THE FAIR DEAL UNIVERSAL HEALTH CARE PROPOSALS: HISTORIANS' PERSPECTIVES FROM 1970 TO 2003

George Horvath[*]

INTRODUCTION

Proposals to expand publicly financed health care coverage—Medicare-for-all plans, a public option, Medicare and Medicaid buy-in plans—are at the top of the public's (and many political candidates') interest.[1] With that interest, the progressives' longtime goal of universal health care coverage once again seems poised to take on new life.[2] Although publicly financed coverage was dramatically expanded in 1965 by Medicare and Medicaid,[3] and in 2010 by the Affordable Care Act,[4] none of these programs can claim the mantel of truly universal coverage.[5] This Article recalls the last attempts at achieving universal coverage in the United States. Throughout the Truman administration's Fair Deal era, ideas for a national system of publicly financed universal health care were developed, debated, and even proposed in Congress.[6] But in spite of public support for

[*] Post-Doctoral Fellow and Lecturer, University of California, Berkeley, School of Law.

[1] *See, e.g.*, Michelle Andrews, *Progressives Tout 'Medicare-For-All' But States Eye 'Medicaid Buy-In'*, KAISER HEALTH NEWS (Feb. 26, 2019), https://khn.org/news/progressives-tout-medicare-for-all-but-states-eye-medicaid-buy-in/ [https://perma.cc/4ZFD-5CLF]; Ashley Kirzinger et al., *KFF Health Tracking Poll - June 2019: Health Care in the Democratic Primary and Medicare-for-All*, KFF (June 18, 2019), https://www.kff.org/health-reform/poll-finding/kff-health-tracking-poll-june-2019/ [https://perma.cc/6SCY-326P]; Josiah Bates, *Survey Says: A Majority of Americans Already Cite 2020 Election as 'Significant Stressor' in Their Lives*, TIME (Nov. 5, 2019), https://time.com/5718498/apa-stress-survey-election-shootings-healthcare/ [https://perma.cc/F9YD-MJ4R].

[2] *See* Kirzinger et al., *supra* note 1.

[3] *See* Lindsay F. Wiley, *Medicaid for All? State-Level Single-Payer Health Care*, 79 OHIO ST. L.J. 843, 846 (2018).

[4] *See* Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119 (2010) (codified as amended in scattered sections of 42 U.S.C.); Andrew F. Moore, *The Immigrant Paradox: Protecting Immigrants Through Better Mental Health Care*, 81 ALB. L. REV. 77, 86 (2017).

[5] *See* Kimberly Amadeo, *Universal Health Care in Different Countries, Pros and Cons of Each*, BALANCE, https://www.thebalance.com/universal-health-care-4156211 [https://perma.cc/N5Q7-JHQD].

[6] *See* PETER A. CORNING, U.S. DEP'T OF HEALTH, EDUC., & WELFARE, THE EVOLUTION OF MEDICARE: FROM IDEA TO LAW 56, 60 (1969).

health care reform, each legislative proposal that embodied these ideas failed.[7] These failures, and historians' evolving accounts of why the Fair Deal proposals failed, offer important understandings into the current moment, and might even suggest ways to move reform forward.

Historians who have examined the failure of the Fair Deal proposals have generally agreed that opposition from within Truman's own Democratic Party and from congressional Republicans, combined with opposition from organized medicine, contributed to the ultimate failure of the proposals.[8] But an examination of the accounts of the Fair Deal health proposal failures written during a period beginning shortly after Medicare and Medicaid were enacted and ending amid President George W. Bush's calls to privatize Medicare and Social Security[9] shows that over time, historians' interpretations of the failures shifted in two major ways. First, historians' answers to the question of why the proposals failed changed.[10] Over time, the roles played by politicians opposed to the programs and by organized medicine were viewed as less central to those failures.[11] And second, historians began to ask a broader set of questions than simply "why did the proposals fail?"[12] Later historians in this period asked about the ways in which the "universal" programs, had they been enacted, would have neglected many marginalized groups, and about the larger impacts of the proposals' failures.[13]

This Article begins in Part I with a brief history of the Fair Deal proposals for a public, compulsory, universal system of health care

[7] *See id.* at 56, 57, 61, 62.

[8] *See id.* at 62, 66; Lowell S. Goin, *The Wagner-Murray-Dingell Bill*, 55 CAN. MED. ASS'N J. 72, 72 (1946); Alonzo L. Hamby, *Harris S. Truman: Domestic Affairs*, UVA: MILLER CTR., https://millercenter.org/president/truman/domestic-affairs [https://perma.cc/KNK3-SYT8].

[9] I have chosen these points so as to ensure that my sources had the advantage of critical distance from the events being examined. I chose the 1965 enactment of Medicare and Medicaid as the starting point for this historiography because the Wagner-Murray-Dingell bills that formed the basis of the Fair Deal health care proposals, and their successors, continued to be introduced annually until 1957. I chose the late George W. Bush era because it is premature to gauge the impact of the ACA on historians' views of the Fair Deal health proposals.

[10] *See* Odin W. Anderson, *Compulsory Medical Care Insurance, 1910–1950*, 273 ANNALS AM. ACAD. POL. & SOC. SCI. 106, 112 (1951); Beatrix Hoffman, *Health Care Reform and Social Movements in the United States*, 93 AM. J. PUB. HEALTH 75, 77 (2003).

[11] *See* Anderson, *supra* note 10 at 109, 112.

[12] *See* Hoffman, *supra* note 10 at 75.

[13] *See* MONTE M. POEN, HARRY S. TRUMAN VERSUS THE MEDICAL LOBBY: THE GENESIS OF MEDICARE 224–25 (1979); Jeneen Interlandi, *Why Doesn't the United States Have Universal Health Care? The Answer Has Everything to Do with Race*, N.Y. TIMES (Aug. 14, 2019), https://www.nytimes.com/interactive/2019/08/14/magazine/universal-health-care-racism.html [https://perma.cc/DR5V-SDKJ].

coverage. In Part II, the accounts of six historians, written over a period of thirty-four years, are examined, with a focus on the factors to which each attributed the proposals' failures, and on the broader implications—if any—that each historian addressed. Part III posits that two developments during the period in which these historians worked—the ascendency of a new conservative movement and the failure of the Clinton health care plan—partially account for the changes in their interpretations of the Fair Deal health proposals. Finally, in Part IV this Article extracts some lessons from the Fair Deal proposals failures and from historical accounts of those failures.

I. THE FAIR DEAL PROPOSALS FOR UNIVERSAL HEALTH CARE

The features that set the Fair Deal health care proposals apart from those that preceded them were their goals of creating a national program of coverage that was both universal and compulsory.[14] Earlier efforts had aimed at enacting coverage programs on a state by state basis or at establishing a voluntary national program.[15] Although the shift to compulsory, universal, nation-wide coverage began late in the Franklin Delano Roosevelt administration,[16] President Truman and his Fair Deal supporters were the first national politicians to advocate such a program.[17] This Part briefly recounts the legislative history of the Fair Deal proposals in order to provide a background for the historical accounts of those proposals that the Article then examines.

After the Progressive reformers' efforts to enact state-based universal health coverage failed in the World War I era, a private group of "physicians, health officers, social scientists and representatives of the public" assembled in 1927 to form the Committee on the Costs of Medical Care (CCMC).[18] The CCMC's majority report, issued in 1932, advocated for a program of

[14] *See* Karen S. Palmer, *A Brief History: Universal Health Care Efforts in the US*, PHYSICIANS NAT'L HEALTH PROGRAM (Spring 1999), https://pnhp.org/a-brief-history-universal-health-care-efforts-in-the-us/ [https://perma.cc/CGS5-SCCH].

[15] *See* Anderson, *supra* note 10 at 107–09.

[16] *See id.* at 112; *Franklin D. Roosevelt's Presidency*, FRANKLIN D. ROOSEVELT PRESIDENTIAL LIBR. & MUSEUM, https://www.fdrlibrary.org/fdr-presidency [https://perma.cc/4BZ6-EY97].

[17] *See Tracing the History of CMS Programs: From President Theodore Roosevelt to President George W. Bush*, CTRS. MEDICARE & MEDICAID SERVS., https://www.cms.gov/About-CMS/Agency-Information/History/Downloads/PresidentCMSMilestones.pdf [https://perma.cc/RSV9-CF79].

[18] C.E.A. Winslow, *The Recommendations of the Committee on the Costs of Medical Care*, 207 NEW ENGL. J. MED. 1138, 1139 (1932); *see also* Hoffman, *supra* note 10, at 76.

"[c]omprehensive medical care . . . provided largely by organized groups of practitioners . . . [with] costs . . . placed on a group payment basis, whether through insurance, taxation, or both."[19] Although the report offered a choice of voluntary and compulsory programs, most members of the CCMC preferred the voluntary approach to prepaid health insurance.[20]

In 1934, President Franklin D. Roosevelt created the Committee on Economic Security (CES), which was tasked with evaluating "proposals for a long-term social security program."[21] Although the CES considered ideas for a federally-run program of health care insurance, health care coverage was not included in Roosevelt's proposals to Congress out of fear that its inclusion would doom the Social Security Act of 1935.[22] Following the passage of the Social Security Act, the Public Health Service commissioned a series of studies including the National Health Survey that examined "the incidence of illness and the underlying social and economic factors" at the time.[23] But like the CCMC report, the CES ultimately recommended a comprehensive program for health insurance, but left open the question of whether the program should be voluntary or compulsory.[24]

In 1939, Senator Robert Wagner of New York proposed the First Wagner Bill, which incorporated a national health insurance program, including the CES's medical insurance recommendation.[25] The Wagner bill was never reported out of committee.[26] In 1943, Senator Wagner, now joined by Senator James Murray and Congressman John Dingell, proposed the first of the Wagner-Murray-Dingell bills that formed the basis of the Fair Deal universal health care proposals.[27] For the first time, a proposed health care bill called for a compulsory program, with health care to be paid for by a social

[19] Isidore S. Falk, *Medical Care in the USA—1932–1972. Problems, Proposals and Programs from the Committee on the Costs of Medical Care to the Committee for National Health Insurance*, 51 HEALTH & SOC'Y 1, 3 (1973).

[20] *See id.*

[21] *Id.* at 5.

[22] *See id.*; *see also* Anderson, *supra* note 10, at 106, 110 (highlighting that the health care plan was strategically excluded from the Social Security Act of 1935 due to widespread misinterpretation and outcry).

[23] Anderson, *supra* note 10, at 110; *see* MONTE M. POEN, HARRY S. TRUMAN VERSUS THE MEDICAL LOBBY: THE GENESIS OF MEDICARE 19 (1979); Falk, *supra* note 19, at 3.

[24] *See* POEN, *supra* note 23, at 19; Falk, *supra* note 19, at 3.

[25] *See* Falk, *supra* note 19, at 6; Isidore S. Falk, *National Health Insurance for the United States*, 92 PUB. HEALTH REP. 399, 401 (1977).

[26] *See* Falk, *supra* note 19, 7.

[27] *See* CORNING, *supra* note 6, at 54–55, 56; Falk, *supra* note 19, at 8.

insurance system funded by payroll taxes.[28] The bill had the tacit support of President Roosevelt, but was not enacted.[29]

In November 1945, less than a year after assuming the presidency following Roosevelt's death, President Truman sent Congress his own health care proposal.[30] Truman's proposal was phrased in universal terms, calling for the recognition that "[e]veryone should have ready access to all necessary medical, hospital and related services."[31] The proposal was mandatory: Truman urged Congress to enact a program that would "distribut[e] the costs through expansion of our existing compulsory social insurance system."[32] Truman's proposal specified that coverage for workers and their dependents would be prepaid through a payroll tax, while coverage for "needy persons" would be paid for by "public agencies."[33] In his message, Truman stressed that although private, voluntary health insurance existed, only three or four percent of Americans had comprehensive coverage.[34] Attempting to avoid the anticipated counterattacks, Truman insisted that his program was not "socialized medicine."[35]

Versions of the Wagner-Murray-Dingell bill were reintroduced annually during the Fair Deal era.[36] Opponents put forth competing proposals.[37] The most prominent of these was Senator Robert Taft's 1947 bill that offered coverage only for the indigent, with a needs test for eligibility and strict limitations on the benefits.[38] Although Truman repeated his calls for Congress to enact a compulsory, universal health coverage program between 1947 and 1949,[39] by the 1950s the dream of universal coverage had ended. Proponents of national health care had begun to focus on more limited proposals that would cover the elderly, survivors of wage earners, and the disabled,[40] which would, fifteen years later, materialize into the Medicare and Medicaid programs.

---

[28] *See* POEN, *supra* note 23, at 32; Falk, *supra* note 19, at 8.

[29] *See* Falk, *supra* note 19, at 8.

[30] *See* Special Message to the Congress Recommending a Comprehensive Health Program, Pub. Papers 475 (Nov. 19, 1945) [hereinafter Truman]; POEN, *supra* note 23, at 51.

[31] Truman, *supra* note 30.

[32] *Id.*

[33] *Id.*

[34] *Id.*

[35] *Id.*

[36] *See* POEN, *supra* note 23, at 10.

[37] *See id.* at 96.

[38] *See id.* at 96–97.

[39] *See President Truman's Fight for National Health Insurance, 1949–1953*, HARRY S. TRUMAN LIBR. & MUSEUM, https://www.trumanlibrary.gov/library/online-collections/fight-for-national-health-insurance [https://perma.cc/93FP-AKB2].

[40] *See* Falk, *supra* note 19, at 15.

II. HISTORIANS AND THE FAILURE OF THE FAIR DEAL HEALTH COVERAGE PROPOSALS

The earliest historical accounts of the Fair Deal proposals focused on the political dimensions of the efforts' failures.[41] In his 1970 *The Politics of Medicare*, Theodore Marmor used the history of the "origins, evolution, enactment, and consequences of Medicare" as a case study to examine certain aspects of U.S. politics and public policy.[42] Marmor's discussion of the Fair Deal health proposals' failure is brief, and is used to frame questions about why Medicare was created at the time and in the form that it was.[43] His thesis is that, although a strong majority of Americans favored a program of "government assistance in the financing of personal health services," any specific proposal was bound to be highly controversial;[44] because of this, the only way that proponents could have enacted a proposal would have been through a combination of several factors, including

- sufficient organization by the proponents to counter the inevitable opposition;
- broad agreement on the problem to be solved and the available remedies;
- strong support from executive branch agencies;
- insiders' commitment to navigating a bill through the legislative process;
- and most importantly, a reliable voting majority in both houses of Congress.[45]

In Marmor's view, the absence of nearly all of these factors contributed to the failure of the Fair Deal proposals.[46] Relying on official government reports from 1965, and on the first-hand knowledge of Truman administration insiders, Marmor attributes the failure in large part to "the absence of a programmatic [voting] majority in the Congress."[47] Although he does not identify Truman's congressional opponents during the first two years of his presidency—when Democrats controlled both houses of Congress—Marmor is clear that for the remainder of the Fair Deal era those

[41] *See, e.g.*, THEODORE R. MARMOR, THE POLITICS OF MEDICARE, at ix–x (1970); POEN, *supra* note 23, at 10–13.
[42] MARMOR, *supra* note 41, at ix.
[43] *See id.* at 11–14.
[44] *Id.* at 3.
[45] *See id.* at 3.
[46] *See id.* at 12–14.
[47] *Id.* at xii, 13, 144.

opponents were congressional Republicans,[48] who controlled both houses in 1947–1948,[49] and after the 1948 elections returned both houses to Democratic control,[50] the combined forces of "anti-Truman Southern Democrats and Republicans."[51]

Marmor makes no attempt to explain why these politicians opposed the Fair Deal health proposals, except for a suggestion that among congressional Republicans were "those who considered minimum accessibility of health services [to be] a standard of adequacy."[52] Because *The Politics of Medicare* does not delve into the motivations of Truman's political opponents in the way many subsequent accounts did, the failure of the Fair Deal plans might be seen as the outcome of an unprincipled, partisan battle amongst three factions in Congress.

The second major factor to which Marmor attributes the failure of the Fair Deal proposals was the inability of proponents to counter the opposition of organized medicine, particularly the opposition of the American Medical Association (AMA).[53] Much like his presentation of the congressional opposition, Marmor's description of the AMA's opposition is one of a "bitter, personally vindictive battle" against Truman.[54] The AMA hired a public relations firm and financed an "emergency 'war chest'" by charging every member a twenty-five-dollar fee.[55] Marmor describes the arguments disseminated by the firm as "propaganda" pitched "on a note of hysteria."[56] He credits this effort "with the defeat of some of the Senate's firmest supporters of health insurance."[57] While the critical tone of Marmor's account is deserved—the AMA exaggerated the dangers of socialism and government autocracy—the absence of an exploration of the concerns that motivated physicians leaves their opposition to appear to have been driven by simple animus.

Marmor's brief account of the Fair Deal health proposals thus portrays their ultimate failure as the result of partisan politics. This is consistent with his treatment of the subsequent history of the

[48] *See id.* at 11.
[49] *Id.* at 10–11.
[50] *Id.* at 11.
[51] *Id.* at 12.
[52] *Id.* at 9.
[53] *See id.* at 12–13.
[54] *Id.* at 14.
[55] *Id.* at 12.
[56] *Id.* at 12–13.
[57] *Id.* at 13.

enactment of Medicare.[58] Republicans, Southern Democrats, and the AMA remained implacable foes of any health care plan based on social insurance.[59] The reason Medicare was ultimately enacted in 1965 is also explained in partisan political terms: the 1964 elections swept such huge Democratic majorities into Congress that passage of a Medicare bill was finally assured.[60] Marmor's examination of the Fair Deal health proposals is thus situated within a political realm where factions and private organizations vie for power in order to enhance their own political standing.

Monte M. Poen also viewed the failures of the Fair Deal health proposals through a political lens. Poen wrote extensively about the Truman presidency.[61] Published in 1979, his *Harry S. Truman Versus the Medical Lobby* book was written as a counter to the work of New Left historians, who had criticized Truman as being "inept, devious, and overly deferential to conservative, middle-class values."[62] Poen had access to the private papers of many of the proponents of the Fair Deal health care proposals, as well as personal access to Truman and several of the architects of the health care proposals.[63] This access allowed him to construct a nuanced narrative of the political activities on behalf of the proposals. However, Poen did not have similar access to the opposition's records, including those of the AMA, which forced him to rely on published accounts such as editorials in the Journal of the American Medical Association.[64] Therefore, his discussion of the motivations of the opposition is less substantial.

Poen's thesis is that Truman forcefully advocated for a radical, not a centrist or a moderate, reform of the U.S. health care system.[65] While recognizing that Truman was an "ineffective . . . legislative salesman before the public," Poen attributes the failures of the Fair Deal proposals to the same group of opponents that Marmor identified: Southern Democrats, whose "anti-union, anti-urban"

[58] *See id.* at 29–30, 31, 44–45.

[59] *See id.* at 29–30, 31 (describing opposition of President Dwight D. Eisenhower and the AMA); *id.* at 44–45 (describing opposition of Southern Democrats and Republicans to Kennedy administration proposals).

[60] *See id.* at 61.

[61] *See Poen, Monte M.*, WORLDCAT IDENTITIES, http://worldcat.org/identities/lccn-n78032944/ [https://perma.cc/3M65-X9FU].

[62] POEN, *supra* note 23, at 222.

[63] *Id.* at xi; STRICTLY PERSONAL AND CONFIDENTIAL: THE LETTERS HARRY TRUMAN NEVER MAILED 4–7 (Monte M. Poen ed., Univ. of Mo. 1999) (1982) [hereinafter STRICTLY PERSONAL AND CONFIDENTIAL].

[64] *See* POEN, *supra* note 23, at xi.

[65] *Id.* at 223.

attitudes "throttled domestic reform;" Senate Republicans, especially Senator Robert Taft; and the AMA.[66] Ultimately, given the "intellectual and institutional obstacles" of the time, Poen concludes that no president could have pushed a "comprehensive health security program" through the legislative process.[67]

By 1948, the southern Democrats had decided to oppose almost all of Truman's programs.[68] Poen attributes this opposition, in part, to decisions that Truman had made early in his presidency, particularly the decision to desegregate the armed forces.[69] The southern Democrats were further alienated by Truman's calls for a labor-friendly job discrimination board and for expansive civil rights legislation.[70] The southern Democrats used tactics beyond simple bloc-voting to oppose Truman's proposals; they also proposed health bills of their own, including the bipartisan 1949 Hill-Aiken bill, which was cosponsored by Democrats Lister Hill of Alabama and Garrett Withers of Kentucky.[71] The Hill-Aiken bill would have given federal subsidies to the states, to be used to help the poor pay for private hospital coverage through Blue Cross plans.[72] Probably because of his lack of access to the private records of the Hill-Aiken bill's sponsors, Poen does not make clear whether the bill was proposed as an attempt to draw support away from the Wagner-Murray-Dingell bill, or whether the southern Democrats were truly committed to the private insurance system on which Hill-Aiken was founded.[73] He does, however, argue that the proliferation of competing bills contributed to the Fair Deal proposals' failure.[74]

Poen sees the Republican opposition to the Fair Deal health proposals as having been to a large degree mere political opportunism.[75] Truman's chief Republican opponent, Senator Robert Taft, was hopeful to receive the 1948 Republican nomination for president.[76] Taft had put forward a health coverage bill between 1946 and 1947 that would have offered limited health coverage solely to the indigent.[77] Poen argues that Taft viewed both his own 1947

[66] *Id.* at xi, 225, 227.
[67] *Id.* at x–xi.
[68] *See id.* at 164–65.
[69] *See id.* at 165.
[70] *See id.* at 164–65, 227.
[71] *See id.* at 165.
[72] *See id.*
[73] *See id.* at 155–57, 165.
[74] *See id.* at 165.
[75] *See id.* at 93, 101.
[76] *See id.* at 117.
[77] *See* CORNING, *supra* note 6, at 60–61; POEN, *supra* note 23, at 96.

bill and the Wagner-Murray-Dingell bill as means to the end of becoming president.[78] Even though Taft chaired the Senate Committee on Labor and Public Welfare, he made no serious attempts to move his bill through the legislative process.[79] He did however, hold legislative hearings on both bills, during which a "mysterious" witness who was a representative of a domestic communist organization testified in favor of the Wagner-Murray-Dingell bill, providing a convenient way for Taft to link the administration-sponsored bill to communism during his primary campaign appearances.[80]

Poen presents a slightly more granular version of the positions of organized medicine than Marmor offered. Through physicians' responses to the hiring of the public relations firm Whitaker and Baxter, and to the multimillion-dollar campaign the firm waged in support of voluntary health insurance and individual physician practices, Poen shows that organized medicine was not a monolith.[81] Within the AMA, dissident voices were raised against the campaign, while other medical groups, such as the American Hospital Association, sought an accommodation with the Fair Deal proposals.[82] Ultimately, though, Poen partially credits the AMA's campaign to link the Fair Deal health care proposals to socialism and to government control over medical practice for the proposals' defeat.[83]

Poen also presents President Truman's support of the Wagner-Murray-Dingell bills as having been politically calculated,[84] even while arguing that Truman was deeply committed to expanding civil rights and to assuring universal access to adequate medical care.[85] Truman's 1947 message to Congress, pressing for enactment of a public, compulsory, universal health care bill, reiterated his frequently-made arguments that "[h]ealthy citizens constitute our greatest national resource," and that the costs of medical care had passed out of reach of far more than just the poor.[86] Poen sees this

[78] *See* POEN, *supra* note 23, at 117.

[79] *See id.* at 101; *see also Senate Leaders: Robert A. Taft*, U.S. SENATE, https://www.senate.gov/artandhistory/history/common/generic/People_Leaders_Taft.htm [https://perma.cc/YZ9C-V88T].

[80] *See* POEN, *supra* note 23, at 106.

[81] *See id.* at 144–45, 151.

[82] *See id.* at 137, 143–44.

[83] *See id.* at 145, 146, 148–49, 151.

[84] *See id.* at 98–99.

[85] *See id.* at 100.

[86] *Id.*

message as "mark[ing] the beginning of the president's [1948] bid for reelection."[87] During the 1948 campaign, Truman used his health insurance proposal as a means of castigating the Republican-led Eightieth Congress for its failures to enact any significant legislation.[88] Thus, the Fair Deal health care proposals are viewed as a political issue that was used by both sides for electoral advantage.

Although Poen recognizes that Truman used health care as a political wedge issue,[89] and also recognizes that Truman was often an ineffective advocate for the health care proposals,[90] he struggles to portray Truman as aggressively committed to expanding access to health care to all Americans. At times, this leads Poen to overlook Truman's inaction or silence on health care: although Truman sent Congress four communications in 1946 that advocated for a national health insurance plan, he gave only "muted" responses to questions about his proposals in radio broadcasts and at press conferences.[91] Disputing earlier scholars who saw in this reticence to speak "weakness as a political leader," Poen explains it as being a part of Truman's "penchant for administrative orderliness": the President was following rules of policy formulation that he had laid down early in his administration.[92] Seeking to justify Truman's silence in 1949, when the Wagner-Murray-Dingell bill had the greatest chance of passage, and when the AMA and Republican "onslaught" reached its peak, Poen offers no explanation, instead pointing to Truman's discussion of health care in the presidential campaign of 1948.[93] These elisions lend Poen's account a sense of bias in Truman's favor. Because many later historical accounts of the Fair Deal health plans rely heavily on Poen's book, it is important to be mindful of this potential bias when analyzing these later works.[94]

By focusing on the politics of the Fair Deal health proposals—on individuals like Truman and Taft; the political parties and the splinter groups like the southern Democrats; and the large organizations like the AMA and labor unions—both Marmor and Poen sought answers to a single question: What political causes were

[87] *Id.* at 99.
[88] *See id.* at 117.
[89] *See id.* at 99.
[90] *See id.* at x.
[91] *Id.* at 153.
[92] *See id.* at 154.
[93] *See id.* at 172–73; DAVID G. SMITH & JUDITH D. MOORE, MEDICAID POLITICS AND POLICIES 22 (2d ed. 2015).
[94] *See infra* note 97.

responsible for the failure of the Fair Deal health proposals? Neither account closely examined the motives of the opponents of the proposals. And neither account addressed the broader causes nor impacts of the failure to enact the proposals.

Paul Starr's *The Social Transformation of American Medicine*,[95] published one year after Poen's book, began to broaden the range of factors used to account for the Fair Deal health plans' failures, and also began to explore more deeply the ramifications of those failures. Starr's overall project was to provide an ideologically neutral historical analysis in order to illuminate the problems facing the U.S. health care system in 1982.[96] Starr drew heavily on Poen's *Harry Truman Versus the Medical Lobby*,[97] as well the work of other historians; he also utilized published statements by architects of the proposals, and contemporary public polling data.[98]

Much like Marmor and Poen, Starr attributes the failure of the Fair Deal health proposals to the outcome of a multipolar political clash.[99] The lobbying effort by the AMA, the opposition of Republicans including Senator Taft, and the antipathy of southern Democrats roused by Truman's civil rights advocacy, are all cited as contributing factors.[100] The success of the proposals' opponents in linking compulsory health care to socialism and communism, and the use of the proposals by both proponents and antagonists for electoral advantage, are also discussed.[101] But through an analysis of public opinion polls conducted during the Fair Deal, Starr is able to explore more deeply than the earlier writers the question of why the opponents of universal, compulsory health care were able to carry the day.

Starr challenges the assumption that the public strongly supported the Fair Deal health care proposals.[102] Theodore Marmor had cited

---

[95] PAUL STARR, THE SOCIAL TRANSFORMATION OF AMERICAN MEDICINE (1982).

[96] *See id.* at x–xi.

[97] As noted above, Poen's account may be somewhat biased toward a positive reading of President Truman's support for a comprehensive, universal, public health coverage program. Starr's use of Poen's account is for the most part to set out the basic facts of the fashioning of the Fair Deal proposals and the introduction of the Wagner-Murray-Dingell bills into Congress. The only clear example of Starr accepting Poen's *interpretation* of the events of the Fair Deal era appears to be his acceptance that Southern Democrats broke with Truman over his support for civil rights legislation. *See id.* at 285 & n.149. Since Starr delves far more deeply into the motives behind the opposition to Truman's proposals for health care, *see infra* notes 105, 108–109, 112–113 and accompanying text, this does not seem to affect the validity of his account.

[98] *See id.* at 66, 280 n.130, 281 n.135.

[99] *See* STARR, *supra* note 95, at 282–83, 285, 287.

[100] *See id.* at 282–85.

[101] *See id.* at 284.

[102] *See id.* at 282, 285.

a 1965 Congressional Quarterly report stating that throughout the 1940s, public opinion polls "report[ed] favourable reactions to federal involvement in health insurance."[103] Monte Poen had given a slightly more nuanced presentation, citing a 1944 public opinion poll showing that while fifty-eight percent of respondents favored a "tax-supported federal health system," opinion was divided as to the exact form that system should take.[104] Given the strong public support that Marmor and Poen reported, the failure of the Fair Deal proposals appeared to be attributable to politicians who had sought to forward their own agendas, even though those agendas were inconsistent with the desires of the general public.

Starr uses a more extensive set of public polling data to argue that the Fair Deal proposals' failure may be attributed in large part to "the ample social foundations of the opposition's strength."[105] Although polls showed fifty-eight percent support for reform in general,[106] Starr examines other polls conducted that probed more deeply to show that only one quarter of Californians supported a public program as opposed to private insurance,[107] and only thirty-eight percent of New Yorkers supported a program similar to that contained in the Wagner-Murray-Dingell bill.[108] By 1949, support for Truman's proposals had dropped to thirty-six percent.[109]

This data suggests an important link that is missing in Marmor's and Poen's accounts. If public support for the specific compulsory national plan that Truman advocated had ranged from twenty-five to thirty-eight percent,[110] then the proposals' opponents may have been doing more than seeking to frustrate the party in power in order to obtain electoral advantage; the opponents may actually have been representing the desires of their constituents. Starr uses other polling data to argue that the opponents of the Fair Deal health proposals successfully redirected general currents of development of the prevailing public attitude.[111] Although a 1942 poll published in *Fortune* magazine had reported that sixty percent of Americans either favored or had an open mind about socialism, by 1949 a Gallup

[103] MARMOR, *supra* note 41, at 10.
[104] POEN, *supra* note 23, at 66.
[105] STARR, *supra* note 95, at 282, 285, 288.
[106] *See id.* at 282.
[107] *See id.*
[108] *See id.* at 282 n.*.
[109] *Id.* at 285.
[110] *Id.* at 282 & n.*.
[111] *See id.* at 288–89.

poll showed that only five percent favored socialism.[112] Starr concludes that a shift in public attitude driven by increasing prosperity and the Cold War may have contributed the Fair Deal proposals' failure.[113]

Starr also provides more context for the opposition of employers and the AMA. Many employers did not want to pay their portion of the higher payroll taxes that the Fair Dealers' programs would have created.[114] And many employers viewed the provision of health benefits to their employees as a means of "recruit[ing] new workers and instill[ing] loyalty to the firm[;]" thus, a federal program would have directly competed for employees' hearts and minds.[115] Meanwhile, the AMA represented the majority of U.S. physicians, whose profession had only a generation or two earlier secured its respected and well-compensated position in society.[116] Insecurity as well as greed appears to have motivated the AMA's opposition. By expanding his sources beyond the records of the politicians and the organizations involved in the attempts to enact a compulsory, national health care plan, and by using robust data from public opinion polls taken during the Fair Deal era, Starr was able to argue that the failure to enact a plan was a reflection of the will of the electorate as well as the will of narrow interest groups.

Starr also raised a second set of questions that subsequent historians would address: What could the Fair Deal proposals have actually accomplished? And what were the ramifications of their failure? His answer to the first question is similar to that of Marmor and Poen: the Fair Deal health proposals would have "augment[ed] the nation's medical resources and reduc[ed] financial barriers to their use."[117] The program would have been comprehensive and universal, thus overcoming the limited scope of Progressive-Era reforms which had targeted only the working class.[118] All three

[112] *Id.*

[113] *See id.* at 285, 288.

[114] *See id.* at 288.

[115] *Id.* at 235, 288.

[116] *See id.* at 79, 110, 143, 273.

[117] *Id.* at 281; *see also* MARMOR, *supra* note 41, at 10 ("Truman's goal was 'to . . . remove the money barrier between illness and therapy.'"); POEN, *supra* note 23, at ix ("[M]edicare . . . fell far below the universal, comprehensive coverage Truman had sought.").

[118] *See* STARR, *supra* note 95, at 281. Similarly, Marmor saw the Fair Deal proposals as ensuring that no one would receive less or worse health care because of their financial means. *See* MARMOR, *supra* note 41, at 10. Poen emphasized the universal and comprehensive nature of Truman's proposals. *See* POEN, *supra* note 23, at ix.

writers assumed that the Fair Deal proposals were universal,[119] meaning that coverage would have extended to everyone, an assumption that later historians disputed.[120]

Unlike Marmor and Poen, who saw the result of the Fair Deal proposals' failure as leading to the enactment of the more limited Medicare and Medicaid programs,[121] Starr saw broader distributional ramifications in the proposals' failures.[122] After the failure to enact a universal program, only the "well off and the well organized" could have access to comprehensive coverage.[123] The well-off could obtain coverage through private insurance, while the well-organized, such as veterans groups and labor unions, could pressure the government and employers to provide coverage.[124] These deficiencies in the system of coverage that developed would be explored more deeply by later historians.[125]

One of the later histories that disputed the universal nature of the Fair Deal health coverage proposals is *The Dual Agenda*, written by Dona Cooper Hamilton and Charles V. Hamilton in 1997.[126] A social scientist and a political scientist with deep roots in the U.S. civil rights movement, their thesis is that civil rights organizations, while typically described as focusing on issues that confronted Black people, have actually pursued a dual agenda: a social welfare agenda of establishing "social welfare policies that would benefit not only blacks but all poor people," and a civil rights agenda that focused on racial segregation and discrimination against Black people.[127] These two agendas were often in tension with one another.[128] When considering the position it should take on the 1945 version of the Wagner-Murray-Dingell bill, the NAACP was dissatisfied that the bill lacked a clause that would have barred the prevalent practices of

---

[119] *See* MARMOR, *supra* note 41, at 10; POEN, *supra* note 23, at ix; STARR, *supra* note 95, at 281.

[120] *See, e.g.*, *infra* notes 126–143 and accompanying text.

[121] *See* MARMOR, *supra* note 41, at 14, 15–16; POEN, *supra* note 23, at 230.

[122] *See* STARR, *supra* note 95, at 289.

[123] *Id.*

[124] *See id.*

[125] *See, e.g.*, *infra* notes 145–172 and accompanying text.

[126] DONA COOPER HAMILTON & CHARLES V. HAMILTON, THE DUAL AGENDA: RACE AND SOCIAL WELFARE POLICIES OF CIVIL RIGHTS ORGANIZATIONS (1997).

[127] *Id.* at 2–3; *see also* Dona Cooper Hamilton & Charles V. Hamilton, *The Dual Agenda of African American Organizations Since the New Deal: Social Welfare Policies and Civil Rights*, 107 POL. SCI. Q. 435, 435 n.* (1992); *Frederick Harris Interviews Charles V. Hamilton for Annual Review of Political Science*, COLUM. UNIV. (May 29, 2018), http://iserp.columbia.edu/article/fredrick-harris-interviewed-charles-v-hamilton-annual-review-political-science [https://perma.cc/V5EZ-MSJN].

[128] *See* HAMILTON & HAMILTON, *supra* note 126, at 6–7, 109.

discrimination against Black patients and physicians, and the maintenance of separate hospitals for Blacks and whites.[129] Ultimately, though, the NAACP subordinated its civil rights agenda in the interests of its social welfare agenda, and threw its support behind "one of the most progressive and potentially beneficial pieces of legislation" for the poor.[130]

The Dual Agenda is critical of the overall structure of the New Deal social welfare system out of which the Fair Deal health care proposals arose. The authors describe the 1935 Social Security Act as having established a two-tiered system of social welfare,[131] with one tier (Social Security) providing superior benefits—which are considered to be a right, are indexed to inflation, increase with each year worked, but which are limited to workers in certain occupations[132]—while the other tier (welfare) provides inferior benefits that were not guaranteed and were not indexed to inflation.[133] Notably, two-thirds of Black employees worked in occupations not eligible for Social Security benefits;[134] thus, the Social Security Act funneled the majority of the Black labor force into the politically-vulnerable welfare program.[135]

Drawing mainly on archival materials from civil rights organizations,[136] Hamilton and Hamilton examine some of the limitations in the Fair Deal health care proposals that contemporary civil rights advocates perceived.[137] The major limitation was the absence of an antidiscrimination provision.[138] Testifying at the Senate Committee on Education and Labor hearings on the 1945 Wagner-Murray-Dingell bill, NAACP board member Dr. W. Montague Cobb pointed out that since seventy-nine percent of the Black population lived in the South, where they had long been excluded from the benefits afforded to other citizens, an antidiscrimination clause was a necessity.[139] Black Americans had, according to data from the 1940 Census, a life expectancy ten years shorter than that of whites, an eighty-one to ninety-five percent

[129] *See id.* at 78–80.
[130] *Id.* at 80.
[131] *See id.* at 4.
[132] *See id.* at 4–5.
[133] *See id.*
[134] *Id.* at 5.
[135] *See id.*
[136] *Id.* at 6. Examples include "congressional testimony, speeches, letters, memoranda, personal notes, and reports." *Id.*
[137] *See id.* at 76.
[138] *See id.*
[139] *See* HAMILTON & HAMILTON, *supra* note 126, at 78–79.

higher mortality rate, and a high incidence of diseases that fell into the preventable category.[140] The original 1945 Truman health care proposal and the 1945 Wagner-Murray-Dingell bill would have done little to impact these disparities because they failed to give the federal government the power to police the discriminatory health care policies of the states.[141]

Further, the bill would have allowed two forms of segregation to persist. First, because the 1945 bill would have permitted the administration of the health care program by "state and local medical societies," Black physicians who had long been excluded from those societies would not have shared in the bill's benefits.[142] These benefits included not only payment for services rendered to their patients, but also expanded funding for the training of new physicians.[143] Thus, even under the Fair Deal proposals, Black communities would have remained underserved. Second, the bill would have permitted the continued construction and maintenance of racially segregated hospitals and clinics.[144]

Hamilton and Hamilton's view of the Fair Deal health proposals represents a shift away from a focus on the actions of the proponents and opponents of those proposals. *The Dual Agenda* addresses the concerns of those who were left out of the Fair Deal programs, or who would have been left out had proposed measures been enacted. The account challenges an assumption that was largely implicit in the prior historical accounts of this era: that the Fair Deal proposals would have provided truly universal coverage.

Jennifer Klein's *For All These Rights*, published in 2003, also critically examines the extent to which the Fair Deal health care proposals offered truly universal coverage.[145] The architects of the Fair Deal proposals had deliberately opted not to address the specific health care needs of Black Americans.[146] The Committee on the Costs of Medical Care, whose 1932 final report was a catalyst for New Deal and Fair Deal health care reform, had "excluded African Americans from its purview," even while recognizing that the health problems that Blacks faced were far more serious than those faced by whites.[147]

---

[140] *Id.* at 79.
[141] *See id.* at 78–80.
[142] *Id.* at 80.
[143] *See id.* at 78.
[144] *See id.* at 78–80.
[145] JENNIFER KLEIN, FOR ALL THESE RIGHTS: BUSINESS, LABOR, AND THE SHAPING OF AMERICA'S PUBLIC-PRIVATE WELFARE STATE (2003).
[146] *See id.* at 121.
[147] *Id.* at 121–23.

During the New Deal, many Black communities' only access to the benefits of the government's programs was provided by preexisting networks of African American activists.[148] Thus, the failure of the 1945 Wagner-Murray-Dingell bill to include an antidiscrimination provision may have been the result of decisions made a decade earlier to limit the scope of the analysis and the provision of U.S. health care needs.

Klein, like Hamilton and Hamilton, distinguishes between a system of universal coverage in which benefits were guaranteed to all, paid out of general tax revenues, and the payroll tax approach that created a two-tiered benefit system.[149] Klein shows that a universal program that would have covered women and children was deliberately rejected by the Truman administration.[150] During World War II, the Roosevelt administration's Children's Bureau had run an Emergency Maternal and Infant Care (EMIC) program that provided prenatal, obstetrical, and post-partum care paid for by general federal tax revenues.[151] Women's eligibility was not determined by their work history—the eligibility of women and children under the program was considered to be a right.[152] Based on the success of the EMIC program, Florida Senator Claude Pepper and experts in the Children's Bureau drafted a Maternal and Child Welfare Bill in 1945, which would have made the program permanent and nationwide.[153] However, the general tax revenue basis of the Pepper bill conflicted with the Truman administration's plans for a payroll tax system, and "the Children's Bureau's attempt . . . was quickly silenced."[154] Thus, under the Fair Deal proposal, women and children would be subject to a two-tiered system under which women who held certain occupations received benefits as a matter of right, while other women were to receive only welfare benefits.[155] To Klein, this two-tiered system was not universal coverage.[156]

Klein's major focus in *For All These Rights* is the development of the private welfare system in the United States.[157] This system is

[148] *See id.* at 136.
[149] *See* HAMILTON & HAMILTON, *supra* note 126, at 261; KLEIN, *supra* note 145, at 160, 162–63, 266.
[150] *See* KLEIN, *supra* note 145, at 169–170.
[151] *Id.* at 167–68.
[152] *See id.* at 170.
[153] *See id.* at 167, 169.
[154] *See id.* at 163, 171–72.
[155] *See id.* at 160, 174–75, 230.
[156] *See, e.g.*, *id.* at 263.
[157] *See id.* at 3.

largely employment based, with employers providing health, disability, life, and retirement insurance as a means of controlling the workforce.[158] In Klein's account, the Fair Deal health proposals appear as minor players that had relatively insignificant effects on the developing private insurance juggernaut.[159] Although the major insurance companies had initially opposed the Social Security Act, they had quickly come to see the government insurance system as a business opportunity to sell more private insurance:[160] agents could use the benefits that Social Security provided to convince potential customers of the importance of insurance, and then argue that the government program provided insufficient coverage to meet their needs.[161] During the Fair Deal, the insurance companies offered health insurance plans tailored to the needs of individual employers, relying on labor's demand for health coverage that was not forthcoming from the government.[162] Thus, the main effect of the failure of the Fair Deal health care proposals was that it facilitated the expansion of the private, employment-based health insurance market.

From Klein's perspective, the impact of the AMA in the Fair Deal health era is also that it facilitated the development of the private welfare system. Although at times called a "formidable" opponent to the Fair Deal health proposals,[163] the AMA does not appear omnipotent in the way it did in earlier historians' accounts. The AMA was vulnerable to manipulation by insurance industry propaganda; during the Progressive Era, Prudential and other companies, working through the Insurance Economics Society of America had "presented distorted accounts of European conditions under public health insurance programs and succeeded in provoking hostility on the part of the medical profession."[164] During the Fair Deal era, the AMA's membership was divided, with many physicians having been "eager to participate" in group health plans, such as California-based Kaiser Permanente and the New York-based Group Health Cooperative, which the AMA opposed and the Fair Deal programs supported.[165] More central to the thesis, Klein argues that the AMA was a relatively ineffective opponent of private insurance plans,

158 *See id.* at 243–44, 258–59.
159 *See id.* at 149.
160 *See id.* at 84, 85.
161 *See id.* at 93.
162 *See id.* at 223.
163 *Id.* at 154.
164 *Id.* at 33–34.
165 *See id.* at 154–55.

which it saw as a threat to its members' financial and professional autonomy.[166] Relying on extensive access to the major insurers' archives, she shows that the insurers effectively neutralized the AMA opposition by contracting with very large corporate employers, including GM, Ford, and Standard Oil, forcing organized medicine to accept private health insurance in order to allow physicians to maintain an adequate supply of patients.[167]

Ultimately, to Klein the Fair Deal health proposals had little impact on the development of the system of health coverage that developed after their failure. That system is characterized as being a mixed public-private regime, in which the private side is one of "welfare capitalism," with employers providing "fringe benefits" such as health insurance in order to maintain control over their employees.[168] By tying benefits to employment, employers are able to restrict employee mobility (since employees stand to lose their benefits if they leave) and employee activism (since employees stand to lose their benefits if they are terminated).[169] Klein never addresses the question of whether, had the Wagner-Murray-Dingell bill or one of the other Fair Deal proposals passed, a public, compulsory, universal program could have prevented, or at least restricted, the resurgence of welfare capitalism in the 1950s. But several strands of her argument suggest that a successful Fair Deal health bill would have had limited impact.[170] First, private insurance companies had massive capital, and decades of experience in using government plans to their own benefit.[171] Second, organized labor was focused on using collective bargaining with employers to secure health benefits.[172] Finally, employers saw private insurance as a means of retaining control over their workforces.[173] Against this broad array of interests that Klein presents, a public health bill would likely have had little effect.

[166] *See id.* at 218–19.
[167] *See ID.* at xi, 218–19, 221.
[168] *See id.* at 2–3, 4–5.
[169] *See id.* at 3, 5, 7.
[170] *See id.* at 7.
[171] *See id.* at 84–85.
[172] *See id.* at 116.
[173] *See id.* at 2–5.

III. ACCOUNTING FOR HISTORIANS' SHIFTING PERSPECTIVES

As the discussion in Part II shows, historians' accounts of the failure of the Fair Deal health proposals shifted from the years just after Medicare and Medicaid were enacted to the time of President George W. Bush's calls to privatize Social Security and aspects of the Medicare program. The early presentations by Theodore Marmor and Monte Poen accepted that the Fair Deal proposals would have resulted in universal coverage and focused on the major individual and institutional players to whom the proposals' defeat is attributed.[174] The later presentations by Dona and Charles Hamilton and Jennifer Klein dispute that the proposals would have created universal coverage, and focus on the groups who would have been left out of coverage under the Fair Deal proposals; these latter histories also examine the broader impacts of the failure to enact any of the Fair Deal proposals.[175] How can we account for this shift?

Paul Starr's 1982 *The Social Transformation of American Medicine* stands near the midpoint both in the chronology and the focus of these historical accounts. The book is considered by many to be "[t]he most comprehensive history of medical care and medical policy."[176] Unlike the earlier authors, Starr examined a broad range of forces that stood in opposition to a government sponsored, universal health care program.[177] Weak and divided public support, growing prosperity, and the beginning of the Cold War all may have undergirded the stances of the politicians who opposed reform.[178] And the history of the medical profession, which had within only a generation or two assumed a prominent cultural position in the United States, may explain much of organized medicine's opposition.[179] Pointing toward the approach of the later authors, Starr addressed the ramifications of the Fair Deal programs' failure, describing a system in which those with political power, such as veterans and union members, have access to government benefits, while others do not.[180] Thus, by situating the Fair Deal proposals in a broader social context, *The Social Transformation of American*

[174] *See supra* text accompanying notes 41–104.
[175] *See supra* text accompanying notes 126–172.
[176] KLEIN, *supra* note 145, at 281 n.25.
[177] *See* STARR, *supra* note 95, at ix–x.
[178] *See id.* at 282, 288–89.
[179] *See id.* at 79, 81.
[180] *See id.* at 289.

Medicine may have presaged a paradigm shift in which historians turned to a broader set of questions about the failure to enact a universal health program.

A second possible explanation for the shift in historians' treatment of the Fair Deal proposals may be simply that each brought a different set of interests to the topic. Marmor wrote extensively on the political aspects of health care reform,[181] and Poen published several books on Truman,[182] which may explain their focus on politics. In contrast, Dona and Charles Hamilton were scholars with deep ties to the Civil Rights Movement,[183] and Jennifer Klein has published extensively on issues of labor and class relations,[184] which may explain their focus on civil rights and class issues.[185] However, a comparison of Klein's *For All These Rights* with an earlier history that also focused on the development of the private, employment-based system of health insurance suggests that scholars' differing interests do not fully explain the shift in their treatment of the Fair Deal proposals.

Lawrence D. Weiss's *No Benefit: Crisis in America's Health Insurance Industry*,[186] published in 1992, focused like Klein's *For All These Rights* on the intersection of labor, business, and government in creating the private social welfare system that developed after the Fair Deal proposals' failure.[187] Thus, their interests are quite similar. Yet Weiss's brief account of the Fair Deal health proposals, although not drawn from Marmor's and Poen's books, closely mirrors these earlier authors' views of why the proposals failed.[188] Although "three

[181] *See, e.g.*, THEODORE MARMOR, UNDERSTANDING HEALTH CARE REFORM xi (1994); Ted Marmor et al., *Comparative Perspectives and Policy Learning in the World of Health Care*, 7 J. COMP. POL'Y ANALYSIS 331 (2005).

[182] *See, e.g.*, HARRY S. TRUMAN, LETTERS HOME (Monte M. Poen, ed., Univ. of Mo. 2003) (1984); STRICTLY PERSONAL AND CONFIDENTIAL, *supra* note 63.

[183] *See* Wilbur C. Rich, *From Muskogee to Morningside Heights: Political Scientist Charles V. Hamilton*, *in* LIVING LEGACIES AT COLUMBIA 333, 333, 335 (Wm. Theodore de Bary et al. eds., 2006); Hamilton & Hamilton, *supra* note 127, at 435 n.*.

[184] *See* Jennifer Klein, Curriculum Vitae, https://history.yale.edu/sites/default/files/CV/klein-cv-dec_2017-public.pdf [https://perma.cc/3JZB-HCNG] [hereinafter Klein C.V.].

[185] *See* Rich, *supra* note 183, at 333, 335; Klein C.V., *supra* note 184.

[186] LAWRENCE D. WEISS, NO BENEFIT: CRISIS IN AMERICA'S HEALTH INSURANCE INDUSTRY (Westview Press 1992 ed. 1992).

[187] *See id.* at 12–14; *supra* text accompanying notes 158–169.

[188] *Compare* WEISS, *supra* note 186, at 12 ("Despite a 1942 national poll indicating that three of every four Americans favored national health insurance, the coordinated political movement for national health insurance had been sapped."), *with* MARMOR, *supra* note 41 at 12 ("Although the Democrats had gained [the majority] in the House, a coalition of anti-Truman Southern Democrats and Republicans blocked [the] proposals."), *and* POEN, *supra* note 23 at 225–27 ("While the Democrats enjoyed a numerical voting advantage . . . [an] anti-union, antiurban voting element . . . block[ed] floor action on the Wagner-Murray-Dingell bills.").

of every four Americans favored national health insurance," Weiss writes that opposition by southern Democrats and the AMA led to the failure to enact universal health care.[189] Even though Klein and Weiss bring very similar interests to their approach the Fair Deal proposals, their treatment of those proposals is very different.

It is difficult to ascribe with certainty any outside cause to explain a shift in historians' views of a given period. However, two events, one general and one specifically related to health care, which occurred during the period in which the five histories discussed in this Article were written, likely account for the shift in the historians' focus. The general event was the rise of Reagan-style conservatism, which challenged "big government" and sought to roll back many aspects of the New Deal.[190] The specific event was the failure of the Clinton health care proposal in 1994.[191] Dona and Charles Hamilton opened *The Dual Agenda* with an account of the passage of a 1996 bill that drastically reduced public assistance to low income people, quoting Senator Daniel Patrick Moynihan expressing concern that "the end of the Social Security system" was near.[192] Jennifer Klein closed *For All These Rights* with an account of President Clinton's failed health insurance program.[193] These events were clearly on the later scholar's minds.

The broader impact of these events may help to explain the shift in approach. By the late 1990s, and certainly during the George W. Bush administration, the dream of universal health coverage was seemingly dead;[194] in fact, given President Bush's second term goal of privatizing Medicare,[195] it was unclear whether any public system of health insurance, including Medicare, would long survive. Earlier, when the ideals of the New Deal, Fair Deal, and Great Society still seemed viable, an understanding of why earlier attempts to enact universal health care had failed might have offered important lessons to modern-day reformers. But with the dominance of a "small

[189] WEISS, *supra* note 186, at 12.

[190] *See* KLEIN, *supra* note 145, at 274.

[191] *See id.* at 271, 272.

[192] HAMILTON & HAMILTON, *supra* note 126, at 1, 2.

[193] *See* KLEIN, *supra* note 145, at 270–73.

[194] *See* Jerry W. Taylor, *A Brief History on the Road to Healthcare Reform: From Truman to Obama*, BECKER'S HOSP. REV. (Feb. 11, 2014), https://www.beckershospitalreview.com/news-analysis/a-brief-history-on-the-road-to-healthcare-reform-from-truman-to-obama.html [https://perma.cc/F92E-EC84].

[195] *See* Laura S. Boylan, *Bush's Privatization Agenda for Medicare*, PROGRESSIVE (Feb. 12, 2008), https://progressive.org/op-eds/bush-s-privatization-agenda-medicare/ [https://perma.cc/5RPQ-PMJQ].

government" ideology,[196] understanding the specific political causes of the Fair Deal proposal failures had little to offer. Instead, historians may have entered a period of reevaluation, seeking to understand the shortcomings of the Fair Deal proposals and the ramifications of their failures in order to provide guidance for the formulation of new approaches.

If this explanation is valid, the impact of President Obama's Affordable Care Act (ACA) on historians' views of the Fair Deal proposals might be expected to be significant. It might be anticipated that the intense political wrangling that led to the passage of the ACA would re-stimulate historians' interests in the political wrangling that led to the demise of the Fair Deal proposals. But even now it is too soon to expect a clear answer. The viability of the ACA remains questionable years after its passage.[197] Having survived (narrowly) the existential threats presented by *National Federation of Independent Business v. Sebelius*[198] and *King v. Burwell*,[199] the ACA is again under siege in the courts. In *Texas v. United States*,[200] the district court in the Northern District of Texas invalidated the entire act after finding the Individual Mandate had been rendered unconstitutional by the Tax Cuts and Jobs Act.[201] Thus, it is too soon to gauge the impact of the ACA on modern day health care and on historians' views of the past.

But the passage of the ACA highlights the importance of one difference between historians that this Article has examined. Writing shortly after Medicare and Medicaid were enacted, Monte Poen and Theodore Marmor implicitly accepted that the Fair Deal health proposals would have created a system of universal health care.[202] Writing later, Dona and Charles Hamilton, and Jennifer Klein rejected that view, arguing that a two-tiered system of benefits, even if it covered everyone, is not universal because the extent and certainty of one's benefits varies dramatically depending on which tier one is assigned.[203] The ACA attempted to mitigate that

---

196 *See* Jon Ward, *Big Government Gets Bigger*, WASH. TIMES (Oct. 19, 2008), https://www.washingtontimes.com/news/2008/oct/19/big-government-gets-bigger/ [https://perma.cc/67RZ-QZZS].

197 *See* Laura R. Dove, *Absurdity in Disguise: How Courts Create Statutory Ambiguity to Conceal Their Application of the Absurdity Doctrine*, 19 NEV. L.J. 741, 777, 787 (2019).

198 Nat'l Fed'n of Indep. Bus. v. Sebelius, 567 U.S. 519 (2012).

199 King v. Burwell, 135 S. Ct. 2480 (2015).

200 Texas v. United States, 352 F. Supp. 3d 665 (N.D. Tex. 2018).

201 *See id.* at 591, 619.

202 *See* POEN, *supra* note 23, at 117; MARMOR, *supra* note 41, at 9.

203 *See* HAMILTON & HAMILTON, *supra* note 126, at 261; KLEIN, *supra* note 145, at 263–64.

distinction by establishing an essential set of services that a health insurance plan must cover and by penalizing "Cadillac" plans that offer "excessive" coverage.[204] But the ACA was designed to preserve the employer-based private insurance system and the welfare-based Medicaid system,[205] thus perpetuating the inequalities that historians like Hamilton and Hamilton, and Klein discuss. Future historians looking back at the Fair Deal era would do well to continue to focus on the inequalities that the proposed two-tiered systems would have created, in order to illuminate the limits of our current system, and to offer guidance to modern-day reformers who may still harbor the dream of universal health care.

IV. THE LESSONS OF HISTORY: THE PAST IS PROLOGUE

The history of the last failed attempt at enacting universal health care coverage in the United States highlights the fact that in the contemporary debates over proposals like Medicare-for-all, the Public Option, and Medicare and Medicaid buy-in programs, we've heard it all before. The sides taken in these debates—whether it be that these programs are needed to secure a basic human right or that they are the leading edge of a looming socialist onslaught—have played out since the Fair Deal Era and well before. In regard to some of the greatest questions of the day, we have not settled on any final answers.

But historians' shifting takes on the Fair Deal health care proposals' failures offer some important insights into the current moment. Polarization and hyper-partisanship are blamed for many modern ills.[206] But as Theodore Marmor's and Monte Poen's early accounts of the Fair Deal Era show, the partisanship of that era was fierce as well as multipolar, with Fair Dealers, Southern Democrats, and Republicans all vying for power. Importantly, as Paul Starr's latter account showed, the origins of that era's partisanship were not necessarily divorced from the attitudes of the electorate toward specific proposals.

The later accounts by Dona and Charles Hamilton and Jennifer Klein highlight the importance of a full airing of the specific plans that have been put forward in the current debates. This point is often rejected, even by the participants in debates over the specifics of

[204] *See* I.R.C. § 4980I(e)(1) (2012).

[205] *See* Nat'l Fed'n of Indep. Bus. v. Sebelius, 567 U.S. 519, 539 (2012).

[206] *See* John P. Sarbanes & Raymond O'Mara III, *Foreword*, 8 HARV. L. & POL'Y REV. 1, 2 (2014).

health care reform legislation.[207] But the choice of whether health care coverage is to be provided through a social insurance mechanism (the Medicare-for-all programs), a needs-based program (Medicaid-based programs), or a government-supported option to private coverage (a Public Option) has significant distributional consequences.[208] The details of how a program is to be financed mattered to voters in the Fair Deal era, once polling with sufficient specificity was considered, and the details almost certainly matter today.[209] And the details over the benefits that will be provided, and in particular whether the source of expanded coverage is seen as providing inadequate access (many states' Medicaid programs struggle to recruit a sufficient number of providers), also matter.[210] Without a full airing of these (and other) issues, the goal of universal coverage will remain unfulfilled.

These points highlight a challenge as well as provide a roadmap for those who believe that access to quality health care is a human right and that a nationwide system of universal, publicly-financed coverage (with or without private insurance) is the best way to ensure that right. As the historical accounts of the Fair Deal era make clear, it is incumbent on us to do far better at convincing a far broader section of the electorate that a specific path forward is both necessary and desirable.

---

[207] *See Buttigieg: Presidential Debates Are Becoming Unwatchable*, CNN POLITICS (Sept. 13, 2019), https://www.cnn.com/videos/politics/2019/09/13/pete-buttigieg-presidential-debates-unwatchable-abc-news-third-democratic-primary-debate-ac360-vpx.cnn [https://perma.cc/JV5X-Q85W] (arguing that presidential primary debates are unwatchable in part because of the focus on contrasting one plan against another).

[208] *See* Peter C. Coyte & David Holmes, *Beyond the Art of Governmentality: Unmasking the Distributional Consequences of Health Policies*, 13 NURSING INQUIRY 154, 154–60 (2006).

[209] *See* STARR, *supra* note 95, at 282–83; Roger I. Schreck, *Overview of Health Care Financing*, MERCK MANUAL (Mar. 2020), https://www.merckmanuals.com/home/fundamentals/financial-issues-in-health-care/overview-of-health-care-financing [https://perma.cc/A3C9-4QNF].

[210] *See* JANE B. WISHNER & RACHEL A. BURTON, URBAN INST., HOW HAVE PROVIDERS RESPONDED TO THE INCREASED DEMAND FOR HEALTH CARE UNDER THE AFFORDABLE CARE ACT? 3 (2017).