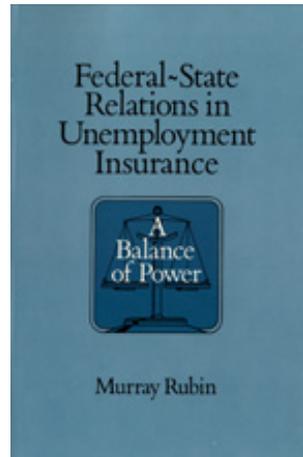


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Introduction

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A Balance of Power**

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Introduction

The unemployment insurance program has been successful by any reasonable measure throughout its nearly 50 years of existence. It has provided hope and help to millions of workers at critical times in their lives. Money for necessary expenses has been paid to qualified unemployed workers quickly, in an impartial manner, without a means or needs test and with relatively little fraud or scandal. Unlike welfare, which is based on a demonstration of need, unemployment insurance has not cost workers their self-respect. Its cost to employers, who finance the program, has not been negligible, but neither has it been excessive, given the value provided. The dollars pumped by the program into failing economies have helped workers and employers by forestalling potential economic disasters at both local and national levels.

These accomplishments have been made despite two apparent obstacles that seem serious enough to defeat any public program. While it is now accepted that insurance against unemployment is a legitimate governmental responsibility, the degree of protection to be provided is the subject of unremitting controversy, primarily between those anxious to ensure a high level of adequacy of protection and those for whom program costs, employer tax rates, and potential work disincentives are important concerns. This debate surfaces at least once every two years in the legislatures of all 50 States, Puerto Rico, the District of Columbia, and the Virgin

Islands, and not infrequently at the federal legislative level. Since each element of unemployment insurance—qualifying requirements, benefit amounts, benefit duration, eligibility and disqualification provisions, tax rates and financing provisions—has cost implications, proposed amendments to any and all such elements may provoke controversy. Over 2,000 unemployment insurance-related proposals are introduced each year in the states' legislatures. Not all are contentious, and not all controversy involves program adequacy versus program costs. However, those considerations underlie debate on most of the significant amendments.

But rather than being an obstacle, the cost-adequacy controversy has made unemployment insurance (UI) a dynamic program, responsive to economic and social change. When opposing views have been reasonably balanced, controversy and ensuing debate have usually resulted either in enactment of carefully considered legislation, or at least defeat of proposals that would weaken the program's effectiveness. When debate has been absent because of the dominance of either labor or management, the program has suffered distortions.

The second apparent obstacle also involves controversy. It arises from the fact that responsibilities for unemployment insurance are shared between two levels of government with different perspectives.

Each of the states and three other jurisdictions (called "states" for UI purposes) provides for its own complete, self-contained unemployment insurance program, administered by state employees. The states are responsible for all substantive matters: qualifying requirements; benefit levels; disqualification provisions; eligibility conditions; and tax structure. The federal government's responsibilities include maintaining nationwide standards which often include program matters. Friction results from state resentment of federal encroachments into state jurisdiction. It results also

when state enactments or practices appear to federal officials to violate national standards. These issues of conformity with federal requirements are usually settled through peaceful negotiation, but occasionally they provoke heated confrontations. What makes conformity with federal standards compelling is the Federal Unemployment Tax Act, which provides for a payroll tax on virtually all employers. It allows employers to credit against most of the federal tax the taxes they pay under a state unemployment insurance program if that program conforms with federal standards. If a state UI law does not conform, employers receive no credit and are liable for the full federal tax, which may be considerably more than the taxes many employers pay under the state law. None of federal taxes thus payable would be used for unemployment benefits. Payment of both the full federal tax and state unemployment taxes could be prohibitive. Accordingly, the state would probably be forced either to abandon its nonconforming unemployment insurance program or find alternative financing. In most cases, denial of tax credit would be tantamount to elimination of the state's program.

Similarly, although the states are responsible for the administration of their programs, the responsibility for the design and nature of that administration is shared, since financing of UI administrative costs comes from federal funds. (A portion of the federal unemployment tax, which cannot be offset by state UI taxes paid, provides the source of funds for program administration.) Thus, state laws and practice also conform with additional federal controls (administrative standards and directives), if the state is to qualify for the funds necessary to run its program.

As indicated above, the result of this division of responsibilities is continual discord. The states seek independence from federal supervision over administrative matters and from federal intrusion into program matters. Federal administrations seek greater authority to establish priorities,

ensure economical operations and exert more influence over program matters.

The intergovernmental conflicts, like the program adequacy-program costs controversy, have provided a “better product”—but only as long as the powers on each side have been reasonably balanced. Until recent years, statutory and practical restraints on the authority of both levels of government have helped preserve the balance by keeping each from usurping the powers of the other. These restraints and the resulting balance of state and federal authority have produced conflict, but more important, they have generated the high degree of intergovernmental cooperation that is necessary in order for either partner to operate effectively. This cooperation has been the key to the program’s success.

For example, neither the federal nor any state government, given the awesome sanctions available, has any interest in provoking a conformity confrontation that could jeopardize the continued existence of a state’s program. The result has been the resolution, through negotiation, of all but a handful of issues. Thus, despite an average of about 20 potential conformity issues being raised each year since the program began, there have been fewer than 30 formal conformity hearings actually undertaken over the first 45 years.

Another practical limitation on federal officials that encourages cooperation is their accountability to Congress. Amendments restricting the authority of the Secretary of Labor have followed past federal administrative actions considered arbitrary by a state-oriented Congress. That experience has been an inhibiting factor even during periods when administrations have been popular with Congress.

The states also face practical limitations on their authority that encourage cooperation and restraint. For example, certain past state enactments have been considered so arbitrary or discriminatory as to provoke congressional adoption of

new federal standards. Each standard diminishes all states' authority.

The restraints on federal authority have allowed the wide discretion states have to tailor their programs to local conditions and preferences. This freedom has made possible the conflict and debate within state legislatures that have made state programs dynamic and responsive. The restraints on state authority have helped control state excesses and unwise legislation. The division of responsibilities and the restraints on both levels of government have necessitated the cooperation that has produced sound programs and effective administration.

It may be that other structural arrangements would have been as successful. A wholly state UI system would produce even greater diversity. However, without at least minimum federal responsibility, it seems likely that pressures of interstate competition ultimately would lead to serious inadequacies and inequities. A wholly federal system would have the advantage of greater efficiency that uniformity offers, but also the potential of sterility. Indeed, most of the innovations that have kept the unemployment insurance program current and dynamic have originated in the states, not from Washington, because of the opportunity for experimentation that the federal-state system encourages.

The balance of power produced by the division of responsibilities and the system of checks has always been fragile, dependent as it is on voluntary as well as statutory restraints. It has been seriously threatened in recent years. Increasingly, the federal government has tightened control over administration of the states' programs. More federal standards concerning substantive program matters, originally the states' jurisdiction, have been enacted since 1970 than during the first 35 years of the system's existence. Recent federal requirements concerning extended benefit duration have

dominated that aspect of unemployment insurance and influenced regular program changes. Federal loans to bankrupt state UI funds and federally imposed conditions for repayment since 1974 have produced new federal influence over state UI tax matters.

There are as many reasons for the new federal dominance over the unemployment insurance system as there are manifestations of federal control. Preservation of the balance of power has been dependent on the states meeting their obligations and the federal government exercising restraint. Failures of the states to keep their programs current, adequate and solvent have contributed much to the recent federal invasion into matters ordinarily outside its jurisdiction. Currently (early 1983), insolvency is the most serious problem, with about half the states' UI funds in debt because of severe recessions, and more borrowers on the horizon. Federal restraint has been undermined not only by state failures, but also by inclusion in the federal unified budget of the Unemployment Trust Fund, through which all UI moneys flow, and the system's consequent vulnerability to national cost-cutting pressures.

The upset of the federal-state balance of power that has lasted nearly 50 years threatens the breakup of an intergovernmental relationship that has been both unique and highly successful. The full consequences of this trend are not yet clear.

The following chapters discuss first the original reasoning for the federal-state distribution of responsibilities and the provisions originally adopted to implement the system. They next describe later federal standards and their impact on the balance of power. The administration of the federal laws is explored, as well as the process of resolving conflicts. Finally, an assessment is attempted on the value of the balance to the system and the prospects for its preservation.

The intent of these chapters is to describe the federal-state division of responsibilities; to identify how the restraints on each partner's authority actually operated; to determine how and why they have been weakened; and finally, to evaluate the implications of increasing federal dominance. This effort seeks to examine the extent to which the federal-state balance of power has been important to the success of the American system of unemployment insurance.

Any light shed on this question should not only add to the understanding of the UI system, but also may have implications for other federal-state programs. In a period when new approaches to federalism are being explored, an understanding of the reasons for at least one federal-state program's success should be useful.