



Health Care and the Constitution

by John Hendrickson

The fundamental question of the health-care debate, as with any issue, should address whether the policy in question is constitutional. Although conservatives, libertarians, and liberals (progressives) tend to interpret the Constitution differently, a discussion of this question would result in a national debate over the role and responsibility of government. In regard to health-care reform, policy makers should follow a constitutional direction — allowing the individual states and the free market to find solutions to improve health-care policy. Our Founding Fathers created a national government that was to be limited in nature, while preserving and protecting natural rights such as liberty and property. In examining the public option of health-care reform, it goes directly against Founding principles. As Senator Barry M. Goldwater wrote, “Our defenses against the accumulation of unlimited power in Washington are in poor shape.”¹

Progressives have long championed health care in the United States as a fundamental right; that is, every citizen should have the “right” to adequate medical care. In his 1944 State of the Union Address, President Franklin D. Roosevelt called for a “Second Bill of Rights” to serve as economic and social security against the fears of a free-market economy. President Roosevelt, with both the Great Depression and fighting the Second World War still fresh in his mind, believed that a new social contract was needed:

This Republic had its beginning, and grew to its present strength, under the protection of certain inalienable political rights.... As our Nation has grown in size and stature, however — as our industrial economy expanded — these political rights proved inadequate to assure us equality in pursuit of happiness. We have come to a clear realization of the fact that true individual freedom cannot exist without economic security and independence... . In our day these economic truths have become accepted as self-evident. We have accepted, so to speak, a second Bill of Rights under which a new basis of security and prosperity can be established for all regardless of station, race, or creed.²

President Roosevelt believed that economic liberty was no longer sufficient to provide for the general welfare and he argued that the national government had to be instrumental in providing economic security. The Second Bill of Rights called for, among other ideas, every American to have “the right to adequate medical care and the opportunity to achieve and enjoy good health.”³ Progressives and modern liberals therefore believe that health care is a civil right, which can be provided for by the national government based on a broad reading of Article I, Section 8 of the Constitution.

Conservatives and libertarians, although agreeing that health care is important, disagree that it is a civil right. Americans do have certain fundamental natural rights. These include the natural rights found in the Declaration of Independence — of life, liberty, and the pursuit of happiness — but also include the right to property and to live by the rule of law. In this view of natural rights, health care as well as education, would be considered goods. Historian Burton Folsom wrote that interpreting health care as a “right is fundamentally different from a right to free speech or a right to liberty, because a right to health care imposes an obligation on society to spend tax dollars for this right. That means others must pay taxes to fulfill someone else’s right to health care.”⁴

A Publication of: **Public Interest Institute at Iowa Wesleyan College**

600 North Jackson Street, Mount Pleasant, Iowa 52641-1328

If you wish to support our efforts, please donate by sending a check to us at the above address.

If you wish to donate by credit card, please go to our website: www.limitedgovernment.org.

PII is a 501 (c) (3) non-profit organization and all contributions are tax deductible.

E-Mail: public.interest.institute@limitedgovernment.org

Phone: 319-385-3462 Fax: 319-385-3799

Health care, if examined under the light of Founding principles, does not constitute a right. Then the question must be asked if Congress has the power under Article I, Section 8 of the Constitution to create such a vast program. Just as with what constitutes a right — Conservatives, libertarians, and progressives view various clauses of the Constitution in a different fashion. Article I, Section 8 provides for the responsibilities of Congress. Progressives will argue that Congress has the power to create national health care based on the theory of the “living Constitution,” which calls for an expansionist view of the General Welfare, Necessary and Proper, and Commerce Clauses of the Constitution. Most conservatives and libertarians on the other hand would argue that these clauses should be interpreted in a more narrow view, within the notion that the national government was to be limited in scope. Examining Article I, Section 8 from the Founder’s perspective will find that Congress does not have the power to enact national health care.

Part of the genius of the Founding Fathers, especially James Madison, in creating the Constitution was the notion of federalism, that is, that state and federal governments would both be sovereign. The Constitution created the national government with few and defined powers as illustrated by the 10th Amendment and Federalist Paper No. 45 written by Madison. Congress should encourage the various state governments to undertake health-care reform — just as state governments handled welfare reform in the 1990s. Writing in *The Washington Post*, Minnesota Governor Tim Pawlenty urged Congress to allow states to handle health-care policy. “Rather than taking power away from states, federal health-care reform should use the lessons we’ve learned tackling this crisis in our back yards,” wrote Governor Pawlenty.⁵ He also noted that Congress “should look instead to the states for models of market-driven, patient-centered, and quality-focused reform.”⁶

Several states are engaged in finding health-care policy solutions. Congress should allow states, through federalism, to find their own solutions. State governments were intended to govern and be equally sovereign and not mere administrative districts of the national government. States have proven in the past that they can solve complicated policy problems whether it is education or welfare reform.

Progressives are currently reminding President Obama that both President Roosevelt and President Truman pushed for national health insurance, but conservatives and libertarians must not surrender the fight over constitutional interpretation. The debate over health care is a debate over constitutional interpretation. “Thus, the American political system, first of all, is a system of limited, delegated powers, entrusted to political officers and representatives and leaders for certain well-defined public purposes,” wrote Russell Kirk, a noted political philosopher.⁷ The Constitution, as Senator Barry Goldwater wrote, is above all “for limiting the functions of government, and which is as binding today as when it was written.”⁸

The best solution for health-care reform is to follow the Constitution and allow states and market principles to lower costs and open the industry to more competition. Federalism works and the Constitution should not be taken lightly or be construed as a blank check for evolving rights and government expansion. Senator Goldwater has offered a solemn warning: “We can be conquered by bombs or by subversion; but we can also be conquered by neglect — by ignoring the Constitution and disregarding the principles of limited government.”⁹

Endnotes:

¹Barry M. Goldwater, *The Conscience of a Conservative*, MJF Books, New York, 1990, p. 14.

²Franklin D. Roosevelt, “State of the Union Message to Congress, January 11, 1944,” *American Presidency Project*, n.d., <<http://www.presidency.ucsb.edu>> (September 4, 2009).

³Ibid.

⁴Burton W. Folsom, “Where do rights come from?” *Burt Folsom.com*, July 30, 2009, <<http://www.burtfolsom.com>> (September 4, 2009).

⁵Tim Pawlenty, “To fix health-care, follow the states,” *The Washington Post*, August 3, 2009, <<http://www.washingtonpost.com/wp-dyn/content/article/2009/08/02/AR2009080201252.html>> (August 3, 2009).

⁶Ibid.

⁷Russell Kirk, *The American Cause*, ISI Books, Wilmington, Delaware, 2002, p. 68.

⁸Goldwater, p. 10.

⁹Ibid., p. 14.

John Hendrickson is a Research Analyst with Public Interest Institute, Mount Pleasant, Iowa.

*Permission to reprint or copy in whole or part is granted, provided a version of this credit line is used:
"Reprinted by permission from INSTITUTE BRIEF, a publication of Public Interest Institute."
The views expressed in this publication are those of the author and not necessarily those of
Public Interest Institute. They are brought to you in the interest of a better-informed citizenry.*