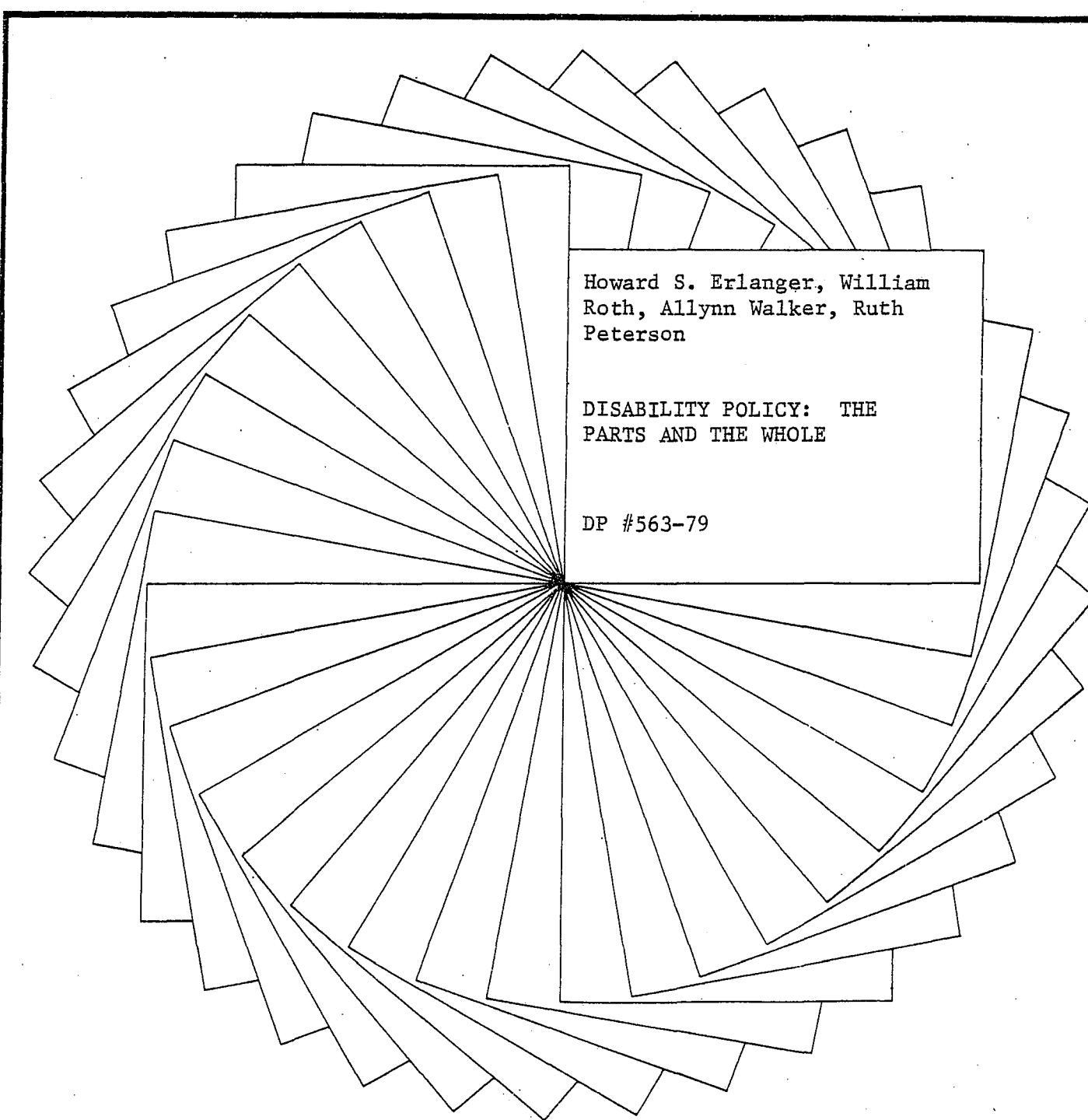




# Institute for Research on Poverty

## Discussion Papers



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DISABILITY POLICY: THE  
PARTS AND THE WHOLE

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Disability Policy: The Parts and the Whole

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## Abstract

Four major programs (Workers' Compensation, Social Security Disability Insurance, Supplemental Security Income, Veterans benefits) comprise the overwhelming majority of the money spent nationally on the problem of physical disabilities. Analysis of the legislative origins of these programs finds that they have developed quite independently of one another, as tangents to development in other issue areas (efforts of industry to minimize their costs associated with worker injury; efforts to establish a comprehensive social security program, to provide for the needs of indigent people, and to compensate military personnel) rather than as part of a coherent policy towards disability. As a result, the benefits that one receives depend not on one's type of disability, but rather on the origin of the disability or on the perceived worthiness of the disabled persons.

In spite of the diverse origins of these programs, however, they share a major characteristic in that they all look to the disabled person as the focus of the problem, and largely ignore the extent to which the problems of disability are also shaped by characteristics of society. The final part of the paper thus briefly considers recent programs to facilitate reentry of disabled people into the mainstream of society, and calls for expansion of such efforts.

## Disability Policy: The Parts and the Whole

In recent years, increasing attention has been paid to social policies for people with disabilities, and there are many indications that disability policy is moving to the top of the health and welfare agenda. There are three major reasons for this increased concern for disabilities. One is the public's increasing awareness of the number of disabled people and the large social cost associated with their reduced productivity. One carefully developed estimate is that in 1973, 17%--or about 20 million--of the U.S. adult (aged 18-64), non-institutionalized population was disabled, where a person is defined as disabled if he or she is limited in the amount or kind of work that can be performed.<sup>1</sup> A second reason is the perceived cost of the programs. Disability programs are considered to be very expensive and rapidly becoming more so, and there is concern whether resources are being efficiently allocated. Finally, there is the increased militancy on the part of disabled people. Breaking with the passive stereotypes and traditions of the past, the "shut-ins" of yesterday are asserting that they have not been shut in by their disabilities, but rather shut out of the mainstream of society, in part by the very policies ostensibly designed to help them.

What is coming to be called disability policy is in fact an aggregate of a variety of policies, each with quite different origins and purposes, reflecting an historical situation in which concern for disability has been intertwined with efforts to establish policy in much broader issue-areas. These include efforts of industry to minimize their costs

associated with worker injury, as well as efforts of other groups to establish a comprehensive social security program, to compensate military personnel, especially those injured in war, and to provide for the needs of indigent people. Rarely has public policy toward disability been introduced or analyzed as "disability policy." Rather, it has been most often seen as a subset of some other, more general policy area such as labor, veterans, or welfare policy.

The comprehensive approach to disability policy that is now emerging has the obvious advantage of allowing both analysts and policy makers to look at the problem of disability in its entirety, to see what the general pattern of policy has been, to assess the adequacy of coverage, to pinpoint the latent or unintended effects of the policy as a whole, and to show the areas that have been ignored. At the same time, however, there is a potential disadvantage to this aggregation. As with any major policy area, aggregation will generate a large figure for total cost. The danger here is that the cost figure will be considered in isolation and erroneously judged too high on its face rather than assessed in terms of the variety of needs to which the component programs have been addressed.

To facilitate the task of evaluating the whole of disability policy, we first consider the legislative development of its subparts. Our purpose here is to show that existing policy is really a very diverse set of mini-policies, diverse in the perceived needs it addresses, in the groups it seeks to benefit, in its legislative origins and purposes, and in the interest groups that battled over its enactment. Following our examination of the component parts of disability policy, we return to a consideration of the aggregate and consider the common elements and changing focus in

disability policy as a whole. Here we find that in spite of the varied origins and purposes of disability policy, there has been, until recently, a common thread to it in that it has been oriented towards income maintenance and minimal rehabilitation of disabled people rather than towards removal of the causes of disability, removal of structural barriers to the employment of disabled people, or integration of disabled people into the mainstream of society.

#### MAJOR SUB-PARTS OF DISABILITY POLICY

In this section we analyze the legislative history of the four largest (i.e. most expensive) programs that are explicitly oriented towards people with disabilities.<sup>2</sup> These include workers' compensation, Social Security Disability Insurance, Supplemental Security Income, and benefits to disabled veterans.

##### I. WORKERS' COMPENSATION

Workers' ("Workmen's") compensation is a system of state-sanctioned insurance programs which are to provide income maintenance, medical payments and rehabilitation services for work-related accidents or occupational disease, and death benefits to survivors of workers killed on the job. Today, all but five states have compulsory workers' compensation programs, although there is substantial variation in terms of coverage, adequacy of benefits, rehabilitation services, administration, and other aspects.<sup>3</sup> Until recently, many states had low benefits and virtually no rehabilitation services ; following a 1972 investigation by a national

commission, however, the situation has somewhat improved.<sup>4</sup> The direct expense of the compensation program is borne by employers, who purchase an insurance policy from a private company or state fund, or who self-insure. Most states use a workers' compensation board or commission to administer claims. In 1970, the state programs covered 85% of all employed wage and salary workers, although agricultural, domestic, and casual employment and employment in small firms are usually excluded and coverage of public employees is variable.<sup>5</sup> In 1977, the last full year for which data are available, the total paid under the various state and federal workers' compensation plans was close to \$6 billion.<sup>6</sup>

### Issues

The key issue in the establishment of workers' compensation plans was who would bear the cost of injuries associated with the mechanization of American industry in the late 19th century. In the period from the mid-1800's to the late 1890's the United States changed from a predominantly agricultural country that imported most of its manufactured goods to the leading manufacturing country in the world; along with this rapid industrialization went a high accident and death rate.<sup>7</sup> Even more so than today, the general orientation of business in the heyday of laissez-faire capitalism was towards maximization of profit and minimization of costs. Few resources were spent on safety measures, children were allowed to work at hazardous occupations, and laborers often worked long hours, even at dangerous jobs, without substantial rest.

Prior to the introduction of workers' compensation programs in the United States, determination of liability for employee injury was made

under the common law of torts. Under torts doctrine, workers were potentially protected against the negligence of their employers by the ability to sue directly (although this rarely occurred) and were theoretically able to sue their employers for damages caused by fellow employees, under the doctrine of respondent superior. Given the fact that in large factories there was only a remote chance that the direct action of the owner (who may rarely have been on the premises and who in any case was not likely to be a single individual) would cause injury, respondent superior was a particularly important principle, but one that the courts rejected in favor of the fellow servant rule. Under the fellow servant rule, an injured employee could only sue the person directly causing the injury; the employer could not be held liable for damage caused to an employee by a "fellow servant." The major early statement of this doctrine in the United States was in an 1842 case, in which the Massachusetts Supreme Court, following the reasoning of classic economic theory, held that one "who engages in employment for another for . . . compensation, takes upon [oneself] the natural and ordinary risks and perils incident to the performance of such services, and, in legal presumption, the compensation is adjusted accordingly." The fellow servant rule, and the attendant "assumption of risk" defense, were apparently not absolute; in the latter part of the 19th century there was a tendency for courts to question and modify it.<sup>8</sup> But nonetheless, it remained sufficiently well established that in 1913 Theodore Roosevelt, in a Colliers Magazine article, inveighed against the following case:



A young woman, Sarah Knisley, had her arm torn off by the unprotected gears of a grinding machine on which she was working. The state law provided that the gears should be covered; Miss Knisley had complained to her employer that they were not, and expressed fear about working at the machine in its present condition. But the employer warned her to do her job or quit, and she complied out of need of the job. The court held that in so doing she had assumed the risk of the dangerous condition and could not recover damages. Had she not known or complained of the illegal condition she would have had a cause of action; her knowledge made her liable.<sup>9</sup>

These defenses, combined with others, such as the doctrine of contributory negligence (under which one cannot collect damages if one's actions contributed, even in small part, to the injury suffered) made it very difficult--but not impossible--for employees to collect damages from employers.<sup>10</sup> A 1907 report by a Governor's Commission on court awards in Illinois showed, for example, that the average court settlement for the death of a miner was \$294, and that, at any rate, a large share of any award went to attorney's fees.<sup>11</sup>

### Legislative History

Surprisingly, pressure for legislative reform came more from major business interests than from labor. By the early 1900's, businesses were losing enough in attorneys' fees, occasional large jury verdicts, and high insurance premiums that there was interest in establishing a system that would limit losses and make them more predictable. Some major companies like International Harvester and U.S. Steel voluntarily instituted compensation plans motivated, according to company representatives, by a "purely business spirit."<sup>12</sup> By 1910, a poll by the National Association of Manufacturers (NAM) of 13,000 businessmen showed that over 99 percent

avored some form of automatic compensation program. The main reasons offered by the NAM were the high expense and worker hostility caused by the litigation as well as the desire to avoid having the problem "settled for us with a vengeance by the agitator and the demagogue."<sup>13</sup>

Review of the various sources already cited indicates that the process of enactment of workers' compensation in Illinois was representative of the process in other states:

The Illinois Manufacturers Association (IMA), the state's leading business organization and spokesman for about 1,000 of its largest corporations, was an early and vocal proponent of compensation. In 1905, protesting that the existing system left employers "unable to extend the most rudimentary evidences of common humanity," it called for change but offered no specific remedy. In 1909, it began to agitate for compensation; and in 1910, in the wake of [a major industrial disaster], President LaVerne Noyes announced that the IMA had promised Governor Charles S. Deneen to support compensation, "secured the creation of an employers liability commission, rounded up sentiment among manufacturers for a fair bill, gave the state [commission] three of its most able men, who contributed their valuable time and wisdom, and used its influence to secure honest and fair provisions in a bill to be submitted to the General Assembly."

The IMA mounted a campaign to secure the plan's passage. It distributed a record amount of literature to members requesting information on their needs and interests in compensation legislation, held meetings to explain provisions of the bill, and cooperated in securing facts needed by the commission and the general assembly. Never before, the organization reported in 1911, had it exerted itself so strenuously on behalf of a piece of legislation.<sup>14</sup>

In other states, however, the influence of the Manufacturers Association seems to have been less, while that of the National Civic Federation, a broadly based "public interest" organization with substantial business involvement, was much greater.<sup>15</sup>

The role of labor in pressing for workers' compensation programs was less central, partly because of major differences of opinion within its ranks. Some workers and labor leaders favored the programs on the ground

that half a loaf is better than none; in addition, there were ties between the Civic Federation and the American Federation of Labor.<sup>16</sup> But a major reason for labor's subsidiary role was that many in the labor movement, especially in the early 1900's, opposed worker's compensation on the ground that it was business controlled, limited potential recovery of damages, and, possible would undercut more radical social reforms. In 1898, the Workingmen's Federation effectively fought a proposed New York program; in the brewing industry the rank and file rejected a plan modelled on long-standing German legislation put forth by industry and labor leaders; in 1907 labor successfully blocked proposed legislation in Illinois; and the Chicago Federation of Labor strongly opposed compensation until 1911.<sup>17</sup>

Opponents to workers' compensation plans favored instead legislation to weaken employers' common-law defenses. Labor pressure produced a number of laws of this type. For example, by 1908 27 states had prohibited contracts that, as a condition of employment, relieved employers of liability for accidents; by 1904, 41 states had extended the right to sue in death cases; and overall, by 1908, almost every state had legislated some modification of the traditional defenses.<sup>18</sup>

This legislation was limited in its effect, however. Generally, it only covered a few industries--usually mining and railroads--and, overall, workers collected little, because of both the difficulty and the costs of successful litigation.<sup>19</sup> Meanwhile, the period 1909-1919 saw the establishment of 40 state and federal commissions to investigate the problem of compensation for industrial accidents. These commissions, which often engaged in intensive hearings and data collection, unanimously recommended that employers' liability under tort be abolished and "no fault" workers'

compensation programs be established in its stead. By 1920, 38 states had established workers' compensation programs; today all states have them, although in five states they are not compulsory.<sup>20</sup>

## II. SOCIAL SECURITY DISABILITY INSURANCE

Social Security Disability Insurance (SSDI) is a federal social insurance program linked to the Social Security retirement program. Under the program, a worker with 20 quarters of coverage in the 40 quarters ending with the quarter in which the period of disability begins, who is judged to be unable to engage in substantial gainful employment, and whose disability is expected to last for at least 12 months or to result in death, is eligible to receive the equivalent of his or her social security retirement benefit, including dependents' allowances. There is no "means test," but the benefit is offset by benefits from other programs such as workers' compensation if the total benefits exceed 80% of pre-disability income. If a recipient earns more than \$200, benefits are terminated.<sup>21</sup> The program is financed by part of the Social Security tax levied on most employees, employers, and self-employed individuals; persons not covered by Social Security are not eligible for benefits. In 1978 payments under SSDI exceeded \$12 billion.<sup>22</sup>

### Issues

The issues in the establishment of SSDI were but a subset of a much broader debate over the extent of society's obligation to ensure the basic necessities of life--e.g. a minimal income and basic medical care--to its working citizens and to those workers who have dropped out of the labor force because of age or disability.<sup>23</sup> Major controversy over

this question in this country dates back to at least the early part of this century, when various groups began to press for social insurance programs. But, with the exception of the establishment of worker's compensation programs (which emerged from a quite different set of concerns), social insurance did not fare well in the pre-Depression period. With the crisis of the Depression, however, attention became focused on the needs of the worker forced into unemployment. President Roosevelt established a Committee on Economic Security, charged with undertaking "the great task of furthering the security of the [working] citizen and his family through social insurance" through the proposal of legislation. This work led to the establishment of both a federal-state Unemployment Insurance program and the original Social Security Act of 1935. The Committee on Economic Security seriously considered a program of national health insurance, and the original social security bill included a provision for further study of the question; however, this provision was dropped when Congress was deluged by telegrams opposing it. The Committee also considered two reports on disability insurance, but did not even include it in the proposed legislation, in part because it was judged to be "the most difficult of all forms of social insurance."<sup>24</sup>

Controversy over a federal program of disability insurance centered on three issues: the entitlement to benefits as a concomitant of steady employment; the cost of the program; and the interference of the federal government in private economic affairs.

Entitlement. From the outset it was apparently agreed by all parties that the beneficiaries of any social insurance program would be workers or

former workers, and (in many instances) their families. This general principle was never seriously questioned in the debate over disability insurance, even though, by definition, disabled people were those unable to work. There was, however, a good bit of disagreement over how much participation in the labor force was necessary to establish a right to benefits, and early proposals were quite restrictive in this regard.<sup>25</sup> There was also a good deal of concern over the possibility of malingering; for example, one argument against the inclusion of benefits for dependents of the disabled worker was that the total benefit package may have been large enough to discourage return to work. More generally, concern was expressed that disability insurance benefits as a matter of right would encourage an excessive concern with health, or "valetudinarianism." Labor, however, resisted the charge that workers would malingering and pushed for less restrictive eligibility requirements and higher benefits. Although by 1950 Congress had established an expanded Federal-State public assistance program for people who were permanently and totally disabled (Aid to the Permanently and Totally Disabled [APTD]), the pro-labor argument was that workers should not suffer the indignities of the dole and should instead have a direct entitlement to adequate benefits.<sup>27</sup>

Cost. The issue of cost was perhaps the one with the greatest legitimacy since there was no way of knowing what the cost of social insurance for total disability would be, and there was agreement that it could be quite high. Private insurers had had a very unsatisfactory experience with policies covering total disability, and many companies refused to issue them.<sup>28</sup> Opponents of the program feared that in hard times there

would be insurmountable pressures on the system from workers who would view benefits as a matter of right but whose disabilities would not justify payments.<sup>29</sup> Much of the maneuvering surrounding various congressional bills focused on ways of setting limits on the total cost of the program; it was a major compromise regarding cost that eventually cleared the way for the enactment of a disability insurance program (see discussion below).

Intervention. The dangers of federal intervention were not originally an issue in the disability insurance debate. From the late 1930's through mid 1940's, disability insurance was supported by the House of Delegates of the American Medical Association, (AMA), the United States Chamber of Commerce, and various associations of insurance companies. However, these interest groups began to shift their position in the late forties, when disability insurance became identified with compulsory medical insurance. By the mid-fifties, physicians were testifying that disability insurance was "Marxism, pure and simple" and the AMA's position was that it was "the forerunner of a completely federalized system of compulsory sickness insurance...any such nationally directed and controlled program will inevitably result in the socialization of the practice of medicine and in a marked deterioration in the quality of the medical care."<sup>30</sup> While disability insurance is a transfer payment totally unrelated to medical expense, it is nonetheless true that, in the minds of many of its sponsors, disability insurance was part of a broad social insurance package that should ultimately include some form of national health insurance--although not necessarily socialized medicine.<sup>31</sup> Creation of such social insurance at the national level was

justified, its sponsors argued, because of pressing social needs that had not been successfully met by state government or private enterprise.

### Legislative History

Although disability insurance was not included in the original social security legislation of 1935, it was one of the first amendments proposed. As early as 1938, a proposal was drafted by a presidential committee, and bills to amend the Social Security Act to include disability insurance were introduced in each session of Congress beginning with 1939. However, no major amendments to the Act were legislated during the war years or immediately thereafter.<sup>32</sup>

The major battle to enact a disability insurance (DI) program began in 1948, with the issuance of a favorable report by the Advisory Council on Social Security, which had been established by the Senate Finance Committee. President Truman included DI in a series of proposed amendments to the Social Security Act in 1948, but no bill was passed that year. After his reelection, Truman again proposed amendments, and a set of amendments, including DI, was passed by the House in 1949. In the Senate however, the DI provision was strongly attacked by the AMA, the U.S. Chamber of Commerce, the NAM, and representatives of private insurance companies.<sup>33</sup> While the Truman administration, labor, public welfare groups, and the National Consumers League tried to save DI, the Senate kept only the amendments which granted federal aid to the states for permanently and totally disabled persons on welfare (APTD), and rejected the insurance concept. In 1954, proponents of DI won a small victory by securing passage of a "disability freeze," which



protected a disabled person's right to social security retirement benefits in much the same way as the "waiver of premium" provision on a private life insurance policy. However, this victory came over the strong opposition of the AMA, which in 1952 had helped undermine a similar provision that was passed into law but that included a clause cancelling provision the day before it was to go into effect. While the disability freeze did nothing to help disabled people until they were at retirement age, it did establish the principle that permanent and total disability could be medically determined, thus overcoming one of the major obstacles to DI.

The following year, the House Ways and Means Committee reported, without any public hearings, a social security amendments bill that included insurance for total disability. The bill, which eventually became the Social Security Amendments of 1956 was passed by the House on a vote of 372-31 under a procedure that suspended the rules, barred amendments, and limited debate on each side to forty minutes.<sup>34</sup> The bill had a much more difficult time in the Senate, where it was opposed by the same coalition of interest groups that had fought the earlier legislation, while the major proponent of the bill was the AFL-CIO. A variety of objections were raised, but the most potent one was cost. Passage of the bill was secured by a narrow margin when Sen. Walter George (D-Ga), who had used his position as chair of the Senate Finance Committee to block previous DI bills, supported a compromise in which DI would be funded out of a Federal Disability Insurance Trust Fund, separate from the Social Security Trust Fund.

The 1955-56 legislation limited benefits to persons aged 50 and over and included a number of other restrictive provisions designed to

minimize costs. In 1958 and 1960, these provisions were dropped, making the provisions of SSDI roughly equivalent to those of the Social Security Program. In 1965 and 1972 various other provisions liberalizing eligibility and benefit levels were enacted.<sup>35</sup>

### III. SUPPLEMENTAL SECURITY INCOME

Supplemental Security Income (SSI) is a program for needy aged (over 65), the blind, and the disabled who meet income and resources tests and other requirements. The purpose of SSI is to guarantee a minimal income; hence other income that the individual receives is subtracted from the guarantee and the applicant is paid the residual. Up to \$20 per month of social security benefits and the first \$65 per month of earned income is disregarded for purposes of determining eligibility and benefit amounts for the elderly and the disabled; there are more liberal provisions for the blind. States are permitted to supplement federal payments if they so choose. For 1978, the total paid to blind and disabled recipients of SSI was in excess of \$4 billion.<sup>36</sup>

#### Issues

SSI is fundamentally different from workers' compensation or SSDI because benefits are based on one's current status, without regard to previous work, contributions, etc. As such, it is a "welfare" program, and emerged out of the debates in that arena. As Garfinkel has noted, two of the basic controversies underlying any welfare program concern first, the location of funding and administration of the program and, second, the relationship of benefits to the recipient's ability to work.<sup>37</sup>

Locus of funding and administration. While social insurance programs have characteristically been national or, at a minimum, state programs, welfare programs have generally been state or local in character.<sup>38</sup> Local government has been believed to be better able to determine whether a potential recipient is genuinely in need of assistance and what the appropriate level of assistance should be. Gradually, however, there has been a move towards funding of these programs at the state and national levels, if for no other reason than the massive costs involved. More recently, there has been pressure for central control as well. Garfinkel suggests several reasons for this: First, when eligibility and benefits are set at the local level, there is an incentive either to keep benefits lower than neighboring states or localities (to encourage out-migration and discourage in-migration) or to refuse to give benefits to non-residents; second, fiscal restraints on state and local governments may prevent them from raising the necessary funds; third, as poverty has become a national concern, it is appropriate that policy be formed, and equitable that it be financed, at the national level. SSI, and more generally the proposed Family Assistance Plan (FAP) from which it was spawned, represented a major turning point because of its establishment of a uniform guaranteed income provided by the federal government.

Work incentives. Although the issue of work incentives comes up in debates over social insurance, it is especially salient in welfare programs, where the recipients, who almost always have not been working steadily, are more suspect of parasitical motives. For well over a

century, however, various groups of the poor have been separated into special "categorical" programs of aid based on the presumed cause of their poverty. As early as the mid-19th century in the United States, people who could not work because of some gross physical or mental handicap were deemed not responsible for their condition and therefore part of the "deserving poor," i.e., those morally worthy of help.<sup>39</sup>

Unemployed able-bodied individuals, by contrast, were seen as undeserving of assistance:

if the poor had pauperized themselves through drunkenness, impiety, idleness, extravagance, and immorality, public relief would only reinforce such habits; moral reform for the "vicious" poor and work for the idle would cure dependency more quickly.<sup>40</sup>

Originally, the deserving poor were a very narrowly circumscribed group, comprising only people who were blind, severely disabled, or believed to be incurably insane, and even they were not always exempt from work requirements. In the Depression years, however, this view changed in two important ways: first, it became hard to insist that disabled people work when there were no jobs for the able-bodied; second, the indigent aged came to be seen as members of the "deserving," whereas previously their poverty had been seen as the result of personal failure to provide for their financial security. As a result, by mid-century there were at least three major welfare programs--Aid to the Blind, Aid to the Permanently and Totally Disabled, and Old Age Assistance--which were firmly established and, for all practical purposes, beyond moral reproach. Each of these programs was partially funded by the federal government but totally controlled by the states, which decided

whether to have the programs and what the benefit levels and eligibility requirements would be.

In contrast to the preferred status in the welfare system of aged, blind, and disabled citizens, female heads of households have occupied an ambiguous position. On the one hand, there is a widespread belief that mothers of young children should stay at home to rear them, thus making mothers deserving of aid; on the other hand, the absence of a father is always suspected as a ruse to get state aid. Because of this, eligibility standards and benefits have always been tighter in programs of Aid to Families With Dependent Children (AFDC) than in the other categorical programs. As Handler notes:

[W]hether or not to give relief to the husbandless mother and, if so, under what circumstances, [has always] raised difficult moral dilemmas for many. So the early conditions remained: a means test, a morals test ..., a work test, and a discretionary control over the budget to prevent waste or high living. And, because lines were hard to draw and politically explosive, discretion was left at the local level.<sup>41</sup>

Given this difference in attitude towards AFDC, it is not hard to see why the proposal to merge this program with the other categorical aids was controversial.

### Legislative History

SSI was enacted as a residual measure when FAP, a much more comprehensive overhauling of the welfare system, failed in Congress.<sup>42</sup> As originally proposed by the Nixon Administration, FAP would have nationalized the welfare system by setting a uniform, federally financed, base benefit for the entire country, subject to state supplementation.

As originally proposed, FAP had something for everybody. Benefits for a significant proportion of the poor, especially those in the South, would be substantially increased; fathers would no longer need to desert their families in order to make them eligible for benefits, (because intact families would now be eligible for aid); there would be relief for the strained budgets of states and big cities with large welfare rolls; and there would be a provision requiring able-bodied family members (including mothers of school-age children) to accept work or job training.

The combination of increased benefits and strengthened work incentives succeeded in engendering support for FAP across the political spectrum. Prominent congressional supporters included conservatives Wilbur Mills (D-Ark) and John Byrnes (R-Wis), and liberal Abraham Ribicoff (D-Conn). Such varied organizations as the League of Women Voters, B'nai Brith, the United States Catholic Conference, the National Association of Manufacturers, the Committee for Economic Development (a national group of educators and business leaders) and the United States Civil Rights Commission voiced support of the plan.

But the same features that brought broad support also meant that FAP would be vulnerable to attacks from both the right and the left. Conservatives, including the United States Chamber of Commerce and the American Conservative Union, complained that FAP would increase the welfare rolls, run up the federal deficit, and encroach on the right of the states to make welfare decisions. Liberals, including Americans for Democratic Action, the American Friends Service Committee, the

National Council of Churches, and a coalition of northern black congressmen, opposed FAP in part because of its work requirements; liberals also had problems backing the plan because of Nixon's sponsorship. In the end, the critics prevailed, and although FAP was a major item on the social services agenda from 1969-1972 and at one point passed in the House, it never got through the Senate.

While FAP was taking the brunt of the controversy, other features of H.R. 1 (as Nixon's comprehensive welfare reform package was known) managed to remain less controversial. SSI was the most important of these. Throughout the controversy, efforts were made to distinguish the issue of aid to the blind, disabled, and elderly from that of aid to the younger or able-bodied poor. For example, Senator Russell Long (D-La), a key protagonist, contrasted old age assistance to family welfare programs: "We know there is not much abuse in it. If these old people qualify in the first instance they are not going to have much income thereafter."<sup>43</sup> There are also suggestions that SSI managed to remain more obscure. Burke and Burke report that few people in or out of Congress read the proposed plan carefully or understood the current situation well enough to appreciate its impact. As a result, they argue, SSI slipped in the door as part of the package remaining after H.R. 1 was stripped of FAP. Whatever the reason, SSI in its final form was uncontroversial; when H.R.1 was finally passed, it was by a vote of 61-0 in the Senate and a record 305-1 in the House.<sup>44</sup>

#### IV. BENEFITS TO DISABLED VETERANS

There are a variety of programs which exist to aid the veteran. For the disabled veteran, there are two types of benefits available: compensation for service-connected disabilities; and pensions for disabilities that are not service-connected. Compensation is available to eligible veterans and their dependents without an income test. The amount of benefits is primarily determined by percentage of disability based on the average impairment such disability would cause in a civilian occupation and whether the service-connected disability was incurred in war or peacetime. Pensions are payable to wartime veterans and dependents whose income and resources are insufficient and who have permanent and total disabilities that are not service-connected. In addition to the two basic benefits, there are programs offering medical care and grants for specially adapted housing. The following types of veterans who are eligible for medical care are listed in approximate order of descending priority for services. Veterans with service-connected disabilities and non-service-connected medical needs may receive hospital care, nursing home care, medical services while hospitalized, outpatient care, prescribed drugs and domiciliary care. Veterans with non-service-connected disabilities for which they swear that they cannot defray medical expenses are eligible for hospital care, medical services while hospitalized, and prescribed drugs. Veterans over 65 years of age or in receipt of a VA pension are eligible for hospitalization, domiciliary and nursing home care, outpatient treatment and prescribed drugs. For nursing home care, domiciliary care and hospitalization, there are variable income limits.



Lastly, to be eligible for specially adapted housing and for direct loans for totally disabled veterans, a claimant must be a veteran with a permanent, compensable, and total disability because of (a) loss or loss of use of both lower extremities; (b) blindness in both eyes; or (c) loss or loss of use of one lower extremity together with residuals of organic disease or injury affecting locomotion. In 1977 benefits to disabled veterans totaled approximately \$7 billion.<sup>45</sup>

### Issues

Federal programs for disabled veterans are by far the oldest programs for disabled people, dating back to the Revolutionary War. Major expansions of the programs have, not surprisingly, been associated with the country's wars, the only contraction occurring during the Depression. While distinctions have always been made between service and non-service-connected disabilities, and between wartime and peacetime service, the legitimacy of veteran pressure for benefits has never been seriously questioned. Programs for veterans--even those who did not serve in wartime and who became disabled as civilians--have always been kept totally separate from "civilian" programs and have had better benefits and less strict eligibility requirements than comparable programs such as SSDI or SSI.<sup>45</sup> Our analysis of Congressional action on disability legislation shows that, virtually without exception, bills concerning disabled veterans are referred to military-related committees in Congress, while comparable civilian bills go to welfare-related committees. Similarly, it is rare for representatives of public welfare or business groups to appear at hearings on civilian bills.

Debate over all veterans' legislation, whether or not it directly affects disabled veterans, generally centers on one issue: cost. Veterans' legislation is generally proposed by the Veterans' Administration (VA), and consists of moderate changes in benefits. It is then challenged by veterans' groups who want to increase the benefits beyond what has been proposed. Congress, as holder of the purse strings, then mediates. The most successful argument based on costs was made with respect to the Economy Act of 1933 (P.L. 73-2), which appears to have been the only bill affecting veterans in which fiscal conservatives took a strong interest. Because of the Depression, the VA proposed various cutbacks in benefits, such as not paying World War I disability allowances for injuries contracted between 1918, when the armistice occurred, and 1921, when hostilities formally ceased. Representatives of the U.S. Chamber of Commerce, the National Committee for Economy in Government (organized by the National Association of Manufacturers), and other business groups argued not only for much greater cutbacks but for a transfer of responsibility to the states through reliance on civilian programs as well, especially for disabilities that were not service-connected. The American Medical Association and American Hospital Association supported this position because of their dislike of VA hospitals. The VA proposals were essentially adopted, however, and subsequent legislation has generally adopted a stand somewhere between the VA and veterans' positions, except for wartime legislation--the Barden-La Follette Act of 1943--in which the veterans' proposals were adopted. Business groups rarely testify on proposed legislation.

The veterans' arguments are typically made by disabled-veterans' groups and the major all-veteran organizations. These groups insist that the country should not turn its back on those who have served it, especially if that service was in wartime. For example, during hearings on 1941 legislation liberalizing eligibility for disability compensation (P.L. 77-359), a major argument was that the security and morale of the fighting soldier would be increased. In peacetime, spokesmen try to evoke the wartime atmosphere:

don't you believe as I do that whether it is human nature or not, while the shooting war is on there isn't anything too good for the man who wears the uniform, but the minute the war is over it is an entirely different story? . . . It seems to me a far drop from only a few short months and years ago when we passed the GI bill by a unanimous vote of the House, while today we are having difficulty in getting legislation on the floor of the House that is just and right and proper.<sup>47</sup>

Veterans also have fought to keep their unique status vis-à-vis civilians. For example, one of the major arguments against the 1933 proposals was that it would not be proper for veterans to accept welfare or to become wards of the state. Similarly, when a means test was proposed for disability allowances, it was attacked as a "pauper's affidavit."<sup>48</sup>

Although the veterans' groups have, on most bills, presented a unified front, this does not mean that there is no divergence of interest among them. On occasion, factions will form, based on when the veterans served or on type of disability suffered. In the 1941 hearings, one issue was whether wartime rates of disability compensation should be paid to veterans who fought under conditions simulating war, i.e., pre-Pearl Harbor.<sup>49</sup> Veterans with peacetime service pushed for a uniform

rate of compensation irrespective of hostilities. In the 1946 hearings on a bill to provide automobiles to disabled veterans, a major issue was whether a car should be seen as akin to a prosthetic device and thus only be provided to recent (WW II) leg amputees, who had obvious mobility problems, or whether it should be seen as a form of compensation and thus be provided to all. The American Legion and the Veterans of Foreign Wars argued that all disabled veterans, not just those from World War II, be included. The Regular Veterans Association requested that no distinction be made on the basis of war or peacetime service. The Blinded Veterans argued for the blind, AMVETS argued for arm amputees, and the Paralyzed Veterans Association of America argued for quadriplegics.<sup>50</sup>

#### Legislative History

Since there is no piece of veteran's legislation that is singly more important than the others, we will briefly discuss the most recent major piece, the Vietnam Era Veteran's Readjustment Assistance Act of 1974 (P.L. 93-508). The Act, which increased G.I. educational benefits by 23% and on-the-job training funds and vocational aid for disabled vets by 18%, originated in a proposal by President Nixon to increase educational benefits by 8%. The House passed a bill with a 14% increase by a 382-0 vote, but the focal point of controversy was the Senate, where a much more liberal bill was developed.

The main defense of the President's position was offered by a representative of the Veterans' Administration, who argued that benefits

had already increased 35% in the previous four years, and hence an 8% increase was sufficient. The VA emphasized that Congress had never intended that federal benefits constitute the sole support of a veteran and that to do so now would be prohibitively expensive. Apparently one concern of the Nixon Administration was that too great a percentage of benefits was going to recipients who qualified for disability pensions because of disabilities unconnected with military service and that the program was becoming more of a welfare program rather than one of compensation.

Representatives of veterans' organizations countered by heavily emphasizing both the lack of parity between benefits awarded Vietnam veterans compared to those benefits awarded Veterans of World War II and the investment value of educational and rehabilitation programs. The cost of the proposals was downplayed: "The veterans did not ask was it inflationary when we went to fight the goddamn war; we simply served this country. . . it is time this country started serving us."

In part because they combine an emphasis on militarism with social welfare concerns, veterans programs make for strange bedfellows in Congress. Leading proponents of the Readjustment Act included liberal Senators Mondale and McGovern on the one hand and conservative Senators Dole and Thurmond on the other. This bill, like most veterans bills, was passed by overwhelming margins. The Senate version, with its higher benefits, was passed by a vote of 91-0, and the first Conference committee, in violation of Congressional rules, increased the benefits even further. The bill as finally approved was close to the Senate's version and was

vetoed by President Ford, who considered it too inflationary. The veto was overridden by votes of 394-10 in the House and 90-1 in the Senate; of the ten House members supporting the President's veto, only one was not a lame duck.<sup>51</sup>

### Discussion

In presenting the legislative history of these four major disability programs, we have sought to show the extent to which the programs have developed independently of one another. There is no indication that either Congress or the major interest groups involved saw them as a package or tried to build a coherent disability policy around them. Instead, each of the four major programs examined was seen as part of a different policy: Workers' Compensation was part of a labor-management conflict and was left to the states to resolve, although not without federal encouragement; SSDI was seen as part of the benefits to which one was entitled as a working member of society and was part of a labor program; SSI was part of a broader dispute as to which groups of nonworking indigents were worthy of aid, and who would assume the growing burden of welfare costs associated with aid; and veterans' programs have been treated largely as a military, rather than a social welfare, expense. Our analysis shows in addition that the predominant approach to disability has not been on the basis of type of disability (the main exception is probably for the blind, which are not a major expense) but rather on the basis of origin of the disability--e.g., if someone is "at fault," they should compensate--or on

worthiness of the disabled person--e.g., their moral worth or military record. In addition, it indicates that what seems like a high aggregate cost for "disability" programs is only in small part a welfare expenditure; the remainder of the expense reflects the operation of a (supposedly) self-sustaining social insurance fund and compensation for damages or for services performed.

Despite the independent development of these programs, they have a major commonality. All of them, and in fact all major effects before the seventies, focus on the supply rather than the demand side of the labor market. Programs have been directed towards the disabled person who cannot work, attempts being made either to make that person "more employable" or to give him or her a stipend. Even vocational rehabilitation, the only "big money" program not discussed above, is of this nature. From its inception in 1920 (P.L. 66-236), vocational rehabilitation has been seen as a way of saving money and increasing industrial output, rather than as a method of reintegrating disabled people into society. The original Act was vigorously backed by business groups such as the National Association of Manufacturers; its first major expansion in 1943 (P.L. 78-113) was the result of the need to enhance the war effort; its second major expansion in 1954 (P.L. 83-565) was part of President Eisenhower's efforts to increase the country's industrial productivity; and its third major expansion in 1965 (P.L. 89-333) was part of the War on Poverty's program of retraining unskilled labor.<sup>52</sup> The problem with vocational rehabilitation is not in what it does do, but in what it does not do. It takes the job structure as given and

tries to fit disabled people into it. But the majority of disabled people can't be made to fit.<sup>53</sup>

Programs focusing on labor supply will always be a major part of any comprehensive approach to disability. But these efforts alone tend to segregate disabled people from society rather than integrate them into it. The alternative, or more properly the supplement, to these programs is a focus on the demand side of the market, making people more employable and more a part of general social life by changing the social organization of work and of other aspects of everyday life, through removal of architectural barriers, nondiscrimination and affirmative action programs, mainstreaming in the schools, etc. Until very recently, there has been almost no concern with these possibilities.<sup>54</sup> Two major pieces of legislation that may signal a reversal are The Rehabilitation Act of 1973 (P.L. 93-112) and the Education for All Handicapped Children Act of 1975 (P.L. 94-142).

The Rehabilitation Act of 1973 is a general set of amendments to the Vocational Rehabilitation Act of 1920. Tucked within it are three sections, 501, 503, and 504 which mandate nondiscrimination and affirmative action by federal contractors and by the federal government itself. These sections were the subject of virtually no testimony or debate, and the department of Health, Education, and Welfare (HEW) issued the necessary supporting regulations for them only after unprecedented public demonstrations by handicapped people in 1977.<sup>55</sup> While some contractors have gone to great lengths to comply with the provisions of the Act and the HEW Regulations, it is not clear at this time how hard either HEW or the courts are willing to push these policies.<sup>56</sup>



The Education for All Handicapped Children Act seeks to guarantee a free public education to all handicapped children, with handicapped and nonhandicapped youth being educated together to the maximum extent appropriate.<sup>57</sup> The main problem with the implementation of the Act is that of funding. The federal government is committed to paying up to 75% of the excess cost for educating handicapped children, but Congress, which passed the bill by overwhelming margins, has not appropriated sufficient funds to implement it.

In all, over \$30 billion was spent yearly in the late 1970's on the five "labor supply" programs outlined above. While precise dollar amounts spent under the Rehabilitation Act of 1973 and the Education for All Handicapped Children Act are impossible to obtain, there is no question that these totals would show an enormous disparity between the supply and demand approaches to the problems of disabled persons. Perhaps one consequence of the trend towards looking at disability policy as a coherent whole rather than as a myriad of independent policies will be a movement towards redress of this imbalance.

## NOTES

<sup>1</sup>Monroe Berkowitz, Jeffrey Rubin and Jack Worrall, "An Evaluation of the Structure and Functions of Disability Programs, Year I Summary Report," (New Brunswick, New Jersey: Disability and Health Economics Research, Bureau of Economic Research, Rutgers University, June 1975): 12.

<sup>2</sup>Our categorization is influenced by the work of Berkowitz et al. However, we differ with those writers in their classification of some programs as disability related. They include virtually all Medicare, Medicaid, and private health and hospitalization insurance costs as disability expenses (making up 50% of an \$83 billion estimated total cost for disability programs in 1973), because these costs are for "non-routine" medical services. We do not see these programs as disability oriented in the sense that most lay people or policymakers would use the term.

<sup>3</sup>George Rejda, Social Insurance and Economic Security (Englewood Cliffs, New Jersey: Prentice-Hall, 1976), pp. 291-292.

<sup>4</sup>Services are discussed in Monroe Berkowitz and John F. Burton, "Income Maintenance Objective in Workmen's Compensation," Industrial and Labor Relations Review 24 (October 1970): 14-31; Abner Brodie, "The Adequacy of Workmen's Compensation as Social Insurance: A Review of Developments and Proposals," Wisconsin Law Review 57 (January 1963): 57-91; John F. Burton and Monroe Berkowitz, "Objectives other than income maintenance for workmen's compensation," Journal of Risk and Insurance 38 (September 1971): 343-355; Arthur Reede, Adequacy of Workmen's Compensation (Cambridge, Massachusetts: Harvard University Press, 1947). At least three-fourths of all states are

now in full or substantial compliance with more than half of the nineteen essential recommendations for reform outlined by the National Commission on State Workmen's Compensation Laws. See National Commission on State Workmen's Compensation Laws, A Compendium on Workmen's Compensation (Washington, D.C.: Government Printing Office, 1972) and American Mutual Insurance Alliance, "Workmen's Compensation: Update 1975," *Journal of American Insurance* (Winter 1974-75): 23-27.

<sup>5</sup>Philip Booth, Social Security in America (Ann Arbor, Michigan: Institute of Labor and Industrial Relations, 1973), p. 109; Rejda, pp. 296-298.

<sup>6</sup>Social Security Bulletin 42 (April 1979): 44. Most of the federal benefits were paid under the Federal Coal Mine Health and Safety Act of 1969, in compensation for pneumoconiosis (black lung disease); benefits under this program totaled about \$1 billion in 1978. In the most glaring omission of the state plans, only four of twenty-five coal mining states provided for benefits for miners, thus providing the impetus for a federally mandated, substantially mine-financed program. See Monroe Berkowitz, William G. Johnson, and Edward H. Murphy, Public Policy Toward Disability (New York: Praeger 1976), p. 29; Ralph Nader, "They're Still Breathing," The New Republic 158 (February 3, 1968): 15; Science News 96 (March 22, 1969): 278-279, and December 27, 1969): 592-593.

<sup>7</sup>John G. Turnbull, C. Arthur Williams Jr. and Earl Cheit, Economics and Social Security (New York: Ronald Press, 1973), p. 307; Herman M. Somers and Anne Ramsay Somers, Workmen's Compensation (New York: Wiley, 1954), p. 9.

<sup>8</sup>In addition to the impediments caused by the fellow servant rule, recovery was also made difficult by the fact that many industrial accidents arise from

general working conditions and are not strictly attributable to the negligence of a particular party. See Lawrence Friedman and Jack Ladinsky, "Social Change and the Law of Industrial Accidents," Columbia Law Review 67 (1967): 52-53, 55, 59.

<sup>9</sup>James Weinstein, "Big Business and the Origins of Workmen's Compensation," Labor History 8 (Spring 1967): 158.

<sup>10</sup>Brodie, p. 58; Walter F. Dodd, Administration of Workmen's Compensation (New York: Commonwealth Fund, 1936), pp. 8-9.

<sup>11</sup>Joseph L. Castrovinci, "Prelude to Welfare Capitalism: The Role of Business in the Enactment of Workmen's Compensation Legislation in Illinois 1905-12," Social Service Review 50 (March 1976): 85.

<sup>12</sup>See, e.g., discussions in Castrovinci, pp. 80-102; Nuala McGann Drescher, "The Workmen's Compensation and Pension Proposal in the Brewing Industry, 1910-1912: A Case Study in Conflicting Self-Interest," Industrial and Labor Relations Review 24 (October 1970): 32-46; Friedman and Ladinsky, pp. 65-72; Weinstein, pp. 156-174. For International Harvester and U.S. Steel, see Weinstein, pp. 160-161.

<sup>13</sup>National Association of Manufacturers publication, quoted by Castrovinci, p. 88.

<sup>14</sup>Castrovinci, p. 88, quoting Illinois Manufacturers Association Annual Reports.

<sup>15</sup>Weinstein, pp. 162-163.

<sup>16</sup>Drescher, p. 34.

<sup>17</sup>For information about these episodes see, respectively, Weinstein, p. 159; Drescher, p. 42; Castrovinci, pp. 84, 96-99.

<sup>18</sup>Somers and Somers, p. 21.

<sup>19</sup>See, e.g., discussion in H. E. Downey, Workmen's Compensation (New York: Macmillan Company, 1924), p. 45.

<sup>20</sup>Dodd, pp. 19-25; Charles I. Schottland, The Social Security Program in the United States, 2nd ed. (New York: Appleton-Century-Crofts, 1970), p. 127; Rejda, p. 296.

<sup>21</sup>U.S. Congress, House of Representatives, Subcommittee on Social Security of the Committee on Ways and Means, Social Security Benefits (OASDI)--Existing Law and Proposals in the Ninety-Fifth Congress (Washington, D.C.: 1977), pp. 16-22.

<sup>22</sup>Social Security Bulletin 42 (April 1979): 49.

<sup>23</sup>"Disability" here refers to that which is not related to occupational injury. As the previous section has shown, in that case the issue is one of compensation.

<sup>24</sup>Franklin D. Roosevelt is quoted in Edwin Witte, The Development of the Social Security Act (Madison: University of Wisconsin Press, 1963), p. 6. For the work of the Committee, see Witte, pp. 111-120, 143-147, 189 (quote); Arthur J. Altmeyer, The Formative Years of Social Security (Madison: University of Wisconsin Press, 1966), pp. 7-13. On the national health insurance proposal, see Odin W. Anderson, "Compulsory Medical Insurance, 1910-1950," in Medicare: Policy and Politics, ed. Eugene Feingold (San Francisco: Chandler Publishing Co., 1966), p. 91.

<sup>25</sup>For example, a 1948 proposal by a Senate Advisory Council on Social Security recommended eligibility requirements of forty quarters (10 years) coverage under Social Security, plus one quarter of coverage for every two

quarters in one's working lifetime, plus employment in at least half the quarters within the previous three years, including half of the year immediately preceding the disability. See Wilbur J. Cohen, Retirement Policies under Social Security (Berkeley: University of California Press, 1957), p. 49.

<sup>26</sup>See, e.g., U.S. Congress, Senate, Committee on Finance, Social Security Amendments of 1955, 84th Cong., 2nd Sess. (Washington, D.C.: 1955), pp. 354-358, 364, 389, 400.

<sup>27</sup>Pollock also argues that the successful experience of disability insurance under the Railroad Retirement Act undercut arguments that a national program was not viable. See Jerome Pollock, "Disability Insurance under Social Security," in Occupational Disability and Public Policy, eds. Earl F. Cheit and Margaret S. Gordon (New York: John Wiley and Sons, 1963), pp. 168-170.

<sup>28</sup>Ibid., p. 159.

<sup>29</sup>Cohen, p. 50.

<sup>30</sup>The quotations come, respectively, from Social Security Amendments of 1955, p. 418, and Senate testimony, quoted in Cohen, p. 52. Marion B. Folsom, who had chaired a U.S. Chamber of Commerce Committee supporting disability insurance, later became a major opponent, both as a member of a Senate Advisory Council and as President Eisenhower's Secretary of Health, Education and Welfare (Cohen, p. 47).

<sup>31</sup>See, e.g., discussion in Theodore R. Marmor, The Politics of Medicare (Chicago: Aldine Publishing Co., 1970), p. 30.

<sup>32</sup>Except where otherwise cited, the presentation in this section on legislative history is based on Cohen, pp. 43-68; Pollock, pp. 158-187.

<sup>33</sup>During this period the AMA was engaged in an intensive and costly campaign against national legislation on health care. See Anderson, p. 98. For the years 1949-1950 the AMA reported the highest expenditures of any organization registered under the federal lobbying law. See comment, "AMA: Power, Purpose and Politics in Organized Medicine," Yale Law Journal 63 (May 1954): 938-1029.

<sup>34</sup>Congressional Record, Vol. 1, Part 8: 10798-10799.

<sup>35</sup>Berkowitz, et al., Policy toward Disability, p. 48, 50.

<sup>36</sup>The criteria for determination of disability are the same as under SSDI; the difference between the two programs is that SSI covers persons who do not have the requisite number of quarters of Social Security coverage. On the provisions of SSI, see Robert Ball, Social Security Today and Tomorrow (New York: Columbia University Press, 1978), pp. 350-351. Estimates of SSI totals are based upon Tables M-22 and M-24, Social Security Bulletin 42 (April 1979).

<sup>37</sup>Irwin Garfinkel, with the assistance of Felicity Skidmore, "Income Support Policy: Where We've Come From and Where We Should be Going," Madison, Wisconsin: Institute for Research on Poverty, Discussion Paper 490-78.

<sup>38</sup>Joel F. Handler and Ellen Jane Hollingsworth, The "Deserving Poor": A Study of Welfare Administration (Chicago: Markham Publishing Co., 1971), pp. 15-16; Jacobus ten Broek, "California's Dual System of Family Law: Its Origin, Development and Present Status," Stanford Law Review 16 (1964): 257-317, 900-981; 17 (1965): 614-682.

<sup>39</sup>Handler and Hollingsworth, pp. 17-18. See also Joe R. Feagin, Subordinating the Poor: Welfare and American Beliefs (Englewood Cliffs, New Jersey: Prentice-Hall, 1975), pp. 54-55; Joel F. Handler, Reforming the Poor: Welfare Policy, Federalism and Morality (New York: Basic Books, 1972), pp. 6-8.

<sup>40</sup>Raymond A. Mohl, "Three Centuries of American Public Welfare, 1600-1932," Current History 65 (July 1973): 9.

<sup>41</sup>Handler, p. 15.

<sup>42</sup>The following discussion of FAP is based upon Vincent J. Burke and Vee Burke, Nixon's Good Deed: Welfare Reform (New York: Columbia University Press, 1974), esp. pp. 130-132, 134-136; 151-187; Handler, pp. 73-80); Daniel Patrick Moynihan, The Politics of a Guaranteed Income (New York: Random House, 1973) M. Kenneth Bowler The Nixon Guaranteed Income Proposal (Cambridge, Massachusetts: Ballinger Publishing Co., 1974), pp. 123-163. The major changes in the exercise of discretion that FAP would have brought are discussed in Handler, pp. 84-93. Burke and Burke suggest that various liberal groups, such as the AFL-CIO, National Welfare Rights Organization, and social work representatives opposed FAP for organizational rather than political reasons.

<sup>43</sup>U.S. Congress, Senate, Committee on Finance, Social Security Amendments of 1971: Hearings on H. R. 1, Parts 1-6, 92nd Cong., 1st Sess. (Washington, D.C.: GPO, 1971), p. 270.

<sup>44</sup>Burke and Burke, p. 93. Besides consolidating and federalizing the programs of aid to the blind, disabled, and aged, SSI also reaffirms the "deserving" status of these groups by moving administration of the programs to the Social Security Administration and by the title and initials of the program, which connote the concept of social security rather than that of aid to the needy.



<sup>45</sup>U.S. Congress, Subcommittee on Fiscal Policy of the Joint Economic Council, "Studies in Public Welfare, Paper No. 2," Handbook of Public Income Transfer Programs, 92nd Cong., 2nd Sess. (Washington, D.C.: GPO, 1972), pp. 83-85, 156-160, 195-197. For benefit totals see Administration of Veterans Affairs, Veterans Administration Annual Report (Washington, D.C.: GPO, 1977), pp. 337, 339. Data on medical services and administrative costs have been adjusted to reflect the VA's estimate that 38% of these funds are expenditures related to disability.

<sup>46</sup>One example of this is veteran opposition to the Barden-La Follette Act of 1943, P.L. 78-113, a major vocational rehabilitation act that originally would have covered both veterans and civilians, but was amended to exclude veterans after heavy opposition from veterans representatives.

This does not mean, of course, that veterans programs always are successful in Congress. The 93rd Congress, for example, considered a bill providing for the treatment and rehabilitation of servicement and veterans who were addicted to alcohol or other drugs, a serious problem among Vietnam veterans. Differing versions of the bill passed the House and Senate, but it was opposed by President Nixon and it died in conference. See, e.g., U.S. Congress, Senate, Committee on Veterans Affairs, Testimony Submitted Concerning the Veterans Health Care Expansion Act of 1973 and S. 284, the Veterans Drug and Alcohol Treatment and Rehabilitation Act of 1973, 93rd Cong., 1st Sess. (Washington, D.C.: GPO, 1973).

<sup>47</sup>U.S. Congress, House of Representatives, Committee on Veterans Affairs, Providing Automobiles or Other Conveyances for Certain Disabled Veterans, Hearings on H. R. 289, 678, 1039, 1449, 2941, 2990, 80th Cong., 1st Sess.

(Washington, D.C.: GPO, 1947), p. 41. For the 1941 hearings, see U.S. Congress, House of Representatives, Committee on Invalid Pensions, Hearings on H. R. 6009: Pensions for Disabled Veterans and Their Dependents, 77th Cong., 1st Sess. (Washington, D.C.: GPO, 1941), p. 3.

<sup>48</sup>U.S. Congress, Joint Congressional Committee on Veterans' Affairs, Hearings on Veterans' Affairs, 72nd Cong., 2nd Sess. (Washington, D.C.: GPO, 1932; 1933), Vols. I-IV, p. 545.

<sup>49</sup>U.S. Congress, Hearings on H. R. 6009, p. 11.

<sup>50</sup>See U.S. Congress, Providing Automobiles for Certain Disabled Veterans, pp. 43-46, 59, 70. The disabled/non-disabled tension also surfaced in the hearings on the 1944 GI Bill of Rights. The Disabled American Veterans (DAV) and the Military Order of the Purple Heart objected to the proposal to provide an education for all veterans. They pointed out that the public believes all the money appropriated to the VA goes to disabled veterans; therefore, embarking on this costly program would strain the public's generosity towards disabled veterans. They warned that too many able-bodied veterans with nothing better to do would "freeload" with the educational benefits. In addition, the DAV objected to charging the Employment Service with the added responsibility of finding able-bodied veterans jobs as well as disabled veterans, the result being that the latter would suffer. See U.S. Congress, Senate, Subcommittee of the Committee on Finance, Veterans' Omnibus Bill: Hearings on S. 1617, 78th Cong., 2nd Sess. (Washington, D.C.: GPO, 1944), pp. 48, 76, 86, 154, 204.

<sup>51</sup>For the discussions of this act and the political maneuvering that accompanied it, see U.S. Congress, Senate, Committee on Veterans' Affairs,

Hearings on S. 2784 and Related Bills: Vietnam Era Veterans' Readjustment Assistance Act of 1974, 93rd Cong., 2nd Sess. (Washington, D.C.: GPO, 1974), pp. 385, 439 (quote), 582, 584, 864; New York Times (December 12, 1974), p. 1; "Veto of Veterans' Benefits Bill Overridden," Congressional Quarterly Almanac 30 (1974): 593.

<sup>52</sup>U.S. Congress, House and Senate Committees on Education and Labor, Vocational Rehabilitation of Persons Disabled in Industry: Joint Hearings on S. 4992, 65th Cong., 2nd Sess. (Washington, D.C.: GPO, 1918), p. 39; Henry Redkey, "Rehabilitating the War Injured," Survey Midmonthly 69 (May 1943): 131-133; Edward Berkowitz, "Rehabilitation: The Federal Government's Response to Disability 1935-1954," (Ph.D. Dissertation, Northwestern University, 1976), p. 273; Mary Switzer, "Legislative Contributions," in Vocational Rehabilitation of the Disabled, eds. David Malikin and Herbert Rusalem (New York: New York University Press, 1969), p. 51.

<sup>53</sup>One consequence of this is that for many, vocational rehabilitation means employment in sheltered workshops, which have been attacked as segregative, custodial, and paternalistic by some representatives of the disabled. See, e.g., testimony of John Nagel of the National Federation of the Blind, U.S. Congress, Senate, Subcommittee on Health of the Committee on Labor and Public Welfare, To Amend the Vocational Rehabilitation Act: Hearings on S. 1525, 89th Cong., 1st Sess. (Washington, D.C.: GPO, 1965), pp. 145-146.

<sup>54</sup>There has also been little direct concern with the prevention of disability, especially in the workplace, as a solution to the problems of

disability. The Occupational Health and Safety Act of 1970 (OSHA), P.L. 91-596, may represent a significant change in this regard, although critics are skeptical. See, e.g., Joseph A. Page and Mary-Win O'Brien, Bitter Wages: Ralph Nader's Study Group Report on Disease and Injury on the Job (New York: Grossman Publishers, 1973).

<sup>55</sup>See, e.g., San Francisco Examiner (May 1, 1977), p. 1; New York Times (February 13, 1977), p. 8; (April 7, 1977), p. 18; (April 11, 1977), p. 12; (April 26, 1977), p. 18.

<sup>56</sup>For example, extensive efforts have been made by the public schools in Madison, Wisconsin. But this school system is recognized as one of the most progressive in the country in its services to disabled children. See "A Helping Hand," Wall Street Journal (June 13, 1979), p. 1.

A recent Supreme Court decision held that Section 504 does not prohibit a college from excluding a person with severe hearing loss from a nursing program. See Davis V. Southeastern Community College (47-LW-4689); New York Times (June 12, 1979), p. 1. Recent amendments to Sections 501 and 504 (Rehabilitation, Comprehensive Services and Developmental Disabilities Amendments of 1978, P.L. 95-602) suggest a congressional intent to strengthen these sections, but the impact of these changes is still an open question. See "Legislation," Amicus 3 (November-December 1978): 8-14.

<sup>57</sup>Leroy V. Goodman, "A Bill of Rights for the Handicapped," American Education 12 (July 1976): 6-8. This legislation was in part a response to a series of state court decisions mandating mainstreaming of handicapped children in the public schools. See 348 F. Supp. 866 Mills v. Board of Education of the District of Columbia (1972) and 334 F. Supp. 1257 Pennsylvania Association for Retarded Children v. Commissioner of Pennsylvania (1971).