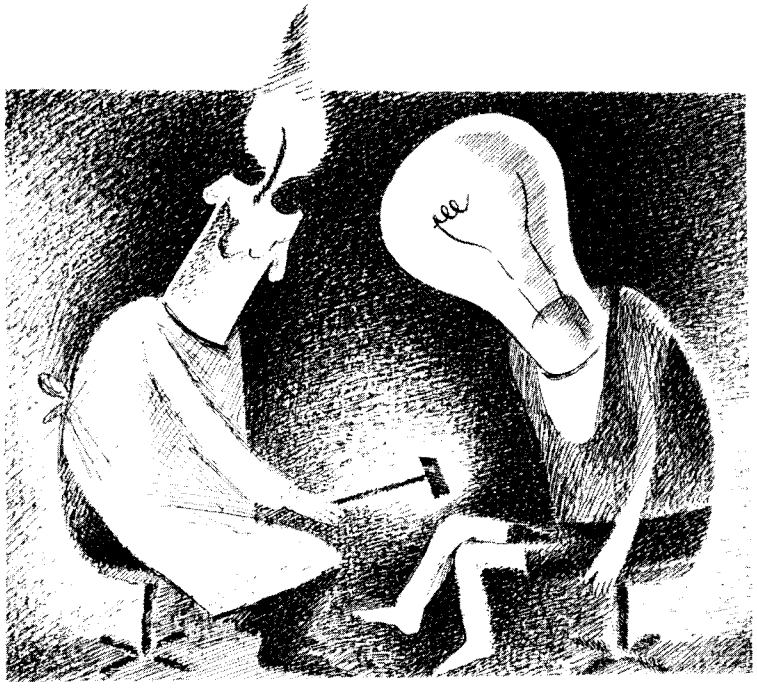
The Clinton Diagnosis

by Thomas M. Wilson



Igor Kopelnitsky

For more than two decades, critics of the American health care system have been unrelenting in their charge that it is a singular failure and manifestly unfair. We are told that millions of our fellow citizens have no access to basic medical services and that our very survival as a nation is threatened by the costs of treating those who do receive care.

If this sounds a bit melodramatic or hyperbolic, listen to the Clinton diagnosis of what ails us. Before a joint session of Congress last September, the President said, "Millions of Americans are just a pink slip away from losing their health insurance, and one serious illness away from losing all their savings. Millions more are locked into the jobs they have now just because they or someone in their family has been sick and they have a preexisting condition. And on any given day, over 37 million Americans—most of them working people and their little children—have no health insurance at all."

President Clinton's assessment of the cost of health care was equally grim. He said we are now spending so much money on health care that large businesses are finding it difficult to compete globally, small businesses are unable to invest, and even our living standards are at stake. If health care costs continue to "devour" the budget, Clinton told Congress, "Pretty soon all of you or the people who succeed you will be showing up here and writing our checks for health care and interest on the debt and worrying about whether we've got enough defense, and that will be it."

By January, a grave situation had apparently deteriorated. In his State of the Union Address, Clinton turned on those questioning the severity of the crisis, saying: "Tell it to the 58 million Americans who have no coverage at all for some time each year. Tell it to the 81 million Americans with those preexisting conditions." Even though he had upped the estimate of the number of uninsured by some 21 million people only a year after becoming President and four months after saying it was 37 million, hardly an eyebrow was raised.

Since the Clinton prescription is based on *his* analysis of the problem, the accuracy of the latter is fundamental to the debate. Until recently, few dissenting voices have been heard. Republican leaders have never really questioned the alleged facts or many of the underlying assumptions of the health care policy "debate." Consequently, they have been reduced largely to putting forth their "alternative" plans, none of which has much appeal to the public and none of which has the proverbial snowball's chance in Congress. Who remembers the Bush health care plan of 1992?

Those who are able to define the health care "crisis," explain its causes, and recommend a solution clearly have the advantage from the outset. This is what Clinton has been able to do. Bill Clinton and other advocates of compulsory national health insurance have been very skillful in using statistics and "factoids" to support their case. Take, for example, the oft-repeated claim that there are 37 million Americans without health care insurance who therefore have no "access" to the health care system. Both components of this claim are misleading.

The figure of 37 million uninsured Americans is an estimate made by the Bureau of the Census. When the advocates of national health insurance use a figure of 37 million uninsured (or even 58 million), the impression they leave is that of a huge

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Thomas M. Wilson is an assistant professor of political science and public administration at Auburn University in Montgomery, Alabama.

group of mostly poor people, enough to comprise a large state, desperate and unable to obtain basic medical care. In fact, the Bureau of the Census estimates are an average in a given month. A 1992 report put out by the bureau estimated that in 1987 only about 16 million people were without insurance for all of 1987. Now this is still a large figure, but it is not as shocking as Clinton would have us believe.

Moreover, health insurance status is constantly changing, and the uninsured population is not always the same group of people. Most spells of uninsurance last only a few months, and most of the uninsured are young and generally healthy. Many of them are not destitute and could even afford insurance if they wanted it. According to *Congressional Quarterly*, about 10 percent of the "uninsured in 1991—nearly 4 million people—had family incomes in excess of $50,000 a year."

Clinton and other supporters of compulsory national health insurance convey the impression that the uninsured have no "access" to health care and that therefore our health care system is "broken." In fact, the uninsured—even illegal aliens—do have "access" to health care, albeit in inefficient ways. The problem is that they do not have someone else to pay for their care. Federal law requires that all hospitals provide screening and treatment "if any individual . . . comes to the emergency department and a request is made on the individual's behalf for examination or treatment of a medical condition." This is not a desirable process for either hospital or patient. According to the Health Care Financing Administration, uncompensated care provided by hospitals totaled $17.8 billion in 1990. Adjusted to reflect actual losses rather than total unpaid charges, however, the figure was $11.7 billion, or about six percent of net patient revenue. Once again, this is a problem that needs correcting but not at the price set by Clinton.

The amount of money the United States spends on health care is another indicator, according to the critics, that something is terribly wrong. The two most important measures are aggregate spending and spending as a percent of Gross Domestic Product. Clinton and others see in these data portents of doom. They see signs that costs are "skyrocketing" and that the system is "collapsing." Moreover, they believe that health care spending inhibits us from spending more on socially useful enterprises.

It is true that the United States spends more money in the aggregate and as a percent of GDP on health care than any other country in the world. This does not mean that we have the "costliest and most wasteful system on the face of the Earth," as Clinton charged in September, or that we are facing a national calamity, as the President has also indicated. We do spend a great deal of money on health care in the United States, but we do so partly because we have been fortunate enough to be a wealthy society. We can afford (or were once able to afford) to build and staff the finest hospitals and medical schools in the world; to conduct half of the medical and pharmaceutical research in the world; to save the lives of premature infants weighing barely more than a pound; to keep alive victims of accidents, kidney disease, or cancer who would die in poorer or more "efficient" countries.

Health care spending in the United States is also driven by forces beyond the health care system itself, and probably beyond control of the government. These include an expanding definition of what health means, the effects of criminal violence, and the medical costs associated with divorce, illegitimacy, drug use, and sexual behavior. A large, but immeasurable, portion of health care expenditures in the United States is the result of the cultural revolution and transformation of values that began in the 1960's.

So, if it is true that the United States spends more money on health care than other countries, what of it? Among the Organization for Economic Cooperation and Development (OECD) nations, Turkey spends the smallest percent of GDP on health care. Does this mean that Turkey is doing a better job than the United States? Such a conclusion would be ludicrous. Why, then, does the fact that the United States spends a higher percentage of its GDP on health care than other nations mean that our health care system is one of the worst "on the face of the Earth," according to Clinton and other critics? There is no "correct" amount to spend. How much we do spend is a choice we make, just like any other.

Although we spend a great deal of money on health care in this country, we receive much in terms of quality and convenience. Americans do not have to wait months or years for routine services or a hospital bed, as is the case in Canada or Great Britain. Moreover, we pay our health care workers and professionals well and receive high quality care in return. Since health services are labor intensive, it is inevitable that tight spending controls will translate into lower wages and fewer jobs in the health services sector of the economy. How this will benefit us, Clinton has not explained. When you get down to the nitty-gritty of how national health care systems achieve "savings," it is through skimping on wages and quality. This is how it will eventually be done in the United States if Washington gains complete control of health care.

Clinton (as well as Congress) has no intention of confronting the issue of public spending on health care. This would mean tackling entitlements, something no one wants to do. The Clinton 'solution,' then, is to make health care an entitlement for everybody.

In their diagnosis of health care spending, Clinton and others advocating his plan argue from another premise that is almost never examined. Essentially, the Clinton position is that health care is a social good of lesser value than other social goods. Repeatedly, Clinton and his supporters assert that if we were not "wasting" so much money on health care, we could be "investing" it in other social goods, especially education. Why is this premise valid? Where has it been shown to be the case? We already have one of the highest levels of spending per capita on public education in the world, and the result is medi-

ocrity and metal detectors. Health care spending does not just "devour" our budget or threaten to wreck our economy. Health services are *part* of the economy. Health services are counted as part of our GDP.

None of this is meant to suggest that there are no problems with the amount of money we spend on health care or the ways in which we spend it. Clearly there are issues to confront, but a word of caution is in order. First, the use of expenditure data can be misleading. In the Fall 1993 issue of *Health Affairs*, economist Mark Pauly writes that expenditure data "do not measure true economic costs. They measure instead the level of *spending*, which is seriously deficient as a measure of (or even a relative proxy for) the cost the economy bears when medical care rather than other goods and services is produced." Hence, it is cost, or to be more precise, opportunity cost, about which we should be concerned. Here the news is not bad. In recent years the rising cost of medical services as measured by the Consumer Price Index (CPI) is beginning to abate. Private firms are beginning to gain some control over their health insurance costs.

In spite of this, advocates of compulsory national health insurance point with horror to the more than $800 billion we spend on health care, taking the position that the government must "do something." This sum, however, includes government *and* private spending. Public expenditures on health care are legitimately a public policy issue, but why are private expenditures? Why are private expenditures for health care any more of the government's business than how much money people spend on sporting events?

It is *government spending* that is the real issue. In 1991, the most recent year for published data, combined federal, state, and local government spending on health care was estimated at $330 billion by the Health Care Financing Administration. Medicare and Medicaid alone accounted for $216.7 billion. In 1991, government spending on health care approached 44 percent of total health expenditures. Furthermore, government spending is growing at a more rapid *rate* than private spending on health care.

Clinton (as well as Congress) has no intention of confronting the issue of public spending on health care. This would mean tackling entitlements, something no one wants to do. The Clinton "solution," then, is to make health care an entitlement for everybody—"health care that can never be taken away, health care that is always there." The entire American middle class would be made dependent on the welfare state in one fell swoop.

The Clinton plan before Congress should be seen for what it is—the most recent battle in the campaign to establish a compulsory national health insurance system in the United States. This campaign has been underway, with some exceptions, since the days of Teddy Roosevelt and the Progressives. The current battle might be the most important. At stake is the best health care system anyone has ever seen.

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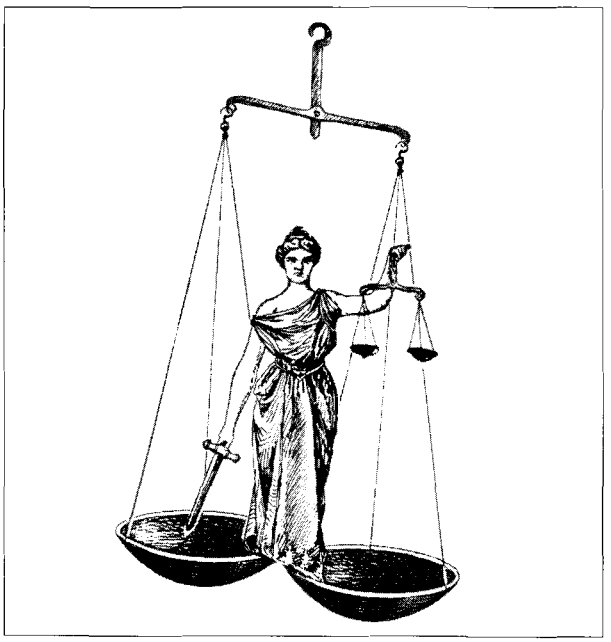
Five Votes

by Gregory J. Sullivan

"Much law, but little justice."
—Thomas Fuller



Igor Kopelnitsky

A Justice for All: William J. Brennan, Jr., and the Decisions That Transformed America
by Kim Isaac Eisler
New York: Simon & Schuster;
303 pp., $22.00

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"With five votes around here you can do anything," Justice William Brennan told his law clerks, thus summarizing the quintessence of Brennanism. That constitutional law is not something derived from the text, structure, and history of the various provisions of the Constitution but rather a creation of the arbitrary personal views of the Justices—this, for the past 30 years or so, has been the crux of Brennan's radical egalitarianism. Kim Isaac Eisler's biographical portrait, *A Justice for All*, though a very mediocre study of Brennan's political—it can hardly be called jurisprudential—thought, provides a good opportunity to examine the decisions that, as Eisler's subtitle states, transformed America.

Brennan had a conventional legal career following his graduation from Harvard Law School and prior to his appointment to New Jersey's state trial bench and subsequent elevation to the New Jersey Supreme Court (which was not then but has since become an appalling Brennanite tribunal). When Brennan arrived on the U.S. Supreme Court in 1956, he fell into the middle of the struggle between the conservative Felix Frankfurter and the liberal Hugo Black. Eisler's misunderstanding of Frankfurter is appalling. At one point he obtusely says: "Frankfurter in no way connected the role of being a 'justice' with the concept of 'justice.'" But Frankfurter understood his role perfectly. "I do not conceive that it is my function to decide cases on my notion of justice. If it were, I wouldn't be as confident as some others are that I knew exactly what justice required in a particular case." This is a concise statement of the doctrine of judicial restraint, whereby the jurist subordinates his personal sense of justice to the law of the Constitution. This view was soon to be overrun by the egregious activism of the Warren Court.

Black rather easily won the battle for Brennan's soul, but Brennan moved far beyond Black's simpleminded and selective constitutional literalism. Black, for all his flaws, attempted to root his views in the Constitution; Brennan, by contrast, virtually ceased bothering with the Constitution in any meaningful way. Moreover, Brennan moved quickly into the position of intellectual architect of the Warren Court's revolution, for Justice William Douglas was too contentious and Warren himself was not by any means a legal scholar—he was, to use the accurate if uncharitable phrase of Judge Learned Hand, a "big dumb Swede." Eisler concentrates on a handful of opinions that Brennan either wrote or helped to shape, and they provide outstanding instances of unfettered judicial power in crucial areas of the law.

Reapportionment. In *Baker* v. *Carr* (1962), Brennan created a new political order with this watershed apportionment

Gregory J. Sullivan practices law in Trenton, New Jersey.