

### III. WELFARE CAPITALISM IN THE UNITED STATES: POLICIES, PRACTICES, AND POSSIBILITIES

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## What Might Have Been: Earl Warren's Alternative to Employer-Based Health Insurance

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#### **Abstract**

It is widely assumed that the United States and Canada differ in their health insurance systems because of deep-rooted cultural factors. Moreover, the defeat of government-provided health insurance in the United States is often dated as 1949—when the Truman plan was defeated in Congress. However, California—under Governor Earl Warren—might well have adopted a Canadian-style plan in the mid-1940s, had Warren not made some crucial political misjudgments. If Warren's proposal had been adopted in California, other states might well have followed. The United States would then have developed a system of state-administered single-payer health insurance plans.

Economists have been content to take note of the U.S.-Canada divergence on social issues as a “natural experiment,” useful in exploring policy outcomes (Card and Freeman 1993:2).<sup>1</sup> Political scientists and sociologists, however, attribute the policy discrepancy to deep-seated cultural forces going back to the American revolution (Lipset 1990). In this view, Canadians are inherently more likely than Americans to prefer collective approaches and government remedies. Presumably, that explains why the United States relies on incom-

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plete employer-provided health insurance—a system that leaves many individuals uncovered—while Canada relies on universal insurance provided by the provinces. As for when the United States rejected government-provided health insurance, the usual answer is 1949, the year President Truman's proposal for federally provided health insurance was defeated (Poen 1979).

There is great temptation to take current reality as inevitable and to view history as deterministic. In the case of health insurance, however, I believe that it was not inevitable that the United States followed the route it did. A Canadian-style system—with state-run insurance—might have developed in the United States had Earl Warren been successful in promoting such a plan in California in the mid-1940s. I also suggest that the critical date for the United States came with Warren's defeat rather than Truman's.

Most people would be surprised that Earl Warren's name arises in this context. Indeed, many who recognize Warren's name as that of a famous Chief Justice of the U.S. Supreme Court are unaware of his California origins. In fact, Warren was an ambitious California Republican politician and the only Californian to be elected three times as governor (1942, 1946, 1950). Warren first proposed a system of state-provided health insurance funded by a payroll tax in 1945, and suffered final defeat for his plan in 1947. At the time, the current web of interest groups committed to private, employer-provided coverage had yet not developed. Had Warren succeeded in putting his plan across, other states would likely have followed; California was already a trendsetter in politics and culture. What could have emerged was a state-based program along the lines of workers' compensation or perhaps a state-federal program similar to unemployment insurance.

### **Warren and California**

Warren's political career developed in a California shaped by the Progressive Republican political movement. The Progressives sought to downgrade traditional politicians and parties and to create institutions through which nonpartisan individuals committed to the public good would govern. Warren began as District Attorney of Alameda County (containing Oakland) and received national attention for effective operation of that office. From there, he became the state's attorney general, capturing both the Republican and Democratic nominations in 1938. He then moved on to defeat incumbent Democratic Governor Culbert Olson in 1942. As governor, Warren was again heralded as a particularly effective administrator, bringing about development of freeways, expansion of higher education, and other major endeavors.

Warren's goal after the governorship was the presidency. He turned down New York Governor Thomas Dewey's entreaties to accept the vice presidential nomination in 1944, reasoning that the Republicans had little chance of beat-

ing Franklin Roosevelt in the midst of World War II. But after failing to win the Republican presidential nomination in 1948, he accepted Dewey's invitation to be the vice presidential candidate in that year, having received assurances that as vice president he would play a major role in the Dewey administration.

The Dewey-Warren "dreamboat" ticket—uniting the governors of New York and California—was viewed as a sure thing against an embattled Harry Truman. Of course, things did not turn out as expected. And one of the reasons Truman promised to fight for federal health insurance during the campaign was to exploit the divide between Dewey and Warren. Governor Dewey had strongly opposed government health insurance in New York; Warren pushed for it in California.

There are numerous biographical studies of Earl Warren. What emerges is a man of contradictions. As part of his 1942 gubernatorial campaign, Warren pushed for wholesale internment of California's Japanese-origin population. The same Warren who justified the roundup in explicit racial language would later preside over a Supreme Court that desegregated the public schools and other institutions. The Warren Court championed defendants' rights in the *Miranda* case, but as district attorney—in what he considered to be his most important case—Warren held a suspect incommunicado in a hotel where his lawyer couldn't find him until a confession was obtained. The Warren Court required the apportionment of state legislatures by population. But as governor, Warren strove to maintain the disproportionate representation of rural (and Republican) districts.

Warren managed to contain these contradictions because he did not recognize them. Introspection was not part of his makeup. He had no lack of what later Californians would call "self-esteem." Indeed, in the phrase of one recent observer, Warren had "an egotism so great as to be heroic" (Starr 2002:266). That egotism seems to have been a major factor in the uncharacteristic defeat of his health insurance proposals.

### **Background of the Warren Plan**

There had been attempts in California—going back to 1918—to promote some form of state health insurance before Warren became governor. These had been vigorously resisted by doctors who feared that any such plans, and even private insurance, would lead to price caps on their services. Yet in 1935, the doctors had briefly toyed with their own plan for state insurance—physician-controlled, of course—when it appeared possible that some other plan might be adopted. In 1939, doctors had defeated a plan proposed by Warren's ineffective predecessor, Culbert Olson. Despite doctor aversion to any form of insurance, the California Medical Association (CMA) created California Physicians Service (Blue Shield), as an alternative to the Olson plan.

Warren conceived his proposal for state health insurance in 1944, the same year he received national prominence as a possible presidential or vice-presidential candidate. The timing was no coincidence. If Warren could create a successful state plan, he would receive still more national attention and strengthen his position for a later run at the presidency. Moreover, a state plan would be an alternative to federal proposals that liberals had been pushing since the mid-1930s. It would have conservative appeal because it would tend to block postwar expansion of the New Deal.

A state health insurance plan would also be helpful to Warren in the upcoming gubernatorial election of 1946. California until World War II had been an elderly state, a land of cheap housing where folks could retire in the sunshine. As a result, the state was the breeding ground of crackpot pensionite movements, notably the Townsend Plan and the Ham and Eggs scheme. The latter, which appeared on the state ballot in 1938 and 1939, would have provided all Californians over age 50 “\$30 Every Thursday” (financed by a new state currency)—and came close to passing the first time around. In his 1942 gubernatorial campaign, Warren cut a deal with the pensionites to obtain their support (Mitchell 2000). But, thanks to the vast expansion of aircraft, shipbuilding, and other military-related industries, California had begun attracting a flood of young workers for the new war plants. Moreover, a further influx of returning GIs could be expected after the war. Pensions would not appeal to these new voters, but state health insurance would.

Although the political appeal of state health insurance can be readily enumerated, Warren would have been unlikely to put the issue in those terms. In light of his Progressive leanings and lack of introspection, he would have seen the proposal as simply the right thing to do in the public interest. As he stated in his autobiography, “I had given much thought to health problems, and felt the necessity of doing something about them. . . . I concluded that if anything was to be done to relieve this tragic situation, it must be a public program, and it should be based on the insurance principle” (Warren 1977:186–87). But Warren’s belief that the need for state-run health insurance was self-evident was probably the proposal’s undoing.

### **The First Plan**

Unlike Olson, who was a general failure in achieving legislative objectives, Warren had an effective approach. Typically, he would first condition public opinion—perhaps through creation of a state commission that would examine the issues, woo the affected interest groups, and build support for its recommendations. Armed with public support, Warren would then take these recommendations to the legislature, where he had prepared the ground through friendly relations with key politicians in both parties.

Sadly, Warren did not handle his health insurance plan in this fashion. The reason for this deviation can never be known for sure. Most probably, because the need for a state plan was obvious to Warren, he assumed it would be so to everyone else. He did meet with CMA representatives to inform them of his intent, but the physicians went away thinking the proposal was a longer-term objective and that they would have time for input. When it turned out the basic outline of the plan was already developed and was announced without further consultation, they were incensed and went into battle mode. Similarly, the business community was not consulted. Organized labor was then divided into the rival AFL and CIO. The two state federations were informed, but no effort was made to harmonize their reaction. Thus, labor split with the AFL backing the Warren plan but the CIO insisting on its own version.

Under the Warren plan there would be a 3 percent payroll tax, split between employer and employee, on the first \$4,000 of income. The tax would fund a state insurance program that would pay doctor and hospitalization expenses on a fee-for-service basis covering employees and their dependents. A new state board—with representatives from business, labor, agriculture, and the medical profession—would administer the system. Announced at the end of 1944, the Warren health plan was to be the centerpiece of the governor's 1945 agenda.

In short order, the CMA denounced the plan, the business community came out against it, and the CIO insisted on an alternative bill based on "capitation"—what we would now call an HMO model—rather than fee for service. California was home to early HMO prototypes such as Kaiser Permanente, under which providers received a fixed payment per patient. Because it was unclear how organizations such as Kaiser would be incorporated into a fee-for-service model, the proto-HMOs could not support the Warren plan. And there were complaints from other providers that were left out: chiropractors, visiting nurses, Christian Science healers, and optometrists. Naturally, they wanted to be covered by any state system. Had Warren followed his normal pattern of creating a commission or taskforce to hash out these concerns before submitting a plan, deals could have been cut and accommodations made before opposition could crystallize. As it was, a *fait accompli* was dropped into the legislative hopper without advance preparations.

Belatedly, it became evident to the Warren administration that a major public relations campaign would be necessary to enact its proposal. Two radio addresses were quickly planned. In the first broadcast, Warren outlined his health plan. The second radio address attacked the opposition's argument that the proposal would lead to state budget deficits and new taxes. But radio could be used by both sides. In CMA broadcasts, the Warren bill and the CIO bill were treated as if they were one, in an effort to tar Warren with CIO radicalism.

CMA hired an early Republican political consulting firm—Whitaker and Baxter, a husband-and-wife team—to plot strategy. Clem Whitaker, who had developed a personal animosity to Warren, was delighted to take up the opposition, but he advised CMA that it would have to beef up its Blue Shield plan as a private alternative to a state system. Whitaker and Baxter had developed a distribution network that provided local newspapers with free editorials. They used their network to offer newspapers around the state editorials opposing the Warren plan.

Last-minute efforts by Warren's staff to provide an expert witness on behalf of a state plan proved embarrassing. The staff brought in Dr. Nathan Sinai of the University of Michigan to testify. But Sinai's academic degrees were in veterinary medicine and public health, and he was ridiculed as a "horse doctor" with expertise in "mosquito abatement." His travel expenses also became a focus of questioning, leading to Sinai's plaintive cry, "What has all this to do with the validity of my testimony concerning this legislation?"

The Assembly Public Health Committee refused to send the Warren bill (and the CIO bill) to the floor in spring 1945. Thus, the test came when Warren pushed for an assembly vote to force his bill out of committee. The effort failed, 39–38. That one vote margin in 1945 may well have been the death knell for a public health insurance system in the United States.

### **The Second Plan**

Rather than accept defeat for the centerpiece of his legislative agenda, Warren came back with a second plan. This proposal scaled back the original bill. It covered only hospitalization up to 30 days for employees and dependents. Because the new plan did not include doctor bills, it was to be financed by only a 2 percent payroll tax split between employer and employee. Hospitals around the country had been less resistant to health insurance than doctors. Their early Blue Cross plans, for example, had originated before the doctor-run Blue Shields came along. So Warren hoped for less opposition to a hospital-only bill than his first plan had produced. But Warren's new bill engendered the same opposition as his original plan.

A hospital-only plan could be a foot in the door to a later plan covering doctors, something the CMA feared and therefore opposed. Even worse from the perspective of the CMA was the prospect that hospitals might offer state-subsidized medical services in competition with those of doctors. As a result, the outcome for Warren's second plan was the same as the first. It was tabled by the assembly's Public Health Committee and proponents failed to produce enough votes to force the new bill to the floor.

### The Third Plan

Although he failed in his 1945 battle for health insurance, Warren remained popular. In 1946, he captured the gubernatorial nominations of both the Republican and Democratic parties in the primaries. Without major party opposition, he was overwhelmingly elected. Warren viewed his reelection as a mandate for state health insurance. If the case for a state plan was not self-evident in 1945, surely it was now. Although noting in his inaugural address that he was “not unmindful” of the controversy his prior proposals had provoked, Warren again failed to shape public opinion or to sound out allies and potential opponents through informal consultations. In late 1946, he announced he would submit a new health proposal in early 1947.

The third Warren plan was designed to cover only *major* hospital expenses. In modern terminology, it was a “catastrophic” program. But the window of opportunity for state health insurance was rapidly closing, because of developments in the private sector since 1944–45. By 1947, there had been a significant expansion in job-based health insurance, thanks in part to union demands. Thus, the new Warren plan had to accommodate employer-based health care that was already in place. Warren’s solution was a “play-or-pay” feature. Under the new proposal, employers could provide employees with insurance policies that at least met the standard of the state plan. If employers chose not to provide insurance, they had to join the state system and pay in 2 percent of payroll split between employer and employee on the first \$3,000 of wages.

Despite the cutback, Warren’s third proposal went the way of the first two. But defeat took place in the state senate rather than the assembly. Warren’s bill produced the same opposition from the medical and business communities that had coalesced in 1945. It was tabled in committee and never taken to the senate floor. Thereafter, Warren dropped health insurance from his agenda. Except for Hawaii in the 1970s, no state has put a health insurance plan into operation. And the Hawaii plan involves an employer mandate to obtain private insurance, not a state-run fund.

### What Might Have Been

By the late 1940s and early 1950s, employer-based health insurance became entrenched. It produced a network of employers, human resource executives, unions, and insurance carriers committed to retaining the system “as is.” The Clinton administration in 1993–94—like the Truman administration in 1949—discovered this fact to its chagrin, when it tried to tamper with the existing order.

But Earl Warren might well have succeeded in enacting his plan had he applied the same political skills that he used to obtain other controversial legislation in California when he was governor. It was quite possible in 1945, that some form of state health insurance could have been implemented in California before the current employer-based system became entrenched. Had California acted, other states might have followed and the United States and Canada could have ended with similar systems, despite whatever cultural differences there are between the two countries. "For of all sad words of tongue or pen, The saddest are these: 'It might have been!'" (John Greenleaf Whittier, *Maud Muller* [1854]).

## Notes

1. This paper is based on documents in the Earl Warren collection of the California State Archives, transcripts of the California State Archives Government Oral History Program and of the Earl Warren Oral History Project, newspaper reports, and numerous other sources. Detailed references can be found in Mitchell (forthcoming).

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