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**WORKERS COMPENSATION, FEDERALISM,
AND THE HEAVY HAND OF HISTORY**

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ABSTRACT

The central question of this paper is why workers' compensation in the U.S. remains the province of state governments when almost every other social program involves the national government in some significant way. To help solve this puzzle, I compare three prominent episodes in which national involvement was considered but rejected: 1) during passage of the Social Security Act in 1934-35; 2) leading up to adoption of disability insurance in 1956; and 3) in the early 1970s, when Congress passed the Occupational Safety and Health Act and created a commission to investigate state workers' compensation laws. As a contrasting fourth case, I describe creation of the Black Lung program in 1969, in which the national government did extend aid on a very limited basis. My research shows that workers' compensation was not left at the state level because it was functioning well or because policy makers wanted to encourage flexibility and innovation. Instead, the program became entrenched politically and riddled with problems. National officials expected that comprehensive reform to workers' compensation would entail too large a battle and endanger other policy objectives. In effect, workers' compensation laws in the states created a "preempted policy space," one that remained unusually resilient to national involvement.

“Workers’ Compensation, Federalism, and the Heavy Hand of History”*

Workers’ compensation¹ was the first social insurance program to gain widespread acceptance in the United States, and as such became one of the foundations of the modern American welfare state. Most states passed workers’ compensation laws between 1911 and 1920, and all but two states did so by 1935. The other major social policy innovation of this era were mothers’ pensions laws, which were targeted at the poor children of single mothers. These laws also spread rapidly in the 1910s and were on the books in virtually every state by 1935. The major histories of the American welfare state (Katz 1986; Lubove 1986; Weir, Orloff, and Skocpol 1988; Berkowitz 1991; Berkowitz and McQuaid 1992; Skocpol 1992, 1995; Noble 1997; Trattner 1999) always acknowledge the importance of workers’ compensation and mothers’ pensions in the early 20th century, and some authors (Nelson 1990) go further by claiming that these two programs established the major fault lines of social provision – between social insurance and public assistance, between employed male workers and unpaid mothers – for the rest of the century.

And then, at some point in the 1930s, workers’ compensation just disappears from the literature. Gone. Starting with the Social Security Act of 1935, the major histories shift their focus to the national level. Mothers’ pensions have been transformed by the Social Security Act into Aid with Dependent Children, later Aid to Families with Dependent Children (AFDC). Faltering state-level efforts to aid the poor blind and poor elderly have been given financial help from the national government and been federalized. New forms of social insurance for the unemployed and the elderly have been introduced. The history of the American welfare state is now the history of programs created in 1935 and later expanded or cut back, with particular attention to Social Security and AFDC. It is also the history of programs created after 1935 that were extensions of Social Security (disability insurance, Medicare) or were linked to AFDC (Medicaid, Food Stamps). The history of workers’ compensation fits in neither category, for it was omitted from the Social Security Act and has remained the province of state governments ever since. Read any of the literature cited above and you will not find a single mention of workers’ compensation after the New Deal.

Of course, workers’ compensation did not end in the 1930s. The program continues to this day in providing income support and medical services to injured workers and their families. Workers’ compensation is currently one of the largest components of the American welfare state. Total spending topped \$43 billion in 1995, which was more than Food Stamps, Supplemental Security Income, public housing, the Earned Income Tax Credit, or AFDC. Over 110 million workers were covered by workers’ compensation laws that same year, roughly the same number covered by unemployment insurance (U.S. Census Bureau 1999). Although it is truly odd that such a large and widely available

program dropped off the scholarly map, its disappearance may be related to the general neglect of state-level social policy after the New Deal.²

This paper helps to fill a void in the welfare state literature by exploring the development of workers' compensation across the entire 20th century. In particular, I examine why workers' compensation has remained the province of state governments when almost every other social program involves the national government in some significant way. Workers' compensation laws "are unlike other social insurance programs in the United States – such as Social Security, Medicare, and unemployment insurance – in that they have no federal involvement in financing, administration, or mandatory minimum coverage standards" (Mont, Burton, Reno 1999: 3).³ From a cross-national perspective, workers' compensation in the U.S. is also unusual. Virtually every nation in the world with workers' compensation, including federal systems like Germany and India, has a single program operating within its borders.⁴

Operating a single national program makes good sense. If workers' compensation were a developmental program, like education or sanitation, one could imagine why the states might be considered the proper level of government to take control. But workers' compensation is clearly a redistributive program, transferring income to injured workers and their families. In theory, it belongs at the national level so that states do not compete to have the least generous program, thereby reducing coverage and benefits for a vulnerable group of citizens (Peterson 1995; Graetz and Mashaw 1999).

Conceivably, policy makers in the U.S. may have seen some technical advantage in state-level control, such as the need for flexibility and innovation. Faced with sizable variation in local conditions, or great uncertainty about the best remedies, it may have been thought best to let states serve as policy laboratories (Banting 1987; Osborne 1988). Such arguments have been used in the past to justify placement of redistributive programs like job training at the state and local levels. Though invoked at times, this line of reasoning did not have a major influence on the development of workers' compensation. National officials were more likely to view state-level variation as a weakness of workers' compensation programs than as a strength.

The more plausible explanation is explicitly political and hinges on the considerable power of federalism to influence policy debates in the United States. By the time policy makers gave serious thought to involvement by the national government, workers' compensation laws were so firmly entrenched in the states that major change was politically costly. States' worker compensation laws created a textbook example of a "preempted policy space":

For a multitiered system, the enactment of policies at a decentralized level may constrain the options available to authorities in the central tier. Once adopted, policies go through a gradual process of institutionalization. Established programs

generated sunk costs and networks of political interests that diminish the prospects for radical reform. The possibility of policy preemption suggests that an important source of variation among multitiered systems arises from the timing of interventions by constituent members and central authorities (Pierson and Leibfried 1995: 22).

Though written with European integration in mind, these words apply equally to federal systems like the United States. Policy makers in the U.S. knew that state-level control of workers' compensation was deeply flawed but chose not to deal with those flaws directly. Proposing any fundamental change to workers' compensation might jeopardize other valued policy objectives, such as the creation of disability insurance or new national standards for workplace safety. Expecting a bitter fight, national officials chose to leave workers' compensation alone.

In short, workers' compensation nicely illustrates several propositions about path dependence in policy making (Pierson 2000). Did timing and sequence matter? Absolutely. The early introduction and rapid diffusion of workers' compensation laws in the early 20th century were significant, particularly when combined with the slow spread or unavailability of many other forms of social protection. Did seemingly small decisions have large consequences? I argue that one specific feature of early state laws, the reliance on public or private entities to underwrite insurance policies for employers, was indeed portentous. Were policy choices made in the past increasingly hard to reverse? Yes. Did the resulting policy fail to address the underlying problem as well as some other alternative? Almost assuredly yes.

The core of my argument is not new. Years ago the historian Edward Berkowitz, one of the few to study the politics of workers' compensation in any detail, summarized the program's history concisely and, I think, accurately:

The fact that lawyers, insurance companies, trade unions, and state industrial commissions all acquired an interest in workers' compensation has made reform of the program exceedingly difficult the program's basic structure, a product of the Progressive Era, remains unchanged Workers' compensation, then, must be explained in terms of the historical circumstances surrounding its origins. Modern policy problems can be traced directly from the program's origins in the Progressive Era (Berkowitz 1987: 15-16).

Missing from Berkowitz's work, however, is a sustained and compelling defense of this judgment. He is far more interested in disability insurance and vocational rehabilitation than in workers' compensation. My aim in this paper is essentially to prove that Berkowitz was right.

As evidence, I compare four prominent episodes in the development of workers' compensation from the late 19th century to the late 20th century. National involvement was considered but rejected in three of these cases and extended on a very limited basis in the fourth. The first and arguably most important set of decisions occurred in 1934-35 in connection with the Social Security Act. At a time when policy makers were rethinking virtually every component of social policy, they essentially ignored workers' compensation, and I try to explain why. The second episode began in the late 1930s and culminated with the passage of disability insurance in 1956. Given the opportunity to create a single disability program or make major changes to workers' compensation, policy makers decided to create a separate program for nonoccupational injuries and leave states responsible for occupational injuries.

The third case in this chronology is the exception. In 1969, Congress passed and President Nixon signed the Coal Mine Safety and Health Act, part of which obligated the national government to pay workers suffering from black lung disease. This program currently pays out about \$450 million in benefits each year, a tiny fraction of overall spending on workers' compensation. I explain why policy makers felt that national involvement was appropriate, and how their remedy left workers' compensation intact.

Contrary to fears expressed at the time, the advent of the Black Lung program was not the beginning of the end of state-level control, as the fourth case demonstrates. Greater national involvement was considered but rejected early in the process of drafting the Occupational Safety and Health Act of 1970. All that did pass Congress was a commission to investigate state workers' compensation laws. The commission published a number of studies and issued numerous recommendations in the early 1970s. The end result was significant improvements to state laws, but again no additional involvement from Washington. This proved to be the last time during the 20th century that workers' compensation attracted much scrutiny at the national level.

As a practical matter, state-level control of workers' compensation has led to some truly bizarre variations in policy. For example, workers in small business (3-5 employees) are covered in 35 states but not in the rest. Someone who loses a hand because of a workplace accident in Connecticut, Iowa, or New Hampshire is entitled to over \$160,000 in compensation. If that same injured worker is unlucky enough to live in Alabama, Colorado, or Massachusetts, compensation is less than \$30,000. Workers who suffer permanent total disability in Iowa can receive weekly benefits equal to 200% of the state's average weekly wage. Similar workers in Indiana, Mississippi, New Jersey, and Wyoming, by contrast, can receive at most 66-75% of those states' average weekly wages. Burial expenses range from \$2000-\$10,000 across the states (AFL-CIO 2000).⁵ There is no conceivable moral or technical rationale for such disparate treatment of similarly situated individuals. The only plausible explanation is historical and political. About the only uniform features of the program are the inadequacy of benefits and the considerable amounts of money consumed by administrative costs (Graetz and Mashaw 1999: 82-87).

ORIGINS OF WORKERS COMPENSATION

To understand better why policy makers found it difficult to break free of state-level control, we need to know how and when workers' compensation laws were established. The passage of these laws in the early 20th century was part of a decades-long struggle to cope with the economic and social costs of industrial accidents (Weiss 1935; Dodd 1936; Somers and Somers 1954; Lubove 1986; Berkowitz 1987; Skocpol 1992; Fishback and Kantor 2000). During the 19th century, the problem of industrial accidents was handled by the courts, and prevailing legal doctrine was heavily biased in favor of employers. If the injured worker or a fellow worker were even slightly to blame, or if the injury could have been expected given the nature of the job, the injured worker could not recover damages in court. Seldom could workers overcome these defenses, so they bore the costs of industrial accidents. In some cases injured workers and their families became paupers who sought shelter in local poorhouses, thus shifting the burden to the larger community.

State legislatures began to restrict employers' defenses in the middle of the 19th century, starting with railroad work and mining, two of the most hazardous occupations. By 1910, most states had abolished or substantially modified at least one of the major legal defenses favoring employers, and some had moved to a system of contributory negligence in which injured workers who were partly at fault could still recover some damages. The move to limit employers' defenses was aided by some judges who interpreted the laws narrowly, claiming for instance that a foreman's contribution to an injury was irrelevant because he was not a fellow worker. As employers' defenses were reduced, they became more willing to purchase private accident insurance.

While these changes increased injured workers' odds of winning in court, they proved unsatisfactory. For the majority of injured workers and their families, compensation still varied between too little and nothing at all. Those who managed to win in court often had to wait years from the time of injury to the time of payment.⁶ There was also the problem of inequity: two workers injured in similar circumstances might be treated very differently depending on the quality of their legal representation and the specific judge or jury they drew. In Minnesota, court awards for loss of an eye ranged from \$290 to \$2,700 in the early 20th century; for loss of a foot, the range was \$50 to \$3,000 (Somers and Somers 1954: 25). In her study of Pittsburgh, Crystal Eastman found that out of 235 fatally injured workers who left behind at least a wife and perhaps children as well, about one-quarter received no compensation at all and another quarter of the families received less than \$100 (cited in Lubove 1986: 48). Nor were modifications of liability law sufficient to induce employers to make the workplace noticeably safer. "Industrial accident rates reached their all-time peak in the first decade of this [the twentieth] century. For example, in 1907 over 7,000 workers were killed in just two industries – railroading and bituminous coal mining" (Berkowitz and Burton 1987: 17).

Employers objected to the unpredictability of the court system, which every once in a while produced a large judgment against them. They worried, too, about the potential for fostering labor unrest at a time when unions were growing in influence. Elected officials were troubled by all of these flaws as well as the strain that the growing number of lawsuits placed on their court systems. Workers, employers, and public officials all viewed the legal system as wasteful: attorney fees and insurance company profits and overhead consumed a large fraction – often more than half – of the monies spent.

Shortly after the turn of the century, many state legislatures created special industrial accident commissions to analyze the status quo and recommend changes. In most instances, these commissions found so many flaws that they suggested an entirely new approach – industrial accident insurance, modeled after laws in Europe. The new system was based on the principle of liability without fault. Employers would pay not because they were negligent, but because accidents were inherent in an industrial society and therefore a cost of doing business. Injured workers and their families would now be guaranteed compensation. Although the benefits would be lower than the largest court awards, they would also be more predictable, more widespread, and paid more rapidly.

The first of these laws were overturned by the state courts. Maryland's 1902 law was declared unconstitutional in 1904, and Montana's 1909 law suffered a similar fate.⁷ The most famous case involved New York, which had passed workers' compensation in 1910. New York's highest court ruled unanimously in 1911 (Ives v. South Buffalo Railway Company) that the law, which applied to eight "especially dangerous" occupations, was unconstitutional.⁸ One problem was that the law compelled employers to participate, which was held to be a violation of the due process clause in the 14th Amendment.⁹ Another problem was that reliance on administrative agencies to handle the problems of injured workers deprived employers of a jury trial, a violation of state and national constitutions. The Ives case might have posed a greater threat to the spread of state laws if not quickly followed by a series of headline-grabbing disasters. One day after the court's decision, the Triangle Factory fire in New York City claimed the lives of 150 workers. During the next few weeks over 75 Pennsylvania miners died in a cave-in, and 150 convicts working in an Alabama coal mine were killed in an explosion (Dodd 1936: 30-31; Shor 1990: 73). The question for states was not whether to act, but how to act legally.

Subsequent to the Ives decision, states started to make participation in workers' compensation elective, while at the same time keeping benefits low and so restricting employers' legal defenses that most employers would "freely" elect to join the new system. As soon as participation was made elective, workers' compensation laws started to withstand judicial scrutiny and diffuse rapidly across the nation. Ten states passed such laws in 1911 and four more followed suit in 1912.¹⁰ Some of these early adopters were important industrial states (Massachusetts, New Jersey) and some were not (Arizona,

Kansas). A total of 32 states had workers' compensation laws by 1915, 42 by 1920. By 1935 only Arkansas and Mississippi had failed to adopt.¹¹

Even though the Supreme Court upheld the legality of compulsory laws in 1917, most states opted for an elective system.¹² At a practical level, this meant that employers in most states did not have to buy accident insurance. They simply had to demonstrate to the state industrial or accident commission that they possessed the financial resources to compensate accident victims, and in some states the standard of proof was fairly low. In effect, employers could self-insure. The other, more prevalent option was to purchase accident insurance from a private or public entity.

The struggle over the establishment of new public compensation funds was at least as contentious as over workers' compensation itself. Organized labor and left-wing politicians pushed for monopoly state funds, arguing that the reduction in operating expenses and lack of profit would free up monies to enhance coverage and benefits. They were strongly opposed by the insurance industry, which raised the twin specters of patronage politics and creeping socialism.¹³ Insurers claimed that the private sector would be better at ferreting out the "fraud, malingering, and simulation characteristic of [workers' compensation] claimants" (cited in Lubove 1986: 62). In most states, private insurers prevailed. But not everywhere. By the mid-1930s, eleven states had created public funds to compete with private insurers. A handful of states (7) operated monopolistic funds, and these same states tended to have compulsory rather than elective laws.¹⁴

Private insurance companies and self-insured employers thus dominated the market for workers' compensation from the beginning. Even where competitive state funds existed, insurance companies were advantaged because they could deny coverage to the worst risks, which by law state-operated funds had to cover; they could better serve companies operating in more than one state; and they could offer employers discounts on other types of insurance if purchased in combination with a workers' compensation policy. Private insurers paid about 50 percent of workers' compensation benefits in the late 1930s, and self-insured companies accounted for another 20 percent. The rest were paid by public funds (Libman 1942).

The decision to allow the private sector to play a large role in operating workers' compensation turned out to be one of those critical junctures, or branching points, that are characteristic of path dependence (Pierson 2000). The combination of elective coverage and a large role for private insurance meant that state compensation laws created a powerful set of stakeholders in addition to whatever state agencies were involved. Private insurers remained important for the rest of the 20th century. By the mid-1990s, six states had monopolistic state funds, 20 states had competitive state funds, and the rest were exclusively market-based. Private carriers paid out approximately 50 percent of all workers' compensation benefits in 1996, and self-insured companies paid out another 25

percent. These parameters are virtually identical to those of the late 1930s (Lencis 1998: 78-79; Mont, Burton, and Reno 1999).

State programs prior to the New Deal varied on other dimensions as well (Rubinow 1934: ch. 8; Reede 1947; Fishback and Kantor 1996). The scope varied from state to state depending on which industries and occupations were covered, and on how many small businesses were exempt. As a general rule, the more industrialized states covered a larger fraction of their work force. By 1930, 11 states and the District of Columbia had extended coverage to at least some occupational diseases; the rest did not. States valued loss of various body parts quite differently, much as they do today. Overall, compensation benefits were two to three times more generous in states like New York and North Dakota than in South Dakota or Virginia. Although Progressive era reformers were critical of these variations and pushed for uniform state laws, they failed. Graebner (1977) argues that some states, notably in the South, resisted uniformity because they wanted to compete for business investment based on the lower cost of their workers' compensation programs relative to programs in other states. Thus, while it is true that workers' compensation was the first social insurance program to gain widespread acceptance in the United States, it is also true that workers' compensation assumed a distinctly different form in every jurisdiction that adopted it.

WORKERS COMPENSATION AND THE SOCIAL SECURITY ACT

When Franklin Roosevelt became president in March 1933, the nation was in the midst of its worst-ever economic depression. The numbers do not tell the whole story, but they are instructive. Unemployment shot up from 3.2 to 24.9 percent between 1929 and 1932. Some five thousand banks failed. Gross national product plummeted from \$103 billion in 1929 to \$58 billion in 1932. Total farm income fell from \$6 billion in 1929, already a bad year, to \$2 billion in 1932. The index of exports dropped from 115 to 35. Over half a million families defaulted on their mortgages and lost their homes from 1930-32. In 1931 alone, 100,000 Americans applied for work in the Soviet Union (U.S. Department of Commerce 1975; Stein 1988; Kennedy 1999).

Roosevelt's first response was to extend immediate cash relief to millions of needy families and create public works programs for the unemployed. The Federal Emergency Relief Administration, Civilian Conservation Corps, and Public Works Administration were three of the many agencies created in 1933 to help citizens cope with hardship. The second wave of initiatives began in 1934 when Roosevelt created the Committee on Economic Security (CES). The committee's report, issued in January 1935, offered a blueprint for expanding significantly the national government's role in social welfare. After modifications by the President and Congress, many of these recommendations were incorporated in the Social Security Act that became law in August 1935.

In several sections of the Act, the national government created a series of financial incentives to help state governments care for the poor. This was accomplished through grants in the case of Aid to the Blind (AB), Old Age Assistance (OAA), and Aid to Dependent Children (ADC), and through a tax that could be partially offset if states created unemployment insurance. All of these programs were expected to be adopted quickly in the states and provide cash relief quickly. The American welfare state would be a truly federal endeavor, involving national and state governments. The one notable exception was old-age insurance (OAI), now called Social Security, which was created as a purely national program. The first retirement pensions would not be distributed until 1942, and represented a more long-term solution to the problem of inadequate retirement income.

Though omitted from the Act, workers' compensation was not excluded from the deliberations leading up to the Act. FDR's original executive order (no. 6757), issued in June 1934, gave the Committee on Economic Security wide latitude. Its overarching mission was to "study problems relating to the economic security of individuals." The Committee narrowed the focus in August 1934, arguing that other parts of the administration were already developing proposals to promote economic recovery and prevent a repeat of the Depression. Even so, its chosen scope was broad:

The field of study to which the committee should devote its major attention is that of the protection of the individual against dependency and distress. This includes *all* forms of social insurance (*accident insurance*, health insurance, invalidity insurance, unemployment insurance, retirement annuities, survivors' insurance, family endowment, and maternity benefits) and also problems of providing work (or opportunities for self employment) for the unemployed, and training them for jobs that are likely to become available. These several problems must be studied not only from the point of view of long time policy, but must be related to the present relief and unemployment situation (quoted in Witte 1962: 21; italics added).

At this point workers' compensation, also known as accident insurance, was apparently still under scrutiny. In practice, however, the CES was already taking steps that effectively relegated workers' compensation to the periphery. Why? Analysis of the secondary literature and of CES records held at the National Archives indicates no clear, simple answer. What follows, then, are several pieces of circumstantial evidence suggesting why workers' compensation was left out. The explanation is complicated and the outcome is overdetermined which, I think, is a fair representation of these events.

Determining what happened to workers' compensation is easier than explaining why. As is well known, the CES devoted most of its time in 1934 to questions of unemployment and old age security, and these sections of the Social Security Act were the major points of controversy in Congress in 1935. The choice of problems to address was understandable: existing work relief programs were of minimal help to the elderly; unemployment remained at record high levels from 1933 to 1934; the elderly and

unemployed were placing the most pressure on the Administration to do something; and FDR made it clear that helping the elderly and unemployed were his top priorities (Perkins 1962; Witte 1962; Altmeyer 1966). In the mid-1930s “work accidents, after all, were a far less pressing problem than the lack of work” (Berkowitz and McQuaid 1992: 107). Indeed, some of the problems with workers’ compensation, such as increased claims in the early 1930s, were attributed to increases in unemployment (Committee on Economic Security 1937: 14).¹⁵

The CES had little time to do more than this. The same executive order creating the CES also required the Committee to submit a report to the President by December 1, 1934. In effect, the CES had less than six months to survey, repair, and redesign the entire social safety net. With no time to waste and a relatively modest budget, CES officials had to make priorities. Unemployment and old age security topped the list of problems, and social insurance was the preferred remedy. Much of the Committee’s scarce resources therefore went to developing technically sound and politically feasible programs of old age and unemployment insurance.

The Committee did, however, find some time to address other social problems. One might think, given the clear bias towards creating truly federal programs linking national and state governments, that a program already well established in the states would have been an ideal target for national involvement. One might also think, given the backgrounds of key participants, that workers’ compensation could have played at least a secondary role in the Committee’s work. Secretary of Labor Frances Perkins, who chaired the CES, had previously helped administer workers’ compensation in New York. Edwin Witte, executive director of the CES, and Arthur Altmeyer, head of the CES technical board, had similar experiences in Wisconsin. Along with FDR, those three were most responsible for crafting the administration’s proposals (Berkowitz and Berkowitz 1985; DeWitt n.d.). They were certainly well aware of the devastating toll inflicted by workplace accidents. On the very first page of their final report to the President, the CES noted that 14,500 workers had been killed and another 55,000 had been permanently injured on the job in 1933 alone (Committee on Economic Security 1935).

Moreover, a study that was commissioned and circulated within the CES, but never published, recommended major changes to existing workers’ compensation laws. The overriding emphasis of that study was on the need for national standards rather than a single national program. In almost every case, these standards would force states to make their programs more comprehensive and more generous. Among other things, the study called for all state laws to be compulsory rather than elective; an end to exemptions for small employers and nonhazardous occupations; blanket coverage of occupational diseases; shorter waiting periods for compensation; higher minimum and maximum weekly benefits; longer duration of benefits; and unlimited expenses for medical care (Kjaer 1934).¹⁶ Many of these same recommendations had been made years earlier, without success, by the

American Association of Labor Legislation, a leading progressive reform group (Skocpol and Ikenberry 1983: 108-09; Skocpol 1992: 295-96).

Nevertheless, the CES devoted considerably more attention to medical care and various relief measures than to workers' compensation. Along with unemployment insurance and old age security, medical care and public employment/relief constituted the four main working groups of the CES technical board. Though workplace accidents were all too common, the Committee argued that nonoccupational disability and sickness affected even more citizens and exacted an even greater toll on families and economic productivity. As for relief, while the Committee expressed a clear preference for public measures to boost employment, it did not expect all children or the elderly to support themselves through work (Committee on Economic Security 1935). Workers' compensation was placed in a miscellaneous category, along with topics like survivor's insurance and life insurance (Witte 1962). Achieving high visibility within the CES did not guarantee that a subject would be part of the administration's proposals; recommendations for health insurance care were ultimately shelved, for instance, out of concern that objections from the medical profession might jeopardize the entire package (Witte 1962; Starr 1982).¹⁷ But without much attention from the CES, workers' compensation faced an uphill battle.

Ironically, it appears that the early introduction and rapid spread of workers' compensation contributed to its neglect during the formative stages of the Social Security Act. As policy makers surveyed the nation in 1934-35, they found many groups in greater need than injured workers and their families. No state had old age or health insurance, and only Wisconsin had a working unemployment insurance program prior to 1935. One-quarter of the states lacked any special program for the poor elderly, and some states with such programs made them county optional. Though subject to wide variation, monthly pensions for the poor elderly averaged under \$15 a month in 1934, well below subsistence level (Committee on Economic Security 1937). Workers' compensation laws, in contrast, had spread to most states by 1920 and were never county optional, always statewide. Though coverage varied by state, roughly 50 percent of all employed workers were subject to workers' compensation laws in 1930 (Burns 1949: 187; U.S. Department of Commerce 1975: 126). Had compensation laws been adopted later, and not spread to many states, it seems reasonable to infer that Roosevelt's Committee on Economic Security would have paid more attention to the plight of injured workers.

Even so, the influence of "Wisconsin school" reformers on the CES meant that the chances of substantial policy change would have been minimal, even with more attention. Scholars have already demonstrated the influence of the Wisconsin school on the deliberations of the CES, particularly with respect to unemployment insurance (Skocpol and Ikenberry 1983). Similar influences can be traced with respect to workers' compensation. Arthur Altmeyer and Edwin Witte came to Washington with first-hand knowledge of workers' compensation in Wisconsin. They believed, for instance, that the

government's role should be limited. Wisconsin relied solely on private insurers for workers' compensation policies, and officials there deliberately resisted pressures from the state federation of labor to establish a state fund. Wisconsin also opted to make workers' compensation elective rather than compulsory for employers. By establishing the right regulatory framework, reformers could create incentives for employers to make their workplaces safer and to offer compensation to injured workers (Altmeyer 1932: part II; Schlabach 1969: 36-39). Other characteristics of the Wisconsin school were resistance to national uniformity and a willingness to accommodate powerful interests (Skocpol and Ikenberry 1983). Major changes to the status quo would seem to be out of the picture.

In addition, workers' compensation suffered from several operational problems that would have made anyone inclined to national involvement quite hesitant. In his study of Wisconsin, Altmeyer (1932) found that as the workers' compensation program grew between 1912 and 1931, administrative costs per case failed to drop significantly, an indication that economies of scale would prove elusive. For most of the 1920s, 40% of all new cases reported were still pending by the end of the year, which did not signify a swift response to the problem of industrial accidents. The time lag between injury and compensation was a problem in other states, too. Between 1914 and 1933, the number of workers' compensation awards that were later contested in court rose from 7 to 20 percent in Maryland (Berkowitz 1987: 24). Perhaps most tellingly, Altmeyer discovered that private insurers consistently lost money on workers' compensation during the 1920s.¹⁸ The only reason they stayed in business was because they offset these losses with profits from other lines of insurance that they sold to employers as a package deal. Such a strategy would have been unavailable to the national government.

Altmeyer was also disturbed by the "random quality" of workers' compensation in Wisconsin: workers with minor injuries received too much, workers with major injuries received too little, and workers with identical injuries received different amounts of compensation (Berkowitz and McQuaid 1992: 107). As the final CES report noted, workers' compensation laws across the nation "were sadly lacking in uniformity" (Committee on Economic Security 1935). This was not just the view from Washington. Speaking before a meeting of the International Association of Industrial Accident Boards and Commissions, the chairman of Maine's Industrial Accident Commission offered a scathing indictment:

... the amounts paid for the losses of certain members in each State often bear no consistent relationship at all to the amounts paid for the losses of other members, nor are they in proportion to the value of the body as a whole. The various systems of such compensation in the United States, or lack of system, have been characterized as a veritable crazy quilt. The schedules themselves have been declared over and over again, by commissioners and other competent authorities, as haphazard, unscientific – even as absurdities (quoted in Dawson 1938: 471).

Workers' compensation laws may well have been an improvement over the previous system of tort liability, but many of the old problems still remained.

As if these reasons weren't enough, the involvement of doctors proved troublesome. Unlike old age or unemployment insurance, workers' compensation provided not just income support but also medical benefits. In the majority of cases involving serious injury, workers had to be examined by doctors approved by their employer or the insurance company, leading to claims that the extent of disability was habitually understated. The reverse was also possible. A committee investigating workers' compensation in New York in 1932 discovered that doctors chosen by workers usually found major injuries and recommended the maximum benefits under law, while doctors chosen by employers or insurers often found no reason for an award (Bale 1989). Because disability is often subjective (Stone 1984), doctors could legitimately disagree on its severity even when a conflict of interest was absent. At a 1935 conference, medical experts from several states were presented with evidence from actual cases of permanent partial disability and asked to determine the severity. "Estimates on one case ranged from nothing (hysteria) to 80%, while another case saw estimates from 25 to 90%" (Bale 1989: 1116).

These difficulties only served to reinforce policy makers' general unwillingness to tackle issues of medical care. Greater national involvement in health care was likely to generate not just waves of criticism from powerful groups of medical providers, but also to lead the government into the thicket of identifying and quantifying medical disability. With important new excursions into unemployment and old-age insurance on the agenda, as well as greater support for several existing means-tested programs, the national government's capacity to provide social welfare might be stretched to the breaking point if it took on workers' compensation as well. Improving workers' compensation would take more than just an infusion of money from Washington.

In light of their other commitments and two decades of experience with workers' compensation, the architects of the Social Security Act decided that the best course of action was to leave workers' compensation alone. National involvement in workers' compensation might have been good policy in the 1930s, for existing state laws were not working well. But it was clearly bad politics. The final CES report to the President mentioned workers' compensation only briefly and towards the very end. Its two main recommendations were to encourage the few states without workers' compensation laws to adopt them, and to have the Labor Department do whatever it could to make state laws more uniform and adequate. The government would offer states neither carrot nor stick; its main tools would be persuasion and exhortation. Though minor, these recommendations were dropped from the final bill.

Comparisons with other programs

After reflecting upon this account of workers' compensation, some readers may wonder why mothers' pensions were not excluded from the CES report and the Social Security Act as well. After all, by 1935 mothers' pensions laws were just as widespread and old as workers' compensation laws. Both programs, according to the CES (1935), were plagued by inadequate benefits and unreasonable variations in eligibility and benefits from state to state. If states were already doing something about poor children, and the program was beset with problems, why not move on to programs with less of a foothold and less operational baggage?

Prevailing images of deservingness help to explain the differences. Policy makers tended to divide the needy population into those who could be expected to work and those who could not. The poor children of single mothers were easily assigned to the latter group, but injured workers were harder to place. Depending on the severity of their injury, they might or might not be able to work, and those who could work might not be able to perform their old job. Injured workers might need temporary help, like the unemployed, or they might require long-term relief like the blind, the elderly, and children. Needing to move quickly, policy makers focused on those needy citizens who were easiest to categorize.

The CES also had evidence that the Depression was taking a heavy toll on poor single mothers and their children. Unlike means-tested old age pensions, which spread rapidly in the states between 1929 and 1933, the scope of mothers' pensions diminished as cash-strapped cities and counties opted out of the program. Mothers' pensions had been discontinued entirely in Arkansas, Mississippi, and New Mexico by 1934. Fewer than 10% of the counties in several other states participated. To ration scarce resources, some localities made one-child families ineligible for mothers' pensions. Virtually no local government could afford to provide aid for all families who qualified. As a result, most families eligible for mothers' pensions were receiving emergency relief instead. According to the CES (1937: 238-41), while 109,000 single mothers with 280,000 children were receiving mothers' pensions in 1934, 358,000 single mothers with 719,000 children were on the relief rolls. The CES had no comparable figures for injured workers and their families, and thus no way to judge how much unmet need existed for workers' compensation.

One reason for this disparity in information is that mothers' pensions had a stronger institutional presence in Washington than did workers' compensation. The U.S. Children's Bureau, created in 1912, was a crucial source of information about a whole range of issues affecting women and children in the early 20th century. Though more involved with maternal and infant health and child labor, the Children's Bureau did conduct a series of studies about mothers' pensions in the 1920s and early 1930s. These studies not only described the scope of existing laws, but evaluated their adequacy and documented cases of

discrimination (Howard 1992). Workers' compensation laws, by contrast, were studied periodically by the U.S. Department of Labor and its Bureau of Labor Statistics but never evaluated or critiqued.

The Children's Bureau was more than a data-gathering operation, however. Agency officials viewed numbers and studies as a resource in achieving a larger political agenda. Their most significant victory came in the 1920s, when the Sheppard-Towner program provided a variety of public health services to tens of thousands of mothers and children, especially in rural areas. In the process, Bureau officials developed close working relationships with a variety of reform groups and an insider's understanding of the policy process in Washington (Skocpol 1992). Katherine Lenroot and Dr. Martha Eliot, both of the Children's Bureau, were largely responsible for the section concerning Aid to Dependent Children in the final CES report to the President. Their involvement was crucial for two reasons. The first is that many of the women's organizations that had championed mothers' pensions in the 1910s had become less politically active and influential by the 1930s (Howard 1992). The second is that "there was little interest in Congress in aid to dependent children. It is my belief," wrote CES director Edwin Witte, "that nothing would have been done on this subject if it had not been included" in the CES report (Witte 1962: 164). Workers' compensation lacked such an advocate within the administration. Officials at the Labor Department were more concerned about passage of unemployment insurance, which entailed a significant expansion of the public sector and generated more controversy than any other part of the Social Security Act.

One final piece of this story remains. It was possible for a program to be largely ignored by the CES, go undefended by any branch of the national bureaucracy, and still be included in the original Social Security Act. That was the good fortune of Aid to the Blind. Like poor children, the blind seemed hard pressed to support themselves economically and were thus deserving of public aid. One difference between Aid to the Blind and workers' compensation was that representatives from the American Foundation for the Blind and related interest groups started to lobby members of Congress when the administration's bill was introduced. Rebuffed in the House, they managed to find a more receptive audience in the Senate. According to Witte (1962: 190-92), a turning point occurred when noted advocate for the blind Helen Keller endorsed national involvement; the program was added to the Act without discussion. Although business and labor groups were not necessarily pleased with existing workers' compensation laws, they were accustomed to working through state legislatures to make the desired changes. They directed their political energies at the national level towards the old age and especially the unemployment insurance titles in the Social Security Act. No one came forward during legislative debate to elevate the problems of injured workers and their families after the CES issued its final report and the Roosevelt administration developed its proposed bill.¹⁹

* * *

The preceding analysis was so detailed because the decisions were so consequential. The framework established by the original Social Security Act proved remarkably durable. Old Age Insurance started as a purely national program and has remained so ever since. Unemployment Insurance and Aid to Dependent Children (later AFDC) started as federal programs and still require the national and state governments to administer and finance them. Even when officials replaced AFDC with Temporary Assistance to Needy Families (TANF) in 1996, they continued the national government's role in helping to finance the program and set eligibility rules. Likewise, workers' compensation was left to the states in 1935 and has remained there to the present.

Nevertheless, these governing arrangements were not always permanent. Aid to the Blind and Old Age Assistance started out as federal programs but were nationalized in the early 1970s with the creation of the new Supplemental Security Income (SSI) program. At a couple of junctures after 1935, policy makers also considered greater national involvement in workers' compensation. With one small and telling exception, they declined to alter the previous decision to leave workers' compensation to the states. The rest of this paper analyzes the most important of these episodes.

WORKERS' COMPENSATION AND DISABILITY INSURANCE

As Martha Derthick (1979) shows in her landmark study, the development of Social Security was in many ways more important than its enactment. Initially, old age insurance paid no benefits and covered a little over half of the workforce. Beginning in the late 1930s, however, policy makers started to build off old age insurance, adding survivors' insurance (1939), disability insurance (1956), and medical insurance for the elderly (1965). They also started to expand the range of occupations covered by old age insurance, with the most notable successes coming in 1950. That same year marked the first of many benefit increases, the largest of which occurred in the late 1960s and early 1970s. The overall pattern of expansion was driven not by interest groups of the elderly, but by a dedicated and capable cadre of bureaucrats who developed alliances with powerful members of Congress.

Berkowitz and Berkowitz (1985) argue that this history of expansion can be understood partly as an effort to compensate for the deficiencies of states' worker compensation laws. With job-related fatalities so common and death benefits so meager in the 1930s, policy makers pushed early and hard for survivors' insurance. They designed survivors' insurance so that benefits would be paid even if covered workers were killed on the job. The persistent inadequacy of workers' compensation benefits, they claim, was one reason that bureaucrats and legislators felt a continuing need to make old age and survivors' insurance benefits more generous.

The most direct link was to disability insurance (DI), the design of which began shortly after the Social Security Act was enacted. A number of policy makers in

Washington saw no good reason why identically disabled workers in Georgia and California, or any other state, should be treated differently. They saw no good reason why the government should limit coverage to disabilities “arising out of and in the course of” employment, as stipulated by states’ compensation laws. Someone who accidentally fell at home while repairing a roof was as much in need of help as someone who fell while building a roof at a construction site. Indeed, one of the fundamental sources of friction in workers’ compensation had been the need to prove that a given injury was work-related: employers and insurers regularly denied claims because the injuries were deemed to have occurred away from the job; workers regularly accused them of violating the law; and the disputes ended up before a state commission or court.

The logical thing to do was create a single national disability program, with uniform benefits and no distinction between occupational and nonoccupational injuries. There was some initial support for this path. In 1938-39, President Roosevelt’s Interdepartmental Committee to Coordinate Health and Welfare Activities surveyed the nation’s health needs and issued five major policy recommendations. One of these was for “Federal action to develop a program of compensation for wage loss due to temporary and permanent disability,” regardless of the source of disability (Altmeyer 1966: 95). Because the Committee included senior officials from the Treasury and Labor Departments, substantial change to workers’ compensation now had advocates in Washington that had been absent in 1934-35.

Policy makers ignored these proposals and decided instead to design a more limited disability program that would operate alongside workers’ compensation. Why the shift? The answer starts with the Social Security Board,²⁰ which was not represented on the Interdepartmental Committee, but which was the main engine for expanding social insurance programs within the administration. Social Security officials preferred a more incremental approach to reform, one designed to dampen opposition from conservative politicians, special interests, and a public still suspicious of big government (Altmeyer 1966; Derthick 1979). In the process of designing disability insurance, they picked their battles carefully.

The early signs were that any form of disability insurance would meet considerable resistance. In its 1938 report to the Senate Finance Committee, the Advisory Council on Social Security was divided over the desirability of national action. Some Council members worried that DI would depart from old age insurance in several respects: its costs would be less predictable; disability determination would require more subjective judgments than verification of age and work history; and medical expertise would be required to determine eligibility. To address these concerns, Social Security officials limited their proposals in the 1940s to the permanently and totally disabled. In 1948, the Advisory Council further stipulated that eligibility for the disability program depend on “recent and substantive attachment to the labor market,” and that benefits be paid only after

a six month waiting period (U.S. Congress 1974). Both provisions were by design more restrictive than those found in states' worker compensation laws.

These restrictions were enough for the House, which approved national disability insurance in 1950 as part of a series of amendments to the Social Security Act. They were not enough for the Senate, which successfully replaced the DI section with a means-tested grant program for the permanently and totally disabled, administered jointly with the states. The Senate was responding in large part to pressures from the American Medical Association (AMA), which portrayed disability insurance as the first step towards the complete socialization of American medical care. Joining the AMA in opposition were the U.S. Chamber of Commerce and various insurance companies. This pattern was repeated in 1952 (Altmeyer 1966: 185-86; Derthick 1979: ch. 15).²¹

In such a hostile political environment, it was hard to imagine tackling workers' compensation at the same time. Doing so might have been good policy, but it would have heightened the resistance of some powerful groups and generated additional enemies.

Despite social security planners' disapproval of workers' compensation inequities and complexities and their desire to eliminate them under their new laws, they were not free of the older program. Workers' compensation had one big advantage over the new program [disability insurance]: it already existed. Both labor and management had invested a lot of political energy into shaping it to their ends. As a result, the program had well-defined interest groups ... (Berkowitz 1979: 41).

Labor and management were not the only interested parties. Insurance companies made millions of dollars off workers' compensation policies, and several states had established their own monopolistic or competitive funds. National involvement posed a direct threat to their existence. A number of doctors and trial attorneys in every state also counted on business from workers' compensation cases. State accident boards and industrial commissions had existed since the 1910s and 1920s, long enough to form their own professional associations and professional identities. Located in every district of every state, opponents to national involvement were in an ideal position to pressure Congress.

If anyone doubted the power of established interests, further proof came just as policy makers were finalizing disability insurance. In 1954, Under Secretary of Labor Arthur Larson was leading an effort to develop a standard for states' worker compensation programs. Intended to motivate improvements in coverage and benefits, the plan triggered fears of a national takeover. "By 1956, Larson's model compensation act ... lay totally discredited, the victim of political sniping by state officials, businessmen, and their allies in the administration" (Berkowitz 1987: 34).

To advocates of disability insurance, the political legacy of workers' compensation was clear – stay away. Advocates viewed these concessions as the price that had to be paid

to gain acceptance for the basic principle of disability insurance. As with old age insurance, officials planned on starting with a fairly limited program and later making DI benefits more generous and more widely available. After 1956, they worked hard to make incremental improvements and cope with the complicated administrative challenges inherent in a disability program (Derthick 1979, 1990; Berkowitz 1987). Doing so left little time or energy for fundamental reform that might include changes to workers' compensation. In retrospect, the decision to create a separate disability program was a turning point in the development of workers' compensation. Since the 1950s, any move towards greater national involvement in workers' compensation has been linked not to social insurance but to occupational safety and health.

THE BLACK LUNG PROGRAM

In December 1969, Congress approved and President Nixon reluctantly signed a bill to extend benefits to victims of black lung (pneumoconiosis), a common and often fatal occupational disease of coal miners.²² This program was, and still is, the national government's only formal intrusion into the realm of workers' compensation since the 1920s. The question is why national officials made an exception in this case, and how they were able to triumph over stakeholders at the state level.

By way of background, it is important to remember that the national government already operated two long-standing workers' compensation programs (Nordlund 1992; Lencsis 1998). The first, passed in 1908 and expanded in 1916, provided coverage to employees of the national government. It was administered initially by the Department of Commerce and Labor, then an independent commission. Since 1950, responsibility has been housed in the Labor Department – which may have reinforced the image in Washington of workers' compensation as an occupational program rather than social insurance. The second program, created in 1927, was designed to cover workers engaged in interstate commerce who were not covered by any state compensation program. In neither case, however, did the government extend coverage to civilians working within individual states. The Black Lung program did just that.

The most visible trigger for national involvement was a disastrous explosion in a Farmington, West Virginia coal mine. For ten days in November 1968, the nation waited and watched as rescue crews tried to free 99 miners trapped underground. Seventy-eight of those miners died. This was not an isolated tragedy. A total of 150 West Virginia coal miners died on the job that year, and another 159 coal miners died in 12 other states. The rate of on-the-job fatalities in the late 1960s was approximately eight times higher for coal miners than for the rest of the workforce.²³

In September of 1968, President Johnson had proposed new health and safety regulations for coal mines. Members of Congress initially did nothing, but in the wake of the Farmington disaster they quickly made the topic a priority for their next session.²⁴ In a

special message to Congress in March 1969, newly elected President Nixon endorsed new health and safety measures for coal mines. The result was the Coal Mine Safety Act of 1969. The Act required the Department of the Interior to set safety standards and the Department of Health, Education, and Welfare to set health standards for coal mines. It authorized funds for health and safety research. It required each mine to be inspected at least four times a year, and established civil and criminal penalties for those who violated the Act. These provisions of the Act were relatively uncontroversial given the recent spate of mining disasters and the national government's prior involvement in mine safety.²⁵ What was novel, and more controversial, was the inclusion of compensation benefits for the victims of black lung disease and their families. Legislators devoted an inordinate amount of time debating this section of the bill. Nixon at one point considered vetoing the entire package because of the new Black Lung program.

The program's road to enactment was a strange and bumpy one. It started with a renegade group of miners who joined in early 1968 to push for better black lung benefits. Their initial target was not the national government, nor was it the state government, even though workers' compensation laws in most coal mining states failed to cover black lung disease.²⁶ Their initial target was the United Mine Workers of America (UMW). In the wake of Farmington, the head of the UMW had publicly "absolved Consolidation Coal of responsibility, explaining that 'as long as we mine coal, there is always this inherent danger ... This happens to be one of the better companies'" (Lewis-Beck and Alford 1980: 746-47). While such a view outraged many miners, it was consistent with the UMW's historic emphasis on wages and benefits to the exclusion of occupational health. The renegades succeeded in passing a series of resolutions at the 1968 UMW convention that directed union leaders to push employers for better compensation for various dust diseases. Nevertheless, when the union finalized a new contract with mine operators in October 1968, there was no mention of workplace safety or occupational disease.

Union leaders' intransigence, coupled with the Farmington mine explosion, helped to fuel the growth of local Black Lung Associations. By the end of 1968, the cause had been joined by a handful of doctors, consumer advocate Ralph Nader, and a variety of activists linked to VISTA and other Great Society programs. By early 1969, legislation had been introduced but not approved in the West Virginia state legislature. Miners staged a wildcat strike in February, prompting legislators to pass and Governor Moore to sign a bill adding coverage for coal dust diseases to that state's worker compensation program. Only then did the mines reopen.

The story might have ended there but for the damage done to the UMW. Union leaders recognized that they risked losing the support of rank-and-file members unless they produced a major victory concerning occupational health, and black lung in particular. And they needed a win fast. UMW officials thus looked to Washington, where coal mine safety legislation was already working its way through Congress. The bill that reached the Senate floor in September 1969 made no mention of compensation for black lung. With

the help of West Virginia's two Senators (Byrd and Randolph, both Democrats), the UMW managed to attach language creating a national Black Lung program to the bill. It received bipartisan support, particularly from legislators in key coal-producing states like Alabama, Kentucky, Ohio, and Pennsylvania, several of whom occupied key leadership positions in Congress.

This peculiar sequence of events meant that one of the stakeholders in state-level control, organized labor, now had a clear interest in national action. The medical community by and large stayed on the sidelines. The government was not proposing to usurp doctors' role in diagnosing or treating black lung disease; it was proposing to help infected miners, who in turn might be better able to pay for medical care. Private insurers did not feel threatened, for occupational diseases were one of the more troublesome parts of their business. The costs were less predictable because the state of scientific knowledge linking specific job hazards to specific diseases kept changing. And the costs were potentially large if afflicted workers lived for many years with the disease.

Administrators of state programs were the main stakeholder to testify in Congress against the measure. They made dire predictions about "the abandonment of our 55 year-old workmen's compensation system." They intimated that the national government was ill-equipped for the task because "workmen's compensation administration is a professional specialty demanding experience and dedication and an intimate knowledge of local problems. This proposed legislation would replace local control with a centralized administration impairing development in the various regions of the country" (both quotes from Barth 1987: 22). To counter these attacks, supporters included language that made parts of the program temporary.²⁷ They made a number of statements indicating that Black Lung would not set a precedent, that it was emergency aid to a tiny but deserving segment of the population. Although these tactics did not prompt state bureaucrats to change their position, they did make opposition to Black Lung benefits less potent in Congress.

Business opposition was blunted after legislators found a way to minimize the fiscal impact on employers. Part B of the Black Lung program extended benefits to miners who filed claims before the end of 1972, and was financed entirely out of general revenues. It was expected to account for most of the spending. Legislators never seriously considered a payroll tax, the traditional means of financing a social insurance program, because they worried that the regulatory measures contained elsewhere in the Act would already impose a significant burden on an industry that had struggled in recent years. Part C of the program extended benefits to affected miners and their dependents who qualified starting in 1973. It was financed by coal companies operating the responsible mines or by employers more generally if states expanded their workers' compensation programs to include black lung disease. Coal companies were not obligated to pay for Part C, however, after 1976. Policy makers expected state compensation laws to have changed by then, and all subsequent cases to be handled at the state level. Given the adoption of stronger health and safety regulations, it was widely expected that the number of future cases of black lung

would be relatively small, so Part C would not entail much change to states' programs or employers' costs over the long run.

The one remaining hurdle was cost to the national treasury. The Nixon administration, which opposed the Black Lung program, estimated that it would cost anywhere from \$155 million to \$384 million in its first year. Estimates in Congress were considerably lower and ranged from \$80 million to \$180 million. A number of legislators, mostly Republicans, were troubled by the size and the wide range of estimates, a sign that the program's future path would be hard to predict and potentially quite costly. In the end, they were unwilling to block a major health and safety bill on account of this one provision. President Nixon, however, did seem ready to veto the bill until workers at four West Virginia mines went on strike in late December. Nixon signed the bill into law on December 30, and the miners returned to work.

It is difficult to see the Black Lung program as a threat to state-level control of workers' compensation. For one thing, the national government was stepping in to cover a disease that states had historically excluded. Neither doctors nor private insurers felt threatened. For another, the program hardly qualified as social insurance. The Black Lung program was not only financed differently than workers' compensation – or disability insurance, or Social Security for that matter. As a practical matter, benefits were available only where coal miners worked and lived, which excluded much of the country. The Black Lung program was, at bottom, regional aid for Appalachia, a throwback to the Great Society of Presidents Kennedy and Johnson. Its unique design, and the UMW's strong but historically specific need for a legislative victory, paved the way for the national government to become involved, ever so modestly, in compensating civilians for work-related disabilities.

THE OCCUPATIONAL SAFETY AND HEALTH ACT AND THE NATIONAL COMMISSION ON STATE WORKMEN S COMPENSATION LAWS

The struggle over Black Lung benefits was part of a larger movement to improve working conditions. Shortly after passing the Coal Mine Safety Act, Congress approved and President Nixon signed the more sweeping Occupational Safety and Health Act (OSHA) of 1970. The Act applied to every non-governmental employer in the country and created strict standards, new enforcement mechanisms, and new rights for workers. One section of the Act created a commission to study problems with workers' compensation and recommend changes. In this last case study, I explain why substantive changes to workers' compensation were not part of the original OSH Act and why the Commission's work later failed to produce any change in state-level control of workers' compensation.

The general issue of workplace safety gained greater visibility in the mid-1960s. One impetus came from organized labor. At the very top, union leaders were generally uninterested in better working conditions; they focused on winning higher wages and

benefits. They believed that workers in risky occupations should be paid more, rather than have a safer workplace. Senior staff members at AFL-CIO headquarters, on the other hand, were interested in better working conditions and fought hard to make the issue a priority among union leaders. They had little trouble winning support from the rank-and-file, who were increasingly motivated to strike over working conditions. These union activists forged alliances with public health specialists within the national bureaucracy to make the case for greater government involvement.

Labor's interest in workplace safety coincided with the Democratic party's search for new issues that would enhance their electoral prospects. The general emphasis on social regulation appealed to educated middle- and upper-middle class voters who were motivated as much by social issues as economic issues. In the wake of increased spending for social programs and the war in Vietnam, social regulation appeared to be a relatively cheap tool of reform at a time when Congress was becoming more cost-conscious. Moreover, the OSH Act strengthened ties to organized labor, which increasingly felt that Democrats were devoting too much attention to racial minorities. Noble portrays Johnson's involvement as decisive. In a curious reversal, it was Johnson who lobbied union leaders to make workplace safety a priority. And it was Johnson's Bureau of the Budget (BOB) that led the way in drafting a bill in 1966 and 1967.²⁸

One justification for any new legislation was that states' worker compensation programs and workplace regulations had done too little to prevent accident rates from rising. As with disability insurance, national officials faced at least two main alternatives: try to reform existing state laws or design a new national program. Reform of states' compensation laws was considered early in the process of crafting the OSH Act, but dismissed for political reasons.

The administration ... decided against reforming the workers' compensation system, although that program's manifest failures made reform logical. Organized labor considered this as important, if not more important, than a federal regulatory program, and Johnson's own advisers were attracted to the idea of rehabilitating the system to provide economic incentives to employers to improve working conditions. But [Labor Secretary] Wirtz met with insurance industry representatives to test the waters and returned to recommend two very limited reforms: a grants-in-aid program to improve state research and administration, and a congressionally appointed National Commission on Workmen's Compensation.

Johnson's advisers clearly understood the economic and political interests at stake and the problems they faced if they chose to tackle workers' compensation directly. After reviewing the history of the program, both the Council of Economic Advisers (CEA) and BOB concluded that comprehensive changes were unlikely to succeed in Congress. Gardner Ackley, chair of the CEA, wrote [Joseph] Califano [Johnson's top domestic policy advisor] that "even innocuous government efforts to

improve the system have been vigorously assailed and strongly resisted as precursors to a Federal ‘take-over’ of the system Given the entrenched power of the defenders of the status quo,” he concluded, minor gains were all that could be expected (Noble 1986: 88-89).

The outcome was virtually identical to that for disability insurance. Although there was a constituency for reform and evidence of poor performance, existing stakeholders proved too formidable. If policy makers wanted to pass a meaningful bill, they had to shorten the list of enemies and accept workers’ compensation in its present, flawed form.

One of those “minor gains” in the OSH Act was creation of a National Commission on State Workmen’s Compensation Laws. Admittedly, the creation of such commissions is frequently symbolic politics at its worst, giving the appearance of official activity but ultimately changing nothing. Every once in a while, such commissions give elected officials the ideas and political cover needed to address difficult issues; the recent military base-closing commission is a good case in point. At a minimum, commissions need to have a clearly-defined topic, adequate technical support, and a wide range of views represented among their members if they are to have any tangible impact on policy.²⁹ The National Commission seemed to qualify on all counts, and was later credited with a number of improvements in states’ compensation programs during the 1970s. None of these improvements, however, entailed fundamental changes to state-level control.

The Commission’s final report (1972) and three volumes of supplemental studies formed arguably the most thorough indictment of workers’ compensation in the 20th century.³⁰ They faulted state laws for failing to cover the entire workforce, provide adequate cash benefits, provide adequate and timely medical benefits, help rehabilitate injured workers, promote safety on the job, and keep administrative and legal costs in line. The final report identified 19 “essential elements” of a good workers’ compensation program. On average, state programs possessed only seven of the 19 elements, and many states had fewer than five. The Report estimated the cost to comply with these elements by 1975 would be minimal in a few states (less than a ten percent increase in Arizona, Connecticut, Hawaii, Maine, and Washington), and substantial in many others (between a 30 and 40 percent increase in, e.g., Colorado, Florida, North Carolina, and Pennsylvania). In 14 states, largely but not exclusively from the South, total compliance would entail a 40-60 percent increase in current spending for workers’ compensation.

Given the Commission’s detailed catalog of deficiencies in states’ programs and its willingness to promote sweeping change, why was state-level control deliberately retained? One explanation points to time constraints. President Nixon did not appoint Commission members until mid-June 1971, and by law they had until the end of July 1972 to produce a final report. Members simply lacked the time to discuss every issue, and greater national involvement and the merits of public versus private insurance funds were among those

excluded. All things considered, it is remarkable that they accomplished as much as they did in little over a year.

Though not specifically charged to do so by Congress, the Commission did discuss a greater role for the national government. “No topic received more attention at our hearings” than how best to implement the Commission’s policy recommendations (1972: 125). One option considered was to disassemble workers’ compensation and combine several of the parts with existing national programs. Total and permanent disability claims could be handled by disability insurance, medical care by Medicare or a future national health insurance plan, and safety objectives by OSHA. The Commission found several problems with this plan, such as the lack of coverage for permanent partial disabilities, the time delay in receiving DI benefits, and the prospect of injured workers shuttling among multiple agencies for help.

The Commission openly rejected a national takeover of the program, though the reasons cited were rather curious. The Commission noted that “a Federal takeover would substantially disrupt established administrative arrangements” (1972: 126) without ever saying whether injured workers or state-level bureaucrats and private insurers would suffer. And it declared that the national government had shown no special skill in administering workers’ compensation for its own employees, but offered little supporting evidence.

Instead, the Commission recommended that states be given three years to comply with the 19 essential elements “and, if necessary, Congress with no further delay ... should guarantee compliance” (1972: 127). All Commission members agreed that states had the technical and economic capacity to comply in short order; the main impediment was political will. If states failed to comply, a minority of the Commission advocated a complete national takeover of workers’ compensation. The majority, however, felt that national standards would be more appropriate. But they left it up to Congress to decide if such standards, or any action at all, were necessary after three years.

The most likely explanation for this odd combination of detailed criticism and reluctance to depart from state-level control was the inclusion of numerous stakeholders in the Commission. They knew exactly what was wrong and wanted another chance to make things right. Of the 18 members, four (including the vice-chairman) had direct connections to state agencies responsible for workers’ compensation, two were from the insurance industry, one administered workers’ compensation for the Ford Motor Company, and one represented the American Medical Association. A few others were academics who had never challenged the basic structure of workers’ compensation in their writings. By law, the Departments of Labor, Commerce, and HEW were also represented, and being from the Nixon administration they were not pushing to nationalize. Though diverse in occupational background, the majority of Commission members shared a strong preference for state-level control. The only members who went on record with serious reservations

about the ability of states to administer workers' compensation were the two representing organized labor.

It is tempting to view the Commission's composition as evidence that national policy makers were not serious about comprehensive reform. Why else would they ask the foxes to inspect the hen house? Nevertheless, an equally plausible explanation is that by 1970, workers' compensation had developed into such a specialized field of knowledge, and state laws varied on so many dimensions, that well-established experts in the field were about the only ones capable of conducting a systematic analysis. National officials well-versed in workers' compensation laws may have been prominent in Roosevelt's Committee on Economic Security, and even in the Social Security Board of the late 1930s and 1940s, but their numbers dwindled over time. This less conspiratorial view points to the importance of information and learning effects in reinforcing the path taken by a given program or policy (Pierson 2000).

Three years after the Commission's report, states were nowhere near complying with all 19 essential elements. Congress did nothing. Six years after the report, same story. Ten years after, no change. Bills calling for national standards were introduced in the late 1970s in the House and Senate, by Democrats and Republicans. Each time, opponents successfully pointed to recent progress in the states and asked for more time. States did, in fact, make significant improvements to their workers' compensation programs in the wake of the Commission's report. Starting with compliance on an average of 6.9 out of 19 elements in 1972, states improved to 9.4 elements by 1975 and 12.1 by 1980. More workers were covered; benefits were considerably higher, and in many cases indexed to inflation for the first time. The glass may be half-full, supporters argued, but it was filling up.

The threat of national action was real but limited in duration. As stakeholders in workers' compensation looked around in the early 1970s, they saw a new Black Lung program, serious discussion of national health insurance and welfare reform, and the nationalization of several means-tested programs (combined into Supplemental Security Income). They saw how a sympathetic audience of Commission members could produce an unflattering portrait of workers' compensation. They moved quickly to demonstrate some progress. Once the threat had passed, the rate of improvement abruptly stopped: the compliance score was 12.1 in 1980 and 12.2 in 1988. By then, most policy makers in Washington had already reverted back to their old patterns of working around the edges of state compensation laws. The main issue during the 1980s was whether the national government should do more to help victims of occupational diseases, especially those related to asbestos. The window for substantial national involvement in workers' compensation, never large to begin with, had closed.

CONCLUDING THOUGHTS

For better or worse, I have avoided the temptation to paint the last hundred years of workers' compensation in broad brush strokes, opting instead for a series of detailed portraits revolving around a common theme: how workers' compensation came to be established as the exclusive responsibility of state governments and stayed that way, even as the national government expanded its role in many other social programs. All but a handful of readers have by now experienced a quantum leap in their factual knowledge of workers' compensation in the United States, more than enough to sustain a cocktail or dinner table conversation on the topic. On the remote chance that some readers may not place a high value on such knowledge, I will conclude by indicating how this history helps to reinforce or refine a number of generalizations about social policy and policy making.

Start first with some descriptive generalizations about the American welfare state. One major thread of this paper has been federalism, and in particular the ways in which state-level control of workers' compensation has periodically been challenged at the national level and allowed to persist. The large role of subnational governments has long been viewed as one of the defining features of the American welfare state, and the example of workers' compensation only strengthens that view.³¹ States have greater control of workers' compensation than any other major social program. A second thread has been the importance of private insurance companies, self-insured employers, and medical professionals, both in delivering cash benefits and medical care to injured workers and in creating an important set of stakeholders. The American welfare state is known for its mix of publicly financed but privately delivered goods and services, and workers' compensation is a good illustration of that pattern as well.

This case helps to remind us that shared understandings of social policy can vary over time. During the first half of the 20th century, workers' compensation was viewed primarily as social insurance, and therefore part of social policy. Comprehensive studies of social policy (e.g., Haber and Cohen 1948) analyzed workers' compensation as well as social security, unemployment insurance, health insurance, and various forms of public assistance. That no longer happens. At some point between the mid-1950s and mid-1960s, workers' compensation became more closely linked in policy debates to workplace safety and in academic research to industrial relations. This shift was made possible by the dual objectives of workers' compensation, income support and accident prevention, which had been present since the first state laws were enacted. In the process of expanding the responsibilities of the national government, U.S. policy makers focused on income support before workplace safety; they created old age and unemployment and disability insurance before OSHA. The sequence of state-building at the national level helped influence the ways in which policy makers and researchers defined workers' compensation as a public problem.

At another level, this study shines light on the policy process. Most journalistic and academic treatments of the policy process focus on the stage when authoritative decisions

are made, such as congressional votes or court rulings, and with good reason. These are important and highly visible moments. Some scholars, however, have tried to show that earlier stages in the process, when issues move on to the public agenda and the range of alternative responses is defined, can be just as important in determining the outcome of policy debates as these authoritative decisions (Bachrach and Baratz 1962; Crenson 1971; Kingdon 1984; Baumgartner and Jones 1993; Rochefort and Cobb 1994). Central to these studies are asymmetries of power that enable particular individuals and groups to influence what problems are taken up and what remedies are considered legitimate.

Empirically, it can be difficult to show what happened at these earlier stages and whether those events were decisive. With workers' compensation, the evidence ranges from strongly circumstantial to clear and compelling. Comprehensive reform of workers' compensation never came to a vote in Congress during the 20th century, so our focus must be on these earlier stages. Clearly, such reform was considered more than once. Each time, key individuals within the executive branch – Franklin Roosevelt's Committee on Economic Security, Social Security officials in the late 1930s and 1940s, White House staff under Lyndon Johnson – decided that a fundamental challenge to states' programs was politically unwise. They repeatedly noted how poor a job states were doing with workers' compensation, and how formidable the stakeholders were. The program's history shaped policy makers' sense of the possible. It is striking that a major expansion of the national government's role in regulating workplace safety (the OSH Act) was deemed more likely than a national takeover of workers' compensation, or even uniform standards for state laws.

Without a strong push from the executive branch, fundamental change was unlikely. Proponents of continued state-level control had a clear advantage in Congress, which is particularly vulnerable to geographically dispersed pressure from locally powerful interests. The only time members of Congress approved change to workers' compensation (i.e., the Black Lung program) was when they were sure it was minor and would not upset the basic framework of state-level control. The appropriate metaphor here is not the dog that did not bark. Workers' compensation is the mean-tempered dog everyone learned to walk around. It is hard to imagine a better example of the "second face of power" (Bachrach and Baratz 1962), in which actions are never attempted because the chances of success seem so low.

Finally, at a more abstract level, this paper offers empirical support for recent arguments about path dependence in politics (Pierson 2000). The history of workers' compensation provides an unusually clear case of the ways in which a program's origins can shape its subsequent development. Perhaps the single most critical juncture in the program's history occurred in the mid-1930s when policy makers agreed to increase the national government's responsibility for a large number of needy groups – the elderly, the unemployed, the blind, poor mothers and children – but not injured workers. That decision, in turn, was shaped by several developments in the 1910s and 1920s: the rapid

diffusion of state workers' compensation laws; the heavy reliance on private employers and insurers to deliver benefits; and mounting evidence that state laws had serious imperfections that the national government would find costly to remedy. Once the program had been excluded from the Social Security Act, it was so embedded politically and institutionally at the state level that future reformers found it almost impossible to imagine a successful campaign to national or even federalize the program. In a number of key respects, such as the mix of public and private insurers and the wide variation in benefits by state, workers' compensation has changed remarkably little since the 1930s.

It is important to remember that workers' compensation did not remain the province of the states simply because of a dense network of stakeholders. National officials never contemplated comprehensive reform to workers' compensation as a single, separate issue. It was always bundled with other issues such as the Social Security Act, disability insurance, and new occupational health and safety regulations. The history of workers' compensation cannot be understood apart from the history of these other initiatives, for policy makers repeatedly chose to leave workers' compensation alone in order to improve the odds of winning these other battles. Charting a new path for the public sector was hard enough without simultaneously trying to redirect an old path.

There was nothing inevitable about this history. Widely shared perceptions of a "crisis" in workers' compensation could have given rise to a strong push for national involvement. In that case, the cost of switching paths might have seemed less daunting. Instead, the costs were repeatedly magnified by the potential of undermining some related and valued expansion of the public sector. Thus, this case suggests that arguments about path dependence in policy making must be sensitive to the ways in which actors' preferences and goals can be shaped by the trajectory of two or more policy paths.³²

The implications for our understanding of policy preemption are more ambiguous. Pierson argues persuasively that one of the unappreciated trends in U.S. social policy making has been the gradual nationalization of income transfers since the New Deal. Some of this transformation has been due to the creation and expansion of new national programs like Medicare and the Earned Income Tax Credit, and some to the rapid growth of older national programs like Social Security. The more intriguing part of his argument concerns patterns of success (Food Stamps, SSI) and failure (unemployment insurance, AFDC) at nationalizing social programs. Pierson argues that these battles were waged less over jurisdictional questions than over substantive changes in policy content. In other words, the issue was not state versus national control, since state officials had little to gain politically by retaining control of income transfers to the poor.³³ The issue was whether coverage would be expanded, benefits made more generous, and both made more uniform. "Opposition stemmed far less from the desire of state officials to amass and retain bureaucratic power than from the demands of many interests to prevent a nationalization of benefits that would hinder economic strategies based on low wages and stingy social

provision” (Pierson 1995: 325). Questions of political economy trumped questions of federalism.

The history of workers’ compensation offers at least two twists to this way of characterizing policy preemption. First, it appears that questions of political economy differ depending on which levels of government are involved. Within the individual states, changes to workers’ compensation are bounded by concerns that generosity will make the state less economically competitive (e.g., Tarpinian, Tuminaro, and Shufno 1997; Graetz and Mashaw 1999: 85-86). When national officials think about reforming workers’ compensation, on the other hand, questions of political economy are bounded by concerns that powerful third-party providers will object. The second twist is that it is hard to separate questions of political economy and questions of federalism when discussing workers’ compensation. When policy makers contemplated a greater national role, they faced opposition from state bureaucracies and from third-party providers operating within the states. Indeed, it is perhaps precisely because opponents could rely on two different lines of attack, substantive and jurisdictional, that workers’ compensation has resisted federalization, much less nationalization.³⁴

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ENDNOTES

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1. The original, and more gendered, name for this program is workmen's compensation. The term "workers' compensation" did not become common until the 1970s.
 2. To be fair, workers' compensation did not disappear off every scholar's maps. Specialists in labor economics and industrial relations have remained interested in the program. But they ask different questions than the political scientists, historians, and sociologists who contribute heavily to the welfare state literature. They are more interested in the impact of workers' compensation on accident rates and labor supply, and the cost-effectiveness of the program (e.g., Burton and Berkowitz 1971; Butler and Worrall 1983; Krueger and Burton 1990). Rarely does one find in these studies mention of political struggles over benefit levels and coverage, or comparisons with other social insurance programs. Although this neglect may reflect the practical difficulties of studying 50 different state programs rather than a single national program, such difficulties have not impeded study of AFDC.
 3. Workers' compensation is also unusual in that employers can deduct their expenses from their taxable income without having to comply with government rules concerning eligibility or benefits, as is true of company-based retirement and health insurance plans (Mont, Burton, and Reno 1999: 3).
 4. Only the United States, Canada, and Australia have multiple workers' compensation programs in operation (Williams 1991).
 5. The only other social insurance program with significant statewide variation is unemployment insurance, and it pales in comparison. Average weekly unemployment benefits in the least generous states are still at least half as large as benefits in the most generous states, and the gap shrinks further if differences in cost of living are taken into account (U.S. Census Bureau 2000: 388).
 6. Berkowitz (1987: 18-19) recounts the case of an immigrant worker who lost his leg on the job in 1909. A court returned a verdict in his favor in 1910 and ordered payment of \$1,000 in damages. The ruling was appealed by the employer, but upheld in 1911. The money was finally paid in the middle of 1912. After paying lawyers' fees, doctors' fees, expert witnesses, and an interpreter, the worker was left with less than \$100 – three years after the injury.
 7. Maryland and Montana were the only state legislatures to enact workmen's compensation without

the benefit of a special commission's report.

8. Besides being dangerous, these occupations were chosen because the affected industries were less threatened by interstate competition (Graebner 1977: 340).

9. As the majority wrote in *Ives*, ““In its final and simple analysis [compulsory worker's compensation insurance] is taking the property of A and giving it to B, and that cannot be done under our constitutions.”” (cited in Robertson 1989: 278).

10. It is worth noting that the first workmen's compensation law for federal employees passed in 1908, before the first state law.

11. Many scholars have noted that the widespread passage of workers' compensation was remarkable considering that proposals for old-age, unemployment, and health insurance went nowhere in the early 20th century. Some scholars argue that government remedies to the problem of industrial accidents had already been well established by tort law and the courts; workers' compensation laws were thus viewed as a technically superior remedy to a legitimate public problem (Skocpol and Ikenberry 1983; Berkowitz and McQuaid 1992; Skocpol 1992). A more recent version of this argument is that workers' compensation was the one form of social insurance that business, labor, and government officials could all agree on and benefit from (Fishback and Kantor 2000). Other scholars argue that business support was more decisive than any actions taken by labor or government (Weinstein 1968; Lubove 1986; Robertson 1989; Noble 1997). For the purposes of this paper, what matters most is that workers' compensation laws were well established in almost every state prior to the 1930s, that business and labor were motivated to make these laws work, and that public and private actors were responsible for administering the program.

12. More precisely, state laws were usually elective with respect to the private sector, but often compelled coverage of public sector workers.

13. For a careful analysis of the ways in which Civil War pensions also triggered charges of corruption and cronyism in the early 20th century, see Skocpol 1992.

14. Fishback and Kantor (1996) found that in these states, unions were stronger politically than insurers and a strong reform movement, led by Progressives or Non-Partisans, existed.

15. A representative from the National Bureau of Casualty and Surety Underwriters wrote the CES in September 1934 to urge passage of unemployment insurance because companies issuing workers' compensation policies were losing money. Faced with skyrocketing unemployment, state courts and agencies were extending workers' compensation coverage to a wider variety of claims, and state regulatory agencies were not approving rate increases (Records of the Social Security Administration, Committee on Economic Security, Record Group 47, Box 42, National Archives).

16. I thank Larry DeWitt of the Social Security Administration's Historian's Office for making a copy

of this report available to me.

17. Title VI of the Social Security Act provided \$8 million annually to assist states in the promotion of public health, which was as close as the national government came to influencing medical care.

18. It seems reasonable to infer that because the science of predicting industrial accidents was in its infancy in the 1920s, the most “successful” insurers were those who gained customers by offering low rates based on faulty actuarial assumptions, rates that later proved too low to cover claims by injured workers.

19. For a general analysis of the New Deal stressing the importance of institutional and interest group advocates, see Amenta 1998.

20. The Board was renamed the Social Security Administration in 1946.

21. This was a switch for both organizations: the AMA had endorsed disability insurance as recently as 1947, and the Chamber of Commerce as recently as 1944 (Altmeyer 1966: 186).

22. The following discussion of the Black Lung program is based primarily on “Labor Legislation” 1973, Barth 1987, and U.S. Congress 1990: 1339-44.

23. Previous efforts to regulate coal mine safety in 1941 and 1952 were also precipitated by mining disasters (Lewis-Beck and Alford 1980).

24. Some readers may note that this case has several parallels to Downs’ (1972) discussion of the life-cycle of public problems.

25. The major bills regulating mine safety before 1969 were passed in 1941, 1952, and 1966.

26. The exceptions were Alabama and Pennsylvania, whose worker compensation programs began covering black lung in the 1960s.

27. Legislators later made the Black Lung program permanent after states failed to make expected changes in their compensation laws.

28. Johnson’s decision not to seek re-election came in 1968, well after he had made occupational health and safety a top priority.

29. The Bipartisan Commission on Entitlements and Tax Reform, created in the mid-1990s, failed in part because it was asked to do too much.

30. In addition to the publications of the National Commission on State Workmen’s Compensation Laws, this section is based on material in Burton and Krueger 1986, Berkowitz 1987, Burton 1988, Larson 1988, and Shor 1990.

31. By the same token, I have said little about the politics of workers' compensation within and across the states, a good topic for future research.

32. For a related insight, see Orren and Skowronek's discussion of the "nonsimultaneity of institutional origins" that are one source of the "patterned disorder" in American politics (1994: 323, 330). Just as tensions and discontinuities exist between the development of large-scale institutions like the presidency and the party system, so too among smaller-scale institutions like social policies.

33. I disagree with Pierson that state officials classify unemployment insurance as income support for the poor, along with AFDC, Food Stamps, Old Age Assistance, and Aid to the Blind.

34. To be fair, Pierson explicitly limits his claims to income transfers and deliberately excludes "cases of service provision (for example, health care, housing) in which the distributional impact of policies may be less clear-cut and the dynamics of multitiered decisionmaking are probably most complex" (1995: 302, fn 2). Workers' compensation is not a great test of this conclusion, for it combines income transfers and service provision. A cleaner test might be Medicaid or job training. My hunch, however, is that workers' compensation stands apart because of its reliance on powerful economic actors – insurance companies, self-insured employers, doctors, hospitals, and lawyers – to help administer the program.