The Development of the Social Security Act of 1935: Reflections Some Fifty Years Later

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INTRODUCTION

The Social Security Act of 1935 stands out among the permanent contributions of the New Deal as landmark legislation. President Franklin D. Roosevelt recognized the Act's historic significance and future incremental development when he stated, upon signing the legislation into law on August 14, 1935, that it "represents a corner stone in a structure which is being built but is by no means complete."

The far-reaching law was enacted only fourteen months after F.D.R. first indicated his general interest on July 8, 1934. The entire legislative process took only seven months—from January 17 to August 14, 1935—a remarkable achievement for such a broad and innovative creation. The completed Act

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4. The bill, drafted and recommended by the Committee on Economic Security and the President, was introduced on January 17, 1935. See H.R. 4120 & H.R. 4142, 74th Cong., 1st Sess., 79 Cong. Rec. 626 (1935); S. 1130, 74th Cong., 1st Sess., 79 Cong. Rec. 549 (1935). The proposed bill consisted of nine titles and is referred to in this Article as “the bill.”

consisted of only thirty-two pages; its eleven titles encompassed eleven wide-ranging programs emanating from very different sources.6

The largest and most far-reaching program instituted by the Social Security Act of 1935 is commonly known as "social security;" its current technical name is the Federal Old Age, Survivors, Disability and Hospital Insurance program (OASDHI). Originally entitled the Federal Old Age Benefits program (OAB), incorporated in Title II and funded in Title VIII of the 1935 law,7 the program now is encompassed in Titles II (Old Age, Survivors, and Disability Insurance—OASDI)8 and XVIII (Medicare)9 and is funded through the Federal Insurance Contributions Act (FICA).10 The other major social insurance initiative of the 1935 Act was the federal-state unemployment compensation program; originally consisting of Title III and Title IX of the 1935 Act,11 it now is additionally embodied in chapter 23 of the Internal Revenue Code of 1954 as the Federal Unemployment Tax Act (FUTA).12 These two major programs were considered by its authors to be the social insurance aspects of the law, but were officially referred to as "social insurance" by the Social Security Board and Congress only after the United States Supreme Court had passed on their constitutionality.13 The drafters of the legislation deliberately avoided using the term "insurance" in the 1935 law in an effort to not invite the enmity of conservative members of the

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6. The eleven programs were authorized in nine titles. Two titles dealt with general matters: Title VII created the Social Security Board and described its responsibilities; Title XI defined terms and provided authority for regulations and separability.


11. Ch. 531, §§ 301, 904, 49 Stat. at 626, 640-41.


In addition to its social insurance aspects, the Act provided for three "assistance," or "welfare," programs: Title I, grants to enable states to provide Old Age Assistance to needy persons (OAA); Title X, grants to states for aid to the needy blind (AB); and Title IV, grants to states for aid to needy dependent children (ADC). OAA and AB later were effectively incorporated into the Supplemental Security Income program (SSI), a new and completely separate federal program codified in subchapter XVI of the revised Act of 1972. That incorporation left ADC (now called Aid to Families with Dependent Children—AFDC) to become known and referred to as "the welfare" program.

The Social Security Act of 1935 also incorporated four health and medical care programs which have had major significance in the development of the United States' health policy in the succeeding fifty years. These programs were the federal Title V grants to the states for Maternal and Child Health (MCH) and Crippled Children Services (CCS); the permanent authorization of grants to the states for vocational rehabilitation (VR), first enacted in 1920, including medical, educational, and placement responsibilities; and the federal grants to the states for Public Health in Title VI. The health and medical care programs were included in the law without any political controversy, largely due to the American Medical Association's (AMA) great sense of relief that the Social Security Act did not include a provision for state or national health insurance. In order to avoid the "terrible calamity" of com-
pulsory or voluntary state or national health insurance, the AMA readily accepted for the first time a measure of federal financial intervention into other aspects of state health and medical care policy that it had opposed during the 1920s.

The eleventh, and final, program instituted by the Social Security Act of 1935 was the federal grants to states for Child Welfare Services (CWS) under Title V.25 This program, administered by the Children's Bureau, was the first nationwide social welfare services program of a nonmedical character. It was subsequently incorporated in Title IV26 which, along with other types of social services for the aged and other persons, was the forerunner of Title XX of the 1972 Act and later was enveloped into the 1981 "Block Grants."27

Clearly, the original law was an omnibus legislative vehicle which gave a strong push toward an expanded federal role in social welfare—beyond what F.D.R. and Secretary Perkins envisioned in 1934. It served as the basis for what critics would later call the development of "the welfare state." The wide range of programs included in the law not only aided aged persons but also children, the blind, and the disabled. The Act broadened public health services for everyone in the nation, made vocational rehabilitation services permanent, and increased child welfare services for a wide spectrum of families from all socioeconomic classes. Although what eventually became the contributory, earnings-related, "Social Security" (OASDI) program was designed primarily to attract the support of self-supporting, middle-income persons, the law also became important to some of the poor. Poor families not only received income and services through the legislation, but for the first time they received conscious recognition by the federal government of their existence and plight. Although the Act

As soon as this announcement was made ... telegraphic protests poured in upon the President. In the *Journal of the American Medical Association*, an editorial was run in which it was stated that the Administration, acting through the Committee on Economic Security, would try to railroad health insurance through Congress, without as much as consulting the profession, and similar comments were made in several of the official publications of state medical associations.

E. Wirte, *supra* note 5, at 174. Thus, the AMA did not seriously object to the less threatening health programs in the Act. "The American Medical Association was far too alarmed about the possibility of health insurance to present any very serious objection to the administration of the child and maternal health services through the Children's Bureau." *Id.* at 167.

25. Ch. 531, § 521, 49 Stat. at 633.
was viewed as a radical program by some conservatives and viewed as a conservative one by some liberals, many political figures looked upon it as a middle-of-the-road program designed to preserve the social and economic structure of the nation, struggling in the midst of the most severe economic depression the republic had ever encountered. Thus, some individuals vigorously opposed the program, most others welcomed it, and others, while critical of some aspects, acknowledged that it was probably the best compromise available at the time within the structure of a capitalistic, free market economy and a democratic, representative legislative system.

With this basic introduction to the Act as background, this Article traces some of the actions and events important to the growth of the Social Security Act of 1935. It will discuss important actors' roles in the process, identify the many changes between the initial bill and the Act, examine the development of the use of the terms "social security" and "insurance," and consider the impact of the challenges to the newly passed Act presented by the constitutional decisions and the 1936 Republican presidential campaign. The early history of the Social Security Act helps explain why that specific type of program was chosen to confront the socioeconomic problems of the time, and reminds us of the underlying policies that can be considered in dealing with future approaches to these problems.

I. THE IMPACT OF THE COMMITTEE ON ECONOMIC SECURITY

Roosevelt and his economic security advisors, Secretary of Labor Frances Perkins and Federal Emergency Relief Administrator Harry Hopkins, recognized the strong support in the 1933-34 Congress for federal grants to states for the needy aged and for some federal legislation in the field of unemployment compensation. The Committee on Economic Security was created in July 1934 to study methods of providing "security against the hazards and vicissitudes of life." The Committee on Economic Security was created in July 1934 to study methods of providing "security against the hazards and vicissitudes of life." The Committee on Economic Security was created in July 1934 to study methods of providing "security against the hazards and vicissitudes of life." The Committee on Economic Security was created in July 1934 to study methods of providing "security against the hazards and vicissitudes of life." The Committee on Economic Security was created in July 1934 to study methods of providing "security against the hazards and vicissitudes of life." The Committee on Economic Security was created in July 1934 to study methods of providing "security against the hazards and vicissitudes of life." The Committee on Economic Security was created in July 1934 to study methods of providing "security against the hazards and vicissitudes of life." The Committee on Economic Security was created in July 1934 to study methods of providing "security against the hazards and vicissitudes of life." The Committee on Economic Security was created in July 1934 to study methods of providing "security against the hazards and vicissitudes of life." The Committee on Economic Security was created in July 1934 to study methods of providing "security against the hazards and vicissitudes of life.”


tee's primary purpose was to develop a workable social insurance system and it was their proposals and recommendations that led to introduction of the economic social security bill.\textsuperscript{30}

The Committee's existence resulted in several important changes and additions to the two pending 1934 bills. First, the new federal-state programs of OAA, ADC, MCH, CCS, CWS, and public health grants were added and were to begin operation in 1936, along with vocational rehabilitation services. Second, the old age benefits program was added and had a tremendous long-range impact.\textsuperscript{31}

The Committee on Economic Security also recommended establishing a Social Insurance Board in the Department of Labor which, among other things, would study and make recommendations on health insurance. Specific authorization to conduct such studies was deleted from the bill by Congress, but the Social Security Board nevertheless subsequently authorized studies and made far-reaching recommendations under its authority to deal with "related subjects."\textsuperscript{32} This set the stage for the national health insurance controversies which have persisted since that time.

Assistant Secretary of Labor Arthur J. Altmeyer, who was particularly interested in and knowledgeable about health insurance, personally sought out one of the leading experts on health insurance, Edgar Sydenstricker, and arranged for him and I.S. Falk to direct the Committee's studies on the risks to economic security posed by ill health. Several members of the Committee's professional staff became staff members of the Social Security Board, thus aiding in the smooth initial functioning of the Board.\textsuperscript{33} Altmeyer, the Technical Board chairperson, was appointed a member of the Social Security Board and later became its chairperson. He was subsequently Commissioner for Social Security and had a significant, indeed monumental,

\textsuperscript{30} For a comprehensive examination of the Committee's functions and actions, see E. Wrrr, supra note 5, at 3-108.

\textsuperscript{31} See E. Wrrr, supra note 5, at 30-31, 174-76, 176-92, 185-98 (Sydenstricker's role in health aspects of the Act).

\textsuperscript{32} The Board shall perform the duties imposed upon it by this Act and shall also have the duty of studying and making recommendations as to the most effective methods of providing economic security through social insurance, and as to legislation and matters of administrative policy concerning old-age pensions, unemployment compensation, accident compensation, and related subjects.

\textsuperscript{33} They included, among others, I.S. Falk, William R. Williamson, Robert J. Myers, Merrill G. Murray, Martha D. Ring, Thomas E. Eliot, Murray W. Latimer, and myself.
impact on the expansion, policy development, and administrative implementation of the law.\textsuperscript{34}

During formulation of the Committee on Economic Security's proposal, it became evident that Emergency Relief Administrator Hopkins favored some kind of broad, comprehensive, unified program that would involve, exclusively or substantially, federal general revenues. F.D.R. opposed the idea and instead strongly favored using payroll taxes to finance both old age and unemployment compensation. On Treasury Secretary Morgenthau's recommendation, Congress chose to finance the old age "insurance" program exclusively from payroll taxes and interest from the reserves. The President contended that, by virtue of a statutory "compact" between the contributors and Congress, financing the program by earmarked payroll taxes would ensure that a future president and congress could not, morally or politically, repeal or mutilate the "entitlement" character of the program.\textsuperscript{35} F.D.R.'s fears were realized in 1981-82 when President Reagan attempted to make sweeping cuts in social security benefits which were repulsed by Congress. Roosevelt's safeguards proved to be a powerful but inadequate weapon, however, as several of Reagan's immediate, albeit relatively minor, cuts were adopted, and some other significant long-range cuts were legislated for future implementation, undermining the sanctity of the statutory commitment.\textsuperscript{36}

It is difficult to ascertain exactly how much the President, via both the recommendations of the Committee on Economic Security and his own lobbying, and how much the Congress influenced the specific policies of the Act in 1934-35. Both played a significant role. Both the President and the Congress made important changes in the recommendations of the Committee on Economic Security. The President, along with Secretary Morgenthau, clearly influenced the self-supporting financing scheme of old-age benefits. Aided by the actions of Mississippi Senator Pat Harrison\textsuperscript{37} and North Carolina Representative

\textsuperscript{34} See C. McKinley & R. Frase, supra note 5, for the extent of Altmeyer's contributions. See also A. Altmeier, supra note 5.

\textsuperscript{35} Secretary Perkins told her side of the story in F. Perkins, The Roosevelt I Knew 278-301 (1946). For later information on the significant roles played by Secretary Perkins and others, see G. Martin, Madam Secretary: Frances Perkins 341-56 (1976).


\textsuperscript{37} For a discussion of Senator Harrison's significant role, see M. Swain, Pat Harrison: The New Deal Years 82-90 (1978).
Robert L. Doughton,38 chairpersons of the Senate Finance and the House Ways and Means Committees respectively and both conservative southerners, the work of the Committee on Economic Security staff assured inclusion of such an "insurance" program in the law.

Another congressman, however, conservative Senator Harry F. Byrd Sr. of Virginia, was responsible for the bill's most significant long-range loss—deletion of the federal government's right and obligation to determine whether a state's OAA, ADC, and AB plans under the federal grant provided "a reasonable subsistence compatible with decency and health."39 This was the fatal blow which still prevents any effective nationwide quantitative standards in federal-state welfare or unemployment compensation programs.40 It took a radical departure by the Congress and the Nixon Administration, in cooperation with Senator Russell Long, Representative Philip Burton, and others, to repeal the OAA, ADC, and AB federal grant-in-aid programs and substitute a wholly federally financed and administered program in 1972—Supplemental Security Income (SSI).

Several other persons significantly influenced the shape of the Act. Thomas Eliot,41 the drafter of the Economic Security bill, contributed, intentionally or accidentally, significant political assistance to the legislative process by placing federal grants to the states for OAA in Title I at the beginning of the bill, where it attracted the most interest and attention. The Act's treatment of the old age problem was viewed favorably because it would have alleviated immediately the states' financial difficulties and assisted the large number of needy aged in dire straits. Putting this popular program at the beginning was thus a helpful factor in pushing the entire bill through Congress. Middleton Beaman,42 the legislative drafter for the Congress, helped make the bill more precise and more worka-

38. For a discussion of Congressman Doughton's significant role, see E. Wrrze, supra note 5, at 93, 95.
40. Quantitative standards should be distinguished from qualitative standards for process, organization, and appeals.
42. The only printed document that indicates the significant drafting and policy role that Beaman played is the Confidential Printed Executive Committee Hearings on H.R. 7260 Before the Senate Comm. on Finance, 74th Cong., 2d Sess. (1935). See also Oral History, supra note 41.
ble, and probably helped make it feasible for the Supreme Court to rationalize its decision "to follow the 1936 election returns" and find the two federal "insurance" and the one state "insurance" program constitutional. He may also have been the one who suggested use of the term "social security."\textsuperscript{43}

It is significant that at no time in 1934 or 1935 did President Roosevelt, the Committee on Economic Security, or the key members of Congress handling the bill deem feasible or appropriate any other age than sixty-five as the earliest eligible age for receipt of old age "insurance" benefits. The age sixty-five decision set in motion in business, industry, commerce, and collective bargaining a practice widely accepted for many years of utilizing age sixty-five as the normal retirement age. Subsequent legislation, however, provided for other eligible ages in the Act.\textsuperscript{44}

The failure to include any kind of national health insurance in the bill may be viewed by some as wise and by others as unfortunate. In my judgment, it was probably the only time between 1916 and the present when the Congress might have enacted some federal legislation relating to health insurance for the entire population. F.D.R., following the advice of Secretary Perkins, thought it too risky.\textsuperscript{45} In addition, an administrable nationwide plan was still too indefinite in form in December 1934, or even in April or May 1935, for high-level policy determination.\textsuperscript{46} Whether it would have been advisable at all depends on one's philosophy and sense of history.

\textsuperscript{43.} See Letter from Thomas Eliot to Wilbur J. Cohen (Oct. 3, 1983) (indicating Beaman may have suggested the title "social security").

\textsuperscript{44.} Age 60 was too costly and age 70 was too high. See W. Cohen, Retirement Policies Under Social Security 17-20 (1957).

\textsuperscript{45.} Secretary Perkins was concerned about AMA opposition. As Professor Witte explained, "It was my original belief . . . that it would probably be impossible to do anything about health insurance in a legislative way, due to the expected strong opposition of the medical profession. I found that this was, also, the view of Secretary Perkins . . . ." E. Witte, supra note 5, at 174.

\textsuperscript{46.} The Committee's report on health insurance was delayed until after the social security bill was enacted. It was never printed or published in full, but a summary of the major recommendations can be found in Appendix III of E. Witte, supra note 5, at 205. The author plans to publish a full report in another context in the near future. The basic structure of the Committee plan was a state system aided by federal funds, guidance, and direction. The idea of a national health insurance system operated by the federal government did not evolve until after the Supreme Court decision on the constitutionality of the federal old age benefits plan in May 1937. The first exclusively federal proposals did not see light until 1940-41, and emerged full-blown in 1943 as the Wagner-Murray-Dingell bill. S. 1161, 78th Cong., 1st Sess., 89 Cong. Rec. 3559 (1943); H.R. 2861, 78th Cong., 1st Sess., 89 Cong. Rec. 5354 (1943).
II. CHANGES IN THE BILL DURING THE LEGISLATIVE PROCESS

A selected review of significant changes to the Economic Security bill, as it passed through the legislative process, reveals the compromises struck and the tensions resolved to reach the final version of the Social Security Act, as it was ultimately titled, which we are so familiar with today. Such a review is best undertaken by discussing changes to each of the Act's major programs.

A. OLD-AGE BENEFITS

The Social Security Act authorized the payment of an old-age benefit to every qualified individual, beginning at age sixty-five and continuing until death.47 The amount of benefits depended on the total wages the person earned before retirement.48 In contrast, the Economic Security bill49 would have paid benefits based on the amount of taxes paid on the individual's behalf.50 The change to a wage-based system was, in part, intended to aid in upholding the constitutionality of both the taxes and the benefit payments. On the other hand, the change increased flexibility in calculating benefits and helped confirm the program's philosophy of replacing lost wages.

With this as a goal, the Social Security Act deducted one month's benefits from an individual's total benefits for any month in which that person received wages for regular employment.51 Although aimed at the same goal, the bill would have made individuals ineligible for any benefits if employed by another in a gainful occupation.52 The bill also excluded non-manual workers earning more than $250 per month,53 individuals covered by private pension plans,54 individuals em-

47. Ch. 531, § 202, 49 Stat. at 623.
50. S. 1130, § 405(a), 79 CONG. REC. at 551.
51. Ch. 531, § 202(d), 49 Stat. at 623. This provision was amended in 1939 and in many succeeding years, and it has turned out to be one of the most controversial issues in the program. See W. COHEN, supra note 44, at 69-86.
52. S. 1130, § 405(a)(4), 79 CONG. REC. at 551. The House Ways and Means Committee deleted this provision, but the Senate Finance Committee added the provision that was incorporated in the Act. See supra note 51 and accompanying text.
53. S. 1130, § 307(6), 79 CONG. REC. at 551.
54. The section exempting persons covered by private pension plans was
ployed by the government or covered by the Railroad Retirement Act, and individuals reaching age sixty on or before January 1, 1937. The Act did not exclude any individual because of salary, but levied taxes and paid benefits on only the first $3000 of an individual's annual earnings. The Act did not contain a private pension exemption because the conference committee eliminated the provision with the understanding that a committee would be appointed to consider the Act's interaction with private pension plans.

The Act's old-age benefits were funded, in part, with revenues generated from taxes imposed on both employers and employees. The taxes for both began at one percent of the employee's wage and were to increase at one percent intervals until a maximum of three percent was reached. The bill, however, would have levied taxes beginning at one-half of one percent for both the employer and the employee and increasing in one-half percent increments, to a maximum of two and one-half percent. The bill also would have required government contributions beginning in 1965 to keep the "old-age fund" actuarily sound.

The Social Security Act provided only one benefit payment plan for all qualified persons, but benefits were computed to give older and lower paid workers a proportionately higher benefit. In contrast, the bill provided for two payment plans: (1) a transitional benefit plan for individuals on whose behalf

inserted in the bill by the Senate by a vote of 51-35. See S. 1130, 74th Cong., 1st Sess., 79 Cong. Rec. 9630 (1935). The House failed to adopt the amendment and the conference committee omitted the provision because of the technical problems involved. 79 Cong. Rec. 12,793 (1935).

57. Ch. 531, § 811(a), 49 Stat. at 639.
59. Ch. 531, § 801, 49 Stat. at 636.
60. S. 1130, § 301, 79 Cong. Rec. at 550.
61. S. 1130, § 404, 79 Cong. Rec. at 551. As an additional means of generating revenue, the bill provided for the voluntary issuance of annuity certificates. S. 1130, § 501, 79 Cong. Rsc. at 552. The House Ways and Means Committee eliminated the provision, but the Senate Finance Committee reinserted a similar section. The Senate, however, ultimately failed to approve the issuance of the certificates.
taxes were first to be paid during the years 1937 to 1941; and (2) a permanent benefit plan for individuals on whose behalf taxes were first to be paid in 1942 or thereafter. The computation was based on average wages. The bill also would have allowed a recipient with a dependent spouse to “elect to receive a joint survivorship annuity . . . in lieu of the annuity provided” to the recipient individually, but the Act did not allow such an election.

To encourage states to provide financial assistance to the needy elderly, the Social Security Act authorized and appropriated funds for payments to states having an approved old-age assistance plan. The Social Security Board’s approval was conditioned on whether the state plan fulfilled each of seven criteria. The bill, on the other hand, went further and required not only that the state plan meet certain criteria, but

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63. S. 1130, § 405(b)(1)-(2), 79 Cong. Rec. at 551.
64. S. 1130, § 405(b)(3), 79 Cong. Rec. at 551.
65. Ch. 531, § 1, 49 Stat. at 620. The Act provided that states prevented by their constitutions from participating were not required to meet the conditions until July 1, 1937. Ch. 531, §3(a), 49 Stat. at 621. The Senate also accepted an amendment allowing the federal government to pay up to $15 per month for each elderly person to any state without a system of federal-state participation until July 1937. 79 Cong. Rec. 9640 (1935).
66. Ch. 531, § 2(b), 49 Stat. at 620. The seven requirements were as follows:
A State plan for old-age assistance must (1) provide that it shall be in effect in all political subdivisions of the State; and, if administered by them, be mandatory upon them; (2) provide for financial participation by the State; (3) either provide for the establishment or designation of a single State agency to administer the plan, or provide for the establishment or designation of a single State agency to supervise the administration of the plan; (4) provide for granting to any individual, whose claim for old-age assistance is denied, an opportunity for a fair hearing before such State agency; (5) provide such methods of administration (other than those relating to selection, tenure of office, and compensation of personnel) as are found by the Board to be necessary for the efficient operation of the plan; (6) provide that the State agency will make such reports, in such form and containing such information, as the Board may from time to time find necessary to assure the correctness and verification of such reports; and (7) provide that, if the State or any of its political subdivisions collects from the estate of any recipient of old-age assistance any amount with respect to old-age assistance furnished him under the plan, one-half of the net amount so collected shall be promptly paid to the United States. Any payment so made shall be deposited in the Treasury to the credit of the appropriation for the purposes of this title.

Id.
67. S. 1130, § 4, 79 Cong. Rec. at 549. The bill’s conditions were as follows: A State plan for old-age assistance, offered by the State authority for approval, shall be approved by the Administrator only if such plan—
(a) is State-wide, includes substantial financial participation by the State, and, if administered by subdivisions of the State, is mandatory upon such subdivisions; and
(b) Establishes or designates a single State authority to adminis-
also that the state have accepted the provisions of the federal bill. And, while the Act authorized an appropriation sufficient to carry out the purposes of the grants, the bill set a specific dollar amount of $125 million for each fiscal year after 1936.

Although both the Act and the bill placed conditions on the Board's approval of the state plans, the nature of the conditions varied. For example, the bill would have required the state to provide assistance that furnished "a reasonable subsistence compatible with decency and health," but the Act contains no such requirement. In addition, the bill mandated that the

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68. S. 1130, § 2, 78 CONG. REC. at 549. Both the bill and the Act also provided similar grants to the states for aid to dependent children. Because the conditions for approval were the same as for the old-age benefit programs, the ADC grants will not be directly discussed here. See S. 1130, §§ 201-211, 79 CONG. REC. at 550; ch. 531, §§ 401-406, 49 Stat. at 627-29.

69. Ch. 531, § 1, 49 Stat. at 620.

70. S. 1130, § 1, 79 CONG. REC. at 549.

71. S. 1130, § 4(e), 79 CONG. REC. at 549.

72. The bill also would have required substantial financial participation by the state for old-age assistance. S. 1130, § 4(a), 79 CONG. REC. at 549. The Act, however, dropped the word substantial and required only financial participation. Ch. 531, § 2(a)(2), 49 Stat. at 620.
state plan insure methods of administration approved by the federal government. In contrast, the Act limited federal control of the state plan's administration to matters other than selection, tenure of office, and compensation of personnel.

Further examples of the different conditions in the Act and the bill are found in the residency and benefit recapture provisions. Under the bill, the state old-age benefit plan could require only that an applicant reside in the state for at least five of the ten years preceding the application. The Act refined that condition to provide that the state's residency requirements could not exceed five years during the preceding nine years and could not require the recipient to have resided in the state for more than one year immediately preceding the application. Finally, the bill would have made the federal government's share of the state benefit paid to any aged person a lien on the recipient's estate, while the Social Security Act provides only that if the state recaptures any amount from the recipient's estate, it must pay one-half to the United States.

Board approval of the state plan, however, did not guarantee that the state would always receive payments under the Act. If the Board, after reasonable notice and opportunity for a hearing, found that a state changed its plan so that it no longer complied with the conditions for approval, it could withhold payments until the plan once again met with the Board's approval. The bill had a similar provision except that the Board could make such a determination without notice and opportunity for a hearing.

B. UNEMPLOYMENT COMPENSATION

Unlike the old-age benefit program, which envisioned both a state and a federal benefit, unemployment compensation under the Social Security Act was designed as a state program with financial assistance provided by the federal government. The Act authorized the appropriation of federal monies to assist the states in the administration of their unemployment compensation programs.

73. S. 1130, § 4(b), 79 Cong. Rec. at 549.
74. Ch. 531, § 2(a)(5), 49 Stat. at 620.
75. S. 1130, § 4(e)(2), 79 Cong. Rec. at 549.
76. Ch. 531, § 3(a), 49 Stat. at 620.
77. S. 1130, § 4(f), 79 Cong. Rec. at 549.
78. Ch. 531, § 2(a)(7), 49 Stat. at 620.
79. Ch. 531, § 4, 49 Stat. at 621.
80. S. 1130, § 6(e), 79 Cong. Rec. at 549.
compensation laws. The amount of the payment to any state was to be determined by the Social Security Board "based on (1) the population of the State; (2) an estimate of the number of persons covered by the State law and of the cost of proper administration of such law; and (3) such other factors as the Board finds relevant." While the bill set forth the same basic payment scheme, the grants were to be apportioned among the states based only on the amount required to properly administer the state's law.

Like the old-age benefit program, the grants were given only to states that had unemployment compensation laws approved by the Board. The conditions placed on receiving Board approval were similar under both the Act and the bill. One significant difference, however, was that the bill would have required the administrative positions in the state to be filled on a non-partisan, merit basis, while the Act restricted the Board's control over the selection, tenure of office, and compensation of state personnel. Another difference between the Act and the bill is found in the circumstances under which the Board could withhold payments. The bill allowed withholding of payments whenever the Board found that the state law no longer complied with the conditions specified in the law and notified the state treasurer of its findings. The Act's requirements for withholding were similar, but it allowed withholding only after the Board gave the state notice and opportunity for hearing.

In addition to authorizing grants to the states for unemployment compensation, the Social Security Act imposed a tax on businesses employing eight or more persons on each of some twenty days in a year. The bill, however, would have taxed businesses employing four or more persons within at least thirteen weeks in a calendar year. Under both the bill

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81. Ch. 531, § 301, 49 Stat. at 626.
82. Ch. 531, § 302, 49 Stat. at 626.
83. S. 1130, § 406, 79 Cong. Rec. at 552.
84. Ch. 531, § 303, 49 Stat. at 626.
85. Ch. 531, § 303(a), 49 Stat. at 626.
86. S. 1130, § 406, 79 Cong. Rec. at 552.
87. S. 1130, § 407(b), 79 Cong. Rec. at 552.
88. Ch. 531, § 303(b), 49 Stat. at 627.
89. Ch. 531, §§ 901, 907, 49 Stat. at 639, 642.
90. S. 1130, § 606, 79 Cong. Rec. at 553.
91. "When used in this title . . . [t]he term 'employer' shall include every person who employs an employee, . . . except that it shall not include the Federal Government, the States or any political subdivision thereof, a governmen-
and the Act\(^92\) certain types of businesses were excluded from taxation by definition, although five more categories were excluded in the Act than in the bill.\(^93\) The amount of the tax also differed between the bill and the Act. The bill levied taxes based on an index of industrial production,\(^94\) but the Act set the tax rate at one percent of an employer's paid-out wages for 1936, two percent for 1937, and three percent thereafter.\(^95\)

The amount of the tax due, however, was not absolute—both the Act\(^96\) and the bill\(^97\) allowed employers to credit against the federal tax up to ninety percent of their contributions to a state unemployment fund. Employers were allowed this credit only if the Social Security Board found that the law establishing the state unemployment fund met certain criteria. Both the Act\(^98\) and the bill\(^99\) placed similar conditions on approval, although the bill would have imposed the additional requirement that the state accept the provisions of the Wagner-Peyser Act creating a federal-state system of employment offices.\(^100\) The Act provided that unemployment compensation payments had to be made solely through public employment offices.\(^101\) Withdrawal of the Board's approval was allowed under the Act, but not the bill, if the Board found either that the state law no longer contained the required provisions or

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92. When used in this title . . . [t]he term "employment" means any service, . . . except (1) Agricultural labor; (2) Domestic service in a private home; (3) Service performed as an officer or member of the crew of a vessel on the navigable waters of the United States; (4) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of twenty-one in the employ of his father or mother; (5) Service performed in the employ of the United States Government or of an instrumentality of the United States; (6) Service performed in the employ of a State, a political subdivision thereof, or an instrumentality of one or more States or political subdivisions; (7) Service performed in the employ of a corporation, community chest, funds or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Ch. 531, § 907(c), 49 Stat. at 643.

93. Compare supra note 91 with supra note 92.

94. S. 1130, § 601, 79 Cong. Rec. at 552.

95. Ch. 531, § 901, 49 Stat. at 639.

96. Ch. 531, § 902, 49 Stat. at 639.

97. S. 1130, § 602, 79 Cong. Rec. at 553.

98. Ch. 531, § 903(a)(1)-(6), 49 Stat. at 640.

99. S. 1130, § 602(b)-(f), 79 Cong. Rec. at 553.

100. S. 1130, § 602(a), 79 Cong. Rec. at 553.

101. Ch. 531, § 303(a)(2), 49 Stat. at 627.
that the state failed to comply substantially with any provision, and if the Board gave reasonable notice and opportunity for hearing.\textsuperscript{102}

After 1937, additional credit was allowed to any employer who, because of favorable employment experience or adequate reserves, was permitted by the state law to reduce payments. The additional credit was available under either the Act\textsuperscript{103} or the bill,\textsuperscript{104} although different conditions were placed on its availability. The bill provided that the additional credit would be permitted only if the employer continued to contribute one percent to a pooled state fund and, if reserve accounts existed, the employer's reserve was not less than fifteen percent of the total payroll.\textsuperscript{105} The Act, on the other hand, contained three alternate conditions,\textsuperscript{106} depending on whether the employer contributed to a pooled fund,\textsuperscript{107} a guaranteed employment account,\textsuperscript{108} or a separate reserve account.\textsuperscript{109}

C. AID TO DEPENDENT CHILDREN

The Social Security Act also authorized federal appropriations to enable the states to furnish financial assistance to needy dependent children.\textsuperscript{110} The appropriated funds were to be used to make payments to states having Board-approved aid plans.\textsuperscript{111} The aid to dependent children program was designed to match, with federal monies, up to one-third of the state's costs. The bill did not set a dollar limit on the matching funds,\textsuperscript{112} but the Act limited the federal matching to $18 for the first child and $12 for each additional child.\textsuperscript{113} Under the bill,

\begin{itemize}
  \item \textsuperscript{102} Ch. 531, § 902(b)(c), 49 Stat. at 640.
  \item \textsuperscript{103} Ch. 531, § 909, 49 Stat. at 643.
  \item \textsuperscript{104} S. 1130, § 607, 79 CONG. REC. at 554.
  \item \textsuperscript{105} S. 1130, § 608, 79 CONG. REC. at 554. As passed by the House, the bill did not allow experience rating credits and thus provided that only pooled state funds would exist. \textit{See} Letter from Edwin E. Witte to Harry Hopkins (Feb. 26, 1935), \textit{reprinted in} STATUTORY HISTORY OF THE UNITED STATES: INCOME SECURITY 143 (R. Stevens ed. 1970); E. WITTE, supra note 5, at 133-35.
  \item \textsuperscript{106} The alternate conditions were inserted by the Senate Finance Committee at the insistence of Senator Robert M. LaFollette, a Republican from Wisconsin.
  \item \textsuperscript{107} Ch. 531, § 910(a)(1), 49 Stat. at 644.
  \item \textsuperscript{108} Ch. 531, § 910(a)(2), 49 Stat. at 644.
  \item \textsuperscript{109} Ch. 531, § 910(a)(3), 49 Stat. at 644.
  \item \textsuperscript{110} Ch. 531, § 401, 49 Stat. at 627.
  \item \textsuperscript{111} Id.
  \item \textsuperscript{112} S. 1130, § 206, 79 CONG. REC. at 550.
  \item \textsuperscript{113} Ch. 531, § 403(a), 49 Stat. at 628. Congress initially overlooked authorizing a payment for the parent or other caretaker, but corrected its omission with later legislation. The $18 figure, however, has remained in the law for nearly
alotments to the states were to be: (a) made annually; (b) paid quarterly; (c) proportionately reduced if the sum of all allotments exceeded the appropriation; and (d) supplemented by any amount of funds not otherwise allotted, determined by need.\textsuperscript{114} Under the Act, allotments and payments were both made quarterly, with no provision for either a reduction in allotment or for supplementary allotments.\textsuperscript{115}

D. \textbf{Other Programs}

Vocational rehabilitation grants were not in the original bill, but were added by the House Ways and Means Committee. The bill also did not contain any specific provision for aid to the blind, but the Senate Finance Committee added one and appropriated $1.5 million for matching grants, although the matching grants provision was ultimately eliminated.\textsuperscript{116} The bill required a finding of need prior to issuing federal public health grants,\textsuperscript{117} but the Act provided that amounts paid to states be determined in accordance with rules and regulations prescribed after consultation with a conference of state and territorial health authorities\textsuperscript{118} and were to be based on population, special health problems, and financial needs of the states.\textsuperscript{119} The bill provided a matching grant mechanism for federal support for child-welfare services.\textsuperscript{120} The Act, on the other hand, provided that federal funds would be expended on a partial-payment basis for the states' cost of providing such services.\textsuperscript{121} Finally, the Senate attempted to add a section on Indian pensions to the bill, but the Conference Committee defeated the amendment.\textsuperscript{122}

E. \textbf{Administration}

As noted earlier, the bill provided for a Social Insurance:

\textsuperscript{114} S. 1130, § 207, 79 CONG. REC. at 550.
\textsuperscript{115} Ch. 531, § 403(a), 49 Stat. at 628.
\textsuperscript{116} Ch. 531, §§ 1001-1006, 49 Stat. at 645-47.
\textsuperscript{117} S. 1130, § 802, 79 CONG. REC. at 556.
\textsuperscript{118} Ch. 531, § 602(c), 49 Stat. at 634.
\textsuperscript{119} Ch. 531, § 602(a), 49 Stat. at 634.
\textsuperscript{120} S. 1130, § 701(a)(1), 79 CONG. REC. at 554.
\textsuperscript{121} Ch. 531, § 521(a), 49 Stat. at 633.
\textsuperscript{122} See S. REP. No. 1540, 74th Cong., 1st Sess. 15 (1935) (conferees receding on amendment granting pensions to Indians).
Board established in the Department of Labor. The House version made the Social Security Board an independent agency, but the Senate put it back in the Department of Labor. The House version ultimately prevailed. In the bill, old-age assistance and aid to dependent children were to be administered by the Federal Emergency Relief Administrator, although the President was authorized to transfer administration of those programs to any other governmental officer or agency. The Act ultimately assigned these functions to the Social Security Board.

III. USE OF THE TERM "SOCIAL SECURITY" AND CHARACTERIZATION OF THE PROGRAM AS "INSURANCE"

As noted in the Introduction to this Article, one unintended aspect of the 1935 Act was worldwide adoption of the term "social security." The original bill was entitled the "Economic Security Act." When the House Committee on Ways and Means reported out a revised and clean bill in April 1935, however, the legislative drafters decided, without too much discussion or consideration of its potential significance, to distinguish it from the earlier version by renaming it the "Social Security Act." When the Act was considered, "social insurance" was the term widely used in European and American reports, studies, and books on the subject. "Social insurance," however, failed to encompass the various kinds of assistance programs

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123. S. 1130, § 401, 79 Cong. Rec. at 551.
124. Ch. 531, § 701, 49 Stat. at 635. The author strongly believes that the existence of a bipartisan "board" to administer the program assisted in building wide public acceptance of social security as a nonpolitical operation.
125. S. 1130, § 2, 79 Cong. Rec. at 549.
127. Ch. 531, § 702, 49 Stat. at 635.
129. See H.R. 7260, 74th Cong., 1st Sess. § 1005, 79 Cong. Rec. 6067 (1935) (§ 1005 became § 1105 in the Act, ch. 531, § 1105, 49 Stat. at 648). The term "social security," however, had been used in the United States before 1935. For example, it is found in the cornerstone of the Department of Justice building in Washington. The most directly related use of the term was by a small but influential organization in New York City, the American Association for Social Security, which was headed by an unusually outstanding scholar and propagandist, Abraham Epstein. The previous name of the Association was the American Association for Old Age Security, suggested by Emil Frankel in the winter of 1926 in lieu of "pensions." Letter from Abraham Epstein to Wilbur J. Cohen (March 4, 1941) (available in the library of the Department of Health and Human Services), quoted in Readings in Social Security 39-40 (W. Haber & W. Cohen eds. 1948).
and other social services contained in the Act. The term "social security" caught on and was used by New Zealand in 1938, then by other countries, and finally by the International Labour Office. It thus became a term of worldwide usage.

On my recommendation, the Social Security Board authorized use of the terms "old age insurance," "unemployment insurance," and "social insurance" in public discussions and Board publications immediately after the Supreme Court upheld the constitutionality of the Act. Subsequently, the Board recommended and Congress accepted "Federal Insurance Contributions Act" (FICA) as the short title for the Internal Revenue Code old age and survivors' revenue provisions.

The terms adopted for the new programs became the focus of much objection by opponents and critics of the social security program. Innumerable articles by persons with contrasting views argued that the program was not "insurance," and that the revenues were not "contributions." The assault was led primarily by persons with economics backgrounds and carried forward by publicists and popular writers; it was not taken up by lawyers, insurance scholars, or the insurance industry—people who understood the theoretical and historical aspects of insurance philosophy and calculations.

The emphasis on "insurance" and "contributions" terminology created a sharp distinction in the public mind between "welfare" and "social security." This distinction was maintained until 1965. After 1965, the efforts of many publicists and economists to group all government payments and programs under the heading of "social welfare" tended, unfortunately, in my opinion, to be more generally accepted.

Robert J. Myers, the former actuary of the Social Security Administration, aptly summarized the validity of using insurance terminology in connection with social security: "It would seem that this is justified because of the broad pooling mecha-
nism utilized in social security systems." Moreover, the Supreme Court stated in 1960 that "[t]he Social Security system may be accurately described as a form of social insurance, enacted pursuant to Congress' power to 'spend money in aid of the "general welfare."'" The old age "insurance" provisions of 1935 had an important impact in eventually stimulating the establishment and sale of private insurance to supplement the basic "floor of protection" provided by the public plan. The addition in 1939 of monthly survivors' benefits (such as those to widows and children) stimulated the sale of private life insurance. Private disability insurance also became more generally available. Along with private voluntary health insurance, the United States has an extensive volume of nongovernmental insurance protection which is not unrelated to the enactment in 1935 of the "social insurance" emphasis, as contrasted with other types of social security or social welfare programs.

IV. THE CONSTITUTIONAL ISSUES

In the almost fifty years since the law was enacted, many articles have explored why Congress did not enact something different or "better" than it did. A number of other alternatives for old age and unemployment benefits were discussed by the Committee on Economic Security, its Advisory Council, and the Congress, but there was such a need and demand for prompt action that F.D.R.'s recommendations were accepted with only minor basic dissent in Congress. The need to create an Act that would survive any constitutional challenge directly influenced the shape and content of the Social Security Act.

It is frequently overlooked that the United States Supreme Court in 1934-36 was controlled by a group of hard-line conservatives with a negative conception of the federal and state governmental roles in social and economic legislation. Frances

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134. Flemming v. Nestor, 363 U.S. 603, 609, reh'g denied, 364 U.S. 854 (1960) (quoting Helvering v. Davis, 301 U.S. 619, 640 (1937)). The government brief stated that "[t]he OASI program is in no sense a federally-administered "insurance program' under which each worker pays 'premiums' over the years and acquires at retirement an indefeasible right." Brief for the United States at 10. This statement leaves open, however, the possibility that OASI is an insurance program of a type other than that specifically described.

Perkins, Arthur J. Altmeyer, Edwin E. Witte, and J. Douglas Brown, because of their labor legislation expertise, were cognizant of the Court's decisions overturning labor and social legislation. They may also have been familiar with the important constitutional precedent of President Franklin Pierce's 1854 veto of a bill granting public land to the states for the indigent insane. While most of these presidential advisors were not lawyers, they were all as familiar with, and as adept and adroit about, legal issues as any qualified constitutional lawyer. Thus, their primary worry in 1934-35 was that the "Horse-and-Buggy" Court would invalidate the basic social security legislation.

Two significant Supreme Court decisions indicated the level of federal involvement that the Court would tolerate. In *Frothingham v. Mellon*, the Court in effect upheld the Shep...
The Social Security Act as a constitutional federal grant-in-aid. Frothingham thus provided strong precedent for using some kind of federal grants to the states. Not only were they deemed a sound political and administrative way to build and support state agencies, but such grants apparently would pass constitutional muster. Most states already were active in the social policy field and the Perkins group, based on their experience as state administrators and students of state legislative programs, saw little possibility of using exclusively federally-operated programs in an era without the administrative tools of computers, television, and satellites.

The Wagner-Peyser Act, the one major piece of related federal economic security legislation passed in early 1933, influenced the administrative shape of the Social Security Act. It provided a system of employment offices initially intended to be developed on a federal-state basis. That alone would have ensured that any system of unemployment compensation would have been of a federal-state character since it was necessary, for an effective unemployment insurance system, that the federal-state employment offices serve as the labor exchange and placement units.

The second Supreme Court decision that the framers of the social security program were familiar with was Florida v. Mellon, upholding the Revenue Act of 1926 credit offset device. Justice Brandeis had suggested this device to his daughter and son-in-law, Elizabeth Brandeis Raushenbush and Paul Raushenbush, of the University of Wisconsin. It subsequently became the basis for the unemployment compensation...
tax credit offset device in Title IX of the Social Security Act, which has remained basically unchanged for the past fifty years.

Sponsors of the 1935 pioneer social security legislation were unable to visualize the revolutions that would occur in 1937 as a result of Franklin D. Roosevelt's "Court Packing Plan." Although Roosevelt lost the battle for control of the Supreme Court in what was probably the most ignominious defeat of his career, he nevertheless won the war for Court decisions upholding his New Deal programs. In 1937, the Court upheld the constitutionality of the National Labor Relations Act, the old-age benefits and unemployment compensation features of the Social Security Act, and the state unemployment compensation laws. The historic Court decisions on social security, however, were predicted by Justice Stone when he told Secretary Perkins, "The taxing power of the Federal Government, my dear; the taxing power is sufficient for everything you want and need."

I attended the oral argument before the Court and heard

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148. Ch. 531, § 902, 49 Stat. at 639.
149. The basic design of the Court Packing Plan was as follows:
   When any judge of a court of the United States . . . has heretofore or hereafter attained the age of seventy years and has held a commission or commissions as judge of any such court or courts at least ten years . . . the President, for each such judge who has not so resigned or retired, shall nominate, and by and with the advice and consent of the Senate, shall appoint one additional judge to the court to which the former is commissioned. . . . [No judge shall] be so appointed if such appointment would result in . . . more than fifteen members of the Supreme Court . . . .
S. REP. No. 711, 75th Cong., 1st Sess. 31 (1937). The plan would have allowed Roosevelt to add six members to the Court because six justices were over 70 years of age. G. GUNThER, CASES AND MATERIALS ON CONSTITUTIONAL LAW 150 (10th ed. 1980).
151. Helvering v. Davis, 301 U.S. 619 (1937). Note that Helvering was argued May 5, 1937, and decided May 24, 1937. Very speedy action after the Court Packing Plan defeat! In 1983 several important oral histories relating to the 1934-35 period became available through the author's efforts. The oral histories were deposited in Butler Library, Columbia University. They throw light on several of the sharp differences of opinion, both about old age and unemployment insurance, among the staff of the Committee on Economic Security. Professor Barbara Nachtrieb Armstrong was the center of much of the most belligerent activity. Her oral history, taped in 1965, is 318 pages. The more dispassionate oral history of Murray Latimer is 51 pages. These oral histories and commentaries are currently in the possession of the author and will eventually be deposited in the LBJ Library and Museum in Austin, Texas along with numerous other oral histories and documents on social security from 1934-69.
154. F. PERKINS, supra note 35, at 286.
Justice Cardozo read the decision. These were momentous experiences for me—a young lad not quite of twenty-four years. Charles Wyzanski, later a federal district judge in Boston, Massachusetts, made the oral rebuttal in defense of the legislation in what I thought then, and still think now, was one of the most brilliant presentations that I had ever heard. He argued his case without a note, answered questions with great facility, and was a master of sophisticated decorum in the highest court of the land. Mr. Robert H. Jackson, then an assistant Attorney General, made the opening arguments.

Writing for the Court, Justice Cardozo's opinions upholding the federal old-age benefits program, the federal unemployment compensation program, and the state unemployment compensation programs were filled with facts, observations, footnotes, and literary-poetic sentences. Justice Cardozo read the decisions with a cadence and power of language indicating his sense of their historic and far-reaching significance. Alanson Willcox, later my General Counsel in the Department of Health, Education, and Welfare, told me that he had heard from his legal colleagues that Justice Cardozo had thought of retiring from the Supreme Court in 1937 but delayed his retirement until after the social security decisions because of their significant historic dimensions. There are sentences and phrases in Cardozo's opinions that still remain etched in my mind. Some of the language became permanent additions to social policy literature.156

V. THE 1936 LANDON ELECTION CAMPAIGN

Within a year after passage of the 1935 Act, Republican

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156. See, for example, the following lines from Helvering v. Davis, 301 U.S. 619 (1937): "The line must still be drawn between one welfare and another. . . . The discretion belongs to Congress," id. at 640, "Nor is the concept of general welfare static. Needs that were narrow and parochial a century ago may be interwoven in our day with the well being of the Nation. What is critical or urgent changes with the times," id. at 641; "The hope behind this statute is to save men and women from the rigors of the poor house as well as from the haunting fear that such a lot awaits them when journey's end is near," id.; "The problem is plainly national in area and dimensions. Moreover, laws of the separate states cannot deal with it effectively. Congress, at least, had a basis for that belief. . . . Only a power that is national can serve the interests of all," id. at 644.
business and conservative leaders began a heated campaign against the old age “benefits” program. The Presidential campaign of 1936 offered an excellent political opportunity for this attack. The Republican candidate, Alf Landon, although a progressive Republican for that day, became, somewhat innocently in my judgment, party to a vicious campaign against social security undertaken by the Republican National Committee.

In Milwaukee, Wisconsin, my birthplace and the home state of several pioneers of social security, including Commons, Altmeyer, Witte, Groves, and the Raushenbushes, candidate Landon attacked the old age program as a “cruel hoax” and “a fraud on the working man.” He criticized the program, urged its repeal, but offered no specific alternatives. As the campaign concluded, he conjured up a foreboding picture of the federal program for the aged in a St. Louis speech: “Imagine the field opened to federal snooping. Are these twenty-six million [workers] going to be fingerprinted? Are their photographs going to be kept on file in a Washington office? Are they going to have identification tags put around their necks?”

Some Republican spokespersons expanded this imagery and warned that workers would be required to wear metal dog tags. The Chairperson of the Republican National Committee said that Roosevelt’s humanity extended only to having these dog tags made of stainless steel so they would not discolor the workers’ skin.

The Hearst newspapers vigorously opposed F.D.R. and printed numerous misrepresentations and sensationalizations. One picture showed a man labelled “YOU” with a metal dog tag around his neck, and another showed a faked application form with a caption warning that a recipient’s record in the files of Washington would be

as complete as any convict’s or prisoner’s. Your personal life will be laid bare. Your religion and church you attend will be listed. Your physical defects will go down in black and white. Your life will be an open book . . . . You are to be regimented—catalogued—put on file. This is what the Roosevelt Administration did not intend you to know until AFTER the election.

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157. N.Y. Times, September 27, 1936, at 31, col. 3-4. For a detailed and informative historical analysis of the 1936-39 crisis, controversy, and compromise, see Berkowitz, The First Social Security Crisis, PROLOGUE, Fall 1983, at 139-49.

158. Landon’s speech was drafted by Charles Taft (the brother of Senator Robert Taft). Taft did not insert the phrase “cruel hoax” in his draft but believes Landon’s speech writer, Sherwin Badger, contributed the phrase. Letter from Charles P. Taft to Wilbur J. Cohen (Jan. 6, 1970).

The election ended with a blitzkreig Republican payroll-envelope-stuffing campaign about ten days before the election. One of the items included in the payroll envelopes stated: "YOU'RE SENTENCED TO A WEEKLY PAY REDUCTION FOR ALL YOUR WORKING LIFE. YOU'LL HAVE TO SERVE THE SENTENCE UNLESS YOU HELP REVERSE IT NOVEMBER 3."

Neither Landon nor the Republican party offered any specifics during the campaign about an alternative. Charles Taft, who prepared the initial draft of the Landon speech, was concerned almost solely about the probable "large reserve fund," which never occurred, and strongly endorsed a pay-as-you-go financing system, which eventually did occur. Donald R. McCoy, Alf Landon's biographer, speculated that "Landon's pensions would be administered by the states, the funds coming from a direct, widely distributed federal tax earmarked for this purpose."

We will never know precisely what Landon had in mind or what he would have proposed on social security if elected. Apparently, Landon did not have a completely thought-out plan of what he would do regarding social security in 1936. Landon's defeat, however, cemented F.D.R.'s determination to go ahead with implementation of the 1935 old age program in 1937 when the initial tax became effective. With the Act's constitutionality upheld in May 1937, the program became accepted as part of

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160. The actuarial estimates of future benefits, taxes, and costs made for the bill and the Act became a controversial issue. The estimates showed an eventual reserve fund in 1980 of $56 billion, which in 1935 was beyond comprehension, either in terms of the gross national product or the national debt. This fact precipitated Landon's and Vandenberg's concerns with respect to the programs. The actual reserves in 1980 turned out to be $23 billion in a much different economic context. For an interesting discussion of the estimates and subsequent occurrences, see Myers, Actual Costs of the Social Security System Over the Years Compared with 1935 Estimates, SOC. SECURITY BULL., March 1982, at 13-15.

161. D. McCoy, LANDON OF KANSAS 306 (1966). The author had extensive correspondence with Professor McCoy, Mr. Landon, and Mr. Taft about the origins of the Landon speech.

162. Mr. Landon's basic opposition to an insurance and non-income-tested program is evidenced in a statement he made to the author:

In a nutshell, we find the way Social Security and Medicare have been written and administered, they are a bonanza for the people not in need and those really in need are increasingly pinched as the result. Even more are the widespread ramifications of the tragic family dissolution under the Social Security Act that are contributing to dreadful tensions in our country. I have always been concerned that sincere dedicated advocates of both programs like you have not seen the humanitarian need for sweeping reform.

Subsequent to the 1936 election, Senator Arthur Vandenberg, a Republican from Michigan who strongly favored a pay-as-you-go financing plan but was not committed on any specific method of determining the benefits or the taxes, suggested the establishment of an advisory council to reexamine the social security program. Arthur J. Altmeyer, by then chairperson of the Social Security Board, wisely accepted the invitation; he and Vandenberg jointly selected the membership. The Advisory Council recommendations revised the program's financing toward a pay-as-you-go program, added survivors insurance benefits, started paying benefits in 1940 instead of 1942, and began the process of incrementally improving the Act. Landon, the Republicans, and Vandenberg thus became the inadvertent instruments of the incremental expansionist development of the program through their strong support of pay-as-you-go financing.

VI. CONCLUSION

The Social Security Act of 1935 was in one sense a "quantum leap" in social policy but in another sense also an incremental development in social policy evolution. Under President Roosevelt's leadership the Act broke with the past policy advanced by President Pierce, and supported by President Hoover, in vastly expanding public responsibility for dealing with the problems of old age, unemployment, disability, and childhood dependency. Yet, it carried this policy out in a way that built upon well-accepted institutional practices: it utilized the widely understood pooling-of-the-risk concept prevalent in private insurance (in connection with old age and unemployment compensation) and federal-state cooperation (in connection with unemployment insurance, welfare, rehabilitation, public health, child health, and social services).

The Act was thus an expression of the ability of Roosevelt's

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163. I have no doubt, from my association with the staff in 1934-35 and subsequent discussions, that if the Committee had not been established there would not have been an old age insurance program. The three persons primarily responsible for the old age insurance proposal were: J. Douglas Brown of Princeton University, Murray W. Latimer of Industrial Relations Counselors, and Barbara Nachtrieb Armstrong.


165. Landon's Milwaukee speech also criticized the unemployment compensation provisions of the 1935 Act, but these provisions did not become a political issue in 1935-38.
advisors to combine both a radical and a conservative program in one legislative package. The Act has served as a mechanism, over the past several decades, to stimulate the increases in both public and private expenditures for social security, health, welfare, and social services that have become a built-in stabilizer of consumer buying power, permitting the continued functioning of the market-price-profit system in a work-oriented free enterprise economy.

Roosevelt was very concerned about the possible political change or repeal of the old age insurance program in the future. Thus, he supported and justified the use of contributory payroll taxes to finance the insurance programs as "the" method that would assure continuation and support of a statutory and political "right" of individuals to receive benefits without an income or "needs" test in time of financial constraints.

At the time he signed the Social Security Act into law, President Roosevelt explained his basic incremental approach when he said that the Social Security Act "represents a cornerstone in a structure which is being built but is by no means complete." The building of the program has been a continuing process which Roosevelt expected to go on until the program provided protection against all the major hazards of life "from the cradle to the grave."

It is obvious as one looks about the world that there is no one best or simple way to provide social security. Each country does it in a way related to its historical background, resources, psychology, interested groups, priorities, and biases. There may be better ways to achieve social security than through the mechanisms incorporated in the present law, but especially in the United States there must be accommodations to differing viewpoints and conditions. Just as there are ways to form a more perfect union in marriage and in merchandising, better ways to raise children and canteloupes, and better ways to improve family life and the automobile, so it is with social security. John Winnant, the first chairperson of the Social Security Board, once said to me that it is essential to be unsatisfied but not to be dissatisfied with the social policy process involved in social change.

Nevertheless, the 1935 Act represents a significant and innovative step which created a workable institutional network which has survived nine presidents from both political parties and twenty-five Congresses. There is no current evidence, despite harsh criticisms and many proposed alternatives, that the
Congress intends to change the basic structure, fundamental philosophy, or financing arrangements of the social insurance features of the 1935 Act. Although the provisions of the Social Security Act undoubtedly will change in the future, as it has in the past,\textsuperscript{166} it will remain, in my opinion, a dynamic and influential factor in American economic, social, and political life.