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Roger Williams University School of Law

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Carl Bogus: Health-Reform Law Will Boost Individual Liberty

Tuesday’s ProJo ran an opinion piece on Health Care Reform by Professor Bogus: Professor Carl Bogus argues in a Providence Journal Op-Ed that, contrary to conventional wisdom, health-care reform can be liberty’s friend.

In a May 25 Op-Ed in the [Providence Journal](), Professor Carl Bogus argues the President Obama's health-care reform will boost individual liberties:


Despite the passage of historic legislation, the health-care debate is just beginning. Opponents will try to make President Obama and members of Congress pay a political price for supporting the legislation. Meanwhile, the president and key supporters will seek further reforms. So far the goal of containing the escalating costs of health care is only partly realized. As the administration pivots from stimulating the economy to reducing deficits, the need to further contain health costs will intensify.

To succeed, the president and other reformers need to challenge the claim that governmental efforts to improve the health-care system threaten liberty. It is this ideological battle cry that energizes the opposition and troubles many Americans. The claim has largely gone unanswered, leading many to assume that it is correct. But, in fact, the stronger argument is that reform will increase liberty.

No thinker has been more influential in equating the free market with freedom than F. A. Hayek. In his 1944 book, “The Road to Serfdom,” Hayek wrote that “individuals should be allowed, within defined limits, to follow their own values and preferences rather than somebody else’s.” Capitalism provided freedom because it let individuals do just that. “If we strive for money, it is because it offers us the widest choice in enjoying the fruits of our efforts,” he wrote, adding “money is one of the greatest instruments of freedom ever invented by man.”

But Hayek also argued that capitalism depended upon a strong legal system “to preserve competition and to make it operate as beneficially as possible.” Government, Hayek believed, had to prevent or correct for market failures.

Here’s a simple example of market failure. As a law professor, I choose textbooks for my courses. A typical textbook, which the publisher gives me free, retails for $167.45, even though I suspect the publisher could make a respectable profit at a fraction of that price. The market fails because those who decide what is purchased are not the people who pay.

Although the complexity is greater, in health care there is also a division between those who use services (patients) and those who pay (insurance companies, public or private). When we need surgery, we aren’t comparing the price tags of hospitals A and B. For that and other reasons, health-care costs keep growing.

Fifty years ago, health-care costs consumed 5 percent of the gross domestic product, today, 19 percent. The Congressional Budget Office estimates that health-care costs will consume half of the GDP by 2082. As health -care costs grow, liberty — the freedom to expend our resources for what we wish — shrinks.

Liberty is at stake on the service side too. The simple doctor-patient relationship between autonomous individuals has gone the way of the horse and buggy. Whenever a patient sees a doctor, an insurance company is in the room with them. Patients are often unaware of how insurance companies tie the hands of their physicians, affecting everything from how much time their doctors spend with them to what treatments are offered.

Foes suggest that heath-care reform means a government takeover of a free-market system, but, in fact, a genuine free market no longer exists in the health system. Two fundamental questions confront us. The first is whether government participation is necessary to stop runaway health-care costs. History has answered that question: Yes. The second question is whether we prefer for-profit insurance companies or public insurance agencies such as Medicare making decisions that balance services against costs.

We all wish that only we — unconstrained by insurance carriers — balanced service and costs for our own care, but that wish is not attainable in a modern world where we — unaided by insurance — cannot pay for our medical care. At least decisions made by public entities are more transparent, more open to public debate, and more a product of the democratic process than those made in corporate boardrooms.

It should be no surprise that Hayek — champion of freedom and free markets — said “the case for the state’s helping to organize a comprehensive system of social insurance was very strong.” For contrary to conventional wisdom, health-care reform can be liberty’s friend.

Carl T. Bogus, a professor of law at Roger Williams University, is writing a biography of William F. Buckley Jr. and the American conservative movement, to be published by Bloomsbury Press.