was delegated to a board composed of the Secretary of Commerce, the Secretary of Labor, and the Attorney-General. The penalties for violation were more severe than those generally specified in state laws—a fine of $100 to $1000, imprisonment of one month to one year, or both fine and imprisonment.

A large number of organizations aligned themselves in favor of the bill: the national and state child labor committees, the National Consumers' League, the American Federation of Labor, the Federal Council of Churches of Christ in America, the Farmers' Educational and Co-operative Union of America, the American Medical Association, and the International Child Welfare League.[190] All three political party platforms, Democratic, Republican, and Progressive supported the bill in 1916.

The opposition to the bill came almost exclusively from the cotton mill interests of the South. At a congressional hearing, the representative of the "executive committee of the southern cotton manufacturers" declared, "The children of the South, many of them must labor. . . . It is a question of necessity. . . . If a child under 14 or under 16 must work, . . . then we insist that a cotton mill pays him more wages than he can get anywhere else in the South and provides better living and working conditions than he would otherwise have." Somewhat inconsistently, they went on to say that the southern states "are making such rapid progress (in raising the standards of state laws) that we think this committee ought to be encouraged to leave this matter to the states themselves." [191] The provision of the bill to which most objection was raised was the eight-hour day. There was no ob-

[189] H. R. 12292, 63d Congress, Second Session, 1914.

[190] *Child Labor Bulletin*, Eleventh Annual Report of General Secretary of the National Child Labor Committee, November 1915, IV, 144.

[191] Hearings before the Committee on Labor, House of Representatives, A Bill to Prevent Interstate Commerce in the Products of Child Labor, and for other purposes, H. R. 12292, 63d Congress, 2d Session, February 27, March 9, May 22, 1914; H. R. 8234, 64th Congress, 1st Session, January 10, 11, 12, 1916, pp. 12, 13.

jection to the 16-year minimum for work in mines and the night work prohibition, and little to the 14-year minimum. The only speaker at the hearing to oppose the bill, besides persons directly identified with southern cotton mills, was James Emery, counsel for the National Manufacturers' Association. After stating that "The National Association of Manufacturers has been at no time opposed to the regulation of child labor," he proceeded to argue for states' rights.[192] The bill was also attacked as unconstitutional.

The vote when finally taken in 1916 was overwhelmingly in favor of the bill, 52 yeas to 12 nays in the Senate and 337 yeas to 46 nays in the House.[193] An analysis of the vote shows that the congressmen of only two states voted unanimously against the bill, those from North and South Carolina.

The constitutionality of the new federal child labor law [194] was at once challenged by a judge in North Carolina. In spite of widespread hope and belief that the United States Supreme Court would uphold it, the law was declared unconstitutional in June 1918 in a five to four decision.[195] The majority opinion emphasized the effect of the law, which was to prohibit child labor, and declared that the power of Congress to prohibit interstate commerce is limited in that it must not "control the States in their exercise of the police power over local trade and manufacture."

In the following fall, another child labor bill was put before Congress, based on the federal taxing power. The advocates of the new bill recognized that they were using a more drastic method of regulation but hoped it would be constitutional, since the phosphorous match tax and the oleomargarine tax were precedents for using the taxing power of Congress for regulatory purposes. The bill provided for a 10 per cent tax in excess of all other taxes, on the net profits from the products of a mining or manufacturing establishment in which children were employed contrary to standards the same as those of the first federal child labor law. The arguments for and against this bill were similar to those for the earlier law. The child labor tax bill as an amendment to the Revenue Act was passed in both houses with favorable majorities

[192] *Ibid.*, p. 157.

[193] For Senate vote see *Congressional Record*, 64th Congress, 1st Session, Vol. 53, Part 12, p. 12313. For House vote see *ibid.*, Vol. 53, Part 2, p. 2035.

[194] 39 Stat. L. 675.

[195] *Hammer* v. *Dagenhart*, 247 U. S. 251 (1918). For a fuller discussion of both the child labor cases, see Chapter IX, pp. 694–695.

as large as those for the first federal child labor law,[196] and became law on April 25, 1919.

The same judge in North Carolina enjoined the enforcement of this second child labor law on the ground that it was unconstitutional. The United States Supreme Court sustained this opinion by an eight to one decision rendered in May 1922.[197]

The administration of the federal child labor laws, though short-lived, was significant as the first attempt to enforce a labor law on a national scale. The United States Children's Bureau, through a Child Labor Division established for the purpose, was made responsible for the administration of the first law, under rules and regulations adopted by the ex officio board provided for in the law. The cardinal policy adopted for federal administration was to co-operate with the state administrative officials and to refrain from stepping in above state officials or duplicating their work, except in relatively few states where practices of administration were too low to be tolerated under the federal regulations. In most states, state inspectors were given federal authority. The work of the federal inspectors was largely confined to those states with standards below those of the federal act and those where opposition to the state law prevented its enforcement.[198]

Employment certificates issued under state authority had the same force and effect as federal certificates, where the state certificates were approved by the federal administration as being issued in substantial accordance with the federal requirements. The federal requirements for an age certificate did not touch the question of education or physical fitness for work but made rigid requirements for documentary proof of age. Certificates were required for all children under 16 years of age for work in manufacturing establishments and for children 16 and under 17 for work in mines. In 39 states and the District of Columbia [199]

[196] In the Senate 50 yeas to 12 nays, and in the House 312 yeas to 11 nays. For Senate vote, *Congressional Record*, 65th Congress, 3d Session, 1918–19, Vol. 57, Part I, p. 621. For House vote, see *Congressional Record*, 65th Congress, 1918–19, Vol. 57, Part 3, p. 3035.

[197] *Bailey* v. *Drexel Furniture Co.*, 259 U. S. 20 (1922), from District Court, W. D., North Carolina, at Greensboro, Dec. 10, 1921, 276 Fed. 452.

[198] This enforcement was carried on for nine months, from September 1917 when the law became effective until June 3, 1918, when the U. S. Supreme Court declared it unconstitutional. U. S. Children's Bureau, *Administration of the First Federal Child-Labor Law*, Publication No. 78, 1921, p. 54.

[199] Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana,

the certificates issued under state authority were tentatively approved although the issuing of certificates was not altogether up to the federal standards in many of them. Federal certificates were issued by federal agents in five states,[200] all of which were in the South.

Under the second federal child labor law, administration was entrusted not to the Children's Bureau but to a newly created Child Labor Tax Division under the Commissioner of Internal Revenue. However, the rules and regulations for administration adopted under the first federal child labor law were embodied in the second act, and the same general policies of co-operating with the states and of accepting state certificates were adopted.[201]

Passage of the Child Labor Amendment by Congress

After the child labor tax law had been declared unconstitutional the only remaining avenue through which the advocates of federal child labor legislation might achieve their aim was to secure an amendment to the federal constitution. The prevailing opinion among them was that the conditions of child labor still existing in 1923 made this step necessary. Nearly a half million children under 16 years of age were employed in non-agricultural occupations according to the United States Census,[202] and in only 13 states were these children employed under the protection of child labor laws with standards in all respects as high as those of the federal laws which had been held unconstitutional.[203] A material increase in the number of employed children after the second federal law was held invalid could be seen from the increase in the number of employment certificates issued in certain states in 1922 and 1923. A frequent increase in the hours of work was also evident in states

Nebraska, New Hampshire, New Jersey, New York, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, and Wisconsin. *Ibid.*, p. 18.

[200] Georgia, Mississippi, North Carolina, South Carolina, and Virginia. *Ibid.*, p. 25.

[201] Statement of Commissioner of Internal Revenue, *The American Child*, May 1919, I, 9; Commissioner of Internal Revenue, Annual Report, 1920, p. 20; Statement of Nila F. Allen, Chief of Child Labor Tax Division, "The Federal Child Labor Law," Association of Government Labor Officials, Proceedings of Seventh Annual Convention, 1920, U. S. Bureau of Labor Statistics, Bulletin No. 266, 1921, pp. 142–143.

[202] U. S. Bureau of Census, *Children in Gainful Occupations*, 1921, p. 12.

[203] U. S. Senate, Committee of the Judiciary, *Hearings on Child Labor Amendment to the Constitution*, S. J. Res. 200, 224, 232, 256, 262, January 10–15, 1923, 67th Congress, 4th Session, p. 25, Testimony of Grace Abbott, Chief of U. S. Children's Bureau.

which lacked the eight-hour standard.[204] Experience had shown that a federal child labor law could be successfully administered without duplicating the work of the states or setting up a cumbersome bureaucracy. State labor officials favored federal action. A large majority of them in reply to a questionnaire testified that the federal laws had helped very materially in the enforcement of their state laws, while only three out of 20 definitely said that they did not help.[205]

The proposed child labor amendment read as follows:

> "Section 1. The Congress shall have power to limit, regulate, and prohibit the labor of persons under 18 years of age.
>
> "Section 2. The power of the several States is unimpaired by this article, except that the operation of State laws shall be suspended to the extent necessary to give effect to legislation enacted by the Congress." [206]

The struggle of powerful forces to kill the amendment in 1924 and 1925 was so intense and so significant for the future, that a fairly full account of this episode seems warranted. The manipulation and manufacture of attitudes toward the proposed constitutional amendment was a phenomenon of group psychology that may well arrest attention.

The proposed child labor amendment had the same organizations backing it as the two federal bills had had. Other significant organizations endorsing it were the National Education Association, the Democratic National Committee, and the Republican National Committee.[207] The amendment's send-off from Congress was in the main propitious, but contained a hint of snags ahead. A new opponent appeared in the shape of the American Farm Bureau Federation which was represented at the House hearings in February and March 1924. This was the first appearance of a farm organization in opposition to federal child labor legislation. Neither the National Grange nor any other farm organizations besides the American Farm Bureau Federation were represented

[204] U. S. House of Representatives, Committee of the Judiciary, *Hearings on Proposed Child Labor Amendments*, February 7–March 8, 1924, 68th Congress, 1st Session, pp. 36–37; also Testimony of Grace Abbott, Chief of U. S. Children's Bureau, Senate Hearings on Child Labor Amendment to Constitution, pp. 37, 39, 50, 51.

[205] National Industrial Conference Board, *The Employment of Young Persons in the United States*, New York, 1925, pp. 70–71.

[206] House Joint Resolution 184, 68th Congress, 1st Session, 1924, *Congressional Record*, Vol. 65, Part 7, p. 7176.

[207] *Congressional Record*, 68th Congress, 1st Session, 1924, Vol. 65, p. 7170.

at the hearings. The sentiment of the National Grange at the time of the hearings was apparently favorable to the amendment [208] though this organization took no formal action on the question until the amendment was before the states for ratification.[209] Most important of the organizations defending the "fundamental principles of the Constitution" which opposed the amendment was the Sentinels of the Republic. They opposed "the attempted continuation of a tendency which has been getting stronger and stronger for the last 20 years, to subordinate to Federal control all local activities, the police powers of the States, and the private rights of the individual citizen." [210]

The debate in the House over the proposed amendment centered about the old issues of states' rights and whether conditions of child labor were such as to make federal control desirable. The bill passed the House by the overwhelming vote of 297 to 69.[211] In the Senate the subversive intent of the proponents of the amendment was the subject of attack. Fear was expressed lest sinister results follow its adoption. The following sentences from a speech by Senator Stephens of Mississippi show the tenor of the new attack which became the dominant note in the subsequent campaign to prevent ratification by the states:

> "If this amendment shall be made to the Constitution," said Senator Stephens, "there is no doubt that in a few years there will be attempts made to prohibit not only work on the farm but also work of every character by children under 18 years of age.
>
> "This is a socialistic movement and has for its end purposes far deeper and more radical than appear on the surface. It is part of a hellish scheme laid in foreign countries to destroy our Government. Many of the propagandists of the measure are communists and socialists. . . .
>
> "The Child becomes the absolute property of the Federal Government."

[208] U. S. House of Representatives, Committee of the Judiciary, *Hearings on Proposed Child Labor Amendments*, February 7–March 8, 1924, 68th Congress, 1st Session, p. 252.

[209] The National Grange, which had originally been favorable to the amendment, began to take an unfavorable attitude by August 1924, when the Ohio State Grange passed a resolution opposing the amendment. In November the Annual Convention of the National Grange passed a resolution: "On account of its sweeping nature, we are opposed to the ratification of the Amendment now proposed." National Grange, Proceedings, Annual Convention, November 1924, pp. 222, 223.

[210] House of Representatives, *Hearings on Proposed Child Labor Amendments*, pp. 216, 217.

[211] *Congressional Record*, 68th Congress, 1st Session, Vol. 65, Part 7, p. 7295.

Few senators were frightened, however, and the bill passed with more than the necessary two-thirds majority.[212] Thus in June 1924 the amendment was submitted to the states for ratification.

The Campaign for Ratification of the Amendment

Thus far those who had been backing the amendment had reason to believe that the prevailing sentiment in the country was with them. The press was very generally friendly. The organizations on record as opposed, with the possible exception of the American Farm Bureau Federation, had far fewer members than those on record as in favor. The opposition itself believed the country to be emphatically behind the amendment. Senator Reed of Missouri, in opposing it in the Senate, declared that it "would not receive a vote in this body were there not so many individuals looking over their shoulders toward the ballot boxes of November." [213]

In the ratification campaign the opposition came largely from the same sources as in the Congressional stage. Several individuals of prominence in the country, such as Cardinal O'Connell of Massachusetts and Nicholas Murray Butler, President of Columbia University, joined the attack. By fall both sides had launched campaigns in the states. The country was swept with propaganda. It appeared in newspapers and magazine articles, editorials, and advertisements, in enormous quantities of printed leaflets, and in speeches, at meetings, and over the radio. The proposed child labor amendment was one of the most discussed political issues of the year. Although not always outwardly apparent, there is evidence that the main forces back of the flood of opposition propaganda were the National Association of Manufacturers, the cotton textile interests of North Carolina, and the American Farm Bureau Federation. It is probable that the "Citizens' Committee for the Protection of our Homes and Children," the "most visible agency of the opposition in Massachusetts," was largely an instrument of the Associated Industries of Massachusetts; at least it was believed by the supporters of the amendment to be such.[214]

[212] For quotation see *Congressional Record*, 68th Congress, 1st Session, 1924, Vol. 65, p. 10122. The vote in the Senate was 61 yeas to 23 nays. See *ibid.*, p. 10142.

[213] *Ibid.*, p. 11084.

[214] The membership of this Citizens' Committee included besides several such prominent citizens as President Lowell and Cardinal O'Connell, certain prominent manufacturers active in opposing the amendment in another organization, the Sentinels of the Republic. The finance chairman was past president of the Associated Industries of Massachusetts. The printed matter they put out was similar

A few quotations will suggest the tendency to misrepresentation and the fear of federal government which were characteristic of the opposition campaign. From a leaflet issued by the Citizens' Committee to Protect Our Homes and Children are quoted these arguments:

> "If this amendment is ratified it will give to Congress, 500 miles away, the power—
>
> "1. To take away the sovereign rights of the states and destroy local self-government which is the strength of our democracy.
>
> "2. To take away from you the control of the education of your children and give it to a political bureau in Washington.
>
> "3. To dictate when and how your children shall be allowed to work.
>
> "4. To subject your children and your home to the inspection of a federal agent.
>
> "Wise Child Labor Laws are necessary but the proposed amendment gives the power to Congress to take away the rights of parents and to bring about the nationalization of their children. . . .
>
> "The passage of this amendment would be a calamity to the Nation. Don't be deceived. If you love your children . . . put a cross (x) opposite No on REFERENDUM 7." [215]

The American Farm Bureau Federation was the organization distributing a leaflet, signed by a little known Chicago lawyer entitled "National Child Labor Law or Socialistic Bureaucratic Control Supplanting Parental Control of Children. Plain Politics for Parents." [216] The editorial opinion of farm journals was influenced in some degree at least by the American Farm Bureau Federation.[217] The National Manufacturers' Association also undertook to influence the editorial opinion of farm journals. According to Senator Walsh of Montana, Mr. Emery of the National Manufacturers' Association wrote a letter in September 1924 "to the editors of the farm journals throughout the Nation urging

in line of argument to that used by the National Manufacturers' Association, and the American Farm Bureau Federation. See leaflet issued by Organizations Associated for Ratification of the Child Labor Amendment entitled *Struggle for the Child Labor Amendment* (leaflet in Wisconsin Legislative Reference Library). See also W. A. Robinson, "Advisory Referendum in Massachusetts on the Child Labor Amendment," in *American Political Science Review*, February 1925, XIX, 71.

[215] Leaflet in Wisconsin Historical Library.

[216] Copy in Wisconsin Legislative Reference Library.

[217] For example, the *Wisconsin Agriculturist* opposing the amendment was backed by the Wisconsin Farm Bureau Federation. Letter of Wisconsin Legislative Reference Library to National Child Labor Committee.

them to join in his campaign and asserting that the amendment will not affect manufacturers appreciably, but that it is aimed at children on the farms." [218] With few exceptions the farm journals did oppose the amendment.[219]

A characteristic argument appearing in the farm papers and magazines against this "Loafer Law," was that "It should be defeated, for if it is adopted by a sufficient number of legislatures it becomes the law of the land and the farmers will be prohibited by law from allowing their sons and daughters to work until they reach the age of eighteen." [220] The journal from which these quotations are taken conducted a straw vote on the question, "Would You Prohibit the Labor of Boys and Girls under Eighteen?" [221] Needless to say the resulting vote was overwhelmingly in the negative.[222]

An exposé made by *Labor*, the official organ of the railroad brotherhoods, showed that one organization issuing a large amount of propaganda against the amendment, ostensibly an organization of farmers, really represented southern cotton textile manufacturing interests. This organization was the Farmers' States' Rights League, Inc., of Troy, North Carolina. The League "(flooded) western papers—especially agricultural papers—with half-page advertisements denouncing the child labor amendment." [223] The prestige of the Catholic Church was used to help defeat the amendment. The Farmers' States' Rights League circulated widely statements in opposition made by Cardinal O'Connell of Boston.[224] The Church did not officially take any stand on the amendment, but other influential Catholics, among them Father John Ryan, strongly favored it.[225]

The turning point in the campaign came in November 1924

[218] *Congressional Record*, 68th Congress, 2d Session, 1925, Vol. 66, Part 2, p. 1446.

[219] "Several Leading Agricultural Publications Favor Child Labor Amendment," *The American Child*, November 1924, VI, 6, and perusal of a number of farm journals.

[220] *Wisconsin Agriculturist*, Editorials, July 5, p. 8, August 16, 1924, p. 14.

[221] *Ibid.*, October 11, 1924, p. 16.

[222] *Ibid.*, October 18, 1924, p. 12.

[223] "Labor Exposes the Cotton Mill False Farmer League," *Labor*, January 31, 1925, p. 4. Quoted in part by *American Labor Legislation Review*, "Opposition Propaganda at Work behind the Scenes," June 1925, XV, 122.

[224] Letter of Marguerite Owen, Secretary of National League of Women Voters' Committee on Legislation and Law Enforcement, to Wisconsin Legislative Reference Library on file in this library.

[225] Ryan, John A., D. D., "The Proposed Child Labor Amendment," *Catholic World*, Vol. 120, November 1924, pp. 166–174.

with the rejection of the amendment by a referendum vote of approximately three to one in Massachusetts. Both sides had regarded Massachusetts as a key state and a very vigorous and heated campaign had been waged there. By the first of March 1925, the rejection of the amendment for the time being was certain. Up to that date only four states had [226] ratified it, while 12 [227] had rejected it by vote of both houses of their legislature.

Up to January 1, 1933, the total number of states ratifying the child labor amendment was only six [228] while the number which rejected by vote of both houses was 23 [229] and by vote of one house was 12.[230]

Thus the opponents of the child labor amendment succeeded in preventing its ratification in the decade that followed its passage through Congress. Their success was probably due in considerable measure to the very wide grant of power which it sought to give to the federal government. Its advocates designed it to include whatever child labor legislation Congress might see fit to enact in the future. They set an 18-year age limit, and they used the term "labor" instead of "employment," thus probably including agricultural labor on the home farm.[231] This wording gave opponents some excuse for the fears they expressed. The prevalent misrepresentations and exaggerations were based on the assumption that the authorization to Congress to legislate in a relatively

[226] Arkansas, Arizona, California, and Wisconsin. "Status of Amendment Action by States," *The American Child*, March 1925, p. 8.

[227] Connecticut, Delaware, Georgia, Kansas, Massachusetts, North Carolina, South Carolina, South Dakota, Tennessee, Texas, Utah, and Vermont. *Ibid.*

[228] Arkansas, Arizona, California, Colorado, Montana, and Wisconsin. See *Monthly Labor Review*, September 1933, Vol. 37, No. 3, pp. 556–557.

[229] Connecticut, Delaware, Florida, Georgia, Indiana, Kansas, Maine, Maryland, Massachusetts, Minnesota, Missouri, New Hampshire, North Carolina, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, and West Virginia. National Child Labor Committee, *Present Status of the Child Labor Amendment*, mimeographed report, 1930.

[230] Idaho, Iowa, Kentucky, Louisiana, Michigan, Nebraska, Nevada, North Dakota, Ohio, Oklahoma, Oregon, and Wyoming (source same as above).

In 1933 there was a renewed and vigorous attempt to secure ratification. By September of that year nine more states ratified the amendment, namely, Illinois, Michigan, New Hampshire, New Jersey, North Dakota, Ohio, Oklahoma, Oregon, Washington, making a total of 15 states. Note that of these nine states, seven (Michigan, New Hampshire, North Dakota, Ohio, Oklahoma, Oregon, and Washington) had previously rejected it. See *Monthly Labor Review*, September 1933; Vol. 37, No. 3, pp. 556–557. In 1934 five more states ratified the amendment; namely, Iowa, Maine, Minnesota, Pennsylvania, and West Virginia. In 1935 up to April 1 four more states ratified; namely, Idaho, Indiana, Utah, and Wyoming, making a total up to that date of 24 states. See National Child Labor Committee, *The American Child*, April 1935.

[231] See above, p. 444, for wording of the proposed amendment.

wide sphere meant actual prohibition of all work by children within that sphere.

The term "labor" was preferred by the proponents of the amendment to "employment" in order to avoid uncertainty as to whether the amendment granted power over the work of children who might not be on the payroll of an establishment because they were working with their parents.[232] They desired to include the power to regulate agricultural labor because of the possible growth of large scale industrialized agriculture which might in the future need more or less extensive legislative regulation.[233] The opponents pictured 17-year-old Johnny forced to idleness because a federal agent forbids him to help his father milk the cows. Last minute amendments to substitute a 16- for the 18-year limit and to exclude agriculture were attempted in the Senate, but were defeated.[234] Had the amendment been limited in this way, its prompt ratification might have been achieved.

State Child Labor Legislation, 1917 to 1932

Characteristic of child labor legislation after 1916, both in its federal and state aspects, was the extension to new areas of child labor standards already proven reasonable and acceptable. With federal child labor legislation a nearly dead issue from 1926 to 1932, state activities in child labor legislation continued as a slow extension of higher standards.

The Adoption of "Minimum Standards" and Progress in Their Attainment

A standard of comparison for measuring achievements in child labor legislation are the "Minimum Standards" adopted as its working basis by the National Child Labor Committee in 1925.[235] These Minimum Standards were in substance as follows: [236]

[232] Senate, *Hearings on Proposed Child Labor Amendments*, January 10–15, 1923, 67th Congress, 4th Session.

[233] House, *Hearings on Proposed Child Labor Amendments*, February 7–March 8, 1924, 68th Congress, 1st Session, 1924, pp. 35–36.

[234] *Congressional Record*, 68th Congress, 1st Session, 1924, Vol. 65, pp. 10129, 10140.

[235] *The American Child*, "The Low Water Mark," February 1926, VIII, 4.

[236] Where not otherwise stated these standards of the National Child Labor Committee apply for children under 16 years of age. They apply to employment in any occupation but in the following discussion of the other standards a state will be considered as meeting the specific standards regarding age, hours, and employment certificates if the provisions on these subjects apply to employment in both manufacturing and mercantile occupations.

1. A minimum age of 14 years with no exemptions for poverty or employment outside of school hours.
2. General provisions of the law applicable to employment in any establishments or at any gainful occupation.[237]
3. Maximum working hours of 8 a day, 48 a week, and a maximum of 6 days a week.[238]
4. Night work prohibited after 7 o'clock in the evening and before 6 o'clock in the morning.
5. Attendance required at continuation school where one is established.
6. Requirement of a work-permit based on:
   a. Evidence of completion of the eighth school grade for employment when the public school is in session.
   b. A physician's certificate of physical fitness.
   c. Documentary evidence of age.
   d. A promise of employment.
7. Dangerous occupations prohibited with specific occupations listed in the law for children under 16 and for children under 18 and with authority to extend the lists delegated to an administrative body.

Progress in the attainment of higher standards was most rapid from 1911 to 1916. The rate of advance did not abate very much from 1917 to 1922, while the federal child labor laws were in force and the Smith-Hughes Act, passed in 1917, was producing a wave of state laws establishing continuation schools. The failure of the states to ratify the child labor amendment in 1925 did not have the effect, anticipated by some, of promoting state child labor legislation. Fewer states took steps to measure up to the Minimum Standards of the National Child Labor Committee in the seven years from 1923 to 1929 than in any six-year period since that from 1899 to 1905. It might be supposed that the marked decline in the rate at which states raised their child labor standards was due to the fact that by 1922 most of the states had already reached these "Minimum Standards." However, this was not the explanation, for up to 1932 on the average only half of the states measured up to the Minimum Standards of the National Child Labor Committee.

[237] Where a state law lists specific occupations to which it applies, it is considered as meeting the National Child Labor Committee Minimum Standard specifying that the law cover employment in all gainful occupations only if the National Child Labor Committee's analysis of the state law reports the occupations listed to be interpreted as all-inclusive. National Child Labor Committee, *Child Labor Laws and Child Labor Facts*, 1928.

[238] The standard for hours is interpreted to be met if either a week of 48 hours or less, or a 6-day week is provided in addition to the 8-hour day. See "The Low Water Mark," *The American Child*, February, 1926, VIII, 4.

The Period from 1917 to 1922

Of the child labor advances from 1917 to 1922 the most noteworthy was the establishment of continuation schools and the requirements that children working on employment certificates attend these schools. The rapid spread of these schools was the direct result of the Smith-Hughes Act of 1917 which granted the states dollar for dollar aid in the support of continuation schools as well as of other kinds of vocational education.[239] In the one year of 1919, 18 new states [240] enacted continuation school attendance requirements. By 1922 altogether 23 states [241] provided for compulsory attendance at continuation schools and one more state [242] was added to this list in 1924.

In 1932 a total of 27 states made some provision for the establishment of continuation schools; though the requirements as to establishment and attendance varied rather widely.[243]

[239] U. S. 39 Stat. 929, approved Feb. 23, 1917.

[240] *Five eastern and middle western states:* Illinois, Massachusetts, Michigan, New Jersey, New York (in addition to the Wisconsin and Pennsylvania laws enacted in 1911 and 1915). *Two southern states:* Oklahoma and West Virginia. *Eleven western states:* Arizona, California, Iowa, Missouri, Montana, Nebraska, Nevada, New Mexico, Oregon, Utah, and Washington.

See U. S. Department of Education, *School Life*, Dec. 15, 1919, pp. 14–16, "Summary of State Laws." This summary includes the laws of 25 states; of these 25 the laws of Wisconsin and Pennsylvania were passed prior to 1919. The laws of Illinois and Washington did not make the establishment of continuation schools compulsory, but did make attendance compulsory once the schools were established. The law of Indiana provided for the establishment of schools but not for compulsory attendance. The laws of New Hampshire, Rhode Island, and South Dakota were ineffective because of the fact that the ability to read and write English was the only requirement necessary to be exempt from attendance. The law of Connecticut was a night school law.

Thus in 1919, 18 laws requiring compulsory attendance at continuation school were passed making a total of 20 states requiring attendance at continuation school.

[241] *Nine eastern and middle western states:* Delaware, Illinois, Massachusetts, Michigan, New Jersey, New York, Ohio, Pennsylvania, and Wisconsin. *Three southern states:* Florida, Oklahoma, and West Virginia. *Eleven western states:* Arizona, California, Iowa, Missouri, Montana, Nebraska, Nevada, New Mexico, Oregon, Utah, and Washington. See U. S. Department of Labor, Children's Bureau, *Chart of the Compulsory School Attendance Standards Affecting the Employment of Minors*, September 15, 1924, Chart No. 2.

Of these 23 states Illinois, Ohio, and Washington did not provide for compulsory establishment of continuation schools but did provide for compulsory attendance if schools were established.

[242] Tennessee, Acts of 1924, c. 1153.21–22–23.

[243] Arizona, California, Connecticut, Delaware, Florida, Illinois, Indiana, Iowa, Kentucky, Massachusetts, Michigan, Missouri, Montana, Nebraska, Nevada, New Mexico, New Jersey, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Tennessee, Utah, Washington, West Virginia, Wisconsin.

U. S. Department of Labor, Children's Bureau, Publication No. 197, *Child Labor Facts and Figures*, 1930, p. 53. For detailed provisions as to requirements and ages covered, see *ibid.*, and U. S. Department of Labor, Children's Bureau,

The Federal Board for Vocational Education, though it did not supervise the conditions for establishing a continuation school, did set up standards regarding the hours of attendance—that they be at least 144 a year, and that they be during the normal working hours of the day.

Of the 22 states (including the District of Columbia) [244] which in 1929 did not require attendance at continuation schools for employed children, half (11) were in the South, the others being concentrated in New England or scattered in the West.[245] Rhode Island and Indiana were the only states with a relatively large proportion of children engaged in manufacturing and mechanical occupations which did not require attendance at continuation schools.[246]

The other big advances in child labor legislation between 1917 and 1922 were the extension of the eight-hour day to eleven more states,[247] most of them in the South and West; the extension of the requirement of a promise of employment to eight more states; [248] and the extension of the requirement for a physician's certificate of physical fitness to seven more states.[249] Five more states were added to the list requiring the completion of the eighth school grade.[250]

State Compulsory School Attendance Standards Affecting Employment of Minors, Chart No. 2, January 1, 1930.

[244] *Four eastern and middle western states:* Maine, New Hampshire, Rhode Island, and Vermont. *Eleven southern states:* Alabama, Arkansas, District of Columbia, Georgia, Louisiana, Maryland, Mississippi, North Carolina, South Carolina, Texas, and Virginia. *Seven western states:* Colorado, Idaho, Kansas, Minnesota, North Dakota, South Dakota, and Wyoming. U. S. Children's Bureau, Publication 197, p. 53.

[245] U. S. Children's Bureau, *Child Labor Facts and Figures*, Publication No. 197, 1930, p. 52.

[246] Indiana, however, provided for the establishment of continuation schools but left the question of compulsory attendance to local option.

National Child Labor Committee, *Child Labor Laws and Child Labor Facts*, see Indiana.

[247] Alabama, Indiana, Kansas, New Mexico, Oregon, Tennessee, Utah, Vermont, Virginia, Washington, and West Virginia.

See U. S. Department of Labor, Bureau of Labor Statistics, *Labor Laws of the United States*, Bulletin 370 for these various state laws. Washington and Oregon fix the hours of minors by orders of the Industrial Welfare Commission. See Oregon Industrial Welfare Commission order No. 46, 1921; Washington Industrial Welfare Commission order No. 31, 1922.

[248] Alabama, Delaware, Illinois, Kansas, New Mexico, New York, Virginia, and West Virginia. U. S. Bureau of Labor Statistics, Bulletin 370, various state laws given. Illinois Acts of 1917, p. 511, Sec. 5, New York Acts of 1921, c. 386, Sec. 631 (3).

[249] Alabama, Connecticut, Delaware, Illinois, Indiana, Virginia, and West Virginia. *Ibid.* and Delaware Acts of 1917, c. 232, Sec. 55.

[250] Idaho, Indiana, Montana, Utah, and Wisconsin. *Ibid.* and Idaho Acts of 1921, c. 215; Utah Acts of 1919, c. 92.

One new development in the technique of administering child labor laws appeared and was adopted in several states in this period. This was the requirement that children over the age for which regular employment certificates were required should secure certificates of age. This requirement serves as a guard against a child's misrepresentation of age both for the legal protection of the employer and for safeguarding the conditions of employment for the child. The first legislation to this effect was in 1919 and 1921, when three states, Alabama, Pennsylvania, and Massachusetts, required every employed minor under 17, 18, or 21 years respectively to have either an employment certificate or a certificate of age. Certain other states have provided that age certificates for older children be issued upon the request of the employer or child,[251] or that they be required for minors employed at occupations prohibited to children under 16.[252]

The Period from 1923 to 1932

In the ten-year period from 1923 to 1932, there were no great advances in the child labor field. Seven states and the District of Columbia amended their laws to require that a child receiving an employment certificate must have completed the eighth school grade.[253] Five states and the District of Columbia raised their standards by requiring a physician's certificate of physical fitness and a promise of employment before a certificate would be granted.[254] Vermont passed a law prohibiting employment of minors in dangerous occupations.[255] Maryland raised the com-

[251] *Six eastern and middle western states:* Illinois, Indiana, New Jersey, New York, Ohio, and Wisconsin. *Two southern states:* Kentucky, West Virginia. *Three western states:* California, Kansas, and Missouri. See U. S. Children's Bureau, Publication 197, p. 72.

[252] Montana, Tennessee, and Federal Child Labor Laws of 1916 and 1919. See *ibid.* Also see U. S. Department of Labor, Children's Bureau, Bulletin 78, p. 22; and U. S. Treasury Department, Internal Revenue Bureau, Regulation 46 relative to tax on employment of child labor under the Revenue Act of 1918, 1921, pp. 18–20.

[253] Alabama, Delaware, District of Columbia, Illinois, Maine, Mississippi, North Dakota, and Rhode Island. Nat. Child Labor Committee, *Child Labor Laws and Child Labor Facts*, from analysis of various state laws.

Sources for Alabama and Mississippi, U. S. Bureau of Labor Statistics, *Labor Legislation, 1931 and 1932*, Bulletin 590, p. 37; *Labor Legislation, 1930*, Bulletin 552, p. 11. Source for Illinois, U. S. Bureau of Labor Statistics, *Labor Legislation, 1929*, Bulletin 528, p. 40.

[254] District of Columbia, Georgia, Louisiana, Missouri, North Carolina, and Tennessee. National Child Labor Committee, *Child Labor Laws and Child Labor Facts*, 1928. For Missouri promise of employment, see Acts of 1929, p. 130, S. 6.

[255] U. S. Bureau of Labor Statistics, Bulletin 590, p. 124.

pulsory school attendance age from 13 to 14 years in 1931.[256] Most of these gains were made in southern states.

A new development in administrative aids to child labor legislation which met with favor was the requirement of extra compensation to be paid in the case of a child injured while illegally employed. In addition to giving a more nearly fair adjustment to a child illegally exposed to danger, extra compensation provides a financial inducement to the employer to avoid employing a child illegally. Wisconsin was the state which devised this plan. In 1917, it enacted a law requiring treble compensation for minors injured while illegally employed.[257] Of this provision the ex-secretary of the Wisconsin Industrial Commission wrote in 1923:

> "Considered as a penalty for violations of the child labor law, the treble compensation provision of the Wisconsin compensation act is by far the most effective penalty ever devised." [258]

This scheme of extra compensation for illegally employed minors did not attract enough attention to be adopted by other states until 1921, when Oregon provided for a penalty to be paid to the State Workman's Insurance Fund in the case of an illegally employed minor.[259] Two other states [260] adopted provisions providing for double compensation, similar to the Wisconsin law, in 1923. By 1932, 9 states had provisions [261] for extra compensation.

Looking back over the long history of child labor regulation in this country, one is impressed first, with the slow progress in reaching even moderate standards of protection, and, second, with the complexity of the problems involved. That children cannot fight their own battles in the industrial world, but must be treated as wards of the state has long been pretty generally accepted; that children as future citizens must be protected against injury to their health and assured at least a modicum of education is almost universally agreed. Child labor laws encountered the least opposition of any kind of labor legislation and at the same

[256] *Ibid.*, p. 71.

[257] Wisconsin Acts of 1917, c. 624, Sec. 2394–9(6), p. 1109.

[258] Witte, E. E., "Treble Compensation for Injured Children," *American Labor Legislation Review*, June 1923, XIII, 126.

[259] Oregon Acts of 1921, c. 311, s. 6.

[260] Indiana Laws of 1923, c. 76; and New York, Laws of 1923, c. 572.

[261] Alabama, Illinois, Maryland, Michigan, Missouri, New Jersey, New York, Pennsylvania, and Wisconsin. The Indiana provision was repealed in 1929. U. S. Dept. of Labor, Children's Bureau, *The Illegally Employed Minor and The Workmen's Compensation Law*, Publication 214, 1912, pp. 5–17.

time aroused the most widespread support among humanitarian groups.

And yet after nearly half a century of effort the general child labor standards were not high and groups of working children, notably in agriculture, domestic service, and the street trades remained virtually unprotected. Moreover as child labor standards and procedure for enforcing them developed, the complexity of the task became apparent. The aim of child labor legislation is simple; to translate it into actuality led to statutes which grew longer and more complicated year by year. Age requirements, physical requirements, educational requirements, together with methods for determining all three were found to be essential. Special provisions for out of school work, vacation work, specially dangerous work, etc., had to be added. Although certain problems have so far found no satisfactory solution, for the most part we have learned how to regulate child labor; but we have also learned that to do it effectively is not and probably never will be a simple or easy task.

CHAPTER III

WOMEN'S HOUR LEGISLATION

Introductory Summary

Women's hour legislation is one of the simplest and most generally accepted types of state activity for the protection of the wage earner. A comparison between January 1, 1896, and January 1, 1933, shows the extent of accomplishment in this field within our period.

In 1896 there were only 13 states with any kind of law restricting the hours of women's work.[1] Several of the 13 penalized the employer only if he "compelled" a woman to work more than the legal maximum, others only for "willful" violation; many of them provided no method for enforcement.[2] One of the 13 laws had been declared unconstitutional by the state supreme court.[3] Only three states, Maine, Massachusetts, and New Jersey, had women's hour laws which had any chance of being effective.[4] In contrast

[1] The 13 states with women's hour laws in 1896 were: Connecticut (1887), Illinois (1893), Louisiana (1886), Maine (1887), Massachusetts (1874), New Hampshire (1887), New Jersey (1892), North Dakota (1863—non-enforceable), Oklahoma (1890), Rhode Island (1885), South Dakota (1863—non-enforceable), Virginia (1890), Wisconsin (1867—non-enforceable). In addition women were subject to all the hour legislation on the statute books at that time which applied to all employees—men and women. Most of these acts, however (other than the general declaratory laws), were for occupations such as public works in which women were not employed. Five acts should be noted, however, which affected women as much as men: namely, those for the textile industry in Georgia, Maryland, and South Carolina and for enumerated manufacturing in Pennsylvania and manufacturing in Minnesota. (For summaries of the women's hour laws and dates and for Pennsylvania and Minnesota see *Chronological Development of Labor Legislation for Women in the United States*, Part II of Bulletin 66 of Women's Bureau, U. S. Department of Labor, 1929. For the three textile laws see *Labor Laws of the United States*, revised edition, 1896, Special Report of the U. S. Commissioner of Labor, Georgia, p. 223; Maryland, p. 415; South Carolina, p. 1023.)

[2] Fine for "compelling": North Dakota, Oklahoma, South Dakota, and Wisconsin.

Fine for "willful" violation: Connecticut, New Hampshire, and Rhode Island.

No provisions for enforcement: Connecticut, North Dakota, New Hampshire, Oklahoma, Rhode Island, South Dakota, Virginia. In Louisiana the local police officers were the only persons charged with the duty of enforcement.

See Bulletin 66, Part II; also *Labor Laws of the United States*.

[3] Illinois act held unconstitutional in *Ritchie* v. *People*, 155 Ill. 98 (1895).

[4] The Maine statute permitted contracts for six hours of overtime per week so long as the weekly maximum of 60 hours was not exceeded. Bulletin 66, Part II, p. 177.

by January 1, 1933, all but six states had passed some kind of women's hour law and one of these six actually covered a large number of its women employees by a law applying to both men and women in the textile industry.[5] Provisions for enforcement were of varying adequacy, but of all the states with women's hour laws only one, Idaho, failed to provide some person specifically charged with this duty.[6]

In 1896 the maximum hours as fixed by law were long. Only two of the 13 statutes set eight hours as the maximum day's work, and both of these were unenforceable since one had been held unconstitutional[7] and the other penalized the employer only if a woman were "compelled" to work beyond the legal maximum.[8] Ten states made ten hours the daily maximum and one had only a weekly maximum of 55 hours.[9] In contrast, by January 1, 1933, eight states and the District of Columbia and Puerto Rico had eight-hour laws and 15 others had eight and a half or nine-hour laws.[10] Of the 42 states with special women's hour

[5] The six states lacking women's hour laws were: Alabama, Georgia, Florida, Indiana, Iowa, and West Virginia. Indiana prohibited night work for women in manufacturing but had no other limit to the number of hours they might be employed. The state without a special law for women was Georgia, which had a general law for both men and women for the textile industry. (See *State Laws Affecting Working Women*, Bulletin 98, Women's Bureau, U. S. Department of Labor, 1932.) North Carolina belonged in this class until 1931 when it passed a law setting up an 11-hour day and 55-hour week for women in manufacturing. Chapter 289, Laws of 1931, 6554 Consol. Statutes.

[6] See National Industrial Conference Board, New York, *Legal Restrictions on Hours of Work in the United States*, Research Report No. 68, 1923, Chap. 4, p. 16.

Five states are listed in this bulletin as not having set up enforcement provisions for women's and children's hour laws: (1) Arizona; (2) Georgia, (3) Idaho, (4) New Mexico, (5) South Dakota; but of these five Arizona set up an enforcing agency in 1925 (Laws of 1925, Chap. 83, Section 12, p. 350), creating industrial commission and giving it powers; Georgia had no exclusive women's hour law (see preceding note); New Mexico set up an enforcement agency in 1931 (New Mexico Laws of 1931, Chap. 9); and South Dakota set up its enforcement agency in 1931 (Laws of South Dakota, 1931, Chap. 174).

[7] Illinois act in *Ritchie* v. *People*, 155 Ill. 98 (1895).

[8] Wisconsin act, see Bulletin 66, Part II, p. 267.

[9] The one state with only a weekly maximum was New Jersey. However the statute prescribed that hours of work should be from 7–12 and 1–6 five days and 7–12 on Saturdays, which in effect made it a ten-hour law. Bulletin 66, Part II, p. 203.

[10] *Eight-hour states:* Arizona, California, Colorado, Montana, Nevada, New Mexico, Utah, Washington, and District of Columbia and Puerto Rico. *Eight and a half hours:* North Dakota and Wyoming. *Nine hours:* Arkansas, Idaho, Kansas, Maine, Massachusetts, Missouri, Nebraska, New York, Ohio, Oklahoma, Oregon, Texas, and Wisconsin. Michigan is not listed as a nine-hour state because one hour overtime was allowed daily so long as the 54-hour weekly limit was not exceeded. (Bulletin 98. However the classification given here does not correspond entirely with that given there. The Women's Bureau included under each heading all states which

laws only 17 permitted a weekly maximum of more than 54 hours.[11]

The scope of the early hour laws for women was very limited as compared with the present. In 1896 all but one of the 13 laws were limited to women employed in manufacturing.[12] By 1933 most of the laws applied to extensive lists of industries and occupations, covering in many states virtually all forms of work in which women wage earners engage, with the exception of farm labor and domestic service. Only three states [13] limited their women's hour law to a narrowly restricted group, such as women employed in manufacturing or mercantile establishments.

A great part of this progress in limiting the hours of women's labor came in the period 1909–17. From 1909 through 1917, 19 states and the District of Columbia enacted women's hour laws for the first time; [14] and 20 more affected substantial improvements in existing laws [15] by decreasing the legal maximum or widening the scope. The peak of this movement came in the three-year

limited the hours of women in any industry or occupation to that number. It then listed the same states again under other headings if other industries or occupations were covered by provisions limiting hours to other lengths. In our enumeration on the other hand we count each state only once, putting it in the category which we estimate covered the largest number of women.)

[11] Weekly maximum above 54 hours permitted in 17 states: Colorado, Delaware, Idaho, Illinois, Kentucky, Louisiana, Maryland, Minnesota, Mississippi, Montana, Nevada, New Mexico, North Carolina, South Carolina, Tennessee, Vermont, Virginia. (Bulletin 98.) In addition Georgia with an hour law for men and women in manufacturing permitted more than 54 hours per week.

[12] The exception was Connecticut. Bulletin 66, Part II, p. 157.

[13] The three states with narrowly restricted coverage were: Vermont, manufacturing and mechanical; North Carolina, manufacturing; South Carolina, mercantile. In South Carolina, however, there was also an hour law for men and women in the textile industry. (Bulletin 98.) For reference to North Carolina Act see note 5, p. 458.

[14] From 1909 through 1917, 19 states enacted women's hour laws for the first time: Arizona (1913), Arkansas (1915), California (1911), Delaware (1913), Idaho (1913), Kansas (act passed 1915—first administration order thereunder limiting hours 1917), Kentucky (1912), Maryland (1912), Minnesota (1909—had had a nonenforceable women's hour law passed in 1858 converted in 1895 into a general legal day's work law), Mississippi (1914), Missouri (1909), Montana (1913), Nevada (1917), Ohio (1911—had had a women's hour law passed in 1852 repealed in 1879), South Carolina (1911), Texas (1913), Utah (1911), Vermont (1912), Wyoming (1915), and the District of Columbia (1914). Bulletin 66, Part II.

[15] From 1909 through 1917, 20 other states improved their women's hour laws: Colorado (1913), Connecticut (1913), Illinois (1909, 1911), Maine (1909, 1915), Louisiana (1914), Massachusetts (1911, 1913), Michigan (1909), Nebraska (1913), New Hampshire (1913), New Jersey (1912), New York (1912, 1913), Oklahoma (1915), Oregon (1913), Pennsylvania (1913), Rhode Island (1913), South Dakota (1913), Tennessee (1913, 1915), Virginia (1913), Washington (1913), Wisconsin (1911). (*Ibid.*) In addition Georgia and North Carolina improved the hour laws for manufacturing which applied to men and women. See Bulletin 66, Part II, p. 223, North Carolina Laws of 1911, c. 85, p. 253, and Georgia Acts of 1911, Code Amendment No. 279, p. 65.

period 1911 to 1913 with 12 new laws; [16] and 17 others substantially improved.[17]

The foregoing sketches very briefly the extensive development of maximum hour laws for women during the 37 years covered by this history. In contrast the growth in prohibitory night work legislation was decidedly meager. In 1896 two states had already prohibited the employment of women at night in manufacturing plants.[18] On January 1, 1933, there were still only 16 states which prohibited night work in any occupation.[19] The coverage of these 16 laws was by no means so extensive as that of the maximum hour laws. Four of them applied only to manufacturing or mercantile employments; two others to such an unimportant occupation that the prohibition was of negligible importance.[20]

The story of the great development of women's hour legislation should include an account of how the laws came to be passed, what problems of administration and enforcement arose, and to what extent they were solved. Further, it may be appropriate to inquire why night work legislation was so fragmentary in this country in contrast to Europe. And finally, the great variety of standards still existing in this country should make it possible to attempt some estimate of the effect of legal restrictions on women's hours, both on the length of the prevailing work day and on women's status and opportunities in the industrial world. The narrative which follows is divided into four periods—(1) that prior to 1896, (2) that from 1896 to 1908, the year when the constitutionality of women's hour legislation was finally established by the United States Supreme Court,[21] (3) that from 1909 to the World War,

[16] From 1911 through 1913, 12 states enacted their first women's hour laws: Arizona, California, Delaware, Idaho, Kentucky, Maryland, Montana, Ohio, South Carolina, Texas, Utah, Vermont. See note 14, p. 459.

[17] From 1911 through 1913, 17 other states improved their women's hour laws: Colorado, Connecticut, Illinois, Massachusetts, Missouri, Nebraska, New Hampshire, New Jersey, New York, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia, Washington, and Wisconsin. See note 15, p. 459.

[18] Massachusetts night work law passed in 1890 (Bulletin 66, Part II, p. 185); New Jersey act of 1892 fixed working hours in manufacturing as 7–12 and 1–6. *Ibid.*, p. 203.

[19] Night work legislation, 16 states: California, Connecticut, Delaware, Indiana, Kansas, Massachusetts, Nebraska, New Jersey, New York, North Dakota, Ohio, Oregon, Pennsylvania, South Carolina, Washington, and Wisconsin. In addition Puerto Rico had a night work law. U. S. Department of Labor, Women's Bureau, *Employment of Women at Night*, Bulletin 64, 1928, pp. 82–86.

[20] Indiana—manufacturing, Massachusetts—manufacturing, Ohio—ticket sellers, Pennsylvania—manufacturing, South Carolina—mercantile, Washington—elevator operators. *Ibid.*

[21] *Muller* v. *Oregon*, 208 U. S. 412 (1908).

the period within which this type of labor legislation, like many others, swept the country, and (4) the period from 1918 to 1932 which saw a gradual slackening in accomplishments in this field. The story of the third period includes a somewhat detailed description of an important development of those years: namely, the use of administrative orders in regulating women's hours, particularly in the canneries.

Before 1896

Thirteen States Pass Hour Laws

The history of enforceable hour legislation for the period prior to 1896 is practically a history of the Massachusetts laws.[22] That state was the first with an enforceable act, originally passed in 1874 and made really enforceable in 1879.[23] Massachusetts, however, was by no means the first state to enact an hour law of any kind. As early as 1847 New Hampshire had passed the first general law making 10 hours the legal working day in the absence of agreements to the contrary. Six other states enacted similar ten-hour laws prior to the Civil War.[24] After the war the eight-hour movement brought a crop of eight-hour laws of the same declaratory type.

In Massachusetts, on the other hand, beginning in 1842 there was an almost continuous effort to secure hour legislation, but almost from the start the most active proponents in that state refused to be satisfied with a merely declaratory law which permitted agreements for longer hours. They demanded a law with teeth or none at all. In 1842 petitioners from Lowell, one of the most important textile towns, asked the legislature for a law that would *prevent* all manufacturing corporations from employing persons more than ten hours a day. In the succeeding years organizations were formed of men and women workers. Their agitation for a ten-hour law led in 1845 to the first government investi-

[22] Throughout this chapter the narrative of events in Massachusetts, New York, and California is very largely based on the *History of Labor Legislation for Women in Three States*, by Clara Mortenson Beyer, published as Part I of Bulletin 66 by the Women's Bureau, U. S. Department of Labor.

[23] Bulletin 66, Part I, pp. 19–20.

[24] Early ten-hour laws: New Hampshire (1847), Maine (1848), Pennsylvania (1848), Ohio (1852), California (1853), Rhode Island (1853), Connecticut (1855). In addition Minnesota in 1858 prohibited any employer from compelling any woman to work more than 10 hours in any manufactory or work shop. The general Ohio law of 1852 included a similar provision applying to women only. See *ibid.*, Part II; for California see Laws of 1853, Chap. 131, p. 187; for Rhode Island, Laws of 1853, p. 245; for Connecticut, Laws of 1855, Chap. 45.

gation of labor conditions in the United States. Although the hours of textile workers were found to average over 12 hours a day the investigating committee recommended unanimously that legislation was not necessary, that the health of operatives was not being impaired by the work in the mills, that the state could not reduce hours and compete with other states, and that legislation as to hours was bound to affect wages.[25]

The agitation for legislation continued, however. In the early 'fifties organized labor was strong enough to become a factor in politics. Legislators were elected or defeated upon their position on the ten-hour bill. In 1853 labor forced the passage of a genuine ten-hour bill by the House; in the Senate, however, a substitute bill was introduced of the unenforceable declaratory type. The advocates of legislation rejected this ineffectual substitute for a genuine ten-hour law and no legislation was passed. However, alarm at the strength of the movement led the textile manufacturers to shorten their working day to 11 hours.[26]

These early demands were for a law applying to all persons employed by incorporated companies. By 1867 the coverage demanded had become restricted to "women and children employed by woolen, cotton, linen and all other incorporated companies."[27] The emphasis on the textile industry was natural since it included most of the incorporated companies in which hours were especially long. Moreover, the preponderance of women and children in that industry had made organization particularly difficult. The legislation was really desired to bring the textile mills up to the ten-hour standard which had been secured in other trades largely through trade union action. The restriction of the bill to women and children was expected to facilitate its passage, and it was realized that the preponderance of these groups in the textile labor force would necessitate a general reduction of hours in the mills. Thus in Massachusetts as in England the men employed in the textile industry decided to "fight the battle from behind the women's petticoats." The manufacturers attacked the proposed legislation with the prevailing *laissez faire* arguments. They advised the workers to "keep clear of governmental care, keep clear of strikes, shun trade unions, keep out of combinations, stick to

[25] Massachusetts Legislative Documents, House No. 50, 1845, p. 16.
[26] Bulletin 66, Part I, pp. 13–15.
[27] *Ibid.*, p. 17.

individual effort, make your services so necessary to the public that they cannot be dispensed with and you will have no need of strikes or governmental aid." [28]

Meanwhile the workers secured the support of physicians and ministers and of one employer, William Gray of the Atlantic Mills at Lawrence, who voluntarily introduced the ten-hour day in 1867, found it entirely successful, and became an enthusiastic supporter of ten-hour legislation. The Massachusetts Bureau of Labor Statistics, created in 1869, began at once to recommend ten-hour legislation. It published testimony from operatives and others as to the effect of long hours and cited the English experience to prove that production increased with shorter hours. Finally in 1874, the state governor urged the passage of ten-hour legislation. This action by the governor combined with a favorable report by the senate committee led to the passage of the ten-hour law. The act was, however, weakened by two amendments, one permitting more than ten hours per day to make one short day a week and the other preventing the prosecution of an employer except for "willfully" violating the law.[29]

The constitutionality of the act was at once attacked; but the Supreme Court of Massachusetts, judging by the opinion rendered, had no hesitation in sustaining it.[30] Attempts to repeal it were made in 1879 but apparently public opinion was strongly behind the law; instead of repealing it, the legislature strengthened it by eliminating the word "willful" from the penalty clause and by authorizing the governor to appoint two inspectors from the district police to insure compliance. Another aid to enforcement was the amendment of 1880 requiring the posting of printed notices giving the number of hours of labor for each day of the week. Thus the posting of notices as an enforcement device was first introduced at a very early date.[31]

It is interesting to find that this first effective law limiting hours led at once to an investigation of the effect of such legislation. As early as 1880 the textile manufacturers complained of the difficulty of competing with manufacturers in other states who were not subject to such restrictions.[32] This led to an extensive survey

[28] Quoted by Mrs. Beyer, *ibid.*, p. 18.
[29] *Ibid.*, pp. 17–20.
[30] *Commonwealth* v. *Hamilton Manufacturing Company*, 120 Mass. 383 (1876).
[31] Bulletin 66, Part I, pp. 20–21, 24–25.
[32] *Ibid.*, p. 26.

by the Massachusetts Bureau of Labor Statistics of hours, wages, and costs in the textile industry in six states and to the conclusions that "Massachusetts with 10 hours produces as much per man or per loom or per spindle, equal grades being considered, as other states with 11 or more hours, and also that wages here rule as high if not higher than in the states where the mills run a longer time." [33]

This report was used by the textile workers of Massachusetts in their attempt to bring other states up to the Massachusetts standard and thus facilitate further reduction in Massachusetts. The organized spinners sent their secretary to Rhode Island and Maine to agitate for ten-hour laws.[34] A statute was secured in Rhode Island in 1885 but like the original Massachusetts act it was weakened by the inclusion of the word "willful" in the penalty clause.[35] Up to 1933 this defect had not been eliminated from the Rhode Island act, although in later years it was disregarded in enforcing the law.[36] In Maine a women's ten-hour law was passed in 1887, which permitted contracts for daily overtime but fixed an absolute maximum of 60 hours per week, and did not contain the word "willful." In the same year ten-hour laws containing the word "willful" were passed in Connecticut and New Hampshire.[37] Thus in 1887 the New England textile states were, on paper at least, brought up to the Massachusetts standard, an accomplishment which greatly helped to allay opposition to the law in Massachusetts.

In the following years business depression tended to keep hours even below the 60-hour maximum permitted by law and probably facilitated the enactment of the Massachusetts night work law of 1890 and the 58-hour law of 1892. The former, which prohibited the employment of women and minors in manufacturing between 10 P. M. and 6 A. M., was passed with little or no opposition. The reduction of the weekly maximum from 60 to 58 hours, though it seems somewhat trifling, was much more bitterly fought. The textile manufacturers and organized labor were arrayed against each other in full force. As stated by Mrs. Beyer, "Both parties to the

[33] Massachusetts Bureau of Labor Statistics, 12th Annual Report, 1881, p. 457.
[34] Bulletin 66, Part I, p. 26.
[35] For dates and summaries of all these statutes see Bulletin 66, Part II.
[36] No mention is made of it in a study of factory inspection in Rhode Island summarized in American Association for Labor Legislation, "Factory Inspection in Rhode Island," *American Labor Legislation Review*, Vol. XX, No. 2, Section on Prosecutions, p. 171.
[37] For dates and summaries of all these statutes see Bulletin 66, Part II.

controversy were fairly well organized by 1890. The textile manufacturers had formed the Arkwright Club and had a paid legislative agent to plead their cause and to organize their defense. Labor on the other hand, could marshal the state branch of the American Federation of Labor, the city central bodies, the Amalgamated Building Trades Union, the State Alliance of the Knights of Labor, and nearly every international and state agency besides the local craft unions." In 1890 and 1891 bills for a 56-hour week passed the House but were defeated in the Senate. In 1892 three bills were introduced providing for a 54-, 56-, and 58-hour week. Labor finally accepted the 58-hour measure as a compromise. No further reductions were secured in Massachusetts for the next 16 years.[38]

A few more states passed women's hour laws in the early 'nineties. Chief among these was New Jersey which established a 55-hour week, and Illinois which passed the first enforceable 8-hour law. (Wisconsin had had an 8-hour law since 1867 but it was a dead letter since its penalty applied only if an employer "compelled" a woman to exceed the legal limit.) [39]

The Illinois eight-hour provision was part of an act passed in 1893 to regulate sweatshop conditions, primarily in the ready-made clothing industry. Credit for this act belongs largely to one individual, Mrs. Florence Kelley. In 1891 the city of Chicago became aroused over the condition of the women and children engaged in the manufacture of clothing and other articles in tenements and small subcontractors' shops. The trade unionists of Chicago appointed a committee to study the subject, and Mrs. Kelley, then one of the early residents of Hull House, urged an investigation by the Illinois Bureau of Labor Statistics. Mrs. Kelley was engaged to make the investigation and found that, though the number of sweatshop workers in Chicago fell below the estimates which had been made, the wages, hours, and conditions under which work was being done were as bad as those found in sweatshop investigations elsewhere. Her report led the legislature to appoint its own committee to investigate the situation and this committee recommended a regulatory act which included a limitation of hours for women and children in clothing and other manufacturing to eight per day and forty-eight per week. Mrs. Kelley and other Hull House residents took the lead in lobbying for the bill, greatly aided

[38] Bulletin 66, Part I, pp. 28–31. For direct quotation see p. 29.
[39] For dates and summaries of all these statutes see *ibid.*, Part II.

by the energetic co-operation of the Progressive governor of Illinois, Altgeld.

The bill was passed in 1893 and Mrs. Kelley was appointed chief factory inspector to enforce it. Vigorous enforcement was begun, but employers throughout the state organized an association for the express purpose of resisting the eight-hour provision and securing its overthrow in the courts. They were successful, and this early attempt to set up the eight-hour standard for women's work came to a speedy end.[40] In 1895 the Illinois Supreme Court unanimously held the eight-hour provision unconstitutional under both state and federal constitutions. The court noted the Massachusetts decision to the contrary—the only previous decision on a women's hour law—but declined to follow it.[41]

Thus the period prior to 1896 closed with 13 women's hour laws on the statute books, all but three of them virtually dead letters, and the constitutionality of all of them in grave doubt.

1896–1908

Eight States Pass Their First Hour Laws

In surveying the development of women's hour legislation from 1896 to 1933, the year 1908 marks the logical end of the first chapter. It was in that year that the unanimous decision of the United States Supreme Court in *Muller* v. *Oregon* finally established the constitutionality of women's hour legislation.[42] Taking the years from 1896 through 1908 as a unit, then, we find it a period of very little progress. Only 13 states enacted any women's hour legislation in these years; eight of these passed their first hour laws of this sort and five improved existing laws by slightly reducing the maximum or broadening the scope or both.[43] This paucity

[40] This account of the passage of the Illinois eight-hour law is summarized from Beckner, E., *History of Labor Legislation in Illinois*, Social Science Studies of the University of Chicago No. 13, Chicago, 1929, pp. 188–189, 245 ff.

[41] *Ritchie* v. *People*, 155 Ill. 98 (1895).

[42] *Muller* v. *Oregon*, 208 U. S. 412 (1908).

[43] New acts passed 1896 through 1908: Colorado (1903), Michigan (1907)—Michigan had had an earlier law passed in 1885 and repealed in 1893, Nebraska (1899), New York (1899), Oregon (1903), Pennsylvania (1897), Tennessee (1907), Washington (1901).

Improvements 1896 through 1908: Connecticut (1907), Louisiana (1908), Massachusetts (1900, 1908), New Hampshire (1907), Rhode Island (1902). Bulletin 66, Part II.

In addition North Carolina in 1903 (Laws of 1903, Chap. 473) passed an act covering manufacturing applying to both men and women and South Carolina in 1907 improved her similar law enacted before 1896 (Act of 1893, Chap. 15, Section 268 of Revised Statutes), for amendment see Bulletin 66.

of legislation was probably due in part at least to the adverse decision by the Illinois Supreme Court in 1895. The doubts raised by this decision no doubt disheartened some who would otherwise have advocated and helped secure this kind of legislation.

The first state to pass a women's hour law in this period was Pennsylvania which took action in 1897. Pennsylvania had been the second state in the country to enact "declaratory" hour legislation. As early as 1848 it had made ten hours a legal day's work for both men and women in textile and paper mills in the absence, of course, of agreements to the contrary. But though Pennsylvania was an important industrial state employing many women in its mills, no real limitation of women's hours was secured until 1897 and then the maximum set up was 12 hours per day. However, the hours per week were set at 60 which may have meant some real restriction on hours worked. This Pennsylvania act, despite the 12-hour day which it permitted, was an advance over legislation in other states in one respect; it was more inclusive, covering not only manufacturing but mercantile establishments and laundries, workshops, renovating works, and printing offices. Pennsylvania continued to lead in this matter of coverage. In 1901 bakeries were added to the list and in 1905 the law was extended to cover "any establishment" which meant all employed women except those in domestic service, coal mining, and farming.[44]

Another important industrial state which had passed no hour law for adult women before 1896 was New York. As early as 1886 New York had set up a 60-hour working week for all minors under 18 and women under 21 employed in factories. This was the culmination of efforts on the part of the Workingmen's Assembly (originally a Knights of Labor organization) and the New York Society for the Prevention of Cruelty to Children, to secure some protection for working children. This statute provided for two inspectors to enforce the act. While they were a very inadequate force for this purpose, the individuals appointed

[44] *Ibid.*, pp. 243–244.

In 1933 Pennsylvania was one of eight states with an inclusive act of this sort, but many of the others had so many exceptions that they were in fact little more inclusive than the list laws. The other seven were: Louisiana, Mississippi, New Hampshire, Oklahoma, South Dakota, Tennessee, Texas. *Ibid.*; cf. *Legal Restriction on Hours of Work in United States*, National Industrial Conference Board Research Report No. 68, p. 10. This list gives ten states including in addition to the above Minnesota and Rhode Island. In Minnesota an inclusive act was passed in 1923 but was held by the Attorney General not to have been constitutionally enacted; hence it never took effect.

did yeoman service in getting further legislative action. Each year in their annual report they pointed out the worst defects in the existing law and urged the most important amendments. Mrs. Beyer gives them much of the credit for the improvements secured, especially for the extension of the law to adult women in factories, which took place in 1899. This extension was achieved with relative ease. The legislature seems to have been impressed by the statements of the inspectors that it was impossible to enforce the law limited to women under 21. In order to get work the girls lied as to their ages. Detection of course was difficult.

Though the extension to adult women was secured without much opposition, repeated attempts were made in the following years to repeal it. Mrs. Beyer states, "The most aggressive of these was the campaign for the Marshall bill introduced in 1902 at the request of manufacturers that sought to remove all restrictions on hours of work for adult women in manufacturing establishments. The concerted efforts of the Consumers' League of New York, labor leaders, settlements, and other interested groups were able to prevent its passage." [45]

The other states which passed their first women's hour laws in the period 1896 to 1908 were mostly in the middle and far West—Nebraska, Michigan, Colorado, Oregon, and Washington. One southern state, Tennessee, took action in 1907.[46] The standard in most of these laws was similar to that prevailing elsewhere, namely 10 hours per day, or 60 hours per week, or both. Colorado was the only state to set up an eight-hour day; since the act laid a penalty only if women were "required to work" more than the legal maximum it was, of course, entirely unenforceable.[47]

The ten-hour laws passed in this period, however, were in one respect an improvement over those previously enacted. The coverage in a number of them was broader than in any earlier law. Nebraska and Washington both included mercantile establishments and hotels and restaurants in addition to manufacturing and mechanical establishments in their original acts, and Oregon secured this coverage in 1907.[48]

[45] Bulletin 66, Part I, pp. 66–71. Direct quotation is from p. 71.

[46] For dates and summaries of these statutes see *ibid.*, Part II. In addition North Carolina passed a law applying to men and women in the textile industry (North Carolina Laws, 1903, Chap. 473).

[47] *Burcheret* v. *People*, 41 Colo. 495 (1907).

[48] For dates and summaries of these statutes see Bulletin 66, Part II.

Five States Raise Their Standards

As for the improvements in existing hour laws during the period 1896 to 1908, the gains won in Massachusetts may be taken as illustrative. In 1900 Massachusetts brought women employed in stores under the protection of the maximum hour law and in 1908 it cut two hours off the maximum working week.

This Massachusetts legislation in 1900 was not the first American regulation of hours in stores. In fact Massachusetts, itself, had had an earlier mercantile hour law for one year from 1883 to 1884. This had been enacted at the urging of the Chief of the District Police (charged with enforcing the women's hour law) and was apparently working successfully. Its repeal was due to one petition; no group rallied to its support.[49] Connecticut had included mercantile establishments in its original act passed in 1887.[50]

New York, after a very hard fight, had secured an hour law for stores in 1896, applying, however, only to minors and women under 21. In this as we have seen it followed the model of the first factory hour law in that state. This age limit for store legislation was perhaps not wholly unreasonable as an investigation had shown that 70 per cent of the girls employed in these establishments were under 21. The act was secured largely by the efforts of the Consumers' League of the city of New York, an organization which grew out of a large public meeting held "to consider the condition of working women in New York retail stores." Attempts to organize these women had previously been abandoned as hopeless and the meeting resolved on the preparation of a "white list" to enable consumers to patronize the stores which provided the best conditions for their employees. This led to the organization of the Consumers' League, which was not only instrumental in securing the act of 1896 to protect the store girls, but was largely responsible for creating public support for much of the subsequent legislation for working women.[51]

In Massachusetts, as in New York, it was the Consumers' League which secured legislative protection for women employed in stores. While the Knights of Labor and later the State Branch of the American Federation of Labor favored limitation on women's hours in mercantile establishments, the real credit for securing the

[49] Bulletin 66, Part I, pp. 43–44.
[50] *Ibid.*, Part II, p. 157.
[51] *Ibid.*, Part I, pp. 69–71.

act of 1900 belongs, not to them, but to this consumers' organization. The Massachusetts Consumers' League was organized in 1898 and began with an investigation of the mercantile industry. It found many large establishments were already working 60 hours or less; in some the eight-hour day prevailed. But in a large group of smaller shops 91 per cent of the women employed were found to be working more than 60 hours per week. On the basis of these facts the Consumers' League proceeded to enlist support for legislative action. A number of women's clubs joined with the League in the fight.

In 1899 the measure failed to pass, but in 1900 after a widely attended hearing, which apparently impressed the legislature, an act was passed extending the 58-hour week to the mercantile industry. As a concession to the demands of the storekeepers, however, the month of December was exempted from all regulation. In 1901 the act was amended to include restaurants as mercantile establishments and thus extend the protection of the 58-hour week to waitresses, kitchen girls, etc. The Massachusetts Consumers' League continued its effort to put an end to the December exemption and in 1904 finally secured its abolition. It is worth noting that the following year saw a formidable attempt to repeal this amendment. The commercial interests of a number of the smaller cities in the state pressed the demand and brought store employees to testify that they wanted to work the longer hours. The Consumers' League, organized labor, and other groups opposed the attempt and the repeal was finally defeated.[52]

The other improvement in the Massachusetts women's hour law in this period was the reduction from 58 to 56 hours, secured in 1908. The attempt to secure this reduction began in 1892, just as soon as the 58-hour law was passed. In fact a 56-hour law passed the House the following year and was defeated in the Senate by only two votes. But it took 15 years before this two-hour reduction in the working week was finally achieved.

In 1898 the cotton manufacturing industry of Massachusetts was in a very depressed condition and there was a strong movement to repeal the 58-hour law. But a legislative investigation of the industry and a study by the Massachusetts Bureau of Labor Statistics made in that year both led to the conclusion that the depression in the industry was general; that southern competition

[52] *Ibid.*, pp. 44–47.

was not a real menace to the Massachusetts mills; and that the 58-hour law should be retained. Some of the statements made in these reports have a very modern ring. The depression is ascribed to over-expansion and over-production, and progress is declared to depend in the long run "upon upholding and extending to the utmost the social conditions that support a constantly expanding market, namely the best possible wages and the highest possible standard of living." [53]

By 1900 the conditions in the textile industry had greatly improved. In the following years an amalgamation of the textile unions greatly increased their strength. But they concentrated their efforts on their night work bill (discussed below) until it was finally attained in 1907. Then they resumed the fight to secure a reduction in maximum hours, seeking a 54-hour law. A bill to that effect passed the House; but the opposition secured the passage of a substitute 56-hour bill in the Senate and the textile unions finally accepted the compromise. This was in 1908.[54]

The Restriction of Night Work

From 1896 to 1908 while maximum hour legislation was slowly gaining ground throughout the country, three states enacted their first night work laws, and Massachusetts strengthened its act passed in an earlier period. Indiana, curiously enough, passed a law in 1899 forbidding the employment of women in manufacturing plants between 10 P. M. and 6 A. M. without setting any limit to the length of the working day.[55] In the same year Nebraska in enacting its maximum hour law included a prohibition of night work between 10 P. M. and 6 A. M. The New York maximum hour law of 1899 contained a similar night work prohibition.[56]

In New York, according to Mrs. Beyer: "The constitutionality of the factory night work law was always a question in the minds of the enforcing officials. They allowed violations to go unnoticed rather than run the risk of having a test case." [57] However, the

[53] *Ibid.*, p. 33, quoting from Massachusetts Bureau of Labor Statistics Bulletin 5, January 1898.

[54] *Ibid.*, pp. 31–35.

[55] Up to 1933 Indiana had no maximum hour law for women. Aside from a seating law and one prohibiting the employment of women in mines, this night work law passed in 1899 remained the only legislative protection to working women in Indiana. *Ibid.*, Part II.

[56] *Ibid.*, Part II.

[57] *Ibid.*, p. 104.

test could not be avoided forever, and in 1907 the apprehension of the inspectors was borne out in the decision of the New York Court of Appeals that the night work prohibition for adult women was unconstitutional.[58] The effect of this decision was disastrous to all limitations of women's hours in New York, until offset in 1908 by the favorable decision of the United States Supreme Court on the constitutionality of the Oregon ten-hour law.[59] Mrs. Beyer describes the situation in New York as follows: "The public press misconstrued [the] decision (on the New York night work law) and announced that the whole hours law for women was wiped out by the courts. The Department of Labor tried to make it clear that this was not the case, but in spite of all its efforts the law limiting daily and weekly hours was utterly disregarded. There was no use in taking violations to the Courts, for the decision in the Williams case made the constitutionality of all labor legislation for women doubtful—judges were loath to convict even in clear cases. Demoralization in the administration of the laws continued until 1908." [60] Subsequently as we shall see New York passed a second night work law, and this one was sustained by the courts.[61]

The Massachusetts experience with night work legislation in this period was very different. To understand it we must go back to the enactment of the first maximum hour law. When that was passed in 1874, 6 o'clock was the customary closing hour in the textile mills. In the late 'eighties the practice of overtime evening work until nine or 10 P. M. began to develop. To prevent this overtime the organized textile workers brought forward a bill to prohibit the employment of women and minors in manufacturing establishments between 6 P. M. and 6 A. M. A compromise measure fixing the prohibited period from 10 P. M. to 6 A. M. passed the legislature in 1890, the first night work law in the United States. This, of course, did not prevent overtime evening work until 10 P. M. The maximum hour law did not prevent it either; as that act was evaded by the practice of "swapping";—i. e., women would work until 6 P. M. in one mill and then go to another for three or four hours more. The courts held this not a violation of the maximum hour law.

[58] *People* v. *Williams*, 189 N. Y. 131 (1907).
[59] *Muller* v. *Oregon*, 208 U. S. 412 (1908).
[60] Bulletin 66, Part I, p. 76.
[61] *People* v. *Charles Schweinler Press*, 214 N. Y. 395 (1915).

In order to put an end to evening overtime work the men workers in the textile mills made a long and determined fight for a night work law for women which should prohibit their employment after 6 P. M. and thus force the closing of the mills at that hour. In 1901 the bill was within one vote of passing; in 1904 it went through both houses but was vetoed by the governor. Aroused by the textile unions, all the labor groups launched a campaign to prevent the re-election of the governor guilty of this veto. His defeat in the following year was attributed to this labor opposition, and his successor urged the passage of the overtime bill in his first annual message. The next two years, however, the bill was defeated in the Senate. Labor then launched a campaign against the senators responsible for the defeat and secured their retirement. Finally in 1907 the bill passed with only one dissenting vote, and was promptly signed by the governor.

Thus in the very year that the New York night work law was held invalid by the highest court of that state, the Massachusetts night work act which prohibited the employment of women in all manufacturing establishments from 10 P. M. to 6 A. M. was supplemented by a prohibition for the textile industry beginning at six in the evening instead of at 10.[62]

This Massachusetts story is interesting because it is almost unique. Wisconsin is the only state which followed the example of Massachusetts in setting a closing hour for adult women as early as 6 P. M.[63] Writing in 1912 Josephine Goldmark, an authority on women's hour legislation, urged that a night work law of this sort was absolutely essential for the effective enforcement of a maximum hour law. Unless employment after a normal closing hour is made illegal, she pointed out, it is extremely difficult to prove that women at work in the evening have been employed more than the legal maximum of hours. She illustrated her thesis by telling the Massachusetts story and also the similar development of the English factory acts.[64] But other states showed little tendency to follow the Massachusetts example, and Massachusetts itself, though it gradually widened the scope of the maximum hour law to include

[62] Bulletin 66, Part I, pp. 49–53.

[63] This was done by administrative order in 1917. In addition to Wisconsin, Oregon by administrative order made 6 P. M. the closing hour for mercantile establishments in the city of Portland. See U. S. Women's Bureau, *Employment of Women at Night*, Appendix D.

[64] Goldmark, Josephine, *Fatigue and Efficiency*, Russell Sage Foundation Publication, N. Y., 1912, Chap. VIII.

almost all women employed outside of domestic service, made no additions to the groups protected against night work, and did not extend the six o'clock closing hour beyond the textile industry.

Thus in the United States with two exceptions night work laws did not serve as aids to the enforcement of maximum hour laws. The fragmentary development of any kind of night work prohibition, and the degree to which the decision on the first New York law should be held responsible for it, will be discussed in the next section.

1909–1917

Nineteen States Pass Their First Hour Laws

In practically every field of labor legislation the two legislative years 1911 and 1913 mark a peak, both in the volume of entirely new laws and in the raising of standards where some enactment already existed. Women's hour legislation is no exception. As previously stated the whole period 1909–17 was a time of great activity; within that period the years 1911 and 1913 [65] brought bumper crops of new hour laws and amendments to old ones. Thirty-nine states passed some of their legislation in this nine-year period,[66] 24 of them took important action in this respect in 1911 or 1913.[67]

Many of the laws passed in this period, in states hitherto without women's hour legislation, were a decided improvement over the acts passed elsewhere in earlier years. Almost half of the states which enacted their first women's hour laws at this time began with an eight- or nine-hour maximum day instead of the ten hours still generally prevalent in other parts of the country.[68] These laws also tended to be much more inclusive than those passed in earlier years.

[65] In most states the legislature meets only in odd years.

[66] For the list of these 39 states see notes 14 and 15, p. 459. The District of Columbia law also belongs to this period.

[67] Twenty-four states passed women's hour legislation in 1911 or 1913: Arizona, California, Colorado, Connecticut, Delaware, Idaho, Illinois, Massachusetts, Montana, Nebraska, New Hampshire, New York, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, Wisconsin. Bulletin 66, Part II.

[68] *Eight hours:* Arizona, California, Nevada, and District of Columbia. *Nine hours:* Arkansas, Idaho, Kansas, Montana, Utah; in addition Missouri set a 54-hour weekly limit with no daily limit.

New laws were enacted in this period in 19 states and the District of Columbia. For complete list of states see note 14, p. 459. For provisions see *ibid.*

California is the outstanding example of a state which was totally without protection to its women workers up to 1911, and then at one bound put itself so far ahead of prevailing standards that with relatively little further progress it has kept in the forefront ever since. This California act passed in 1911 set an eight-hour day and a 48-hour week and its coverage was more inclusive than any previously in existence.[69] It added telephone and telegraph offices and express and transportation offices to the list of occupations used in Nebraska, Oregon, and Washington, hitherto the most extensive lists on the statute books.[70] In fact, this California act of 1911 resembles Pallas Athene who sprang full grown from the head of Zeus, as compared with the women's hour laws of Massachusetts or New York, which began as puny infants and grew slowly over a long period under the painstaking care of zealous friends.

The ease with which this model California law was passed must have seemed miraculous to those who had taken part in the long struggle in the eastern states. No attempt to pass a women's hour law had been made in California in early years. The number of women wage earners in the state was not great and to a considerable extent they belonged to unions along with men. Further, the general doubt as to the constitutionality of women's hour legislation was probably heightened in California by a provision in the state constitution guaranteeing to women the right to enter any lawful business or vocation. Some studies on women's hours made in 1904 by the state Bureau of Labor Statistics showed that women's hours were relatively short (compared with eastern states) both in manufacturing and mercantile companies, with the exception of bakery salesrooms.

However, in 1905 and 1906 the State Federation of Labor introduced a women's eight-hour bill as a possible means of shortening hours generally. No real fight was made to secure its passage, and it died in committee. Meanwhile organization among working women was spreading and the eight-hour day was being secured by union action. In 1910 a small group of union women and unionists' wives suggested that the State Federation take action to secure an eight-hour law for women workers. The suggestion was welcomed

[69] With the exception of the "any establishment" law of Pennsylvania already described. The other seven "any establishment" laws listed in note 44, p. 467 were passed after 1911.

[70] Bulletin 66, Part II, pp. 145–146.

as a chance to show labor's political strength and to bolster up the eight-hour standard secured through union activity.

In the House no opposition developed except from the fruit and vegetable canners. The decision to exempt them from the operation of the law enabled the bill to pass the House without a record vote, but meant the exclusion of a large number of working women who particularly needed the protection of the maximum hour law.[71] In the Senate, the fight against the bill was more prolonged. The other business interests in the state voiced their emphatic opposition. A hearing was held at which both sides appeared in full force. The legislative agent of the San Francisco Labor Council led the labor groups, and working women from the various unions made telling speeches in favor of the bill. A bitter fight necessitated seven roll calls before the bill finally passed the Senate. The opposition then flooded the governor with telegrams and petitions demanding that he veto it, but Hiram Johnson, leader of the Progressives, could not well veto a bill that organized labor considered "perhaps the most important labor law" ever passed in the state.[72]

Thus the credit for California's eight-hour law belongs almost entirely to organized labor. Aside from one prominent suffragist identified with the waitresses' union, practically no other influence was brought to bear on the legislature. This is especially interesting because in the next session of the legislature the Industrial Welfare Commission was created and the minimum wage law was passed in the face of strong opposition by organized labor.[73]

The other states enacting their first women's hour laws in the period 1909 to 1917 were scattered throughout the country. There were Ohio and Minnesota in the Middle West which had passed non-enforceable laws for women back in the 'fifties and subsequently repealed them. (Wisconsin may be classed with them, since its only women's hour law, passed in 1867, though it had not been repealed, had never been enforced. Hence its new law passed in 1911 might well count as its first. Similarly Illinois, which had had no women's hour law since its early eight-hour law was declared unconstitutional in 1895, passed a new law in 1909.)

[71] The attempts in later years to protect this group through administrative orders will be discussed in a later section of this chapter. See pp. 487–490.

[72] *California State Federation of Labor*, Proclamation, 12th Annual Convention, 1911, p. 80. Quoted in Bulletin 66, Part I, p. 124.

[73] Bulletin 66, Part I, pp. 120–124, 128–129.

The far West states—Arizona, Montana, Nevada, Utah, and Wyoming—enacted their first women's hour laws in this period. They had few wage earning women but there was sufficient impetus in this progressive period for them to set up standards which might be important in the future. Some eastern states hitherto without legislation also came in—Delaware, Maryland,[74] and Vermont; and a number of southern states took some action. In this same period Congress passed an eight-hour law for the District of Columbia, the model statute recommended by the National Consumers' League.

The scope of these new laws varied widely, from California's very comprehensive list to Vermont with a coverage confined to manufacturing and mechanical trades. In general, as might be expected, long hours and a restricted coverage went hand in hand. The eight-hour and nine-hour laws covered a comprehensive list of industries and occupations; many of the ten-hour laws were narrowly restricted in scope.

Twenty States Raise Their Standards

As for the 21 states which already had women's hour laws before 1909, all but one of them were also affected by the general popularity of labor legislation in the years that followed, and passed amendments strengthening these acts.[75] In many of these states drastic improvements were secured with remarkably little effort as compared with the struggle of earlier years.

Massachusetts was probably typical. According to Mrs. Beyer, "The general wave of progressivism reached Massachusetts in 1911. From the standpoint of labor the legislature of that year was the best in many years. The demands of labor were met with respect and in large measure acceded to."[76] Following close on the 56-hour week secured in 1908 this 1911 legislature reduced women's hours in manufacturing establishments to 54. The daily maximum still remained at ten. It is worth noting that after this reduction the textile manufacturers carried out their oft repeated threat and put through a cut in wages. This cut precipitated a great number of strikes, chief among them the famous Lawrence Strike when

[74] Maryland had had an hour law for men and women in the textile industry enacted before 1896. See note 1, p. 457.

[75] For the list of these 21 states see note 1, p. 457 and note 43, p. 466. The one state out of these 21 which did not amend its laws in the 1909–17 period was North Dakota.

[76] Bulletin 66, Part I, p. 36.

20,000 unorganized workers walked out. The conflict was long and bitter ending with a victory for the workers in the granting of a 10 per cent wage increase. In 1913 the Massachusetts standard was further raised by a great increase in the scope of its 54-hour act. For the first time women employed by telephone and telegraph offices and express and transportation companies were covered by an hour law. Hotels still remained unregulated.[77]

The progress achieved in New York in this period was even more pronounced. There, however, the general country-wide movement for labor legislation was combined with a local event which aroused the public to the need of better legislative protection for the workers. In 1911 the terrible Triangle Waist Factory fire caused the death of 145 workers, mostly young girls. The heavy loss of life was due to utterly inadequate fire escape facilities. The existing laws on the subject were defective and entirely disregarded to boot. A widespread demand for government action in this field led to the appointment of the Factory Investigating Commission to study safety particularly, but also health conditions, hours of labor, etc. Its investigations and recommendations were far more extensive than at first contemplated. The public and the legislature were in a receptive mood. As a result the whole New York labor code was remade—36 laws were passed in the years 1912 to 1914. Among them were three affecting women's hours, one reducing the weekly maximum from 60 to 54 hours, a second which brought mercantile workers over 21 under the maximum hour law for the first time, and a third which re-established a night work prohibition.

The 54-hour law passed in New York in 1912 was not actually recommended by the Factory Investigating Commission, but it owed its passage through the legislature, after a long fight, to the support it received from the leaders of both houses, who as Chairman and Vice-Chairman of the Commission had become educated to the need for such legislation. Prior to their service on the Commission these political leaders had had little or no appreciation of the importance of state action to protect the wage earner. After their experience on the Factory Investigating Commission they played an important part as enlightened and enthusiastic supporters of various kinds of labor legislation. These men were Robert F. Wagner, later United States Senator from New York, and Alfred E. Smith.

[77] *Ibid.*, pp. 36–38, 183–184.

It was not merely their interest, however, which secured the 54-hour law. That measure was the product of a well-organized and intensive campaign, in which the lead was taken by the Women's Trade Union League. The League, founded in 1904, had devoted its early years to purely trade union activity. But in 1910 its leaders, recognizing the importance of legislation in improving the conditions of working women, decided to turn some of their energy in this direction. Their first legislative campaign was for the 54-hour bill. They formed a joint labor legislative conference of the legislative committees of all the various labor bodies and secured an unprecedented array of supporters to appear on behalf of the bill. In 1911 the bill passed the House by a large majority; in the Senate its opponents managed to keep it from coming to a vote. It was then made a leading issue at the convention of the State Federation of Labor and the Senate leaders were notified that unless it was passed at the next session, labor would work to secure their defeat. The next year, after another bitter fight, it was finally passed, but not until the canners had secured an exemption for the whole of the canning season. The act set a nine-hour day but permitted overtime under certain conditions if the weekly maximum of 54 hours was not exceeded.

In 1913 and 1914 mercantile workers in New York were brought under the nine-hour day and 54-hour week. Small towns with a population of less than 3000 were exempted and the limitation did not apply to the week before Christmas.[78] In 1917 the coverage was extended to include restaurants in cities of the first and second class.[79]

The Restriction of Night Work

In the nine years 1909–17 when maximum hour legislation was making such extensive gains, the progress in night work laws was meager. Four states enacted statutes prohibiting night work in one or more industries—South Carolina,[80] Pennsylvania, Dela-

[78] In 1933 these exemptions were still on the statute books. McKinney's *Consolidated Laws of New York*, 1933 Cumulative Supplement, 1933, Vol. 1, Labor Law Supplementary Article 5, Title 3, Section 181, p. 5.

[79] Messengers and elevator operators were added at subsequent dates but up to 1933 hotels, telephone and telegraph offices, and other establishments covered in many other states remained unregulated in New York.

For the account of this period in New York see Bulletin 66, Part I, pp. 78–83; for dates and summaries of the laws see *ibid.*, Part II, pp. 210–212.

[80] South Carolina included a 10 P. M. closing hour in its 12-hour law for mercantile establishments. Bulletin 66, Part II, p. 252. South Carolina Acts of 1911, Chap. 8, Section 2.

ware, and New York. In the same period Nebraska in extending the coverage of the maximum hour law also extended that of the night work prohibition.[81]

Most interesting of these laws was that passed in New York. This act, passed in 1913, was the direct product of the Factory Investigating Commission. That body made a comprehensive investigation of night work in New York state, including a "case history" study of 100 night workers in a cordage plant. As a result of this investigation the Commission recommended that night work for women in factories be prohibited from 10 P. M. to 6 A. M. They urged the legislature to pass this act despite the previous adverse decision on the constitutionality of night work laws rendered by the New York Court of Appeals in 1907.[82] They declared that their investigations had demonstrated the need for a night work prohibition as a health measure. Undoubtedly the favorable decision by the United States Supreme Court on the Oregon maximum hour law in 1908 [83] encouraged them to hope that the New York court might be willing to change its position. Their hopes were justified. In 1915 the New York Court of Appeals reversed its decision of 1907 and upheld this new night work law, referring to the facts revealed by investigations of the Factory Investigating Commission as a ground for its action.[84]

In contrast to the bitter fight over the 54-hour law in the two years preceding, it is interesting to note that this night work bill passed the legislature in 1913 without a single voice being raised in protest. Soon thereafter, night work prohibition was extended to include women in mercantile establishments. In 1917 restaurant workers were also added.[85]

Another type of night work law found favor in this period. Beginning with Wisconsin in 1911, four states passed statutes which, instead of prohibiting night work, fixed an especially short maximum hour limit (eight hours) for the woman who worked at night.[86] All four of these laws were passed before 1915, the year in which the New York Court virtually established the constitu-

[81] For dates and summaries of these laws see Bulletin 66, Part II, under the various states.

[82] *People* v. *Williams*, 189 N. Y. 131 (1907).

[83] *Muller* v. *Oregon*, 208 U. S. 412 (1908).

[84] *People* v. *Charles Schweinler Press*, 214 N. Y. 395 (1915).

[85] Bulletin 66, Part I, pp. 105–107.

[86] Wisconsin (1911), Maryland (1912), Delaware (1913), New Hampshire (1913). *Ibid.*, Part II.

tionality of laws prohibiting night work. Probably the prevalent uncertainty on that question explains the enactment of laws which were regulatory rather than prohibitory. To some extent these regulatory measures represent an acceptance of the economic necessity of night work for women and an attempt to minimize its health hazards through the greater curtailment of the working period.

After the New York decision, Delaware (by statute) and Wisconsin (by administrative order) combined this regulation of night work with a complete prohibition of it in certain industries.[87]

Limiting Hours by Administrative Order (1913–1932). Flexible Power

Two other important new developments in women's hours legislation merit somewhat detailed discussion; namely, (1) the use of administrative orders in this field, and (2) the introduction of partial or total exemptions for seasonal industries, particularly canning. Those two developments are somewhat interrelated since one of the greatest uses of administrative orders in the field of hour regulation has been to establish special conditions for the canning industry.

The delegation of power to an administrative body (commonly called an Industrial or Industrial Welfare Commission) to regulate women's hours of work was part of a new development in labor legislation, which came in the second decade of the twentieth century. By that time the attempts to use the state to alleviate the variety of hardships suffered by the wage earner had resulted in a tremendous growth in the volume and complexity of statutes dealing with labor. In many respects the mass of detailed enactments was proving unsatisfactory: enforcement frequently revealed serious defects; and change through legislative action proved slow and cumbersome. This was particularly true in the field of safety legislation.

A radical departure was made in Wisconsin in 1911 when a mass of detailed statutes were swept away and the Industrial Commission was created with authority to prescribe a detailed safety code on the basis of certain broad general standards set up by the legislature.[88] In 1913 five more states gave to administra-

[87] See Bulletin 66, Part II, pp. 161, 274.
[88] Wisconsin Statutes, Sections 101.10–101.28.

tive bodies broad code making power in the field of safety and sanitation and thereafter 14 others took the same action.[89] Six of these 20 states included the subject of women's hours within the code making power and two other states gave power to regulate women's hours in this way although safety and sanitation remained subject to statutory regulation only.

These eight states were the following: Wisconsin in 1913 gave to its Industrial Commission unlimited power over women's hours; it could decrease or increase for any or all occupations covered by the statute the statutory maximum established in 1911. In Kansas in 1915, the newly created Industrial Welfare Commission was similarly given power to regulate women's hours (as well as wages and other conditions). Here no statutory maximum had been established so that the entire task was left to the administrative body. California and Oregon in creating Industrial Welfare Commissions in 1913 gave them power to regulate women's hours but with the restriction that the maximum was not in any case to exceed that set by statute. In Arkansas the power granted the Commission in 1915 in regard to women's hours was more limited. The Commission was authorized to permit overtime for not to exceed a specified period under certain conditions, and to regulate certain industries not covered by the statutory limit, but for these the statutory limit was not to be exceeded. In 1919 an administrative body in North Dakota was given power over women's hours similar to that exercised in California and Oregon. Ohio had given similar power to its Commission in 1913 and Colorado in 1917.[90]

[89] 1913: California (c. 176, Laws of 1913), Massachusetts (Laws of 1913, c. 813, Sections 1–13), New York (Laws of 1913, c. 145, Art. 3A), Ohio (Laws of 1913, Section 871–1 to 871–45), Pennsylvania (Acts of 1913, No. 267).

1915: Colorado (Laws of 1915, p. 568, Section 11), Montana (Laws of 1915, c. 96, Sections 50–54).

1917: Idaho (Laws of 1917, c. 81, Sections 118–120), New Hampshire (Laws of 1917, 183:2–183:13), Utah (Laws of 1917, p. 306).

1919: Nevada (Statutes of 1919, c. 225), North Dakota (Acts of 1919, c. 162, Section 4G), Washington (Laws of 1919, Chap. 130, Sec. 1–8).

1920: Oregon (Laws of 1920, c. 48).

1923: Tennessee (Acts of 1923, c. 7, Sections 55–6).

1925: Arizona (Laws of 1925, c. 83).

1929: Maryland (Acts of 1929, c. 426), Nebraska (Acts of 1929, c. 138).

1931: North Carolina (Public Laws of 1931, c. 312, Sec. 12F).

For the references in the compiled statutes see those cited in Chapter VIII, p. 653, note 83.

[90] The eight states in which women's hours can be regulated by administrative order and the dates on which this power was granted are as follows. In Oregon the

The theory on which these newly created administrative bodies were given power over women's hours is clear. The subject was classed with safety and minimum wages as matters better handled in this way than by legislative enactment. The chief advantages of this method of establishing standards have proved to be three. First, it makes it easier to change the standards when changing conditions or new knowledge makes change desirable. Second, it permits of greater diversity between different industries and occupations to fit their different needs and problems, than would be possible in a statute. Thirdly, it makes possible the use, in formulating standards, of advisory committees made up of experts and interested parties, which usually results in more practicable standards and more willing compliance therewith. These advantages in the field of safety and minimum wage are very generally recognized. In the field of hour regulation the use made of this power to set standards by the administrative bodies possessing it suggest that the case is not so clear. To trace the activities of these commissions in regard to hours will carry us beyond the period we have been describing (1909–17). But the story can best be sketched in its entirety.

Fixing Canning Hours

The most important use of administrative orders in regulating women's hours has been in seasonal industries, particularly canneries. This method of giving special treatment to the canneries has been used in only two states, California and Wisconsin.[91] To understand its significance we must compare it with the methods employed in the rest of the country.

It is probably safe to say that in no state have the canneries ever complied strictly with the maximum hours enforced for other manufacturing plants. To be sure most of the early women's hour laws made no exceptions for canneries. Only one of them,

power to regulate women's hours (together with minimum wages) was granted to an administrative body earlier than the power to issue safety orders.

1913: California (Laws of 1913, c. 324), Ohio (Laws of 1913, Section 871–1 to 871–45), Oregon (Laws of 1913, c. 62), Wisconsin (Laws of 1913, c. 381).

1915: Arkansas (Laws of 1915, Act 191), Kansas (Laws of 1915, c. 275).

1917: Colorado (Laws of 1917, c. 98).

1919: North Dakota (Laws of 1919, c. 174).

Of these eight states Colorado and Ohio had never up to 1933 issued any orders regulating women's hours.

[91] For summaries of the cannery orders in these two states see Bulletin 66, Part II, under each of these states.

the New Jersey law of 1892, contained any specific exemption for the canning industry.[92] But as the canning industry developed and as the hour laws came to be actively enforced, the canners became aroused. In one state after another when a new or improved women's hour law was under discussion, they raised a loud protest and demanded total exemption from such regulation. They explained that the hours worked in canneries were determined by nature not by man; that they could not control the ripening of the crops and must be permitted to employ their women workers whatever hours were necessary. They further urged that the work was very healthful being carried on largely in the country in more or less open sheds.

These arguments proved so persuasive that beginning with Michigan in 1909, 19 states specifically exempted canneries from the operations of their women's hour laws.[93] Half of these exemptions came into existence in the 1911–13 period, in some states as part of the original hour law, in others added when the maximum was reduced or other changes made.[94]

In addition to the 19 states completely exempting canneries from hour regulation, New York in 1913 inserted a special provision into its 54-hour statute permitting the employment of women in canneries up to 66 hours per week for a certain limited period and to 60 hours for the whole canning season.[95] New York, California, and Wisconsin plus the 19 states completely exempting canneries include all the states in which the industry employs any considerable number of women.[96] Therefore we may say that the

[92] *Ibid.*, p. 203.

[93] The 19 states specifically exempting canneries were: Arizona (1927), Delaware (1913), Idaho (1913), Maryland (1912), Michigan (1909), Minnesota (1913), Missouri (1913), Nevada (1917), New Jersey (1892, extended 1912), New Mexico (1921), Ohio (1911), Oregon (1916), Pennsylvania (1913), Tennessee (1915), Utah (1911), Vermont (1919), Virginia (1912), Washington (1911), Wyoming (1923). In some of these states the exemption was limited to 60 or 90 days in the canning season. *Ibid.*, Part II.

Oregon does regulate hours in canneries to the extent of requiring by statute that time and a half be paid for all hours over ten. In addition Kansas in 1922 by administrative order gave exemption to seasonal occupations handling food products. Kansas had no general maximum hour statute. All its regulation was through administrative orders.

[94] See states and dates given in note above.

[95] Bulletin 66, Part II, p. 210.

[96] Among the states which have a maximum hour law for women in manufacturing and include canneries by implication Illinois was in 1925 the only one in which more than 4000 women were employed in canneries at the peak of the season. See *Census of Manufactures*, 1925, pp. 68 ff. The Illinois Department of Factory Inspection declared (in a letter to the author in 1930) that they enforced the

problem raised by the extremely seasonal nature of the industry has been handled either by total exemption or by special statutory or administrative treatment permitting somewhat longer hours under specified conditions. The objections to leaving hours in canneries completely unregulated are too obvious to need discussion. It means the refusal of protection by the state to a group of women probably more likely than any other to be worked excessive hours. Working weeks ranging up to 80 and 90 hours were found to be not unusual under such unregulated conditions.[97] It remains to compare the New York, California, and Wisconsin methods of handling the cannery problem.

New York has always been an important canning state and the fight there has been long and bitter. The original ten-hour law in New York passed in 1899 applied to the canneries. As the enforcement machinery was gradually strengthened, the canners became aroused and sought to obtain total exemption from the law. In 1907 the Labor Commissioner, finding it difficult to enforce the 60-hour week in the canneries, suggested an amendment which would permit up to 66 hours during a six-week period. Both the canners and the advocates of labor legislation were against this proposal. The 54-hour law passed in 1912 contained a total exemption for canneries from June 15 to October 15.

This total exemption was in effect only one year. The Factory Investigating Commission, aroused by the cases of abuse reported to it, undertook a thorough investigation to decide what basis there was for the canners' pleas for exemptions and what regulation was necessary for the protection of the women in the industry. They concluded that the total exemption was most undesirable, but that the seasonal character of the work necessitated some extension of hours beyond the 54-hour week. Their recommendations which were enacted into law in 1913 set a ten-hour day and 60-hour week for the canneries from June 15 to October 15. Since peas are particularly perishable and are apt to ripen in a rush, they recommended that for the pea crop season, June 25 to

women's ten-hour law in the canneries. But in other quarters it was generally asserted that no such attempt was made and that the inspectors were careful to avoid the canneries during the active season.

[97] See figures given for California on p. 488, this chapter, taken from California Bureau of Labor Statistics, *Labor Conditions in the Canning Industry*, Special Report, 1913. Also see N. Y. State Factory Investigating Commission, *Industrial Conditions in the Canning Industry*, Second Report, 1913, Vol. II, p. 820.

August 5, a 12-hour day and 66-hour week should be permitted on application to the Industrial Board.[98]

The first year this law was in operation the Department of Labor made a special survey of the industry during the canning season. They reported a great deal of violation and a complete failure to secure convictions when prosecutions were undertaken. The canneries were located in rural districts and the juries, reflecting prevailing public opinion in these localities, refused to convict canners, whom they felt were forced by the exigencies of the situation to employ women beyond the maximum limit. Moreover, they believed that the work in the canneries was so healthful that long hours were not injurious.[99]

In 1915 and 1916 bills extending the cannery maximum to 72 hours per week passed both houses of the New York legislature and were only killed by a governor's veto. In both years a bitter fight raged between the canners and such organizations as the Women's Trade Union League and the Consumers' League.[100]

In later years the canners made no further attempts to secure a greater amount of overtime, but on the other hand the 12-hour day and 66-hour week were not reduced and the difficulty of enforcing them remained. Local sentiment in favor of the canners continued to make it virtually impossible to secure convictions, even when there was abundant evidence of violation. An investigation conducted by the New York Consumers' League in the summer of 1929 revealed a great amount of illegal overtime. The Department of Labor came to believe that compliance with the law could be secured only through the co-operation of the canners.[101]

Beginning in 1930 a long series of joint conferences were held between representatives of the New York State Canners' Association and the New York Department of Labor. Finally on the basis of extended investigation and deliberation a rule was adopted

[98] A six-day week was added by the legislature. Bulletin 66, Part I, pp. 85–86, Part II, p. 210.

[99] New York Department of Labor, *Canneries and Enforcement*, Special Report, 1914, pp. 132 ff.

[100] Bulletin 66, Part I, p. 87.

[101] Consumers' League of New York, *Behind the Scenes in the Canneries*, New York, April 1930. The continued difficulty in securing convictions for violations of the labor laws in canneries was stated in a letter to the author from the director of the Bureau of Women in Industry of the New York Department of Labor in 1930.

in April 1932 [102] setting forth the conditions under which the department would permit employment up to 12 hours per day and 66 per week. The department was to grant a permit to a cannery to work the extra hours, only if it complied with specified requirements for correlating its expected supply, of vegetables and its "canning lines" and its labor supply, so that it would be able to pack the expected yield within a normal ten-hour day. Each cannery must also arrange for the employment of additional women when needed for rush periods. The 12-hour day and 66-hour week were to be used only during emergency or rush periods.

Despite the agreement of the Canners' Association to the new rule and its pledge of co-operation, and despite an over-abundant labor supply and a short crop of peas and most other vegetables in the summer of 1932, employment of women in excess of 12 hours per day and other violations of the law continued to be common that summer. Moreover, many of the canneries failed entirely to file the required reports with the department.[103] In short, it appeared that though the Canners' Association was in form co-operating with the department this co-operation did not filter down to the cannery managers. It was obvious that little or nothing was done to utilize the methods jointly worked out for regularizing operations or otherwise avoiding excessive hours.

It will be noted that the New York method of regulating cannery hours involved relatively little administrative action. The amount of overtime permitted was specified in the statute. The Department of Labor was only given power to determine under what conditions the specified overtime might legally be worked. Until 1932 this power was little used; and the attempt at control through this means tried in 1932 was not conspicuously successful.

In California and Wisconsin, on the other hand, the regulation of hours in canneries has been entirely through administrative action. When the original women's hour law was passed in California in 1911 the canners secured a total exemption. However, when the Industrial Welfare Commission started work in 1914 it proceeded at once to investigate the canning industry and in

[102] *Industrial Code Bulletin*, No. 1. Rule (as amended) relating to the employment of women in canneries adopted by Industrial Board of the Department of Labor of New York, April 21, 1932.

[103] New York Department of Labor, *Division of Women in Industry*, Report to the Labor Committee of the Association of New York State Canners, Inc., states that 15 out of 34 plants reporting for 1932 had one or more violations of the women's hour laws and 21 canneries had not made the required report prior to November.

1916 it issued an order fixing minimum wages and regulating hours in the industry. Thereafter it continued to regulate cannery hours in this way.[104] In Wisconsin the first effective hour law, also passed in 1911, contained no exemption for canneries. But when in 1913 the Industrial Commission was given unlimited power to regulate women's hours, the canners at once asked for special treatment, and the first orders dealing with hours issued by the Commission concerned the pea canneries.[105] The regulations which were built up through administrative orders in the two states were very different. The process by which they were evolved is worth examining as illustrative of the use of administrative orders in the field of hours. (The experience in both California and Wisconsin suggests that where frequent changes are desirable either to permit experimentation or to make possible a gradual tightening of standards, then the administrative order is an ideal instrument in regulating hours.)

In this period California was the leading state in fruit and vegetable canning.[106] Moreover at the height of the season the canneries constituted the largest woman-employing industry in the state. The industry was growing rapidly.[107] Prior to regulation the hours worked were very irregular but on the whole very long. A study of conditions in 1912 showed *average* weekly hours for the season the cannery was open running up to 76 hours per week and *maximum* weekly hours as high as 96 in some canneries.[108] In the first

[104] For summaries of the act of 1911 and the long series of canning orders in California see Bulletin 66, Part II, pp. 146–152.

[105] For summaries of the act of 1911 and canning orders issued subsequently in Wisconsin see *ibid.*, pp. 268, 270–273.

[106] California employed more than twice as many persons in the industry as Maryland, its nearest competitor.

WAGE EARNERS IN THE FRUIT, VEGETABLE, ETC., CANNING INDUSTRY IN 1925

	AVERAGE NUMBER	NUMBER EMPLOYED 15TH DAY OF THE MAXIMUM MONTH
United States	85,866	220,115
California	23,384	52,481
Maryland	6,949	25,897
New York	7,517	14,638
Wisconsin	4,426	17,562

From *Census of Manufactures*, 1925, pp. 68 ff.

[107] According to the California Industrial Welfare Commission it employed about 22,000 women at the peak of the season in 1916 and nearly 45,000 in 1925. See Industrial Welfare Commission of California, Second Biennial Report, 1915–16, p. 231; Fifth Report, 1922–26, p. 199.

[108] Bureau of Labor Statistics of California, *Labor Conditions in the Canning Industry*, Special Report, published 1913.

wage board for the canning industry (which was to set maximum hours as well as minimum wage rates) the employee representatives accepted the necessity of some overtime in so seasonal an industry, but asked for overtime pay. The first order for the industry, issued in 1916, set basic hours at 10 per day and 60 per week. Hours worked above this standard were to be paid for at one and a quarter times the minimum wage rate. There was no daily maximum but an absolute weekly maximum of 72 hours.[109]

The enforcement of this absolute maximum proved difficult. As in New York, so in California, the reports speak of the impossibility of securing convictions due to local sentiment which favored unlimited hours in the canneries. In consequence in a new order issued the following year a radical change was made in the method of regulating cannery hours. The maximum limit was completely given up. The basic hours were reduced to nine per day and six days per week. The one and one-quarter rate for overtime remained, except that above 12 hours per day the overtime rate was increased to twice the minimum rate. The Commission stated their belief that this overtime double rate would be far more effective than an absolute prohibition in preventing hours beyond an upper limit. The reduction in the length of the basic day would also tend to reduce hours worked. They regarded the new regulations as a decided raising of the standards.[110] In 1918 the basic hours were again reduced, to the eight-hour day and 48-hour week, the maximum for other industries. The overtime rate remained as before.[111] After 1919 there was practically no change in the regulations as to hours in canneries. Apparently the California authorities and cannery workers were satisfied.

The question remains whether the requirement of higher rates of pay for overtime work was really effective in reducing hours. A survey of the industry made in 1926 at the peak of the season showed that 85 per cent of the 27,659 women included in the study worked beyond an eight-hour day and 48-hour week, that over 40 per cent of them worked more than 60 hours in the week,

[109] Industrial Welfare Commission of California, Second Biennial Report, 1915–16, pp. 261 ff. For the order issued see also Bulletin 66, Part II, p. 146.

[110] Industrial Welfare Commission of California, *Report on the Regulation of Wages, Hours, and Working Conditions of Women and Minors in the Fruit and Vegetable Canning Industry of California*, Bulletin 1, published May 1917. See Preface.

[111] For all the canning orders see Bulletin 66, Part II, under California.

and that 13 per cent exceeded 72 hours.[112] As compared with the figures for 1912, these figures show that the higher rates for overtime had the effect of reducing hours in the California canneries. Nevertheless, the fact that in 1926 over 40 per cent of the women worked more than a 60-hour week is significant. For by the standards of the country as a whole (not merely of California) a working week of more than 60 hours may well be regarded as excessive. Finally the California method of restricting hours in canneries can obviously be used only in connection with well-enforced minimum wage rates.

In Wisconsin the administrative regulation of hours in canneries proceeded along entirely different lines. Wisconsin in 1925 ranked third among the canning states,[113] with most of its canneries handling only peas.[114] Since peas are probably the most perishable product canned, this made the regulation of hours in Wisconsin canneries particularly difficult.

As soon as it was given power in this field, the Industrial Commission was asked by the pea canners for permission to work overtime beyond the statutory 10-hour day and 55-hour week. The Commission called together a committee, representing the public, the State Federation of Labor, the Pea Packers' Association, and the pea growers, to recommend regulations to be enforced for the 1913 season. The first pea canning order permitted 10 hours daily with no weekly limit, and for emergencies 15 days of 12 hours each, provided that time and a half was paid for overtime.[115] Thus Wisconsin began like California by permitting a limited amount of overtime at higher rates; the amount permitted, however, was more restricted than in California.

The success in enforcing these regulations in the first season

[112] Survey described in California Industrial Welfare Commission, Sixth Biennial Report, 1926–28, pp. 107 ff. Figures quoted in the text taken from the work sheets of this survey loaned to the author by Mrs. Edson, Executive Officer of the Commission.

[113] This means rank as measured on the basis of the number of wage earners employed on the 15th day of the maximum month. If rank is measured by the average number employed throughout the year, Wisconsin is only sixth. This difference is due to the fact that most of Wisconsin canneries handle only peas and have a very short season. For figures see those given in note 106, p. 488, and reference given there.

[114] See *Census of Manufactures*, 1925, pp. 78–79. Of roughly twelve million cases of fruit and vegetables canned in Wisconsin in 1925, nine million were peas.

[115] Wisconsin Industrial Commission Report of Allied Functions for two years ending June 30, 1914, pp. 88–89. For pea canning order see also Bulletin 66, Part II, p. 270.

led the commission to declare in its report, "Canners in general showed a very commendable spirit of co-operation and the results of even the first year of effort would indicate that the time soon will come when the canning industry can be so regulated that there will be no question of special exemptions." [116]

This hopeful prognostication was not fully realized, but except for an increase in 1917 in the permitted hours on four of the 15 emergency days (a concession granted because of the wartime shortage of labor and the wartime emphasis on saving perishable food) there was a slow but steady decrease in the amount of overtime permitted. By 1926 the normal hours in the pea canneries had been reduced to nine per day—the statutory standard, and 54 per week—the maximum for other industries being 50. Emergency overtime was limited to eight days in the season and not to exceed 11 hours daily and 60 hours weekly. The Commission reported that it had the co-operation of the Canners' Association and the individual canners throughout, and that the hour limits set were strictly complied with. By no means all the canneries used the eight days of emergency overtime permitted them.[117]

The Wisconsin Industrial Commission was obviously proud of its achievement in educating a highly seasonal industry to operate with a reasonable maximum day for its women workers. Its success in this regard in comparison with New York and California is conspicuous. Undoubtedly the basic factor was the degree of co-operation it was able to win from the canners. Such co-operation was probably easier to secure in Wisconsin than in New York, because of the smaller number of employers involved. But aside from this and other more imponderable differences, it would appear that the absence of a statutory overtime allowance in Wisconsin and complete reliance on the procedure of administrative orders was a decided advantage. It made it easier to effect a gradual reduction in the permitted overtime, on the basis of close co-operation with the employers involved. The Wisconsin experience indicates, that in dealing with hours in highly seasonal industries, there are marked advantages in the method of administrative orders.

[116] Wisconsin Industrial Commission Report for two years ending 1914, *op. cit.*, p. 88.

[117] For the various orders see Women's Bureau, Bulletin 66, Part II, pp. 270–272. For statements as to co-operation of the canners, etc., see the reports of the Wisconsin Industrial Commission: Report of Allied Functions for year ending June 30, 1918, p. 38; Biennial Report of Allied Functions, 1918–20, p. 48; Biennial Report, 1922–24, p. 36.

Other Rule Making

As for the broader use of the administrative order in regulating women's hours, the experience in the various states is somewhat indecisive.

The Wisconsin Industrial Commission, in contrast to its achievement in the canneries, moved warily in regulating hours in other industries. It never reduced the general maximum; that was achieved in 1923 by legislative enactment. Aside from the cannery orders and a number covering minor matters such as length of lunch period, etc., the only administrative order it issued dealing with hours was that prohibiting night work in manufacturing and laundries. This was issued in 1917 to prevent a wide use of women at night in war-time industries. It set high standards, beginning the prohibited period at 6 P. M. instead of 10. There was no further extension of this night work order to other industries or occupations.[118]

California used administrative orders more extensively than Wisconsin. In addition to prohibiting night work in laundries and manufacturing establishments, the California Commission through administrative orders extended the scope of the statutory maximum to include "unskilled and unclassified occupations," thus taking care of most of those omitted from the statutory list.[119] In 1920 it also attempted to regulate agricultural occupations by setting up a maximum 48-hour week and a basic eight-hour day. Apparently this did not prove feasible, as the order was rescinded two years later and no further action was taken in this direction. The California Commission by the use of administrative orders established the six-day week in most industries. Its

[118] Women's Bureau, Bulletin 66, Part II, pp. 268–270, 273–275. During 1932 an attempt was made by certain Wisconsin manufacturers, mostly in the hosiery industry, to secure modification of this order to permit the employment of women beyond 6 P. M. so that two shifts of women might be employed. Because it was claimed that this would provide additional employment during the serious unemployment of this period, the Industrial Commission finally issued an order specifying that permission might be granted to individual concerns to employ adult women up to 10 P. M. under specified conditions if it could be definitely shown that additional employment would be created. Only a handful of establishments availed themselves of this opportunity. See Wisconsin Industrial Commission Hearing (Sept. 9, 1932), Order in the Matter of the Applications of the Mayors of Waupun, Ripon, and Fond du Lac for the Reduction in the Minimum Wage Rate, and Modification of the General Order Prohibiting the Employment of Women after 6 P. M., Nov. 7, 1932.

[119] This could not have been done in Wisconsin since the Commission in that state did not have the power to regulate hours in occupations not covered by the statute. Wisconsin Statutes, Chap. 103, Sections 103.01, 103.04.

procedure in the hotel and restaurant industry is particularly interesting, since this is a continuous industry in which it is especially difficult to enforce a six-day week. The California Commission began in 1919 with a basic six-day week permitting work on the seventh day in emergencies at overtime rates. Apparently, it felt after a few years that the hotel keepers had learned to operate on this basis, for in 1923 it made the six-day week absolute.[120]

In four other states administrative orders have been used to regulate women's hours.

In Arkansas the Commission's power over hours is limited. Its only order in this field extended the statutory maximum to hotels and restaurants.[121]

In North Dakota an eight and a half hour day and 48-hour week was established by statute in 1919 and the newly created Workmen's Compensation Bureau was given power to issue orders as to women's hours, limited by the statutory maximum. In 1920 it issued a series of orders supplementing the statutory regulation by covering certain occupations throughout the state, and other occupations in towns under 500 population which were entirely exempt from the statutory maximum. However, enforcement of these orders was enjoined on the ground that they were unlawfully passed and they never took effect. New orders were issued in 1922 but much restricted in scope. The occupations not covered by statute were left unregulated; the extension of the statute to towns under 500 was not repeated for manufacturing or for laundries, and for stores the maximum hours were set at nine per day and 54 per week instead of the previous eight and a half and 48. It is evident that the first flush of enthusiasm as to the regulation of women's hours had waned. The 1922 orders marked a definite recession; no further orders were issued up to 1933.[122]

In Oregon and Kansas the use made of administrative orders in the field of women's hours was more extensive. In Oregon, the statutory maximum of ten per day first established in 1903 (for a limited list of occupations) was never reduced, but through administrative orders Oregon achieved a standard of nine hours per day and 48 hours per week. This is the only state in which administrative orders have actually reduced hours below a statutory

[120] Women's Bureau, Bulletin 66, Part II, pp. 145–154.
[121] *Ibid.*, p. 145.
[122] *Ibid.*, pp. 225–230.

maximum. The gradual reduction put into effect by the Oregon Commission from 1913 to 1919 can probably be explained by the fact that the other Pacific Coast states were operating by statute under an even higher standard; namely, an eight-hour day and 48-hour week. A six-day week was established in Oregon for most industries, but unlike California, Oregon made no attempt to apply this to hotels and restaurants. Oregon went further than California in prohibiting night work by administrative order. The prohibition applied to manufacturing and mercantile establishments and laundries and also to elevator operators. Mention should be made of the fact that in Oregon administrative orders were not used to regulate hours in the canning industry. The only regulation of that industry was by statute. Oregon was not an important canning state, but its commission and its legislature took pains to exempt canneries from administrative regulation. In the commission's first order for the manufacturing industry canneries were specifically exempted. Not content with this, in 1917 the legislature took away from the commission all power to regulate hours in the canneries. It did, however, provide by statute that time and a half should be paid for work done beyond ten hours per day.[123]

In Kansas up to 1933 administrative orders constituted the only regulation of women's hours. The first orders were issued in 1917; up to 1922 numerous changes were made, thereafter very few. There was some variation between the different industries and some elasticity as to permitted overtime. The most prevalent standard was the nine-hour day. In the manufacturing and laundry industries there was a slight raising of standards; in stores a concession was made in 1922 permitting longer hours on Saturday. The attempt to enforce a six-day week in the continuous hotel and restaurant industry was apparently unsuccessful. Unlike California which started with a basic six-day week and changed to an absolute one, Kansas after five years' attempt at enforcement gave up its virtual prohibition of seven-day work, though it retained the 48-hour week. Telephone and telegraph operators and numerous other groups were never covered by orders dealing with hours. As for seasonal industries, Kansas was not a canning state, but for poultry dressing, apparently quite an important industry in the autumn, a certain amount of overtime was permitted.

[123] *Ibid.*, pp. 236–242.

Kansas also prohibited night work in quite a wide range of industries including a prohibition from midnight to 6 A. M. in the hotel and restaurant industry.[124]

On the whole, in Kansas where the administrative body was given unlimited power to regulate women's hours, it set up standards equivalent to a pretty good statute. It made a few special arrangements to cover problems in particular industries but not more than are found in many statutes. Though it did a little "tightening up" as the years passed, it took very slight advantage of the opportunity afforded by its administrative set-up to make gradual continued progress in raising standards.

In Ohio and Colorado administrative bodies did not make any use of their power to regulate women's hours.[125]

On the whole, the regulation of women's hours by administrative order, in the states where the power to do so existed, does not make an especially strong case for adopting this method elsewhere. For most industries, the advantages of the many variations and frequent changes made possible by this method probably do not equal the advantages of a fixed, simple, and uniform standard which can be easily known and adjusted to, and more readily enforced. As for a general reduction in maximum hours or an important increase in the scope of hour regulation, such changes are so drastic that most administrative bodies have preferred to leave them to legislative action. On the other hand, for highly seasonal industries and other special problems the administrative method of regulating hours proved itself highly successful.[126] Other states might well give administrative bodies power to regulate hours in this more limited field.

1918–1932

We may now revert to our chronological treatment of women's hour legislation, and sketch events from 1918 up to January 1, 1933. This period marked a gradual decline in the progress of the movement to regulate women's hours by state action. In these 11 years, only two states, New Mexico and North Carolina, were added to

[124] *Ibid.*, pp. 167–173.

[125] Ohio General Code, Section 871–13 through 871–44. Colorado Compiled Laws 1921, Sections 4243–4245 (Session Laws 1917, Chap. 98, pp. 380–390).

[126] Special problems other than canneries which have been handled in this way in Wisconsin, Washington, and elsewhere are the hours of rural telephone operators. See Bulletin 66, Part II, under Oregon, Washington, and Wisconsin.

the list of those regulating women's hours. This happened in 1921 in New Mexico and 1931 in North Carolina.[127] Only 12 states out of the 40 which had previously enacted statutes made any appreciable improvements therein in this period.[128] And most of the activity in these 12 states came shortly after the war. After 1923, the gains were very slight.

In the early post-war period the raising of standards was relatively easy. In Massachusetts, for example, the 54-hour week secured in 1911 was reduced in 1919 to 48 hours and the maximum day of 10 hours to 9, by an act which passed both houses of the legislature with overwhelming majorities. This was the first reduction secured in Massachusetts in the main through the efforts of the organized women workers. Hitherto the men's organizations had been the chief proponents of such legislation. When the 54-hour law was passed in 1911, the textile union had agreed not to agitate for further reduction until other states had been brought up to the Massachusetts standards. Beginning in 1916, however, the Women's Trade Union League took the lead and introduced a 48-hour bill (the daily maximum, however, to be nine hours, not eight) and in 1919 the bill was passed with relatively little difficulty. The Women's Trade Union League was successful in securing widespread support for its bill including many important women's organizations (such as the Consumers' League and the Federation of Women's Clubs) and all the labor bodies in the state. The textile manufacturers opposed the bill, but their protests were not taken very seriously, since in that year the industry was thriving and union action had just secured a 48-hour week in almost all the mills.[129]

In 1921 the Women's Trade Union League secured another advance in Massachusetts in the extension of the hour law to laundries, hotels, and certain other minor occupations. For hotels,

[127] Women's Bureau, Bulletin 66, Part II, p. 206; North Carolina Laws of 1931, Chap. 289 creating Section 6554, Consol. Stat. (This North Carolina statute superseded for women a general 60-hour law for men and women.)

[128] Arizona (1927), Louisiana (1930, Act No. 71, Laws of 1930), Massachusetts (1919, 1921), Michigan (1919), New Jersey (1921), New York (1918, 1919, 1927, 1930, and 1931), North Dakota (1919), South Dakota (1923), Utah (1919), Virginia (1926), Wisconsin (1923), Wyoming (1923). Bulletin 66, Part II.

In addition note that Puerto Rico in 1919 passed an eight-hour law. U. S. Department of Labor, Women's Bureau, *State Laws Affecting Working Women*, Bulletin 63, p. 15.

[129] Apparently this action released the textile unions from their pledge not to agitate for further statutory reduction of hours.

however, the legislature amended their bill to permit one hour of overtime per day.[130]

In 1919 North Dakota, which had never had any women's hour law,[131] enacted a statute fixing an eight and a half hour day and 48-hour week and empowering an administrative body to extend its scope or reduce its maximum.[132] This statute was the product of the Non-Partisan League Movement which secured for North Dakota a large number of enlightened labor laws.

From 1919 to 1923 improvements in women's hour laws of a much less striking nature were secured in Utah, New Jersey, South Dakota, Wisconsin, and Wyoming, all of which made reductions in hours, and in Michigan and Wisconsin and New York, which made extensions in scope.[133]

After 1923 the gains were very slight. In 1926 Virginia added restaurants to its list. In 1927 Arizona reduced its weekly maximum.[134] In the same year New York, after a long and bitter fight, finally secured a statute "embodying the principle of the eight hour day." In 1931 North Carolina enacted its first women's hour law, fixing an 11-hour day and 55-hour week in manufacturing, superseding a 60-hour law for men and women.[135] The New York story is worth telling in some detail. It illustrates the vigor with which employers' organizations in the period from 1923 to 1933 fought reductions in women's hours, and the difficulty of securing such legislation, even when the proponents were well organized, ably led, and had the sympathy and support of the governor of the state.

The old New York law, passed in 1912, fixed an absolute maximum of 54 hours per week. The daily maximum was nine hours but overtime was permitted under rather generous provisions. Almost immediately the attempt to secure the eight-hour day and 48-hour week began. In 1914 a bill to this effect was introduced at the instance of the Women's Trade Union League. From then on it was introduced each year; but the real fight to secure its passage began in 1919 when the various women's organizations

[130] Massachusetts story taken from Bulletin 66, Part I, pp. 38–42.

[131] Except an unenforceable hour law passed for Dakota territory in 1863. See Bulletin 66, Part II, p. 224.

[132] *Ibid.*, p. 224. For administrative action taken under this statute see preceding section of this chapter.

[133] *Ibid.*, under the various states in Part II.

[134] *Ibid.*, under the various states in Part II.

[135] See note 5, p. 458.

which had been working for legislation for wage earning women co-ordinated their efforts through the formation of the "Women's Joint Legislative Conference." The leading plank in their program was the eight-hour bill.

From 1919 to 1927 each legislative session saw a bitter fight over this bill. The Joint Legislative Conference which had begun with a membership of six organizations grew to include 15, and in addition the whole organized labor movement and many other civic and social organizations gave their support on behalf of the eight-hour bill. On the other side were the Associated Industries—the chief employers' organization in the state, and the Women's League for Equal Opportunity and the National Woman's Party—women's organizations which opposed all special legislation for women. Governor Smith was strongly in favor of the bill and it passed the Senate a number of times. But though the Republicans, who were in control of the Assembly, also made it a part of their program, their leaders prevented its coming to a vote in that house. In 1925 a substitute bill empowering the Industrial Board to reduce hours to not less than 48 in particular industries on a health basis passed the legislature. It was vetoed by Governor Smith at the request of the organizations working for a statutory eight-hour law. In 1926 the eight-hour bill was again defeated after a bitter fight, and, as a substitute, a commission was created to investigate the whole subject and report to the next session of the legislature.

This New York Industrial Survey Commission recommended a bill embodying the principle of an eight-hour day, but permitting up to nine hours a day and 49½ hours per week if a Saturday half holiday were provided. It further provided for 78 hours of overtime per year to be used when the employer desired. The employer representatives on the Commission did not accept even this proposal, contending that there was no evidence to show that the health of women was injured by the 54-hour week. The labor representatives accepted the compromise somewhat reluctantly and the organizations which had worked so long for an eight-hour law, though not enthusiastic, did not oppose it. When it passed the legislature in 1927, Governor Smith signed it as embodying the principle of the eight-hour day.[136]

The state enforcing officials were thoroughly dissatisfied with the

[136] *Ibid.*, pp. 94–103.

new law. In their reports in the following years they pointed out the great difficulties from the point of view of detecting violations and urged the enactment of a genuine eight-hour law.[137] Slight amendments were made in 1930 and 1931 reducing the amount of overtime permitted, but the possibility of working 49½ hours and the provision for additional overtime remained.[138]

The night work legislation in the period after the war was also meager. Some orders prohibiting night work in certain industries were issued in this period in states where administrative bodies had this power. In addition in Ohio in 1921 a statute was passed prohibiting the employment of women at night as ticket sellers. But the only really important gain in the field of night work legislation was the act passed in New Jersey in 1923. This prohibited night work for women in all the industries and occupations covered by the maximum hour law.[139]

Effects of Hour Legislation for Women

Thus for a time at least the movement to reduce women's hours through state action came to a virtual standstill. The cessation of progress left the greatest possible variation between states, ranging from the widely inclusive eight-hour law and less widely extensive night work prohibition of California to total lack of regulation in Alabama, Georgia, Florida, Iowa, and West Virginia.

This diversity between states should facilitate an appraisal of the effects of this type of state action. The United States Women's Bureau has made a limited attempt at such an appraisal in its study entitled *The Effect of Labor Legislation on Employment Opportunities for Women.*[140] On the whole their figures show that prevailing hours reflected the presence or absence of maximum hour legislation. For example, prevailing hours in Ohio where the daily maximum was nine hours were far shorter than in the neighboring state of Indiana where there was no legal limitation on the number of hours a woman could be employed. Nearly half the women in a representative sample of establishments in

[137] See New York Department of Labor, Industrial Commissioner, Annual Report, 1928, pp. 1–2; also 1927, pp. 11–12.

[138] New York Laws of 1930, Chaps. 867–868; Laws of 1931, Chap. 509. A genuine 48-hour law was finally achieved in New York in 1935. See New York Laws of 1935, Chap. 106.

[139] Women's Bureau, Bulletin 64, pp. 82–86; Bulletin 66, Part II, pp. 204, 232. In addition Puerto Rico passed a night work law in 1919; see Bulletin 64, p. 86.

[140] U. S. Department of Labor, Women's Bureau, *The Effect of Labor Legislation on the Employment Opportunities for Women*, Bulletin 65, 1928.

Ohio worked less than nine hours per day and naturally a negligible number more than nine hours. On the other hand, in Indiana only 16 per cent worked less than nine hours and nearly a quarter worked more than nine hours. However, the comparisons between states are not always so striking. In Iowa where there was also no legal limit a slightly larger proportion worked less than nine hours than in Ohio with a nine-hour law. At the other extreme, of course, the advantage lay with Ohio, since in Iowa 14 per cent worked more than nine hours per week in contrast to the less than 1 per cent in Ohio.

The investigators studied intensively a large number of establishments in five typically women employing industries in nine states. They found out just what reductions in hours had been made in recent years and their causes and consequences. On the whole they concluded that while in many instances there were other causes, in the preponderant number the causes of reduction in hours was a reduction in the legal maximum. As for the consequences of legal maxima and their reduction, careful investigation revealed practically no dismissal of women employees on this account and no diminution in their opportunities for employment.

CHAPTER IV

MINIMUM WAGE LEGISLATION

Introduction and Summary

Prior to 1933 the most ambitious attempt to ameliorate labor conditions in the United States by legislative enactment was that embodied in the minimum wage laws passed between 1912 and 1923 in 15 states, the District of Columbia, and Puerto Rico.[1] The passage of these laws, the problems of their administration, and their effects on wages form the subject of this chapter.

Long before the passage of the Massachusetts minimum wage act in 1912 the states had regulated the physical conditions under which labor might be performed and the length of the working day. But the only legislation concerning wages was that fixing the time of payment and forbidding certain methods of payment which led easily to fraud. The amount of the wage to be paid had remained a matter for so-called free bargaining between employer and employee.

Meanwhile first in Australia and later in Great Britain experiments were being made in using the governmental powers to protect workers from unduly low wages. The earliest statute which can be regarded as the direct forerunner of American minimum wage legislation was an act passed in Victoria in 1896 providing for the establishment of trade boards to fix minimum rates for employees in unorganized trades.[2] Between 1900 and 1910 three

[1] States with minimum wage laws: Arizona (1917), Arkansas (1915), California (1913), Colorado (1913), Kansas (1915), Massachusetts (1912), Minnesota (1913), Nebraska (1913), North Dakota (1919), Oregon (1913), South Dakota (1923), Texas (1919), Utah (1913), Washington (1913), Wisconsin (1913), District of Columbia (1918), and Puerto Rico (1919). For texts of these laws, amendments, and references to the statutes see Women's Bureau of the U. S. Department of Labor, *The Development of Minimum Wage Laws in the U. S., 1912–1927*, Bulletin 61, 1928, App. A, pp. 398–449.

Possibly the Wisconsin Unemployment Compensation Act (Wisconsin Statutes, Chap. 108) passed in 1932 might be regarded as more ambitious, but it did not take full effect until after 1933 and no other state followed the Wisconsin lead before that date.

[2] Victoria, Factories and Shops Act, 1896, No. 1445. The earliest modern statute dealing with the amount of the wage to be paid (rather than merely methods of payment) was passed two years earlier in New Zealand. New Zealand Statutes, 54 Victoria 1894, No. 14, p. 22. Under this act provision was made for conciliation in strikes, and if that failed for arbitration. Since wages were very frequently

other Australian provinces followed the example of Victoria in setting up the trade board system and in 1909 similar legislation was enacted in Great Britain.[3]

The first legislative action in the United States was taken in 1911, when the legislature of Massachusetts authorized the appointment of a commission to investigate the condition of women wage earners. This commission, on the basis particularly of the British experience, recommended the enactment of a minimum wage law for women and minors. In 1912 the Massachusetts legislature passed a minimum wage law, the first in the United States. True, the bill recommended by the investigating commission was considerably modified before its passage. It was made non-mandatory—to be enforced by publicity only—and the financial condition of the industry, as well as the cost of living, was to be taken into account in setting the minimum wage rates. Still the Massachusetts minimum wage law constituted a great innovation in American thought and practice.[4]

In the following year, 1913, eight other states, California, Colorado, Minnesota, Nebraska, Oregon, Utah, Washington, and Wisconsin enacted minimum wage laws. Five of them went further than Massachusetts since they provided that the minimum rates were to be based solely on cost of living and that failure to pay these rates should be punishable by fine or imprisonment.[5] Each of the other three statutes contained some feature which weakened it materially. The Nebraska law like that of Massachusetts was made enforceable only through publicity. The Colorado statute directed that the financial condition of the industry be taken into account

the central question in the labor dispute this meant that a state agency was empowered under certain circumstances to set wages. In that respect the New Zealand statute was the predecessor of American minimum wage legislation. However, the purpose of the act and the methods employed were clearly different. The purpose of the New Zealand act was to protect the public from labor disturbances; the method in the last resort was judicial decision; most important was the limitation on the right to strike. In contrast, the Victoria statute and the American legislation was designed to protect the weak unorganized worker; the wage setting was done by administrative rather than judicial procedure; and there was no limitation on labor's right to strike to secure higher wages.

[3] South Australia, Factory Amendment Act No. 752 (1900), Tasmania, An Act to Consolidate and Amend Laws Relating to Factories, No. 57 (1910), Queensland, Factory and Shop Amending Act of 1908, 8 Edward VII, No. 4, Great Britain 9 Edward VII, Chap. 22 (1909).

[4] For the recommendations of the investigating commission and their modification by the Massachusetts legislature see Women's Bureau of the U. S. Department of Labor, *History of Labor Legislation for Women in Three States*, Bulletin 66, pp. 55, 60.

[5] For texts of these laws see Women's Bureau, Bulletin 61, App. A.

in setting rates. In Utah the legislature itself fixed the minimum wage (instead of delegating authority to an administrative body) and fixed it so low that it had little or no effect in raising wages.[6]

We must recognize that the eight states covered by these laws were not among the most important industrial states. Nevertheless the speed with which minimum wage legislation was introduced into the United States is little short of amazing. Such legislation was clearly a radical innovation, a drastic step in state intervention in the field of industrial relations. Yet in one year eight state legislatures were ready to try this daring experiment. At that rate it looked as if women workers throughout the United States might speedily be ensured a living wage by legislative action. Minimum wage, like workmen's compensation, seemed destined soon to become nation-wide.

But the subsequent history was far otherwise. After 1913 the minimum wage movement rapidly lost momentum. Only two new laws were passed in 1915, in Arkansas and Kansas, one in 1917 in Arizona, and one in 1918 for the District of Columbia. The end of the war brought a slight revival—three new statutes were passed in 1919, in North Dakota, Texas, and Puerto Rico. But that was the end,[7] except for one more law passed in South Dakota in 1923, just before the whole movement received a stunning blow in an adverse decision by the United States Supreme Court on the question of constitutionality.[8]

Moreover, not all of the statutes which were passed became

[6] *Ibid.*, App. A.

[7] The seven minimum wage laws passed in 1933 lie beyond the period covered in this volume These laws were passed in Connecticut (Laws, 1933, Chap. 131, p. 263); Illinois (Laws, 1933, S. B. 730, p. 597); New Hampshire (Laws, 1933, Chap. 87, p. 36); New Jersey (Laws, 1933, Chap. 152, p. 304); New York (Laws, 1933, Chap. 584, p. 1212); Ohio (H. B. 681); and Utah (Laws, 1933, Chap. 38, p. 54. Utah had repealed in 1929 its law passed in 1913.)

These measures were the product of a new minimum wage movement resulting from the depths to which women's wages were driven by depression conditions, and led (in all the states except Utah) by the National Consumers' League, which prepared a new model "minimum fair wage" bill drafted to meet the U. S. Supreme Court decision against the constitutionality of the old minimum wage laws based on the cost of living principle. The new model bill—followed in all the 1933 laws except that passed in Utah—substituted for the living wage principle of the old legislation a minimum fair wage based on the reasonable value of the services rendered, with wage boards to determine such reasonable value. The New York law was passed in March 1933. President Roosevelt shortly after his inauguration personally urged the governors of 13 industrial states to secure the enactment of similar measures. For President Roosevelt's letter see *New York Times*, April 13, 1933, p. 1.

[8] *Adkins* v. *Children's Hospital*, 261 U. S. 525 (1923). For complete list of minimum wage laws and dates of passage see note 1, p. 501.

effective operating laws. In Colorado no actual minimum wage rates were ever set. The same was true in Nebraska, which repealed its law in 1919. In Texas the statute was passed in 1919 and repealed in 1921—the wage rates established by the commission were never put into operation.[9] Of the remaining minimum wage statutes four, the Arizona, Puerto Rico, South Dakota, and Utah acts, were of the inflexible or flat rate variety. That is to say, the actual minimum wage rates were embodied in the statutes, instead of being fixed by some administrative body. In consequence, in a period of rapidly rising prices the rates set were soon below existing wages and played no part in ameliorating conditions.[10]

In the other ten states [11] another obstacle hindered the operation of minimum wage laws—namely the numerous attempts to get them declared unconstitutional. In some states injunctions granted by lower courts virtually tied the hands of the administering agencies for years; in others these bodies to a large extent postponed action until the constitutional question should be decided.[12] In 1917 that question seemed to be permanently settled when the United States Supreme Court, dividing equally (one justice not participating), sustained the favorable decision of the Supreme Court of Oregon.[13] Unfortunately, however, this did not establish a precedent in the United States Supreme Court; and in 1923, when a new case came up from the District of Columbia, that Court, somewhat altered in personnel, held the District minimum wage law unconstitutional in a five to three decision.[14]

[9] Women's Bureau, Bulletin 61, p. 11.

[10] For discussion of the inflexible laws and their ineffectiveness see *ibid.*, Chap. XVI, especially summary, pp. 395–396.

[11] In this count of ten states the District of Columbia is treated as a "state." For convenience in referring to these laws the District of Columbia will be so treated throughout this chapter.

[12] Thus in Minnesota in 1914 after the first wage orders were issued but before they became effective a temporary injunction restrained the commission from enforcing them and no enforcement was possible until 1918 when the constitutionality of the act was finally upheld by the state Supreme Court. In North Dakota a similar situation existed from 1920 to 1921, although the question at issue was not the constitutionality of the act but the validity of the method of issuing certain orders. On the other hand, in California and Wisconsin no court cases occurred because the commissions delayed action waiting for a decision by the United States Supreme Court on the constitutional question. See *ibid.*, pp. 11, 321–322.

[13] *Stettler* v. *O'Hara*, 69 Oregon 519 (1914), 243 U. S. 629 (1917); Justice Brandeis not participating because of his connection with this case as counsel before his appointment to the Court.

[14] *Adkins* v. *Children's Hospital*, 261 U. S. 525 (1923); Justice Brandeis not participating. After 1923 six other minimum wage laws were declared unconstitutional on the basis of this decision, and only the Massachusetts non-mandatory law was

After 1923 the shadow of that decision hung over all the minimum wage statutes, even those which were not held invalid by any court. The administrative bodies in the various states either stopped trying to enforce the law or proceeded with great caution. For the most part they secured compliance only so far as that was possible without prosecuting violations—afraid of what might happen if they gave the courts the opportunity to pass upon the law. In Wisconsin a new minimum wage statute was passed in 1925 designed to meet the constitutional objection.[15] The Industrial Commission succeeded in securing substantial compliance with this act without court action and did not risk a test case, afraid that even this new type of minimum wage law might be declared invalid.[16] Only in Massachusetts was the administrative body in a position to continue its work unhampered—secure in a decision by the state Supreme Court that its non-mandatory statute was not affected by the decision in the District of Columbia case.[17]

upheld. Arizona—*Murphy* v. *Sardell*, 269 U. S. 530 (1925); Arkansas—*Donham* v. *West Nelson Manufacturing Company*, 273 U. S. 657 (1927); both these laws held unconstitutional on the basis of *Adkins* v. *Children's Hospital;* California—*Gainer* v. *A. B. C. Dohrman et al.*, constituting Industrial Welfare Commission of California, dropped before it was reached for argument; Kansas—*Topeka Laundry Company* v. *Court of Industrial Relations*, 119 Kansas 12 (1925), law held unconstitutional on basis of *Adkins* v. *Children's Hospital;* Massachusetts—*Commonwealth* v. *Boston Transcript Company*, 249 Massachusetts 477 (1924), upheld non-mandatory law but held unconstitutional provision requiring newspapers to publish names of persons not complying with decrees; Minnesota—*Stevenson* v. *St. Clair* (1925), 161 Minn. 444, law held constitutional as to minors, assumed to be unconstitutional as to adults; Wisconsin—*Folding Furniture Company* v. *Industrial Commission*, 300 Fed. 991 (1924), act held unconstitutional on basis of *Adkins* v. *Children's Hospital;* Puerto Rico—*People* v. *Laurnaga & Co.*, 32 Puerto Rico, 766 (1924), act held unconstitutional on basis of *Adkins* v. *Children's Hospital.*

[15] The new Wisconsin act read: "No wage paid or agreed to be paid by any employer to any adult female shall be oppressive. Any wage lower than a reasonable and adequate compensation for the services rendered shall be deemed oppressive and is hereby prohibited." For full text of this act see Women's Bureau, Bulletin 61, p. 446.

[16] The Wisconsin Industrial Commission feared that the new Wisconsin act might be held invalid because of the broad statement in *Ribnick* v. *McBride*, 277 U. S. 350 (1928) in which the United States Supreme Court in holding unconstitutional the regulation of fees to be charged by employment agencies stated (at p. 357): "Under the decisions of this court it is no longer open to question that, at least in the absence of a grave emergency, . . . the fixing of prices of food or clothing, of house rental or of wages to be paid, whether minimum or maximum is beyond the legislative power."

[17] *Commonwealth* v. *Boston Transcript*, 249 Mass. 477 (1924). This case held unconstitutional the provision requiring a newspaper to publish any names of firms not paying minimum wage rates which the commission might submit. The court held a newspaper could not be required to do this. However, most of the newspapers were willing to do it so that the decision had little actual effect. Aside from this provision the act was held constitutional.

Thus the first minimum wage experiment in the United States was virtually limited to the six years 1917 to 1923. It was confined to ten states—those in which statutes of the workable type were actually put into effect.[18] Yet despite these limitations it deserves an important place in a history of labor legislation in the United States. The high hopes and ambitious program of the decade 1913 to 1923 have their significance. In those years for the first time low wages were regarded as a matter of public concern and an attempt was made to devise governmental machinery to mitigate the evil.

The experiment was brief, but it affords at least tentative answers to certain interesting questions. In the first place, we need to know how far it is possible to secure the enactment of laws which drastically restrict the employer in setting the terms of the employment relation, and at what point employer opposition will make the passage of such legislation impossible. The story of how the minimum wage laws were passed in one period and repeatedly defeated in another throws some light on this question. Secondly, it is important to find out how far we can go in using government to ameliorate the condition of the workers, before the sheer administrative difficulties become insurmountable. Here again the minimum wage experiment from 1917 to 1923 provides illuminating data. Finally, it is valuable to measure so far as it is possible the effect of any particular statute, to determine whether and to what extent it is serving the purposes for which it was designed. The painstaking attempt made by the Women's Bureau of the United States Department of Labor to measure the effects of American minimum wage legislation for the period from 1912 to 1927 should prove a valuable illustration along this line.

The Campaign for the Minimum Wage Laws

With few exceptions the campaign for minimum wage legislation in the United States was led by public spirited middle class individuals and groups aroused to the social evil of underpaid women workers and convinced that the time for state action had

[18] This means omitting the four flat rate statutes in Arizona, Puerto Rico, South Dakota, and Utah and the three states where no rates ever went into operation, Colorado, Nebraska, and Texas. See Women's Bureau, Bulletin 61, App. A and pp. 11, 375.

Arkansas is listed as a flat rate state by the Women's Bureau but is not so counted here, because it also set wage rates by administrative order.

come. Organized labor either gave only nominal support to the movement, as in Massachusetts, or was actively opposed, as in California. Generally speaking employers opposed the passage of minimum wage laws, but in many states their opposition was not very vigorous.

The impetus behind the movement for minimum wage legislation in the United States was twofold. On the one hand, a number of investigations conducted by the federal government and by various private agencies revealed shockingly low wages being received by women and minor workers throughout the country.[19] On the other hand, beginning in 1896 in Australia and 1909 in Great Britain, attempts were being made in other parts of the English speaking world to use legislative action as a cure for this situation.[20] The actual minimum wage movement in this country started in 1910, when the National Consumers' League made such legislation for women and children part of its program for the next ten years. In the following year the Women's Trade Union League took similar action.[21]

The rapidity with which the movement initiated by these organizations bore fruit was amazing. Apparently the public conscience had become so aroused that it was relatively easy to secure legislation designed to alleviate the situation. In 1911 the first American minimum wage bill was introduced in Wisconsin [22] and official investigations of women's wages in relation to cost of living were begun in Connecticut, Kentucky, and Massachusetts.[23] In

[19] *Condition of Woman and Child Wage Earners in the United States*, 19 volumes, printed as Senate Document 645, 61st Congress, 2d Session, 1910–12; Butler, Elisabeth B., *Women and the Trades*, Charities Publication Committee, New York, 1909; Abbott, Edith, *Women in Industry*, D. Appleton & Company, New York, 1909; MacLean, Annie M., *Wage Earning Women*, Macmillan, New York, 1910; Bosworth, Louise, *The Living Wage of Women Workers*, American Academy of Political and Social Sciences, Philadelphia, 1910.

[20] Victoria (1896); South Australia (1900); Tasmania (1910); Queensland (1908); Great Britain (1909). For reference to these statutes see note 2, p. 501 and note 3, p. 502.

[21] Kelley, Florence, "Status of Legislation in the United States," *Survey*, Vol. 33, 1914–15, pp. 487–489. "The subject [minimum wage] was first brought forward as ripe for action in this country at the annual meeting of the National Consumers' League held in Milwaukee March 1910 when it was incorporated in the League's ten year program."

[22] Wisconsin Legislative Session of 1911, Bill No. 317S and 799A introduced February 16 and February 24, 1911.

[23] *Connecticut.* Act 276, 1911, p. 272, authorized the governor to appoint an Industrial Commission of five persons to investigate the conditions of wages of women and minors in the state.

Kentucky. At the instance of the state Consumers' League the governor appointed a committee of citizens to investigate the conditions of working women in the

1912 the Massachusetts investigation led to the enactment of a law designed to prevent the payment of the low wages revealed by the study. In the following year eight more states passed similar legislation.[24]

Massachusetts

The creation of the Massachusetts investigating commission was secured by a committee organized in December 1910 representing the state branches of the Women's Trade Union League, the National Consumers' League, the American Association for Labor Legislation, and certain local organizations of like character.[25] This committee, while itself convinced of the need for a minimum wage law, feared the lack of sufficient facts to gain public support. Hence it decided to begin by working for legislation to authorize an official investigation of women's wages in relation to cost of living. Very little opposition was aroused by this proposal. The interests which would naturally have been opposed probably thought that the creation of an investigating commission would satisfy the popular clamor for action and prevent further agitation. In fact counsel for the organization of textile manufacturers actually advocated the appointment of such a commission though doubting the power of the legislature to fix wages. On the other hand, the president of the United Textile Workers was the only labor leader active in behalf of minimum wage, either in this preliminary stage or later. The rest of the organized labor movement in Massachusetts (aside from the Women's Trade Union League) gave purely nominal support.

The commission authorized by the legislature and appointed by the governor in the spring of 1911 made an investigation of wages in retail stores, laundries, and candy factories. As a result of their survey four of the five members of the commission recommended to the next session of the legislature a mandatory minimum wage law, the actual minimum rates to be fixed by wage boards for the separate industries. The fifth member of the commission

state and prepare recommendations to present to the next General Assembly. See Commission to Investigate Conditions of Working Women in Kentucky, *Report*, December 1911.

Massachusetts. See Women's Bureau, Bulletin 66, Part I, pp. 55–56.

[24] California, Colorado, Minnesota, Nebraska, Oregon, Utah, Washington, Wisconsin. For texts of these laws see Women's Bureau, Bulletin 61, App. A.

[25] The following description of the campaign in Massachusetts is derived largely from Women's Bureau, Bulletin 66, Part I, pp. 55–61.

agreed with the majority in general, but reserved the right to recommend certain modifications.

The proposed measure was based on the English Trade Boards Act of 1909 which in turn was based on Australian legislation beginning with the Victoria Act of 1896.[26] The statute recommended for Massachusetts differed from the Australian and English legislation in that it was limited to women and minors. It provided for the creation of a permanent commission which should set up subordinate trade or wage boards for the various industries or occupations, to be composed of an equal number of representatives of employers and employees in the particular industry and one or more persons representing the public. These boards were to recommend rates sufficient to cover the necessary cost of living for a self-supporting working woman. These rates, if approved by the permanent commission, were to be issued by it as mandatory orders, and thenceforth it was to be illegal to pay women employed in the designated industry less than the minimum wage so established.

The campaign for the proposed minimum wage law was conducted by the previously established minimum wage committee, largely through its counsel. Representatives of textile and other manufacturers opposed the bill, maintaining that they could not raise wages and still meet competition from outside the state. It was obvious that the minimum wage proposal marked a great departure from existing thought and practice in the United States. However, the Lawrence strike then in progress had created a feeling that the legislature must act to prevent further outbursts of that sort. And this was 1912, the gala period for labor legislation throughout the country. Everywhere there was widespread confidence that labor conditions could be ameliorated through state action. Labor's excellent showing in the previous state election probably influenced members of the legislature, who wanted to be able to point to action on their part on behalf of the working people. At all events, when the dissenting member of the investigating commission came forward with a proposal for a non-mandatory law, to be enforced only by publicity, it met with immediate support in the legislature. Under this plan the permanent commission was to investigate to see whether employers were paying the established minimum rates and to publish in the newspapers the names of employers failing so to do. To meet the objection

[26] For reference to these statutes see note 2, p. 501 and note 3, p. 502.

that employers might be bankrupted by paying minimum wage rates, a further qualification was inserted into the bill; namely that "the financial condition of the occupation and the probable effect thereon of any increase in the minimum wages paid" should be taken into account in setting minimum wage rates.

This modified bill was reluctantly accepted by the group which had been working for a mandatory law with rates to be based solely on cost of living. They were afraid to let slip the favorable moment for securing some sort of minimum wage legislation. They regarded the proposed measure as an entering wedge and hoped that the publicity as to wages which it would provide would lead to the enactment of a more effective law. Subsequent events suggest that they may have been right in snatching the psychological moment to secure some kind of legislation. But their hopes for the future were disappointed. Aside from minor amendments the Massachusetts minimum wage law remained up to 1933 in its original form.

Thus in 1912, only two years after the beginning of the campaign to secure minimum wage legislation in the United States, the first statute was placed on the books in Massachusetts.

At the same time the movement in other states was going rapidly forward. In Ohio in 1912 the people of the state voted to adopt 32 amendments to the state constitution and the amendment receiving the second largest number of votes was one which authorized the legislature to enact minimum wage legislation as well as other protective labor laws for men, women, and children.[27] In Oregon also in 1912 the movement for minimum wage started with an extensive investigation of women's wages undertaken by the state Consumers' League.[28] Similarly in Missouri in the same year a study of women's wages in Kansas City made by the Public Welfare Association of that city attracted wide attention.[29] In 1912 also the new Progressive Party under which Roosevelt ran for the Presidency made minimum wage for women and children a plank in its platform.[30]

In the next year, 1913, minimum wage laws were enacted in

[27] Ohio Constitution, 1912, Article II, Section 34. See as to vote cast, Kelley, Florence, "Minimum Wage Laws," *Journal of Political Economy*, 1912, XX, 1004.

[28] See Social Survey Committee of the Consumers' League of Oregon, Report, 1913.

[29] Board of Public Welfare of Kansas City, *The Wage Earning Women of Kansas City*, Annual Report, 1912, Part II.

[30] Women's Bureau, Bulletin 61, p. 4.

eight states widely separated throughout the country: California, Colorado, Minnesota, Nebraska, Oregon, Utah, Washington, and Wisconsin.[31] For three of these states, Oregon, Wisconsin, and California, we shall sketch briefly how the law came to be passed.

Oregon

Oregon's minimum wage law was secured largely through the efforts of the state Consumers' League. In 1911 and 1912 that organization aroused enough interest to enable it to get funds for an investigation of women's wages and cost of living, which was begun in August 1912. A Catholic priest, Father E. V. O'Hara, was especially active. As chairman of the Social Survey Committee of the Consumers' League he directed the investigation of wages and cost of living and submitted the draft of a proposed minimum wage bill.[32] His speech at the annual meeting of the Consumers' League in 1912 was widely used as publicity in the campaign throughout the state. The bill recommended by the Consumers' League provided for the creation of an industrial welfare commission with power to regulate hours and conditions and to establish minimum wage rates for women and minors. The wage rates so established were to be mandatory. The National Consumers' League and the American Association for Labor Legislation aided in the drafting of this bill and it was later regarded, particularly in its minimum wage provisions, as the model for other states.

The report of the Oregon Consumers' League containing the draft of the proposed bill was published in January 1913, the bill was at once introduced into the legislature, met with almost no opposition, and was passed practically unanimously in the following month, February 1913. The first chairman of the new Industrial Welfare Commission was Father O'Hara.

From the outset the Commission received general public support and employer opposition was slight.[33] In 1923 when the adverse decision of the United States Supreme Court in the District of Columbia case led to the presumption that all the minimum wage

[31] For texts of these acts see *ibid.*, App. A.

[32] Social Survey Committee of the Consumers' League of Oregon, Annual Report, 1913.

[33] See Industrial Welfare Commission of Oregon, Biennial Report, 1915–16, Preface, pp. 4, 5. Also statements made by officers of Oregon Consumers' League, etc.

laws were unconstitutional, the Manufacturers' and Merchants' Association of Oregon issued a bulletin to its members urging all employers in the state to continue to observe the minimum wage rates set by the Industrial Welfare Commission.[34] Up to 1930 the law was continuing to operate, although cases of violation could not be taken to the courts.

Wisconsin

In Wisconsin the minimum wage movement began in 1910 when the National Consumers' League, at its annual meeting held in March of that year at Milwaukee, made minimum wage the leading item in its ten-year legislative program.[35] Professor John R. Commons of the University of Wisconsin at once set several of his students to work studying English and Australian experience on this subject and investigating wages and cost of living in Milwaukee. The Milwaukee study was published by the state Consumers' League and used as part of their campaign for a Wisconsin law. Professor Commons also took the lead in drafting a minimum wage bill which was introduced in the 1911 session of the legislature—the first minimum wage bill to be introduced in any American state.[36] This bill provided for the setting of minimum wage rates for men as well as for women and minors.

It is interesting that the young man who introduced this bill in the state Senate had just come from graduate study with Father John A. Ryan, perhaps the first American exponent of minimum wage, who as early as July 1909 had written an article in the *Catholic World* entitled "A Legal Minimum Wage." Another young man introduced the same bill in the Assembly and he was the son of the then president of the state Consumers' League. Father Ryan came to Wisconsin to appear at a joint hearing on this first American minimum wage bill on March 29, 1911. A representative of the Merchants' and Manufacturers' Association of Milwaukee appeared in opposition. Neither this bill nor a substitute amend-

[34] Manufacturers' and Merchants' Association of Oregon, *The Supreme Court Decision and Its Effect on the Minimum Wage and Child Labor Law*, Bulletin, May 19, 1923; reprinted in Ohio Council on Women in Industry Bulletin, October 1923 and in Reed, Ellery, *Analysis of Report of Ohio Minimum Wage Commission*, published by Consumers' League of Ohio, 1925, p. 24.

[35] This description of the campaign for the Wisconsin law is based on the unpublished Ph. D. thesis of Gertrude Schmidt, *A History of Wisconsin Labor Legislation*, University of Wisconsin, 1933; and an unpublished paper by Irma Hochstein.

[36] Wisconsin Legislative Session of 1911, Bill No. 317S and 799A, introduced February 16 and February 24, 1911.

ment providing for an official investigation of wages could pass the Senate; in 1911 the idea was still too novel.

In 1912 minimum wage for women and minors was made a plank of the state Republican platform—the convention being controlled by the Progressive faction of the Party. The Progressive governor elected in 1912 was committed to minimum wage and, with Progressive control of the legislature, passage of a minimum wage law in 1913 was readily secured. The bill introduced and passed in 1913 showed a number of changes from the 1911 model, the most notable being that its coverage was limited to women and minors. The Milwaukee Federation of Churches joined with the state Consumers' League in pushing this measure. The state Federation of Labor did not support it, believing trade unionism would be of more lasting benefit to women workers than a minimum wage secured by law.[37]

It is noteworthy that Wisconsin was the only state prior to 1933 to pass a new minimum wage law designed to meet the adverse Supreme Court decision in *Adkins* v. *Children's Hospital.* In 1924 a district federal court held on the basis of the Adkins case that the original Wisconsin minimum wage law was unconstitutional as applied to adult women.[38] The next year a Progressive legislature passed a new measure for adult women—drafted, like the original act, by Professor Commons.[39] This new law attempted to meet the argument of the majority opinion in the Adkins case. It substituted the "oppressive wage" principle for the "living wage" principle of all the American minimum wage laws passed before 1923. Up to 1933 this new law was not brought to test in the courts as to its constitutionality, and the Industrial Commission enforced minimum wage rates without intermission, though avoiding court cases applying to adult women.

California

California is the most extreme illustration of the general truth that minimum wage laws were the product of public concern over low wages, not of any demand by organized labor for state protection.[40] In California organized labor was not merely indifferent

[37] Miss Schmidt states that the state Federation in convention approved an hour law for women but not a minimum wage. See note 35, p. 512.

[38] *Folding Furniture Co.* v. *Industrial Commission,* 300 Fed. 991 (1924).

[39] Wisconsin Laws of 1925, Chap. 176, Wisconsin Statutes 104–125.

[40] For account of the campaign for minimum wage in California see Women's Bureau, Bulletin 66, Part I, pp. 128–131.

to the minimum wage proposal; it was actively hostile. Credit for the passage of the law belongs to a great extent to one woman, Mrs. Katharine Phillips Edson. In 1912 Mrs. Edson, then associated with the state Bureau of Labor Statistics brought to the attention of Hiram Johnson, the Progressive governor of the state, the low wages being paid to women workers as shown by studies made by that bureau. Impressed with the need for state action, the governor asked Mrs. Edson to have a bill drafted along the lines of the new Massachusetts statute. This bill was introduced as part of his legislative program in the 1913 session of the legislature. Early in the same session another minimum wage bill was introduced. This was the draft prepared by the National Consumers' League for use in Oregon. Mrs. Edson recognized that this bill (with some amendments) would be far more effective than the Massachusetts model and she persuaded the governor to transfer his support to it.

This bill provided for an industrial welfare commission with power to regulate hours, wages, and conditions of labor for women and minors and provided penalties for non-compliance. At the hearings on the bill the support came from representatives of the governor. Virtually every trade union which numbered women among its members sent its officers to oppose the bill. However, organized labor was too busy promoting its own legislative program (workmen's compensation, a general eight-hour law, etc.) to devote much attention to fighting the minimum wage bill. The organized employers, also opposed to minimum wage, were too busy on their side fighting labor's program to pay much attention to the governor's bill. With little campaign of any sort, the minimum wage bill was put through quietly as an administration measure, late in the 1913 session.

After the law was passed the fight began; labor and employers combined in violent opposition to it. The opportunity for a fight arose because the legislature, doubtful of their constitutional power to enact such legislation, had passed along with the minimum wage law an amendment to the state constitution granting them power to enact it. The amendment had to be ratified by popular referendum which was to take place in November 1914. In the interval labor through its press and on the platform conducted a vigorous campaign to secure its defeat. The opposition was based on the belief that the establishment of minimum wage rates would undermine union scales and weaken union organization, and that

many women would be unable to get jobs if employers were required to pay specified minimum rates. The chambers of commerce of Los Angeles and San Francisco, the state Merchants' and Manufacturers' Association, and other business organizations were also active in opposition. On the other hand, the Progressive Party, then dominant in California, made the amendment a major issue. Mrs. Edson aroused the state Federation of Women's Clubs to active support. Clubwomen adopted such slogans as "Let us be our sisters' keepers." The amendment carried by a wide majority. However, when the strength of labor's opposition was demonstrated in San Francisco, the stronghold of organized labor, the amendment lost decisively.

In the years after 1914 organized labor in California remained somewhat unfriendly to the minimum wage law, but the organized employers completely reversed their position. Credit for this change belongs in great measure to Mrs. Edson who was in charge of administering the law from its inception until 1930. She succeeded in getting established virtually the highest minimum wage rates in the country [41] and at the same time convinced the employers of the state of their desirability. In 1923 after the adverse decision in the District of Columbia case, various individual employers and spokesmen for most of the important employers' organizations stated their intention of continuing to abide by the existing high minimum rates, regardless of their doubtful constitutional validity.[42] As late as 1932 this compliance was still continuing.[43]

The ease with which eight minimum wage laws were secured in 1913 naturally led to the hope of an even greater volume of such legislation in the next legislative year, 1915. But by then the crest of the wave of labor legislation had passed. Though the National Consumers' League and the Women's Trade Union League continued their efforts, only two new laws were passed, in Kansas and Arkansas.[44] In a number of other states official

[41] For an analysis of the rates established in the various states see this chapter, p. 529. For short periods certain rates in North Dakota and District of Columbia exceeded the $16.00 rate in California.

[42] See Frankfurter, F., Brief in *Gainer* v. *Industrial Commission of California*, Supreme Court of California, pp. 46–49, published by National Consumers' League, New York.

[43] Letter to the author from Mrs. Edson, Executive Commissioner of the Industrial Welfare Division of California.

[44] For texts of these laws see Women's Bureau, Bulletin 61, App. A. The Arkansas statute fixed a flat minimum rate of $7.50 per week but provided for the setting of flexible rates in addition.

investigating bodies recommended minimum wage laws but it was impossible to secure their passage.

For example in Michigan an investigating commission created by the legislature in 1913 recommended in 1915 the enactment of a minimum wage law but no legislation was secured. In Missouri in 1915 a Wage Commission to study women's wages throughout the state was appointed by the state Senate. On its recommendation a bill was introduced in the following session. It was sponsored by the Consumers' League and the Women's Trade Union League, but the employers' opposition was sufficient to defeat it in four successive sessions.[45]

In 1915 a minimum wage bill was also introduced in New York but failed of passage. The Consumers' League of that state had been instrumental in having the state Factory Investigating Commission, created in 1911, undertake a study of the wage situation. On the basis of this study the Commission recommended a minimum wage bill, but it was not introduced until 1915. By that time the general reaction against labor legislation had set in throughout the country and was particularly acute in New York, where the entire labor code had been revised and standards materially raised in 1912 and 1913.

As Mrs. Beyer explains:

> "The business depression aggravated by the outbreak of the war in Europe came at a time when industry was adjusting itself to the new requirements of the law. Naturally enough there was a tendency to blame the new legislation for the general business decline. The opposition made political capital of the protest on the part of employers and succeeded in gaining control of the legislature in 1915. As was to be expected repeal bills of every description filled the calendar. The Consumers' League of New York was led to report that 'never before in the history of labor legislation has there been such an alarming attack upon the labor law in this state as has been witnessed in 1915.'"

Under those circumstances the passage of the minimum wage bill of 1915 was impossible, though it received considerable support in the legislature. The fight in New York continued unsuccessfully for many years thereafter.[46]

In 1917 a minimum wage law was passed in Arizona and in

[45] Michigan Public Acts, 1913, No. 290.
Senate Wage Commission for Women and Children in the State of Missouri, *Report to the Senate of the 48th General Assembly of Missouri, 1915.*

[46] See Women's Bureau, Bulletin 66, Part I, pp. 88, 97–98.

1918 the National Consumers' League succeeded in getting its model bill enacted by Congress for the District of Columbia. The latter victory was won with remarkable ease. Due probably to war-time prosperity and the war-time labor shortage in Washington, the local merchants' and manufacturers' association was persuaded to send its secretary to appear in behalf of the minimum wage bill. There being no opposition the law was easily passed without debate in either house.[47]

It was hoped that this action by Congress would help materially the movement throughout the country. But the post-war period was not one in which labor legislation flourished, and the minimum wage campaign bore little fruit—only four more statutes were secured, counting that enacted in Puerto Rico in 1919. The North Dakota statute passed in the same year came in the Non-Partisan League era, when the political leaders there were eager to put the state in the forefront in respect to all kinds of social legislation.

The other minimum wage law passed in 1919 was in Texas and is interesting because it is the only minimum wage law secured almost entirely by the efforts of organized labor.[48] As early as 1911 the Texas Federation of Labor adopted a resolution favoring a minimum wage law. By 1914 the Federation began active agitation and in 1915 two minimum wage bills were introduced in the legislature. Employers' opposition became aroused and no vote was taken. In 1917 a bill was again introduced and the retail merchants prevented its coming to a vote. In 1918 the state Federation of Labor demanded of all candidates for the legislature a pledge to vote for a minimum wage law, and the Democratic Party in the state included it in its platform. In the following year a law was passed creating an industrial welfare commission with power to fix minimum wage rates for women and minors.

The employers, however, continued their opposition to the law. To create public sentiment against it, they protested against the fixing of the same minimum wage rates for cities and small towns, claiming a great variation in cost of living. The Attorney-General

[47] Hearings before the Subcommittee of the Committee on the District of Columbia, Hearing on H. R. *10367*, 65th Congress, 2d session, April 16, 1918, pp. 4–5.

[48] The account of events in Texas is based in part on an article by M. W. Splawn, "A Review of Minimum Wage Theory and Practice, with Special Reference to Texas," *Southwestern Political Science Quarterly*, Vol. I, No. 4, March 1921, and in part on a file of News Clippings on Minimum Wage collected in the Texas State Library, Austin, Texas.

ruled that under the existing law the Commission could only set uniform rates for the whole state. The employers then asked for delay in putting the rates into effect until an amendment to the law could be passed. The legislature in 1921 asked the Commission to delay action until it could act and then proceeded to repeal the whole minimum wage law. Thus the Texas law came to an end before any rates were actually put into effect.

One more minimum wage statute was passed in South Dakota in 1923, just before the decision in the District of Columbia case.[49] After that adverse decision it was impossible to secure any additional mandatory minimum wage laws on the old model—especially after the United States Supreme Court had disposed of a number of state laws as falling under the authority of the District of Columbia case.[50]

But even before 1923 the movement for minimum wage legislation in the United States had come to a virtual halt. In 1913 the advocates of these laws had found a ready acceptance on all sides for their proposal. At that time the public conscience was shocked at the facts revealed as to the conditions of great numbers of women workers. Low wages and immorality were believed to be closely connected. Many employers were afraid to protest too vigorously against legislative action designed to remedy this situation for fear of incurring general ill favor. In the post-war period the experience of those working for minimum wage laws was very different. They found an apathetic public and employers well organized in vigorous opposition.

No single explanation for the change is adequate. In the first place, the minimum wage movement in 1913 was part of the general movement for labor legislation, which in turn was part of the progressive movement which gave Theodore Roosevelt so great a following in 1912. The post-war years marked the "return to normalcy" when "less government in business" was a popular slogan and there was general skepticism as to the desirability of increased regulation by the state in any field. Secondly, though women's wages were still low, they had risen greatly. True, they had probably not kept pace with the increase in cost of living. But to a large extent the popular mind still thought in terms of pre-

[49] *Adkins* v. *Children's Hospital*, 261 U. S. 525. This decision was handed down April 9, 1923. The South Dakota act was approved March 7, 1923, Laws of 1923, Chap. 309, p. 329.

[50] See cases cited note 14, pp. 504–505 of this chapter.

war wages and prices and could not become greatly excited over the "poor working girl" who earned $12.00 or $13.00 per week.

Finally, and probably most important, in the post-war years the employer opposition to minimum wage had become organized and effective. Merchants' and manufacturers' associations of all kinds were becoming more active and powerful. They were engaging intelligent young executive secretaries and legislative agents who adopted the methods of their opponents and adapted them to their own uses. These young men could use statistics and surveys and questionnaires. They could marshal "contented" workers to appear at legislative hearings and protest against a statute which they had been told would cost them their jobs. All this, of course, impressed the legislators. Moreover, employers' organizations thought it worthwhile to exert political power to defeat minimum wage legislation. New York and Ohio are examples of states in which an ably conducted campaign for a minimum wage law, wherein a great number of women's organizations were enlisted, was unable to overthrow these defenses. The Ohio story may be worth telling as a striking contrast to experiences in earlier years.

Ohio

Ohio had taken some part in the early minimum wage movement. It specifically authorized such legislation by constitutional amendment in 1912.[51] Minimum wage bills were introduced into the legislature in 1913 but legislation was postponed until a study of women's wages could be made. A law was passed in that year requiring all employers of female employees to give information to the Ohio Industrial Commission as to their hours, wages, etc.[52] Apparently the psychological moment for securing a minimum wage law thus passed.

No very active attempt to secure such legislation for Ohio was made again until 1920. On December 2 of that year the Ohio Council on Women and Children in Industry (made up of a large number of organizations) voted to have a bill drawn to establish a minimum wage commission and delegated to the Consumers' League members of the Council the drafting of the bill.[53] The bill as drafted followed the model law, providing for a permanent

[51] Ohio Constitution 1912, Article II, Section 34.

[52] Ohio Laws 1913, p. 654.

[53] The account of the campaign in Ohio in 1921 is taken from Consumers' League of Ohio, Bulletin for May–June 1921, published at Cleveland.

commission of three, subordinate wage boards, etc. A large number of organizations were mobilized in active support of this measure. The list included various Young Women's Christian Association organizations in the state, a number of Catholic organizations such as the state convention of the Knights of Columbus, and the Holy Name Societies; and, in addition, the Business Women's Clubs of Cleveland, Toledo, Warren, and Springfield.

Early in the 1921 session identical bills were introduced in both houses of the legislature and referred in each to the Committee on Labor. Hearings were held in each house at which certain prominent proponents of minimum wage from outside the state, the active lobbyists in the state, and some industrial girls were heard. The bill passed the House by a large majority. However, it was soon apparent that the real fight would be in the Senate which voted to refer the House bill to the Committee on Manufactures and Commerce instead of to the Committee on Labor which was known to be friendly.

On April 26 the Committee on Manufactures and Commerce met to consider the bill and began by voting to hear no one except members of the Committee. A member then produced a substitute bill which he alleged was modeled on the Massachusetts non-mandatory law. The proponents of the original minimum wage bill realized at once that it was a vicious caricature of that law, containing a large number of alterations which made it completely worthless. For example, the minimum wage commission was to be composed of a number of elected state officials serving ex-officio, which would have meant a purely political body of persons not qualified for the work. Further, the bill provided for reducing the rates for any individual employer who could not afford to pay the minimum as set. And finally, the publicity penalty was vitiated by reversing it to permit merely the publication of the names of employers complying instead of those failing to comply. With virtually no discussion this substitute was adopted by the committee by a four to three vote, while the women who had worked for a genuine minimum wage law sat by, not permitted to point out the vicious and misleading features of the substitute. Two days later the Senate voted to accept this substitute measure. The proponents of course preferred no law to such a measure as this, and thus no legislation was secured in 1921.

The following year the various women's organizations began

preparations to renew the fight [54] and the Ohio Manufacturers' Association renewed its counter offensive. An interesting bulletin issued to its members on April 21, 1922 was headed by the question: "Are you contributing to these Organizations?" There followed a list of the organizations conducting the campaign for a minimum wage law with special attention devoted to the Young Women's Christian Association. Further on came the statement: "The organizations which are doing this work are largely supported but not directed by you" and the suggestion: "You might stipulate the purposes for which your contributions to these organizations may be used and expressly provide that no part of it shall be used to promote the passage of legislation or to carry on propaganda for the social service labor program adopted by these organizations." [55] Subsequently the Toledo Community Chest followed this advice by dropping the Toledo Consumers' League from the list of organizations which it supported.

Despite attacks of this sort, the Young Women's Christian Association at its conference for that district held in June 1922 again pledged itself to work for a minimum wage law.[56] At the request of interested groups, the Women's Bureau of the United States Department of Labor made a survey in the fall of 1922 of women's wages and conditions in Ohio and found that, though wages were higher than in many other states, a substantial number of women were receiving less than a living wage, as measured in states operating under minimum wage laws.[57]

In the 1923 session of the legislature the minimum wage bill was again actively pushed. The interests which had killed the bill in 1921 by the introduction of the vicious substitute now resorted to new tactics and asked for a committee of legislators to investigate the whole subject and report to the next session. This resolution was adopted April 3, 1923, just a few days before the adverse decision by the United States Supreme Court on the constitutionality of the District of Columbia law.[58]

[54] See Women's Bureau of the U. S. Department of Labor, News Letter No. 15, July 26, 1922.

[55] Ohio Manufacturers' Association, Bulletin, April 21, 1922.

[56] See Women's Bureau, News Letter No. 15.

[57] U. S. Women's Bureau, *Women in Ohio Industries*, Bulletin 44, 1925. For conclusions see p. 12.

[58] See Women's Bureau, News Letters Nos. 21, 22, 23, 1923. The Resolution was adopted April 3, 1923, Ohio Laws of 1923, Joint Resolution, p. 640, and the decision in *Adkins* v. *Children's Hospital*, 261 U. S. 525 came April 9, 1923.

Both proponents and opponents of minimum wage urged the committee to make its investigation despite that decision.[59] After a thoroughly biased and unscientific investigation, obviously dominated by the Ohio Manufacturers' Association, five of the six members of the committee signed a report opposing any minimum wage legislation. The reasons given for their stand were somewhat contradictory, including the two statements: that such legislation would have a detrimental effect on Ohio industries; and that such legislation was not needed in Ohio because wages there were equal to those paid in states with minimum wage laws.[60]

Thus for a time the attempt to secure a minimum wage law in Ohio came to an end. The outcome might have been different if the fight could have been continued for a few more years without the discouragement which the adverse decision in 1923 in the Adkins case naturally brought. At all events, the campaign waged through two legislative sessions ended in defeat. Yet it was well planned and very ably led, and had enlisted the support of organizations representing very large numbers of men and women not usually favorable to legislative innovations of this sort. Public opinion had been roused to an unusual degree. The bill had the support of the governor.[61] However it seems clear that the Ohio Manufacturers' Association felt it worth while to take an aggressive stand to prevent such legislation and that under these circumstances there was no chance of securing its passage.

Setting the Minimum Wage Rates

The central problem in state regulation of wages is the determination of the rate or rates which shall be declared the legal minimum. Unless a workable method can be evolved for arriving at a satisfactory rate, state intervention in this field cannot succeed, no matter how effectively the legal rate can be enforced.

In the American minimum wage laws of the 1913 to 1923 period the problem of rate setting was simpler than in Australia or England since the laws covered only women and minors. Where men are also included the relation between wages for men and for

[59] See Women's Bureau, News Letter No. 30, March 24, 1924.

[60] See Reed, Ellery, *An Analysis of the Report of the Ohio Minimum Wage Commission*, published by the Consumers' League of Ohio, 1925.

[61] See Consumers' League of Ohio Bulletin for May–June 1921, published at Cleveland.

women complicates the problem.[62] But even with this limitation in scope the establishment of minimum wage rates in the United States in this period needed first, some standard or principle upon which the wage should be based, and second, some agency and some method for translating that standard into dollars and cents. In Australia a variety of standards have been tried and a variety of agencies and methods for applying them.[63]

In the United States in this period all the rates were based on the living wage standard; that is, on the principle that the state should insure to every woman worker a wage sufficient to meet the "necessary cost of living." [64] For minors (and other learners) under most of the statutes the wage was permitted to fall below this standard, on the theory that children could not expect to be self-supporting and that learners received training in addition to money in return for their labor.

In the United States the agencies for applying this standard were of three types, the legislature, the administrative commission, and the wage board. Under the "flat rate" or inflexible laws (in four jurisdictions) [65] the legislature itself decided what sum of money would cover the necessary cost of living and declared this to be the legal minimum wage. In a few other states (the number differed at different periods) the administrative agency empowered to enforce the rates was also instructed to decide what the rates should be.[66] In the remaining states the minimum wage rates established by the administrative commission were based on the recommendations of subordinate agencies, generally known as "wage boards."

[62] If the living wage standard is used for men the size of family to be regarded as typical is an essential element. Further complications as to skill differentials, etc., arise if other standards are used.

[63] For a full discussion of the standards used in Australia and the methods for applying them see E. M. Burns, *Wages and the State*, P. S. King & Son, Ltd., London, 1926.

[64] In three states, Colorado, Nebraska, and Massachusetts, only one of which, Massachusetts, ever actually set any rates, the statute directed that the living wage principle be modified by considering how the rates might affect the financial condition of the industry. For texts of these laws see Women's Bureau, Bulletin 61, App. A.

[65] Arizona, Puerto Rico, South Dakota, and Utah. For text of acts see *ibid.*, App. A.

[66] Under the statutes the commissions were required to set the rates in Arkansas and Texas, in Colorado until 1917 and in Kansas after 1921. Rates might be set by *either* commission *or* wage board in Minnesota, in Colorado after 1917, and in California up to 1921. In the other states wage boards were required. In practice California and Minnesota were the only states which did much wage setting without the use of wage boards. See *ibid.*, pp. 84–86.

These wage boards were bodies made up of equal numbers of representatives of employers and employees, with one or more persons representing the public. They were to decide what sum represented the necessary cost of living and to recommend a minimum wage rate, either for all women workers or for those in a given industry, trade, or occupation. They might recommend one rate for the whole state or different rates for communities of different sizes.[67]

By whatever body performed, the task of translating a "living wage" into dollars and cents was found to involve many problems and admit of no simple solution. Where the legislature itself attempted to do this work, the sum which constituted a living wage was arrived at in a rather haphazard fashion. Prevailing rates both within and without the state probably played a large part. Where the rate setting was done by the industrial commission (or other administrative body), either directly or acting on the recommendation of a wage board, an attempt was made to base the minimum wage on a scientific study of the facts. Before any rates were established, the agents of the commission made a survey of wages paid to women in the industries under consideration and a more or less extensive investigation of cost of living. This data was used by the commission as the basis for its decision, or was turned over to the wage board which in many cases made further investigations on its own account.[68]

To arrive at the cost of living for a working woman is by no means a purely statistical problem. Whether the work was done largely by the agents of the administrative body or by a wage board made up of representatives of the parties involved, numerous questions of judgment had to be decided.[69] In the first place, it was necessary to determine who was to be regarded as the typical woman worker: the girl living at home, the single self-supporting woman away from home, or the woman helping to support or en-

[67] In seven states at one time or another rates in all or some industries varied with the size of the community. However, Minnesota and Wisconsin are the only states which used this system extensively. See *ibid.*, pp. 19–21.

[68] For an account of the investigations of wages and cost of living undertaken in the various states see *ibid.*, Chap. IV.

[69] The following discussion of the setting of minimum wage rates and the operation of wage boards is based in part on Women's Bureau, Bulletin 61, Chap. VI, and in part on the experience of the writer in serving as Assistant Secretary and Secretary of the Minimum Wage Board of the District of Columbia from the spring of 1919 to April 1923 when it was disbanded following the decision of the U. S. Supreme Court in *Adkins* v. *Children's Hospital.*

tirely supporting one or more dependents. In America the single self-supporting woman living away from home was everywhere taken as the standard. To ascertain the minimum cost of living for such a worker two different methods were employed. One method was to find the actual expenditures of sample groups of women wage earners; the other was to price the items of a theoretical minimum subsistence budget—the list of articles regarded as indispensable for a working woman.

Both of these methods were subject to criticism. Workers' representatives on wage boards declared that cost of living figures based on actual expenditures were too low: first, because the women whose expenditures were used naturally could not remember just how they had spent their money or how much they had spent; second, because these women, all of whom were self-supporting, necessarily had to live in some fashion on what they earned.

On the other hand, where cost of living figures based on theoretical budgets were submitted to wage boards, they were often severely criticized by the representatives of the employers. They usually questioned the inclusion of many items such as laundry or vacation or "party dress" or "best hat." They contended that a working girl should do her own washing and that a minimum wage could not be expected to provide for party clothes or recreation. The minimum prices for the various items were also matters of debate. How much is it necessary to spend on a dress or coat which is to last two years? What is the least for which a healthful lunch can be bought?

Thus, though cost of living might appear to afford a definite standard, ascertainable by strictly scientific methods, it turned out in practice to involve much judgment and opinion. Hence the importance of the agency empowered to determine it. We may take the wage board as the typical agency which did this work. It was a body created for this special task, a group of private citizens, usually unpaid or at the most receiving compensation for time actually devoted to the work. Wage boards varied in size, but were always made up of equal numbers representing employers and employees, with one or more representatives of the public to prevent a deadlock between the two sides. The public representatives were appointed by the commissions, which sought to secure public spirited individuals without pronounced bias in either

direction. The employer representatives were usually chosen from nominations submitted by employers' organizations.

To choose employee representatives in industries where the workers were entirely unorganized and afraid of incurring the ill will of employers, proved a difficult task. In some states attempts were made to get the workers in the industry involved to make nominations, by distributing notices in the plants or by calling mass meetings.[70] In other states organized labor was asked to nominate, even though the workers in the particular industry for which the board was being formed were entirely unorganized.[71] No method was regarded as entirely satisfactory. The workers' representatives were often lacking in the knowledge, skill, and courage to enable them to play their full part in the wage board proceedings.

The wage boards so composed were directed to recommend a minimum wage based on the "necessary cost of living." They were provided with what scientific data could be collected by the agents of the commission. The procedure of the wage boards varied from state to state and to some extent from board to board. There was great variation in the number of meetings held, the extent of discussion of each item in the minimum budget, and the degree to which general agreement was reached on many points without formal votes. Much depended on the skill of the chairman. Sometimes a board would come to swords' points over a relatively minor matter; for example, whether a working girl was entitled to a new hat every year or carfare for Sundays as well as week days. Sometimes, especially if business conditions were good and the employers in genial mood, concessions on many points were easy to secure. Much turned on the individual members representing the public and how they chanced to react to the representatives of the other two groups. If they thought that either employers or employees were misrepresenting the facts in any way or were unreasonable in their attitude, they tended to swing in the opposite direction.[72]

[70] Notices were posted in the plants in Massachusetts. Bulletin 61, p. 96. Mass meetings were held in the District of Columbia.

[71] Organized labor made nominations in Wisconsin.

[72] Two episodes of a minor character which occurred in the District of Columbia may illustrate the point. In their budget the employees on one wage board gave the price of resoling and heeling shoes as $2.25 because they did not know that it had just been reduced throughout the city to $1.75. The public representatives never got over the feeling that this was a deliberate exaggeration and in conse-

In the end the rate arrived at was almost always a compromise. One side or the other conceded enough to win the support of the public representatives, or both were persuaded to make concessions to secure an unanimous recommendation. Moreover, despite the fact that it was made the sole standard in most of the minimum wage statutes, cost of living was not the only subject given consideration. Prevailing wages, the amounts of the proposed increases, and their possible consequences on business conditions necessarily influenced the members of the wage boards, even though the chairman frequently ruled such matters out of order in the discussion.

Taken all in all the wage board procedure proved a feasible method of setting minimum wage rates. It saved the administrative commissions from the full responsibility for the wage rates they were to enforce and helped to educate the groups involved. For this reason it must be regarded as a significant experiment in administrative technique, one of the demonstrations that state intervention in labor conditions can be carried out without entrusting the detailed working out of the standards to bureaucratic action by officials.[73]

Did the Minimum Wage Rates Cover the Cost of Living?

But the question remains whether the minimum wage rates set by wage boards really covered "the necessary cost of living" as they were designed by the statutes to do. The Women's Bureau in their comprehensive study of the *Development of Minimum Wage Laws in the United States* have made a detailed analysis of the cost of living figures arrived at and the minimum wage rates set in the various states. This analysis shows that the cost of living estimates announced in 1913, 1914, and 1915 (before the rapid increase in prices during the war) in states with minimum wage laws all fell within a narrow range (from $8.50 to $10.74). The similarity of these figures suggests that they actually did approximate a reasonable cost of living for a single working

quence mistrusted all the other figures in the employees' budget. On the other hand in another wage board an employer prejudiced the public members against his side by declaring in connection with the cost of lunch that he had argued the matter out with the Society for the Prevention of Cruelty to Animals and had convinced them that his horses were better off with only two meals a day.

[73] For further discussion of the use of representative boards in drafting administrative orders see Chap. VIII, on Administration.

woman. On the other hand the estimates of cost of living made in 1919 to 1920 diverged widely from one state to another (from $10.25 in Minnesota to $22.60 in the state of Washington, or—if the latter figure be excluded as an exception—to $16.00 in the District of Columbia). It seems evident that some of these estimates in the later years must have been well below a reasonable cost of living since it is doubtful whether any of them were substantially above.[74]

Now as to the minimum rates set, how did they compare with the cost of living estimates? The figures show that in Arkansas the original minimum wage equaled the announced cost of living figure; that in North Dakota the rates ranged above it; but that in the nine other states rates were set below announced cost of living figures—the discrepancy in some cases running to as much as $2.00 to $3.00.[75] This statement requires the following explanation: in four of these nine states [76] no cost of living figures were announced for the years in which the original wage rates were set. Hence the comparison between the two had to be made on the basis of earlier cost of living figures adjusted to the years in question by means of the cost of living index published by the United States Bureau of Labor Statistics. This analysis of the figures indicates that many of the original minimum wage rates did not equal a reasonable cost of living.

As prices rose in the period, 1915 to 1920, attempts were made to raise the minimum wage rates which had been set in the earlier period. But the Women's Bureau study shows conclusively that they were not raised fast enough nor far enough to keep pace with the rising price level. This is demonstrated by comparing the new rates set with the original cost of living estimate in each state, adjusted by the Bureau of Labor Statistics cost of living index number. This comparison is contained in the accompanying

[74] The Washington estimate of $22.60 may perhaps be regarded as excessive. See Women's Bureau, Bulletin 61, pp. 142–143. It is worth noting that if the $16.00 cost of living estimate made by the District of Columbia Minimum Wage Board in 1918 is adjusted backward on the basis of the Bureau of Labor Statistics cost of living index number to 1913 it comes to $9.17—very close to the average ($9.00) of the cost of living budgets issued in the various states publishing such figures at the earlier period. This suggests that the cost of living estimates did not increase as rapidly on the average as the actual cost of living. See *ibid.*, p. 146.

[75] See *ibid.*, p. 149, Table and text discussion of it. Note that this table includes Texas, where a rate was set which never took effect. Hence 11 states are given as setting rates instead of only 10.

[76] California, Kansas, Wisconsin, and the District of Columbia. See *ibid.*, p. 149, and following table.

TABLE I

SHOWING TO WHAT EXTENT MINIMUM WAGE RATES KEPT PACE WITH INCREASES IN COST OF LIVING, 1920 AND 1923 [77]

STATE	ORIGINAL COST OF LIVING ESTIMATE IN EACH STATE		ORIGINAL COST OF LIVING ESTIMATE ADJUSTED TO 1920 ON BASIS OF BUREAU OF LABOR STATISTICS INDEX NUMBER	MINIMUM RATE IN EFFECT 12/31/20	ORIGINAL COST OF LIVING ESTIMATE ADJUSTED TO 1923 ON BASIS OF BUREAU OF LABOR STATISTICS INDEX NUMBER	MINIMUM RATE IN EFFECT 1923
	Date Made	Amount				
Arkansas	1920	$13.25	$13.25	$13.25	$11.45	$11.00
California	1914	9.63	18.72	16.00	16.18	16.00
District of Columbia	1918	16.00	18.38	15.50 16.50	15.88	15.50 16.50 16.50 15.00
Kansas	1915	7.30	13.93	7.00–11.00	12.04	7.00–11.00
Massachusetts	1914	8.71	16.95	13.75–15.50 [a]	14.65	12.00–15.40
Minnesota	1914	8.36– 8.72	16.27–16.97	10.25–12.00	14.06–14.67	10.25–12.00
North Dakota	1920	16.25	16.25	16.50	13.99	14.00–14.90
Oregon	1913	10.14–10.48	20.32–21.00	13.20–13.85	17.56–18.15	13.20–13.85
Texas	1920	13.55–15.12	13.55–15.12	12.00	. . .	. . .
Washington	1914	9.65–10.74	18.78–20.90	13.20 ($18 for public housekeeping)	16.23–18.06	13.20 (14.50 for public housekeeping)
Wisconsin	1914	8.45– 9.50	16.44–18.48	12.10	14.21–15.97	12.10–13.75

[a] This range covers only rates set in 1920—many lower rates set previously had not been revised.

[77] Compiled from Table 31 and Table 32, pp. 132 ff., 144 ff., Women's Bureau, U. S. Department of Labor, Bulletin 61.

table. It shows that in 1920, except in North Dakota and Arkansas where rates were set for the first time in that year, a rate for a single industry in the state of Washington [78] was the only minimum wage rate not substantially below the adjusted cost of living estimate for the state in which it was established. The discrepancy between cost of living estimates and legal minimum wages varied from something over $1.00 to nearly $7.00 per week. In 1921 the adjusted cost of living estimates were of course reduced by the sharp drop in prices; after that they remained relatively stable. Meanwhile a number of states raised some or all of their wage rates. Therefore these extreme discrepancies disappeared. Still, in 1923 a discrepancy of over a dollar a week remained in six states out of the 11 which were setting rates within the period (Kansas, Massachusetts, Minnesota, Oregon, Washington, and Wisconsin).

In studying the foregoing figures it should be remembered that they cover a period in which cost of living rose with almost unprecedented rapidity—100 per cent from 1913 to 1920.[79] That the wage board method of setting minimum rates did not function with entire success in such a period should not be grounds for condemning it out of hand. Apparently, either the commissions in various states delayed the reconvening of wage boards, because they hesitated to raise minimum rates as rapidly as would have been necessary to keep pace with the cost of living, or else the wage boards were reconvened but worked too slowly to keep minimum wages abreast of prices. In many states both these things happened. The difficulty might have been obviated if the minimum wage statutes had provided for the adjustment of rates once set to changes in cost of living on the basis of some stated price index.

The real test of the wage board method is to be found in the original minimum rates which boards set. Here it must be said that, even on the basis of very conservative budgets which pared expenses to the bone, the minimum wages set in many states did not quite provide for the "necessary cost of living." On the whole, the standard set up in the minimum wage statutes was not quite attained.

[78] This rate remained in force only a few months.

[79] U. S. Bureau of Labor Statistics, "Cost of Living Index Numbers," *Monthly Labor Review*, February 1928, p. 218. Used in Table 32 of Women's Bureau, Bulletin 61, pp. 144 ff.

Did Minimum Wage Laws Raise Wages?

It remains to ask: did the setting of legal minimum rates produce substantial wage increases, even if it did not always provide a living wage? Unfortunately the figures available for answering this question are fragmentary. In some of the ten states in which minimum rates went into effect,[80] the only figures on women's wages thereafter were secured incidentally in the course of very incomplete inspections, and hence cover only a small number of women. In others, the figures are available for so few years that they are inadequate for comparative purposes. In one state the wage figures were recorded as merely under and over certain rates and hence do not tell the whole story.[81] We shall limit our discussion here to the five states for which the best figures are available, California, the District of Columbia, Arkansas, Kansas, and Massachusetts.

On the whole, statistics for these states for the period 1914 to 1923 show very substantial increases in women's wages. But naturally it is difficult to know how far these increases should be attributed to the establishing and raising of legal minimum rates. The period was one of rapidly rising prices and of more or less pronounced labor shortage in many lines. Wages in all industries, for men as well as for women, were rising. It is easy to conclude that general conditions rather than legal minima were responsible for increases recorded in these five states. However, in three of the five states, California, the District of Columbia, and Arkansas, it seems clear from a careful examination of the figures that the fixing of the minimum rates did have a substantial effect in raising women's wages. In Kansas and Massachusetts the evidence is far less conclusive.

The figures which we shall cite were taken from the exhaustive analysis made in the Women's Bureau bulletin already referred to.[82] In this bulletin all the available figures on women's wages in the minimum wage states were summarized in the form of medians and first and third quartiles. This statistical device may require a brief explanation. The median is a form of average.

[80] The ten states were: Arkansas, California, District of Columbia, Kansas, Massachusetts, Minnesota, North Dakota, Oregon, Washington, and Wisconsin. This omits Texas from the list used above since the rates in that state never took effect. See Bulletin 61, p. 11.

[81] This state was Wisconsin, *ibid.*, p. 367.

[82] Women's Bureau, Bulletin 61, Chap. XV.

A median wage is a figure so chosen that half the total number in any group are employed at weekly rates below it and half are employed at rates above it. As for the first quartile, one-quarter get rates below this figure while three-quarters receive rates above it. Finally, the third quartile divides the group so that three-quarters receive rates below this figure and only one-quarter are paid at rates above it. Obviously, in this study the first quartile reflects the condition of the typically low paid worker. Its behavior in relation to the median and third quartile indicates the effect of a minimum wage rate on the lowest paid group. On the other hand, the third quartile shows the condition of the better paid workers. Its behavior in relation to the median shows whether there is any tendency for the minimum wage to become the maximum.

The effect of the legal minimum rates in raising women's wages is most clearly evident in the figures for California. This is not surprising since California had the highest minimum rates in operation for any considerable period of time and covering a considerable proportion of the women wage earners in the state.[83] In California the rate set in 1917 was $10.00 per week, raised in 1919 to $13.50, in 1920 to $16.00. While the median rates for the three principal industrial groups (manufacturing, mercantile, and laundry) show a steady upward trend throughout the period for which figures are available (1914–25), they show an abrupt upward jump each time the minimum rate was raised. For example, in the laundry industry a few months before the $13.50 minimum took effect the median rate was $12.65; a few months after, it was $15.10. The next year the minimum wage was raised to $16.00 and the median increased to $17.10.[84]

The doubter may suggest that these figures merely indicate a rapid general increase in wages throughout 1919 and 1920. But a comparison of these California medians with wage figures for other states lends weight to the conclusion that the minimum rates caused a very appreciable part of these increases. Between 1920 and 1925 the Women's Bureau made studies of women's wages in 14 states.[85] Their findings can be summarized in a median

[83] For short periods the District of Columbia and North Dakota had rates above the California $16.00 rate. Also in the state of Washington an $18.00 rate was in effect in one industry for a very short time. See *ibid.*, App. B.

[84] *Ibid.*, p. 337, Table 60.

[85] See U. S. Department of Labor, Women's Bureau, *Women's Wages in Kansas*, Bulletin 17; *Women in Rhode Island Industries*, Bulletin 21; *Women in Georgia Industries*, Bulletin 22; *Women in Arkansas Industries*, Bulletin 26; *Women in Ken-*

rate for women wage earners in each state. The highest of these 14 medians were $13.85 in Ohio, $14.55 in New Jersey, and $15.00 in Rhode Island.[86] None of these three states had minimum wage laws. In contrast the California medians for the three industrial groups for the same period range from $17.45 to $19.50.[87]

Another fact which the California figures show: after each minimum rate went into effect (with a single exception in one industry) three-quarters of the women in each industrial group were found to be employed at rates above the legal minimum.[88] Thus it is clear that relatively few employers took full advantage of the apprenticeship provisions in most of the orders, which permitted one-third of the women to be employed at less than the minimum. Finally, it is worth noting that the median and third quartile figures for the three industrial groups maintained their relative positions throughout the period. When the medians went up, the third quartiles showed a corresponding increase. For example, the median in manufacturing increased from $12.35 to $18.20 from 1919 to 1925 and the third quartile increased from $14.35 to $21.25. This demonstrates that though minimum wage rates were high in California, they did not tend to become maximum wage rates.[89]

No other state can show figures quite so conclusive as California's on the effect of minimum wage regulation. The figures for the District of Columbia do not cover so long a period nor so wide a range of industries. For one industry, however, the effect

tucky Industries, Bulletin 29; *Women in South Carolina Industries*, Bulletin 32; *Women in Alabama Industries*, Bulletin 34; *Women in Missouri Industries*, Bulletin 35; *Women in New Jersey Industries*, Bulletin 37; *Women in Ohio Industries*, Bulletin 44; *Women in Oklahoma Industries*, Bulletin 48; *Women in Mississippi Industries*, Bulletin 55; *Women in Tennessee Industries*, Bulletin 56; *Women in Delaware Industries*, Bulletin 58.

[86] These are median *rates*, not *earnings*. They were used here in preference to the *earning* figures because the California rate figures were necessarily used in comparison with the minimum *rates*. It happens that for Rhode Island the median *rate* for all industries fell appreciably below the median *earnings* for all industries, due partly to large amounts of overtime worked but chiefly to the inclusion in the earning figures of large groups of high paid piece workers necessarily excluded from the rate figure since they had no weekly rates. The median weekly earnings in Rhode Island were $16.85. In New Jersey also the earnings figure ran slightly above the rate figure for the same reason. The median earnings in New Jersey were $14.95. However it is to be noted that even the high earnings figure for Rhode Island is below the lowest median in California. See Women's Bureau, Bulletins 21, 37, 44, *op. cit.*

[87] Women's Bureau, Bulletin 61, p. 337, Table 60.

[88] This statement is based on a comparison of the rates set in 1917, 1919, and 1920 with the first quartile figures given in *ibid.*, Table 60, p. 338.

[89] *Ibid.*, p. 338.

of establishing a legal minimum wage seems to have been almost as pronounced as in California. The median in the mercantile industry in 1919 prior to the establishment of any minimum rate was $12.90. A minimum wage of $16.50 went into effect shortly thereafter. In 1921 the median had risen to $16.95. The change in the first quartile shows an even greater gain for the lowest paid group. Before the minimum wage was set a quarter of the women in the mercantile industry received $10.75 or less. In 1921 the corresponding group received $16.35 or less.[90]

In Arkansas the minimum wage law passed in 1915 established a flat rate of $7.50 but provided for the setting of flexible rates. The only flexible rate ever set was in the mercantile industry and was limited first to one and then to two cities in the state. However, the effect of this rate seems to have been very considerable, to judge from a comparison of wages in the mercantile and other industries between the first city, Fort Smith, and the rest of the state. In 1920 a minimum rate of $13.25 was put into effect in the mercantile industry in Fort Smith. The available wage figures are for 1922 and show the median earnings for white women in that industry as $15.95 in Fort Smith and $14.95 in the rest of the state. On the other hand, for manufacturing (also white women only) the Fort Smith median was the same as that for the rest of the state; namely $10.10 for both, while in the laundry industry the Fort Smith median was lower than that for the rest of the state, $10.05 as against $10.30.[91]

In Kansas the minimum rates were decidedly low. They were originally set at $8.50 in laundries and mercantile establishments and $11.00 in manufacturing. Throughout the period of rising prices the only increase made was to bring the two $8.50 rates up to $11.00.[92] With these low rates in mind, it is interesting to compare the median wages in Kansas with those in California where the original $10.00 minimum wage was raised to $13.50 in 1919 and $16.00 in 1920. To quote a few comparable figures: in Cali-

[90] *Ibid.*, Table 61, p. 341.

[91] See Women's Bureau, Bulletin 26, *Women in Arkansas Industries.* It should be noted that these figures apply to white women only; also that the figures given in the text for the mercantile industry do not include the five and ten cent stores where the contrast between Fort Smith and the rest of the state is even more striking—the Fort Smith median being $13.30 as against $9.20 in the rest of the state. These figures do not correspond with those given on p. 335 of Bulletin 61, presumably because white and colored are there lumped, also five and ten cent stores and other mercantile establishments.

[92] See Women's Bureau, Bulletin 61, App. B.

fornia in 1919 (after the legal minimum had been raised to $13.50) the median in the laundry industry was $15.10; by 1924 it had risen to $18.70. In Kansas the 1919 median was $10.25 (the minimum rate being $8.50); by 1924, while the minimum had been increased to $11.00, the median had risen only to $11.95. For the manufacturing and mercantile industries the difference between the two states was almost as great.[93] There is no reason why Kansas and California should not have been equally affected by the nation-wide rise in prices. Therefore it seems proper to account for this difference in women's wages in the two states by the difference in the legal minimum rates in effect throughout the period.

The Kansas figures are interesting in one other respect. They show that where the minimum rates are low, the effect they do have is confined to the wages of the lower paid group. This appears from a comparison of the changes in the first and third quartiles in the laundry industry between 1920 and 1922. In the latter year the minimum in that industry was raised from $8.50 to $11.00. The effect on the better paid workers was negligible; the third quartile rose only 15 cents, from $12.85 to $13.00. The effect on the lowest paid group was pronounced; the first quartile rose a dollar and a half, from $9.80 to $11.30.[94] In contrast to this, in California where the minimum rates were far higher, we have seen how the first and third quartiles tended to maintain their relation to each other—that is, an increase in the minimum tended to raise wages all along the line.

The fifth state which we shall discuss is Massachusetts. The Massachusetts figures are by far the most complete. Not only did the minimum wage authorities make very careful payroll studies throughout the whole period, but the state division of labor statistics also collected extensive wage figures up to 1922. In the Women's Bureau study these figures are analyzed with care, but the results are disappointing. The report states: "The Massachusetts figures are the most complete but they are the most inconclusive." [95] Certainly there is little indication that the legal rates effected substantial increases in wages.

For example, if we study the men's and women's clothing industries in which some of the highest minimum rates were set, we find

[93] For the California figures see above; for the Kansas figures see *ibid.*, Table 62, p. 343.

[94] *Ibid.*, p. 345.

[95] *Ibid.*, p. 363.

a marked increase in women's wages in the years following those in which the legal minima were established. But this proves nothing, for we find a similar increase in the stationery goods industry, where no wage rate was set until after the period for which these figures are available, and a much greater increase in the cotton textile industry where no legal minimum was ever set at all. The minimum rate for women employed in the men's clothing industry was set at $9.00 in 1917 and raised to $15.00 in 1919; that in the women's clothing industry set at $8.75 in 1916 and raised to $15.25 in 1920.[96] The wage increases in these industries compared with increases in the stationery goods and cotton textiles can best be seen in the following table:[97]

TABLE II

MEDIAN WAGE FOR WOMEN

YEAR	INDUSTRIES IN WHICH MINIMUM WAGE RATES WERE SET		INDUSTRIES IN WHICH NO MINIMUM WAGE RATES WERE SET	
	Men's Clothing	Women's Clothing	Stationery Goods	Cotton Textiles
1915	$ 8.55	$ 8.85	$ 8.65	$ 8.85
1918	13.15	13.00	13.85	16.20
1920	19.65	17.20	17.20	21.60
1922	16.50	16.40	16.45	17.75

Other comparisons between industries which were covered by wage decrees and industries which were not, would tell the same story. It is clear that a rapidly rising price level, an acceleration of industrial expansion, and a curtailing of immigration with a resulting labor shortage brought big wage increases regardless of legal regulations. If the minimum wage rates had any effect, it was obscured by the operation of these more potent factors.

The Massachusetts figures have a very special interest due to the unique character of the Massachusetts statute. Did the non-mandatory law really prove effective? The figures quoted above and others of a similar character give no help in answering this question. The test of the non-mandatory law must be its ability to bring about appreciable wage increases without the help of other forces operating in the same direction. Since for the most part the period of regulation coincided with a period of general wage in-

[96] *Ibid.*, App. B.

[97] Figures for this table taken from *ibid.*, Table 65, p. 361.

creases, it is difficult to find instances which might serve as tests. However, the wage figures in certain industries after 1920 are such as to cast doubts on the effectiveness of non-mandatory rates. The wages paid women engaged in paper box making afford the clearest illustration. In 1919 the median rate in that industry was $10.15; there was no minimum wage. In the following year a minimum rate was established of $15.50 (the highest rate ever set in Massachusetts), with a learning period of nine months at lower rates. Despite the $15.50 minimum the median in 1920 was only $13.55; in 1921 it dropped to $11.40 and even the third quartile fell below the legal minimum—standing at $14.30.[98] Thus in 1920 and 1921 half the women in the paper box industry were receiving substantially less than the legal minimum and in 1921 that statement applies to three-quarters of the group. By no means all these women were employed in violation of the decree. Many undoubtedly were learners. The Massachusetts wage decrees did not limit the proportion of inexperienced workers who might be employed at sub-minimum rates. However, the figures indicate that the $15.50 minimum was so far above prevailing wages in the industry that employers simply refused to pay it. In 1922 the minimum rate was reduced to $13.50.[99]

In four other industries (candy, knit goods, men's furnishings, and retail stores) the median wage rates paid fell below the legal minimum rates for a single year. The discrepancies between the two figures in these industries were not so great as in paper box making—they ranged from 15 to 45 cents.[100] This was partly due to the fact that the minimum rates in these industries were not so high as in paper box making—they ranged from $12.50 to $14.00.[101] Here again these low paid women were not necessarily employed in violation of the decrees.

Still the fact remains that Massachusetts with a non-mandatory law was the only state in which half the women in any industry were found to be employed at less than the minimum rate at any time when figures were collected.[102] Though the median rates for the various industries in Kansas were relatively low, they were all

[98] These figures are taken from *ibid.*, Table 63, pp. 348, 350.

[99] For the wage decrees in the paper box industry see *ibid.*, App. B, under Massachusetts.

[100] *Ibid.*, p. 358. This comparison of minimum rates and median rates is based on Table 63 and App. B.

[101] *Ibid.*, p. 358.

[102] *Ibid.*, p. 358.

well above the minimum rates. In California and the District of Columbia, though the minimum wage rates were higher, the medians were also higher and well above the legal minima. In California, in many cases, even the first quartiles were above the minimum rate; that is to say three-quarters of the women were employed at wages above the minimum level. On the other hand, in Massachusetts with its non-mandatory law, in certain industries, in certain years, though the minimum wage was not high (compared with legal rates in California or the District of Columbia or with actual medians in other Massachusetts industries) half the women were employed at wages below the minimum. This comparison necessarily raises grave doubts as to the effectiveness of the non-mandatory law.

On the whole, only the California, Arkansas, and District of Columbia figures furnish any clear evidence of general wage increases following the establishment of the legal minimum rates. It is noteworthy that in California and the District the minimum wage rates were the highest set and enforced over any period of time. In Arkansas the one rate set, though not especially high, was clearly above prevailing wages in the state. The conclusion to be drawn is little more than a truism. We may state it thus: only where legal minimum rates were high enough to be appreciably *above* prevailing wages did they have any appreciable effect *on* wages. Where they were set at a high level, as in California, it is clear that they did raise wages above those prevailing in other states. One supplementary statement is in order: In some states where the legal rates were low they obviously helped the typical low paid worker; in other states with similar rates the effect is less apparent. Finally, whether the minimum rate was high or low, there is abundant evidence that it did not tend to become the maximum.

Enforcement

Finally in appraising the minimum wage experiment we must apply the test appropriate to all legislation: did the statutes prove in practice to be enforceable? Here the answer is clearly in the affirmative. The minimum wage statutes in the various states provided that after minimum rates had been established by the procedures described above and had been published and announced in designated ways, they acquired the force of law. Thereafter

failure to observe these minimum rates constituted violations of the statutes.[103] Provision was made for inspection to see whether the rates were being complied with. In cases of violation there were two legal remedies: a civil suit to recover back wages, to be brought by the underpaid worker; a criminal action to be brought by the appropriate prosecuting authority.[104]

In practice an effective administrative method was extensively used which made court action unnecessary. Where it was found either through routine inspection or on complaint that an employer had failed to pay the minimum wage, he was offered the opportunity to make an adjustment by paying the back pay due. In that case no legal action was resorted to. Despite the inadequate appropriations for enforcement purposes substantial sums were collected in this manner.[105] It is evident that violations of minimum wage laws (as compared for example with maximum hour laws) are relatively easy to detect. Further, the workers afford considerable aid in enforcement. They are far more likely to complain when paid less than the minimum than when other kinds of labor laws are violated. Finally, the possibility of requiring the payment of back wages to underpaid workers affords an effective method of enforcement without the necessity of resorting to court action.

[103] This statement of course does not apply to the Massachusetts and Nebraska statutes. See Bulletin 61, App. A.

[104] In Wisconsin action by the state was in the form of a civil action brought by the state. Wisconsin Statutes, Chap. 101, Sec. 101.26.

[105] See Women's Bureau, Bulletin 61, pp. 285–288 for tables showing amounts of back pay collected. In some states it is clear from these tables that back pay was collected from many establishments without prosecution. In other states the numbers of prosecutions is not given but it is known to the writer that back pay was collected in most instances without recourse to court action.

CHAPTER V

HOUR LAWS FOR MEN

Legal limitation of the working hours of women and children has been discussed in previous chapters. This chapter deals with the history of general hour laws, usually called men's hour laws. The latter term is not strictly accurate since women and children were not excluded from the scope of such legislation. But they were little affected by it because usually covered by special laws with higher standards. Up to 1933 hour legislation covering adult men was fragmentary in character. In comparison with similar legislation for women or children, it was to be found in fewer states and covered far fewer occupations. Most of it was narrowly limited in scope to special occupations for which legal protection was especially needed or especially easy to secure. One exception must be made to this general statement: the earliest hour laws, those which set up a "legal day's work" in the absence of contracts to the contrary, usually had a wide coverage.

For the purposes of this chapter men's hour laws have been divided into seven classes. These classes are listed below, together with the number of states which enacted laws in each class prior to 1933.

1. General declaratory, or "legal day's work" laws—permitting contracts for longer hours—17 states.
2. Public works laws—27 states, federal government and territories.
3. Railroad laws—27 states and federal government.
4. Street railway laws—12 states.
5. Bus drivers' laws—7 states.
6. Mining laws—15 states, federal government and Alaska.
7. Laws covering special miscellaneous occupations—19 states.[1]

[1] For lists of states in each of these classes see supplement to this chapter, pp. 560–563. This supplement contains also the references in session laws and compiled statutes for all these laws. Since there is no governmental or other reliable publication in which references to all these statutes can be found it has seemed desirable to include for this chapter these detailed references. This is contrary to the procedure followed in other chapters where some one readily available secondary source could be referred to in which such references can be found.

General Declaratory or "Legal Day's Work" Laws

The foregoing classification follows in general the order in which the first impetus for legislation made itself felt. First came the general declaratory laws which made ten or eight hours the legal working day in the absence of a contract to the contrary. These laws usually applied to laborers and mechanics employed by the day in other than farm or domestic labor. The first of them was a ten-hour law enacted in New Hampshire in 1847. After the Civil War this movement for hour legislation took on much greater vigor. Ira Steward, a prominent labor leader, preached the universal eight-hour day, and organized labor put much of its energies into this field. By 1896, 17 states had enacted hour laws of this kind,[2] the majority of them making eight hours the legal working day. However, all of them permitted contracts for longer hours, and since the courts usually assumed the existence of such contracts wherever longer hours were customarily worked, these laws had little or no effect in shortening hours.[3] They are significant chiefly as a monument to a belief now largely obsolete; namely, that state action in the interest of the workers should not curtail individual liberty to contract, but could be effective without so doing. No laws of this type were enacted after 1896.

Public Works Laws

Before 1896

In the same period in which the general declaratory hour laws were being passed, one particular class of workers was beginning to receive special protection against long hours; namely, those employed on public works, in constructing government buildings, roads, etc. In fact, the first action taken on behalf of this group antedates the first general ten-hour law passed in 1847. For in 1840 President Van Buren issued an executive order establishing the ten-hour day in government navy yards. Legislative action began shortly after when in 1853 the state legislature in New York declared ten hours to be a day's work on all public works.[4] In 1868 Congress passed an eight-hour law for federal public work,[5]

[2] California, Connecticut, Florida, Illinois, Indiana, Maine, Michigan, Minnesota, Missouri, Montana, Nebraska, New Hampshire, New York, Ohio, Pennsylvania, Rhode Island, Wisconsin. See p. 560 of supplement.

[3] See, for example, *Helphensteine* v. *Hartig* (5 Ind. App. Ct. 172, 1892).

[4] See p. 561 of supplement.

[5] See p. 561 of supplement.

and the California legislature passed a similar statute.[6] Other laws of this kind followed.

By 1896 eight states had enacted eight-hour laws for men employed on public works, and the federal government had acted for federal work and for the District of Columbia.[7] In addition, cities were beginning to enact ordinances establishing an eight-hour day for public work within their jurisdictions.

This volume of public works legislation was the result of pressure exerted by organized labor. Special protection for this group was sought, not because of any special hazard either for the public or for the workers involved, but because of the belief that where the government was the employer, its establishment of maximum hours would be more readily approved by the public and by the courts than would laws for other groups. These public works laws, it was believed, would then serve as an entering wedge for more legislation and as an example to private employers. Moreover, legal protection for this group was felt to be justified because of a doubt whether strikes to secure shorter hours could be used against the government.

Most of the early public works laws were no more effective than the general declaratory laws in actually reducing hours. The first act in New York in 1853 [8] specifically permitted agreements for longer hours and the next New York act, passed in 1870 [9] permitted overtime for extra pay. Most of the other laws were similarly ineffective. Up to 1896 only the Colorado law [10] and the second federal act, passed in 1892,[11] expressly prohibited overtime work and provided penalties for the officer or contractor who violated this provision. Further, there was in these years considerable doubt whether a law penalizing contractors for violation was constitutional. The Supreme Court of California in 1890 held invalid a Los Angeles city ordinance of this type.[12]

[6] See p. 560 of supplement.

[7] California, Colorado, Idaho, Indiana, Kansas, Nebraska (1891, Chap. 54, Sec. 2074; declared unconstitutional in *Low* v. *Rees Printing Co.* 41 Neb. 127, 1894), New York, Utah, United States, and District of Columbia. For references see pp. 560–561 of supplement. In addition Texas had passed a nine-hour law for employees in the state departments, Wyoming had put an eight-hour provision for public works into its constitution, and Maryland had passed a law for the city of Baltimore. The Massachusetts law set nine rather than eight hours. See pp. 560–561 of supplement. Wyoming constitution 1889, Article XIX concerning Labor, Sec. I.

[8] See p. 561 of supplement.

[9] Laws of New York, Chap. 385, 1870.

[10] See p. 560 of supplement.

[11] United States Acts of 1891–92, Chap. 352.

[12] *Ex parte C. J. Kuback*, 85 Cal. 274 (1890).

1896–1902

The constitutionality of public works laws was not finally settled until 1903, but nevertheless from 1896 to 1902 the movement for such legislation made considerable headway. Five new states and Puerto Rico passed laws in these years,[13] making a total of 14 states and 3 other jurisdictions covered by the latter date. In the same period the laws passed elsewhere in earlier years were gradually strengthened, as the attempts to enforce them revealed their weaknesses. It was found that to be effective a public works law should cover the political subdivisions (counties, cities, and towns) as well as the state, should specifically include work done under contract as well as directly, and that penalties should be carefully provided for officers of the state and for contractors and subcontractors for any employment beyond eight hours except in cases of grave emergency.

The sequence of public works laws in California may be sketched as illustrative of the slow development of effective legislation in this field. The first act in that state was passed in 1868 [14] as part of a general declaratory eight-hour law. It specified that all contracts for public work must include an eight-hour stipulation, but it provided no penalty. The state supreme court ruled that under it a city could not insert a further provision in a public works contract that the contractor would forfeit his pay if he worked his employees in excess of eight hours.[15] As a result of this decision contractors completely ignored the law unless the unions were strong enough to insist on its observance.

In the hope of improving the situation organized labor secured a new law in 1870,[16] requiring all work on state public buildings to be done under direct supervision of a state official and not under contract. But in the following years even state officials frequently disregarded the eight-hour law unless union pressure was constantly exerted, and of course municipal work continued to be done under contract. Organized labor secured the insertion of an

[13] Minnesota, Ohio, Pennsylvania, Washington, West Virginia. Massachusetts had passed an eight-hour law in 1899, Chap. 344. Texas still had the nine-hour law for employees in the state departments, Wyoming still had its constitutional provision, and Maryland had a law only for Baltimore. See pp. 560–561 of supplement and note 7, p. 542.

[14] Lucile Eaves, *A History of California Labor Legislation*, University of California Publications in Economics, Vol. 2, August 23, 1910, p. 205.

[15] *Drew* v. *Smith*, 38 Cal. 325 (1869).

[16] Eaves, *op. cit.*, pp. 211, 212.

eight-hour provision in the new state constitution of 1879,[17] but this merely made eight hours a legal day's work on all public work and did not affect the situation. In the 'nineties union agitation led the state labor commissioner to make great efforts to enforce the eight-hour day on public works, but with the law as it then stood he found it exceedingly difficult.

Finally, in 1899 organized labor secured the passage of an effective statute [18] which made it unlawful for a contractor to permit an employee on public works to exceed the eight-hour limit except in case of serious emergency, and provided that every contract for public work must stipulate a penalty in case the eight-hour provision was violated of $10 per day for each employee employed overtime. To further strengthen this act, it was amended in 1901 [19] to provide that any contract not containing the eight-hour provision should be null and void.

The constitutionality of the act of 1899 was naturally dubious, since as mentioned above the state supreme court had in 1890 held invalid a Los Angeles ordinance which made it a misdemeanor for the contractor to employ workers more than eight hours. To prevent similar action on the state law, an amendment to the state constitution was passed by the legislature in 1901 [20] and ratified in 1902 specifically authorizing such a statute. Finally, lest there be any doubt on the matter, the legislature in 1903 [21] re-enacted the act of 1899 under the authority of the amendment. In that year also the United States Supreme Court held the similar Kansas law valid under the federal constitution [22] and removed all doubts on that score. Thus in 1903 the objective first sought by organized labor in California in 1868 was finally attained.

California was by no means the only state where the constitutionality of public works legislation was in doubt prior to 1903. The courts of Illinois and Louisiana had also held city ordinances on the subject unconstitutional, and the courts of New York and Ohio had taken the same action in regard to state laws.[23] Prior

[17] Eaves, *op. cit.*, p. 216.

[18] California Acts of 1899, Chap. 114, p. 149.

[19] California Acts of 1901, Chap. 172.

[20] California Constitutional Amendment adopted November 4, 1902, Art. XX, Sec. 17.

[21] California Acts of 1903, Chap. 107.

[22] *Atkin* v. *Kansas*, 191 U. S. 207 (1903).

[23] *Fiske* v. *People ex rel. Raymond*, 188 Ill. 206 (1900); *State* v. *McNally*, 48 La. 1450 (1896); *People* v. *Orange County Road Construction Co.*, 175 N. Y. 84 (1903); *Cleveland* v. *Clements Bros. Construction Co.*, 67 Ohio St. 197 (1902).

to 1903 Kansas was the only state where an enforceable public works law had been upheld. The first Kansas case decided by the state supreme court in 1899 [24] was not carried higher. Finally, a second case went to the United States Supreme Court, where the decision of the Kansas court was sustained in 1903.[25] The court took the position that the state as an employer could stipulate the conditions under which work should be performed, and that in contracting to have work done for it, it could make such stipulations part of the contract.

1903–1910

In the years that followed this decision the movement for public works legislation continued,—more states were added to the list and many of the old laws continued to be strengthened. Where the laws were contested in the courts, they were sustained on the basis of the United States Supreme Court decision, except in New York and Pennsylvania, where the state courts held that under the state constitution municipalities could not be so regulated by the state legislature.

A decision to this effect came in New York in 1904 invalidating the enforceable public works law passed in that state in 1899.[26] Immediately organized labor started a campaign to amend the state constitution. The amendment was opposed by the manufacturing interests of the state on the ground that it was "a dangerous step in the wrong direction. If the state is to invade the freedom of contract in one particular, such a step becomes a justification for a further act of paternalistic meddling." [27] However, the amendment was passed by the legislature and ratified by a two to one vote in a popular referendum in 1905. The next year the legislature re-enacted the act of 1899.[28]

1911–1913

In Pennsylvania the adverse decision by the state supreme court on the constitutionality of the public works law came in 1911 [29]

[24] *In re Dalton* (61 Kansas 257, 1899).
[25] *Atkin* v. *Kansas*, 191 U. S. 207 (1903).
[26] *People ex rel. Cossey* v. *Grout*, 179 N. Y. 417 (1904).
[27] National Association of Manufacturers in *American Industries*, October 16, 1905, p. 4, "Labor's Dangerous Proposed Amendment to the Constitution of New York."
[28] New York Laws 1906, Chap. 506, Vol. II, p. 1394.
[29] *Commonwealth* v. *Casey*, 231 Pa. 170 (1911).

and was at once followed as in New York by an attempt to amend the state constitution. But in Pennsylvania the amendment was defeated by a narrow margin when submitted to popular vote in 1913.[30]

This defeat in Pennsylvania was consistent with a rather surprising situation; namely that the boom period for labor legislation (1911–13) had relatively little effect in the field of public works laws. Missouri and New Jersey were the only states to enact their original statutes in these years.[31] In addition New Mexico put an eight-hour provision for public works into its constitution adopted in 1911, and Alaska passed a territorial act in 1913.[32] But aside from a slight increase in the number of states amending their public works laws in 1913,[33] the only important gain made in this period was the new federal act passed in 1912, which had been sought by organized labor ever since the omissions and defects of the act of 1892 had come to be realized.[34] The earlier act, though it exacted heavy penalties against contractors, was too narrow in its scope, and contractors took advantage of the undefined term "emergency" to exceed the eight-hour limit. The A. F. of L. had made the strengthening of this act one of the chief items of its legislative program.

It is surprising that the general "boom" in labor legislation did not produce more public works laws. Such laws were by no means universal before the boom began. In 1911 there were still 21 states without them.[35] Moreover, many of these 21 states passed their workmen's compensation laws, or their first women's

[30] Joint Resolution No. 2, amending Sec. 7 of Art. 3 of Pennsylvania Constitution, defeated at the general election of November 4, 1913, by vote of 203,663 for, 219,351 against. Smull's *Legislative Handbook*, Pennsylvania 1915, p. 303.

[31] For references see pp. 560–561 of supplement. In addition Connecticut in 1911 passed a law limited to skilled mechanics in state institutions. Acts of 1911, Chap. 282.

[32] *New Mexico* Constitution, Art XX, Sec. 19. *Alaska*, Chap. 7 of 1913, approved April 18, 1913.

[33] Kansas, Chap. 220 (1913); New Jersey, Chap. 253 (1913); Ohio, Acts of 1913, p. 854, Secs. 17-1, 17-2; Oregon, Chap. 1, Secs. 3, 4, 5, 6 (1913); Texas, Chap. 68, Secs. 1, 2, 3 (1913); Wyoming, Chap. 90, Secs. 1 and 2 (1913); *Puerto Rico*, Special Session, Act No. 140 (1913).

[34] U. S. Statutes at Large, Chap. 174 (1912), approved June 19, 1912, effective January 1, 1913.

[35] Alabama, Arkansas, Connecticut, Florida, Illinois, Iowa, Louisiana, Maine, Michigan, Mississippi, Missouri, New Hampshire, New Mexico (constitutional provision only), North Carolina, North Dakota, Rhode Island, South Carolina, South Dakota, Tennessee, Vermont, Virginia.

In some of them individual cities had public works ordinances.

hour laws or important amendments thereto in the 1911–13 period—evidence that they felt the force of the labor legislation wave.[36] Yet none of these states passed public works laws at this time.[37] It seems strange that a kind of labor law which had made such progress in earlier years came to a virtual standstill at the time when other types of labor legislation swept the country.

The probable explanation lies in the difference in the impetus behind public works laws and the types of labor legislation which made such headway in the 1911–13 period. An aroused humanitarian public opinion was largely responsible for accident compensation laws and the special women's measures passed in these years. The public conscience had become concerned over the industrial cripple with his dependent family and the exploited working girl who toiled excessive hours for a niggardly wage. But the public conscience was not troubled about the hours worked by the adult man in the employ of the state or city, and the middle class groups motivated by humanitarian sentiment made no attempt to secure legislative protection for him. Yet it seems probable that organized labor, which had secured public works laws in one state after another through a long period, could have utilized the prevailing favorable sentiment toward labor legislation to make big gains in this field. They did utilize it to secure their long sought federal act. Their failure in the states testifies either to the weakness of organized labor or to their apathy on this question.

1914–1932

In the years from 1914 to 1932 only Illinois passed a new public works law.[38] No other states were added to the list. In the states which had passed laws in earlier years the process of amendment continued to some extent as one weakness or another was discovered. But no important changes were made. It appears that organized labor lost interest in this method of securing shorter working hours either for the special group concerned or, through example, for labor in general.

[36] Of the states without public works laws, Connecticut, Illinois, Iowa, Michigan, New Hampshire, and Rhode Island passed workmen's compensation laws; Connecticut, Illinois, New Hampshire, Rhode Island, South Carolina, Vermont, and Virginia passed important women's hour laws. See Chapter VI on Workmen's Compensation and Chapter III on Women's Hours.

[37] Except for a limited law in Connecticut. See note 31, p. 546.

[38] For reference see p. 560 (supplement).

Railroad Laws

For adult men in private employ the first laws really limiting the working day were those which covered men engaged in operating or moving trains. The chief impetus for these laws was the desire to prevent railroad accidents. The relation of excessive hours of work to railroad accidents was never seriously questioned; figures compiled from the accident reports of the Interstate Commerce Commission for the five-year period, 1901–06, revealed an impressive aggregation of accidents correlated with long hours of work,[39] and in earlier and later tests of the constitutionality of railroad hour laws this relationship was considered so apparent as to demand no proof.[40]

In an endeavor to protect the traveling public, a law was passed in Ohio in 1890 which provided that no employee engaged in the operation of trains should remain on duty more than 24 consecutive hours.[41] At the end of that period he must have a rest period of not less than eight hours. In 1892 the maximum duty was shortened to 15 hours.[42] Other states followed suit, and by the end of 1895 seven states had laws of this type, most of them fixing 16 hours as the maximum without a rest period.[43] Two of them expressly included telegraph operators engaged in directing the movement of trains.[44] Four of these laws also declared ten hours to be a day's work and required extra pay on a pro rata basis for hours in excess of that limit.[45] This second provision was obviously not prohibitive in character. It resembled the general "legal day's work" laws. In contrast, the rest period provision (eight hours rest after 15 or 16 hours on duty) was compulsory and a penalty was provided in all the laws for violation.

From 1896 through 1906 seven more states enacted laws of this

[39] These figures were presented in the United States Senate by Senator La Follette. They covered accidents in which railroads reported 15 or more hours of continuous service and included 204 collisions, 29 derailments, and 64 other accidents, in which 93 people were killed and 281 injured. *Congressional Record*, Vol. 41, pp. 814–819 (January 9, 1907).

[40] *Baltimore & Ohio R. Co.* v. *Interstate Commerce Commission*, 221 U. S. 612 (1911), and cases cited in notes 54 and 56, p. 550.

[41] Ohio Acts of 1890, p. 112.

[42] Ohio, Sec. 9007 of Gen. Code est. 1892. Ohio Laws of 1892, H. B. 657, p. 311.

[43] Colorado, Acts of 1891, p. 284; Florida, Acts of 1893, Chap. 4199; Georgia, Acts of 1890–91, No. 337; Michigan, Acts of 1893, No. 177; Minnesota, Laws of 1893, Chap. 17; New York, Acts of 1892, Chap. 711; Ohio, Acts of 1890, p. 112.

[44] Colorado and Ohio. See note 43 above.

[45] Michigan, Minnesota, New York, and Ohio. See note 43 above.

type [46] and in the one year 1907 eight additional states were added to the list.[47] In 1907 also a more rigid requirement was introduced in ten states in respect to telegraph and telephone operators or others employed in directing the movement of trains.[48] The need for especially short hours for the men engaged in this work, in order to protect the traveling public, had come to be realized. Most of these laws provided that train dispatchers must not work more than eight hours in 24 at a station operating continuously, or more than 13 hours at a small station operated only in the daytime.

In 1907 along with this flood of state legislation, Congress passed a law applying to the territories, the District of Columbia, and to all employees engaged in the movement of trains between states.[49] The standards of the federal act were ten hours rest after 16 consecutive hours of work for trainmen and a nine-hour working day for train dispatchers. This federal action virtually put a stop to the enactment of new state laws, since practically all employees engaged in the movement of trains came under the federal law. A few state statutes were passed in the years immediately after.[50] But in 1914 the United States Supreme Court decided that Congressional action in this field precluded any further state action, even where the state attempted to set higher standards.[51] Since then there has been no further state legislation in this field.[52]

In 1916 Congress passed the statute generally known as the Adamson law, which made eight hours the basic day of men

[46] Arizona, 1903, Act 34; Arkansas, 1903, Act 144; Indiana, 1903, Chap. 46, p. 113; Kansas, 1905, Chap. 342; Missouri, 1905, H. B. 19; Nebraska, 1899, Chap. 77; Texas, 1903, Chap. 31.

[47] Iowa, Montana, North Carolina, North Dakota, Oregon, South Dakota, Washington, and Wisconsin. For references see p. 561 of supplement. This lists 11 railroad laws for 1907; of these Connecticut, West Virginia, and Nevada laws were for the regulation of telegraph and telephone operators and train dispatchers.

[48] Arkansas, 1907, Act 282; Connecticut, 1907, Chap. 242; Maryland, 1906, Chap. 454; Missouri, 1907, H. B. 100, p. 332 (declared unconstitutional, *State* v. *Mo. Pac. R. R. Co.*, 212 Mo. 658, 1908); Nevada, 1907, Chap. 186; New York, 1907, Chap. 627; North Carolina, 1907, Chap. 456; Texas, 1907, Chap. 122; West Virginia, 1907, Chap. 59; Wisconsin, 1907, Chap. 575 (declared unconstitutional, *State* v. *Chicago, Mil. & St. Paul Ry. Co.*, 136 Wis. 407, 1908).

Note that the Maryland law came in in 1906.

[49] For reference see p. 561 of supplement.

[50] California, Massachusetts, Nevada, New Mexico. For references see p. 561 of supplement. (Nevada law passed in 1907.)

[51] *Erie R. Co.* v. *N. Y.*, 233 U. S. 671 (1914).

[52] Except that in 1914 Maryland (Chap. 26) and Massachusetts (Chap. 723) passed laws requiring two days off per month for train dispatchers, signalmen, and telephone and telegraph operators in signal towers or stations.

employed in the operation of trains and required extra pay for hours beyond eight.[53] The act was regarded as largely a wage fixing measure.

The constitutionality of the rest period provisions of the railroad acts was never seriously questioned, since they were clearly enacted in the interest of the traveling public. State acts had been sustained in several states before 1911 [54] when the federal act was sustained unanimously by the United States Supreme Court.[55] The provisions making ten hours a day's work were more open to question. This part of the original Ohio act was held unconstitutional by the circuit court of that state in 1894.[56] The Adamson law was sustained by the United States Supreme Court in 1917.[57] In this decision the power of Congress to regulate hours of railway men was regarded as having been established in 1911; the question at issue was taken to be chiefly the wage regulating feature.

Street Railway Acts

Along with the railroad acts passed in the 'nineties there came legislation in a number of states applying to men employed by street railway lines. Here, too, accidents were found to be caused by excessive hours worked by drivers and conductors. Between 1886 and 1902 twelve states passed laws making ten or twelve hours the working day.[58] Some of these laws were more stringent than the similar provisions in the steam railroad laws. In six states [59] overtime was to be permitted only in emergencies. After 1902 no new states were added to the list of those regulating hours on street railways, and Massachusetts and South Carolina were the only states of the twelve which raised their standards in any way. Massachusetts, in 1912, reduced basic hours from ten to nine but continued to permit overtime for extra pay, and South Carolina, in 1916, reduced basic hours from twelve to ten.[60]

[53] *U. S. Statutes at Large*, Chap. 436, Sept. 5, 1916.

[54] See *People* v. *Phyfe*, 136 N. Y. 554 (1893); *Wheeling Bridge Co.* v. *Gilmore*, 8 Ohio C. C. 658 (1894); *State* v. *Northern Pacific R. Co.*, 36 Mont. 582 (1907); *State* v. *Chicago Mil. & St. Paul R. Co.*, 136 Wis. 407 (1908).

[55] *Baltimore & Ohio R. Co.* v. *Interstate Commerce Commission*, 221 U. S. 612 (1911).

[56] *Wheeling Bridge Co.* v. *Gilmore*, 8 Ohio C. C. 658 (1894).

[57] *Wilson* v. *New*, 243 U. S. 332 (1917).

[58] California, Louisiana, Maryland, Massachusetts, Michigan, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, South Carolina, and Washington. For references see pp. 561–562 of supplement.

[59] California, Louisiana, Maryland, New Jersey, New York, and South Carolina. See note above.

[60] Massachusetts, Chap. 533 of 1912; South Carolina, Chap. 544 of 1916.

Bus Drivers' Laws

A much later development was the regulation of the hours of bus drivers. The motive for this legislation was the same as in the limitation of the hours of railroad and street railway employees, i. e., the protection of the traveling public. In the two years 1931 and 1932 seven states enacted laws regulating the hours of bus drivers.[61]

Mining Laws

Before 1896 only two states, Maryland and Wyoming, had acted to regulate the hours of men employed in coal mines, and both these laws were of the unenforceable type permitting overtime for extra pro rata pay.[62] Beginning in 1896 there came a movement for effective regulation of miners' hours with work beyond the maximum limit permitted only in emergencies. Utah passed an act of this type in 1896. Montana followed the next year, Colorado and Missouri in 1899 and Arizona and Nevada in 1903.[63] Nine more states were added to the list between 1904 and 1920, and similar laws were enacted for Alaska and the United States public domain.[64] By 1921 fifteen states and Alaska and the United States had laws of this type.[65] From then to 1933 no further states were added.

Most of these mining acts were repeatedly amended to widen their scope and strengthen their enforcing provisions. By 1933 in most states they included mines, smelters, and reducing plants of various kinds; in some they included open pits as well as underground mines. The eight-hour day, with which regulation began, was not reduced except in Arizona and Nevada, where time going to and fro underground to the place of work was later made to count as part of the working day. In the other states the eight-hour limit applied to work at the face.

Unlike the steam railroad, street railway, and bus drivers' acts, these mining laws obviously were not intended to protect the con-

[61] Alabama, Arizona, Georgia, Iowa, Mississippi, Nebraska, and New York. For references see p. 562 of supplement.

[62] Maryland, Public Local Laws, 1884, Chap. 427, Code of 1888, Art. 12, Sec. 115 (limited to two counties); Wyoming, Acts of 1890–91, Chap. 83.

[63] For references to acts see p. 562 of supplement.

[64] California, Idaho, Kansas, North Dakota, Oklahoma, Oregon, Pennsylvania (hoisting engineers in anthracite mines only), Washington, and Wyoming. For reference to acts see p. 562 of supplement. Colorado law declared unconstitutional in 1899 (*In re Morgan*, 26 Col. 415, 1899), new law passed in 1905, Laws of 1905, Chap. 119.

[65] Arizona, California, Colorado, Idaho, Kansas, Missouri, Montana, Nevada, North Dakota, Oklahoma, Oregon, Pennsylvania, Utah, Washington, and Wyoming. For reference to acts see p. 562 of supplement.

suming public. Long hours worked by miners did not present any particular menace to the consumers of coal or other mineral products.[66] Limitation of hours in this field was secured largely through the efforts of organized labor seeking to protect a class of workers subjected to particularly dangerous and unhealthful employment. It is important to note that, though the mining acts were passed chiefly in states in which either coal or metal mining was an important industry, the most important mining states did not pass such laws. Pennsylvania, clearly the leading state, had up to 1933 no hour law for miners, except an act passed in 1911 limited to hoisting engineers in anthracite mines. West Virginia, Kentucky, Illinois, Alabama, and Ohio, the next five states in number of miners employed, had no law whatever. The Kansas act applied only to lead and zinc mines, although coal mines in that state employed far more workers.[67]

Curiously enough, of the states which did not pass hour laws for miners, two, Illinois and Ohio, were in strongly unionized fields, while a third, West Virginia, was notorious for years for its success in keeping the union out. Apparently the absence of legislation was due in some states to the strong opposition of the mine operators, in others to the strength of union organization which made it easy to secure the eight-hour day by trade union action and rendered legislation unnecessary.

Since the safety of the consuming public was not involved in these statutes, their constitutionality was very much in doubt. Fortunately, the first of them, enacted in Utah in 1896, was upheld by the state supreme court, and when carried to the United States Supreme Court, was also sustained there in the famous case of *Holden* v. *Hardy* in 1898.[68] This decision, of course, encouraged the enactment of similar laws in other states.

Miscellaneous Hour Laws

The remaining hour laws for men covered a variety of miscellaneous occupations which in one state or another seemed to merit special regulation. Before 1896 while the New England states were passing laws to regulate women's hours which were intended to re-

[66] This argument was used by the Colorado Supreme Court in declaring its eight-hour law for miners unconstitutional in 1899. *In re Morgan*, 26 Colo. 415, 1899.

[67] Census of 1930, Pennsylvania, Vol. IV, Table 3, p. 1383. Census of 1930, *Mines and Quarries* (1929), Table 3, p. 31, Table 2, p. 122.

[68] 169 U. S. 366, 1898. For a discussion of this case see Chap. IX, pp. 667–669.

duce men's hours in the textile industry as well, two southern states, Georgia and South Carolina, tackled the problem the other way and enacted eleven hour laws limited to the textile industry but applying to all persons employed therein.[69] In these statutes contracts for longer hours were declared void and contrary to law. Maryland passed a ten-hour law for the same industry but permitted contracts for longer hours by male employees over twenty-one years.[70] New York picked out bakers and brickyard workers as persons needing special protection and granted them a ten-hour day.[71] The brickyard act was made innocuous in 1896 by an amendment expressly permitting agreements for longer hours.[72] Montana in this early period for some reason chose to grant an eight-hour day to stationary steam engineers.[73]

The decision in *Holden* v. *Hardy* in 1898 held that a health hazard to the workers involved was a valid ground for limiting the hours of labor of men. This decision might have been expected to stimulate the enactment of laws for many other special groups in addition to the miners specifically affected by the decision. But the years that followed were barren ones in this respect. New York added drug clerks to the list of regulated occupations, though with the high maximum of 136 hours in two weeks.[74] This law was probably intended as a protection to the purchasers of drugs,—analogous to the railroad hour laws to protect the traveling public. Three states joined New York in regulating bakers' hours,[75] and North Carolina joined the southern movement to regulate hours for men as well as women, her law including all manufacturing, not merely textiles.[76]

These few statutes were passed before 1905, the year in which the New York bakers' law was held unconstitutional by the United States Supreme Court, because it could see no special health hazard in that occupation.[77] This decision in *Lochner* v. *N. Y.*, was, of course, a very important event in the history of constitutional law, as it relates to labor. It was the first decision involving labor legis-

[69] For reference to acts see p. 563 of supplement.
[70] For reference to act see p. 563 of supplement.
[71] For reference to acts see p. 563 of supplement.
[72] New York, Chap. 789 of 1896, Vol. I amending Chap. 691 of 1893.
[73] For reference to act see p. 563 of supplement.
[74] New York, Chap. 453 of 1900, Secs. 1–5.
[75] Missouri, New Jersey, and Ohio. For reference to acts see p. 563 of supplement.
[76] North Carolina, Chap. 473 of 1903, Sec. 2.
[77] *Lochner* v. *N. Y.*, 198 U. S. 45 (1905).

lation in which the United States Supreme Court reversed a state court of last resort, and declared that a state legislature had exceeded the bounds of the police power in its efforts to protect the wage earner. Specifically, it restricted materially the field within which the constitutionality of hour legislation could be regarded as unquestioned. Until the decision in *Muller* v. *Oregon* [78] three years later, it endangered the whole movement to limit women's hours as well as men's. And even after the Oregon women's ten-hour law was upheld, the influence of the Lochner decision remained; it was quoted in many subsequent decisions.

But the effect of the Lochner decision on men's hour legislation, the subject of its direct reference, was probably very slight. Statutes for men in narrowly restricted occupations continued to trickle in through the next few years—similar in kind and number to those in the years preceding. When the years 1911 to 1913 brought a mass of labor laws of other kinds, the field of men's hours was virtually unaffected. That this was not due to the blighting effect of the Lochner decision seems clear; for even in those industries and occupations where regulation was clearly constitutional, there was almost no new legislation. We have already discussed the paucity of new laws in the public works field. There were only two new railroad acts,[79] probably due to the Congressional act of 1907. But no new street railway laws were passed after 1902; and though the miners of many other states still lacked protection, only Pennsylvania and Alaska were added to the list in the 1911–13 period.[80] A few other scattered statutes came at this time. Only two of them seem in any way to belong to the labor legislation movement of those years; namely, the ten-hour laws for persons employed in manufacturing plants passed in Mississippi in 1912 and Oregon in 1913.[81] And this Mississippi law really belongs with the statutes previously passed in three other southern states.

The Movement for General Eight-Hour Laws

The Oregon ten-hour law for all persons employed in manufacturing was a decided departure from previous legislation in

[78] *Muller* v. *Oregon*, 208 U. S. 412 (1908).

[79] California and New Mexico. For reference to acts see p. 561 of supplement.

[80] See p. 562 of supplement.

[81] See p. 563 of supplement.

that part of the country. It stands today as the only permanent record on the statute books of an active movement on the Pacific Coast in the years 1911 to 1914 to achieve comprehensive limitation of men's hours through legislative enactment. This Oregon ten-hour law was passed in 1913. In the following year general eight-hour laws to cover all industries were voted on in popular referendum elections in California, Oregon, and Washington, but were defeated in all three states. This Pacific Coast campaign was led by the state federations of labor in the three states. To understand its significance one must review the attitude of organized labor toward such legislation over a long period.

Prior to the organization of the A. F. of L., the American labor movement, in so far as it was a united whole, had sought to secure the universal eight-hour day through legislative action. The product of its endeavors had been first the ineffectual declaratory laws, later the somewhat more effective legislation for men employed on public works and for miners and other special groups. The goal had continued to be the universal eight-hour day. However, while this movement continued, certain skilled groups with strong bargaining power had little enthusiasm for it. Their attitude was voiced at an early convention of the A. F. of L. in 1884 by a delegate from the International Typographical Union, Frank K. Foster. He protested against the assumption of leadership by the new federation of the movement for an eight-hour day by legislation. Urging that the goal be secured by a general strike, he declared: "A united demand for a shorter working day, backed by thorough organization will prove vastly more effective than the enactment of a thousand laws depending for enforcement upon the pleasure of aspiring politicians or sycophantic department officials." [82]

Though assuming no aggressive leadership, the American Federation of Labor did not take an actual stand against general eight-hour legislation. In fact in 1894 it restated its position as favoring such laws.[83] In the 'nineties and the first decade of the twentieth century the success in securing laws in many states for special groups, such as miners, railroad workers, and men employed on public works had some effect in stimulating a movement for general eight-hour statutes. In 1911 the general movement for

[82] American Federation of Labor, Proceedings, 1884, p. 20.
[83] *Ibid.*, 1894, Resolution No. 65, p. 50.

labor legislation of all kinds coincided with the enactment of initiative and referendum laws in a number of states, making it possible to submit such a question as a general eight-hour law directly to the electorate. This combination of circumstances encouraged the state federations in the Pacific Coast states to press their demands for such a law.

With little or no discussion the A. F. of L. convention of 1913 passed a resolution recommending to its state branches that they work for eight-hour laws for women and children and that where such laws already existed, an agitation should immediately begin for the enactment of a general eight-hour law.[84] In the three Pacific Coast states the state federations at once initiated inclusive eight-hour laws for men for submission to popular referendum in 1914. But within the A. F. of L. the sentiment in favor of such legislation was by no means unanimous. On the contrary, many of the skilled trades which had secured shorter hours through trade union action were strongly opposed, fearing that such legislation, if enacted, would weaken their unions. President Gompers was known to sympathize with this attitude. During the campaign on the Pacific Coast the manufacturers circulated the statement that the president of the A. F. of L. opposed a compulsory eight-hour law. Though urged by the trade unionists on the Coast to make a positive statement to the contrary, President Gompers refused to do more than declare that he had given no opinion on the pending legislation.

In the 1914 convention President Gompers was hotly attacked by the Westerners as having contributed materially to the defeat of the referenda. He and other representatives of the skilled trades took the position that "general eight hour legislation" referred to in the resolution of the preceding year meant public works legislation and that they had never favored inclusive legislation of the type sought in the Pacific Coast states. After a hot debate the convention reversed its position of the preceding year and by a clear majority adopted a resolution opposing such legislation.[85] In 1915 the question was again raised, and again the convention voted decisively in favor of trade union rather than legislative action.[86]

[84] *Ibid.*, 1913, p. 285.
[85] *Ibid.*, 1914, pp. 421, 443.
[86] *Ibid.*, 1915, Resolution 152, pp. 484–504.

The line up on the question at these conventions is interesting. The leading advocates of legislative regulation of hours were the state federations, which represented to a considerable extent the weaker unions, unable to gain a short day through trade union action. They were supported by the representatives of unions which had secured legislative protection for themselves and wanted this protection extended. These were the miners and the railway telegraphers; and also the machinists, who had benefited greatly by public works laws. On the other side were the representatives of the strong unions of skilled craftsmen, such as the printers and the building tradesmen. These unions had used collective bargaining successfully to reduce hours and were emphatically opposed to the other method, fearing that, if their gains were thus universalized, their unions would be materially weakened. As the A. F. of L. is organized the state federations have little voting strength in the conventions. Hence it is not surprising that their proposition was voted down decisively.[87]

This reversal of position by the A. F. of L., combined with the general reaction against labor legislation, effectually put an end to the movement for general enforceable hour legislation for men and even reduced the amount of legislation sought for special groups. In 1917 the United States Supreme Court upheld Oregon's ten-hour law for men in all manufacturing industries.[88] But this favorable decision had no effect in stimulating the movement in other states. A few more laws were passed for men in especially unhealthful occupations, such as compressed air or cement and plaster mills.[89] But up to 1933 Alaska was the only part of the United States to attempt a more general statute. There an eight-hour law was passed in 1917, so drastic that it prohibited salaried workers as well as wage earners from working more than eight hours a day. Also it included partners in a business or officers of a corporation. It was so worded that it made liable for violation the person who worked more than eight hours.[90] On account of its extreme character, this act was declared unconstitutional by the

[87] *Ibid.*

[88] *Bunting* v. *Oregon*, 243 U. S. 426 (1917).

[89] Colorado, cement and plaster manufacturing plants, 1927; New Jersey, condensed air, 1914; New York, compressed air, 1909; Oregon, eight hours for saw and planing mills, 1923 (not to go in force until California, Washington, and Idaho passed similar legislation); Pennsylvania, compressed air, 1917.

For reference to statutes see p. 563 of supplement.

[90] Alaska, Chap. 55 of 1917.

district court for Alaska.[91] It was never carried to the United States Supreme Court.

Aside from Alaska, Oregon remained the state in which the movement to secure hour legislation for men seemed to have the greatest vitality. In 1923 an eight-hour law was passed in that state for saw mills and lumber camps, to take effect when California, Washington, and Idaho had passed similar legislation.[92] This they did not do.

Judging by the paucity of any kind of hour legislation for men enacted between 1918 and 1932, there was little desire to use the power of the state to reduce the length of the working day for adult men. While the constitutionality of an inclusive eight-hour law remained somewhat in doubt, there is no ground for thinking that it was the courts which were retarding this kind of legislation. Rather it appears that no group was interested in conducting the campaigns necessary to secure it. For the most part the general public was never particularly interested in hour legislation for adult men. The chief force behind the movement for such laws was always organized labor, though where a particular danger to the public or a special health hazard could be shown, general support could sometimes be enlisted.[93] From 1918 to 1932 organized labor apparently felt that it had secured virtually all the legislative protection as to hours that it wanted. For the rest it preferred to gain the shorter work day by direct trade union action.[94]

[91] *U. S.* v. *Northern Commercial Co.*, 6 Alaska Rep. 94 (1918).

[92] For reference to act see p. 563 of supplement.

In 1921 Michigan amended her constitution expressly to authorize the legislature to enact hour laws for men, women, and children, but aside from its declaratory ten-hour law passed in 1885, it enacted no hour legislation for men either before or after 1921. Michigan Public Acts, 1921, Art. 5, Sec. 29, p. 834.

[93] The laws limiting the hours of bus drivers enacted since 1931 belong to this class of legislation. See p. 562 of supplement.

[94] Beginning in 1930 shorter hours were urged as a remedy for unemployment, and in a few states legislation for this purpose was sought. In Wisconsin in 1931 an emergency general eight-hour bill (Bill No. 90A introduced January 30, 1931) was vigorously pressed by the state Federation of Labor, but without success. Not until 1933, however, did the American Federation of Labor reverse the position taken in 1914 and actively advocate general hour legislation—namely a national 30-hour week. But this movement does not belong to the period covered by this history.

See American Federation of Labor, Proceedings, 1932. Resolution 1, p. 123—resolution to ask Congress to enact legislation for a shorter work day and shorter work week, unanimously adopted after consideration by Committee on Shorter Work Day and Work Week. Resolution 51, p. 167—resolution to ask Congress to amend constitution to provide for 30-hour week, referred to Committee on Legislation, not approved on grounds of impracticability (citing difficulty of child labor amendment)

The prevailing attitude of organized labor toward the general limitation of men's hours by law was frequently attacked as a selfish one. It was charged that the well-organized skilled workers, who were able to secure shorter hours for themselves through union action, were selfishly refusing to help achieve the same goal for the great mass of the unskilled and unorganized by the only feasible method, i. e., legislation. No doubt there is some validity in this accusation. In the period of which we are writing the A. F. of L. was dominated by the skilled trades, and their interests largely determined its program and policies. And yet the refusal of the A. F. of L. leaders to work for general hours laws probably contained an element of wisdom. They may have realized that statutes limiting hours are of all labor laws about the most difficult to enforce; that inspection in this field has rarely proved an entirely effective instrument; that workers (lured by overtime pay) are altogether too apt to connive with employers in violating hour laws. In short, the labor leaders were probably entirely sincere, and in a measure correct, in their belief that the protection apparently secured for unorganized workers through hour laws might prove somewhat illusory.

and on grounds that history had shown that progress was only made through union action.

See United States Congress, *Miscellaneous Senate and House Hearings 1932–33*, 72d Congress, January 5, 1933. Appearance of President W. Green of American Federation of Labor before Committee on Labor in favor of the Black 30-hour week bill. (In his testimony President Green argued the necessity of the 30-hour week and said it could only be brought about in a universal manner by legislation or a universal strike—that voluntary action by individual employers would never be successful.)

SUPPLEMENT TO CHAPTER V

STATES ENACTING HOUR LAWS FOR MEN, WITH DATES AND REFERENCES TO THE STATUTES

(References here given are to both session laws and compiled statutes except where laws were subsequently repealed or dropped and hence do not appear in compiled statutes.)

1. General declaratory laws permitting contracts for longer hours—17 states.

California, 1853, Laws of 1853, Chap. 131, p. 187; *Connecticut*, Laws of 1855, Chap. 45; *Florida*, 1874, Chap. 90 of McClellan's Digest of 1881; *Illinois*, 1867, Hurd's Revised St. (1885), Chap. 48, p. 592; *Indiana*, Elliott's Sup. of 1889, Chap. 28, Sec. 1606; *Maine*, 1848, Laws of 1848, Chap. 83, Act. app. Apr. 10; *Michigan*, 1885, Act No. 137; *Minnesota*, General Statutes of 1878, edition of 1883, Chap. 24; *Missouri*, 1867, Revised Statutes of 1889, Sec. 6353; *Montana*, Codes and Statutes Enacted—Annotated Codes of 1895, Chap. II, Art. I, Sec. 2724; *Nebraska*, Chap. 90, Compiled Statutes of 1887; *New Hampshire*, Laws of 1847, Chap. 488; *New York*, Acts of 1867, Chap. 856; *Ohio*, Laws of 1852, p. 187; *Pennsylvania*, Laws of 1848, No. 227; *Rhode Island*, Laws of 1853, p. 245; *Wisconsin*, 1867, Statutes of 1923, Sec. 103.38.

2. Public Works laws—27 states, federal government, and territories.

Arizona, 1912, Chap. 78, Revised Code, 1928, Sec. 1350; *California*, 1868 (Eaves, Lucile, *A History of California Labor Legislation*, 1910, p. 205), Sims' Deering's Codes, 1906, Penal Code, Sec. 653c as amended by Acts of 1927, Chap. 257, Acts of 1929, Chap. 793, and Acts of 1931, Chap. 1144; *Colorado*, 1893, Chap. 113, Compiled Laws, 1921, Sec. 4175; *Delaware*, 1903, Chap. 410, Revised Code, 1915, paragraph 2160, Sec. 45 (limited to Wilmington); *Idaho*, Acts of 1890–91, p. 169, Code, 1932, Secs. 43–701 to 43–703; *Illinois*, 1931, H. B. 307, Smith-Hurd Revised Statutes, 1931, Chap. 48, Secs. 39a–39f; *Indiana*, 1889, Chap. 80, Burns' Annotated Statutes, 1926, Secs. 9366–9369; *Kansas*, 1891, Chap. 114, Revised Statutes, 1923, Chap. 44, Art. 2, Sec. 201 (as amended by Acts of 1931, Chap. 214), and Secs. 202–205; *Kentucky*, 1910, Chap. 123, Carroll's Statutes, 1930, Sec. 2290b; *Maryland*, 1892, Chap. 286, Public Local Laws, 1930, Art. 4, Sec. 516 (limited to Baltimore); *Massachusetts*, 1890, Chap. 375, Sec. 1, General Laws of 1921, Chap. 149, Sec. 30, as amended by Acts of 1923, Chap. 236; *Minnesota*, 1901, Chap. 310, General Statutes, 1923, Secs. 4088, 4089; *Missouri*, 1913, p. 420, Secs. 237–239, Revised Statutes, 1929, Sec. 6712 (limited to cities of second class); *Montana*, 1905, Chap. 5, Revised

Code, 1921, Sec. 3079 as amended by Acts of 1929, Chap. 116; *Nevada*, 1903, Chap. 37, Hillyer's Compiled Laws, 1929, Secs. 6170–6172, 10460; *New Jersey*, 1911, Chap. 243, Sec. 1, Compiled Statutes, Supplement 1911–24, Secs. 107–78d, 107–78e as amended by Acts of 1932, Chaps. 176, 230; *New York*, 1853, Chap. 641, McKinney's Consolidated Laws, 1930, Vol. 15, Book 30, Art. 8, Sec. 220 (see editor's note), as amended by Acts of 1931, Chap. 785; *Ohio*, 1900, p. 357, General Code, 1932, Title 1, Chap. 1, Sec. 17–1; *Oklahoma*, 1908, Chap. 53, Compiled Statutes, 1931, Chap. 52, Art. 4, Secs. 10872–10874; *Oregon*, 1907, Chap. 190, Code, 1930, Sec. 49–704 as amended by Acts of 1931, Chap. 330; *Pennsylvania*, 1897, Act 379, Statutes 1920 (Pepper and Lewis), Sec. 18270–1; *Texas*, 1879, Chap. 137, Revised Civil Statutes, 1925, Articles 5165–5167; *Utah*, 1894, Territorial Acts, Chap. 11, Compiled Laws, 1917, Sec. 3666; *Washington*, 1899, Chap. 101, Remington's Revised Statutes, 1922, Secs. 7642–7647; *West Virginia*, 1899, Chap. 17, Code, 1931, Chap. 21, Art. 4, Sec. 2; *Wisconsin*, 1909, Sec. 1729, Statutes, 1931, Sec. 103.41; *Wyoming*, 1913, Chap. 90, Revised Statutes, 1931, Sec. 63–101; *United States*, 1868, United States Statutes at Large, Chap. 72, p. 77, United States Code, Title 40, Secs. 321–326, 44 Statute, Part I, p. 1307; *District of Columbia*, 1892, United States Statutes at Large, Vol. 27, p. 340, Chap. 352, Code, 1929, Secs. 307–309; *Alaska*, 1913, Chap. 7; *Hawaii*, 1903, Act 37, Revised Laws, 1925, Sec. 175 as amended by Acts of 1925, Chap. 44; *Puerto Rico*, 1902, Sec. 624, 1913, No. 140, 1923, No. 11, 1925, No. 54.

3. Railroad laws—27 states and federal government.

Arizona, 1903, Act 34; *Arkansas*, 1903, Act 144; *California*, 1911, Chap. 484; *Colorado*, 1901, Chap. 89; *Connecticut*, 1907, Chap. 242; *Indiana*, 1903, Chap. 46; *Iowa*, 1907, Chap. 103; *Kansas*, 1905, Chap. 342; *Maryland*, 1906, Chap. 454; *Massachusetts*, 1914, Chap. 723; *Michigan*, P. A. 1893, No. 177, Compiled Laws, 1929, Sec. 8492; *Minnesota*, 1903, Chap. 69; *Missouri*, 1905, H. B. 19; *Montana*, 1907, Chap. 5; *Nebraska*, 1899, Chap. 77; *Nevada*, 1907, Chap. 186; *New Mexico*, 1912, Chap. 62; *New York*, 1892, p. 1466, McKinney's Consolidated Laws of New York, 1930, Vol. 15, Art. 5. Title I, Sec. 106(2); *North Carolina*, 1907, Chap. 456; *North Dakota*, 1907, Chap. 207; *Ohio*, General Code Est. 1892, Sec. 9007, Laws of 1892, H. B. 657, p. 311; *Oregon*, 1907, Chap. 143, Code of 1930, Sec. 62–1602; *South Dakota*, 1907, Chap. 220; *Texas*, 1903, Chap. 31; *Washington*, 1907, Chap. 20 (declared unconstitutional, *N. Pac. P. R. R. Co.* v. *Washington*, 222 U. S. 370, 1912); *West Virginia*, 1907, Chap. 59; *Wisconsin*, 1907, Chap. 655, Statutes, Sec. 192.37; United States Act of Congress, March 4, 1907 (34 Stat. 1415–1417), Act of Congress, September 3, 1916 (39 Stat. 721).

4. Street railway laws—12 states.

California, Statutes 1887, p. 101, Political Code (Deering), 1931, Sec. 3246; *Louisiana*, 1886, Act 95, Revised Laws, 1897, p. 766, as

amended by Acts of 1902, No. 122; *Maryland*, 1898, Chap. 123, Sec. 793, repealed by Acts of 1927, Chap. 561; *Massachusetts*, 1894, Chap. 508, Sec. 9, General Laws, 1932, Chap. 161, Sec. 103; *Michigan*, 1893, Act 177, Compiled Laws, 1929, Sec. 8492; *New Jersey*, P. L. 1887, p. 145, Compiled Statutes, 1910, p. 5008, Sec. 57; *New York*, 1887, Chap. 529, McKinney's Consolidated Laws of New York, 1930, Vol. 15, Book 30, Art. 5, Title I, Sec. 106(1), p. 60; *Ohio*, 1892, Sec. 9007 of the General Code, repealed by H. B. 272 of 1913; *Pennsylvania*, 1887, P. L. 13, paragraph 1, Purdon's Statutes Annotated, 1930, Title 67, Sec. 1311; *Rhode Island*, 1902, January Session, Chap. 1004, General Laws, 1923, Chap. 252, Sec. 3661; *South Carolina*, 1897, Chap. 294, Code of Laws, 1932, Sec. 1479, 1480; *Washington*, 1895, p. 192, Sec. 1, Remington's Revised Statutes, 1932, Sec. 7648.

5. Bus drivers' laws—7 states.

Alabama, 1931, Act No. 273, p. 314, Sec. 15; *Arizona*, 1931, Chap. 6, Sec. 1; *Georgia*, 1931, Act No. 243, Sec. 25, p. 210; *Iowa*, 1931, Chap. 122; *Mississippi*, 1932, Chap. 332, Sec. 7; *Nebraska*, 1931, Chap. 102; *New York*, 1932, Chap. 471, Sec. 167.

6. Mining laws—15 states, United States, and Alaska.

Arizona, 1903, Act 8, Revised Code, 1928, Secs. 1354, 1356; *California*, 1909, Chap. 181, and 1913, Chap. 186; *Colorado*, 1899, Chap. 103, declared unconstitutional (*In re Morgan*, 26 Colo. 415, 1899), 1905, Chap. 119, Compiled Laws, 1921, Sec. 4173; *Idaho*, 1907, H. B. 32, p. 97, Code of 1932, Secs. 43–704 to 43–706; *Kansas*, 1917, Chap. 242, Revised Statutes, 1923, Secs. 49–282, 49–283; *Missouri*, 1899, H. B. 271, p. 312, Revised Statutes, 1929, Secs. 13206–13209, 13622, 13623; *Montana*, 1897, H. B. 122, p. 67, Revised Codes, 1921, Secs. 3068–3072, 3073 (as amended by Acts of 1929, Chap. 116), 3079 (as amended by Acts of 1929, Chap. 116); *Nevada*, 1903, Chap. 10, Compiled Laws, 1929, Secs. 2794, 2795, 10237–10243; *North Dakota*, 1919, Chap. 168, Sec. 88, Compiled Laws, Supplement 1913–25, Sec. 3084a88; *Oklahoma*, 1907.8, Chap. 53, S. B. 26, Art. 11, Sec. 8, Statutes, 1931, Chap. 55, Art. 1, Sec. 11112; *Oregon*, 1907, Chap. 161, Code of 1930, Sec. 49–604; *Pennsylvania*, 1911, p. 102, Secs. 1, 2, Statutes (West's) of 1920, Sec. 15251 (mine hoisting engineers only); *Utah*, 1896, Chap. 72, Compiled Laws, 1917, Sec. 3667; *Washington*, 1909, Chap. 220, Remington's Revised Statutes, 1910, Secs. 6583–6585; *Wyoming*, 1909, Chap. 17, Revised Statutes, 1931, Secs. 63–103 to 63–105; *United States*, Acts of Congress, February 25, 1920, 41 Statute 449; *Alaska*, 1913, Chap. 29, 1915, Chap. 6, 1917, Chap. 4. This does not include Maryland, which passed a law in 1884 for two counties, Laws of 1884, Chap. 427 (Public Local Laws, Code of 1888, Art. 12, p. 165). However, this law was unenforceable since it permitted overtime for extra pay.

7. Laws covering special miscellaneous occupations—19 states.

Arizona, electric plants, 1912, Chap. 50, Revised Code, 1928, Sec. 1357; *Arkansas*, saw and planing mills, 1905, Act 49, Digest 1921, Sec. 7082; *California*, drug clerks, 1905, Chap. 34, Deering General Laws, 1931, Act 5887, Sec. 1; *Colorado*, cement and plaster manufacturing plants, 1927, Chap. 87; *Georgia*, cotton and woolen manufacturing plants, 1889, No. 599, p. 163, Park's Annotated Code, 1914 (and supplement), Sec. 3137; *Louisiana*, stationary firemen, 1912, Act 245 (held unconstitutional, *State* v. *Barba*, 132 La. 738, 1912–13), 1914, Act 201 (held unconstitutional, *State* v. *Legendre*, 138 La. 154, 1915–16); *Maryland*, textile plants, 1888, Chap. 455, Annotated Code, 1924, Art. 100, Secs. 1–3; *Mississippi*, manufacturing establishments, 1912, Chap. 157, Code of 1930, Sec. 4646; *Missouri*, bakers, 1899, H. B. 162, p. 274 (declared unconstitutional, *State* v. *Mikeicek*, 225 Mo. 561, 1910); *Montana*, stationary steam engineers, 1893, p. 67, Codes Annotated (1895), Part 3, Title VII, Secs. 3370–3372; telephones, 1909, Chap. 75, Revised Codes, 1921, Sec. 3074; *Nevada*, plaster and cement works, 1909, Chap. 44, Compiled Laws, 1929, Secs. 10242–10243; *New Jersey*, bakeries, 1896, Chap. 181, Compiled Statutes, Supplement 1911–24, Sec. 107–141A(7), condensed air, 1914, Chap. 121, Sec. 10, Compiled Statutes, Supplement 1911–24, Sec. 107–140A(10); *New York*, brickyards, 1893, Chap. 691, McKinney's Consolidated Laws, 1930, Vol. 15, Book 30, Art. 5, Sec. 163, bakeries, 1897, Chap. 415, Art. VIII, Sec. 110 (held unconstitutional, *Lochner* v. *N. Y.*, 198 U. S. 45, 1905); drug clerks, 1900, Chap. 453, McKinney's Consolidated Laws, 1930, Book 44, Sec. 236, compressed air, 1909, Chap. 291, McKinney's Consolidated Laws, 1930, Book 30, Sec. 134a, grocery clerks, 1915, Chap. 343, McKinney's Consolidated Laws, 1930, Book 44, Sec. 236a; *North Carolina*, manufacturing establishments, Public Laws, 1903, Chap. 473, Sec. 2, Consolidated Statutes, 1919, Sec. 6554; *Ohio*, bakeries, 1896, H. B. 592, p. 393, Sec. 1, Bates' Annotated Statutes, 1897, Secs. 4364–71, repealed Bates' Annotated Statutes, 2d edition, Secs. 4364–71; *Oregon*, manufacturing establishments, 1913, Chap. 102, Code of 1930, Sec. 49–601, saw and planing mills, 1923, Chap. 122 (not to go in force until California, Washington, and Idaho have passed similar legislation); *Pennsylvania*, compressed air, 1917, Act 364, Sec. 10, p. 1088, Purdon's Statutes Annotated, 1931, Title 43, Secs. 448, 450; *South Carolina*, cotton and wool manufacturing establishments, cotton mills, 1892, No. 39, Code of Laws, 1932, Sec. 1466; *Utah*, mercantile houses, 1915, Chap. 23 (declared unconstitutional, *Saville* v. *Corless*, 46 Utah 496, 1915).

CHAPTER VI

EMPLOYERS' LIABILITY AND WORKMEN'S COMPENSATION [1]

By *Harry Weiss*

The Period of Employers' Liability

Legislation dealing with compensation for industrial accidents had its genesis in popular dissatisfaction with the common-law rules on this subject as they developed during the nineteenth century. The central problem at issue was who should bear the economic losses which workers sustain through occupational injuries or deaths. The physical costs, of course, must be borne by the injured workers, but the expense of caring for such workers and supporting their dependents may be met as society sees fit. This problem became acute only after the Industrial Revolution had enormously increased the number and severity of industrial accidents. In earlier times the infrequency of such accidents and the close personal relations between masters and servants apparently kept the question of compensation in such cases from becoming a matter of public concern. No rules of law developed as to recovery for accidental injuries received in the course of employment. However, beginning with the first recorded cases in England in 1837 and in the United States in 1841, the common-law rules of employers' liability developed rapidly in both countries. And very soon the injustice of these rules led to attempts to modify them through statutory enactments. The first American employers' liability act was passed in 1856.[2]

To understand employers' liability laws and the succeeding workmen's compensation acts, some picture of the common-law rules which they altered or supplemented is essential. As they developed, these common-law rules formed a highly complex body of law, full of fine spun refinements. Only a rudimentary outline of them will be attempted here.

[1] This chapter is based on a Ph. D. thesis by Harry Weiss entitled *Development of Workmen's Compensation in the United States*, University of Wisconsin, 1933.

[2] Georgia. See U. S. Department of Labor, *Present Status of Employers' Liability in the United States*, Vol. 5, Bulletin 31, 1900, p. 1174.

Common-Law Doctrines of Employers' Liability

The common law of employers' liability began with the English case of *Priestly* v. *Fowler*, in which a butcher's driver sued his employer when injured due to the overloading of the cart by another employee.[3] It had long been established under the general law of negligence that a master could be held liable by an injured third party for injuries caused him by the negligence of the master's servant.[4] But Lord Abinger refused to apply this general rule to a situation in which the injured party was another servant of the same master. He denied recovery, declaring that it would be absurd to hold an employer responsible for injuries to one employee arising from the negligence of another. Thus he originated the "fellow servant doctrine" as a defense for an employer sued by an injured employee.

This English rule relating to recovery in industrial accidents was promptly adopted in the United States. In 1841, in the first recorded American case, a South Carolina court denied recovery to a locomotive fireman who had been injured through the negligence of the engineer under whom he worked.[5] One year later, in a case involving an engineer who had lost a leg because of the negligence of a switchman, Chief Justice Shaw of the Supreme Court of Massachusetts similarly denied recovery, and in so doing clearly formulated the new doctrines of employers' liability.[6] From that date until the second decade of the twentieth century, legal responsibility for industrial accidents in the United States was judged pretty much according to the doctrines laid down in these early decisions.

Basic to the common-law rules of employers' liability was the doctrine that the employer was bound to use reasonable care to protect his workers from injury. He had to provide them with a safe place to work, to furnish them with safe tools and appliances, to establish proper rules of conduct, and to warn them of special dangers.[7] If a worker wished to recover damages for an injury resulting from his employment, he had to prove that the employer

[3] *Priestly* v. *Fowler*, 3 M. & W. 1, 6 (England 1837).

[4] Pollock, Sir Frederick, *The Law of Torts*, Stevens and Sons, London, eleventh edition, 1920, pp. 63, 87, 100.

[5] *Murray* v. *S. C. Ry. Co.*, 1 McMullen 385, South Carolina, 1841.

[6] *Farwell* v. *Boston & Worcester Ry. Co.*, 4 Metcalf 49, Mass. 1842.

[7] Downey, E. H., *History of Works Accident Indemnity in Iowa*, Iowa State Historical Society, 1912, p. 18, gives a more complete list of such duties.

was negligent in regard to these duties and that such negligence was the proximate cause of the injury complained of. If the worker could not prove this to the satisfaction of the judge, he had no chance of recovery, as the judge could dismiss the case without submitting it to the jury.[8] The common law was interested only in those cases in which the negligence of the employer was established.

In addition to proving negligence on the part of the employer, the worker had to demonstrate that he himself had not also been negligent.[9] Even after the injured worker proved beyond a question of doubt that his employer had been negligent in failing to provide a safe place to work and that he himself had not been even partly to blame, the employer could still escape payment of damages, if he could show that it was the negligence of a fellow servant of the injured worker that brought on the accident. This rule, usually termed the "fellow servant" or "co-service" doctrine, enabled the employer to escape responsibility for all accidents in which an injury to one employee could be attributed to the negligence of another employee.[10]

There was still another loophole for the employer. He could escape payment of damages by the contention that the injured employee had "assumed" the risk which resulted in his injury and, therefore, waived his right to recover. If the employee had known of the negligence of the employer with respect to the hazard which caused his injury and yet continued on his job, he was said to have "assumed" the risk. This doctrine of "assumption of risk" served to relieve employers from compensating injured workers even when it was a violation of a safety law by the employer that caused the accident.[11]

This statement of the common-law doctrine is, of course, a

[8] *Ibid.*, p. 21.

[9] Under the common law, the burden of proof as to "contributory negligence" was upon the plaintiff, even though it is usually termed a defense of the employer. Cooley, T., *The Law of Torts*, Callahan and Company, Chicago, third edition, 1906, p. 1457.

[10] This was so despite the rule of "respondeat superior" in general negligence cases under which an employer was liable to non-employees for damages caused by the negligence of employees. Campbell, Robert, *The Law of Negligence*, Stevens and Haynes, London, 1871, pp. 55–61.

[11] The "assumption of risk" here considered is to be distinguished from assumption of the so-called "ordinary" risks. These ordinary risks are assumed by the employee in the sense that any injury arising from them, not being attributable to the employer's negligence, gives no grounds for action. The doctrine of "assumption of risk" really refers to those risks for which the employer is prima facie responsible. Downey, *op. cit.*, p. 58.

crude one, since it does not contain all the variations and modifications developed by various judges. However, the result everywhere was that workers rarely could recover damages for injuries sustained in their employments.

Statutory Modification of Common-Law Doctrines

Hardly had these doctrines become established in the body of English and American common law, when agitation developed to abrogate or modify them by legislative enactment.[12] In England it was not until 1880 that this agitation resulted in legislation modifying any of the basic common-law doctrines.[13] Legislation was secured much earlier in a number of American states but was much more limited in scope. Most of the statutes were restricted to railroad accidents, partly because of the frequency of such accidents and partly because of the anti-railway sentiment in many of the legislatures. Georgia led the way in 1856 and Iowa followed in 1862 with laws virtually abrogating the fellow servant rule for railroad accidents.[14] Other state legislatures followed the lead of Georgia and Iowa, and by 1910, when the movement for workmen's compensation legislation had gained full headway, almost every state had enacted laws which modified the common-law doctrines of employers' liability. This mass of legislation ranged from little more than affirmations of common-law doctrines to complete abrogation of certain of the employer's common-law defenses. The aim in most instances was to give the injured worker a little better prospect of success in the great gamble of a court suit for damages.

The legislation on employers' liability enacted prior to the workmen's compensation period may be classified as follows:

1. Statutes denying the right to "contract out" of liability.
2. Statutes extending the right of suit in death cases.
3. Statutes abrogating or modifying the common-law defenses of co-service, assumption of risk, and contributory negligence.

[12] As early as 1846 Lord Campbell's Act, 9 and 10 Victoria, Chap. 83, 1846, gave to the representatives of deceased employees the right to sue for damages. In 1875–76 bills were introduced in Parliament attempting to abolish the fellow servant and assumption of risk doctrines. For example see 38 Victoria, Vol. II, Bill No. 186 (1875); 39 Victoria, Vol. II, Bill No. 15 (1876).

[13] For an analysis of this law, Tillyard, Francis, *Industrial Law*, London, A. and C. Black Ltd., 1916, pp. 104–107.

[14] For copy of Georgia law see U. S. Department of Labor, Bulletin No. 31, 1900, p. 1174. For analysis of Iowa law, see Downey, *op. cit.*, p. 38.

Even the meager possibilities for obtaining indemnity through the common law were often taken away by employers who, as a condition of employment, compelled workers to sign contracts, relieving the employer from any liability for accidents. Although a preponderance of court opinion held such contracts against public policy and therefore void, a number of states felt it necessary to legislate against the practice.[15] Ten states took this action prior to 1896 while 17 more acted during the period from 1896 to 1908.[16]

Under the common-law rule of "action personalis moritur cum persona," the right of action for personal injury expired with the death of the injured.[17] This rule operated to relieve employers of all responsibility in fatal accidents. It occasioned such hardship that it was gradually abolished by legislative enactments. By 1904, 39 states, Puerto Rico, and the District of Columbia had abolished this ancient common-law rule.[18]

The attack on the three defenses of the employer was far more difficult. The fellow servant rule was the first to be modified. Prior to 1896, Colorado was the only state to abrogate the rule for all industries while Georgia, Iowa, Kansas, Wisconsin, Minnesota, and Florida made the rule practically non-operative for railroad accidents. In addition to these states, a number of others modified the rule by adopting either or both the "vice-principal" and the "departmental" doctrines. The "vice-principal" rule held that persons in a position superior to the injured worker, such as foremen, could not be considered fellow servants. Under the "departmental" rule, the doctrine of co-service was limited to work-

[15] In England such contracts were held legal. The Georgia court, an exception to the rule in this country, also sustained such contracts. See U. S. Department of Labor, Vol. 5, Bulletin No. 31, 1900, p. 1204.

[16] Arkansas, California, Colorado, Florida, Georgia, Indiana, Iowa, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Mexico, New York, North Carolina, North Dakota, Ohio, Oregon, South Carolina, South Dakota, Texas, Virginia, Wisconsin, and Wyoming (constitutional provision only). Clark, Lindley, *The Legal Liability of Employers for Injuries to Their Employees in the United States*, U. S. Bureau of Labor, Vol. 16, Bulletin No. 74, 1908, pp. 54–91.

[17] This rule was abolished in England in 1846 through Lord Campbell's Act. See footnote 12, p. 567.

[18] Alabama, Arizona, Colorado, Connecticut, Delaware, Georgia, Idaho, Illinois, Indiana, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, Wisconsin, Wyoming, District of Columbia, and Puerto Rico. U. S. Bureau of Labor, *Labor Laws of the United States, 1904*, 10th Special Report of U. S. Commissioner of Labor. Under various state laws.

ers in the same department and negligence on the part of workers in another department was held no bar to recovery.[19] By 1908 the fellow servant rule was abolished for railway employees in 16 states,[20] and modified in many more. In a number of states this modification applied generally. Colorado remained, however, the only state which completely abrogated the fellow servant rule for all employments.

The doctrine of assumption of risk was also considerably restricted in scope in the period prior to compensation legislation. The usual method was the incorporation in safety laws of provisions to the effect that knowledge by employees of violations would be no bar to recovery in case of injury. Wisconsin went the furthest in this respect in a general factory act prescribing the use of a great many safety devices.

The common-law defense of contributory negligence was not seriously attacked as early as the other doctrines. The fact that negligence was the basic rule of employers' liability probably accounts for the hesitancy to impose liability where the injured worker had also been negligent. The doctrine of "proportional negligence" or "comparative negligence" was not incorporated in statute form until 1906, but in that and the following year fully eight states adopted it for certain industries. This rule simply stated that if a worker were negligent he could recover damages, but the amount would be reduced in proportion to the negligence which he contributed. Nevada's law applied to railroads and ore mines and smelters. Maryland's to mining; while those of six other states were restricted to railroads.[21] In a few other states the doctrine was slightly modified by changing the burden of proof from the plaintiff to the defendant.

It should be pointed out that in addition to the statutory modifications here considered, the common law itself was undergoing changes through the gradual acceptance by judges of the more humane positions taken by legislatures.

[19] For a discussion of this doctrine, see Clark, Lindley D., *The Law of Employment of Labor*, Macmillan, 1911, Chap. VII.

[20] Arkansas, Florida, Georgia, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, Nevada, North Carolina, North Dakota, Oklahoma (constitutional amendment), South Dakota, Texas, and Wisconsin. (Oklahoma included mining.) See Clark, Lindley D., *The Legal Liability of Employers for Injuries to Their Employees in the United States*. From various state laws, given pp. 54–91.

[21] Florida, Georgia, Nebraska, North Dakota, South Dakota, and Wisconsin. See *ibid.*

Progress of Workmen's Compensation Abroad

While agitation in the United States was centered on legislative modification of employers' liability, an entirely new method of distributing the losses resulting from industrial accidents was being adopted by European countries. The idea of workmen's compensation differed basically from that of employers' liability in that it provided for indemnification for work injuries regardless of whose negligence brought them about. The theory underlying the new system was that the consumers of economic goods should bear all the money costs incurred in their production. The pecuniary costs of work accidents should, like any other cost, be borne by the employer in the first instance and then shifted to the consumers by the addition of such costs to the selling price of his product.[22]

Germany led in the enactment of workmen's compensation legislation. The German measure passed in 1884 was part of the social legislation program designed by Bismarck to counteract the growth of socialism. This law applied only to manufacturing, mining, and transportation, but in the period from 1884 to 1911 it was gradually extended and finally codified into one unified system. Following Germany's initial step, workmen's compensation laws were rapidly adopted in other European countries. Austria enacted a law in 1887, Hungary in 1891, Norway in 1894, Finland in 1895, and Great Britain in 1897. By 1910 practically every European country, including Russia, had adopted some system of workmen's compensation.[23]

Beginnings of Workmen's Compensation in the United States

The publication in 1893 of John Graham Brooks' report on *Compulsory Insurance in Germany* by the United States Department of Labor marked the first interest in workmen's compensation in this country.[24] In 1898 began a period of experimentation

[22] For two good statements of the theory, see Downey, E. H., *Workmen's Compensation*, Macmillan, 1924, pp. 14–15; and Rubinow, Isaac M., *Social Insurance: With Special Reference to American Conditions*, Holt, 1916, Chap. I.

[23] For the best discussion of European systems, see Frankel, Lee K. and Dawson, Miles M., *Workingmen's Insurance in Europe*, Charities Publication Committee, New York, 1910. A brief discussion is given in Armstrong, Barbara N., *Insuring the Essentials*, Macmillan, 1932, pp. 223–234.

[24] In the form of Fourth Special Report of the U. S. Commissioner of Labor, 1893. Rubinow, *op. cit.*, p. 156, remarks that the study received little attention at the time.

during which a number of states enacted legislation patterned after European models.

A bill modeled somewhat after the British Act of 1897 was introduced in the New York Legislature in 1898, but was never reported out by the committee to which it was referred. The first actual legislation providing stated benefits for work injuries without suit or proof of negligence was enacted by Maryland in 1902.[25] Under this law, an employer in mining, quarrying, steam and street railroads could exempt himself from all liability for accidents by paying an annual premium, half of which he could recoup from his workers, into a fund administered by the state insurance commissioner. Except for a lump sum indemnity of $1000 for death, the law failed to specify the amount of benefits. This act was declared unconstitutional after less than two years of operation on the ground that it deprived both parties of trial by jury and conferred judicial functions upon an executive officer.[26]

In 1908 the federal government enacted a law granting to certain of its employees the right to receive compensation for injuries sustained in the course of employment. Prior to the passage of this act, it was only by special act of Congress that a federal employee could recover compensation for injuries. The law of 1908 was notoriously inadequate but remained in force until 1916.[27]

Montana was the first state to pass a compulsory compensation act. A law of 1909 provided for a state co-operative insurance fund in the coal mining industry maintained by contributions from the employer on the basis of tonnage and from employees on the basis of their earnings.[28] A $3000 benefit was provided for death and a maximum of $1.00 a day for permanent disability.

[25] Maryland Acts of 1902, Chap. 139. For a copy of this law see U. S. Bureau of Labor, *Laws of Various States Relating to Labor Enacted Since January 1, 1896*, Vol. VIII, Bulletin No. 45, 1903, pp. 406–408.

[26] *Franklin* v. *The United Railways and Electric Co. of Baltimore*, Court of Common Pleas of Baltimore, opening plea April 27, 1904.

For an account of the operation of the law and the opinion declaring it unconstitutional, see U. S. Bureau of Labor, *The State Co-operative Accident Insurance Fund of Maryland*, Vol. 10, Bulletin No. 57, 1905, pp. 645–648, 689–690.

[27] U. S. 35 Statutes at Large 556, 1908, approved May 30. This was passed after special emphasis was placed on it by President Roosevelt in his special message to Congress on January 31, 1908, p. 2, in which he termed the position of federal employees as "an outrage."

[28] Montana Laws of 1909, Chap. 67. For the law in full see U. S. Bureau of Labor, Vol. 19, Bulletin No. 85, 1909, *Laws of Various States Relating to Labor Enacted Since January 1, 1908*, pp. 658–661.

Though payment of the tax was compulsory upon both employers and employees, the injured worker or his dependents could ignore the provisions of the act and sue under the common law. It was mainly on account of this provision that the law was declared unconstitutional, the court holding that because of this double obligation the employer was not given the equal protection of the laws.[29]

The foregoing laws, along with several others of less significance, cover the period of experimentation which preceded the period of commission investigation. They represented crude attempts to enact legislation patterned after European models. Little study was given to compensation requirements and practically no attention paid to the constitutional limitations peculiar to this country. Nor was there displayed in these laws an understanding of the actuarial requirements of a sound compensation system. All of the laws were of limited application, both as to the employments covered and as to the classes of injuries compensated.

The Commission Investigations and Their Criticism of Employers' Liability

This period of experimentation was followed by a brief but intense period of commission investigations. The years of greatest activity were 1909 when three commissions were appointed, 1910 with eight, 1911 with 12, and 1913 with seven. Only four investigating bodies were appointed after 1913, the latest one being that of Arkansas, in 1919. Altogether there were 40 commissions in 32 jurisdictions appointed by legislative or gubernatorial action in the years from 1903 through 1919.

After holding public hearings and after gathering considerable material, these investigating bodies unanimously recommended the complete abolition of employers' liability. The only suggestion of a contrary opinion was that of the Connecticut Commission of 1907 which recognized the necessity for some system of workmen's compensation but was unable to recommend its adoption at that time.[30] Not only were the commissions unanimous in condemning the system of employers' liability, but in the hearings held by them the defenders of the common-law system were a "very small minority." [31]

[29] *Cunningham* v. *Northwestern Improvement Co.*, 44 Mont. 180 (1911).

[30] For summary of this report see U. S. Bureau of Labor Statistics, *Workmen's Compensation Laws of the U. S. and Foreign Countries*, Bulletin 203, 1917, p. 16.

[31] A summary of the reports of all these commissions is given in *ibid.*, pp. 15–44, especially p. 43.

The failure of employers' liability to transfer the burden of industrial accidents from injured workers had long been apparent. The investigations by the state commissions and by unofficial bodies served to bring out the utter hopelessness of achieving reform, except through the complete abrogation of the old system and the substitution for it of some system of workmen's compensation. The principal charges brought against employers' liability, amply proved during the period from 1909 to 1913, may be summarized as follows:

1. Recovery was hopelessly inadequate and uncertain; only a very small proportion of the injured workers recovered substantial damages and a large proportion recovered nothing.
2. Recovery was slow; it was long delayed while the need was immediate.
3. The system was wasteful; a relatively small percentage of the sums paid by employers reached the injured workers or their dependents.
4. The system fostered misunderstanding and bitterness between employers and employees.

Crystal Eastman, in her study of work accidents in the Pittsburgh district, strikingly revealed the inadequacy of benefits under employers' liability.[32] She showed, to cite an example, that of 212 married workers killed in industrial accidents, only 48 families received more than one year's wages of the lowest paid worker. In 40 cases, the dependents received less than $500; in 65 cases they received bare funeral expenses; while in 59 cases the dependents recovered absolutely nothing from the employer.[33]

That these conditions in Pennsylvania were not exceptional was clearly indicated by commission studies in other states. The New York commission found that in only 22 out of 115 cases of married men killed by industrial accidents, did the compensation amount to more than $500.[34] In 38 cases it amounted to nothing. The dependents in 16 out of 51 fatal accidents in Wisconsin recovered less than $100 and 18 others recovered between $100 and $500.[35] In Minnesota, 14 out of 54 families who lost their bread-

[32] This was by far the best study. Made as part of the Pittsburgh Survey directed by Paul N. Kellogg. Eastman, Crystal, *Works Accidents and the Law*, New York, Charities Publication Committee, 1910. Especially Chap. XIII, p. 190.

[33] *Ibid.*, pp. 120–121.

[34] See New York Employers' Liability Commission, First Report, 1910, pp. 20–21.

[35] Wisconsin Bureau of Labor and Industrial Statistics, Thirteenth Biennial Report, 1907–08, p. 54.

winners recovered nothing, seven received $100 or less, and 13 others received from $100 to $500.[36] The same situation was found wherever investigations were made.[37]

It was common knowledge that our court system worked slowly. The New York commission reported that suits for indemnity lasted "from six months to six years" in that state.[38] In Ohio it required two years on the average to render final judgment in fatal accident cases.[39] Interesting evidence of the slowness of the common law was carried by the Insurance Year Book for 1911, which reported 13,043 suits outstanding from 14 liability insurance companies. In 42 cases these suits originated more than ten years previously, while over 750 cases originated from five to ten years previously.[40]

In showing the waste involved in employers' liability, E. H. Downey revealed that out of every $100 paid by employers in premiums, but $28.00 reached the injured worker after a long legal action. This estimate was based on the records of ten insurance companies for a three-year period.[41]

A system which required court suit in most cases could hardly fail to arouse antagonism and bitterness between the parties to the action. Almost every investigating body ascribed to employers' liability a tendency to arouse bitterness between employers and employees. Even the National Association of Manufacturers criticized the system of employers' liability as "antagonistic to harmonious relations between employers and wage workers." [42]

This detailed criticism of the common-law system of employers' liability may be summarized in the words of the Illinois Commission which termed it "unjust, haphazard, inadequate and wasteful, the cause of enormous suffering, of much disrespect for law, and a badly distributed burden upon society." [43] And the United States Employers' Liability Commission pointed out that it was not the

[36] Minnesota Bureau of Labor, Industry and Commerce, Twelfth Biennial Report, 1909–10, pp. 166–167.

[37] For figures on Illinois, see Beckner, Earl L., *History of Labor Legislation in Illinois*, University of Chicago Press, 1929, p. 444.

[38] New York Employers' Liability Commission, First Report, 1910, p. 32.

[39] Ohio Employers' Liability Commission, Report to the Legislature (1911), Part I, Table VIII, p. xliv.

[40] See Rubinow, *op. cit.*, p. 96.

[41] Downey, *History of Works Accident Indemnity in Iowa*, p. 83.

[42] National Association of Manufacturers, Proceedings of the 15th Annual Convention, New York, 1910, p. 280.

[43] Illinois Employers' Liability Commission, Report of 1910, p. 19.

details of the system which were at fault so much as "the system itself upon which those details are based. The system has been outgrown and should be abandoned." [44] Most workers, employers, judges, and others who were acquainted with the operation of the common-law system concurred in this evaluation.[45]

The Rapid Spread of Accident Compensation

As the glaring defects of employers' liability were brought to public attention by the early investigating bodies, a wave of protest swept the country. The enactment of accident compensation laws in state after state came with surprising rapidity. No other kind of labor legislation gained such general acceptance in so brief a period in this country.

What may be called the first modern American compensation law was enacted in 1910 in New York; but this law was promptly declared invalid under the state constitution by the highest court of that state.[46] However, this adverse decision had little effect in retarding the spread of compensation legislation. Ten states enacted such laws in 1911 while twelve others appointed investigating commissions.[47] In the race to enact this legislation Kansas and Washington were tied for first place, as the date of passage in both states was March 14. Wisconsin, however, could boast of the first law actually in operation, as in that state the law took effect on the date of its passage, May 3, 1911. Eleven more states passed compensation laws in 1912 and 1913.[48]

Late in 1913 the American Federation of Labor and the National Civic Federation (an organization which included employers in its membership) appointed a joint commission to study the opera-

[44] U. S. Employers' Liability and Workmen's Compensation Commission, Report of 1912, p. 15.

[45] Bureau of Labor Statistics, Bulletin 203, p. 43.

[46] New York Laws of 1910, Chap. 674. *Ives* v. *So. Buffalo Ry. Co.*, 201 N. Y. 271 (March 24, 1911).

[47] In California, Illinois, Kansas, Massachusetts, Nevada, New Hampshire, New Jersey, Ohio, Washington, Wisconsin, laws were enacted in 1911. Bureau of Labor Statistics, Bulletin 203, p. 51.

In Colorado, Connecticut, Delaware, Iowa, Michigan, Missouri, Nebraska, North Dakota, Oregon, Pennsylvania, Texas, West Virginia, commissions were appointed. See U. S. Department of Labor, Bureau of Labor Statistics, *Workmen's Compensation Legislation of United States and Foreign Countries*, Bulletin 126, 1913, p. 12.

[48] Arizona, Connecticut, Iowa, Maryland, Michigan, Minnesota, Nebraska, Oregon, Rhode Island, Texas, West Virginia. (In addition New York re-enacted its law declared unconstitutional in 1911. See note 46 above.) Bureau of Labor Statistics, Bulletin 203, p. 12.

tion of these first compensation laws. Their conclusions were favorable to the new system and indicated the direction the legislation should take. Publication of their report as a government document [49] gave added impetus to the movement. Nine states and three territories were added to the compensation area in 1915 and 1916; and the act covering federal employees was strengthened.[50]

The year 1917 marked a turning point in the history of compensation legislation. Up to that time its constitutionality was seriously in doubt due to the adverse decision of the New York court of appeals in the Ives case in 1911.[51] Partly because of that decision many states passed "elective" laws or laws limited to "hazardous occupations." However the restricted coverage of these early laws was not entirely due to fears as to the constitutionality of more inclusive measures. Compromises and exclusions were necessary in many states in order to get some kind of law on the statute book. Thus agriculture was exempted in practically every state; certain favored industries were sometimes exempted, such as logging in Maine.[52] In 1917 the United States Supreme Court in a series of three decisions upheld the three prevailing types of compensation law, a compulsory law, an elective law, and a compulsory law with an exclusive state fund.[53]

Laws passed after 1917 were more apt to be compulsory, though some states continued to choose the elective variety. From 1917 to 1919 eight states and the District of Columbia enacted compensation laws,[54] and many others strengthened laws passed in earlier years. Waiting periods were reduced, medical benefits liberalized, and some efforts were made to raise benefit scales to catch up with increases in wages and cost of living.

After 1920 accident compensation legislation developed slowly.

[49] The American Federation of Labor and the National Civic League Workmen's Compensation Joint Commission, Report on the Operation of State Laws, Senate Document No. 419, 63d Congress, 2d Session, 1914.

[50] Colorado, Indiana, Kentucky, Maine, Montana (Montana's early law was declared unconstitutional, see note 29), Oklahoma, Pennsylvania, Vermont, Wyoming, Alaska, Hawaii, Puerto Rico, and U. S. Civil (1916). See Bureau of Labor Statistics, Bulletin 203, p. 51.

[51] *Ives* v. *So. Buffalo Ry. Co.*, 201 N. Y. 271 (March 24, 1911).

[52] Bureau of Labor Statistics, Bulletin 203, pp. 60–63.

[53] *New York Central Rail. Co.* v. *White*, 243 U. S. 188 (1917). *Mountain Timber Co.* v. *State of Washington*, 243 U. S. 219 (1917); *Hawkins* v. *Bleakly*, 243 U. S. 210 (1917).

[54] Alabama, Delaware, Idaho, North Dakota, South Dakota, Tennessee, Utah, Virginia, and District of Columbia (Law for Public Employees only). U. S. Department of Labor, Bureau of Labor Statistics, *Workmen's Compensation Legislation of the United States and Canada*, Bulletin No. 272, 1921, p. 9.

From 1920 to 1932 only two new states enacted laws, namely Missouri and North Carolina.[55] In addition there were two new federal statutes, one for the District of Columbia passed in 1928, one for the longshoremen who had been excluded by the Supreme Court from the protection of state laws. By the end of 1932 only four states, Arkansas, Mississippi, Florida, and South Carolina, were left without accident compensation legislation.[56]

An accident compensation law is necessarily a very complicated statute made up of many detailed provisions. Moreover, the rapid spread of this type of legislation meant the almost simultaneous enactment of laws in many states and this prevented the adoption of one standard measure. Though a single principle underlies all the compensation laws, there is a great diversity in details. For these reasons it is difficult to trace the evolution of these laws. In the following pages their development will be discussed under three heads: (1) type of system; (2) scope—both as to employments and injuries; and (3) benefits.

By 1932 accident compensation laws had been in operation in the United States for twenty years. They had been fully accepted; generally speaking workers and employers were agreed as to the desirability of this method of handling industrial accidents. Consequently this kind of labor legislation had had a favorable atmosphere in which to develop. For that reason it seemed appropriate to attempt here some evaluation of its attainments—some appraisal of the extent to which it succeeded in putting an end to the evils which prevailed under the system of employers' liability. Therefore each of the three sections that follow will include an attempt at such appraisal.

Development of Compensation Laws—Type of System

Compulsory versus Elective Systems

American workmen's compensation laws are either compulsory or "elective." Under an elective law an employer may if he prefers remain outside the jurisdiction of the compensation system. He

[55] Missouri Acts of 1925, p. 375, approved April 30, 1925, deferred by referendum, approved effective November 6, 1926. North Carolina Acts of 1929, Chap. 120.

[56] District of Columbia (45 Statutes 600), approved May 17, 1928. Longshoremen (44 Statutes 1424), approved March 4, 1927, amended 1928 (45 Statutes 490). For cases and discussion see p. 593. In 1935 Florida and South Carolina passed accident compensation laws, leaving only two states without such legislation.

is then, of course, subject to the common law of employers' liability (with whatever modifications have been imposed by statute) and his employees have the right to sue him for damages if injured. Elective compensation laws owe their existence largely (but not wholly) to the doubts which existed up to 1917 as to whether compulsory laws would be held constitutional. Up to that year only eight states and one territory passed compulsory compensation laws,[57] four of these states having amended their state constitutions specifically to permit such legislation.[58] Twenty-two states and two territories which passed compensation laws in this period made them elective and utilized a variety of devices to induce employers to elect to come under them.[59]

One of these devices was to presume acceptance of the compensation act by the employer, unless he made notification to the contrary.[60] For it was discovered that where positive action was required from employers to bring them under the compensation act, the great majority failed to take the necessary steps; but where acceptance of the compensation act was presumed, the tendency was to remain under it, except where the inducements for withdrawing were especially strong.[61] Prior to 1914, the elective laws were almost evenly divided as to whether or not they required positive acceptance; after that date an overwhelming majority of them presumed it. Not a single elective jurisdiction

[57] Arizona, California, Maryland, New York, Ohio, Oklahoma, Washington, Wyoming, and Hawaii. U. S. Department of Labor, Bureau of Labor Statistics, *Comparison of Workmen's Compensation Laws of the United States up to Dec. 31, 1917*, Bulletin 240, 1918, table on p. 13. This list includes Idaho and Utah also but these laws did not become effective until after January 1, 1917, see *ibid.*, p. 10, and Illinois, whose act did not become compulsory until after January 1, 1917. Illinois Acts of 1917, Chap. 505.

[58] Arizona, California, New York, and Ohio. See U. S. Department of Labor, Bureau of Labor Statistics, *Workmen's Compensation Legislation of the United States and Canada as of Jan. 1, 1929*, Bulletin 496, 1929, p. 9.

The Supreme Court of Washington directly challenged the New York decision in sustaining the compulsory act of that state. State ex rel. *Davis Smith Co.* v. *Clausen*, 65 Wash. 156 (1911).

[59] Colorado, Connecticut, Indiana, Iowa, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Montana, Nebraska, Nevada, New Hampshire, New Jersey, Oregon, Pennsylvania, Rhode Island, Texas, Vermont, West Virginia, Wisconsin; and Alaska and Puerto Rico. See Bureau of Labor Statistics, Bulletin 240; for list of elective states p. 34; for exclusions from this list laws having been passed after January 1, 1917, see p. 10; and for devices used to induce employer to accept, pp. 35–39.

[60] New Jersey Acts of 1911, Chap. 93, as amended by acts of 1913, Chap. 174. The New Jersey law was the first to include such a provision. Bureau of Labor Statistics, Bulletin 203, p. 709.

[61] See for example Wisconsin Industrial Commission, Third Annual Report, 1913–14, pp. 1, 2, 5.

added after 1917 required positive action for employers desiring to come under the law.

An even stronger device for inducing employers to accept elective legislation was the abolition or modification of the common-law defenses of assumption of risk, contributory negligence, and co-service, for those employers who elected to remain under employers' liability. Employers under workmen's compensation were either exempted from common-law suits or retained these defenses in case such suits arose. The first state to provide this type of pressure was New Jersey in 1911. After its constitutionality had been affirmed there,[62] this device became the accepted mode of making elective laws effective in bringing in the employers covered by them.

In the spring of 1917, the United States Supreme Court held that compulsory compensation acts were not in contravention of the federal constitution.[63] Despite this decision there remained a reluctance to pass compulsory legislation. Of 12 state compensation laws [64] passed from 1917 to 1932 only three were compulsory in character.[65] (In addition, however, Illinois, Puerto Rico, and Wisconsin changed over from elective to compulsory acts during this period.) This indicates that fear of constitutional objections was not the sole explanation of the general preference for elective systems. It is true that state constitutions could still be interpreted to make compulsory laws invalid. It is also true that the inducement of abrogating the common-law defenses was fairly effective in most states in bringing employers under the act. But perhaps of more importance was the opposition of many employers to compulsory laws and the consequent necessity for compromise in order to get some measure enacted. At any rate, of the 51 compensation systems in force on January 1, 1933, 32 were elective in character and only 19 compulsory.[66] Of these 19, six were federal or territorial laws.

[62] The New Jersey law was sustained in *Sexton* v. *Newark District Telegraph Co.*, 84 N. J. 85 (1913).

[63] Sustained in *New York Central Rail. Co.* v. *White*, 243 U. S. 188 (1917); and *Mountain Timber Co.* v. *State of Washington*, 243 U. S. 219 (1917).

[64] Alabama, Delaware, Georgia, Idaho, Missouri, New Mexico, North Carolina, North Dakota, South Dakota, Tennessee, Utah, and Virginia. See Bureau of Labor Statistics, Bulletin 496, pp. 5–6. For North Carolina see North Carolina Acts of 1929, Chap. 120.

[65] Idaho, North Dakota, and Utah. Bureau of Labor Statistics, Bulletin 496, Table 4, p. 4.

[66] Compulsory systems: Arizona, California, District of Columbia, Hawaii, Idaho, Illinois, Maryland, New York, North Dakota, Ohio, Oklahoma, Philippines, Puerto Rico, Utah, Washington, Wisconsin, Wyoming, Longshoremen, U. S. Civil. *Ibid.*,

Elective compensation laws gave the employee as well as the employer an "election" whether to come in or stay out. Here too the device of presuming acceptance was utilized to bring most individuals under the act. In every state but Kentucky, the laws provided that where the employer had accepted the act, the employee was presumed to have accepted with him. At the outset there was some question whether under an elective law the worker should retain the right to choose, *after he was injured*, whether to sue in court or to accept the compensation due him under the compensation law. This question caused a bitter conflict at the conferences of the commissions which framed the first compensation laws. Labor's representatives were very reluctant to give up the court remedy entirely. But the employers' representatives were insistent that the worker must elect one remedy or the other when taking the job. This view prevailed.[67] Of the laws passed prior to 1914, only those of Arizona and New Hampshire gave the employee the choice after he was injured of accepting the benefits of the act or of suing at common law. Not one law passed after 1913 provided for this choice and the idea of compensation as an exclusive remedy became definitely established in this country.[68]

Early experience under compensation laws indicated the need, however, for permitting common-law suit in special cases. Most important was the discovery after an accident occurred that the employer had failed to insure his risks or was in default in his premiums. Gradually a majority of states amended their laws to permit court action under certain circumstances.

Under elective laws workers were also induced to accept the compensation system by provisions which enabled employers to retain their common-law defenses in suits brought by employees who chose to remain under employers' liability. Of the states with elective laws only New Jersey and Pennsylvania did not have this provision.

At the end of 1932, 32 American compensation laws were still

Table 4, pp. 11–12. For U. S. Civil see *ibid.*, charts following p. 50. (The Wisconsin Act is listed in this bulletin as an elective law. It became compulsory for employers with more than three employees in 1931, Session Laws of 1931, Chap. 87, Wisconsin Statutes, 1933, Sec. 102.04(3). The Wisconsin law is therefore being considered as a compulsory law in this chapter.)

[67] See Conference on Workmen's Compensation held at Atlantic City, New Jersey, Proceedings, July 29–31, 1909. Also Third National Conference on Workmen's Compensation for Industrial Accidents, Chicago, Proceedings, June 10–11, 1910.

[68] On January 1, 1933, New Hampshire was the only state which gave the employee this choice. U. S. Bureau of Labor Statistics, Bulletin 496, p. 14.

of the elective variety.[69] Of course most of them succeeded in securing pretty general acceptance by the use of the various devices described above. Only ten of the 32 required positive action by either the employer or the employee to bring him under the compensation act.[70] More important, every one of them had abolished the fellow servant and assumption of risk defenses for employers electing to remain under employers' liability. Nineteen of the 32 also abolished the contributory negligence defense, while the remaining 13 only permitted it in cases where the injured worker had been intoxicated or recklessly indifferent or had willfully intended to injure himself.[71]

Despite the effectiveness of these devices, it is probable that a substantial number of employers and workers remained under the antiquated employers' liability system. An investigation in 1931 (referred to on p. 592) revealed a rather alarming practice of forcing employees to elect to stay out from compensation as a condition of securing employment. How widespread this practice is we do not know. It is obvious that historical accident is the only justification for elective compensation laws. Their survival in a majority of American states as late as 1932 represented a distinct defect in our compensation system.

Methods of Insurance

A workmen's compensation system without some provision for insurance would seem absurd today. Yet in the early years

[69] Alabama, Alaska, Colorado, Connecticut, Delaware, Georgia, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas, Vermont, Virginia, West Virginia.

See U. S. Bureau of Labor Statistics, Bulletin 496, p. 11. Wisconsin is given here as an elective state. Reason for exclusion is given in note 66, pp. 579–580. North Carolina is not listed here because its act was passed after publication of this Bulletin. See North Carolina Acts of 1929, Chap. 120.

[70] Kentucky, Maine, Massachusetts, Michigan, Montana, Nevada, New Hampshire, Rhode Island, Texas, and West Virginia. *Ibid.*, p. 14.

[71] Nineteen elective states abolished rule of contributory negligence. Connecticut, Delaware, Georgia, Indiana, Kansas, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Missouri, New Hampshire, New Mexico, Rhode Island, South Dakota, Tennessee, Vermont, Virginia, and West Virginia.

Thirteen elective states abolished rule of contributory negligence except in cases where insured worker had been intoxicated, recklessly indifferent, or willfully intended to injure himself. Alabama, Alaska, Colorado, Iowa, Minnesota, Montana, Nebraska, Nevada, New Jersey, North Carolina, Oregon, Pennsylvania, Texas.

U. S. Bureau of Labor Statistics, Bulletin 496, charts following p. 50. Reason for Wisconsin exclusion see note 66, pp. 579–580. North Carolina Laws of 1929, Chap. 120, passed after publication of Bulletin 496, so North Carolina is not included.

of compensation history, the absolute necessity of insurance was not fully realized. Although a majority of the early laws compelled the employer to insure his risks, or demonstrate his ability to pay awards, many of the requirements were very weak. The failure of employers to insure and the consequent difficulty of collecting benefits soon made it apparent that the first step necessary to guarantee payment of the compensation provided by law was to compel employers to insure their risks.

Although it was universally agreed long before 1932 that employers must be required to insure their compensation risks, yet we must note that in that year the compensation laws of Alabama, Alaska, and the Philippines still did not include this requirement.[72] Moreover the insurance requirement had been declared unconstitutional in Louisiana, and in New Hampshire was so weak as to be virtually ineffectual. Obviously on this count the compensation laws in these jurisdictions were seriously defective.

Throughout compensation history there has been a bitter struggle over the type of insurance system to be adopted. At the outset in Wisconsin, the stock companies opposed not only state insurance, but the whole compensation system.[73] When the elective compensation law was passed in that state, the stock insurance companies set rates for compensation insurance at double those for liability insurance. Thus they tried to induce employers to remain under employers' liability. After they had failed in this attempt, the stock insurance companies rearranged their rates so that liability insurance actually cost ten per cent more than compensation insurance. In Massachusetts, the stock insurance companies first defeated the proposal to establish an exclusive or monopolistic mutual insurance company. Succeeding in this, they next tried to wreck the competing mutual, by persuading the Massachusetts Commission to consent to a large reduction in rates under which they felt the mutual would be unable to survive and under which they themselves lost $600,000 in one year. A committee of the legislature termed their activity as "improper" and "indefensible."[74] In Idaho in 1913, the casualty companies

[72] See Bureau of Labor Statistics, Bulletin 496.

[73] For the history of this incident see Wisconsin Industrial Commission, First, Second, and Third Annual Reports on Workmen's Compensation, 1911–12, 1912–13, 1913–14.

[74] See statement read by Insurance Commissioner F. Hardison before the Joint Judiciary Committee of the Legislature, May 11, 1916. Printed by Massachusetts

defeated a bill to create a monopolistic state fund which had the support of labor and some of the larger employers. They attacked the state fund proposal as socialism and thus succeeded in frightening the employers of the state. In doing so, they also managed to delay compensation legislation for a number of years.[75]

Despite the activities of the insurance interests, seven of the 13 states, which up to January 1, 1914 required employers to insure their compensation risks, provided either an exclusive or competitive state fund with which employers could place their insurance.[76] In addition, Massachusetts and Texas set up state sponsored mutual organizations.

As the casualty companies attack on state insurance developed, it became more successful. Out of the 19 states added to the compulsory insurance group from 1914 to 1917, only two provided exclusive state fund systems of insurance; and only four more set up state funds in competition with private carriers.[77] In 1920, the United States Bureau of Labor Statistics conducted an investigation of workmen's compensation insurance covering 20 states and two Canadian provinces. The Bureau reported that exclusive state funds were vastly cheaper, were more liberal, and were at least on a par with the average stock company in speed of payments and in safety work.[78] Despite this favorable report, not another monopolistic or competitive state fund was adopted from 1919 through 1932. In Missouri there was a strong movement to adopt an exclusive state fund in 1926, but the casualty companies defeated it by promising employers that workmen's compensation with a stock company system would result in considerable savings to industry. When these savings failed to materialize, the movement was revived and a state fund proposal was placed in a referendum ballot in 1930 but was defeated. Again the old bogy of state

Insurance Commission, 61st Annual Report, 1916, Part II, pp. 8–25. Also see Massachusetts Joint Special Recess Committee on *Workmen's Compensation Insurance Rates and Accident Prevention*, Report, 1917, p. 25.

[75] Idaho Industrial Accident Board, First Annual Report, 1918, pp. 13–14.

[76] Michigan, Nevada, New York, Ohio, Oregon, Washington, and West Virginia. See U. S. Department of Labor, Bureau of Labor Statistics, *Compensation Legislation of 1914 and 1915*, Bulletin 185, 1915, analysis of various state laws, pp. 13–29.

[77] Puerto Rico and Wyoming. See U. S. Department of Labor, Bureau of Labor Statistics, *Workmen's Compensation Legislation of the United States and Canada*, Bulletin 272, 1921, tables on pp. 12 and 18. Colorado, Maryland, Montana, and Pennsylvania. *Ibid.*, tables on p. 12 and p. 18.

[78] U. S. Department of Labor, Bureau of Labor Statistics, *Comparison of Workmen's Compensation, Insurance and Administration*, Bulletin 301, 1922, p. 21.

socialism won the day.[79] Another strong effort to provide an exclusive state fund system along with other model features was attempted in the federal bill for the District of Columbia. The casualty insurance lobbyists not only managed to defeat the state fund idea, but also succeeded in substituting another bill with much less liberal benefit provisions.[80]

During the depression years, the movement for state funds revived somewhat for two reasons. One was the failure of a number of insurance companies with resultant losses to injured workers. The other was the difficulty experienced by thousands of employers in the more dangerous industries in obtaining the insurance coverage required by law, because private insurance companies were only interested in profitable risks.[81] It was primarily this last situation which in 1933 resulted in the setting up of a competing state fund in Oklahoma.[82]

Basically, three types of insurance systems have competed in the workmen's compensation field. One system was that in which the state was the sole insurance carrier. On January 1, 1933, such systems were in operation in Nevada, North Dakota, Ohio, Oregon, Washington, West Virginia, and Wyoming. The second type was one in which a state fund was in competition with private carriers. At the end of 1932, Arizona, California, Colorado, Idaho, Maryland, Michigan, Montana, New York, Pennsylvania, Puerto Rico, Tennessee, and Utah had such a system. The third type of insurance system, in effect in the remaining compensation jurisdictions, was one in which the private carriers, stock and mutual, represented the only method of insuring obligations created by the workmen's compensation law.

The controversy over the type of insurance system to be adopted has usually been treated as a battle of state versus private insurance. In reality the more fundamental issue is that of competition versus monopoly in this field. The impartial studies

[79] For this story see American Association for Labor Legislation, "State Compensation Fund Again Delayed in Missouri," *American Labor Legislation Review*, Vol. XX, 1930, pp. 435–437.

[80] See Hearings before the Committee on the District of Columbia, H. R. 487, 68th Congress, 1914, Part 3, p. 204.

[81] For a discussion of these problems, consult the Annual Proceedings of the International Association of Accident Boards and Commissions, published in a special series by U. S. Department of Labor, Bureau of Labor Statistics, Bulletins 536 (1931), 564 (1932), 577 (1933).

[82] Oklahoma Acts of 1933, Senate Bill 151 effective July 1, 1933. Oklahoma Statutes 1933, Art. 13046, Secs. 1–23.

available indicate such marked advantages in a monopolistic set up that the continuing prevalence of competitive private insurance would seem to represent a very serious defect in our accident compensation system.[83]

A monopolistic system of workmen's compensation insurance is ipso facto cheaper than a competitive system. It is cheaper because of the tremendous savings made when one state-wide organization takes the place of 50 to 100 organizations covering the same field. Comparative studies of expense ratios demonstrate this conclusively. There is a tendency on the part of private insurance interests and their sympathizers to belittle this question of cost. But when the expense of an adequate scale of benefits is appreciated, the additional cost of providing insurance protection can scarcely be ignored—especially when under stock company insurance it amounts to two-thirds the sum paid out in benefits.

The marked advantage in cost of the monopolistic system throws the burden of proof on the competitive system to show that its rival does not or cannot render as good service. It is probably true that the *best* insurance carriers of a competitive system have provided more prompt payments and done better safety work than monopolistic carriers. But under the competitive system, along with a few good carriers there have been many who were not prompt in payment of compensation and who did practically nothing in the way of safety work.

In another respect, the advantage would seem to be with the monopolistic scheme. Certainly the basic purpose of compensation insurance is to assure to injured workers the benefits provided by statute and to enable the employers to combine their risks. The competitive system has often failed in this respect when private insurance companies went bankrupt. During the depression the number of such bankruptcies increased.[84] In consequence, in many cases employers had to pay for liabilities against which they had presumably protected themselves and, in other cases, injured workers and dependents failed to receive the compensation presumably guaranteed them by law. This situation of itself constitutes an indictment of competitive workmen's compensation insurance.

[83] For a detailed analysis of this problem see Weiss, Harry, *Development of Workmen's Compensation Legislation in the United States*, Chap. VI.

[84] For abundant evidence as to this statement, see International Association of Industrial Accident Boards and Commissions, Proceedings, 1932, in U. S. Department of Labor, Bureau of Labor Statistics, Bulletin 577, 1933, pp. 90–102.

From the standpoint of paying the compensation provided by law in full without quibbling, the competitive system, which means in effect a system of private profit seeking carriers, has been severely criticized. There have been indications that private insurance carriers have, in many instances, cheated injured workers out of part or all of the compensation to which they were legally entitled. Of course a monopolistic system is no guarantee of liberality of payments. Whatever the type of system, it seems clear that activity by organized labor is essential in order to assure that injured workers receive the benefits provided by law. It would seem, however, that a monopolistic scheme is easier to control than one which contains hundreds of profit seeking carriers.

The competitive insurance system has other disadvantages. Perhaps the most serious may be stated as follows: Competition, of course, means competition for profits and profits do not thrive on poor risks. Consequently in every competitive jurisdiction where there is no state fund, many insurance companies compete in selling insurance to employers and yet hundreds of employers are unable to find an insurance company willing to sell to them. These are what are called the poor risks. In many cases whole industries, such as coal mining, find it impossible to get insurance protection, except from a state fund where there is one. The advocates of private insurance companies recognize this difficulty. Some of them suggest the creation of a state fund to care for the bad risks. But why should the state fund be limited in this way?

If the advantages of monopoly in the field of workmen's compensation are recognized, the question remains: what kind of monopoly? A monopolistic stock company need hardly be seriously considered. A much better case can be made out for a monopolistic mutual insurance scheme such as Massachusetts attempted to put into effect. This type of system would probably be favored by employers. Labor might fear that it would be illiberal to injured workers. If supervised closely by the state and by an advisory board with equal representation of workers, a monopolistic mutual organization should have a reasonable chance to succeed, and would avoid the criticism of "socialism" so often leveled against a state fund.

Exclusive state insurance funds have demonstrated their usefulness in the field of workmen's compensation insurance. They have operated at a tremendous saving as compared with competi-

tive systems and have avoided many of the other difficulties inherent in the competitive set up. To be sure they have had problems of their own. Among these, the following have been perhaps most important: a tendency toward political interference with the fund especially when the state administration was opposed to its continuance; payment of low salaries with the consequent loss of able leadership; narrow interpretation of statutes in an effort to demonstrate their conservatism to employers; and functions narrowly construed, partly due to limitations of expenditures by state authorities. These difficulties, though serious in certain instances, would not appear to be fundamental. They could be overcome, especially if organized labor took an active interest in the proper functioning of state fund laws. Further improvements in the present structure of state funds might be effected: by the separation of general administration of the act from administration of the fund; by providing for the payment of expenses from premium income with no limitation on such expenditures; and by providing an advisory board composed of representatives of employers, employees, and of the public.

Court versus Commission Administration

At the outset the need for a special administrative agency to make an accident compensation system effective was not universally recognized. Eight of the 22 states which passed compensation laws prior to 1914 provided only the so-called "court system of administration." [85] This meant that injured workers and their employers were expected to agree mutually on the benefits applicable to the particular injury. If any controversy arose it could be appealed to the courts. In most of the states with this system there was very little supervision by any state agency. This "court system" was partly a survival of the days when the courts settled all accident cases; partly it was grounded on a fear that an administrative agency for settling disputed claims would be held unconstitutional. The other 14 compensation laws, passed before 1914 provided some sort of board or commission to administer the law; while the federal law provided appeal to the Secretary of Labor.

From the beginning the "court system" of administration was

[85] Arizona, Kansas, Maryland, Minnesota, Nebraska, New Hampshire, New Jersey, and Rhode Island. U. S. Bureau of Labor Statistics, Bulletin 126, pp. 49–74.

widely condemned. The Joint Commission of the American Federation of Labor and the National Civic Federation, which investigated the working of the early laws, reported a number of abuses prevalent in certain of those states which lacked a real administrative agency.[86] A few years later, a careful study of three years' operation of the New Jersey law proved conclusively that the court system was slow and extremely costly to injured workers.[87] It was discovered that it took an average period of six months to make an award in case of dispute. In contrast, the time lost in similar controversies under an administrative system was about two months. Even more important, it was found that in New Jersey it cost the injured worker between one-fifth and one-fourth of the award for attorneys' fees and medical testimony. The general conclusion of the study was that the courts were unfit for the work of handling compensation cases and that an administrative agency was vitally necessary for securing prompt and full payment in contested cases.

Despite the almost universal criticism to which court administration was being subjected,[88] the number of states providing nothing else increased for a time. From 1914 to 1920, three states [89] abandoned the court system, but six others in enacting compensation laws [90] provided only this method for settling disputed claims.

On January 1, 1933, 44 of the compensation systems in operation had the board or commission type of administration.[91] Under these laws, the administrative bodies varied widely in set-up, functions, and extent of power. In general, however, they re-

[86] The American Federation of Labor and the National Civic League Workmen's Compensation Commission, *Report on the Operation of State Laws*, Senate Document No. 419, 63d Congress, 2d Session, 1914, p. 59.

[87] *Three Years under the New Jersey Workmen's Compensation Law*, Report of the Investigating Committee directed by the American Association for Labor Legislation, New York, 1915.

[88] See for example the Annual Proceedings of the International Association of Industrial Accident Boards and Commissions.

[89] Maryland, Nebraska, and New Jersey. U. S. Department of Labor, Bureau of Labor Statistics, Bulletin 272, under Analysis of Various State Compensation Laws.

[90] Alabama, Alaska, Louisiana, New Mexico, Tennessee, and Wyoming. *Ibid.*

[91] Arizona, California, Colorado, Connecticut, Delaware, District of Columbia, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Philippines, Puerto Rico, Rhode Island, South Dakota, Texas, Utah, Vermont, Virginia, Washington, West Virginia, and Wisconsin, U. S. Civil, and U. S. Longshoremen. Bureau of Labor Statistics, Bulletin 496, charts following p. 50, North Carolina Laws of 1929, Chap. 120; see note 69, p. 581.

ceived accident reports, investigated claims, settled disputes, and granted awards. Appeal to the courts was provided in all these states but was usually limited to questions of law.

In 1932 the "court system" still prevailed in seven states.[92] In these states the compensation system was obviously so defective as scarcely to merit the name of compensation at all. These states really had nothing more than a statutory schedule of awards imposed upon the common-law method of a court action to obtain damages for injuries. It is hard to explain the persistence of the court system in these jurisdictions in the face of universal agreement as to its inadequacy.

To summarize, we may say that after 20 years of operation many American compensation laws had serious defects in respect to the type of system they provided. Thirty-two of them were elective rather than compulsory; five of them had no adequate requirement as to insurance; all but seven of them permitted private insurance; and worst of all there were seven compensation laws which lacked any administrative agency to make them effective.

Development of Compensation Laws—Scope

Employments Covered

Among those appointed to investigate the feasibility of workmen's compensation there was some sentiment that the legislation should apply to all workers. The majority, however, felt that for constitutional reasons, if for no others, the laws would have to be limited to hazardous employments. This attitude was strengthened by the decision of the New York court in the Ives case, in which it was suggested that the police power could be exercised only as to unusual requirements of health and safety—in short, only in extrahazardous employments. In addition to the fear of constitutional objections, it was widely felt that workers in dangerous employments should be reimbursed for injuries, while employees subject to no unusual hazards should be left to the ordinary legal remedies. To these legal and ethical rationalizations must be added the political maneuvers of certain groups to secure exemption from the operations of the law. At any rate, of the 23 laws passed prior to January 1, 1914, seven were limited in application

[92] Alabama, Alaska, Louisiana, New Hampshire, New Mexico, Tennessee, and Wyoming. Bureau of Labor Statistics, Bulletin 496, charts following p. 50.

to the so-called "hazardous employments." [93] In practically all of the others, agricultural and household workers and "casual laborers" were excluded. Public employments were definitely covered in only six states; [94] while in about the same number of states the employees of the "small business man" were left to their common-law remedies.[95]

In 1914 the Joint Commission of the American Federation of Labor and the National Civic Federation found the sentiment among employers and employees almost universally for laws of more general coverage.[96] The commission reported that laws limited to "hazardous employments" not only led "to confusion" but bred "disrespect for the law." Nevertheless, almost half of the laws enacted from 1914 to 1917 were restricted in scope to "hazardous" employments.[97] The exclusion of farm labor and household workers was not seriously objected to and, except for Hawaii and New Jersey, both exemptions were universally adopted. The practice of excluding small employers from the operation of the law spread markedly when it was discovered that this type of exemption was also in effect a method of excluding agriculture and domestic service. No significant move was made during this period to compel the state and its political subdivisions to provide a system of compensation for their employees.

Early in 1917 the United States Supreme Court ruled that nothing in our federal constitution prevented the passage of compensation laws of universal application.[98] Thereafter, New Mexico was the only state to enact a law limited to hazardous employments. Moreover, during the period from 1917 to 1932, New York, Alaska, and Arizona changed over from laws limited to hazardous occupations to laws of general coverage. At the

[93] Arizona, Illinois, Kansas, New Hampshire, New York, Oregon, and Washington. Also the U. S. Civil Employees' Act of 1908. Bureau of Labor Statistics, Bulletin 203, pp. 12, 58, 74.

[94] Illinois, Iowa, Michigan, Nevada, Ohio, and Wisconsin. Bureau of Labor Statistics, Bulletin 126, from section on "Analysis of State Laws."

[95] Kansas, Nebraska, Nevada, Ohio, Rhode Island, and Texas. *Ibid.*, chart of "Principal Features of State Laws" following p. 48.

[96] *Report on the Operation of State Laws*, Senate Document No. 419, 63d Congress, 2d Session, 1914, pp. 60–61.

[97] New states: Alaska, Louisiana, Montana, Oklahoma, and Wyoming. Maryland changed over from general to hazardous coverage. On the other hand, the U. S. Civil Employees' Act was made general. Bureau of Labor Statistics, Bulletin 203, *op. cit.*, charts, pp. 12, 58, Maryland Acts of 1916, Chap. 597, U. S. Acts of 1915–16, Public Number 267.

[98] See cases quoted under footnote 63, p. 579.

latter date, but ten of the 51 compensation systems were restricted in scope to "hazardous" employments.[99] In all of these states additions to the list were made from time to time, while a few added the "catch all" phrase "and all other hazardous employments." Nevertheless, these laws were more limited in scope than the laws of the other states since they normally excluded the trades, professions, and many clerical occupations.

The Supreme Court decisions had virtually no effect in extending the laws to cover agricultural and household workers. Practically every state continued to exclude these large groups of employees, despite the growth of statistical evidence that both occupations were high among the hazardous industries. The justification for their exclusion was, therefore, changed from low hazard to difficulties of administration.

Despite the Supreme Court decisions, the number of states which exempted the "small employers" increased for a few years. From 1920 to 1933, however, the number abandoning this type of exclusion equalled the number of states adopting it. On January 1, 1933, 24 states provided for this form of exemption.[100] In Oklahoma the exemption applied only to those employing less than two workers. Arizona, Kentucky, Ohio, Texas, Utah, and Wisconsin required a minimum of three employees in order to be covered by their acts. Employers of less than four were exempted in Colorado, New Mexico, and New York, and those of less than five in seven states.[101] More extreme were the exemptions in Georgia and Missouri, in which all employers hiring less than ten workmen were exempted; while Vermont and Virginia required at least 11 employees in order to be covered. Alabama captured the prize with the exemption of all employers with less than 16 workers in their employ.

[99] Kansas, Louisiana, Maryland, Montana, New Hampshire, New Mexico, Oklahoma, Oregon, Washington, and Wyoming. Bureau of Labor Statistics, Bulletin 496, p. 12. This list includes Missouri and Illinois. These two state laws were amended to extend their coverage after 1929. Missouri Laws of 1931, p. 382; Illinois Laws of 1931, p. 576.

[100] Alabama, Alaska, Arizona, Colorado, Connecticut, Delaware, Georgia, Kansas, Kentucky, Maine, Missouri, New Hampshire, New Mexico, New York, North Carolina, Ohio, Oklahoma, Rhode Island, Tennessee, Texas, Utah, Vermont, Virginia, and Wisconsin. Bureau of Labor Statistics, Bulletin 496, charts following p. 50, "Principal Features of Laws"; North Carolina Acts of 1929, Chap. 120; see note 69, p. 581.

[101] Alaska, Connecticut, Delaware, Kansas, New Hampshire, North Carolina, and Tennessee. Bureau of Labor Statistics, Bulletin 496, chart 5, p. 12; North Carolina Laws of 1929, Chap. 120; see note 69, p. 581.

Although the extension of coverage to public employments made little headway for a time, it was slowly accomplished in the decade from 1920 to 1930. By January 1, 1933, Alaska, Missouri, New Hampshire, Tennessee, and Texas remained the only states exempting public employments and in two of these, Missouri and Tennessee, the law authorized acceptance by the state, counties, or municipal corporations. Thirty-one jurisdictions [102] covered public employees generally, while 14 [103] others did so partially.

Partly because of difficulties of administration, the exclusion of "casual workers" or "workers not in the usual course of employment" was made almost universal.

In later years also, there developed a type of exclusion from compensation coverage about which administrators of workmen's compensation were frankly puzzled. This was the use of "waivers" by which certain groups of workers might give up claims for compensation under certain conditions. A "waiver," to use the words of the Connecticut Board of Compensation Commissioners, means that "if a person desiring employment has some physical defect which would impose upon his prospective employer unusual hazard such as would probably result in his not being hired at all except in times of extraordinary business activity, he can waive both for his dependents and for himself any claim for the results of such physical defect." [104] An investigation of the question in 1931 by Miss Frances Perkins, then Industrial Commissioner of New York, revealed that Wisconsin, Ohio, Massachusetts, Connecticut, and Maryland permitted this practice.[105] In Connecticut, which had the broadest provision, the Board of Compensation Commissioners approved 9148 waivers in a two-year period.[106]

Perhaps a more serious threat to the compensation principle

[102] Arizona, California, Colorado, Connecticut, District of Columbia, Hawaii, Idaho, Illinois, Indiana, Louisiana, Maine, Michigan, Montana, Nebraska, Nevada, New Jersey, New York, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, Philippines, Puerto Rico, Rhode Island, South Dakota, Utah, Virginia, West Virginia, Wisconsin, and U. S. Civil. Bureau of Labor Statistics, Bulletin 496, p. 13, North Carolina Acts of 1929, Chap. 120; see note 69, p. 581.

[103] Alabama, Delaware, Georgia, Iowa, Kansas, Kentucky, Maryland, Massachusetts, Minnesota, New Mexico, Oklahoma, Vermont, Washington, and Wyoming. Bureau of Labor Statistics, Bulletin 496, p. 13.

[104] See Connecticut Board of Compensation Commissioners, Ninth Report, 1927–29, p. 10.

[105] International Association of Industrial Accident Boards and Commissions, Proceedings of 1931 meeting, printed as Bureau of Labor Statistics Bulletin 564, pp. 266, 270–272.

[106] *Ibid.*, p. 274. It should be noted that a new waiver must be obtained for each job, so that this figure probably includes some amount of duplication.

was discovered in the tendency in some states with elective systems to compel employees, as a condition of employment, to "elect themselves" out of the compensation law. Miss Perkins reported this situation as "far more serious than a waiver in a particular disability, since it offers the way to nullification of the compensation principle." [107]

Railway and Maritime Employees

The attempt to include maritime workers and employees engaged in interstate commerce under workmen's compensation laws gave rise to peculiar constitutional questions. Longshoremen had been covered, as a matter of course, by the various state enactments until the Supreme Court ruled, in May 1917, that dock workers in the ports of the United States could not be covered wholly by state laws, since they were under federal maritime jurisdiction when working on gangplanks and boats.[108] Congress immediately attempted to correct this situation by a statute providing that longshoremen should receive compensation under the act of the state in which they were injured.[109] However, this act of Congress was declared void as conferring on states power to enact legislation on a subject over which they were denied control by the constitution.[110] In 1922 Congress made another attempt to put longshoremen under the jurisdiction of state compensation laws.[111] This act was also declared unconstitutional.[112] Finally in 1927 Congress enacted the federal compensation law for longshoremen and harbor workers.[113]

Although jurisdiction over interstate railway employees had definitely been accepted by Congress when it enacted the Employers' Liability Act of 1908, several states attempted to legislate in

[107] *Ibid.*, p. 267.
[108] *Southern Pacific Co.* v. *Jensen*, 244 U. S. 205 (1917).
[109] U. S. 40 Statutes at Large 395 (1917).
[110] *Knickerbocker Ice Co.* v. *Stewart*, 253 U. S. 149 (1920).
[111] U. S. 42 Statutes at Large 634 (1922).
[112] *Washington* v. *Dawson Co.*, 264 U. S. 219 (1924).
[113] U. S. 44 Statutes at Large 1436 (1927). As first drawn up this bill included seamen. But the organized seamen were afraid to jeopardize their rights under maritime law and their right to sue for damages under the Jones Act [U. S. 41 Statutes at Large 988 (1921)], which brought them under the Federal Employers' Liability Act. Hence they insisted that they be not included under the new federal compensation law. See Proceedings of the 13th Annual Meeting of the International Association of Industrial Accident Boards and Commissions. U. S. Bureau of Labor Statistics, Bulletin 432, 1927, p. 43, and Proceedings of 14th Annual Meeting, Bulletin 456, 1928, pp. 153–156.

this field also. The state supreme courts took different positions on this legislation.[114] In May 1917 the United States Supreme Court decided that the states had no jurisdiction over such employees.[115] Thereafter, repeated efforts were made to enact a federal compensation statute to cover them. These efforts were defeated, largely because of the opposition of the railroad brotherhoods, who preferred to gamble for large awards in the courts rather than to accept the limited benefits likely to be granted by a compensation law.[116]

Summary of Excluded Employments

No figures for later than 1920 are available as to the total effect of these gaps in the coverage of our compensation laws. In that year, Carl Hookstadt, of the United States Bureau of Labor Statistics, estimated that practically 30 per cent of the employees of the 45 compensation jurisdictions of that date were excluded from the operations of the compensation laws.[117] It has been noted that the coverage of the acts was only slightly broadened from 1920 to 1932. It is safe to assume that on January 1, 1933, taking the United States as a whole, between 25 and 30 per cent of the workers of the country were still under the common-law system of employers' liability for work accidents.[118]

It is obviously impossible to justify a situation in which, though compensation was generally accepted as the best method of dealing with industrial accidents, 25 to 30 per cent of the workers of the country were not protected by it. As Downey long ago pointed out: "The farm hand who loses his arm in a corn shredder, the domestic laundress who breaks her leg on the basement stairs, the country blacksmith's helper who is permanently disabled by a kicking horse . . . have the same ethical claim to compensation that any other class of employee has." [119]

[114] For a brief summary of these cases see U. S. Bureau of Labor Statistics, *Comparison of Workmen's Compensation Laws of U. S. and Canada up to Jan. 1, 1920*, Bulletin 275, pp. 26–28.

[115] *New York Central Railway* v. *Winfield*, 244 U. S. 147 (1917); and *Erie Railway* v. *Winfield*, 244 U. S. 170 (1917).

[116] See U. S. Bureau of Labor Statistics, Bulletin 456, pp. 170–171, 173; also Bulletin 432, p. 44.

[117] *Comparison of Workmen's Compensation Laws of United States and Canada*, U. S. Bureau of Labor Statistics, Bulletin 275, 1920, p. 36.

[118] This estimate is based on a crude analysis of 1930 Census figures.

[119] Downey, E. H., *Workmen's Compensation*, p. 22.

Injuries Compensated

After it has been determined what workers are to be covered by a compensation law, there remains the question of defining the injuries to be compensated. During the first wave of legislation, half of the compensation laws used a definition which included the word "accident" such as "accidental injuries" or "injuries by accident";[120] the other half used the term "injuries" without the modifying adjective.[121] After 1914, practically every law enacted used a definition which included the word accident. This was evidently due to a fear that without it the act might be construed to include occupational diseases. That this fear was largely unfounded will be indicated at a later point.

A second question raised in any definition of compensable injuries involves the circumstances under which they may arise. Only five laws passed before 1914 failed to state that the injury must "arise out of and in the course of employment."[122] In these five states, compensable injuries were simply defined as those occurring "in the course of employment,"—obviously a more inclusive term. Virtually every law passed after 1913 set up the less inclusive standard.

Whatever the legislatures may have intended by these terms, it devolved upon the courts and commissioners to determine their exact meaning. In the early years of compensation experience, the courts tended to be strict in interpreting definitions; subsequently the tendency was in the other direction.[123] On the whole, it is safe to say that injuries occurring while going to or coming from work, or resulting from "horseplay on the job," or accidents caused by "Acts of God" are more likely to be compensated under a law which requires only that an accident occur "in the course of employment."

Even though the theory of workmen's compensation was that

[120] Arizona, Illinois, Kansas, Maryland, Minnesota, Nebraska, New Jersey, New York, Oregon, Rhode Island, and Wisconsin. U. S. Bureau of Labor Statistics, Bulletin 126, "Analysis of Principal Features of Laws," pp. 49–72.

[121] California, Connecticut, Iowa, Massachusetts, Michigan, Nevada, New Hampshire, Ohio, Texas, Washington, West Virginia, and U. S. Civil. *Ibid.*, pp. 49–72.

[122] Ohio, Texas, Washington, West Virginia, and U. S. Civil. *Ibid.*, pp. 65, 68, 70, 72.

[123] This statement is open to question. In 1918, C. A. Kingston suggested that there was a strict interpretation of the double standard. See U. S. Bureau of Labor Statistics, International Association of Accident Boards and Commissions, Proceedings of Fifth Annual Meeting, held 1918, Bulletin 264, pp. 60–72. Armstrong, in

all accidents should be compensated, regardless of whose negligence brought them about, there was from the very beginning a failure to carry out this principle completely. By January 1, 1914, 13 out of 22 states having compensation laws refused compensation for "self inflicted" injuries or those resulting from the "willful intent to injure self or another"; [124] 13 for injuries resulting from intoxication; [125] seven for injuries resulting from "willful misconduct"; [126] and two for failure to use safety devices.[127] This type of exemption spread rapidly. By January 1, 1933, practically every state refused to pay compensation where the injured or killed worker had been guilty in one or more of the ways indicated above. Thus a form of penalty for negligence was retained in many of our compensation laws and the dependents of the injured worker were left to suffer. Certainly compensation should be denied where the worker deliberately injured himself, but it is hard to see how other provisions of this sort are consistent with the idea of abolishing negligence as a basis for recovery.

Occupational Diseases

The movement to compensate occupational diseases along with occupational deaths and injuries is of relatively recent development. In the early years of compensation legislation too little was known about the nature and extent of such diseases. None of the compensation laws passed before 1914 specifically covered occupational diseases. It was the apparent intention in some of the states to include such diseases by avoiding the word "accident" in defining compensable injuries; but up to 1917 Massachusetts was the only state in which the courts interpreted such a law to cover occupational diseases.[128]

Insuring the Essentials, p. 255, suggests that the courts are still strict; on the other hand, F. Robertson Jones of the Workmen's Compensation Publicity Bureau, a stock company organization, contends that liberalization has gone too far.

[124] Iowa, Kansas, Maryland, Minnesota, Nevada, New Jersey, New York, Ohio, Oregon, Rhode Island, Washington, West Virginia, and Wisconsin. Bureau of Labor Statistics, Bulletin 126, "Analysis of the Principal Features of Various State Laws," pp. 49–74.

[125] California, Connecticut, Iowa, Kansas, Maryland, Minnesota, Nebraska, Nevada, New Hampshire, New Jersey, New York, Rhode Island, and West Virginia. *Ibid.*, pp. 49–74.

[126] California, Connecticut, Massachusetts, Michigan, Nebraska, New Hampshire, and West Virginia. *Ibid.*, pp. 49–74.

[127] Kansas and New Hampshire. *Ibid.*, pp. 49–74.

[128] The courts refused to so interpret the laws in Michigan, Ohio, and Texas. In Massachusetts the court held that an injury may be anything that disables a man from work. See, for example, *H. P. Hood and Sons* v. *Maryland Casualty Co.*, 206

Between 1917 and 1920 six jurisdictions provided for the inclusion of occupational diseases. Hawaii, Wisconsin, Connecticut, and California accomplished this through amendments; while the North Dakota Act and a federal law were so construed by their administrative bodies. Between 1920 and 1925 Kentucky, Puerto Rico, Minnesota, Illinois, New Jersey, and Ohio amended their laws to cover occupational diseases. By January 1, 1933, the total was brought to 11 states, three territories, and three federal jurisdictions.[129] Maryland may also be added since its supreme court has ruled a gradually contracted disease to be an "accidental injury."

In the period up to 1920 the general procedure for including occupational diseases was by a blanket provision more or less restrictive in wording, under which commissioners and courts could determine what diseases were of an occupational origin. New York was the only state to list in her law the diseases which were to be compensated. After 1920 the "list" laws became more popular except in federal jurisdictions. Additions to the list were made from time to time, and by January 1, 1932 the New York law covered 32 recognized occupational diseases, Minnesota 23, Ohio 25, Puerto Rico 15, and New Jersey 10.

Administrators of compensation laws agree that "a blanket provision is by far preferable to a list, no matter how liberal." [130] A resolution to this effect was adopted by the 1929 meeting of the International Association of Accident Boards and Commissions.[131]

On January 1, 1933, occupational diseases were compensable in only one-third of the 51 compensation jurisdictions. Of the 17 laws which provided for occupational disease coverage, seven were of

Mass. 223 (1910). This case arose under employers' liability before the compensation law was enacted but the interpretation of the word "injury" in this case apparently governed in subsequent cases arising under the accident compensation law.

[129] California, Connecticut, District of Columbia, Hawaii, Illinois, Kentucky, Massachusetts, Minnesota, New Jersey, New York, North Dakota, Ohio, Puerto Rico, Philippines, Wisconsin, U. S. Civil, and Longshoremen.

Bulletin 496, from charts of principal features of laws of the United States relative to workmen's compensation and insurance, following p. 50 (column: injuries covered).

[130] Stewart, Ethelbert, "Occupational Diseases and Workmen's Compensation Laws," *Monthly Labor Review*, XX, 2, February 1930, p. 93. On the other hand, Goldberg, Rosamond W., *Occupational Diseases*, Columbia University Press, 1931, points out that in practice the list has many advantages.

[131] U. S. Bureau of Labor Statistics, Proceedings, 1929, International Association of Accident Boards and Commissions, Bulletin 511, 1930, p. 325.

the unsatisfactory "list" variety.[132] Obviously the failure to cover occupational disease was a serious defect in the American compensation system.

Writing in 1924, E. H. Downey, perhaps the foremost authority on the subject, declared that an ideal system of workmen's compensation would cover "all employments . . . and all injuries whether by accident or disease which arise in the course of employment." [133] In 1933 after 20 years of compensation legislation there was no American compensation law which measured up to this standard.

The Waiting Period

The most important method for excluding injuries from the compensable category has been that of setting up a specified period which disability must exceed in order to be compensated. The modal waiting period provided by the laws up to 1914 was two weeks. This was the period recommended by the Conference of Commissions, which framed our first compensation laws.[134] This meant that all injuries of less than two weeks' duration brought no compensation and that in the case of other injuries the worker had to wait two weeks before payments started. The purpose of the waiting period was to exclude minor injuries and to prevent malingering. It soon became apparent that it also caused the seriously injured worker the loss of several weeks of compensation. In order to prevent this, a number of states provided that, if disability extended beyond a specified period, payment for the waiting period should also be made. Up to 1914 only five states had adopted this retroactive feature.[135]

From the beginning of compensation development there was controversy over the proper length of the waiting period. The investigating commission of 1914 found neither employers nor employees agreed among themselves on this question.[136] No marked tendency to reduce the length of the waiting period appeared during the period from 1914 to 1917. After 1917, however,

[132] Illinois, Kentucky, Minnesota, New Jersey, New York, Ohio, and Puerto Rico. Bulletin 496, from charts following p. 50 (column: injuries covered).

[133] Downey, E. H., *Workmen's Compensation*, p. 31.

[134] Conference of Commissions on Compensation for Industrial Accidents, Chicago, Proceedings, November 1910, p. 100.

[135] Arizona, Michigan, Nebraska, Nevada, and Wisconsin. Bureau of Labor Statistics, Bulletin 126, charts of the principal features of the laws, following p. 48.

[136] *Report on the Operation of State Laws*, Senate Document No. 419, 63d Congress, 2d Session, p. 37.

a great many states reduced the waiting period. During 1918 and 1919 alone, 18 states amended their laws in this respect.[137] By 1920 the modal waiting period had shifted from two weeks to one. In addition, the retroactive feature was adopted by 12 states during this three-year period.[138]

The decade from 1920 to 1930 witnessed a slow but steady reduction in the length of the waiting period. On January 1, 1933, 36 of the 51 systems provided for only seven days' waiting period;[139] while nine others provided for less than seven days.[140] By this date also, 29 states had adopted the retroactive feature of paying for the waiting period when injuries lasted a specified time, ranging from one to eight weeks.[141] Most of this development, however, took place before 1929.

Development of Compensation Laws—Benefits[142]

Initial Benefit Scales

The benefits provided injured workers by our first compensation laws were miserably low measured by any standard. Some reasons for the low scales adopted may be gleaned by reading the proceed-

[137] California, Colorado, Connecticut, Hawaii, Indiana, Kansas, Kentucky, Maine, Michigan, Minnesota, Nebraska, New Jersey, New Mexico, Oklahoma, Pennsylvania, South Dakota, Utah, and Vermont. U. S. Bureau of Labor Statistics, Bulletin 275, p. 58.

[138] Alabama, Connecticut, Delaware, Missouri, New York, North Dakota, Oklahoma, Rhode Island, South Dakota, Tennessee, Washington, and Wyoming. U. S. Bureau of Labor Statistics, Bulletin 272, 1921, p. 15, and laws of various states given, pp. 276–1050.

[139] Alaska, Arizona, California, Connecticut, Delaware, District of Columbia, Georgia, Hawaii, Idaho, Illinois, Indiana, Kansas, Kentucky, Maine, Massachusetts, Michigan, Minnesota, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Pennsylvania, Puerto Rico, Rhode Island, Tennessee, Texas, Vermont, Virginia, West Virginia, Wyoming, and U. S. Longshoremen. Bureau of Labor Statistics, Bulletin 496, Table 6, p. 14, and North Carolina Laws of 1929, Chap. 120. The list in Bulletin 496 excludes Delaware, whose law was amended in 1931, Chap. 239, and should be included; and includes Wisconsin, whose law was amended 1931, Chap. 66, and should not be included. This Bulletin was published in 1929.

[140] Maryland, Missouri, Oklahoma, Oregon, South Dakota, Utah, Washington, Wisconsin, and U. S. Civil. Bulletin 496, Table 6, p. 14. This list excludes Wisconsin (the Wisconsin law was amended 1931, Chap. 66. See note above).

[141] Alabama, Alaska, Arizona, Connecticut, Delaware, District of Columbia, Idaho, Illinois, Iowa, Louisiana, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Rhode Island, Tennessee, Texas, Virginia, Wisconsin, Wyoming, and U. S. Longshoremen. Bulletin 496, *op. cit.*, charts of principal features of laws following p. 50, and North Carolina Laws of 1929, Chap. 120.

[142] Chapter IV of *Development of Workmen's Compensation Legislation in the United States*, carries out this analysis in much greater detail than is possible to present here.

ings of some of the conferences held by the commissions which framed the first compensation acts. Perhaps the most important influence in shaping their recommendations on this question was uncertainty as to the burden which the new system would impose on the employer. It was generally supposed that workmen's compensation would cost him more than employers' liability, but how much more, no one had the vaguest idea. The possible effect upon the small employer caused special concern. In addition to this general apprehension, each commission feared that if it provided more liberal benefits than did competing states, it would place its industries in an unfavorable competitive position. Actual amounts received under employers' liability also affected the benefit scales set up in the first laws. Theoretically, the commissions were establishing an entirely new system of accident compensation, but they tended to look back for guidance to the miserable payments made to injured workers under employers' liability. Finally, there was the opposition of employers' representatives to a compensation law if it meant a relatively high scale of benefits.

Such were the reasons why the commissions favored very low benefit scales. The rates they recommended were as follows: [143] In the case of partial disabilities, the recommended compensation was 50 per cent of the difference between earnings before and after the accident, with a $10.00 weekly maximum, a $4.00 minimum, and a maximum duration of 300 weeks.[144] Exactly the same scale was recommended for permanent total disability except that the minimum was $5.00.[145] In other words, a man completely disabled for life would draw at the most $10.00 a week for 300 weeks. The recommendation for death benefits permitted a maximum compensation of 60 per cent of wage loss if the widow had four or more children, but the weekly maximum was again $10.00 and the maximum period 300 weeks. In fairness, it should be pointed out that these were considered minimum recommendations. Hardly anyone at the Conference urged less liberal benefits; while all who opposed the recommendations urged greater liberality. Moreover, most of the recommendations were passed with but small major-

[143] These were given in the Conference of Commissions on Compensation for Industrial Accidents held in Chicago, Proceedings, November 1910, pp. 31–302 and App. D. This was the only conference to vote on specific recommendations.

[144] *Ibid.*, pp. 70–99.

[145] *Ibid.*, pp. 115, 125.

ities; opposition coming primarily from labor men who were a minority in the conferences.[146]

On the whole, the provisions of the laws passed from 1911 through 1913 were more liberal than these recommendations. A few states provided less liberal benefits, but a vast majority set standards at least as good, and in many cases better. This was especially true for death and permanent total disability.

It is extremely difficult to analyze the development of benefit provisions in any specific way. A benefit scale is necessarily complicated since it must provide benefits for four classes of injuries: deaths, permanent total disabilities, temporary total disabilities, and permanent partial disabilities. Moreover most American compensation laws were set up with so many restrictions around benefit payments that it is impossible to say what the benefit scale actually amounts to. A typical provision is that compensation shall be 50 per cent of weekly wages, but not to exceed $10.00 a week for three hundred weeks, with a maximum of $2000. With four classes of benefits, four elements in the make up of each benefit rate, and 51 compensation laws to consider it is obvious it would take a book to analyze at all adequately the development of statutory benefit provisions. Hence, the following brief discussion will have to be quite general.

Statutory Development of Benefit Scales

From the beginning of compensation history, three methods were used for computing benefits payable in death cases. Twelve of the 23 systems set up prior to 1914 provided a pension based on a percentage of wages earned for a period prior to the injury.[147] Eight states provided for lump-sum payments usually based on earnings; [148] while three states granted fixed monthly pensions not related to earnings.[149] For convenience, these plans will be referred to as the "wage-loss pension plan," [150] the "lump-sum plan" and the "straight-pension plan" respectively. The principle of wage loss as the factor determining benefits soon became dom-

[146] *Ibid.*, pp. 91, 112, 113.

[147] Connecticut, Iowa, Massachusetts, Michigan, Minnesota, Nebraska, Nevada, New Jersey, New York, Rhode Island, Texas, and Ohio. Bulletin 126, from analysis of principal features of laws, pp. 49–72.

[148] Arizona, California, Illinois, Kansas, Maryland, New Hampshire, Wisconsin, and U. S. Civil. *Ibid.*, pp. 49–72.

[149] Oregon, Washington, and West Virginia. *Ibid.*, pp. 49–72.

[150] Strictly speaking the word pension means payments for life, which is not necessarily the case here. The term is used for want of a better word.

inant, as a vast majority of states adopted the "wage-loss pension plan" of compensation. By January 1, 1933, only ten of the 51 systems in force compensated by other methods.[151] Of these ten, six provided lump-sum payments, usually based on earnings and with a stated maximum ranging from $3000 to $9000.[152] The remainder provided monthly pensions based on the principle of need rather than wage loss.[153]

The method of compensation has of course little to do with the liberality of the benefits provided. The meager benefits provided by our first compensation laws met sharp criticism at their very enactment. The Joint Survey Commission of 1913 reported considerable sentiment even among employers for an increase in payments for death and the more serious injuries.[154] Despite this sentiment, very little improvement took place during the period from 1914 to 1917. During the war period, when wages and cost of living were shooting skywards, a little improvement was noticeable. The decade from 1920 to 1930 witnessed a gradual improvement of the benefit provisions of most of our compensation laws. In general, it can be said that there was a greater degree of improvement in the weekly scale of benefits than in the maximum amount and maximum duration limits set up in most of the laws. Whether or not this improvement was significant depends upon a comparison with changes in wages and cost of living during the same period. This will be discussed in a later section.

When the first compensation laws were enacted very few states realized that a permanently disabled workman brought a greater financial burden to his dependents than if he had been killed outright. The laws passed during the first wave of legislation provided more liberal benefits for death than for total disability. It did not take long to discover that from a compensation standpoint permanent total disabilities were more serious than death. As early as 1914 there appeared to be a "growing demand in the different states . . . for extending the compensation period in cases of total

[151] Alaska, California, Illinois, Kansas, New Hampshire, Oregon, Puerto Rico, Washington, West Virginia, and Wyoming. Bulletin 496, *op. cit.*, from charts of principal features of the laws following p. 50.

[152] Alaska, California, Illinois, Kansas, New Hampshire, and Wyoming. *Ibid.*, from charts of principal features of the laws following p. 50.

[153] Oregon, Puerto Rico, Washington, and West Virginia. *Ibid.*, from charts of principal features of the laws following p. 50.

[154] Joint Survey Commission Report, Senate Document No. 419, 63d Congress, 2d Session, pp. 34–40.

disability so as to cover the lifetime of the unfortunate victim." [155] Again this demand was but little satisfied in the period from 1914 to 1917, but after the latter date benefits for permanent total disability were increased relatively more than those for death.

A vast majority of serious accidents result in temporary total disability. That is to say, during the "healing period" the injured worker cannot engage in any work. For this period he is paid on the basis of total disability. When he returns to work, if he has suffered some permanent impairment he is shifted to permanent partial disability. On the whole, the rate of compensation for *temporary* total disability has been practically the same as for *permanent* total disability except as to the duration of benefits.

One of the most difficult problems in drafting compensation laws has been the method of compensating permanent partial injuries.[156] The early commissions did not fully appreciate the problem when, after some discussion, they voted to base compensation on loss of earning power following the accident. They felt that wage loss would develop during the course of years and that the amount of compensation should be left open to constant revision. It was soon discovered, however, that leaving the question permanently open resulted in constant confusion for administrative bodies. Moreover, cases often occurred where a workman lost several fingers, but could return to his old job at the same pay. To adopt completely the wage loss principle seemed unjust.

New Jersey was the first state to adopt a method of compensation which attempted to avoid the difficulties of the wage loss method. The New Jersey plan was to adopt a schedule providing a certain rate of compensation for varying periods depending on the nature of the injury. Thus the loss of an arm might be compensated by paying 50 per cent of earnings for 100 weeks; the loss of a leg, 50 per cent for 200 weeks, and so on. During the first three years of compensation history, "percentage of wage loss" was the favorite method of compensation for permanent partial injuries, but thereafter, a large majority of states adopted the New Jersey schedule system. By 1917, all but seven states [157] had

[155] *Ibid.*, pp. 39–40.

[156] For a thorough discussion of permanent partial disabilities, see Bowers, Edison L., *Is It Safe to Work?* Houghton Mifflin, 1930.

[157] Arizona, California, Kansas, New Hampshire, Puerto Rico, Washington, and West Virginia. Bureau of Labor Statistics, Bulletin 240, p. 59; for schedules of other states see Bureau of Labor Statistics, Bulletin 203, section on comparison of state laws.

adopted schedules for a number of injuries and in three [158] of the seven they had been worked out by administrative bodies. The schedule system proved to be relatively simple and workable, but was found to operate unjustly in a great many cases. For example, a ditch digger, whose loss of a thumb did not result in any wage loss, received approximately the same compensation as a typesetter who was forced to seek a new occupation as a result of the same injury. Or an 18-year old boy might receive no more than a 65-year old man, whose working days were practically over. The schedule system was also attacked for failure to develop a fair relationship among the various types of injuries.

Out of these defects of the schedule system arose a movement for a fairer and more scientific system for compensating permanent partial injuries. California was the first state to modify the flat rate schedule by taking into account: (1) some recompense for the injury itself, (2) the impairment of working ability by the same injury in the various occupations, and (3) adaptability to conditions varying with the age of the injured. After a thorough study an elaborate schedule of payments for each major type of occupation at different age levels was developed. Each injury was given a rating on the basis of a percentage of total disability.[159] In 1921, after a number of years of discussion, the International Association of Accident Boards and Commissions authorized a committee to draft a standard schedule for compensating permanent partial injuries. During the course of several years, the committee's recommendations calling for recognition of age and occupation were adopted with some modification.[160] However, there seemed little tendency to abandon the flat rate schedules despite the recommendation of administrators of workmen's compensation.

Up to January 1, 1930 California, Wisconsin, New Hampshire, and the federal government in the Longshoremen's Act were the only jurisdictions to modify even partially the existing flat rate schedules. In 1931, Wisconsin shocked administrators by abandon-

[158] California, Washington, and West Virginia. Bureau of Labor Statistics, Bulletin 240, p. 60.

[159] Bowers, *op. cit.*, Chap. IV. Also International Association of Accident Boards and Commissions, Proceedings of Eighth Annual Meeting, 1921, U. S. Bureau of Labor Statistics, Bulletin 304, pp. 117–139.

[160] Bowers, *op. cit.* Also U. S. Bureau of Labor Statistics, Bulletin 304, p. 140, and International Association of Accident Boards and Commissions, Proceedings of Ninth Annual Meeting, 1922, Bulletin 333, pp. 70–149.

ing the more scientific system in favor of a flat rate schedule.[161] The most recent criticism of flat rate schedules was made in the summer of 1931 at a conference of eastern states. This conference recommended that the schedule loss tables of the Federal Longshoremen's Act be taken as a standard guide for other laws.[162] Despite all these pronouncements of administrators, there appears little likelihood of any rapid change from the old system which offers a simple and workable scheme even though unscientific and often unjust.

Did Benefits Keep Pace with Wages and Cost of Living? [163]

The previous section attempted to picture the changes in the statutory provisions on benefits. It is fair to state as a generalization that the *weekly rate* of payments was considerably improved during the period from 1914 to 1930, but that the improvement in the *duration* and *total amount* of benefits was not very significant. It is important to consider the general improvement in relation to changes in wages and cost of living during this period.

During a period of rising wages and prices, one of the most important benefit provisions is the weekly maximum figure. A stationary maximum will cut more and more from workers in the higher brackets and, as the wage level increases, affects more injured workers in the lower brackets. A comparison of changes in the weekly maximums provided in our first compensation laws with changes in wages and cost of living, indicates that the weekly maximums almost always lagged behind the other two factors. In other words, the average injured worker of 1930 received a smaller portion of wage loss in his weekly compensation than did the average injured worker of 1914. The average injured worker of 1930 also received less in weekly compensation measured in terms of its purchasing power, than did the worker of 1914. It is true, however, that the improvements in the maximum amount and maximum duration provisions of the laws probably compensated for the loss in real weekly compensation, so that in total benefits the injured worker of 1930 was probably about as well off as the injured worker of 1914.

[161] Wisconsin statutes 102.52 through 102.54.

[162] This recommendation was quoted in a paper read at the 18th Annual Meeting of the International Association of Accident Boards and Commissions, October 1931. See U. S. Bureau of Labor Statistics, Bulletin 564, 1932, pp. 2–3.

[163] This section is but a brief summary of material in Chap. IV of thesis, *op. cit.*

To speak of an average worker of course means very little. The variation from state to state in the size of benefits provided is tremendous. In some states there was a genuine liberalization of the benefit provisions in the period from 1914 to 1930. In other states the liberalization was barely adequate to keep up with the changes in cost of living during the period. In a number of states, the miserable provisions of the first laws were allowed to stand intact while cost of living shot skyward and while the earnings of physically able workers went up in somewhat the same proportion. A later section will give an indication of some of the states falling into these groups.

It might seem that with the falling wages and cost of living after 1929, the injured workers of 1930–32 would have been better off than in the previous decade. The weekly maximum on compensation affected fewer workers and the limitations on maximum amount restricted the recovery of wage loss to a considerably less degree. In actual fact, this improved situation affected very few workers. In the first place, millions of workers were entirely without employment, or employed on public projects in many of which they were not subject to compensation when injured. Secondly, since benefits in most states were figured by computing 50 to 65 per cent of *actual* earnings, not of *full time* earnings, the prevalence of short time work and periods of complete unemployment meant that workers injured in 1930 to 1932 tended to receive much lower weekly benefits than workers injured during the preceding period of "prosperity." In some states labor tried to secure the computation of benefits on a basis of full time earnings. But this was opposed for fear of its effect on the insurance companies.[164] This fear was probably unfounded due to a failure to take into account the decrease in number of accidents in a period of declining employment.

Development of Medical Benefits

In contrast to the meager liberalization of compensation provisions, there should be recorded the extremely significant improvements in the provisions for medical treatment of injured workers. Prior to the enactment of workmen's compensation laws,

[164] See discussion at 1932 meeting of the International Association of Industrial Accident Boards and Commissions, U. S. Bureau of Labor Statistics, Bulletin 577, 1933, "Discussion," pp. 68–85. The ignorance of some of the commissions was shocking.

employers were not compelled to pay for the medical care required by injured employees except where included by the jury in awarding damages. Most of the early compensation acts recognized the need for at least a limited amount of medical care, but up to 1914 only three states provided for an unlimited period of medical attention.[165] Even in these states the amount expended was limited. Six states and the U. S. Civil Act failed entirely to provide for medical attention; [166] while the others limited both the duration of such treatment and the amount.

In 1914 the Joint Commission of the American Federation of Labor and the National Civic Federation urged the desirability of more adequate medical benefits in order to restore injured workmen to full earning capacity in the shortest possible time.[167] Yet in 1917 the United States Bureau of Labor Statistics reported that the importance of medical and surgical treatment to rehabilitate injured workmen was "overlooked by most of the legislatures and not sufficiently grasped by many of the compensation commissions." [168]

The war period witnessed a considerable improvement in the medical provisions. During 1919 alone, 17 states liberalized the medical provisions of their laws. In 1920 the Bureau of Labor Statistics reported that "state legislatures at last seem to have awakened to the fact that adequate medical benefits are essential if injured employees are to receive just and proper treatment under workmen's compensation laws." [169] At this date only three states failed to require any medical treatment.[170] A steady liberalization of medical benefit provisions was accomplished in the decade from 1920 to 1930. By the latter date every state with a compensation act required the furnishing of some medical treatment by the employer. Moreover, under 15 laws neither the time nor the amount to be expended was limited.[171] The other states placed

[165] Ohio, Oregon, and West Virginia. U. S. Bureau of Labor Statistics, Bulletin 126, from charts of principal features of laws following p. 48.

[166] Arizona, Kansas, Maryland, Nevada, New Hampshire, New York, and U. S. Civil. *Ibid.*

[167] Report of the Joint Commission, Senate Document 419, 63d Congress, 2d Session, pp. 31–37.

[168] Bulletin 203, p. 106.

[169] Bulletin 275, p. 90.

[170] Alaska, Arizona, and New Hampshire. Bulletin 275, Table 27, p. 92.

[171] California, Connecticut, District of Columbia, Hawaii, Idaho, Illinois, Minnesota, Nebraska, New York, North Dakota, Philippines, Puerto Rico, Washington, U. S. Civil, and U. S. Longshoremen. Bulletin 496, pp. 20–21. (Minnesota is not included in this list but Chap. 248, Laws of 1929, amended the Minnesota law to end limitation, leaving the matter up to the discretion of the Industrial Commission.)

some limit to the amount or duration of expenditures, but in a number of them either or both could be increased at the discretion of the administrative body.

That liberalization of medical benefit provisions has taken place was brought out by a study of the trend of medical costs made in 1931.[172] This study, based on data from 21 states, showed that the average ratio of medical costs per $100 of payroll exposure to the pure premium income increased from .16 in 1920 to .26 in 1929. The comparatively greater liberalization of medical provisions compared with compensation provisions may be brought out in the changing ratios of medical costs to compensation costs. A study of 30 states for the period from 1917 to 1920 showed the average ratio as 26.7 per cent. Data for all states indicated the ratio to be 42 per cent at the end of 1932.[173]

Appraisal of Benefits Provisions [174]

Perhaps the most serious criticism of American compensation laws, as they stood in 1932, relates to the inadequacy of the benefits which they provided. It should be remembered that it was not a theory of compensation which led to the rapid spread in this country of compensation legislation. It was the miserable living standards forced upon families of industrial accident victims that aroused the nation to the need for some better method than employers' liability for dealing with this problem. Whatever else may be desired of our compensation laws, they ought to have put an end to the conditions of the pre-compensation era. Have they done this? The answer is that they have not.

Though not to be taken as conclusive proof, a glance at the states which fail to meet the benefit standards of our most liberal compensation acts will reveal those states which fail to cover the barest needs of injured workers and their families. For death cases the best half dozen laws provide at least 65 per cent compensation, with a weekly maximum of $20.00 or more until death or remarriage of the widow, and up to a specified age for the children. This standard in 1932 was met by the laws of New York, Arizona, Nevada, North Dakota, and the federal acts for civil employees

[172] Made by the National Council on Compensation Insurance, mimeographed copy loaned by Mr. Arthur Altmeyer of the Wisconsin Industrial Commission.

[173] Private data loaned by Mr. Arthur Altmeyer of the Wisconsin Industrial Commission.

[174] For a more thorough analysis of the benefit provisions, we again refer to the thesis by Harry Weiss, Chap. V.

and longshoremen. It was estimated that the actual benefits provided in New York in 1930 (maximum of 66⅔ per cent and $25.00 a week) amounted, on the average, to less than 30 per cent of what the injured worker would have earned during the remainder of his working life. It is safe to say the dependents of these workers were living at a very low standard. A study of the effect of the death of the breadwinner in California and Ohio indicated a definite lowering of the standard of living; moving to poorer neighborhoods, no education of the children, taking in boarders, resorting to charity, and often absolute dependence upon charity after a few years.[175] If this was the case in these two states which rank at least average in their death benefit provisions, what can be said of the states which award even less in the way of compensation? What sort of living are the families of industrial victims getting in states like Colorado, Vermont, Georgia, Kentucky, Virginia, Alabama, Utah, and Indiana? In all of these states the maximum weekly rate of compensation in 1933 could not go above $15.00 and, what is even more serious, payments were limited to six years and even less if the amount of compensation reached $4000. This standard was the best of this group of states. Another large group of states provided benefits but slightly more liberal.

Six states also set the standard for permanent total disability. Arizona, Wisconsin, California, New York, North Dakota, and the federal law for civil employees all provided in 1932 at least 65 per cent of weekly compensation for the life of the victim and set their maximum payment at $20.00 or better. A vast majority of compensation laws were far from meeting this moderate standard of liberality. The following states limited the weekly compensation to $15.00 or less and in practically every case provided that a man totally disabled for life could receive compensation for 500 weeks or less; that is, for less than 10 years. These states were Alabama, Georgia, Indiana, Kentucky, Rhode Island, Tennessee, Vermont, Delaware, Iowa, New Hampshire, Pennsylvania, South Dakota, Colorado, Virginia, and the Philippines. A number of other states provided benefits only a little more liberal.

The benefit provisions for temporary injuries were, relatively speaking, more liberal than for the serious injuries. This was because the maximum amount and duration provisions did not affect the awards except in unusual cases. Fifteen states limited

[175] Bowers, *Is It Safe to Work?* Chap. XI, gives a summary of these studies.

weekly compensation to $15.00 per week or less. These backward states were Alabama, Delaware, Georgia, Iowa, Kentucky, Nebraska, New Hampshire, New Mexico, Pennsylvania, Puerto Rico, South Dakota, Vermont, Virginia, Colorado, and the Philippines.

The many types of injuries under the classification of permanent partial disabilities makes it difficult to pick out the states with the lowest standards. An analysis indicates, however, that for the most part they were the same states which provided low awards for the other types of injuries. Benefits for permanent partial disabilities were based on the assumption that the benefits would be supplemented by earnings. With millions of workers out of jobs, the chances for handicapped workers to find employment are remote.

The medical provisions of compensation laws have been greatly liberalized, yet there remained in 1932 many states which set up limitations around the amount to be expended for medical treatment. Although it seems clear that, even from the standpoint of the employer and the insurance company, unlimited medical attention is desirable. The least liberal states in this respect were Alabama, Georgia, Iowa, Maine, New Hampshire, Pennsylvania, Tennessee, and Vermont.

The benefit provisions of most laws in 1932 may be said to constitute a grave indictment of our compensation system. They indicate that after 20 years under compensation laws but a small fraction of the burden of industrial accidents had been shifted from injured workers and their dependents. It seems clear that the compensation received was generally speaking entirely inadequate to maintain injured workers and their dependents in accord with any standard of minimum decency. No doubt it is true that prior to workmen's compensation many injured workers received even less for the same injury and that many got nothing at all. But workmen's compensation legislation was certainly intended to do more than distribute somewhat more equitably the small amounts paid out to injured workers under employers' liability.

An analysis of American compensation legislation suggests an impasse. It is widely assumed that workmen's compensation has solved the problem of industrial accidents and abolished the evils of employers' liability. Yet this assumption is by no means borne out by the facts. To reach the real goal of workmen's compensation legislation will require a reawakened concern over the plight of injured workers and their dependents.

CHAPTER VII

OLD AGE PENSIONS AND UNEMPLOYMENT COMPENSATION

In the period after the World War two new types of labor legislation came prominently to public attention—namely old age pensions and unemployment compensation. By December 31, 1932, 17 states [1] had enacted old age pension laws and one state, Wisconsin, had passed a measure providing for a system of compensation for the unemployed.[2] Because these two new types of labor legislation will undoubtedly play an increasingly important part in the future, a brief discussion of these first laws seemed an essential part of this volume. Naturally the history of their enactment constitutes the major part of the story.

Old Age Pensions

The movement for old age pensions may be said to date from as far back as 1907 when the state of Massachusetts appointed a commission to study the question of old age dependency.[3] No action, however, resulted from this investigation and the first old age pension law was passed in Arizona in 1915.[4] Because of its ambiguity and loose wording this act was promptly declared unconstitutional.[5] The first old age pension law to be operated was also passed in 1915, strangely enough, in the territory of Alaska.[6]

Except for the passage of the United States Civil Service retirement law in 1920 no further activity occurred in this field until

[1] California, Colorado, Delaware, Idaho, Kentucky, Maryland, Massachusetts, Minnesota, Montana, Nevada, New Hampshire, New Jersey, New York, Utah, West Virginia, Wisconsin, and Wyoming. For references to these statutes see subsequent notes in this chapter.

[2] This act was not yet completely in operation at that date. Payment of contributions did not begin until July 1, 1934. See Wisconsin Laws, Special Session, 1931–32, Chap. 20; Wisconsin Laws of 1933, Chap. 186, Wisconsin Statutes, Chap. 108.

[3] Massachusetts Acts of 1907, Chap. 127 (Resolve to Provide for an Investigation and Report relative to the Adoption of a System of Old Age Insurance and Pensions).

[4] Arizona Acts of 1915, p. 10 (initiative measure).

[5] *State Board of Control* v. *Buckstegge*, 18 Arizona 277 (1916).

[6] Alaska Acts of 1915, Chap. 64, p. 116.

1921.[7] In that year official investigating commissions were created in Massachusetts, Ohio, Pennsylvania, and Wisconsin. In August of that year the cause of old age pensions gained a powerful ally when the Grand Aerie of the Fraternal Order of Eagles passed a resolution declaring such pensions to be a "necessary social and economic consideration" and appropriating a fund of $7500 plus the interest for one and a half years on the Eagles' Patriotic Fund for an educational campaign.[8] The Eagles were no newcomers to the cause of social legislation, having played an important part in the campaigns for mothers' pensions and workmen's compensation. In the following year the Grand Aerie created a permanent old age pension department. This department co-operated with the American Association for Labor Legislation in drafting a model old age pension bill.[9]

This model bill provided for a pension of not to exceed one dollar per day (when added to all other income) for persons of 70 years or older. Such persons must have been citizens of the United States for at least 15 years, and residents of the state for 15 years immediately preceding application for pension, or for 40 years five of which immediately preceded application. The value of property which might be owned by an applicant for a pension was limited to $3000. The bill provided for administration of old age pensions on a county basis—probably because the responsibility for caring for the indigent aged had always rested on that unit of government. It was the counties which had always provided institutional care for the aged who lacked other resources. Mothers' pension laws had also used the county basis.

The Eagles undertook an aggressive campaign to secure old age pension laws. They organized old age pension clubs in each of their local aeries or lodges and sought to make all their members familiar with the text and purpose of the model bill. This force of nearly one-half million informed individuals proved very effective in "spreading the word" and in combating the objections to old age pensions. The most common arguments which they had to meet were difficulty of administration, high cost, and pauperization of the aged population.

The year 1923 may properly be said to mark the beginning

[7] The Retirement Act of May 22, 1920 (41 Stat. L. 614, 619).

[8] *The Eagle Magazine*, September 1921, pp. 4, 18.

[9] Published in full in *American Labor Legislation Review*, XVIII, December 1928, pp. 430–433.

of successful legislation for old age pensions in the United States. In that year three states, Montana, Nevada, and Pennsylvania, placed old age pension laws on the statute books.[10] However, adoption of the pension system under these laws was made optional with the counties, and it was the counties which had to provide the funds. Such legislation was obviously weak. The law in Nevada remained entirely inoperative. In Montana only certain counties adopted the pension system. In Pennsylvania the new law was declared unconstitutional because of a provision in the state constitution prohibiting the legislature from appropriating money for benevolent or charitable purposes.[11] In the same year the standard bill was introduced in the legislatures of 21 other states. In Ohio a referendum vote on pensions was lost by almost two to one odds.

During 1925 Wisconsin was the only state to pass a pension law.[12] It was a county option law, but contained a new type of provision whereby the state was to reimburse the counties for one-third of the cost of pensions paid. In California a pension law was passed by the legislature only to be killed by the governor's veto. Three states, Colorado, Minnesota, and Utah, appointed commissions to study the subject. In Pennsylvania, the legislature voted to amend the state constitution to permit old age pension legislation.[13] In that state, however, a constitutional amendment cannot be submitted to popular referendum until passed in two successive legislative sessions, and if defeated in one session it cannot be considered in the next. Since the 1927 session voted the pension amendment down, further action in Pennsylvania was impossible until 1931.[14]

In 1926 Kentucky became the fourth pension state, but its law, like that of Nevada, remained practically inoperative.[15] A law passed both houses of the legislature in Washington, but was vetoed. New York appointed a commission to study the subject.

In 1927 Colorado and Maryland passed pension laws,[16] but

[10] Montana, Acts of 1923, Chap. 72; Nevada, Acts of 1923, Chap. 70; Pennsylvania, Acts of 1923, No. 141.

[11] *Busser* v. *Snyder*, 282 Penn. 440 (1925).

[12] Wisconsin Acts, 1925, Chap. 121; Statutes, Secs. 49.20 through 49.39.

[13] Pennsylvania Acts of 1925, Jt. Res. 6A.

[14] See Purdon's Pennsylvania Statutes Annotated, Constitution, Art. XVIII, Sec. I, 1930.

[15] Kentucky Acts of 1926, Chap. 187, p. 873.

[16] Colorado Acts of 1927, Chap. 143, p. 542; Maryland Acts of 1927, Chap. 538, p. 1108.

Colorado's law did not become operative because of faulty administrative provisions.[17] The Wyoming legislature passed a bill which became the third to be killed by executive veto.

Thus as late as 1928 only six states [18] had pension laws, and of these only two, Montana and Wisconsin, were actually paying pensions, even in a few counties.

The year 1929 marks the turning point in the history of old age pension legislation. For the first time the American Federation of Labor openly supported this legislation.[19] Partly due to this addition to the ranks of its supporters, California, Minnesota, Utah, and Wyoming were added to the six pension states.[20] Bills introduced in 28 states indicated a growing interest in the legislation. More important, three of the new laws, in California, Utah, and Wyoming, were of a new type; they were mandatory upon all counties in the state. The California law contained another important feature, it provided for a state contribution to the cost of pensions. The California bill as introduced was nonmandatory. It was through the insistence of the American Association for Labor Legislation and of the Eagles that it was amended before passage to make it compulsory. There was no organized opposition to the bill in either house and its passage was accompanied by applause. The Eagles had conducted an extensive educational campaign in the state, and many of the legislators had gained a personal knowledge of the need for a pension plan.[21]

In the following year, 1930, two thickly populated and highly industrialized states, Massachusetts and New York, provided pensions for aged dependents. Both laws were mandatory on all counties and provided for state contributions to costs.[22]

The year 1931 marked a new high in pension legislation. Laws were passed in five states, four of them mandatory on all counties

[17] See Metropolitan Life Insurance Company, *Old Age Dependency: Some Existing Governmental Plans for Its Relief*, Monograph II in Series of Social Insurance, May 1, 1931, p. 23. According to Epstein, A., "The American State Old Age Pension Systems in Operation," *Annals* of the American Academy of Political and Social Sciences, Vol. 170, 1933, p. 107, one or two counties took advantage of the law.

[18] Colorado, Kentucky, Maryland, Montana, Nevada, and Wisconsin.

[19] American Federation of Labor, Proceedings, 1929, Resolution No. 3, p. 264.

[20] California Acts of 1929, Chap. 530, p. 914; Minnesota Acts of 1929, Chap. 47, p. 42; Utah Acts of 1929, Chap. 76, p. 116; Wyoming Acts of 1929, Chap. 87, p. 109.

[21] *The Eagle Magazine*, July 1929, p. 5.

[22] Massachusetts Acts of 1930, Chap. 402, p. 489; New York Acts of 1930, Chap. 387, p. 812; Chap. 388, p. 818.

and two providing for very substantial state contribution to the costs.[23] Two other states amended their pension laws to make them mandatory, though in one of these, Wisconsin, this provision was not to take effect until July 1, 1933.[24] Several other states amended their pension laws to facilitate the raising of funds. In Pennsylvania the fight to amend the constitution was renewed and a resolution passed the legislature.[25] Bills were passed in one house in a number of states. The wide interest in the subject is apparent from the fact that over 100 pension bills were introduced in the various legislatures during 1931.

The only promising new development in the non-legislative year 1932 was in Missouri where the voters approved by referendum a constitutional amendment authorizing the legislature to enact an old age pension law.[26] The Colorado law after being made mandatory in 1931 was declared unconstitutional in 1932.[27]

The actual growth of pensions as a method of caring for the indigent aged may best be expressed in figures. In 1928 a total of 1221 persons in the United States received pensions amounting to $222,559. By 1932 the number of pensioners had risen to 102,537 and the amount disbursed was roughly twenty-two and a half million dollars.[28] The administrative cost proved to be very low. In California in 1931 it amounted to only seven-tenths of a per cent of the annual cost of pensions; in New York it was 5.6 per cent of the total pension cost; in Milwaukee County, Wisconsin, 3.8 per cent.

Annual cost per pensioner proved to be much lower than poorhouse care. In California in 1931 the average annual pension was $275.28 compared with $484.12 per inmate of poorhouses. In Massachusetts the corresponding figures were $312 and $539.33, in New York, $302.88 and $405.59. In every state in which pen-

[23] Delaware	Mandatory	100% state financed	Acts 1931, Chap. 85
Idaho	Mandatory		Acts 1931, Chap. 16
New Hampshire	Mandatory		Acts 1931, Chap. 165
New Jersey	Mandatory	75% state financed	Acts 1931, Chap. 219
West Virginia	Non-mandatory		Acts 1931, Chap. 32

[24] Colorado Acts of 1931, Chap. 131, p. 678.
Wisconsin Acts of 1931, Chap. 239, p. 372. This was again amended in the 1933 legislature to postpone the mandatory provision until July 1, 1935. Wisconsin Acts of 1933, Chap. 375.

[25] Pennsylvania Laws of 1931, Resolutions No. C-1 and No. C-6, pp. 1436, 1439.

[26] Missouri Acts of 1931, p. 385 (amendment passed; see Acts of 1933, p. 478).

[27] *Denver* v. *Lynch*, 92 Colorado 102 (1932).

[28] U. S. Department of Labor, *Monthly Labor Review*, XXXVII, No. 2, 1932, Table 7, p. 261.

sions were paid the difference in cost was in favor of the pension system. The saving per pensioner ranged from $102.71 in New York to $738.02 in Wyoming.[29] Undoubtedly these figures exaggerate the financial advantages of the new system for caring for the aged, since many persons applied for and were entitled to pensions who would not go to a poorhouse and would, in the absence of pensions, manage somehow without public aid. But the financial saving was nevertheless considerable and no doubt was the principle reason for the slackening opposition to the old age pension movement.

The rapidity with which old age pension legislation swept the country reflects not only a growing humanitarian demand, and an able and concerted campaign conducted by the Eagles, the American Association for Old Age Security, and the American Association for Labor Legislation. It indicates that the opposition was—relatively speaking—weak. After all, the public had always been responsible for the indigent aged, and when the figures began to show that pensions were cheaper than poorhouse care, the battle was at least half won.[30]

Unemployment Compensation

In contrast to old age pensions the movement for unemployment compensation in the United States moved slowly. The first bill (modeled on the British act) was introduced in Massachusetts in 1916. But the only state in which a real campaign was conducted prior to 1931 was Wisconsin. In that state Professor John R. Commons and the State Federation of Labor began the fight in

[29] For all these cost figures see pamphlet, *The Poorhouse Is Going*, published by Fraternal Order of Eagles, 1934 Revision. For similar figures see Epstein, A., *Insecurity: A Challenge to America*, Smith and Haas, 1933, pp. 534–535.

[30] The legislation of 1933, though beyond the scope of this chapter must be mentioned summarily. Nine states enacted old age pension laws in that year, all of them of the mandatory type: Arizona, Acts 1933, Chap. 34; Indiana, Acts 1933, Chap. 36, p. 164; Maine, Acts 1933, Chap. 267, p. 446; Michigan, Acts 1933, No. 237, p. 378; Nebraska, Acts 1933, Chap. 117, p. 470; North Dakota, Acts 1933, Chap. 254, p. 387; Ohio, passed by initiative at general election of November 7, 1933. Baldwin's Ohio Code Service, Special Legislative Issue, March 1934, Secs. 1359-1 to 1359-30, inc.; Oregon, Acts 1933, Chap. 284, p. 433; Washington, Acts 1933, Chap. 29, p. 173. From January 1, 1934 to June 1, 1935 nine more states enacted old age pension laws: in 1934, Iowa, Special Session of 1934, Chap. 17, Pennsylvania, Special Session of 1933, Act No. 64, approved January 18, 1934; in 1935, Arkansas, Connecticut, Florida, Illinois, Missouri, Rhode Island, and Vermont, *American Labor Legislation Review*, June 1935, p. 86. The federal Social Security bill (s. 1130, 74th Congress, 1st Session) signed Aug. 14, 1935 provided for federal aid for state old age pensions.

1921 and carried it on for a decade. The Wisconsin unemployment compensation act, the first in the United States, became law in January 1932.[31]

The campaign for this act well exemplifies the process of education needed to secure the enactment of labor laws and the complex interaction of economic and political forces which play a part in the outcome.[32] A variety of different elements enabled Wisconsin to do this piece of pioneering in labor legislation. Without attempting to list them in the order of importance we may enumerate these elements as follows:

1. A tradition of taking the lead in labor legislation which began with the Industrial Commission Act of 1911.
2. A public confidence in the successful operation of such laws engendered by the outstandingly disinterested and effective administration carried on by that Commission.
3. An unusually able and enlightened state labor movement in which a strong infusion of socialist philosophy combined with actual experience in working with the state Industrial Commission had created a much more favorable attitude toward extending the scope of labor legislation than that which prevailed in the American labor movement in general.
4. A Progressive political movement which was committed to pushing advances on this front and which had made at least some progress in educating the farmers—usually hostile to labor legislation—to favoring such advances.
5. A long continued interest and activity on the part of a small group in the state university headed by Professor John R. Commons in drafting and promoting improvements in the state's labor laws.

In 1921 Professor John R. Commons drafted, and the leaders of the State Federation of Labor joined him in urging the enactment of, an unemployment insurance measure modeled on the state's accident compensation law. Unlike European unemployment insurance the bill provided that employers alone should

[31] Wisconsin statutes, Chap. 108, Secs. 108.01–108.27 (Chap. 20, Laws of Special Session 1931–32). Under the terms of this act the compulsory features were not to take effect until July 1, 1933 and not then if before that date plants employing a specified number of employees (175,000) had established voluntary unemployment benefit plans approved by the Industrial Commission as measuring up to the standards set in the act. The 1933 legislature further prolonged the period for establishing voluntary plans and postponed the compulsory payment of contributions for a minimum period of a year. (Laws of 1933, Chap. 186.) The law finally became fully effective July 1, 1934.

[32] The following description of the Wisconsin campaign is based on first hand observation by the writer.

finance the compensation—neither employees nor the state were to contribute to the funds. A leading Progressive, Senator Huber, introduced the bill in the legislature. The depression of that year and the resulting unemployment created public interest in the problem; public spirited groups in the state conducted an educational campaign. Though the bill did not pass, it received serious consideration. Throughout the prosperity of the 'twenties this unemployment insurance bill (in revised form) was introduced by a leading Progressive in each legislative session. The State Federation educated its members throughout the state to its importance. Professor Commons wrote and spoke on the subject, and during several sessions of the legislature temporary organizations of public minded individuals familiarized the state with the idea.

In 1931 the depression had again brought the unemployment problem to the fore. Professor Harold Groves of the state university (a former student of Professor Commons) was a member of the 1931 legislature. He introduced an unemployment compensation bill derived from the original Huber bill but changed in one basic principle. It provided that the contributions of employers, instead of being pooled into an insurance fund, should be segregated in company reserves to be used only to pay benefits to workers laid off by the individual concern. The maximum rate of contributions was fixed in the bill, and the employers' liability was limited to the amount in his reserve. The employers of the state greatly preferred this reserve plan to the earlier insurance bills, but were not ready yet to accept any unemployment insurance law.

The Progressives controlled the Assembly by a wide margin—control of the Senate was in doubt. Under these circumstances employer opposition to unemployment insurance turned into a plea for delay and the creation of an interim committee to study the subject. Such a committee was created in July 1931 to report to a special session to be held in the fall. The committee held hearings throughout the state during September and October. Local labor groups turned out in force at these hearings, and a temporary "Wisconsin Committee for Unemployment Reserves Legislation" helped to mobilize liberal sentiment for the measure. Probably the turning point in the campaign was the endorsement of the proposal by several important farmer organizations at their annual conventions held that fall. This action by the farmers—

traditionally hostile to most labor legislation—arose from a growing conviction that in the future industry, not the property tax payers, should bear the burden of supporting the unemployed; and that a system of unemployment compensation financed by employers would help to maintain the purchasing power of city wage earners for the farmers' products.

A majority of the interim committee recommended passage of the Groves bill. The organized employers, fearful of its enactment, stated their belief in unemployment reserves but asked for the opportunity to set them up voluntarily, and opposed legislation at that time. Governor La Follette took the employers at their word and urged the special session to enact the recommended bill, with the proviso that if within a year and a half a substantial proportion of the employers of the state should set up voluntary plans measuring up to the standards of the act, its compulsory features should not take effect. This proposal in large measure took the ground from under employer opposition. Their spokesmen at legislative hearings could only protest against too much state supervision and regimentation.

At all events, the bill passed the Progressive Assembly by a wide margin. In the Senate the votes of certain "independent" members were indispensable. The factors that led to their support of the measure are difficult to assess. The strength of labor's demand, the advocacy by certain leaders among the Eagles and other humanitarian organizations were undoubtedly important. Very possibly the strength of employer opposition to another measure before the legislature was the deciding factor. The Progressives were advocating a rather drastic additional income tax for relief purposes. The business men of the state were so violent in their opposition to this proposal that their protests against the unemployment compensation bill were relatively faint. At all events, with rather little damage through amendments the bill passed the Senate and was signed by the governor on January 28, 1932.[33]

The first American unemployment compensation law differed markedly from its European prototypes. It may be briefly sum-

[33] A somewhat similar campaign participated in by many groups was carried on in Ohio in 1931 and 1933, but passage of the Ohio Bill was not achieved during this period. For a first hand account of the Ohio campaign see Rubinow, I. M., "The Movement towards Unemployment Insurance in Ohio," *Social Service Review*, VII, No. 2, June 1933.

marized as follows:[34] the act applied to concerns employing ten or more persons—with certain exceptions. Contributions were to be paid only by employers, each company contributing not more than 2 per cent of its payroll. A company's rate of contribution was to drop from 2 per cent to 1 per cent when its reserves exceeded $55 per employee, and to cease entirely while more than $75 per employee was available for the payment of benefits. To assure availability of these funds and enforcement of the act each employer was to pay his money into his own separate account with a central state fund.[35] The state was to serve as custodian, investor in specified government securities, and disbursing agent, but not to supplement or guarantee the adequacy of the several funds. Each employer's account was to be used only to pay his own employees with his liability limited at all times to the amount in his reserve. Each employer was to pay benefits to his eligible workers in proportion to their length of service with him, with a maximum of ten weeks of benefits per year. After a two weeks' "waiting period" weekly benefits were to be paid at 50 per cent of the employee's full time weekly wage with a $10 maximum and a $5.00 minimum. The administrative expenses were to be financed by additional employer contributions not to exceed two-tenths of one per cent of their payrolls. Machinery for settling disputed claims was provided for and representative advisory committees to assist the Industrial Commission in administering the act and in promoting the stabilization of employment.

During 1931 and 1932 the movement for unemployment compensation was slowly gaining ground in other parts of the country. In December 1930 the American Association for Labor Legislation, which had begun in 1914 to urge government action concerning the unemployment problem, published its "American Plan for Unemployment Reserve Funds" and started an active campaign in different parts of the country to secure its enactment into law.[36] In a number of states the 1931 legislative sessions authorized the creation of commissions to investigate the subject of unemployment compensation. Early in 1932 an interstate

[34] Wisconsin Statutes, Chap. 108.

[35] Unless he secured "exemption" in which case his reserve might be deposited elsewhere—under strict state supervision. See Wisconsin Statutes, Chap. 108, Sec. 108.15. Certain of the provisions summarized in this paragraph were amended in 1933 (Chap. 383), and 1935 (Chaps. 192 and 446).

[36] See American Association for Labor Legislation, *American Labor Legislation Review*, XX, 1930, pp. 349–356.

commission representing the governors of six of the leading industrial states recommended the enactment of legislation on substantially the Wisconsin model.[37] Before the end of 1932 an official commission in Ohio recommended a bill under which employers and workers were to contribute to a pooled insurance fund.[38] In California a similar commission recommended company reserves with both employers and workers contributing.[39] In Massachusetts the commission unanimously recommended a bill similar to that passed in Wisconsin.[40]

The Ohio bill may be briefly summarized because of its marked contrast in certain respects to the Wisconsin law. It applied to concerns employing three or more persons with certain exceptions. Contributions were to be paid by employer and worker—2 per cent of payroll by the former and 1 per cent of wages by the latter. These contributions were to be pooled in a state-wide fund modeled after the Ohio exclusive state fund for accident compensation insurance. At the end of three years' operation there was to be worked out a "merit rating" system under which the contributions of employers would range from 1 to 3½ per cent—employee contributions to remain at 1 per cent. After a three weeks' waiting period benefits were to become payable at the rate of 50 per cent of wages with a maximum of $15 per week. The maximum benefit period was 16 weeks per year. If at any time the state fund proved inadequate to finance this benefit schedule, benefits might be scaled down or the fund might borrow from any available source. Administrative expenses were to be paid out of the fund. Machinery for settling disputed claims was similar to that set up in Wisconsin.

It is noteworthy that both the Ohio and Wisconsin plans provided for a state fund and barred private insurance companies from the field. This was true of all the bills seriously considered in the United States during this period and suggests an agreement among proponents of such measures that private insurance had proved unsatisfactory in the field of accident compensation.

[37] "Governor's Interstate Commission Urges Unemployment Reserves," *American Labor Legislation Review*, XXII, March 1932, p. 19.

[38] The Ohio Commission on Unemployment Insurance Report, 1932, Part I, "Conclusions and Recommendations," Bill, p. 70.

[39] California State Unemployment Commission, Report, November 1932, p. 54.

[40] Massachusetts Special Commission on Stabilization of Employment, Final Report, December 1932, House 1200, pp. 23–29.

The basic difference between the Ohio and Wisconsin plan—as to who should contribute and how the funds should be handled—reflected a rather clear-cut difference in objectives. The Ohio plan was primarily designed to provide relief for the unemployed; it regarded unemployment as a social responsibility. As a minor objective its authors were interested in providing some stimulus to preventive effort, and to serve this purpose arranged a possible differentiation in employer contribution rates after three years operation of their measure.[41] In contrast the Wisconsin law created a definite incentive to regularization from the start by requiring contributions from employers only, to be segregated in separate company reserves, so that the individual employer was made responsible only for unemployment arising from layoffs in his own establishment and might, by avoiding such layoffs, build up his reserve to a point where his contribution might be reduced or suspended entirely. The Wisconsin law plainly regarded at least a part of unemployment as an industrial responsibility, and may be said to have had a twofold objective: to provide for the worker some compensation when unemployed, and for the employer a definite financial and psychological incentive to eliminate unemployment in so far as he was able.

Aside from the reports of official state commissions the year 1932 brought other developments in the unemployment compensation movement. A select committee of the United States Senate reported in favor of state legislation for unemployment reserves or insurance;[42] the Democratic Party wrote into its national platform a plank for unemployment insurance by state laws;[43] and, perhaps most significant, the American Federation of Labor

[41] One of the members of the Ohio Commission admitted that the merit rating provision was included largely because of the popularity of the Wisconsin emphasis on prevention concerning which he himself was frankly skeptical. In an article written shortly after the Ohio report appeared Dr. I. M. Rubinow said: "The authority granted to the administration to vary premium rates is based not only upon financial considerations but also for the purpose of meeting the Wisconsin idea halfway . . . the popularity of the Wisconsin idea among students of the problem in this country is so great (perhaps for the very reason that they lack practical experience and depend too much upon a priori economic reasoning) that it appeared wise to introduce this factor in the bill." Rubinow, I. M., "The Movement towards Unemployment Insurance in Ohio," *Social Service Review*, VII, No. 2, June 1933, pp. 200–201.

[42] U. S. Senate, 72d Congress, 1st Session, Report No. 964, summarized by Trafton, George M., in "American Moves toward Compulsory Unemployment Reserves," *American Labor Legislation Review*, XXII, 1932, p. 132.

[43] See platform adopted by the Democratic National Convention, 1932, Chicago. "We advocate unemployment and old age insurance under state laws."

reversed its position of long standing and went on record at its convention in favor of state unemployment compensation legislation to be financed by employers under government supervision.[44] But Wisconsin remained the only state with a law actually on the statute books.[45]

It is obvious that unemployment compensation differed radically from old age pensions in the amount and character of the opposition which it aroused. This is not surprising, if we recognize the basic differences between these two types of social insurance and the prevailing public attitude toward the groups to be protected. The indigent aged have always been recognized as entitled to some form of public care; but the unemployed, until the depression beginning in 1929, were left for the most part to shift for themselves. Moreover the two kinds of legislation differ radically in their basic principle. Old age pensions are a form of relief to which the individual is entitled only if he proves "need." Unemployment compensation is to be paid as a matter of "right" regardless of the circumstances of the individual. Even though millions of unemployed were by 1932 supported by public relief, there survived an assumption that this was a temporary expedient, that long-run provision for the care of the unemployed was not needed, and should not be enacted into law. The emphatic opposition to unemployment compensation on the part of business interests applied to all forms advocated in the United States whatever

[44] American Federation of Labor, Proceedings of the 52d Annual Convention, 1932, pp. 325–360, summarized by Trafton, George H., *American Labor Legislation Review*, XXII, pp. 133–134.

[45] In 1933 unemployment compensation bills were introduced in 25 states and passed one house in seven of them. See article "Unemployment Insurance Bills Introduced in 1933," *American Labor Legislation Review*, XXIII, 1933, p. 73.

In 1933 the Association for Old Age Security was changed into the American Association for Social Security and began actively to promote legislation under which employers, workers, and the state should contribute to a pooled unemployment insurance fund. See its publication *Social Security*, particularly the number for November 1933, which contains its model bill.

In 1934 the Wagner-Lewis bill (H. R. 7659, 73d Congress, 2d Session) was introduced in Congress to levy an excise tax on payrolls of 5 per cent against which an employer could offset contributions under a state unemployment compensation law, if that law measured up to a few minimum standards set forth in the federal measure. On August 14, 1935 the President signed the Social Security bill (S. 1130, 74th Congress, 1st Session) which provided among other things for an excise tax on payrolls to reach 3% in 1938, against 90% of which an employer might offset contributions under a state unemployment compensation law if such law measured up to standards set forth in the federal measure. In anticipation of this act five states passed unemployment compensation laws up to June 1, 1935, California, New Hampshire, New York, Utah, Washington, all but the New York statute being made contingent on passage of the federal measure.

their basic objectives and their proposed set-up. This opposition was effective in delaying the enactment of legislation in other states than Wisconsin up to the end of the period covered in this volume. Even up to January 1, 1935 no such legislation had been secured.

CHAPTER VIII

THE ADMINISTRATION OF LABOR LAWS

As a method of regulating or modifying the economic system, labor legislation cannot succeed unless it can be translated into action. Statutes which remain dead letters are obviously useless or worse. Effective enforcement is essential. Whatever the unit for which regulations are set up—a state, an industry, or the nation—certain basic problems remain the same. In any event it is necessary to devise a method of achieving standards which are practicable in detail and to secure the co-operation of large numbers of individual employers so that they will neither ignorantly nor wilfully violate the rules.

In the United States, as increasing reliance was placed on labor legislation and its scope was steadily widened, the difficulty and importance of methods of enforcement were gradually recognized. The history of administration is the story of a series of attempts (confined of course to a limited number of states) to make labor laws truly effective. From this point of view the history of American labor legislation may be divided into three stages.

First came a "pre-enforcement stage" in which it was assumed that a mere statutory declaration of the rights of workers and the duties of employers was enough. In this stage there was no governmental agency to take the initiative in enforcing labor laws. In case of violation the worker himself had to take action, and his only recourse was to the court or the prosecuting attorney.

Second came the "enforcement stage" in which a special governmental agency was set up to see that employers complied with the requirements. A special kind of policeman called an inspector was empowered to investigate employers' premises and records in search of possible violations and to take appropriate action to secure compliance—calling on the aid of the courts where necessary.

Third came the "administrative stage" in which the functions of the special governmental agency in the field of labor legislation was thought of in much larger terms—when its task became the

translation of legislative policy into action, by securing the co-operation of both employers and workers in the setting up and enforcing of detailed regulations designed to carry out the general legislative intent.

These three stages cannot be marked off rigidly in point of time. They all occurred contemporaneously in different states and even to some extent within the same state when some labor laws were in one stage and some in another. Yet the history of labor law administration can best be told in terms of these three stages with the successive developments which they indicate.

The Pre-enforcement Stage

Three kinds of labor laws belonged in the pre-enforcement stage. First, there were statutes which on their face were unenforceable, because they set standards which were to prevail only in the absence of an agreement to the contrary between the employer and the employee. Such were the first hour laws which set up a legal day's work but expressly permitted the worker to "contract out" by agreeing to work longer. A few of the early scrip laws were of the same variety; the employer was required to pay in cash unless the worker agreed to accept scrip instead, which he obviously had to do if he wanted to hold the job. Similarly unenforceable were the early hour laws which forbade an employer to "compel" a woman to work beyond the maximum hours set. The woman who wished to hold her job must perforce express willingness to work longer hours. But in the eyes of the law she was under no compulsion.

A second kind of statute which belonged in the pre-enforcement stage was that which gave the worker certain rights which could be enforced only through a civil suit which he himself had to bring. The employers' liability statutes which modified the common law were of this variety. So were many of the laws relating to time and method of wage payment. Under some of these statutes, for example, the worker was entitled to be paid fortnightly in cash; there was no penalty on the employer who failed to pay wages in this fashion; the worker was merely given the right to sue for the cash wage due him.

The third and most prevalent kind of statute which belongs in the pre-enforcement stage was that which made violation a misdemeanor and specified a fine as a penalty, but left it to the em-

ployee or some other interested citizen to initiate prosecution by making a complaint to the appropriate prosecuting attorney. Sometimes the employee was given an incentive to make such complaint by a provision that all or half the fine paid by the employer was to go to the "informer." This type of statute was common among early hour laws. Thus a California statute limiting hours of labor on street railways specified that "any . . . corporation shall forfeit the sum of $50.00 as a penalty for such offense to the use of the person prosecuting an action therefor." [1] And an early law in Maryland limiting hours on public works provided in case of violation "one half of such fine to go to the informer." [2] It was also used in some of the early safety laws. Thus in Wisconsin an early act requiring blocking of frogs in railroad tracks provided: "If a railroad corporation . . . fail to comply . . . such corporation shall forfeit not less than $50.00 nor more than $500, one-half to the person prosecuting." [3]

The effectiveness of such provisions was probably nil. Very few workers knew of the possible reward, and if any did they no doubt hesitated to risk their jobs in pursuit of it. Yet statutes with such provisions survived in some states well into the period when the administrative stage was reached elsewhere. Thus, for example, as late as 1923 and 1924 in Rhode Island and Maryland various laws dealing with health and wage payment and hours provided that half the fine should go to the informer.[4]

All these types of pre-enforcement statutes had this in common: they lacked a special governmental agency charged with the duty of active enforcement. They were based on the assumption that the ordinary governmental agencies of policemen, prosecuting attorneys, and courts would suffice. The organized labor groups primarily responsible for the enactment of early labor legislation apparently did not at first recognize the need for special enforcing agencies. In fact the first state agencies which they demanded and obtained were not designed for this purpose at all, but rather

[1] California Statutes and Amendments to Codes, 1887, Chap. 85, Sec. 3250, p. 102.

[2] Maryland Code of Public Laws, 1888, Article 4, Sec. 31A; U. S. Bureau of Labor, *Labor Laws of the United States*, Second Special Report of Commissioner of Labor, revised edition, 1896, p. 420.

[3] Wisconsin Annotated Statutes, 1889, Chap. 87, Sec. 180–9a(2); *Labor Laws of United States*, p. 1154.

[4] Rhode Island General Laws, 1923, Chap. 89, Secs. 94, 248, 252. Maryland 1924 Code, I:769, Article 23, Sec. 263; II:3089, Article 100, Sec. 3.

to secure reliable information as to wages, hours, and other conditions as a basis for promoting more regulation. These were the bureaus of labor statistics, set up in Massachusetts in 1869, in Pennsylvania in 1872, in Ohio in 1877, and in Missouri in 1879, as the result of agitation started by the National Labor Union—the national workers' organization of the post Civil War decade.[5] By 1887 the Knights of Labor had secured such bureaus in 20 states.[6] Officers of labor unions were commonly appointed to head them. Employers were usually not required to furnish information. Much of it was secured from workers.

But along with their interest in governmental fact finding bodies, the Knights of Labor realized the need for government enforcement agencies. They began to see that it was not enough to give workers an opportunity to invoke the aid of the courts when their rights were disregarded. So the enactment of factory inspection laws became part of their legislative program. Thus to quote from state histories of labor legislation: In Rhode Island—"A definite demand for a state inspection law was first made by the Knights of Labor in the early 'eighties";[7] and in Connecticut—"The campaign for a law creating a factory inspection department was begun by the Knights of Labor in 1885."[8]

Massachusetts, the pioneer in so many kinds of labor legislation,

[5] Powderly, T. V., *Thirty Years of Labor, 1859–1889*, Excelsior Publishing House, Columbus, Ohio, 1889, pp. 158, 303–304. The date for Missouri given by Powderly is 1876 but the Missouri statute was actually enacted in 1879. See Third Special Report of U. S. Commissioner of Labor, *Analysis and Index of all Reports Issued by Bureaus of Labor Statistics prior to November 1, 1892*, 1893.

[6] California, Connecticut, Colorado, Indiana, Illinois, Iowa, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, Wisconsin. See U. S. Bureau of Labor Statistics, *Laws Providing for Bureaus of Labor Statistics*, Bulletin 343, 1923.

The activity of the Knights in this field is illustrated by the following quotation from a report of the Maine Bureau of Labor Statistics describing its origin in 1886 and the purpose for which it was set up. The bill to create the bureau "was presented as a labor measure and its passage was urged by the labor organizations of the state whose membership at that time numbered about 16,000 most of whom were enrolled in the order of Knights of Labor. Among the officers of each local assembly was designated a statistician whose duty it was to collect from the members information relating to industrial conditions surrounding their everyday life. . . . It was intended that the state bureau should work along these same lines, using the local statisticians as sources of information upon all subjects applying directly to labor conditions." Report of Maine Bureau of Industrial and Labor Statistics for 1907, Introduction.

[7] Towles, J. K., *Factory Legislation of Rhode Island*, American Economic Association, 3d Series, IX (1908), 78–79.

[8] Edwards, Alba M., *Labor Legislation of Connecticut*, American Economic Association, 3d Series, VIII (1907), 252.

was the first state to set up a special enforcing agency—by appointing in 1879 three factory inspectors to enforce her child labor, safety, and women's hour laws.[9] By 1887 enough states had factory inspectors to lead to the creation of an "International Association of Factory Inspectors," though to be sure only four states were represented at the first meeting and eight at the next.[10]

A clear comprehension of the enforcement problem can be seen in a speech made at the second meeting of this association by the chief inspector from Ohio. Speaking on child labor and compulsory schooling he said: "It is true that ample provision is made for securing to every child in the state at least an elementary education, but the state is still derelict if it fails to compel those in whose behalf such provision is made to take full advantage of it. Nor is it sufficient to declare in the form of a statute that this must be done. Laws do not enforce themselves. There must be an active, energetic and vigilant executive force behind them, fully armed with the power to put them into effect." [11] Men engaged in inspection work were naturally among the first to recognize this truth.

Their attitude was not general even among those interested in securing labor legislation. For many years after this not only did old laws remain on the statute books in many parts of the country, but new ones were enacted as well with no provision for enforcement machinery. The idea of a government agent who should, in the absence of any complaint, make it his business to investigate to see whether employers were observing the statutory requirements, was accepted only slowly. In a number of states where officials were charged with the duty of enforcement, they were not given any power to require the making of reports or to demand admission to factories or workshops. Such powers were attacked as unconstitutional, an invasion of the rights of private

[9] Willoughby, a thorough student of labor law enforcement in this period, wrote apropos of the Massachusetts statute of 1879 (Massachusetts Acts of 1879, Chap. 305, p. 659), "This year therefore really marks the beginning of factory inspection in the state." Willoughby, W. F., *State Activities in Relation to Labor in United States*, Johns Hopkins Studies in History and Political Science, XIX (1901), 214. A few states had inspectors to enforce child labor laws even earlier—Massachusetts Laws of 1867, Chap. 285, Connecticut in 1869. See Edwards, Alba M., *The Labor Legislation of Connecticut*, American Economic Association, 3d Series, VIII (1907), 62.

[10] International Association of Factory Inspectors, Proceedings, First Annual Convention, 1887.

[11] International Association of Factory Inspectors, Proceedings, Second Annual Convention, 1888, p. 33.

citizens, a radical departure from the republican form of government, un-American, and inquisitorial.[12]

As late as 1896 a substantial proportion of American labor legislation was still in what we have called the pre-enforcement stage. This was obviously true of many of the laws as to time and method of wage payment.[13] It was also true, of course, of the law (partly statutory and partly common law) which entitled workers to damages when injured under certain conditions in industrial accidents. Only much later was it recognized that injured workers would not be adequately protected until (along with a change in their substantive rights) a governmental agency was created with the affirmative duty of seeing that they actually secured compensation when entitled to it.

Even kinds of labor legislation more obviously requiring active enforcement, if they were to amount to anything, still lacked such machinery in most states. Of course the 17 general hour laws on the books at this date which permitted "contracting out" were completely unenforceable.[14] But even the hour laws for special occupations, though they usually did not permit agreements to work beyond the maximum, still belong for the most part to the pre-enforcement stage. Thus only one of the seven laws which limited the hours of trainmen on steam railways made any provision for enforcement, and then only on complaint.[15] Women's hour laws were not much better from this point of view. Out of 13, four were entirely unenforceable because under their wording

[12] See for example Downey, E. H., *History of Labor Legislation in Iowa*, Iowa Economic Series, State Historical Society, 1910, p. 196; International Association of Factory Inspectors, Proceedings, 1894, pp. 5–6.

[13] In 1896 two of the 21 anti-truck laws on the statute books permitted payment in scrip if the employee agreed to accept it—namely North Carolina, p. 801, and South Carolina, p. 1024. Three other states (Alabama, p. 76, New Mexico, p. 715, and Wyoming, p. 1194) had anti-truck laws with no penalty provision which merely gave the employee the right to sue for his cash wage. Of the 21 states with time of payment laws seven (California, p. 142, Kansas, p. 349, Massachusetts, pp. 471–473, Missouri, p. 579, West Virginia, p. 1143, Wisconsin, p. 1153, Wyoming, p. 1194) had no penalty provision—merely authorized the employee to sue. Pages refer to *Labor Laws of the United States*, 1896.

[14] In 1896, seven states had ten-hour laws of this kind: Florida, p. 209, Maine, p. 392, Michigan, p. 498, Minnesota, p. 521, Montana, pp. 625–630, New Hampshire, p. 663, Rhode Island, p. 1062; and ten states had eight-hour laws of this kind: California, p. 117, Connecticut, p. 177, Illinois, p. 255, Indiana, p. 292, Missouri, p. 584, Nebraska, p. 645, New York, p. 719, Ohio, p. 841, Pennsylvania, p. 921, and Wisconsin, p. 1153. Pages above refer to *Labor Laws of the United States*, 1896. See also Chapter V of this book.

[15] Ohio. *Labor Laws of the United States*, 1896, pp. 860–861; Ohio Laws of 1892, p. 311.

the law was violated only if the employer "compelled" or "required" a woman to work beyond the maximum set.[16] Only five of the 13 represent the enforcement stage with factory inspectors charged by the statute with the duty of enforcement.[17]

Even in the field of child labor, the oldest field of labor legislation and the one in which the worker most obviously could not be expected to secure his own protection, many states made no provision for enforcement beyond specifying the penalty for violation and leaving it to the child or its parents to report to the regular state prosecutor. Out of 31 states with child labor laws only 12 had state factory inspectors to enforce them.[18] In two others enforcement was made the duty of local police officers.[19]

Only in the field of safety was there any general recognition of the need for positive enforcement with special agents responsible for the job. Apparently by 1896 it was recognized that employers might easily violate safety laws through ignorance, and that workers would be apt to know even less about the detailed requirements and might also prefer to take a chance of injury rather than risk their jobs by complaining of safety violations. Of the mine safety laws on the books in 25 states all but four provided for qualified mine inspectors.[20] The 11 factory safety laws all provided for at least a modicum of enforcement.[21]

To summarize: As late as 1896 only 17 states provided any inspectors to enforce their child labor, maximum hour, or factory safety laws.[22] The total number of labor law inspectors in the

[16] North Dakota, p. 818, Oklahoma, p. 875, South Dakota, p. 1040, Wisconsin, p. 1142. Pages refer to *Labor Laws of the United States*, 1896.

[17] Illinois, pp. 273–274, Maine, p. 400, Massachusetts, p. 467, New Jersey, p. 697, Wisconsin, p. 1148. Pages refer to *Labor Laws of the United States*, 1896. But the Illinois act had been declared unconstitutional in *Ritchie* v. *People* in 1895, 155 Ill. 98, and in Wisconsin the factory inspector could not enforce the statute because of its wording as to "compelling."

[18] California, p. 136, Illinois, p. 274, Maine, p. 400, Massachusetts, p. 461, Minnesota, p. 523, Nebraska, p. 638, New Jersey, p. 685, New York, p. 756, Ohio, p. 847, Pennsylvania, p. 915, Rhode Island, p. 996, Wisconsin, p. 1148. Pages refer to *Labor Laws of the United States*, 1896.

[19] Louisiana, p. 380 and Nebraska, p. 649. Pages refer to *Labor Laws of the United States*, 1896.

[20] The four mining laws without enforcement provisions were in California, pp. 134–144, Nevada, p. 650, New Mexico, p. 710, and Utah, pp. 1087–1089. Pages refer to *Labor Laws of the United States*, 1896.

[21] The 11 factory safety laws were in Connecticut, p. 187, Massachusetts, p. 451, Michigan, p. 415, Minnesota, p. 523, Missouri, pp. 595–596, New Jersey, pp. 686–687, New York, pp. 736–746, Ohio, p. 837, Pennsylvania, pp. 914 ff., Rhode Island, p. 996, Wisconsin, p. 1148. Pages refer to *Labor Laws of the United States*, 1896.

[22] California, Connecticut, Illinois, Maine, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Jersey, New York, Ohio, Pennsylvania, Rhode Island,

United States in that year was 117.[23] And in only nine of these 17 states was there a separate inspection department.[24] Of course these nine states included those most highly industrialized. But as late as 1900 there were eight states with as many as 50,000 workers employed in manufacturing in which no inspection system whatever had been established.[25] On the whole at the opening of the twentieth century the enforcement stage was just beginning.

The Enforcement Stage

In the enforcement stage in labor legislation the typical figure was the inspector. He came into existence when it was recognized that the regular law enforcing agencies, the policeman, the prosecuting attorney, and the court, were not adequate to secure compliance with labor laws.[26] Essentially the inspector in the enforcement stage was merely a special policeman assigned to

Tennessee, West Virginia, Wisconsin. In Tennessee and West Virginia there were no regular inspectors; the Commissioner of Labor Statistics merely had this power. See *Labor Laws of the United States*, 1896.

[23] Figure computed from Willoughby, *op. cit.*, pp. 213–230. There is always a question as to who should be classified as an inspector.

[24] Nine states with separate department: Connecticut, Illinois, Massachusetts, Michigan, New Jersey, New York, Ohio, Pennsylvania, Rhode Island. Willoughby, *op. cit.*, pp. 213–230.

[25]

States	Number of Wage Earners in Manufacturing in 1900
Maryland	108,000
Georgia	84,000
Virginia	73,000
New Hampshire	70,000
North Carolina	70,000
Kentucky	63,000
Iowa	58,000
Alabama	53,000

U. S. Bureau of Census, S. N. D. North, Director, *Abstract of Twelfth Census*, Census of United States, 1900, Table 164, pp. 331–332.

[26] The inadequacy of the regular law enforcing agencies was conclusively demonstrated in an investigation made in 1908–09 as part of the exhaustive study of woman and child wage earners which Congress directed undertaken by the Department of Commerce and Labor. Volume XIX of this study on *Labor Laws and Factory Conditions* starts with a chapter on scope and enforcement of the laws and contains a survey of 17 states. In three of these—North Carolina, Georgia, and Florida—the enforcement of laws pertaining to woman and child wage earners was left to grand juries and local police officials. In none of these states could record of any prosecutions be found. U. S. Department of Commerce and Labor, *Report on Conditions of Woman and Child Wage Earners in the United States*, Senate Document 645, 61st Congress, 2d Session, Vol. XIX, *Labor Laws and Factory Conditions*, 1910–13.

discover violations of these special laws and to see that prosecutions were initiated. The court remained the fundamental agency for securing compliance.

Along with the creation of special police came improvements in the drafting of labor statutes so that violations could be punished and evidence of violations could be more readily obtained. First, "contracting out" was forbidden. Second, various kinds of "weasel words" were eliminated from penalty sections. Thus employers could no longer escape by proving that they did not "compel" women to work beyond the legal maximum or "knowingly" or "wilfully" disregard other provisions. They could no longer be excused from installing machine guards because such guards were required only "where practicable." Child labor laws were amended so that employers could no longer escape the penalty for violation by proving that the child employed below the minimum age had represented himself as above it. Third, certain aids to successful prosecution were written into the statutes in the form of requirements as to record keeping. For example, the employer was required to post the schedule of hours to be worked by women in his establishment. Then if a woman were found working on the premises outside the scheduled hours it was prima facie evidence of violation.[27] The development of the employment certificate for employed minors (discussed in Chapter II) is another form of record keeping which greatly facilitated enforcement. Further, many statutes were made more enforceable by making them more specific.

However, none of these improvements in bill drafting would have been very effective without the introduction of inspectors charged with the duty of seeing that employers obeyed the labor laws or were brought to justice if they failed to. Of course in many states the number of inspectors did not become adequate to permit systematic routine inspection of all industrial establishments; and the inspectors actually investigated a given plant only on complaint. This of course meant that violations were discovered only if some one—usually an employee—took the initiative in setting the law enforcing machinery in motion. However, it was

[27] The importance of this provision may not be apparent, but without it a judge might rule, and many did, that violation of the women's hour law could only be proved if the inspector actually saw when the woman entered and when she left the plant, and even then some judges raised the question of whether the inspector could prove that she had been at work for the whole time while within the building.

obviously much easier for a worker to make a complaint to the inspection department than to the prosecuting attorney. It could be done quite informally, and even anonymously, if he was afraid to give his name. In theory, the inspector in the enforcement stage was not supposed to wait for complaints, but to make a systematic investigation periodically of each establishment in which wage earners were employed, to see that the employer was complying with the various duties laid on him by law. To the extent that an adequate force was available, this is what the inspectors did.

The function of the inspector, however, extended beyond merely discovering violations and reporting them for prosecution. If possible, he was to get the situation corrected without resort to prosecution; if not, he was responsible for instituting legal proceedings. In many states a series of laws and amendments defined and enlarged the inspector's powers and duties as the need became apparent. He was not only given access to the premises and records of the employer at any reasonable time. He was given the power to order the employer to make necessary changes within a given time limit—for example to install fire escapes, ventilating fans, etc. Sometimes the inspector himself, if his order was not complied with, was empowered to initiate and conduct prosecution. Sometimes it was apparently thought more effective to have him report to the appropriate prosecuting officer. But it appears that that official with many other duties frequently neglected to press labor law charges, for we find in some states specific amendments to the inspection laws to require the prosecuting attorney to act.

Wisconsin early entered the enforcement stage so far as its safety laws were concerned; its original inspection statute passed in 1883 with its subsequent amendments may illustrate the steps taken to facilitate the work of the inspector. The act of 1883 gave the inspector power to enter and examine methods of protection from accidents and means of escape in case of fire, and gave him power to prosecute offenders in any court of competent jurisdiction.[28] Two years later the inspector was given wider power of investigation; and in case he found violation or neglect of duty he was directed to notify the owner in writing. But his power to initiate prosecution was taken away; if the violation was not cor-

[28] Laws of Wisconsin, 1883, Chap. 319, I, 267.

rected in 30 days he was directed to lodge a formal complaint with the district attorney who should proceed at once against the offender.[29] Apparently this strengthening of the enforcement machinery was not sufficient, for at its next session the legislature again amended the inspection law. The inspector was now given specific power to order stairways or any dangerous machinery guarded and any person refusing to obey his order was subject to a specified fine. Moreover, the district attorneys were prodded into action by a section which provided that when an officer of the bureau of labor filed complaint with any district attorney relative to any of the means of safety prescribed by law, the district attorney should at once proceed against the offender. In case he refused the officer of the bureau might file charges with the governor and ask his removal for neglect of duty.[30]

Aside from the importance of defining the powers and duties of inspectors the emphasis in the enforcement stage was on increasing their number and in general increasing governmental expenditures for labor law enforcement.

Actual figures on expenditure for all the 48 states are impossible to secure. For use in this chapter a very careful study was made of expenditures for labor law administration in a representative sample of 11 states for which the figures could be secured.[31] The selected states were: California, Connecticut, Illinois, Kansas, Massachusetts, Mississippi, Missouri, New Jersey, New York, Virginia, and Wisconsin. These states are representative of the different geographical areas and of various stages of industrial development. In the following table the actual amounts expended for labor law administration in these states are shown for 1889, 1899, and 1909, 1919, and 1927.[32] But these figures exaggerate the real increase in a period of rising prices. Hence they have been adjusted for the change in retail prices and are also expressed in terms of 1909 dollars.

[29] Laws of Wisconsin, 1885, Chap. 247, I, 212.

[30] Laws of Wisconsin, 1887, Chap. 453, I, 496.

[31] This study, *Expenditures for the Administration of Labor Legislation in the United States, 1889 to 1927*, was made by Elizabeth S. Johnson. It was not published in its entirety but a summary of it entitled, "Expenditures for Labor Law Administration in the United States, 1889–1927," appeared in *American Labor Legislation Review*, Vol. 20, June 1930, pp. 174–180.

[32] These figures of course carry the story beyond the enforcement stage. It seemed best to give the complete tables at this point in the chapter.

TABLE I

EXPENDITURES FOR LABOR LAW ADMINISTRATION IN ELEVEN STATES COMBINED, IN ACTUAL DOLLARS AND IN 1909 DOLLARS

YEAR	TOTAL EXPENDED IN ACTUAL DOLLARS	TOTAL EXPENDED IN 1909 DOLLARS
1889	$ 202,549	$ 235,796
1899	405,790	481,364
1909	809,232	809,232
1919	3,324,081	1,802,647
1927	5,577,628	3,280,956

These figures show a continuous increase in government expenditure for this purpose, the decades 1889–99 and 1909–19 marking the biggest gains. But it must be remembered that the number of wage earners covered by labor laws in these states also increased greatly, which obviously enlarged the task of enforcement officials. Therefore a comparison of money expended per wage earner is more accurate as showing the real increase in governmental activity in enforcing labor laws.

TABLE II

EXPENDITURES FOR LABOR LAW ADMINISTRATION PER WAGE EARNER IN MANUFACTURING AND MINING IN ACTUAL DOLLARS AND IN 1909 DOLLARS FOR ELEVEN STATES

YEAR	ACTUAL DOLLARS PER WAGE EARNER	1909 DOLLARS PER WAGE EARNER
1889	10.4 cents	12.1 cents
1899	16.9	20.1
1909	24.0	24.0
1919	75.9	41.2
1927	139.7	82.2

On a per wage earner basis it is apparent that the big increase in expenditure came after 1909 and reflects the great enlargement in the scope of labor law administration after the enactment of workmen's compensation laws and the general shift to the administrative stage. From the point of view of old style enforcement we should like to get some measure of the increase in expenditure for inspection only, disregarding the new types of administrative activity. Such segregation of expenditure was feasible for only five of the 11 states and in one of these nothing

was spent for inspection as late as 1909. The following tables show the trend in expenditure for inspection for this limited sample.

TABLE III

EXPENDITURE FOR INSPECTION FOR FIVE STATES COMBINED, TOTAL IN ACTUAL DOLLARS AND AMOUNT PER WAGE EARNER IN MANUFACTURING AND MINING IN 1909 DOLLARS

YEAR	TOTAL IN ACTUAL DOLLARS	AMOUNT PER WAGE EARNER IN 1909 DOLLARS
1889	$ 75,419	6 cents
1899	191,398	13
1909	360,948	15
1919	873,901	15.6
1927	1,319,360	29.2

As we might expect the great increase in the total expended for inspection dwindles—especially in the 1899 to 1919 period—to a very slow and meager gain, when the rising price level and the increase in the number of wage earners are taken into account.

It may be worth while to give the figures on a wage earner basis for each of the five states.

TABLE IV

EXPENDITURES FOR INSPECTION PER WAGE EARNER IN MANUFACTURING AND MINING IN FIVE STATES, 1889, 1899, 1909, 1919, AND 1927

YEAR	CONNECTICUT	ILLINOIS	MASSACHUSETTS	MISSISSIPPI	NEW YORK
1889	2.2 cents	4.0 cents	12.7 cents	. . .	3.6 cents
1899	3.6	10.4	18.5	. . .	13.7
1909	5.9	17.8	21.9	. . .	12.1
1919	4.3	12.4	18.7	. . .	19.0
1927	13.1	24.5	30.1	6.2 cents	36.4

This shows that in New York the increased expenditure from 1899 to 1909 actually did not keep pace with the increase in the number of wage earners—if the rising price level is taken into account; and in Massachusetts the increase was very slight. In the next decade New York, probably as a result of the work of the Factory Investigating Commission, greatly expanded its inspection work. From 1909 to 1919 it was the only state in the sample which increased expenditures fast enough to keep pace with the rising price level.

As for the increase in the actual number of inspectors during the enforcement period, we must note the difficulty of arriving at accurate figures on this subject, because of the difficulty of deciding who should be counted as an inspector. For example, in many states the chief inspector was an administrative official who did no actual inspection; in other states officials with other designations performed inspection work. In 1912 the National Child Labor Committee on the basis of careful study gave the number of labor law inspectors in the United States (not including mining) as 425.[33] This shows a big gain from the 117 inspectors of 1896.[34] Even if we take into account the increased number of wage earners the gain is substantial. From 1900 to 1910 the number of wage earners employed in manufacturing in the United States increased from 4,712,000 to 6,615,000. Hence, taking the country as a whole, we can estimate roughly that the ratio of inspectors to manufacturing wage earners increased from 1900 to 1910 from one for every 40,273 wage earners to one for every 15,564 wage earners. This was obviously a substantial increase in governmental agents occupied with the task of labor law enforcement.[35]

Yet despite the increased care with which labor laws were drafted and the increase in the number of governmental agents and the amount of governmental activity directed to secure their compliance, the problem was not solved. As practiced in the advanced industrial states, the enforcement method and technique was by no means entirely successful in assuring observance of the growing volume of labor legislation.

This failure was well realized by those especially interested in the subject. It was brought dramatically to general public attention in 1910 in the leading industrial state, when a fire in the Triangle Waist Factory of New York resulted in the death of 145 shirt waist makers. Public opinion in New York was aroused. Were there no laws to protect the young girls employed in such a factory by requiring adequate fire escapes? Or if there were such laws why were they not enforced? This public indignation led to the

[33] See American Association for Labor Legislation, "Efficient Enforcement of Labor Laws," *American Labor Legislation Review*, II, 598–599, 1912. Of these 425 inspectors 352, or about 83 per cent were in nine states—New York, Massachusetts, Pennsylvania, Ohio, Illinois, New Jersey, Michigan, Minnesota, and Wisconsin.

[34] See p. 632, figure computed from Willoughby, *op. cit.*, pp. 213–230.

[35] Computed from figures for wage earners in manufacturing, Thirteenth Census, 1910, Vol. VIII, pp. 239–240.

creation of the Factory Investigating Commission to make a thorough study of the factory laws and their enforcement. In its preliminary report published early in 1912 the Commission made a statement which could probably have been echoed in any other state, if a similar investigation had been made. "It is substantially conceded," said that Commission, "that the present system of factory inspection is totally inadequate." [36]

According to the Commission this inadequacy was partly a matter of too few inspectors.[37] The figures given above would seem to bear this out. For in New York the amount expended for inspection had actually decreased from 1899 to 1909, if the increase in the number of wage earners and the rising price level are taken into account.[38] But it is clear that the inadequacy in inspection forces in 1909 was not confined to New York. New York in that year spent 20 cents per wage earner for labor law enforcement while the average for the 11 states in the figures used above was only 24 cents.

Thus although the detailed drafting of labor laws had greatly improved in the first decade of the twentieth century and the numbers of inspectors to enforce them had substantially increased, yet compliance with the standards set up was not being attained.

This failure was especially marked in one of the most important fields of labor legislation—that relating to safety and health. In these years a steady increase in industrial accidents and a rising public concern about them led in many states to a great multiplication of safety acts as well as to the enlargement of inspection forces. But the results were disappointing. It seemed impossible to cover all dangers with specific statutory provisions. Especially with the advent of new hazards and the discovery of new safeguards there were always serious gaps in the protection afforded the wage earner from industrial injuries. Yet generalized laws, or generalized provisions intended to cover all dangers not specifically mentioned, left too much responsibility on and too much discretion to the individual factory inspector, and were often interpreted by the courts in such a way as seriously to detract from their value.

Thus it was often held that under a general safety provision

[36] New York State Factory Investigating Commission, Preliminary Report, March 1, 1912, I, 66.

[37] *Ibid.*, I, 67.

[38] See above, p. 637.

the employer had no obligation to install safeguards until he received an affirmative and specific order from an inspector. If he did receive such an order, disregarded it, and was prosecuted, the court would pass on the question whether the order was reasonable or whether the employer was providing an adequately safe place of employment without complying with it.[39] The trial court thus passed on technical questions on which it was obviously unqualified to act. In the words of a factory inspector faced with the difficulty of enforcing safety legislation of this kind, such laws "make it necessary for the inspector to prove to the satisfaction of the court or jury, that his definition of what is proper, is correct, and to do this requires expert testimony which is often very hard to secure." [40]

One leading safety expert writing in 1911 was emphatic that safety laws would continue to be unenforceable, until the employer was made primarily responsible for providing safe working conditions and hence for providing appropriate safeguards, whether or not an inspector had ever ordered him to do so.[41] Yet where statutes gave the employer that general duty, the courts in many states held that the employer had fulfilled it if he provided the ordinary or prevailing measure of protection, which of course did nothing to raise standards.[42]

That most safety statutes left too much to the discretion of the inspector was recognized. Where the individual inspector had to decide whether a machine was reasonably safe or required an expensive guard, there was a danger that two inspectors might decide differently in substantially the same circumstances. Or the same inspector might decide, or be thought to decide, differently in dealing with different employers. Such lack of uniformity nat-

[39] For an excellent analysis of the ineffectiveness of the old style methods in regard to safety see Andrews, John and Irene, "Scientific Standards in Labor Legislation," *American Labor Legislation Review*, Vol. I, June 1911, pp. 123–134. See also Commons, John R., *Labor and Administration*, Macmillan, 1913, 1923, p. 387.

[40] From a speech by C. J. Nordmeyer, chief factory inspector of Missouri, International Association of Factory Inspectors, Proceedings, Eighteenth Annual Convention, 1904, p. 51.

[41] See Calder, John, "Accident Prevention," New York State Factory Investigating Commission, Preliminary Report, 1912, App., pp. 758–764; and Calder, John, "Scientific Accident Prevention," *American Labor Legislation Review*, Vol. I, December 1911, pp. 12–24.

[42] The Supreme Court of Wisconsin for one so interpreted all safety laws. See Altmeyer, A. J., *The Industrial Commission of Wisconsin*, published by the University of Wisconsin as No. 17 of University of Wisconsin Studies in the Social Sciences and History, 1932, p. 12.

urally roused suspicion and resentment on the part of employers and charges of arbitrary or discriminatory action. In short, under the best of safety laws the inspector tended to have too much power. Whether he wished it or not he was a bureaucrat.

In some states this situation was partially remedied by not allowing the individual inspector to order an employer to install a safety device or make other changes. He merely reported his investigation and recommendations to the chief of the department who alone issued orders to employers.[43] In Wisconsin and perhaps elsewhere a beginning was made in securing greater uniformity and reducing the area of discretion by the formulation of lists of rules for the guidance of inspectors.[44] But on the whole we must say that up to 1911 no really satisfactory technique for formulating and enforcing safety and health standards had been devised.

So much for the difficulty of enforcing safety legislation. We must remember that until 1911 another kind of labor law—in many ways even more important—still remained in the pre-enforcement stage. With a growing number of industrial accidents, no special enforcing agency existed to see that injured workers received compensation if entitled to it. Under employers' liability, at common law and as modified by statute, the employee had certain rights and the employer certain duties, but they were enforced only if the employee took the initiative and resorted to the regular courts. In many accidents the employee through ignorance or fear took no action and received either no compensation or a totally inadequate adjustment offered him by his employer or the insurance company. Yet enough accident cases got into court in industrial states to create a very serious burden on the judicial system. Aside from necessary changes in the substantive law it became obvious that some new method of enforcing the workers' rights must be devised, both to give them adequate protection and to relieve the courts of an intolerable load.

In concluding this brief discussion of the enforcement stage we must remind the reader that up to 1911 only a little over half of the American states could be said to have reached it at all. Only 28 states had up to 1912 set up special governmental agencies

[43] See speech of C. J. Nordmeyer, chief factory inspector of Missouri, International Association of Factory Inspectors, Proceedings, Eighteenth Annual Convention, 1904, pp. 47–49.

[44] Altmeyer, *op. cit.*, p. 122.

to enforce their labor laws.[45] Using the classification applied in the preceding section it is interesting to note that there were still eight states with 50,000 or more wage earners employed in manufacturing which had absolutely no enforcement machinery.[46]

The Administrative Stage

The third stage in the evolution of methods for securing compliance with labor legislation has been called the administrative stage. It involved the setting up of a specialized governmental agency with a somewhat hybrid combination of powers and functions. Initially, of course, American government was based on a rigid separation of legislative, executive, and judicial powers and functions. Within each of these divisions, however, there was little specialization. It was assumed that one legislature, one police force, and one system of courts could function effectively in all different fields. One legislature made all the laws, one police force enforced them, and one system of courts decided all kinds of disputes and punished violations of all kinds of laws. As the sphere of legislation widened and the amount of it greatly increased, this arrangement became less and less satisfactory. The need for some degree of specialization became apparent—particularly in certain fields where rather complex detailed regu-

[45] States with departments of labor including factory inspection: California, Colorado, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Michigan, Minnesota, New York, Oklahoma, Oregon, South Carolina, Texas, Utah, Virginia, Washington.

States with departments of factory inspection: Illinois, Indiana, Missouri, Pennsylvania, Rhode Island, Connecticut, New Jersey, Ohio.

States with commissions or boards: Massachusetts, Wisconsin.

Classification based on analysis in *American Labor Legislation Review* for December 1912, *op. cit.* The 28 states do not include a few listed there. The omissions are based on the discussion on p. 596 of that article.

[46] Eight States Had No Enforcement Machinery in 1912

State	Number of Wage Earners in Manufacturing	State	Number of Wage Earners in Manufacturing
N. Carolina	121,000	Alabama	72,000
Georgia	105,000	W. Virginia	64,000
N. Hampshire	79,000	Florida	57,000
Tennessee	74,000	Mississippi	50,000

Data as to factory inspection from *American Labor Legislation Review*, December 1912, *op. cit.;* data as to wage earners from U. S. Bureau of Census, *Census of Manufactures*, 1910, Thirteenth Census of the United States, Vol. VIII, 247, Table 10.

lation came to be demanded. Labor conditions constituted one of these fields.

The enforcement stage in labor legislation meant the creation of a specialized governmental agency to enforce labor laws. But in the enforcement stage that agency was really only a police force. Its functions were executive. It had no legislative or judicial powers. The change from enforcement to administration, as the terms are used in this chapter, meant a significant enlargement of the functions performed by this special governmental agency. This change came when the regular legislature gave up the attempt to formulate precise regulations in this complicated field and became satisfied to lay down very general standards. It then delegated detailed law making to the administrative agency and that agency became in effect a specialized legislature for the regulation of labor conditions. Where this administrative agency was also empowered to decide (with a very restricted appeal to the courts) disputes arising under certain labor laws which had formerly been decided by the regular courts, it became also a specialized judicial tribunal.[47] Moreover in the administrative stage the executive function of the specialized agency devoted to labor legislation underwent something of a metamorphosis. To a large

[47] It was customary for some years to deny that there was any delegation of legislative or judicial power to such administrative agencies. They were declared to be merely "fact finding" bodies. This somewhat artificial way of looking at the situation was supposed to be necessary if the constitutionality of such bodies was to be upheld. By 1929 one authority on the subject, Chief Justice Rosenberry of the Wisconsin Supreme Court, seemed to think it was time to call a spade a spade. "In admitting administrative law into our constitutional system," he wrote in that year, "we have indulged in a certain amount of formula worship which is of doubtful value. Why say that the power exercised by a board or commission is quasi-judicial and not judicial, when the only difference . . . is the subject matter with which the power deals." And again he explained: "Under our system of law there was no place in constitutional theory for the development of these subordinate tribunals. Because of overpowering necessity, they were finally admitted into the legal system in various disguises. It was held that power to make rules and regulations, although such rules and regulations have the force and effect of law, was not, within certain limitations, an unconstitutional delegation of legislative power. On the ground that an administrative tribunal might be required to find certain facts existing in theory, the delegation of what amounts to a combination of legislative and judicial power was conferred upon these tribunals, and such delegation of power has been repeatedly sustained." Rosenberry, M. B., "Administrative Law and the Constitution," *American Political Science Review*, February 1929, pp. 35, 36.

The decisions in *Panama Refining Co.* v. *Ryan*, 55 Sup. Ct. 241, January 1935 and *Schechter Poultry Corp.* v. *U. S.*, 55 Sup. Ct. 837, May 1935, were handed down while this volume was in press. These important decisions cannot be adequately discussed here; but the opinion may be hazarded that neither of them rendered invalid the exercise of quasi-legislative and quasi-judicial power by administrative bodies discussed in the following pages of this chapter.

extent the typical inspector was transformed from a specialized policeman into an expert acting as an instructor and adviser.

The first complete administrative agency in the labor field was set up in 1911 in Wisconsin. It was called the Industrial Commission. This Commission took over the executive functions of the state's Bureau of Labor and Industrial Statistics which—despite its title—was a law enforcing agency with a corps of inspectors. In addition it was given quasi-judicial functions under the new workmen's compensation law passed in the same year and wide quasi-legislative powers and functions in the field of safety and health.[48] Wisconsin's administrative set-up was not long unique. In 1911 four other states gave quasi-judicial power to similar commissions in connection with their new workmen's compensation laws.[49] Massachusetts had previously given a small measure of quasi-legislative power to its Board of Boiler Rules and—in relation to dangerous employments for children—to its Board of Health.[50] In 1912 in passing the first American minimum wage law it gave similar power to its new Minimum Wage Board.[51] With the spread of workmen's compensation practically all the states empowered administrative bodies to act in a quasi-judicial capacity in deciding disputed compensation cases and in the course of time 22 states authorized such agencies to exercise quasi-legislative power in the field of safety and health or women's hours and wages.[52] In relatively few states, however, were all the various administrative powers given to the same agency.

Thus between 1911 and 1932 the administrative method was in operation to a greater or less extent in a large number of states. Of course in some others it was never tried at all. The history of the administrative stage is hard to write because its significant features are not contained in statutory provisions and its success cannot be measured quantitatively in numbers of inspectors employed or amounts of money expended.[53] Administration is made

[48] Wisconsin Statutes, Safety and Health, Chap. 101, Secs. 101.06–101.30; Workmen's Compensation, Chap. 102, Secs. 102.14–102.18.

[49] California Acts of 1911, Chap. 399; Massachusetts Laws of 1911, Chap. 751; Ohio Acts of 1911, p. 524; Washington Acts of 1911, Chap. 74.

[50] Massachusetts Acts of 1907, Chap. 465, p. 410; Acts of 1910, Chap. 404, p. 344.

[51] Massachusetts Acts of 1912, Chap. 706.

[52] See p. 653, this Chapter.

[53] The increase in amounts expended for labor law administration is shown in the tables on pp. 636–637. The increase in number of inspectors according to the best estimates was for the United States as a whole from 425 in 1912 to 675 in 1927. Increase in the number of inspectors compiled for this study by Elizabeth S. Johnson.

up of a great amount of detail, a variety of small devices and techniques which sometimes work effectively and sometimes under slightly changed circumstances do not. Its success or failure is revealed in the attitudes of employers and workers, attitudes felt by those in contact with the work but seldom put into words. Relatively few studies of the administration of labor laws have been published, perhaps because of the difficulty of making them. Wisconsin was the birthplace of the administrative method in this field and its exponents in that state have been somewhat more articulate in setting forth its philosophy and describing its operation. Moreover, the Wisconsin Industrial Commission was distinguished for its outstanding success in utilizing the new method. For all these reasons the following discussion of the administrative stage will tend to center on Wisconsin.

Administrative Procedure in Dealing with Industrial Accidents

Administrative procedure has been particularly important as a method of dealing with industrial accidents. It will be remembered that this field of labor legislation did not pass through the enforcement stage at all. Until 1911 injured workers throughout the United States could only secure compensation by bringing suits against their employers in the regular courts. In some states the change in the substantive law from employers' liability to workmen's compensation did not carry with it the creation of special governmental machinery for enforcement or administration. These states provided only what has been called "court administration" for their compensation laws.[54] This arrangement assumed that if every worker injured in the course of employment were entitled without question to a definite amount of compensation (depending on the nature of the injury), the law would be self-enforcing, the worker could understand his rights and utilize when needed his recourse to the courts.

But in most states when workmen's compensation laws were passed it was recognized that special government agencies would be needed to administer them. Experience in these states in the 20 years after 1911 showed that such agencies had important functions to perform, largely quasi-judicial in character. The story of the administration of the Wisconsin workmen's compen-

[54] For a list of these states and a discussion of court administration see Chapter VI, pp. 587–589.

sation law exemplifies the operation of such an agency. Several excellent studies which have been made of the activities of the Wisconsin Industrial Commission in this field form the basis of the following descriptive analysis. One of these studies was made by Professor Ray Brown of the University Law School, the other by the then Secretary of the Commission, Dr. Arthur J. Altmeyer.[55]

Dr. Altmeyer describes in detail the work of the Wisconsin Industrial Commission in administering the state's accident compensation law.[56] From the start the Commission regarded itself as a social agency charged with the duty of seeing that every worker entitled to compensation received promptly the full amount due him. It was never satisfied to assume "merely the passive rôle of adjudicating cases presented it through the initiative of the parties." [57] The attitude of the Wisconsin Commission is exemplified by one item in its procedure thus described by Dr. Altmeyer. "The Commission," he writes, "also subscribes to a newspaper clipping service which furnishes it with stories of accidents. The Commission refers to its files to determine whether [these] accidents have been reported. If not, these stories are investigated to determine whether the accidents [which they describe] should have been reported." [58]

The Commission's work in the field of accident compensation included continued supervision of a large number of insurance companies,[59] and the never ending task of seeing that all employers carried insurance or were approved as self insurers. The Commission also gave considerable time to a study of requests for commutation of benefits into "lump sum payments," [60] which they were authorized to permit where the best interests of the injured worker or his dependents would be furthered thereby.[61] Cases

[55] Brown, Ray A., *The Administration of Workmen's Compensation*, University of Wisconsin, Studies in Social Science and History, No. 19, University of Wisconsin, 1933; Altmeyer, A. J., *The Wisconsin Industrial Commission*, University of Wisconsin, Studies in Social Science and History, No. 17, University of Wisconsin, 1932.

[56] See Altmeyer, *op. cit.*, Part II, especially Sec. 5.

[57] Brown, *op. cit.*, p. 10. Professor Brown points out that such a commission is thus "an institution of a hybrid character partly executive and partly judicial both in aim and method."

[58] Altmeyer, *op. cit.*, p. 37.

[59] It should be noted that the Wisconsin compensation law did not provide for a state fund (either exclusive or competitive) for insuring the accident risk.

[60] According to Altmeyer, "The Wisconsin commission is obliged to devote much of its time and energy to consideration of requests of injured employees or their dependents for pre-payment of compensation otherwise payable in future installments." Altmeyer, *op. cit.*, p. 66.

[61] Wisconsin Statutes, Sec. 102.32(6).

in which the employer or the insurance company paid the compensation due without protest required relatively little work on the part of the Commission. Yet each of these "uncontested cases" involved considerable routine procedure and a careful checking of reports from employers and insurance companies.

A larger number of industrial accidents necessitated further activity by the Commission. A substantial proportion of the compensation cases—on the average 11 per cent of the total—Dr. Altmeyer classifies as "formal cases." In these "formal cases," numbering on the average 2112 per year, there was some question as to the compensation due and some investigation had to be made by the Commission as to the cause and nature of the accident.[62] Half of the formal cases were actually "contested." This meant that the Commission had to hold one or more hearings, witnesses had to be called and heard, and a decision rendered as to whether or not compensation was due and if so how much. In these contested cases it is clear the Commission was exercising its quasi-judicial power.

In the period from 1914 to 1931 on the average only 6 per cent of all compensated injuries were thus "contested." But though the percentage was small, the number of cases it represents was not. On the average there were 1197 such cases each year.[63] Until 1933 the three commissioners were required by the statute personally to decide all contested cases. As the number of such cases grew they could not themselves hold hearings in all of them. Hence examiners were deputed to do this work and to summarize the evidence to the commissioners as a basis for their decisions.[64] Even this arrangement left the commissioners with a growing burden which gave them little opportunity to direct other phases of labor law administration.[65]

Under the method of handling industrial accidents inaugurated in Wisconsin in 1911, review by the courts was resorted to in

[62] Computed from Altmeyer, *op. cit.*, Tables W. C. 4, 5, pp. 43, 44.

[63] *Ibid.*

[64] *Ibid.*, p. 100; Brown, *op. cit.*, pp. 69, 70.

[65] In 1933 on the recommendation of the Commission the statute was amended to empower the examiners to decide contested cases with an appeal to the Commissioners. Wisconsin Statutes Secs. 102.18(2)–102.18(4). In the first six months of the new arrangement only 36 cases were thus appealed. (Preliminary figure secured from the Commission.) Obviously the time of the commissioners was freed for other work. The change made in 1933 really created an intermediate quasi-judicial tribunal; it did not reverse in theory or practice the administrative method of handling industrial accidents.

relatively few cases. From 1914 to 1931 less than 5 per cent of the cases contested and heard by the Industrial Commission were appealed to the courts. Of the total number of compensated accidents these court cases constituted three-tenths of 1 per cent —a very small proportion. But the actual number of such cases was by no means negligible, for it amounted on the average to 56.6 court cases per year or a total of 963 cases in the period from 1914 to 1931.[66]

The Wisconsin figures demonstrate that the change from employers' liability to workmen's compensation not only gave to workers a much speedier and more certain recompense for industrial accidents; it also relieved the courts of a heavy burden [67] and made possible the payment of compensation in a large proportion of industrial accidents without any form of adjudication. Nevertheless it left a very substantial job for a government administrative agency.[68]

Although it was used with varying effectiveness in different states, we can say that by 1932 the administrative method for handling industrial accidents was established throughout most of the United States. The need for an active enforcing agency in this field and the advantages of a quasi-judicial way of handling disputed cases were generally recognized.

The quasi-judicial power of administrative agencies in Wisconsin and elsewhere was used almost entirely in the field of workmen's compensation. Indirectly to be sure the effect of workmen's compensation awards was to penalize under certain circumstances employers who violated other laws. For example, the 15 per cent

[66] Computed from Altmeyer, *op. cit.*, Tables W. C. 4, 5, and 25, pp. 43, 44, 85.

[67] As Professor Brown points out: "The industrial commissions of the various states in deciding claims under the workmen's compensation acts not only are quasi-courts but even are performing tasks that formerly constituted a major part of the work of the regular judicial tribunals." Brown, *op. cit.*, p. 5.

[68] It is noteworthy that in spite of the thorough job done in Wisconsin in administering the workmen's compensation act a relatively smaller proportion of the appropriation for labor law enforcement was spent in this way in Wisconsin than in a number of states for which comparable figures are available. For the year 1927 when the Wisconsin Industrial Commission spent 20 per cent of its appropriations for workmen's compensation the four states, Connecticut, Illinois, Massachusetts, and New York, spent in the aggregate 36 per cent of their total expenditure for this purpose. However, the Wisconsin figures show 14 per cent for general administration in contrast to 9 per cent in the four states. Since the Wisconsin commissioners devoted so much of their time to workmen s compensation perhaps their salaries should be allocated in good part to that field. Figures from Altmeyer, *op. cit.*, p. 22 and Johnson, Elizabeth S., "Expenditures for Labor Law Administration," *Labor Legislation Review*, Vol. 20, June 1930. (Mississippi had no workmen's compensation law.)

additional compensation assessed by the Wisconsin Industrial Commission when an accident arose from violation of a safety order is equivalent to a substantial fine which might be levied by a court as a penalty for such violation.[69] The double or triple compensation which the employer had to pay if a child were injured while illegally employed is equivalent to an even more substantial fine.[70] Constitutional limitations would presumably prevent an administrative body from actually collecting fines for violation of labor laws without recourse to a court. But prosecutions are so small an element in enforcement under a successful administrative set-up that the job left to the regular courts is small.

Administrative "Law Making"

The new administrative bodies in the field of labor legislation were given not only quasi-judicial but also quasi-legislative powers and functions. These powers were exercised through the issuance of administrative orders having the force of law. Wisconsin was the first state to undertake administrative "law making" on an extensive scale. Its Industrial Commission when set up in 1911 was given wide power to "legislate" in the field of safety and health.

Credit for this new method of handling the safety problem belongs to Professor John R. Commons, of the University of Wisconsin. The virtual impossibility of securing successful enforcement of the old style safety laws was discussed in the preceding section on the enforcement stage. Professor Commons set himself to find a method which should both produce better safety regulations and interest employers and workers in securing their enforcement. After extensive study of American methods of regulation in other fields (such as public utilities) and of European methods in labor legislation, Professor Commons drafted the Industrial Commission act containing a blanket safety provision which superseded all the detailed safety laws which the legislature had been passing for many years. There was no enumeration of specific hazards or specific safeguards. Instead the new statute

[69] This is suggested by Rosenberry, *op. cit.*, p. 36.

[70] Wisconsin Statutes, Sec. 102.09. Eight other states with similar provisions in 1933 were: Alabama, Maryland, Michigan, New Jersey, New York, Pennsylvania, double compensation; Illinois, Missouri, 50 per cent additional compensation. In addition such employers in Nevada, Oregon, and Washington were subject to a fine. See U. S. Department of Labor, Children's Bureau, *The Illegally Employed Minor and the Workmen's Compensation Law*, Publication No. 214, 1932, pp. 5–17.

provided that every employer should furnish employment and a place of employment which should be safe for the employees therein.[71] Safe and safety were defined as: "Such freedom from danger to the life, health, safety, or welfare . . . as the nature of the employment, place of employment . . . will reasonably permit." [72] Most important, the act gave the new commission the power and duty: "To investigate, ascertain, declare, and prescribe what safety devices, safeguards, or other means or methods of protection are best adapted to render the employees of every employment and place of employment . . . safe"; and "To ascertain and fix such reasonable standards and to prescribe, modify, and enforce such reasonable orders for the adoption of safety devices, safeguards, and other means or methods of protection . . ." [73] Thus the commission was empowered and directed to use its quasi-legislative power to translate the general safety standard set up by the legislature into detailed concrete terms in the form of administrative orders.

In the first two years of its existence the Wisconsin Industrial Commission formulated a comprehensive safety code more detailed and inclusive than the preceding conglomeration of safety statutes. More important, it developed a technique for the drafting of such codes which not only made for reasonable and workable rules but was immensely helpful in changing the attitude of employers toward them and thus facilitating their enforcement.

The essence of this new technique was "representation of interests," achieved through the use of advisory committees on which representatives of employers and employees sat with engineers and technical experts and worked out a body of detailed safety rules to be recommended to the Commission. These recommendations, when accepted, were issued by the Commission as general orders having the force of law.

It is worth noting that the Industrial Commission statute did not require or even provide specifically for this use of advisory committees. It merely empowered the Commission "to appoint advisors who shall without compensation assist the Industrial Commission in the execution of its duties." [74] What kind of advisers should be used or how they should function was not indicated.

However, a beginning in the use of such advisers had been made

[71] Wisconsin Statutes, Sec. 101.06.
[72] *Ibid.*, Sec. 101.01(11).
[73] *Ibid.*, Secs. 101.10(3) and (4).
[74] *Ibid.*, Sec. 101.10(1).

by the old Bureau of Labor and Industrial Statistics shortly before it was superseded by the Industrial Commission. For some years the head of the bureau had held periodic conferences with his inspectors in an attempt to bring about uniformity in their application of the general provisions of the old safety statutes. In 1910 and 1911 he had improved this procedure by including in the conferences representatives of employer and employee organizations and outside safety engineers.[75]

Professor Commons, who was appointed one of the first members of the Industrial Commission, recognized that the new workmen's compensation law which made the employer responsible in every industrial accident created a leverage for interesting employers in accident prevention and hence in the enacting and enforcing of workable safety rules. The problem was how best to stimulate and utilize their new interest and concern in the problem. The solution was the advisory committees on safety. The use of these committees was worked out under Professor Commons' guidance by C. W. Price, the "expert advisor on matters of safety and sanitation" of the new Commission. In effect Mr. Price took over the conference procedure initiated by the old Bureau and improved and developed it. According to Mr. Altmeyer:

> "He [Mr. Price] was familiar with the practice of certain large and progressive employers of organizing shop committees composed of superintendents, foremen, and workmen who investigated danger points and then worked out safety regulations to cover them. Therefore he proceeded to organize at the very outset an Advisory Committee on Safety and Sanitation Standards, composed of representatives of the Wisconsin State Federation of Labor, the Milwaukee Merchants and Manufacturers' Association, the Wisconsin Manufacturers' Association, the Milwaukee Health Department, workmen's compensation insurance companies, and the commission itself. Two of the four representatives of the commission were safety engineers in the employ of private employers. Four of the factory inspectors, as well as Mr. Price, were detailed to gather information for the committee." [76]

From the start this advisory committee procedure was outstandingly successful. Two years after its inception its essential character was thus enthusiastically described by Professor Commons:

[75] Described by Altmeyer, *op. cit.*, p. 122.
[76] *Ibid.*, pp. 123–124.

"In this way," he wrote, "the commission has had the assistance of scientific experts, of representatives of the interests affected by the orders to be issued, representatives of the public as consumers, representatives of overlapping agencies such as insurance companies and boards of health, and its own experts. This has brought to the commission the assistance of some leading men of the state in their several lines of work. These men have given an astonishing amount of time, at their own expense, which, if paid for at commercial rates, would have required an expenditure far beyond the appropriation which the legislature allowed to the commission. Such men have looked upon their work not merely as a public service, but mainly as a vital matter in the future conduct of manufacturing in the state." [77]

Professor Commons went on to say that this use of advisory committees resulted in safety standards which were "practicable" and thus readily observed. He recognized the value of the technical experts declaring that "their investigations are indispensable and fundamental" but declared that "unless they [such investigations] lead to practicability, which can only be supplied by the practical man, they run the risk of unconstitutionality." [78]

The combination of technical experts and practical men (i. e., representatives of employers and workers) resulted, he said, "in a code of rules which are not only reasonable in law but reasonable in the minds of employers." [79] The use of employer representatives in drafting the rules meant, that "The most progressive employers in the line of safety and sanitation draw up the law, and the business of the commission is to go out and bring the backward ones up to their level." [80] And thus the work of the commission he testified "has been almost entirely transformed from what they [the employers] consider an irritating and arbitrary interference in their business, into a work of instruction and education." [81]

In Wisconsin the method adopted in drafting the first safety codes was employed continuously thereafter.[82] Its success con-

[77] Commons, John R., "Constructive Investigation and the Industrial Commission of Wisconsin," *Survey*, XXIX, No. 14, January 4, 1913, reprinted in Commons, John R., *Labor and Administration*, Macmillan, 1913, 1923, p. 408.

[78] *Ibid.*, p. 407.

[79] *Ibid.*, p. 411.

[80] *Ibid.*, p. 411.

[81] *Ibid.*, p. 411.

[82] Writing in 1932 Mr. Altmeyer stated: "With the exception of certain orders on fire prevention adopted in 1918 . . . all orders have been drafted by advisory committees and no general safety orders have ever been adopted without first having been submitted for discussion at public hearings. Moreover the commission has invariably followed the recommendations of its advisory committees." Altmeyer, *op. cit.*, p. 125.

tinued to be outstanding. An entirely new spirit was engendered, and though some of the early enthusiasm inevitably died down, though industrial accidents by no means disappeared, nevertheless the Wisconsin advisory committees on safety should be rated as a real achievement in the difficult art of government. The evils of bureaucracy were avoided in two ways: (1) by the participation of eminently practical people representing employers and workers, and (2) because many of the technical experts were not government officials at all but outsiders participating in their professional capacity or in the interest of insurance companies or other interested groups.

The use of quasi-legislative power by the Wisconsin Industrial Commission in the field of safety was so successful that its extension to other fields in Wisconsin and to other states naturally followed. In 1913 five other states gave this power to boards or commissions in connection with safety; in 1915 two more states followed suit; and by 1933 there were 20 states in this group,[83] and two others had given similar power not in the field of safety but in that of women's hours and wages.[84]

In 1930 Dr. John B. Andrews of the American Association for Labor Legislation made a careful and extensive study of how this quasi-legislative power to issue administrative orders had been

[83] 1911—Wisconsin Statutes, Secs. 101.10–101.28.

1913—California, Chap. 176, Laws of 1913; Massachusetts, 1913, Chap. 813, Secs. 1–13, General Laws, Chap. 149, Secs. 6–13; New York, Laws of 1913, Chap. 145, Art. 3A, Birdseye Cummings and Gilbert, Consolidated Laws of New York, Cumulative Supplement, Vol. 8, Secs. 50–52, 1910–13; Ohio, Laws of 1913, 871–1 to 871–45, p. 95; Pennsylvania, Acts of 1913, No. 267 as amended by Acts of 1923, No. 274, Art. 17.

1915—Colorado, Laws of 1915, Chap. 180, p. 568, Sec. 11, Compiled Laws of 1921, Sec. 4335, Montana, Laws of 1915, Chap. 96, Secs. 50–54, Compiled and Revised Statutes 1921, Secs. 3012–3033.

1917—Idaho, Laws of 1917, Chap. 81, Secs. 118–120, Compiled Statutes 1919, Secs. 6337–39; New Hampshire, Laws of 1917, Chap. 183, Secs. 2–13, Public Laws 1926, Rev. Chap. 177; Utah, Laws of 1917, Chap. 100, Secs. 11–32, p. 306, Compiled Laws of 1917, Title 49, Secs. 3071–3090.

1919—Nevada, Statutes of 1919, Chap. 225; North Dakota, Acts of 1919, Chap. 162, Sec. 4 as amended in 1927, Chap. 285; Washington, Laws of 1919, Chap. 130, Secs 1–8, Remington's Compiled Statutes, 1922, Secs. 7727–7736, 10838, Laws of 1921, Chap. 7, Secs. 80–81.

1920—Oregon, Laws of 1920, Chap. 48.

1923—Tennessee Public Acts of 1923, Chap. 7, Secs. 55–56.

1925—Arizona, Laws of 1925, Chap. 83, Secs. 1–29.

1929—Maryland, Acts of 1929, Chap. 426; Nebraska, Acts of 1929, Chap. 138, as amending Compiled Statutes, Sec. 7693.

1931—North Carolina, Public Laws of 1931, Chap. 312, Sec. 12(F).

[84] Arkansas, Laws of 1915, Act 191; Kansas, Laws of 1915, Chap. 275, Sec. 3.

used.[85] Of the 19 state commissions or departments then possessing this power in regard to safety [86] he rated seven (California, Massachusetts, New York, Ohio, Pennsylvania, Utah, and Wisconsin) as definitely successful in their use of administrative orders. In seven states (Colorado, Idaho, Maryland, Nebraska, Montana, New Hampshire, and North Dakota) no true safety codes had been issued—in two of them the power to do so had been granted only in 1929. In five states (Arizona, Nevada, Oregon, Tennessee, and Washington) only a few orders had been issued, leaving most of the statutory safety legislation unsupplemented. Along with the seven states which used administrative orders effectively, Dr. Andrews rated three states (New Jersey, Minnesota, and Oklahoma) which obtained nearly the same effect without direct statutory authorization. He declared that in these states "the power to issue individual inspection orders inherent in practically all inspection systems has been so exercised as to approach closely in result the administrative code system." [87]

On the basis of a careful study of administrative orders in each state Dr. Andrews discusses how far the new method fulfilled the expectations of those who urged its adoption. A few of his conclusions are so interesting that they are given in summary form here.

As for the replacing of vague unenforceable generalities by precise standards, he says:

> "It seems clear that the delegation of administrative code power does not in itself guarantee definiteness and completeness in the resulting protective standards. But it is equally true that even the most elementary codes sometimes represent a step in advance of existing conditions and of any protective legislation which could be hoped for in the same states."

[85] This study has not yet been published. Permission has been granted by the author to quote from the manuscript.

[86] The twentieth, North Carolina, dates only from 1931.

[87] Dr. Andrews explains the system used in these three states as follows: "If as often happens the terms of protective legislation are general rather than specific the details must be filled in by the orders of the enforcing officer. In an attempt to secure uniformity some of the better organized labor departments adopt specific and detailed inspection standards for the guidance of their individual inspectors—and when in a few instances these standards are published and distributed for the guidance of employers as well, the result appears very like the issuance of an administrative code. There is of course an important theoretic distinction. . . . In practical result however the two systems approach each other."

Thus New Jersey, Minnesota, and Oklahoma apparently utilized, probably in a more developed form, the method of dealing with safety which was used in Wisconsin just before the creation of the Industrial Commission.

As for flexibility, he points out that many, though by no means all, of the specific codes in the various states have been revised one or more times since they were issued. But the process did not prove so expeditious as the early theorists had hoped. In a number of states flexibility in individual cases without the danger of arbitrary action or too great a dependence on individual discretion was attained through an orderly procedure for permitting "variations." Speed in drafting rules to meet new hazards, though possible under the administrative set-up, was not by any means always attained. As for the use of representative advisory committees, Dr. Andrews concludes that, though seldom required by statute, (except in setting minimum wage rates) they have been regularly employed in those states where code work has developed into a most vital force.

The use of administrative "law making" in other fields than safety and health has also been tried in a limited number of states.

Wisconsin enthusiastically extended it in 1913 to minimum wage and maximum hours for women, and dangerous occupations for employed minors. In fact it was expected that all labor legislation in that state would soon be resolved into the administrative pattern. But for various reasons the Wisconsin commission made relatively little use of its quasi-legislative power in the new fields. To a considerable extent the statutory standards previously enacted were left virtually unaltered by administrative action.

For example the statutory list of dangerous occupations forbidden to minors of various age groups were hardly changed at all for over 20 years. It had been assumed that the commission would modify it to meet changing industrial conditions or new knowledge as to hazards to the health of children. But the commission issued only one important order; namely that relating to employment in beet fields.[88]

The Wisconsin minimum wage law passed in 1913 contained merely the general cost of living standard, which of course was meaningless until translated by the commission into actual wage rates. But the commission was tardy in setting rates and in altering them to meet changes in cost of living. In this field it is doubtful whether the Wisconsin Industrial Commission performed its

[88] See Altmeyer, *op. cit.*, p. 198.

quasi-legislative function as well as special commissions created to handle this specific problem in other states.[89]

As for administrative orders fixing maximum hours for women, they were used very effectively in Wisconsin in handling the difficult problem of the canneries (as discussed in detail in Chapter III). Otherwise the commission did little "law making" in the field of women's hours. For the most part the statutory standard (set at ten hours in 1911 and reduced to nine in 1923) remained unmodified. The only really important order was one issued in 1917 prohibiting night work in factories and laundries.[90]

A general discussion of administrative "law making" as to maximum hours and minimum wages is to be found in Chapters III and IV. Here we shall only remind the reader of the conclusions reached.

As regards administrative fixing of maximum hours, even in the states where it was done extensively it is noteworthy that on the whole there was not much variation from one industry to another in the maxima set, and the standards once established tended to remain unchanged. The orders were relatively few in number and simple and inclusive in their terms. If fatigue sets in much sooner in some occupations than in others such differences were little recognized. It appears that the advantages from the point of view of compliance of a simple, definite, and stable standard were felt to outweigh the benefits to be obtained by attempting a precise correlation between the nervous or physical strain of a given industry and the maximum hours permitted.

For setting minimum wage rates, administrative orders were undoubtedly better than statutory action. But the representative or advisory committee process usually worked far less smoothly and easily than when used for formulating safety rules. The conflict of interest between representatives of workers and employers was far more acute in setting wage rates and the technical expert could render far less real aid. In this field truly unanimous decisions of representative committees or "wage boards" were rare. If impartial public representatives had not been included in the membership, such boards would often have been deadlocked. To

[89] As to the setting of rates see Altmeyer, *op. cit.*, p. 196. For a comparison of Wisconsin achievements and those in other states see a careful and detailed study of minimum wage administration, U. S. Women's Bureau, *The Development of Minimum Wage Laws in the United States*, Bulletin 61, pp. 23–48.

[90] See Altmeyer, *op. cit.*, pp. 194–195.

be sure, formal unanimity was quite frequently obtained; but only because the public representatives decided which party to side with and persuaded the other that nothing would be gained by standing out; or because the public representatives persuaded each side to modify its position under threat of siding with the other.

By 1933 administrative "law making" in labor legislation had been tried for more than 20 years. From the outset it was called the reign of the expert and as such was either lauded or condemned. On the one hand it was criticized as bureaucratic, because it gave to irresponsible appointed officials power formerly exercised by the legislature chosen by and responsible to the people. On the other hand it was praised on the ground that a legislator could no longer be a jack of all trades, that in law making as in other occupations specialization had become necessary. The charge of bureaucracy was met by pointing out that those to whom power was entrusted were not all experts in the narrow "book learning" sense of that term, nor necessarily entirely irresponsible. Where advisory committee procedure was used, they included, along with highly trained technicians, individuals who from different angles represented special experience and special concern with the subject matter under consideration. It was urged that the participation of such experts in the law making process meant that the groups primarily affected by the laws secured a far more realistic representation of their interests than was possible in a regularly elected legislative body.

After more than two decades of this kind of "law making" certain tentative conclusions as to the value of this governmental device may be hazarded. Of course it has its limitations. It is most useful when detailed regulations varying from one industry to another and subject to change with changed conditions are desirable and necessary. It works best when representative advisory committees are used. And these committees in turn function most effectively under certain conditions; namely (1) when there is a minimum of conflict of interest between the groups represented and affected by the rules, and (2) when expert knowledge of various kinds is helpful if not indispensable in drafting workable rules.

Rules to promote safety and health obviously fit this description, and this is the field in which administrative "law making"

has worked most easily and well. None of these conditions exist in the fixing of maximum hour standards (except in certain very limited fields such as canneries). The setting of minimum wage rates is not greatly aided by experts and the conflict of interest here is obviously acute. But it seems probable that the need for some variation between industries and for adjustment to meet changed conditions is great enough to swing the balance in favor of the administrative method in this field. However, because of the essential difference in the problem it copes with, an advisory wage board is a very different thing from an advisory committee on safety.

Many other aspects of the administrative system might well be discussed. For example, it is worth noting that the successful use of advisory committees was not confined to the formulation of administrative orders. Such committees proved very helpful in a number of states in other ways, as in connection with public employment offices. Another important feature of the administrative stage was the changed character of the inspector. Undoubtedly his metamorphosis from policeman to adviser and instructor was facilitated by the change in the source of the "laws" which he was enforcing. When they were formulated by advisory committees the employer attitude toward them tended to change. Yet this change did not follow inevitably. Moreover it occurred, in some measure at least, in states where no change was made in the method of law making—merely because the inspectors became better qualified and themselves took a different attitude toward their work. It is at least arguable whether this change in the conception of the inspector's functions can or should be complete—even in states using advisory committees widely. In relation to statutes where there is no indirect pressure for compliance, such as that exerted in safety by the existence of workmen's compensation, some "policing" probably continues to be necessary. Or possibly analogous pressures can be devised to induce compliance with a maximum hour law for instance. The lessons of experience on this subject need to be studied further.

The history of the administrative system from 1911 to 1932 does not provide any definite answer to the moot question as to the desirability of centralization in labor law enforcement. Certainly effective administration of certain labor laws was achieved under a decentralized set-up on the Pacific Coast, where industrial

welfare commissions handled a segment of the field; namely that relating especially to women, or to women and children. On the other hand, the excellent correlation and co-operation found in Wisconsin would be virtually impossible to attain without a centralized organization. But Wisconsin's complete centralization probably meant that the special problems of women and children were somewhat neglected while the major attention was directed to safety and workmen's compensation.

We have said that the essence of the administrative system was the existence of a specialized governmental agency possessing, in addition to its executive functions, quasi-legislative and quasi-judicial powers and duties. We must recognize, however, that the successful operation of the system did not involve a uniform exercise of these new powers in each field of labor law. Thus in child labor the executive function probably continued to be most important—though a more extensive use of administrative orders in connection with dangerous occupations would have been desirable. In workmen's compensation the use of quasi-judicial power by the administrative agency proved indispensable. In safety the use of quasi-legislative power to formulate detailed rules carrying out the general statutory standard was outstandingly successful. In regard to maximum hours a limited use of quasi-legislative power proved exceedingly helpful, but in general a simple and relatively uniform standard set up by statute turned out to be preferable.

In short the administrative method of handling labor legislation did not prove a "cure all." It merely offered a number of governmental devices of varying utility in different fields, none of them successful unless applied by able, disinterested, and untiring public servants without whom governmental regulation of any kind is doomed to failure.

CHAPTER IX

LABOR LEGISLATION AND THE CONSTITUTION

The purpose of this chapter is to trace the constitutional history of labor legislation from 1896 to 1932. It is a commonplace that American labor legislation has been shaped in large measure by court decisions. On the authority of the Fifth and Fourteenth Amendments and the constitutional delimitations of power as between the state and federal governments the United States Supreme Court has exercised an effective veto power over Congress and the state legislatures. It not only invalidated a number of important laws in this field; the position it might be expected to take determined the context of many others. For example, the probability of the Court's veto was undoubtedly an important factor in limiting minimum wage laws to women and minors, in making many workmen's compensation laws "elective," and in discouraging the enactment of laws prohibiting night work for women. Hence constitutional history is an important chapter in a history of American labor legislation.

The story is here told almost entirely in terms of decisions of the United States Supreme Court. A complete survey of state decisions would be a very large task and could lead to few conclusions except as to the divergence of opinion from one state to another on almost every kind of law involved. Only those state decisions which for one reason or another attracted wide attention or played an important part in shaping subsequent development, will be referred to here.

It should be noted at the outset that this chapter does not include the decisions on the constitutionality of statutes dealing with the issuance of injunctions or other aspects of labor disputes. The most important of these cases are discussed in Volume IV by Perlman and Taft.

In chronicling the decisions on the constitutionality of labor legislation we shall for the sake of clarity divide the field into periods and within each period subdivide by subjects. The periods may be listed as: (1) Before 1896, (2) 1896 to 1916, (3) The year 1917, (4) 1918 to 1932. The subjects as: (1) Hours—including

night work, (2) Wages—including methods of wage payment and minimum wage, (3) Employers' Liability and Workmen's Compensation, (4) Child Labor, (5) Safety and Health, (6) Miscellaneous—including regulation of employment agencies.

Before 1896

Before 1896 the United States Supreme Court had passed on the constitutionality of only one type of labor statute; namely that which modified the common law of employers' liability. In 1888 it upheld two of the early state statutes which abolished the fellow servant rule (as applied to railroad employees) declaring that this was not an infringement of the constitutional rights of the employer, since it merely placed the employee in the same situation in regard to injuries by a negligent servant as were all third parties.[1]

Prior to 1896 no other kind of labor law had been submitted to the United States Supreme Court for decision as to its constitutionality. This was due, in part at least, to the fact that, under the Judiciary Act as it then stood, no case could be appealed to the United States Supreme Court if the state court of last resort had held the act unconstitutional.[2] Only cases in which a state law was upheld by the state courts could be carried to the United States Supreme Court.[3] It so happened that no case of this kind relating to other fields of labor legislation occurred before 1896; the first was *Holden* v. *Hardy* decided by the United States Supreme Court in 1898.[4]

[1] *Missouri Pacific Railway* v. *Mackey*, 127 U. S. 205 (1888), and *Minneapolis, etc., Railway* v. *Herrick*, 127 U. S. 210 (1888). Antedating these decisions in 1885 the United States Supreme Court had passed on an ordinance of the city of San Francisco which among other provisions prohibited washing and ironing in public laundries from 10 P. M. to 6 A. M. The ordinance was attacked on the ground that it interfered with the liberty of an employee to contract to work at night. However, the Supreme Court upheld the ordinance on the ground that the City Council might reasonably regard fires at night in laundries as a public danger in a city with many wooden buildings. It was thus sustained as a protection to public safety, not to the health of employees. For that reason it is not rated here as a decision involving a labor law. *Barbier* v. *Connolly*, 113 U. S. 27. *Soon Hing* v. *Crowley*, 113 U. S. 703 (1885).

[2] In this chapter the expression "appeal to the United States Supreme Court" will be used for all cases carried to that court for judicial review regardless of the exact procedure by which the case was carried up.

[3] This remained true until 1914 when the Judiciary Act was amended to permit appeal regardless of whether the State Court held the act valid or invalid. See 36 U. S. Stat. 1156 and Act of December 23, 1914, Chap. 2, 38 Stat. 790, 2 U. S. Comp. 1916, 1580.

[4] *Holden* v. *Hardy*, 169 U. S. 366 (1898).

As for decisions in the state courts, prior to 1896 there was a wide diversity on many subjects between different states. The more important of these decisions in the state courts are given in the following pages.

1. Hours

In the field of hour legislation a number of important state decisions had been rendered before 1896 which left the constitutionality of most kinds of hour laws in serious doubt. The first decision on an hour law came in Massachusetts in 1876 when the first effective women's hour law (enacted two years earlier) was upheld by the Massachusetts Supreme Court.[5] This decision preceded the whole development of the doctrine of freedom of contract as a right safeguarded by the Fourteenth Amendment. Perhaps this explains why the Massachusetts court showed no hesitation in making its favorable decision. On the question whether the ten hour law for women was in violation of any right reserved under the Constitution to the individual citizen it stated emphatically that there was "no room for debate." The court further stated "There can be no doubt that such legislation may be maintained either as a health or police regulation, if it were necessary to resort to either of these sources of power."

But the constitutionality of hour laws for women, thus early accepted in Massachusetts, was stoutly denied in Illinois nearly twenty years later.[6] Illinois had enacted in 1893 an eight-hour law for women employed in manufacturing.[7] This statute was promptly attacked in the courts. In the first Ritchie case the Illinois Supreme Court held it unconstitutional under the Fourteenth Amendment on two grounds: first, the Court declared it to be class legislation and a denial of equal protection of the laws, because it applied only to women employed in manufacturing, stating further, however, that it would still have been class legislation had it applied to all women and not to men. Secondly, the Court held that the eight-hour law interfered with freedom of contract and hence was a deprivation of liberty and property. The court saw no valid connection between women's hours of work and the public health and therefore no justification for

[5] *Commonwealth* v. *Hamilton Manufacturing Co.*, 120 Mass. 383 (1876).
[6] *Ritchie* v. *People*, 155 Ill. 98 (1895).
[7] See Chapter III, pp. 465–466.

invoking the police power. The decision in the Massachusetts case was held to be not in line with current authority.

Of course the decision of the Illinois court did not constitute an actual precedent in other states. But nevertheless it naturally raised grave doubts as to the constitutionality of all the hour laws for women. Writing in the following year, an authority on labor legislation stated:

> "It seems clear that, under the modern view that women are citizens, capable of making their own contracts, particularly in states where they have the right of suffrage, such legislation restricting their hours of labor is unconstitutional, both on ordinary grounds of denying them the right to contract, and as class legislation of the worst sort; for such privileges, or restrictions . . . cannot be conferred or imposed upon women and not on men." [8]

He explained the Massachusetts decision by a peculiar provision in the Massachusetts constitution giving the legislature wider powers than it had elsewhere.

As for hour laws applicable to men as well as women and children, in 1896 the constitutionality of many of them was in considerable doubt. The earliest hour laws, those merely fixing a legal day's work in the absence of contracts to the contrary, were not questioned. Obviously no restriction of contract could be found in these acts. However, a statute which permitted overtime only with extra pay at a higher rate was more dubious. The Nebraska eight-hour law of this sort was declared unconstitutional by the supreme court of that state in 1894.[9] The court held the law to be class legislation because it excluded those employed in farm and domestic labor; and a deprivation of liberty and property without due process of law. In the following year the Supreme Court of Colorado gave the legislature an advisory opinion to the same effect as to the constitutionality of a proposed eight-hour law for mines, factories, and smelters.[10]

In Ohio a special statute for railroad employees came before the state circuit court. The section requiring eight hours' rest after 24 hours' continuous service was upheld as necessary for public safety, but the section requiring overtime pay for all hours

[8] Stimson, Frederick J., *Handbook to the Labor Law of the United States*, Scribner's Sons, 1896, pp. 64–65.

[9] *Low* v. *Rees Printing Company*, 41 Neb. 127 (1894).

[10] *In re Eight Hour Law*, 21 Colorado 29 (1895).

beyond ten was declared unconstitutional. The court declared the absolute prohibition in this act to be "of that paternal class of legislation, and legislation for a class, that destroys alike all the constitutional guarantees of liberty of action, the security of property, and the equal protection of the laws—an infringement at once of the rights of the employee as well as those of the employer." [11]

As for statutes or city ordinances limiting hours for persons employed on public works, prior to 1896 many of them raised little constitutional question since they permitted overtime or contracts for longer hours.[12] In the few instances where a legislative body tried to secure a real limitation of hours for employees on public works, the courts prior to 1896 nullified the attempt, either by the way they construed the statute or ordinance [13] or by declaring it unconstitutional.[14]

2. Wages

It was in the field of wage payment regulation that the largest number of decisions on the constitutionality of labor legislation had been rendered up to 1896. Anti-truck acts, weekly payment laws, and coal screening acts had been passed on by the courts in a number of states in the preceding decade.

The Maryland anti-truck act, limited to corporations, was upheld in 1880.[15] The Pennsylvania anti-truck act (not limited to corporations) was declared unconstitutional in 1886 in an emphatic opinion in which it was called "an insulting attempt to put the laborer under a legislative tutelage, which is not only degrading to his manhood, but subversive of his rights as a citizen of the United States." [16] In 1892 and 1893 similar decisions were handed down in Illinois [17] and Missouri.[18] On the other hand anti-truck acts were upheld in Indiana and Kentucky.[19] In West Virginia two anti-truck laws were held unconstitutional in 1889

[11] *Wheeling Bridge Company* v. *Gilmore*, 8 Ohio C. C. 658 (1894).

[12] See Chap. V on Hour Laws for Men, p. 542.

[13] As in *People* v. *Warren*, 77 Hun 120 (N. Y. Sup. Ct., 1894); *People ex rel. Warren* v. *Beck*, 144 N. Y. 225, Court of Appeals (1894).

[14] *Ex parte Kuback*, 85 Cal. 274 (1890).

[15] *Shaffer and Munn* v. *Union Mining Company*, 55 Md. 74 (1880).

[16] *Godcharles and Company* v. *Wigeman*, 113 Pa. St. 431 (1886).

[17] *Frorer* v. *People*, 141 Ill. 171 (1892).

[18] *State* v. *Loomis et al.*, 115 Mo. 307 (1893).

[19] *Hancock* v. *Yaden*, 121 Ind. 366 (1890); *Avent Beattyville Coal Company* v. *Commonwealth*, 96 Ky. 218 (1894).

as class legislation because of their restricted scope,[20] but a new more inclusive law passed in 1891 was upheld.[21]

Statutes fixing the time of payment of wages had before 1896 been declared invalid in Illinois and Pennsylvania [22] but upheld in Rhode Island and Massachusetts.[23]

Special statutes dealing with the weighing of coal had been twice declared unconstitutional by the Illinois Supreme Court before 1896 as unwarrantable interference with freedom of contract as well as class legislation.[24] In West Virginia, however, a similar screening law was upheld.[25]

In Massachusetts attempts to protect the weavers in the textile mills from being penalized for imperfections for which they might or might not be responsible were invalidated by the Massachusetts Supreme Court with Justice Holmes, later of the United States Supreme Court, dissenting.[26]

Thus, it is evident that up to 1896 in many states the courts were extremely doubtful as to the validity of statutes limiting hours or regulating time and methods of wage payment. The interference with freedom of contract was frequently regarded as arbitrary and unreasonable and the attempt to confine these acts to a particular industry where the evil was most apparent often served merely to bring them under the ban as "class legislation."

3. Employers' Liability

On the subject of employers' liability, as stated above, the United States Supreme Court had before 1896 sustained two statutes which abolished the fellow servant rule in regard to injuries of railroad employees.[27]

4. Child Labor

Very few of the early child labor laws were contested in the courts on grounds of constitutionality. Apparently it was gen-

[20] *State* v. *Fire Creek Coal Co.*, 33 West Va. 188 (1889); *State* v. *Goodwill*, 33 West Va. 179 (1889).

[21] *Peel Splint Coal Co.* v. *State*, 36 West Va. 802 (1892).

[22] *Braceville Coal Company* v. *People of Illinois*, 147 Ill. 66 (1893); *Commonwealth* v. *Isenberg and Rowland*, 4 Pa. Dist. R. 579 (1895).

[23] *State* v. *Brown and Sharpe Manufacturing Company*, 18 R. I. 16 (1892); *Opinion of the Justices*, 163 Mass. 589 (1895).

[24] *Millett* v. *People*, 117 Ill. 294 (1886); *Ramsey* v. *People*, 142 Ill. 380 (1892).

[25] *Peel Splint Coal Co.* v. *State*, 36 West Va. 802 (1892).

[26] *Commonwealth* v. *Perry*, 155 Mass. 117 (1891).

[27] *Missouri Pacific Railway Co.* v. *Mackey*, 127 U. S. 205 (1888); *Minneapolis and St. Louis Railway Co.* v. *Herrick*, 127 U. S. 210 (1888).

erally recognized that such laws were a proper exercise of the police power. The prevailing attitude was exemplified in New York in 1894 when a statute was upheld which forbade the employment of children under 16 in certain occupations and made it a misdemeanor for parents to consent to such employment. The court declared that the statute was based on society's interest in the welfare of the child and did not deprive the parent of his right to the legitimate use of his child's services.[28]

5. Safety and Health

Safety and health statutes were also generally upheld by the state courts. As early as 1875 the Supreme Court of Illinois upheld the provision in a mine safety law requiring the making of a map of the mine workings. The court pointed to similar provisions in the laws of Great Britain and the state of Pennsylvania as evidence that this provision was of aid in protecting the lives of miners.[29] A clear connection with safety and health was apparently held to warrant the exercise of the police power. An authority on labor law wrote in 1896: "Such statutes are doubtless constitutional in any case where the reason of the regulation is based upon considerations of public health, safety and comfort or the health and morals of the operatives and is apparent on the face of the statute." [30]

Regulations in the interest of health which amounted to prohibitions were in a different category. In 1885 the New York Court of Appeals in the Jacobs case declared unconstitutional a statute passed in the preceding year which forbade the manufacture of tobacco in a tenement house if any part of it was used for living, cooking, or sleeping. The court pointed out that the law interfered with "the profitable and free use of his property by the owner or lessee of a tenement house who is a cigar maker." It denied that this was a proper exercise of the police power on the ground that: "This law was not intended to protect the health of those engaged in cigar making as they are allowed to manufacture cigars everywhere except in the forbidden tenements." Apparently it did not occur to the court that the law might have been intended to protect the health of consumers, as the opinion con-

[28] *People* v. *Ewer*, 141 N. Y. 129 (1894).
[29] *Daniels* v. *Hilgard*, 77 Ill. 640 (1875).
[30] Stimson, *op. cit.*, p. 146.

tinues: "It is plain that this is not a health law, and that it has no relation whatever to the public health." [31] This decision put a stop to attempts to prohibit home work in tenements and led to ineffective attempts at *regulation* instead—in New York State and elsewhere.

1896–1916

1. Hours

In 1898 the United States Supreme Court rendered its first important decision in the field of labor legislation. In that year by a seven to two vote it upheld a law passed by the state of Utah to limit the hours of men working in mines to eight per day.[32] The importance of this decision in *Holden* v. *Hardy* can only be appreciated if it is seen in its setting of contemporary events. It will be remembered that three years earlier the Illinois Supreme Court had held invalid the state's eight-hour law for women employed in manufacturing—a decision which as the Judiciary Act then stood could not be appealed to the United States Supreme Court.[33] Though not a controlling precedent elsewhere, this Illinois decision tended to influence the courts of other states. As noted above grave doubts arose whether any effective regulation of hours would be upheld by the courts. Yet excessive hours of work were arousing public concern everywhere and creating a growing demand for state protection in this field. For several years no opportunity arose to secure an authoritative answer to the constitutional question.

Fortunately the Utah eight-hour law for men employed in mines and smelters was contested and upheld in 1896 by the supreme court of that state—the first mandatory law for men to be sustained in any state.[34] This decision could be and was appealed to the United States Supreme Court. That Court handed down its opinion in 1898 in *Holden* v. *Hardy*. This decision of course provided a controlling precedent as to the constitutionality of hour legislation under the Fourteenth Amendment. Moreover, in interpreting the provisions in their state constitutions which resemble

[31] *In re Jacobs*, 98 N. Y. 98 (1885).
[32] *Holden* v. *Hardy*, 169 U. S. 366 (1898).
[33] *Ritchie* v. *People*, 155 Ill. 98 (1895).
[34] *State* v. *Holden*, 14 Utah 71 (1896). Appealed to the U. S. Supreme Court and decided there in *Holden* v. *Hardy*, 169 U. S. 366 (1898). For quotations given here see pp. 391–392, 396, 397.

the federal Fourteenth Amendment, the state courts naturally tended to follow the line of reasoning used in *Holden* v. *Hardy.*

In addition to the intrinsic significance of this decision the opinion, written by Mr. Justice Brown, sets forth the grounds for upholding such legislation with a clarity and cogency not surpassed in the long line of decisions which followed. After pointing out that law must change to meet changing economic conditions and that the Constitution must be interpreted to permit such changes, the opinion proceeds to justify the statute in question on the following basis: First, the health of miners is part of the public health and its protection constitutes a proper exercise of the police power, and hence a justifiable restriction on freedom of contract. Second, the legislature of Utah was warranted in regarding mining and smelting as peculiarly unhealthful occupations; hence a statute which limited hours in these occupations is not unconstitutional as discriminatory or class legislation. Finally, the inequality in economic power between mine operators and mine workers is such that the latter are forced to accept whatever conditions are offered, they do not agree to them in any real sense; hence it is reasonable for the legislature to fix maximum hours beyond which these workers cannot be required to labor.

In short, the court held that this intervention by the state was justified on two grounds: public health and the gross inequality in bargaining power between the parties to the labor contract. Certain passages in the opinion are such classics that they cannot well be omitted from even a brief history of the subject:

> "This right of contract, however, is itself subject to certain limitations which the state may lawfully impose in the exercise of the police power. . . . While this court has held [citations omitted] that the police power cannot be put forward as an excuse for oppressive and unjust legislation, it may be lawfully resorted to for the purpose of preserving the public health, safety or morals, or the abatement of public nuisances, and a large discretion is necessarily vested in the legislature to determine, not only what the interests of the public require, but what measures are necessary for the protection of such interests. . . .
>
> "While the general experience of mankind may justify us in believing that men may engage in ordinary employments more than 8 hours per day without injury to their health, it does not follow that labor for the same length of time is innocuous when carried on beneath the surface of the earth, where the operator is deprived of fresh air and sunlight, and is fre-

quently subjected to foul atmosphere and a very high temperature, or to the influence of noxious gases generated by the process of refining or smelting. . . .

"The legislature has also recognized the fact, which the experience of legislators in many states has corroborated, that the proprietors of these establishments and their operators do not stand upon an equality, and that their interests are, to a certain extent, conflicting. The former naturally desire to obtain as much labor as possible from their employees, while the latter are often induced by the fear of discharge to conform to regulations which their judgment, fairly exercised, would pronounce to be detrimental to their health or strength. In other words, the proprietors lay down the rules and the laborers are practically constrained to obey them. In such cases self interest is often an unsafe guide, and the legislature may properly interpose its authority."

Despite the decision in *Holden* v. *Hardy* the Colorado Supreme Court held its eight-hour law for miners unconstitutional in the following year.[35] But aside from Colorado, after 1898 it was apparently settled that hours could be restricted in special occupations in which the hazards to health were obviously greater than in the general run of callings. In Missouri and Nevada eight-hour laws for miners were sustained by the state supreme court in 1904.[36] In California a similar statute was upheld in 1909.[37]

However *Holden* v. *Hardy* by no means established the constitutionality of men's hour laws for any or all occupations. This became manifest in 1905 when two of the seven justices who had voted to uphold the Utah mining statute joined with the two dissenters and one new member to hold unconstitutional in *Lochner* v. *New York* a ten-hour law for bakers.[38]

Meanwhile in 1903 came a decision (in *Atkin* v. *Kansas*) which settled the question whether the state could effectively limit the hours of employees on public works.[39] Prior to that date the courts

[35] *In re Morgan*, 26 Colorado 415 (1899). The Supreme Court of Colorado explained its action by contrasting the relevant provisions in the state constitutions of Utah and Colorado. Both had special provisions empowering the legislature to enact laws to increase the safety of mines. But the Colorado court pointed out that the Colorado provisions were less broad and merely applied to statutes dealing with mechanical appliances, not other kinds of health regulation.

[36] *State* v. *Cantwell*, 179 Mo. 245; *Ex parte Boyce*, 27 Nev. 299 (1904).

[37] *Ex parte Martin*, 157 Cal. 51 (1909). This law was contested as a violation of the state constitution. However, the state supreme court in sustaining it relied on the general argument of the United States Supreme Court in *Holden* v. *Hardy*.

[38] *Lochner* v. *New York*, 198 U. S. 45 (1905).

[39] *Atkin* v. *Kansas*, 191 U. S. 207 (1903).

in five states had held unconstitutional statutes or ordinances limiting hours on public works.[40] The Kansas Supreme Court was the only one which held such a law valid under the federal Constitution and from which consequently a case could be carried to the United States Supreme Court.[41] When such a case was finally appealed, the United States Supreme Court sustained the act on the ground that the state was one party to the contract and therefore might fix its terms.[42] In this case the court refused to discuss the question whether a general statute limiting hours of labor would be constitutional.

That question it faced two years later in *Lochner* v. *New York*.[43] The Lochner case involved the constitutionality of a limitation of the hours of bakers to ten per day and 60 per week. The limitation was upheld by the Court of Appeals of New York in a four to three decision [44] with a line of reasoning so similar to that in *Holden* v. *Hardy* that one might have expected the United States Supreme Court to accept it readily. But this did not happen. In an emphatic opinion, that court by a five to four vote, held the New York ten-hour law for bakers unconstitutional. Justice Brown who had written the opinion in *Holden* v. *Hardy* was one of the five members of the court to believe that "the limit of the police power has been reached and passed" in the Lochner case.

The majority of the court distinguished the New York statute from that involved in *Holden* v. *Hardy* by pointing to the different groups of workers employed and to the absence of any clause in the New York act permitting overtime in case of emergency, and concluded: "There is nothing in *Holden* v. *Hardy* which covers the case now before us." Discussing whether the ten-hour law for bakers was a proper protection to public health the court declared:

> "We think that there can be no fair doubt that the trade of a baker, in and of itself, is not an unhealthy one to that degree

[40] California—*Ex parte C. J. Kuback*, 85 Cal. 274 (1890).
Washington—*Seattle* v. *Smyth*, 22 Wash. 327 (1900).
Illinois—*Fiske* v. *People ex rel. Raymond*, 188 Ill. 206 (1900).
Ohio—*Cleveland* v. *Clements Bros. Construction Co.*, 67 Ohio St. 197 (1902).
New York—*People* v. *Orange County Road Construction Co.*, 175 N. Y. 84 (1903).

[41] *In re Dalton*, 61 Kansas 257 (1899); *State* v. *Atkin*, 64 Kansas 174 (1902).

[42] *Atkin* v. *Kansas*, 191 U. S. 207 (1903). In 1907 the Court upheld the federal public works law on the same ground. *Ellis* v. *United States*, 206 U. S. 246 (1907).

[43] *Lochner* v. *New York*, 198 U. S. 45 (1905). For quotations given here see pp. 55, 58, 59, 61.

[44] *People* v. *Lochner*, 177 N. Y. 145 (1904).

which would authorize the legislature to interfere with the right to labor, and with the right of free contract on the part of the individual, either as employer or employee. In looking through statistics regarding all trades and occupations, it may be true that the trade of a baker does not appear to be as healthy as some other trades, and is also vastly more healthy than still others. . . . Very likely physicians would not recommend the exercise of that or any other trade as a remedy for ill health. . . . It might be safely affirmed that almost all occupations more or less affect the health. There must be more than the mere fact of the possible existence of some small amount of unhealthiness to warrant legislative interference with liberty."

After further discussion they conclude:

"The act is not, within any fair meaning of the term, a health law, but is an illegal interference with the rights of individuals, both employers and employees, to make contracts regarding labor upon such terms as they may think best, or which they may agree upon with the other parties to such contracts. Statutes of the nature of that under review, limiting the hours in which grown and intelligent men may labor to earn their living, are mere meddlesome interferences with the rights of the individual."

The Lochner decision was of great significance because it was the first in which the United States Supreme Court held a statute to protect labor unconstitutional. It demonstrated that that court might outdo the state courts in construing the Fourteenth Amendment as forbidding such legislation. Obviously it had no opportunity at this time to be *more* liberal than the state courts, since until 1914 it could not review a decision by a state court which held a state law *unconstitutional.*[45] The effect of the Lochner decision was to circumscribe rather narrowly the occupations in which hours might be limited. Apparently mining was so prejudicial to health as to justify the restriction; baking was not. Hours of labor on public work of course could be limited, but that rested on an entirely different principle.

Up to this time the Supreme Court had not passed on any statute specifically restricting women's hours. Whether it would recognize sex as a basis for distinguishing such legislation from that held invalid in *Lochner* v. *New York* was settled in *Muller* v. *Oregon*, decided in 1908.[46]

[45] See footnote 3 on p. 661, this chapter.

[46] *Muller* v. *Oregon*, 208 U. S. 412 (1908). For quotations given here see pp. 420–421, 422.

After the decision by the Illinois Supreme Court in 1895 holding invalid the eight-hour law for women in that state, women's hour laws had been upheld in Nebraska, Washington, and Oregon.[47] In Nebraska the court referred to the favorable decision in Massachusetts in 1876 and to a consensus of opinion in other states. It did not mention the Illinois case. In the Washington case the adverse decision in Illinois was referred to but the Court said, "we are not inclined to follow the reasoning of the court in that case." On the other hand in Colorado in 1907 the supreme court held unconstitutional an eight-hour law for women, chiefly due to its defective drafting.[48] With this array of decisions the constitutionality of women's hour legislation was still in doubt. The favorable decision by the United States Supreme Court in 1908 in *Muller* v. *Oregon* established the power of the state to protect the generality of women workers against excessive hours of labor.

The brief presented to the Supreme Court on behalf of the Oregon statute is generally credited with an important part in the outcome.[49] In that brief the attempt was made to present the medical and economic facts on which hour legislation for women is based. In view of the Lochner decision the argument was based on the physical difference between men and women and the special need to protect women's health because of its bearing on future generations. This medical argument was buttressed by a compendium of legislation as to women's hours in effect all over the world. The Supreme Court found this line of argument persuasive and sustained the Oregon ten-hour law in a unanimous decision. The opinion summarized in a footnote the data contained in the brief and declared:

> "The legislation and opinions referred to in the margin may not be, technically speaking, authorities, and in them is little or no discussion of the constitutional question presented to us for determination, yet they are significant of a widespread belief that woman's physical structure, and the function she performs in consequence thereof, justify special legislation restricting or qualifying the conditions under which she should be permitted to toil. Constitutional questions, it is true, are

[47] *Wenham* v. *State*, 65 Neb. 394 (1902); *State* v. *Buchanan*, 29 Wash. 602 (1902) at p. 607; *State* v. *Muller*, 48 Ore. 252 (1906).

[48] *Burcheret et al.* v. *People*, 41 Colo. 495 (1907).

[49] This brief was presented by Louis D. Brandeis, later Associate Justice of the United States Supreme Court, who argued the case for the constitutionality of the Oregon law in behalf of the National Consumers' League.

> not settled by even a consensus of present public opinion. . . . At the same time, when a question of fact is debated and debatable, and the extent to which a special constitutional limitation goes is affected by the truth in respect to that fact, a widespread and long continued belief concerning it is worthy of consideration. We take justicial cognizance of all matters of general knowledge."

Considering these matters the court concluded:

> "Differentiated by these matters from the other sex, she [woman] is properly placed in a class by herself, and legislation designed for her protection may be sustained, even when like legislation is not necessary for men and could not be sustained."

From 1908 to 1915 four more cases involving hour legislation for women reached the Supreme Court. The court adhered to the principle it laid down in *Muller* v. *Oregon;* and in each case sustained the statute in question, even the very inclusive eight-hour law of California.[50]

Meanwhile in 1911 in *Baltimore and Ohio Railroad Company* v. *Interstate Commerce Commission* the court decided that under the commerce clause the federal Congress had the power to regulate the hours of labor of men engaged in and connected with the movement of trains.[51] The statute was upheld, however, not as a protection to the health of this group of workers but as a safety measure "to reduce the dangers [to life and property] incident to the strain of excessive hours of duty on the part of engineers, conductors, train despatchers, telegraphers, etc." This decision, of course, had no bearing on the question at issue in *Holden* v. *Hardy* and *Lochner* v. *New York.*[52]

2. Wages

In the period from 1896 to 1916 the United States Supreme Court passed on the validity of a group of laws affecting the pay-

[50] *Hawley* v. *Walker*, 232 U. S. 718 (1914); *Riley* v. *Massachusetts*, 232 U. S. 671 (1914); *Miller* v. *Wilson*, 236 U. S. 373 (1915); *Bosley* v. *McLaughlin*, 236 U. S. 385 (1915).

[51] *Baltimore and Ohio Rail. Co.* v. *Interstate Commerce Commission*, 221 U. S. 612 (1911). For quotation see p. 619. The statute of course applied only to railroads engaged in interstate transportation. In 1914 in *Erie Railway Co.* v. *New York*, 233 U. S. 671, the Supreme Court held that a state statute with higher standards than the federal hours of service act was void so far as interstate transportation was concerned. Since Congress had acted in this field the state could no longer act.

[52] One other Supreme Court decision of this period may perhaps be regarded as belonging in this classification; namely *Petit* v. *Minnesota*, 177 U. S. 164 (1900), which upheld a statute providing for Sunday closing of barber shops.

ment of wages. In 1899 it upheld an Arkansas statute which provided that if a railroad company on discharging an employee failed to pay the wages due, wages should continue at the same rate until payment should be made—with a maximum limit of 60 days.[53] The passage of such a statute points to a practice of the railroads which deprived discharged employees of wages due them. The statute was attacked as class legislation and a deprivation of property. The United States Supreme Court upheld the act on the ground of the "peculiar character of the business of the corporations affected and the public nature of their functions." Since it applied to all rail corporations it was not a denial of equal protection of the laws.

A more important decision was that rendered in the following year which settled the constitutionality of anti-truck acts; that is, of statutes requiring wages to be paid in cash or in orders directly redeemable in cash.[54] As we have seen, these laws had been enacted in many states in the 'eighties and 'nineties and the state courts were about evenly divided as to their validity.[55] The Supreme Court of Tennessee had upheld the anti-truck act of that state passed in 1899 and on appeal the United States Supreme Court sustained the decision. It regarded the restriction imposed upon freedom of contract as justifiable. The justification in this instance was not the protection of public health—the principle chiefly relied on in *Holden* v. *Hardy*. The connection between the failure to pay wages in cash and the public health was not regarded as immediate. But the second principle recognized in *Holden* v. *Hardy* was invoked and extended; namely, the power of the legislature to protect the wage earner from conditions which he may be forced to accept because of the economic inequality prevailing between him and his employer. In *Holden* v. *Hardy* the condition involved was a working day so long as to impair his health. In the anti-truck act case it was a method of payment tending to deprive him of the full wage which he was supposed to receive.[56]

[53] *St. Louis, I. M. & S. R. Co.* v. *Paul*, 173 U. S. 404 (1899). For quotation see p. 408.

[54] *Knoxville Iron Company* v. *Harbison*, 183 U. S. 13 (1901).

[55] See above pp. 664–665.

[56] *Knoxville Iron Company* v. *Harbison*, 183 U. S. 13 (1901). The facts in this case probably made the court realize the effect of payment in orders not immediately redeemable in cash. The company in this case paid on the 18th of each month wages covering only to the first. Against the pay due for the 18 days the miner could draw orders for coal. The evidence showed that a man in the mining

This decision was the first of a series dealing with legislation of this sort. In 1909 the court upheld a "screening law" requiring coal to be paid for on the basis of its weight before it is passed over a screen.[57] In 1914 it upheld a statute requiring the semi-monthly payment of railway employees [58] and a second anti-truck act.[59] In 1915 a second screening law—somewhat different in form—was also upheld.[60] In each of these decisions the court took the position that the legislature should exercise its judgment as to the necessity for the regulation involved—it was not for the court to say whether actual conditions required it. If the legislature found that the method of payment tended to deprive the employee of his full wages or was otherwise detrimental to him, it was justified in remedying the situation by statute. This series of decisions constituted a recognition by the United States Supreme Court that for the employee freedom of contract is frequently a legal fiction and that he may need protection against terms of employment which he himself agrees to accept—even though health is only remotely involved.

3. Employers' Liability

We turn now to a group of decisions involving another type of labor legislation—that altering the common-law rules on the subject of employers' liability. We have already noted that as early as 1888 the United States Supreme Court had held constitutional two employers' liability statutes which abolished the fellow servant rule as applied to railroads.[61] These decisions were followed by a number of similar ones from 1899 to 1912—a line of decisions particularly important as laying the groundwork for upholding the far more drastic change involved in workmen's compensation.

In 1899 the court sustained an Indiana statute abolishing the fellow servant rule, passing on it only so far as it applied to railroads.[62] In 1907 the court sustained an Illinois statute which

town was accustomed to buy up thousands of dollars worth of these orders at 75 cents on the dollar. It was apparent then that this method of payment tended to deprive many miners of one-fourth of the wages due them for the first 18 days of each month.

[57] *McLean* v. *Arkansas*, 211 U. S. 539 (1909).

[58] *Erie Railway Co.* v. *Williams*, 233 U. S. 685 (1914).

[59] *Keokee Consolidated Coke Co.* v. *Taylor*, 234 U. S. 224 (1914).

[60] *Rail and River Coal Company* v. *Yaple*, 236 U. S. 338 (1915).

[61] *Missouri Pacific Rail. Co.* v. *Mackey*, 127 U. S. 205 (1888); *Minneapolis and St. Louis Rail. Co. v. Herrick*, 127 U. S. 210 (1888).

[62] *Tullis* v. *Lake Erie and Western Railway Company*, 175 U. S. 348 (1899).

made mine owners liable for accidents due to the wilful failure of the mine manager or mine examiner to comply with safety regulations. The court recognized that the statute was not in accord with common-law principles but held that it was "competent for the state to change and modify those principles in accord with its conceptions of public policy." [63] In 1908 the court held invalid the first federal employers' liability act but solely on the ground that by its wording it included more than employees employed in interstate commerce.[64] In 1910 the court decided two more cases involving employers' liability acts for rail employees—again holding these statutes constitutional.[65] In 1911 it passed upon the provision in the employers' liability act of Iowa, which made invalid any contract by which an employee waived his right to sue in case of injury in exchange for benefits to be paid from a company fund.[66] The court held it to be within the discretion of the legislature to decide whether this provision against "contracting out" from under the act was necessary for the protection of the employee. The statement in the opinion on the general question of the relation between legislative and judicial power is worth quoting:

> "The principle involved in these decisions is that where the legislative action is arbitrary and has no reasonable relation to a purpose which it is competent for government to effect, the legislature transcends the limits of its power in interfering with liberty of contract; . . . The scope of judicial inquiry in deciding the question of power is not to be confused with the scope of legislative considerations in dealing with the matter of policy. Whether the enactment is wise or unwise, whether it is based on sound economic theory, whether it is the best means to achieve the desired result, whether, in short, the legislative discretion within its prescribed limits should be exercised in a particular manner, are matters for the judgment of the legislature, and the earnest conflict of serious opinion does not suffice to bring them within the range of judicial cognizance."

In 1912 the Supreme Court sustained the second federal employers' liability act applying to employees in interstate com-

[63] *Wilmington Star Mining Company* v. *Fulton*, 205 U. S. 60 (1907), at p. 74.

[64] *Employers' Liability Case* [First], *Howard* v. *Illinois Central Railway Company*, 207 U. S. 463 (1908).

[65] *Louisville and N. R. Co.* v. *Melton*, 218 U. S. 36 (1910); *Mobile, J. & K. C. Rail. Co.* v. *Turnipseed*, 219 U. S. 35 (1910).

[66] *Chicago, Burlington & Quincy Railway Co.* v. *McGuire*, 219 U. S. 549 (1911). For quotation see p. 569.

merce.[67] This statute went further than most of the state acts, by adding to its other sections a provision substituting for the rule of contributory negligence that of comparative negligence.[68] The opinion contained an emphatic statement that no person has any property right in a rule of common law: "Indeed, the great office of statutes is to remedy defects in the common law as they are developed, and to adapt it to the changes of time and circumstances." In the same year the court also sustained a state statute which substituted comparative for contributory negligence.[69]

Thus in the first decade of the twentieth century the Supreme Court was ready to sustain very considerable changes in the common-law rules dealing with employers' liability. However, in these years it became evident that even more drastic changes were needed to afford adequate protection to the injured employee. The first comprehensive workmen's compensation act was passed in 1910 and was rapidly followed by a flood of such laws. But the United States Supreme Court did not pass on the validity of this new type of labor legislation until 1917.[70]

4. Child Labor

In the period from 1896 to 1916 the Supreme Court passed on the constitutionality of a typical state child labor law which among other provisions prohibited the employment of children in dangerous occupations under 16 years. Justice Hughes, speaking for a unanimous court, said there could be no doubt as to the power of the state to prohibit children from working in dangerous occupations. The provision which made the employer responsible

[67] Second Employers' Liability Case, *Mondou* v. *New York, New Haven and Hartford Railway Co.*, 223 U. S. 1 (1912). For quotation given here see p. 50. The contracting out feature of the statute was sustained in *Philadelphia, Baltimore, and Washington Railway Co.* v. *Schubert*, 224 U. S. 603 (1912).

[68] This means that the employee is not barred entirely from recovering because his negligence contributed to the accident. Instead the relative negligence of himself and his employer are assessed and the amount he can recover is reduced in proportion to the negligence which he has contributed.

[69] *Missouri Pacific Railway Co.* v. *Castle*, 224 U. S. 541 (1912).

[70] In 1915 the United States Supreme Court did pass on the constitutionality of one provision of the Ohio elective compensation law, namely that which deprived employers who elected to stay out from under the act of their common-law defenses in suits for damages. The Ohio act was limited to employers of five or more workers and it was contended that it was a denial of equal protection of the laws to deprive employers of five or more but not other employers of these defenses. The Court held this to be a reasonable classification and sustained the provision. It did not discuss the constitutionality of the act as a whole. *Jeffry Manufacturing Co.* v. *Blagg*, 235 U. S. 571 (1915).

in case the child gave an incorrect age was held entirely justifiable.[71]

5. Safety and Health

In this period a number of cases were decided which involved safety legislation. We have noted that, on the whole, statutes designed to protect the public safety or to make the workplace safe and healthful for the employee had been upheld in the state courts. The United States Supreme Court took the same position if any connection with safety or health could be shown.

In 1911 the full crew law (requiring every freight train to carry engineer, fireman, conductor, and three brakemen) was upheld on the ground of public safety, despite the railroad's contention that the sixth man was unnecessary for that purpose.[72] The court stated:

> "[The statute] is a means employed by the state to accomplish an object which it is entitled to accomplish, and such means, even if deemed unwise, are not to be condemned or disregarded by the courts, if they have a real relation to that object."

A second full crew act was sustained in 1916.[73] However, in another case where the court failed to see any "real relation" to public safety it held unconstitutional a somewhat similar statute.[74] This was a Texas act which provided that no one could serve as a conductor on a freight train unless he had held such position for the two years previous or had served as a brakeman on a freight train.

Four decisions in this period dealt with statutes designed to increase the safety or healthfulness of the place of work. In 1913 the court sustained an Illinois statute requiring the enclosure of certain shafts or openings in buildings in process of construction.[75] The statute was attacked as a denial of equal protection because it did not apply to all openings in all buildings, but the court dismissed the objection, summarily, stating that the legislature should decide what to include in such a statute. In the same year the court upheld an Indiana statute regulating the construction of

[71] *Sturges and Burn Manufacturing Company* v. *Beauchamp*, 231 U. S. 320 (1913).
[72] *Chicago, R. I., & P. Rail. Co.* v. *Arkansas*, 219 U. S. 453 (1911). For quotation see p. 466.
[73] *St. Louis, I. M., & S. R. Co.* v. *Arkansas*, 240 U. S. 518 (1916).
[74] *Smith* v. *Texas*, 233 U. S. 630 (1914).
[75] *Chicago Dock and Canal Company* v. *Fraley*, 228 U. S. 680 (1913).

track ways or entries in coal mines, and in the next year a statute requiring that adequate pillars be left along the line of adjoining mines to safeguard the miners from possible "cave ins" in case one mine or the other were abandoned and allowed to fill with water. These statutes were upheld on the ground that coal mining is well known to be a dangerous occupation and that the legislature must be the judge of what regulations are necessary to reduce hazards therein.[76] In 1915 the court upheld an Indiana statute requiring owners of coal mines to provide washrooms for their employees, at the request of 20 of their number. The court refused to regard this statute as a denial of equal protection of the laws or as unconnected with health.[77]

6. Miscellaneous

Two decisions in 1915 involved statutes limiting the employment of aliens. A New York statute provided that in the construction of public works only United States citizens could be employed. The United States Supreme Court upheld this statute on the ground that the state can prescribe the conditions upon which it will permit public work to be done on its behalf or on behalf of the municipalities. The case followed the rule laid down in *Atkin* v. *Kansas*.[78] On the other hand the court declared invalid an Arizona statute which made it illegal for any employer of five or more persons to employ less than 80 per cent qualified electors or native born citizens. This act was held to deny "equal protection of the laws" to aliens. If the right to work could be refused "solely upon the ground of race or nationality, the prohibition of the denial to any person of the equal protection of the laws would be a barren form of words." [79]

Finally, in 1916 in *Brazee* v. *Michigan*, a case came before the Supreme Court involving the constitutionality of a statute regulating private employment agencies. The court upheld the statute in general and particularly the provision involved in this case, a prohibition against sending an applicant to an employer who had not applied for labor.[80] However, the court stated specifically that the section of the statute concerning the regulation of the

[76] *Barrett* v. *Indiana*, 229 U. S. 26 (1913); *Plymouth Coal Company* v. *Pennsylvania*, 232 U. S. 531 (1914).
[77] *Booth* v. *Indiana*, 237 U. S. 391 (1915).
[78] *Heim* v. *McCall*, 239 U. S. 175 (1915).
[79] *Truax* v. *Raich*, 239 U. S. 33 (1915), at p. 41.
[80] *Brazee* v. *Michigan*, 241 U. S. 340 (1916).

fees which employment agencies might charge was severable from the rest of the act and was not passed upon in this decision. This reservation was fraught with significance perhaps not fully realized at the time. Twelve years later, in *Ribnick* v. *McBride*, the United States Supreme Court held unconstitutional the regulation of fees to be charged by employment agencies.[81]

The Year 1917

In looking back over the line of Supreme Court decisions on the constitutionality of labor laws extending from 1898 to 1932, the year 1917 stands out—both as to the number of cases decided and the liberal construction placed upon the legislative power. It chanced that in this one year the Court passed upon almost all the forms of labor legislation.[82] In *Bunting* v. *Oregon* it upheld a ten-hour law for men in manufacturing and mechanical industries. In *Wilson* v. *New* (by a five to four vote) it sustained the Adamson law which regulated the wages as well as the hours of men employed by railroads. In *Stettler* v. *O'Hara* its four to four vote left standing the favorable Oregon decision as to the constitutionality of a minimum wage law for women. Perhaps even more clearly indicative of a liberal point of view, it upheld all three varieties of workmen's compensation legislation—the elective law of Iowa, the compulsory law of New York, and the compulsory law providing for an exclusive state fund of the state of Washington. However, in the same year it held that longshoremen could not be included under a state workmen's compensation act and that a state could not forbid private employment agencies to collect fees from workers.[83]

This group of cases decided in 1917 is so important that the year is here treated as a separate period in the chronology.

1. Hours

In *Bunting* v. *Oregon*[84] the Court unanimously sustained a ten-hour law for men employed in manufacturing and mechanical establishments. Although no mention of the Lochner case was made in the opinion, that decision appeared to have been reversed.

[81] *Ribnick* v. *McBride*, 277 U. S. 350 (1928).

[82] As classified in this chapter only the child labor and safety and health fields were not represented.

[83] For citations to cases mentioned in this paragraph see following pages where these cases are discussed more at length.

[84] *Bunting* v. *Oregon*, 243 U. S. 426 (1917).

As a matter of fact, the statute under attack in the Bunting case was of a very ineffective type, since it permitted three hours of overtime at a time and a half rate. This overtime provision seems to have absorbed the attention of the court, since most of the opinion is concerned with demonstrating that it was intended merely as a mild penalty and did not render the statute a regulation of wages. The assumption seemed to be that a regulation of men's wages would be unconstitutional, but a mere regulation of hours which limited them to the customary and reasonable average of ten per day was unquestionably valid.

2. Wages

The question of wage regulation was acted on by the Court in that same year in two other cases. In *Wilson* v. *New* [85] the Court in a five to four decision upheld the Adamson law passed by Congress at the request of President Wilson to avert a national railway strike. The act made eight hours the basic day and provided that pending the report of a commission to be appointed by the President wages should continue at existing rates, all hours in excess of eight to be paid for pro rata at these rates. The Court held that the power of Congress to regulate hours of railroad workers was unquestioned. As for the regulation of wages, it was justified as an emergency measure, a form of compulsory arbitration to protect the public against the calamity of a national railroad strike.

In the case of *Stettler* v. *O'Hara* [86] the Court was called upon to decide on the constitutionality of minimum wage legislation for women. The first act of this kind passed in the United States was enacted in Massachusetts in 1912, and eight more states passed similar laws in the following year. The Oregon statute was the first contested in the courts and was upheld by the Oregon Supreme Court in 1914.[87] On appeal it was first argued before the United States Supreme Court in 1914 and reargued in 1916. Justice Brandeis, who as counsel for the state of Oregon had appeared on behalf of the validity of the statute in 1914, took no part in the final decision. The eight remaining members of the court divided four to four. In consequence no opinion was rendered and the favorable opinion of the Oregon court stood. This occurrence was generally regarded as establishing the constitu-

[85] *Wilson* v. *New*, 243 U. S. 332 (1917).
[86] *Stettler* v. *O'Hara*, 243 U. S. 629 (1917).
[87] *Stettler* v. *O'Hara*, 69 Ore. 519 (1914).

tionality of minimum wage legislation for women, but subsequent events proved the falsity of the assumption.

3. Employers' Liability and Workmen's Compensation

Perhaps the most important decisions handed down in 1917 were those dealing with workmen's compensation. To appreciate their significance fully it is necessary to review certain previous state decisions in this field.

In 1911 the New York Court of Appeals in the Ives case [88] had held the first New York compensation law unconstitutional because it knew of "no principle on which one can be compelled to indemnify another for loss unless it is based upon contractual obligation or fault." Under the Judiciary Act as it then stood this case could not be carried to the United States Supreme Court.[89]

Beginning in 1911 many other states passed accident compensation laws, some of them being made "elective" [90] in order that they might be more readily upheld by the courts. In the following year both elective and compulsory laws were upheld in a large number of state decisions. In New York the state constitution was promptly amended specifically to permit a compulsory compensation law and a new law was passed in 1914. This act was upheld by the New York Court [91] and appealed. In 1917 the Supreme Court upheld the compulsory New York act along with two other kinds of workmen's compensation laws.

In unanimously upholding the second New York act in *New York Central* v. *White*,[92] the United States Supreme Court pointed out that the act replaced the body of common-law rules relating to industrial accidents with another system. The employee lost the possibility of securing very large sums in damages if the employer's liability could be proved, but gained the certainty of moderate compensation for all injuries without recourse to court action. On the other hand, the employer's new "liability without fault," which had proved the sticking point for the New York court, was held to be offset by the assurance that the amount he might be

[88] *Ives* v. *So. Buffalo Rail. Co.*, 201 N. Y. 271 (1911) at p. 318.

[89] See above, p. 661.

[90] For an explanation of what is meant by an elective law see Chapter VI.

[91] *Jensen* v. *Southern Pacific Co.*, 215 N. Y. 514 (1915), and *White* v. *New York Central and Hudson River Railroad Company*, 216 N. Y. 653 (1915).

[92] *New York Central Rail. Co.* v. *White*, 243 U. S. 188 (1917). For quotation see p. 204.

called upon to pay was limited and fixed. On this point the court remarked:

> . . . "we may add that liability without fault is not a novelty in the law. The common law liability of the carrier, of the innkeeper, or him who employed fire . . . was not dependent altogether upon questions of fault or negligence. Statutes imposing liability without fault have been sustained."

The Iowa elective compensation law which was not confined to extra hazardous employment was unanimously sustained on the same day.[93]

A third workmen's compensation act was sustained at the same time in *Mountain Timber Company* v. *Washington*.[94] The Washington compensation law was compulsory for hazardous occupations and provided that compensation should be paid from an exclusive state fund. The state fund feature proved a sticking point for four members of the Court, and this third type of compensation law was upheld by only a five to four vote. The majority maintained that since the state might pension soldiers, it might give compensation to men injured in industry. To assess the industries in which accidents arose was held to be a reasonable method of raising the necessary funds.

The effect of those three decisions handed down on March 6, 1917 was to establish that all the various forms of workmen's compensation legislation then on the statute books would pass muster in the courts.[95]

Within two months, however, two limitations on the power of the states to protect injured workers in this way were announced. The first, that railroad workers engaged in interstate commerce could not be included under a state compensation act, was not so important, since the Federal Employers' Liability Act afforded

[93] *Hawkins* v. *Bleakly*, 243 U. S. 210 (1917). The specific points on which it had been attacked were two: the provision abrogating the common-law defenses of the employer who elected to stay out of the compensation system and the provision which made it prima facie evidence of duress if a similar election by the employee was made at the suggestion of his employer. The court sustained the first on the ground frequently stated in earlier cases that the employer has no vested right in the common-law defenses. As for the second it was regarded as a reasonable presumption in view of the advantages to the employee of accepting workmen's compensation and as a permissible aid in carrying out the new law.

[94] *Mountain Timber Company* v. *Washington*, 243 U. S. 219 (1917).

[95] On the same day the United States Supreme Court upheld a very liberal employers' liability law of the state of Kansas in *Bowersock* v. *Smith*, 243 U. S. 29 (1917).

them reasonably adequate protection.[96] (As a skilled group trainmen were well able to take advantage of an act which required them to bring suit in court. Indeed many of their number preferred the method which gave them an opportunity to secure large awards.)

The second limitation, however, left a large group of workers in a very hazardous occupation with nothing but their common law remedies in case of injury. This group was the longshoremen engaged in loading vessels moored in navigable waters. By a five to four vote in *Southern Pacific Company* v. *Jensen*[97] the Supreme Court held that a longshoreman injured on board a ship in New York harbor could not receive compensation under the New York compensation act. The grounds for this decision were two provisions in the constitution: the one which extended the judicial power of the United States to all cases of admiralty and maritime jurisdiction, and the other which gave Congress power to make all laws necessary to execute the powers of the departments of the federal government. Under the Judiciary Act Congress had given original cognizance of admiralty and maritime cases to the federal district courts "saving to suitors, in all cases, the right of a common law remedy, where the common law is competent to give it." Since a right under a compensation act is not a common-law right, five members of the Court declared that the longshoremen could not constitutionally recover under it. This exclusion of a particularly hazardous occupation from the benefits of compensation aroused a storm of protest. The efforts to remedy the situation and their fate at the hands of the Supreme Court will be recounted later.

4-5. Child Labor. Safety and Health

As previously stated no cases involving child labor or safety and health came to the Supreme Court in the year 1917.

6. Miscellaneous

One more important decision in the field of labor legislation was handed down in 1917, namely that in *Adams* v. *Tanner*.[98] The state of Washington had passed an act designed to end the evils of private employment agencies. Despairing of effective regulation, this act prohibited employment agencies from col-

[96] *New York Central Rail. Co.* v. *Winfield*, 244 U. S. 147 (1917).

[97] *Southern Pacific Company* v. *Jensen*, 244 U. S. 205 (1917). For quotation see p. 216.

[98] *Adams* v. *Tanner*, 244 U. S. 590 (1917).

lecting fees from employees. The majority of the Court held this to be the prohibition of a useful and beneficial calling which might properly be regulated but could not constitutionally be prohibited. In a dissenting opinion, Justice Brandeis pointed out that the statute did not prohibit private employment agencies, since they were free to collect fees from employers; and that even if it did, it might still be upheld along with statutes prohibiting the selling of oleomargarine, dealing in futures, etc. He summarized the facts as to the evil which existed and as to the remedies proposed, to show that the legislature had not acted arbitrarily or unreasonably.

1917–1932

An analysis of the cases decided from 1917 to 1932 suggests that while the Supreme Court did not reverse any of its earlier decisions sustaining labor laws, the general trend was toward a stricter construction of the power to protect labor through legislation. It is true that a number of these decisions invalidating laws passed to protect labor turned, not on individual rights under the Fourteenth Amendment, but on the question of state versus federal power. But the action of the court in protecting the states from encroachments by Congress and Congress from encroachments by the states served effectively to delay certain kinds of protection much needed by wage earners. It is somewhat ironical that while Congress was denied the power to regulate child labor, the states were at the same time denied the power to include longshoremen under their workmen's compensation acts, even after Congress had twice attempted by statute to authorize the inclusion. The longshoremen were finally taken care of by a federal compensation act passed in 1926. But the children must wait for ratification of the child labor amendment or the slow action of the various states.

1. Hours

In 1924 a statute prohibiting the employment of women at night finally reached the United States Supreme Court and was upheld.[99] The history behind this case is worth recalling. By 1907 four states had night work laws on their statute books. In that year the New York law was held unconstitutional by the highest court of that state, the court failing to see any connection between

[99] *Radice* v. *New York*, 264 U. S. 292 (1924).

the statute and the health and welfare of women.[100] This decision, of course, could not be appealed to the United States Supreme Court. In the following year that Court, in *Muller* v. *Oregon*,[101] upheld a ten-hour law for women; but the constitutionality of night work prohibition remained dubious for many years, a situation which no doubt retarded the enactment of such legislation. In New York the Factory Investigating Commission after extensive investigation recommended the enactment of a new night work law, believing that its findings would convince the courts of the connection between night work and health. On the basis of these findings a new law was passed and sustained by the New York Court of Appeals in 1915, thus reversing its decision of eight years before.[102]

This decision by the New York court was generally regarded as establishing the constitutionality of night work legislation for women. A flaw in the record, however, prevented the appeal of the case to the United States Supreme Court. A third New York case finally reached that court in 1924 and the night work act was unanimously sustained.[103] Justice Sutherland wrote the opinion. He distinguished a night work law from a minimum wage law and found that the legislature was not without warrant in concluding that night work is detrimental to the health of women. Thus the constitutionality of this legislation first denied in 1907 was finally established in 1924.

After the Bunting case decided in 1917 no further hour legislation for men came before the United States Supreme Court. Consequently up to 1933 it was still unsettled whether a statute which effected any real limitation on men's hours in the manufacturing industries or in some other fairly inclusive classification would be sustained. After all, a ten-hour law permitting three hours overtime at time and a half—the provisions of the statute involved in the Bunting case—set too low a standard to be of great importance. Would an eight- or nine-hour law or even a ten-hour law without overtime provisions be sustained?

Turning to state decisions for light on the subject, we find that Mississippi, strangely enough, was the only state in addition to Oregon in which a general hour law for men had been sustained.

[100] *People* v. *Williams*, 189 N. Y. 131 (1907).
[101] *Muller* v. *Oregon*, 208 U. S. 412 (1908).
[102] *People* v. *Charles Schweinler Press*, 214 N. Y. 395 (1915).
[103] *Radice* v. *New York*, 264 U. S. 292 (1924).

The statute involved was a ten-hour law for manufacturing or repairing. Longer hours were forbidden except in cases of emergency. In 1912 (before the Bunting decision) the Supreme Court of Mississippi sustained this ten-hour law, in a very enlightened opinion which referred to the strain of modern industry, suggesting "Such a law as that before us may not have been needed half a century ago, but may be needed at the present time. In fact the . . . legislature has decided that the law is needed." The Court referred to the Lochner case but maintained that that decision did not control under the facts in the Mississippi case. Upon rehearing the law was again sustained; the opinion contained a trenchant reference to "the notable fact that it is rare for the seller of labor to appeal to the courts for the preservation of his inalienable rights to labor. This inestimable privilege is generally the object of the buyer's disinterested solicitude." A further sentence merits quotation. "Some day, perhaps, the inalienable right to rest will be the subject of litigation; but as yet this phase of individual liberty has not sought shelter under the state or federal constitutions." [104]

In 1918 (after the Bunting decision) an eight-hour law for men was held unconstitutional by the district court of Alaska.[105] However, this statute was of an excessively sweeping character—outstripping any eight-hour law for women in this respect. For this reason the district court held it unconstitutional.[106]

One other limitation on men's hours was passed on by the courts in a number of states though it never reached the United States Supreme Court. That is the requirement of one day's rest in seven—the modern successor to "Sunday laws." These one day of rest statutes except certain occupations, such as janitors, watchmen, foremen, etc. In New York such a statute was upheld, although a provision giving the Commissioner of Labor power to exempt necessarily continuous processes was declared unconstitutional as a delegation of legislative power.[107] In Minne-

[104] *State* v. *Newman Lumber Company*, 102 Miss. 802 (1912) at p. 828; 103 Miss. 263 (1913) at pp. 267–268.

[105] *United States* v. *Northern Commercial Company*, 6 Alaska 94 (1918).

[106] This Alaska statute, Chap. 55, Acts of 1917, defined employment as "the performance of labor or services for any individual, partnership, association or corporation, whether the person performing such labor or service be a member of such partnership or association and stockholder or officer of such corporation or not." Further it was so worded that the penalty for violation would fall on the worker, not on the employer.

[107] *People* v. *Klinck Packing Co.*, 214 N. Y. 121 (1915).

sota the highest court declared its one day rest law unconstitutional because the classification of industries was held to be so arbitrary as to deny equal protection of the law.[108]

2. Wages

From 1917 to 1932 probably the most important decision on the constitutionality of a labor law was that handed down in 1923 in *Adkins* v. *Children's Hospital* which held unconstitutional the minimum wage law of the District of Columbia.[109] The procedural history of this case deserves at least summary mention here. We have noted that in 1917 the court divided four to four in a case involving the Oregon minimum wage statute,[110] thus in effect sustaining the favorable decision in the Oregon Supreme Court. Although the action established no precedent in the United States Supreme Court it was generally supposed that no further attacks would be made on the constitutionality of minimum wage legislation.

However, in 1920 an attempt was made to secure an injunction against the District of Columbia minimum wage board. The court of first instance promptly denied the request for an injunction. Appeal was taken to the Court of Appeals of the District of Columbia. This court first sustained the lower court and then, after a rehearing with a changed personnel, reversed it. Due to a long delay in handing down this second decision, the case was not argued before the United States Supreme Court until 1923. By that time four justices sitting in 1917 had resigned and been replaced.[111] The District of Columbia minimum wage law was held unconstitutional by a five to three vote (Justice Brandeis again not participating).

From the point of view of legal reasoning the majority opinion written by Justice Sutherland is remarkable in that it relies largely on *Lochner* v. *New York*, declaring that "the principles therein stated have never been disapproved." In his dissent Chief Justice Taft commented: "It is impossible for me to reconcile the Bunting

[108] *State* v. *Pocock*, 161 Minn. 376 (1925).

[109] *Adkins* v. *Children's Hospital*, 261 U. S. 525 (1923). For quotations given here see pp. 550, 553–554, 558, 559, 564.

[110] *Stettler* v. *O'Hara*, 243 U. S. 629 (1917). Justice Brandeis took no part in the case because he had appeared as counsel when it was first argued in 1914.

[111] For a discussion of the history of these delays see article by Thomas Reed Powell in the *Harvard Law Review* for March 1924, reprinted in *The Supreme Court and Minimum Wage Legislation* published by New Republic, 1925.

case and the Lochner case and I have always supposed that the Lochner case was thus overruled sub silentio."

Justice Sutherland recognized that in *Muller* v. *Oregon* and subsequent cases hour legislation for women had been distinguished from the ten-hour law for bakers held invalid in the Lochner case, but he contended that the physical difference between the sexes which justified a different rule as to hours did not warrant a different rule as to wages. He summarized the types of legislation previously upheld by the Court and pointed out how minimum wage legislation differed from all such laws. All the other statutes dealt, he said, "with incidents of the employment having no necessary effect upon the heart of the contract, that is, the amount of wages to be paid and received." He then went on to discuss minimum wage legislation, stating why he thought it unreasonable and undesirable, mentioning the vagueness of the standard set up, the failure to take into account the economic situation of the employer, and the exaction of an arbitrary payment from him "for a purpose and upon a basis having no causal connection with his business, or the contract or the work the employee engages to do."

As for the extensive array of facts and figures and opinions marshalled in the brief on behalf of the law, Justice Sutherland said,

> "We have been furnished with a large number of printed opinions approving the policy of the minimum wage, and our own reading has disclosed a large number to the contrary. These are all proper enough for the consideration of the law making bodies . . . but they reflect no legitimate light upon the question of its [the legislation's] validity."

This attitude is an interesting contrast to that of the Court in *Muller* v. *Oregon* where the Court recognized the importance of similar data.

Vigorous dissents were penned by Chief Justice Taft and Justice Holmes.

It is interesting to compare the attitude of the legal profession toward the Lochner and the Adkins decisions, as gleaned in the comment in the law reviews. In both decisions by a close vote the court drew a line beyond which labor legislation might not be extended. Looking backward, the Lochner decision seems perhaps the more startling, since it was the first instance of a pro-

tective labor law invalidated by the highest court in the land. However, the law review comments on the Lochner decision were largely favorable. Of articles in eight American law journals, only one definitely condemned the decision.[112] In contrast, 18 years later most of the law reviews contained unfavorable criticisms of the decision in the minimum wage case. Out of 14 writers in the reviews, only three expressed approval of the majority opinion, four were noncommittal, seven were outspoken in their condemnation.[113] This difference suggests a change in public opinion, a decrease in the importance attached to such abstract rights as freedom of contract and a growing desire to use the power of government to offset economic inequality.

After the Adkins decision the minimum wage laws of Arizona and Arkansas were passed on by the United States Supreme Court.[114] In both cases the statute was held unconstitutional on the basis of the earlier decision in a brief memorandum opinion.

The non-mandatory minimum wage law of Massachusetts was not passed on by the United States Supreme Court but would almost surely have been upheld.[115] Up to 1933 the new Wisconsin law passed in 1925, which was designed to meet the objections raised by Justice Sutherland, was not tested in the courts.

One other wage law was passed upon by the United States Supreme Court in the period 1918–32. In 1926 the court held invalid a "prevailing wage" law for employees on public work.[116] The Court did not deny the power of the state legislature to fix wages for such employees but held that the standards set up in the statute were so vague as to "violate the first essential of due process of law." The statute in question like many of the public works acts required the payment of the "current rate of wages"

[112] Law review comment on *Lochner* v. *New York*, 198 U. S. 45 (1905): (1) *Harvard Law Review* (Note), 18 (1904–05), p. 618 (noncommittal); (2) *Yale Law Journal*, 14 (1904–05), p. 453 (against); (3) *Columbia Law Review*, 60 (1905), p. 401 (favorable); (4) *Central Law Journal*, 6 (1905), p. 93 (favorable); (5) *Albany Law Journal*, 67 (1905), p. 129 (favorable); (6) *Case and Comment*, 11 (1905), p. 135 (favorable); (7) *Chicago Law Journal*, 22 (1905), p. 117 (favorable); (8) *National Corporation Reporter*, 30 (1905), p. 322 (noncommittal).

[113] These articles were collected in a book entitled *The Supreme Court and Minimum Wage Legislation*, compiled by the National Consumers' League, New Republic Company, New York, 1925. This volume includes in addition three articles from other periodicals all condemning the decision.

[114] *Murphy* v. *Sardell*, 269 U. S. 530 (1925); *Donham* v. *West-Nelson Manufacturing Co.*, 273 U. S. 657 (1927). In both these decisions Justice Brandeis dissented.

[115] It was upheld by the Massachusetts Supreme Court in *Holcombe* v. *Creamer*, 231 Mass. 99 (1918).

[116] *Connally* v. *General Construction Co.*, 269 U. S. 385 (1926).

in the "locality." The Court objected that no specific sum and no specific area were denoted by these terms.

3. Employers' Liability and Workmen's Compensation

In the period from 1918 to 1932 the United States Supreme Court made 12 decisions involving provisions in employers' liability or workmen's compensation laws. All of these decisions sustained the provisions involved. Taken as a group they show a complete acceptance of the compensation principle and a readiness to permit even somewhat extreme application thereof. Only one of these decisions was reached by a five to four vote. We shall not attempt to discuss all of these cases but shall merely mention the most interesting.[117]

In 1919 by a vote of five to four the Court upheld the Arizona statutes which gave the injured employee in hazardous employments the option of securing compensation either under a workmen's compensation or an employers' liability act.[118] If a worker sued under the employers' liability act, the fellow servant defense was abolished and assumption of risk and contributory negligence were made questions of fact for the jury to determine. The effect was to make the employer in such a suit liable even without fault, thus reversing the basic principle of employers' liability at common law. The minority pointed out that this statute went further than those previously upheld, since it imposed new burdens on the employer, but unlike the workmen's compensation acts did not relieve him of any burden previously borne.[119] But the majority upheld the unqualified right of a state to shift the burden of industrial accident from employee to employer. They pointed out that the employer is best able to bear this burden "because he takes the

[117] The 12 cases are as follows: *Middleton* v. *Texas Power and Light Co.*, 249 U. S. 152 (1919); *Arizona Employers' Liability Cases*, 250 U. S. 400 (1919); *New York Central Rail. Co.* v. *Bianc*, 250 U. S. 596 (1919); *Thornton* v. *Duffy*, 254 U. S. 361 (1920); *Ward and Gow* v. *Krinsky*, 259 U. S. 503 (1922); *Madera Sugar Pine Company* v. *Industrial Commission*, 262 U. S. 499 (1923); *Cudahy Packing Company of Nebraska* v. *Parramore*, 263 U. S. 418 (1923); *Sheehan Company* v. *Shuler*, 265 U. S. 371 (1924); *Yeiser* v. *Dysart*, 267 U. S. 540 (1925); *Booth Fisheries Company* v. *Industrial Commission of Wisconsin*, 271 U. S. 208 (1926); *Bountiful Brick Company* v. *Giles*, 276 U. S. 154 (1928); *Boston and Maine Rail. Co.* v. *Armburg*, 285 U. S. 234 (1932).

[118] *Arizona Employers' Liability Cases*, 250 U. S. 400 (1919). For quotation see p. 423.

[119] Under a workmen's compensation act the employer exchanges freedom from liability without fault and unlimited liability with fault for a *limited* liability regardless of fault. See Commons, John R., and Andrews, John B., *Principles of Labor Legislation*, Harper and Brothers, New York, 1916, pp. 356 ff.

gross receipts of the common enterprise, and by reason of his position of control can make such adjustments as ought to be and practically can be made, in the way of reducing wages and increasing the selling price of the product, in order to allow for the statutory liability."

In the same year the Court upheld the granting of compensation for disfigurement wholly independent of inability to work.[120] In 1922 the Court passed on the New York compensation act as amended to include additional occupations and held that workmen's compensation need not be limited to especially hazardous occupations—that

> "The legislature . . . is justified in extending the benefits of the compensation law as far as it reasonably may determine occupational hazard to extend—to the 'vanishing point' as it were—and any lines of group definition it may adopt, if easily understood and applied, cannot reasonably be called 'an empty form of words' merely because they do not carry on their face the reasons for adopting them." [121]

In the following year the Court sustained the workmen's compensation statute of Utah as interpreted to permit recovery where a man was killed at a railroad crossing which he had to cross on his way to work.[122] It was contended that this was simply a risk which the public in general ran and therefore the liability was imposed arbitrarily and capriciously, but the Supreme Court (with three members dissenting) upheld the law. Justice Sutherland who wrote the opinion stated:

> "Workmen's compensation legislation rests upon the idea of status, not upon that of implied contract . . . it is enough if there be a causal connection between the injury and the business . . . a connection substantially contributory though it need not be the sole or proximate cause."

The Court then held that, because of the necessity of crossing this particular set of tracks in order to reach work, it was reasonable to hold that the accident arose out of and in the course of the employment.

In a later decision (also written by Justice Sutherland) the Court sustained recovery when the employee killed on the way to work

[120] *New York Central Rail. Co.* v. *Bianc*, 250 U. S. 596 (1919).

[121] *Ward and Gow* v. *Krinsky*, 259 U. S. 503 (1922), at p. 520.

[122] *Cudahy Packing Company of Nebraska* v. *Parramore*, 263 U. S. 418 (1923). For quotation see pp. 423–424.

had crossed the railroad track by a short cut through a gap in the fence. The evidence showed that the employer knew of the practice, but did not object, and the Court held there was a causal connection between the employment and the injury.[123]

While the Supreme Court was thus very liberal in its attitude toward workmen's compensation laws, it drew the line at the inclusion of longshoremen under state laws. By a series of three decisions, each of them reached by a five to four vote, the Court made it impossible for these workers to be covered by state acts. The first decision came in 1917 and has already been summarized.[124] A few months later Congress attempted to clear up the situation by an amendment to the Judiciary Act to save claimants under maritime and admiralty jurisdiction "the rights and remedies under the workmen's compensation act of any state." In 1920 the Supreme Court by a five to four vote held this amendment unconstitutional on the ground that the power of Congress

> "to legislate concerning rights and liabilities within the maritime jurisdiction and remedies for their enforcement, arises from the constitution. . . . The definite object of the grant was to commit direct control to the federal government. . . . The subject was entrusted to it [Congress] to be dealt with according to its discretion—not for delegation to others. . . . Congress cannot transfer its legislative power to the states—by nature this is non-delegable." [125]

As in the first of these longshoremen cases, Justice Holmes wrote a vigorous dissent.

In 1922 Congress made a second attempt to amend the Judiciary Act so as to put longshoremen under the state compensation acts. This time the provision was limited to apply to persons "other than the master or members of the crew" who might otherwise come under maritime jurisdiction. The constitutionality of this provision was passed on in 1924. Despite changes in the personnel of the Court since the 1920 decision, five justices again insisted that such delegation of power by Congress to the states was invalid.[126] Justice Brandeis wrote a dissent in this case in which he remarked: "The conclusion that the state law violates the

[123] *Bountiful Brick Company* v. *Giles*, 276 U. S. 154 (1928).

[124] *Southern Pacific Company* v. *Jensen*, 244 U. S. 205 (1917).

[125] *Knickerbocker Ice Company* v. *Stewart*, 253 U. S. 149 (1920). For quotation see p. 164.

[126] *Washington* v. *Dawson and Company*, 264 U. S. 219 (1924). For quotation see p. 230.

constitution and that the consent of Congress cannot save it, is reached solely by a process of deduction." He then traced the many steps necessarily traveled from the grant of maritime jurisdiction to the federal courts to the conclusion that longshoremen cannot be included under state compensation acts even though Congress authorizes it.[127]

4. Child Labor

In the period from 1918 to 1932 the Supreme Court rendered two other important decisions relating to the division of power between state and federal governments. In the two child labor decisions the court held that in legislating in this field Congress was infringing on the power of the states.[128]

The first federal child labor law passed in 1916 forbade the shipment in interstate commerce of goods produced in factories in which children were employed contrary to the standards set up by that act.[129] The statute was thus an attempt to use the commerce power to regulate child labor. The Supreme Court had previously sustained this method of regulating impure foods, the white slave trade, and lotteries. But in 1918 it held by a five to four vote that this method of regulation could not be extended to child labor. The majority distinguished between the regulation and the prohibition of interstate shipment and between shipping goods inherently harmful and those in themselves harmless. In his dissent Mr. Justice Holmes pointed out that the national child labor law was a proper exercise of federal power because, in the absence of a federal government, a state could erect tariff barriers to keep out the products of child labor from other states.

The second federal child labor law passed in 1919 imposed a tax of 10 per cent on the net profits of any concern employing children in violation of the standards set up in the act.[130] The

[127] The constitutionality of the federal longshoremen's act was upheld in *Crowell* v. *Benson*, 285 U. S. 22 (1932). The real question at issue in the case however was the right of review in the courts of findings of fact made by the administrative agency—the deputy commissioner. The majority held that the lower court did not err in permitting a new trial—on the ground that the act of Congress did not prohibit it. The minority contended that Congress did not authorize a new trial.

[128] *Hammer* v. *Dagenhart*, 247 U. S. 251 (1918); *Bailey* v. *Drexel Furniture Company*, 259 U. S. 20 (1922).

[129] The minimum age was set at 14 for factories, 16 for mines; for children from 14 to 16, hours per week were limited to 48 and night work was prohibited. U. S. 39 Statutes at large 675.

[130] The standards were the same as in the earlier act. U. S. 40 Statutes at large 1138 (Revenue Act of 1918).

proponents of the act believed that this use of the taxing power would be sustained since the Supreme Court had long held that "the power to tax is the power to destroy." Further it had upheld a prohibitory tax on narcotics and on oleomargarine colored like butter. But apparently the Court believed that a line must be drawn somewhere or the use of the taxing device would give Congress an unlimited power to regulate. With only one dissent the Court held the second child labor law unconstitutional.

5. Safety and Health

No statutes relating to safety or health were passed on by the Supreme Court in this period except that the full crew law of Arkansas, sustained in 1911 and 1916, was again contested and again upheld.[131]

6. Miscellaneous

One important decision remains to be discussed.[132] This was *Ribnick* v. *McBride* in which the Supreme Court passed on the validity of an act regulating the fees which might be charged by private employment agencies.[133] We have noted that another provision of one of these acts was upheld by the United States Supreme Court in 1916.[134] But at that time the Court stated that it was not passing upon the fee regulating section. The following year the more drastic act of the state of Washington, which entirely forbade the charging of fees to employees, was held invalid.[135] After this decision it was generally assumed that regulation of employment agency fees was constitutional but their prohibition was not.

However, in 1928 in *Ribnick* v. *McBride* the United States Supreme Court held by a five to four vote that any regulation of the fees charged by employment agencies was unconstitutional. The majority declared that prices can be regulated only where the business is affected with a public interest or where a grave emergency exists. It maintained that employment agencies were essentially private businesses.

[131] *Missouri Pacific Rail. Co.* v. *Norwood*, 283 U. S. 249 (1931).

[132] Two other decisions of lesser importance were made by the United States Supreme Court in this period which sustained statutes requiring certain corporations to issue on demand written statements as to cause of discharge—*Prudential Insurance Company* v. *Cheek*, 259 U. S. 530 and *Chicago, R. I., and P. Rail. Co.* v. *Perry*, 259 U. S. 548 (1922).

[133] *Ribnick* v. *McBride*, 277 U. S. 350 (1928). For quotation see p. 360.

[134] *Brazee* v. *Michigan*, 241 U. S. 340 (1916).

[135] *Adams* v. *Tanner*, 244 U. S. 590 (1917).

In an effective dissenting opinion Justice Stone asserted that price fixing

> "is within a state's power whenever any combination of circumstances seriously curtails the regulative force of competition, so that buyers or sellers are placed at such a disadvantage in the bargaining struggle that a legislature might reasonably anticipate serious consequences to the community as a whole."

He then discussed the evils of unregulated private employment agencies as revealed by many investigations and pointed to the legislation of 21 states as evidence that the public has an interest in the subject and that regulation is reasonably calculated to guard that interest.

Conclusion

By way of concluding this historical survey it may be interesting to compare very briefly the constitutional status of labor legislation in 1896 and 1932. Certain types of legislation were recognized as constitutional at the beginning of the period and did not change in this respect. This applies to state child labor legislation, safety and health regulations, and employers' liability acts. Certain other kinds of legislation had a questionable constitutional status in 1896 but were later sustained by the United States Supreme Court. This applies to laws regulating methods and time of wage payment and statutes limiting hours of labor for women. This change in the 36 year period marks a recognition of the relation of hours of labor to health and an appreciation that the health of workers is a part of the public health. It further marks a recognition that gross inequality in economic power may make legislative interference in some items of the labor contract a proper exercise of the police power.

One group of labor laws of uncertain constitutional status in 1896 retained in 1932 some element of uncertainty—that is the laws limiting hours of labor for men. Even in 1896 such limitation was upheld where the public safety was at stake, as with railroad employees. Later the permissible limitation was extended to include public works and occupations peculiarly dangerous or harmful to the health of the workers—such as mining. Whether more general statutes which effected any substantial reduction in hours would be upheld remained doubtful as late as 1933.

A comparison between 1896 and 1932 cannot include all the

classes of labor legislation considered important at the latter date, because two of the most significant types of state action had not been attempted in any part of the United States before 1911. The first of these—workmen's compensation—after 1917 was clearly constitutional; the second—minimum wage—after 1923 was apparently unconstitutional. The prohibition against wage fixing was extended to price fixing (except in cases of emergency or where the business has long been recognized as affected with a public interest). Hence it was held that the fees charged by private employment agencies could not be regulated.

Finally, we may note that during the period of this history the division of power between Congress and the states in the field of labor legislation was marked out. Between 1917 and 1924 it was decided that Congress could regulate labor conditions only for workers engaged in interstate commerce or classed as maritime workers, and that the states could not exercise jurisdiction over such workers. Whether this division will stand remains to be seen.[136]

[136] No attempt is made to discuss the important decisions affecting labor legislation and the relation of state and federal governments which were handed down while this volume was in press; namely, *Railroad Retirement Board* v. *Alton Railroad Co.*, 55 Sup. Ct. 758, and *Schechter Poultry Corp.* v. *U. S.*, 55 Sup. Ct. 837.

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