CHARACTERISTICS OF THE BRITISH SYSTEM OF SOCIAL SECURITY, WITH SPECIAL REFERENCE TO UNEMPLOYMENT

Harry CALVERT

Dean of the Faculty of Law,
The University of Newcastle-upon-Tyne

Like most modern states, the United Kingdom enjoys a comprehensive system of social security designed to ensure that the accepted minimum standard of life can be maintained where the normal means (most commonly income from employment for workers and their dependants) fails.

This system is a relatively recent development. Historically, the prevailing philosophy has been one of individual responsibility and self-help. A man should foresee the risks and make provision out of his earnings against them, i.e. «save for a rainy day». One who failed to do so might be fortunate — his family might come to his assistance, or neighbours might offer help. A charitable organisation, the Church in particular, might provide for him. But he had no «right» from society to protection.

This philosophy proved inadequate for a number of reasons :

1. The earnings of very few people indeed were adequate to provide against all the risks that might befall — the earnings of many were hardly more than was needed to maintain a bare level of subsistence.
2. The majority of individuals (almost all women and children) were dependents and did not themselves have the means to make any provision. These two reasons were inherent in the social organisation of the times. A third was not, but became so. Urban development and, eventually, the industrial revolution one the one hand greatly aggravated the proportions of the problem and, on the other, weakened those institutions (the family, the neighbourhood, the Church) on which primary reliance had been placed.

It was this latter development which provoked what was at first a very limited response from English law. Acts of Parliament at the

very end of the sixteenth century in London and throughout the seventeenth century elsewhere (except in Ireland where the process culminated in the nineteenth century) established a "Poor Law" aimed no higher than keeping the really destitute alive and frequently failing even in that objective. In Ireland (at that time still under the British Crown), hundreds of thousands starved to death ; many more emigrated. The "Poor Law", financial responsibility for which rested with the local community, was clearly inadequate.

Yet, for many decades, the state did nothing, the only attempts at amelioration being made by private charity, trade unions and friendly societies. The prevailing philosophy was one of «laissez-faire» — provided that government did not tamper with things too much, everything would eventually come right. It was not until the turn of the present century that this faith was progressively abandoned. Starting in 1897 on a very limited front, a series of acts of Parliament over the ensuing 40 years gradually extended security. At first, limited protection was conferred only on limited groups. By the outbreak of war in 1939, a multitude of separate schemes had come to offer some protection to most people against most risks. But this regime lacked both unity and comprehensiveness.

The achievement of these two latter characteristics was the chief aim of the Beveridge committee, set up and reporting during the war with a view to establishing a new and more rational all embracing scheme after the war. The Beveridge Report formed the basis of the Family Allowances Act, 1945 ; the National Insurance Act, 1946 ; the National Insurance (Industrial injuries) Act, 1946 and the National Assistance Act, 1948, the modern counterparts of which form the legal framework of present-day social security in the United Kingdom.

You may well wonder why, if this modern scheme is unified and all-embracing, four separate legislative instruments are required. So do I. It is easy to explain why, but impossible to justify. The reasons are historical :

1. National Assistance (now Supplementary Benefits) was the successor to the old "Poor Law" which I mentioned earlier — I shall return to it and deal with it in greater detail later.

2. National Insurance (Industrial Injuries) follows on from a series of Acts, beginning in 1897, dealing specifically with injuries at work.

3. National Insurance, **simpliciter**, continues and extends all the other aspects of social security law known prior to the 1939 war — unemployment Benefit, Sickness Benefit, Retirement Pensions etc.

4. Family allowances was without precedent, a new scheme evolved by Beveridge as an attempt to cope with the problem of family poverty.

I wish now briefly to review each various element in the scheme, paying special attention to the Supplementary Benefits scheme and then deal with the unemployed in greater detail.

I. Industrial Injuries

Benefit of one of three kinds may be awarded in the event of "personal jury caused by accident arising out of and in the course of insurable employment», or recognised industrial disease.

The three kinds of benefit are :

1. Injury benefit, directed towards making good loss of earnings due to loss of work because of the injury ;
2. Disablement benefit payable as a sort of **solatium** in respect of a more or less permanent disablement involving the victim in handicap or discomfort even though not interfering with earning capacity.
3. Death Benefit — payable to dependents in the event of the fatal injury of the breadwinner.

In recent years, there have been, on average, just under one million claims per annum, most of them successful. At any given time, there are about 300,000 people receiving benefit. Over 200,000 of these are disablement benefit cases (this benefit being payable for the duration of the disablement which is often, e.g. in the case of loss of a limit, for life). Death benefit accounts for about 30,000, this again being of relatively long duration. The remaining 70,000 or so are relatively short-term injury benefit cases.

The total annual cast of industrial injury benefits is about £ 110,000,000. The scheme is only partly financed out of general taxation and is separately funded. The chief source of funds is contributions by employees and employers, each contributing a few pence in respect of each worker depending to some extent upon sex and age.

By comparison with other benefits, industrial injury benefits are generous. The rate for an adult beneficiary with a wife is now about £ 12 p.w. The benefits are payable as of right. There is no means-testing.

II. National Insurance

In terms of the total sums involved, the numbers of persons affected and the range of benefits offered, this is the most important part of the social security regime.

It is a contributory scheme, i.e. the greater part of the income again derives from contributions paid by or on behalf of employers and employees. There is a contribution of about quarter of total income from general taxation. Social security expenditure totals

nearly one fifth of all public expenditure in the U.K. and of this, nearly two-thirds (i.e. about one eighth of total public expenditure) is National Insurance outgo, i.e. £ 2,300 m. plus. The weekly contributions vary with age and sex, as in the case of industrial injuries contributions but are much larger — in the commonest case of an adult employed male, the flat-rate contribution is 67p by the man and 74p by the employer, a total of 1.41 p.w. This is the **flat-rate** contribution. Additional contributions varying with income, are also payable.

The range of benefits offered is extensive, and I shall deal with them briefly one by one :

1. **Retirement Pensions** — these account for over two-thirds of total outgo. They are payable to contributors aged 65 (men) and 60 (women) whether retired or not. Light or occasional work may be undertaken consistently with "retirement". The flat-rate benefit is not generous — it is presently £ 6.75 for a single person and nearly £ 11 for a couple. (A widow who has not contributed may, nevertheless, draw pension by virtue of her deceased husband's contributions). Those who have paid extra ("graduated" i.e. varying with income) contributions may be entitled to an earnings-related supplement. This however, is a relatively recent innovation and as yet raises few retirement pensions to an adequate level. The basic retirement pension would pay the rent on a very humble furnished flat ; or would buy 3 kilos of best beef ; or two bottles of Bacardi. That is all.

The retirement pension is, however, payable as of right, regardless of income from other sources, i.e. it is not means-tested. The theory here, as with all other National Insurance benefits, is that of insurance — the beneficiary has paid his contributions, therefore he is entitled to his benefits. This, however, overlooks the fact that the contributions are inadequate to finance the scheme without supplementation from general taxation. In short, the millionaire retirement pensioner has not earned and does not need a substantial part of his benefit. If this were to be rationalised,some three to four hundred million pounds would become available for redistribution within the social security system and this is almost as much as is presently spent on any other single benefit.

2. Sickness Benefit

This is the second largest spender, accounting now for nearly £ 400m. per annum. It is payable whenever a contributor becomes incapacitated for work through mental or physical illness. Of course, if the disability arises out of the work, industrial injuries Benefit (at a higher rate) may be payable and there are rules against double benefit.

The rates are the same as for retirement pensioners except that

there are more restricted earnings-related benefits. Sickness benefits tends overall, therefore, to be even less adequate to maintain a reasonable standard of living. In many cases this will be aggravated since no benefit at all is payable for the first 3 days of any spell of sickness.

In some cases, however, sickness benefit will be more than adequate. This is because its payment is **not** contingent upon loss of earnings. It is theoretically possible, therefore, for a beneficiary whose employer continues his pay throughout the sickness, to receive **both** full wages **and** sickness benefit. This actually used to happen to a considerable extent. Gradually, however, employers become aware of this and it is now usual for contracts of employment which used to provide for salary or wages during illness to provide instead for payment of that amount less the amount of sickness benefit. The beneficiary is, in the result, neither better nor worse off than if he had been at work. But the employer is very much better off than under the former practice and, in effect, the social security budget is subsidising his wages bill rather than alleviating need due to illness. The only way to avoid this abuse is to legislate for the payment of compulsory sick pay by employers (in the same way that the Contracts of Employment Act 1963, considered below, provides for mandatory severance pay) and there has been little agitation for this.

3. Unemployment Benefit, the next costly benefit (currently running at about £ 250m. p.a.) is considered in detail below.

4. Widow's Benefits

These are payable by virtue of the deceased husband's contributions. They are of 3 kinds aimed at satisfying 3 needs :

(a) All dependent widows are entitled to an initial short-term benefit designed to ensure a continuation of income pending the widow's securing an alternative income from employment. In the case of relatively young widows without children, it is assumed that work will be found and the needs thus provided for. In many cases, this assumption proves unwarranted — the benefits nevertheless cease and the widow must look to other sources for a livelihood after 26 weeks.

(b) Older widows, inured to a lifetime of dependency, are much less likely to find or be suited for work. A widow's pension, available until retirement pension age or remarriage, is therefore available to the survivors of marriages of three years or more, aged 50 or over. The pension is also payable for the duration of an incapacity and may be suspended during cohabitation.

(c) A widow left with young children cannot be expected to work for a living and a special continuation of benefit after the

first 26 weeks for so long as the children are dependant is therefore provided in her case.

The initial 26 weeks' benefit in the case of widowhood is paid at a higher, though still not generous, rate than other National Insurance benefits. After that, however, it continues, if at all, at the customary, lower, National Insurance rate.

5. Other Benefits

The National Insurance Act also covers matters such as Maternity Benefits, Guardian's allowances, Death grants (to assist with funeral expenses etc.) and child's special allowance (for the maintained children of a divorced and then deceased father).

It will be appreciated that whilst all these National Insurance benefits go a long way towards alleviating need in the cases covered, they leave many gaps. One of these, family poverty, is specifically dealt with by the Family Allowances scheme and a later scheme, the Family Incomes Supplement scheme.

III. Family Poverty

Wages, i.e. usually, the family income, are still determined largely by the labour market. The worker tends to be paid as much as and no more than his labour is worth. How many people have to eke a living out of what he earns is irrelevant. The only difference between the bachelor and the father of ten is that there is some evidence of the latter dissipating his energies in activities other than this work.

What, therefore, is a living wage for one man or a small family may be utterly inadequate for a large family. Beveridge foresaw this and the Family Allowance's Act provides a system of payments as of right (i.e. no contributions ; no means-testing) in respect of the second and subsequent children in a family. The current rates are 90p for the second child and £ 1 for the third and subsequent children.

All families qualify for these payments. They are, however, taxable and all recent increases have been negatived, in the case of many families not in dire need, by 100 % recoupment in the form of income tax. Even so, large sums (the total budget is about £ 400m) are still paid to families not in need who further benefit by income tax allowances in respect of dependent children.

It has for long been recognised that in the case of very low wage — earners with large families, family allowances are by themselves inadequate to raise the family income to a decent level. To increase family allowances (payable regardless of means) substantially would involve greater public expenditure than governments have thought desirable. Accordingly, a new scheme, based

on supplementing very low family incomes, has been established by the Family Incomes Supplement Act 1971. This scheme is still in its early days but already evidences one of the basic weaknesses of such schemes — almost one half the families entitled have not applied for supplementation. The reasons are still somewhat speculative. It is quite possible that information about the schemes has failed to reach some of those entitled. Yet others may be embarrassed by revealing their incomes or too proud to accept what they regard as "state charity".

It will be noted that although all the above — mentioned schemes are extensive in scope, none of them, nor all together, are absolutely comprehensive. Not all disabling injuries occur at work ; not all sick or unemployed persons are covered by national insurance — they may either never have satisfied, or have exhausted, their contribution requirements. These and similar cases used to be provided for by the old "Poor Law", later "National Assistance". Beveridge anticipated that there would always be a residiuum of cases of need not provided for by the other schemes and accordingly the old Poor law was revamped, re-named and continued as National Assistance.

IV. National Assistance (now Supplementary Benefits)

National Assistance (again re-vamped and re-named in 1966 for reasons which I shall come to) carried over into the post-war scheme much of the opprobruim which had attached to the old "poor law". People who were entitled to the benetifs which it offered were often too proud or ashamed to apply for them — they were a form of "means-tested" charity. The classic caricature was that of the brash young bureaucrat seeking to inspect the old lady's underwear in order to ascertain if a clothing allowance was justified ; and caricature is merely an exaggeration of truth.

Over the two decades after the war, this came to matter more and more because national assistance came to play a role never conceived for it by Beveridge. It was this — inflation came to mean that the benefits which the National Insurance funds could bear (on the subsidised insurance principle) to pay were inadequate to maintain a decent basic subsistence level of life without supplementation. The simple expedient of making a larger exchequer contribution to National Insurance funds and raising benefits would have involved making increased payments to all beneficiaries, regardless of need and would have been cripplingly expensive. It was therefore left to the means-tested national assistance to raise benefit levels by the necessary amount in cases of need.

This was less prodigal of government funds. It did, however, mean that many more people were embraced by national assistance than had ever been the case with the Poor Law. The function

of national assistance had radically changed and its image needed changing too.

The old poor law (and national assistance) had been discretionary. This added to the flavour of charity. In 1966, a new Act was passed — National Assistance became Supplementary Benefits — what had previously been a matter of "discretion" now became a "right". A publicity campaign emphasising the latter point was launched and the following years saw a marked increase in the number of beneficiaries. To some extent, it was a confidence trick. The new "right" is obviously not an absolute one, otherwise every man woman and child would be entitled to full benefit without more ado. The "right" is conditional upon proof of need — i.a. a means-test. The idea that Supplementary Benefits are something for "the poor" thus still prevails, though claimants seem to be becoming less sensitive about this.

The basic benefits are at about the same level as national insurance benefits, but may be supplemented by additional allowances for matters such as rent, clothing, long-term needs etc. The amount of entitlement is calculated by subtracting actual resources (including national insurance benefits) from requirements as laid down in the Act and regulations. It may thus happen that a man recently unemployed and with some savings of own finds himself receiving substantially less by way of unemployment benefits than a long-term unemployed neighbour, a fact which breeds considerable if not wholly justifiable resentment. It also makes a mockery of the contributory character of the national insurance scheme. It was a cardinal principle of the Beveridge proposals that national insurance benefit rates should be higher than national assistance, otherwise the contributor to the former would get nothing for his money. In many cases to-day, he does get nothing for his money. If he had not contributed (though for workers it is compulsory, so he has no option) he would have been just as well off. I shall return to this point. First, just a brief word about the range of supplementary benefits.

Nearly two million persons (some with dependant wives etc.) now receive either supplements to their Retirement Pensions or are wholly pensioned out of supplementary benefits. A further 250,000 widows receive such benefits. This compares with about 4 million on unsupplemented insurance retirement and widows' pensions. A quarter of these receiving unemployment and a seventh of those receiving sickness benefit are supplemented. There are now almost as many unemployed persons relying upon supplementary benefits as there are exclusively on national insurance benefits.

The position this is that although the form of the post-war scheme has remained the same throughout the past 25 years, the substance has altered radically. The original concept was of a sort of compulsory providence - the prudent man puts something aside in the good times to tide him and his dependants over the

bad times at an adequate standard of living. Others, the few who fail to make such provision, should not be left to starve but cannot expect luxury.

To-day, the idea of contribution functions largely as a form of regressive taxation and in many cases, the contributor gets nothing for his trouble. Whilst most not covered by national insurance are not spendthrifts and wastrels but rather helpless casualties of our inefficient social organisation.

A complete abandonment of national insurance is, in the near future, unlikely — the strong and not wholly rational attitude that, having paid contributions, one owns the fund, prevails. In the area of non-contributory benefits, however, we can expect that Britain will soon abandon separate means-testing with its stigma of the old poor law and adopt a system of negatieve income tax. Such a system would be by no means simple and would involve complex administrative structures and procedures. So, however, does our existing system of social security, and negative income tax at least opens the prospect of approximating more closely to accepted notions of social justice.

UNEMPLOYMENT

The vast majority of people in the United Kingdom today are either workers or their dependants and accordingly look to income from employment as a means of securing most of the amenities of life. Protection of the right to work and compensation in the event of loss of work therefore rank high among social objectives.

Before the comparatively recent growth of state intervention the law offered scant protection. In a very few exceptional cases, a "worker" might be entitled to retain his job for life, provided he behaved himself but for the overwhelming majority of workers, the only rights were contractual ones, i.e. mutually agreed to by employer and employee, and since the individual worker was usually in a very weak bargaining position, his rights were usually very limited. We may state, briefly what the salient features of his position were :

1. He had no **right** whatever to be employed by another person in the first place (though he had liberty to use his own enterprise) ;
2. He could, if he got work, be summarily dismissed at any time without notice or compensation for a sufficient misconduct ;
3. Without any misconduct, (a) he could be summarily dismissed, though this would constitute a breach of contract by the employer who would be liable in damages (though it was almost unheard of for a worker to sue an employer in the courts). The damages were confined to the amount of wages the worker would have received had he been given proper notice. This would usually be one week's or one day's wages.

Occasionally, it might be a month or more, or an hour or less. It all depended upon the contract which the employer largely dictated in the first place. Or (b) he could be given due notice (an hour or day or week or month etc.) at the end of which he would be discharged with no further obligation on the employer's part.

This remained the basic legal position long after trade unions became a prominent feature of the industrial scene. Unions preferred to avoid legal processes as much as possible (though certain legislative changes were necessary in order to enable them to go about their business as trade unions at all.) That statutory improvement of the worker's position has come about is due more to occasional flashes of enlightened government and to the influence of millions of workers as individual voters rather than to trade union activity as such.

Whatever the reason, the worker today has available to him a number of statutory weapons with which to defend himself. I shall deal with them in a moment. Before I do so, I wish to draw attention to one other significant development. Our ordinary courts of law are, for the ordinary worker seeking to assert his rights, rather forbidding places. A judge, drawn from a different stratum of society, sitting in robes and a wig on an elevated dais, is an unfamiliar sight to one straight off the shop floor. Procedure is very formal and even ritualistic. Litigation can be crippingly expensive and go on for years.

The greatest single advance we have made is to create a new structure of less formidable tribunals with less forbidding officials, a more informal procedure and efficient, swift and inexpensive method of despatching business, to say nothing of a degree of expertise, in their fields, not shared by our ordinary courts. For many years now we have had special tribunals to try social security claims of which unemployment benefit claims are an important part. We now have another tribunal structure — Industrial Tribunals, established in 1964 with a purely fiscal function but now invested with jurisdiction over a wide range of employment questions, including redundancy.

These tribunals are, in an important sense, peoples' courts. They handle very many times the number of actions processed in our old courts of civil jurisdiction and, of course, they deal with matters of vital importance to their clientele. £ 1,000 to an ordinary worker can matetr more than does £ 1m. to a giant industrial corporation. Without these tribunals, the range of weapons I am about to describe would be ineffective indeed.

I suppose first of all to set out the complete armory, dealing briefly and finally with some weapons and then to go on to deal in greater detail with Redundancy Payments and Unemployment Benefit.

1. Contracts of Employment Act 1963 (now consolidated in the 1972 Act)

Prior to 1963, there was no comprehensive statutory regulation of the terms of a contract of employment. In particular, the period of notice (i.e. the extent of job security) to which the worker was entitled really depended upon the employer who was usually in a position to dictate the terms of the contract. The 1963 Act, as amended in 1971, does not entitle a worker to resist dismissal but it does ensure him a minimum period of notice or compensation in lieu thereof in the event of his dismissal. Even if the contract stipulates one hour's notice, a worker is entitled to at least one week's notice (once he has been there for a few weeks) ; or, if he has served 2 to 5 years, 2 weeks' notice ; up to 8 weeks' notice after 15 years. He may still be summarily dismissed, with no compensation in the case of misconduct, but if there is no misconduct he is entitled to his full wages (up to £ 40 p.w.) for the stipulated number of weeks.

2. Unfair Dismissal under the Industrial Relations Act 1971

If a worker is unfairly dismissed (i.e. other than for some good reason such as misconduct or redundancy) he may secure from an industrial tribunal :

(a) a recommendation for re-engagement, if practicable and, failing this (or if the employer refuses to re-engage) ;

(b) Compensation for the dismissal.

Note that he has no right to re-engagement. The Tribunal may not order it ; it can only recommend, though an employer ignoring a recommendation without good cause would have to pay more compensation than would otherwise be the case.

This is the nearest we have so far got to a universal right to work and we still have a long way to go. Many jobs (such as in small or family firms) are not covered and the protection only operates after two years in the job. There is a relatively low upper limit to the compensation (2 years' wages not exceeding £ 40 p.w.) and we have not yet evolved adequate rules for measuring compensation. But it is a start.

3. Other Social Security Benefits

For completeness it should be pointed out that where the unemployment results from industrial injury, sickness, or forced retirement on grounds of age, benefits already mentioned may be payable under the appropriate industrial injuries and national insurance schemes.

I come now to the two chief weapons — Redundancy Payments and Unemployment benefit :

4. Redundancy Payments

Technological advance and inefficient social organisation have come to mean that skills which formerly would have ensured a man job security for life are now much more likely to become obsolete and throw him out of work. The legislative attack on this problem in the U.K. is twopronged. In 1964, the scope of industrial training and re-training was radically increased, financed by a system of levies on employers. And in 1965, the first scheme for compensation for loss of job security (not for loss of wages — R.P. are payable alongside unemployment benefits) was instituted.

The RP Act offers payment to those who lose a job by reason of redundancy and also to those who, whilst they have not actually been dismissed, have been subjected to so much suspension and short-time working that their careers have been effectively interrupted and upset. Payments are funded in part by the employer and in part out of a separate fund payments into which are made by employers, employees and the Exchequer. (In fact, a single contribution covering industrial injuries, national insurance and r.p., as well as a part of the cost of the National Health Service is deducted from wages). The size of the payments is determined in each case by references to age, length of service and terminal wages. The largest possible benefit is payable in respect of 20 years service after the age of 40 at a wage of £ 40, the employee receiving 1 1/2 weeks' pay for each year of service, i.e. £ 1,200. Payments are not payable in respect of service before the age of 18 ; nor in respect of less than 2 years' service. A limited range of employments (e.g. government service) are excluded.

In principle, the scheme is a good one. There are, of course, many difficulties in its implementation. Some of them are effectively anticipated by the legislation. I should now mention these :

1. Burden of Proof — In English Law, the burden of proof of the facts upon which he relies is normally on the claimant — he must substantiate his allegations. In the redundancy situation, however, (as also in the unfair dismissal situation) the crucial facts (i.e. the reason for the dismissal) are often peculiarly within the knowledge of the employer. He and perhaps he alone, will know why the claimant has been dismissed. The 1965 Act therefore thrusts the onus squarely on the employer to establish that the reason for the dismissal was NOT redundancy. (The same approach is adopted in the case of unfair dismissal under the Industrial Relations Act 1971.)

2. Continuity of Employment — The longer the duration of the employment the greater the potential payment. Conversely, a

worker might never acquire rights at all if no spell of work ever exceeded two years in length. Because of our obsession with the contractual aspect of employment (as opposed to the simple fact of employment) the common law insists that when the employer changes, the employment ends, even though the job remains the same. This would produce absurd results in some situations. The Act therefore provides that certain breaks in employment can be ignored, as for instance, where a whole business is taken over by a new company as a going concern, without a break in production. At the same time, a line has to be drawn somewhere and our tribunals have not yet adequately solved the problem of where. In cases of transfer, the subject of the sale may be anything from the entire business down to a solitary machine on which the claimant happens to work. The present attitude is to allow continuity only where the entire business in transferred — this can lead to injustice.

3. Re-absorption of Labour.

The most convenient and effective solution to the problem of redundancy is the re-employment (in an identical job) or re-engagement (in a different but equally good job) of the worker. The Act therefore provides that liability to make a redundancy payment may be avoided by an appropriate offer by the employer. This has the effect of conducing an employer to solve his own redundancy problem wherever he can.

These and other problems were all anticipated by Parliament. Others were not, and the tribunals have had to grapple with them. I will illustrate some of these :

(a) An employer may dismiss for a mistaken reason, e.g. he may attribute a decline of business to the inefficiency of a worker and dismiss him for that reason, when in fact it is due to a fall in demand. Here, in fact, there is redundancy, but our courts have taken the view that it is the motive of the employer which matters and denied payment. There is obvious scope for abuse here.

(b) In some cases, it may be difficult to determine whether there has been a «dismissal» or whether the employment has come to an end in some other way, e.g. by agreement between employer and employee, or by frustation (e.g. in case of prolonged sickness). The former frequently occurs when redundancy is anticipated and the employer seizes the change of another job either with the old employer or with a new one. If it is a new employer, no payment is obtainable. In the case of work with the old employer the tribunals have now become inclined to lean in the claimant's favour and presume, if they can, that the new job is just a trial arrangement and that if it turns out to be unsatisfactory, the employee may opt for the payment.

(c) One of the most difficult problems to grapple with has been the question of the changing job specification. As the techniques required in a particular job become more sophisticated, so must the skills of the worker, if he is to perform satisfactorily. An old

dog may, however, find new tricks hard to learn. Tribunals have had the greatest difficulty in deciding these cases. Up to a point, it can be said that the old job continues but the worker has become inadequate. Beyond that, the view might be taken that the old job no longer exists — a new one has taken its place and the worker is therefore redundant and entitled to payments.

I have merely touched upon a few of the salient points of what is, for us, a relatively novel scheme. For some years yet we shall be ironing out the creases. It can, however, already be said that the scheme, though far from perfect is achieving two associated and very desirable objects :

1. It is abating some of the fear of unemployment which has haunted the British industrial scene for too long. Jobs are made slightly more secure and livelihoods much more secure by the availability of compensation ;

2. It is enabling a much more speedy and smooth renovation of British industry to take place than would have been possible otherwise. Without an effective and acceptable scheme of redundancy payments, organised labour would have resisted change very much more forcefully.

I turn now to unemployment benefit.

The idea that a man could become employed for reasons outside his own control and for which he is in now way to blame has only recently won acceptance in our law. Historically, it never seems to have occurred to us even to question the idea that this dependants must also, somehow, necessarily share the responsibility with him and thus be equally disentitled to help from the state.

In the course of this century, we have gradually departed from the idea that unemployment is necessarily a sin — but we have not yet fully shouldered social responsibility for his condition. A man fully trained, able and willing, even anxious to work, but unable to do so despite his very best efforts, is still regarded by us as deserving only a minimum subsistence standard, during his period off work. We shelter behind the idea of providence — he should have put something aside for a rainy day — quite without regard to the fact that his level of earnings when in work (and many young people never find work in the first place) may have been grossly inadequate for the purpose. We assume that a higher level of benefit would necessarily make him "work-shy" even if it is proved conclusively that there is no work to be "shy" of. I shall now outline in brief the law relating to unemployment benefit — but in doing so, we must view it against the background of this social philosophy.

It is the most complex part of our model security law. Benefit is payable for one year only if four conditions are satisfied :

1. He must have paid contributions in a certain amount for a certain period — benefit is thus not universally payable — in

effect it is confined to those who have been employed by another for a certain period of time.

2. The claim must be in respect of a reckonable day of unemployment (the first 3 days of any spell are excluded for administrative convenience) ;

3. He must, if he is to benefit, be available for employment, and

4. He must not be disqualified for benefit.

Most of the difficulties which arise, arise under heads 2 to 4.

First, whether a day is a "day of unemployment" or not. One would expect this to be simply a question of whether there was work for the worker to do or not. It isn't. There are a number of instances where, although not working, he may not get benefit :

1. Suspensions — i.e. where the employment is not terminated but the worker is laid off (e.g. because of shortage of work). Here, the first 6 days of suspension are discounted. When it is remembered that the next three days also fail to qualify (under the "waiting days" rule) benefit may not be receivable for the first 9 days (plus any intervening Sunday !)

2. Full extent normal — Unemployment benefit is meant to take the place of wages. It is therefore a rule that where a man's normal week includes non-working days, he shall receive no benefit one he has already worked the full extent normal in his case. This is all very well in some cases, but in others (where a worker has been forced to take a long spell of short-time work) hardship results.

3. Guarantee Agreements — Where an employer guarantees a week's wages whether work is done or not, there is no case for benefit. The law, however, only imperfectly achieves this end. It assumes that if the contract obliges the worker to work a full week if requested, his guaranteed wage is a full week's wages. Frequently, it isn't. A very common guarantee is four days' wages. A worker might "earn" these by working four days but nevertheless be unable to earn benefit for the 5th and 6th days when he is both unemployed and unpaid.

.4 Compensation — A dismissed worker is often compensated. It is, again, reasonable to withhold benefit for the period covered by the compensation. The law, however, can again work hardship. In one case, a worker entitled to 12 weeks' salary was given only seven weeks' pay and was in consequence without both pay and benefit for 5 weeks.

5. Recognised or customary holidays : Where a worker would in any case not have earned because of a holiday, he cannot obtain benefit.

I have, in mentioning the above cases, concentrated on these instances where the law may produce odd results detrimental to the worker. It should be emphasised that the most usual instance is for an unemployed worker to be entitled to benefit. And at the

other extreme there are instances where he may be entitled to benefit notwithstanding that he is NOT unemployed. Examples are :

1. **Nightwork** — where a simple spell of work begins on one day and ends on the next, it would be very harsh to disqualify a worker from benefit for both days — he has, in effect, received only one day's pay. Fair enough. But in some occupations, much more than a day's work may be done in a single overnight spell — an extreme example is a night-watchman beginning work at 04.00 on one day and ending at 20.00 on the next — he has earned and received a week's pay, but may (unless the "full extent normal" ours applies) be treated as employed on only one day and therefore entitled to five day's benefit.

3. **Subsidiary occupations** — provided the pay is low, and provided it is NOT his usual work, a worker may keep the pay from a subsidiary occupation without losing his benefit.

4. Certain types of "work" of a casual or temporary nature may be ignored.

I come now to the 3rd condition mentioned above — that the unemployed worker must be "available for employment". This follows from the notion that U.B. is only for those willing and able to work but lacking the opportunity to do so. It makes good sense up to a point. If it works harshly it is by reason of the fact that the worker must have a realistic prospect of obtaining work eventually if he is to be considered available. There have thus been cases where workers have been denied benefit on grounds of unavailability because they have refused to leave the home locality and take work 700 miles away.

Condition 4 — Disqualification

No-one would quarrel with the refusal of benefit to a man who prefers not to work when he has the chance. The grounds of disqualification applying specifically to U.B. seek to elaborate upon this principle. Again, however, they do so less than perfectly. If the unemployment results from misconduct, six weeks' disqualification may ensue. An act of misconduct may, however stem from neglect, frustration, tiredness, and is very far from necessarily evidencing a wish to cease work. It may well be that his dismissal is his own fault. If it is thought that he should be penalised as a result (which I doubt), one may properly wonder whether 6 weeks' deprivation of livelihood is a rational or just retribution. An increase of contribution once he is back at work seems preferable.

The main source of discontent with the rules relating to disqualification surrounds strikes. The position here is that as a general rule a worker unemployed as a result of a strike forfeits his right to benefit. No doubt, in many cases this is a fair rule, and a worker may escape disqualification in certain circumstances which I shall deal with below. In two not uncommon situations, however, it is hard not to regard the worker as harshly treated :

(a) The law pays no attention to who is to blame for the dispute and stoppage. The employer may be utterly harsh and unreasonable thus provoking the strike — it is, indeed, all the same if he "locks out". It matters not. The worker loses both wages and benefit. The alleged justification for this rule is that the law is being "neutral". Quite apart from the fact that the employer may be completely to blame, however, it will also be the same that he suffers no disqualification, i.e. no penalty over and above his loss of production, simply because he never stood to benefit in the first place.

(b) The disqualification is by no means confined to those who actually go on strike or get locked out. It is frequently the cause that many other workers are laid off when others strike. Benefit is nevertheless forfeited unless the worker can prove that neither he nor any of his fellow-workers ("of the same grade or class") is participating, financing or directly interested in the outcome. The law here is detailed and complex but some of its potential harshness may be illustrated by an example :

There is a strike of train-drivers, financed by the ABC union. X works as a porter. As a result of the strike the porters are laid off. X is not a member of the ABC union and his pay will not be affected by the strike. He is, nevertheless, disqualified, simply because one fellow-porter does belong to the ABC union and is therefore held to be "financing" the dispute.

I am sorry to have gone on at such length, though I am not personally responsible for the complexity of our law.

I would like, however, to make one final point in conclusions :

Conclusion :

What a state can do in order to alleviate the evils that result from a loss of work varies with a number of factors :

1. It's wealth ;
2. The demands of the people, particularly organised labour ;
3. The willigness of the government to realise its sympathy.

Such factors determine the limits within which state action is possible. Within those limits, as drawn for the U.K. to-day, a fair effort is made to ameliorate the condition of the unemployed. Many may well argue that better provision should be made ; most are thankful that it is not worse.

A final point however remains to be made. We have been examining an area of social security law — law concerning the making of provision for the unemployed. We should never lose sight of the fact that in this area, social security is a mere palliative and that it can never compensate for all the losses that attend unemployment. No cash sum can divest a man of the feeling that he is useless, ready for the scrap-heap. No money compen-

sation can restore dignity. The primary assault of government must therefore be on another front. By intelligent planning of industrial development it must seek to prevent the loss of existing jobs and create new ones that are risk-free. But that is another matter.