



MILLER CENTER
of **PUBLIC AFFAIRS**
UNIVERSITY of VIRGINIA

Gerald L. Baliles, Director

**MILLER CENTER OF PUBLIC AFFAIRS DEBATE:
HEALTH CARE**

APRIL 9, 2008

SPEAKERS: THOMAS MENINO
MAYOR OF BOSTON

GERALD L. BALILES
DIRECTOR, MILLER CENTER OF PUBLIC AFFAIRS

DR. JUDYANN BIGBY
MASSACHUSETTS EXECUTIVE OFFICE OF HEALTH AND
HUMAN SERVICES

REGINA HERZLINGER
HARVARD BUSINESS SCHOOL

RICHARD EPSTEIN
UNIVERSITY OF CHICAGO LAW SCHOOL

DICK ARMEY
FREEDOMWORKS

SUSAN DENTZER
THE NEWSHOUR WITH JIM LEHRER

[*]

THOMAS MENINO: Hi. I'm Tom Menino, Mayor of the city of Boston. I welcome you all to Faneuil Hall for an important discussion on health care, which is vital to all Americans.

I want to thank the Miller Center of Public Affairs at the University of Virginia for putting this discussion on this evening. This discussion is being held throughout America. In the city of Washington, they have set up many parties throughout the city to have the same discussion that's going on at Faneuil Hall this evening.

Thank you for watching.

ANNOUNCER: This program was made possible by the generous support of Frederick W. Scott Jr. and Ann R. Worrell.

From Boston, the Miller Center of Public Affairs at the University of Virginia presents the National Discussion and Debate Series. Tonight, health care as a fundamental right.

GERALD BALILES: Good evening from the history Faneuil Hall in Boston. My name is Jerry Baliles, and I'm the director of the Miller Center of Public Affairs at the University of Virginia. I would like to express our appreciation to Mayor Menino and his superb staff for their advice and assistance and cooperation in arranging for this national event in Boston.

Health care is a topic on the minds of many Americans, and tonight the Miller Center brings another of our national discussions and debates on issues of importance to the governance of this country.

The purpose of these programs is to educate and to elevate the level of civility in our public conversations about the complex questions of our time.

Our topic tonight: health care. Our moderator is Susan Dentzer, health correspondent for *The NewsHour with Jim Lehrer*.

Ms. Dentzer?

SUSAN DENTZER: Thank you very much, Governor Baliles.

Few problems have proven as complex and as difficult to solve as America's health care crisis, and our debate tonight strikes at the core of that issue.

Resolved: Americans have a fundamental right to health care, and it is the obligation of government to secure that right.

Arguing in support of the resolution is Dr. JudyAnn Bigby, secretary of health and human services for the Commonwealth of Massachusetts. And joining Secretary Bigby is Regina Herzlinger, author of "Who Killed Health Care?" and a professor at Harvard Business School.

Arguing against the resolution we have, first, Dick Armey. Mr. Armey, a former Republican congressman, served as the House majority leader from 1995 to 2003. He's now the chairman of FreedomWorks, a nonprofit organization dedicated to lower taxes, less government and more freedom and Richard Epstein, professor of law at the University of Chicago, and author of "Mortal Peril: Our Inalienable Right to Health Care?"

Before we begin, some background.

(BEGIN VIDEOTAPE)

ANNOUNCER (voice-over): One thing most Americans can agree on is that our health care system is in critical condition. An estimated 47 million Americans have no health insurance. And eight of 10 of those without insurance are in families in which someone works fulltime.

Those uninsured often delay or forgo needed medical care. As a result, millions grow sicker and die earlier than those who have insurance.

KATIE BALAS, Bartender: Just wait until something awful happens – till I get hit by a car. And then what? And then you go to the hospital and you get these crazy bills. And the next thing you know, you are in debt.

ANNOUNCER (voice-over): Meanwhile, an estimated 77 million Americans are underinsured. Although they have health insurance, their policies are inadequate, leaving them exposed to hefty medical bills that they have trouble paying.

All told, the U.S. spends more than 50 percent per person more on health care than other comparable countries, but often lags behind in providing timely and effective health care to its citizens.

How did we get to this point?

In most developed countries, such as Canada and Germany, health care is considered a fundamental right.

In the U.S., government programs such as Medicare and Medicaid cover millions of the elderly, poor and disabled. Most other Americans still are covered by private, employer-based health insurance, but that coverage is eroding.

The root of the problem: rising costs for health care and health insurance.

DR. ANA VALDES: We're seeing a lot more families and a lot of working people who either don't get insurance through their employer or the employer offers insurance but it's too much of their salary or too much of their paycheck for them to be able to afford it.

ANNOUNCER (voice-over): An estimated 60 percent of businesses now offer coverage to their workers. That's down from 69 percent in 2000.

Meanwhile, rising Medicare and Medicaid spending poses a major challenge to the nation's fiscal future.

There's nothing in our Constitution that guarantees our right to health care. But should everyone be entitled to health care, just as we provide every child an education?

QUESTION: How many teeth does she have?

ANSWER: Six.

ANNOUNCER (voice-over): Some people believe health care is a vital human need and that government should play a role in making it available to all.

QUESTION: Oh, how are things going for you?

ANSWER: Pretty well.

ANNOUNCER (voice-over): On the other side are those who consider health care more of a market good. They say government has no special responsibility to assure access to care and that individuals should consume health care based on their personal preferences and ability to pay.

For decades, federal health reform efforts have sputtered. Meanwhile, some states such as Massachusetts have enacted their own reforms. But the Massachusetts plan faces cost overruns and tens of thousands who still are without coverage.

All three presidential candidates have offered health care plans. But to decide how to reform the health care system, voters must ask themselves the questions central to tonight's debate: Do Americans have a fundamental right to health care? And does the government have the obligation to secure that right?

(END VIDEOTAPE)

SUSAN DENTZER: And now to our debate. Each debater will have a four-minute opening statement, starting with Secretary Bigby and alternating between teams.

Then we'll move to two question-and-answer sessions. The first will allow the teams to challenge each other, followed by a group discussion that I'll moderate. The debate will conclude with two-minute closing statements from each team.

Up first, arguing that health care is a right and it is the obligation of government to secure that right is Secretary JudyAnn Bigby.

JUDYANN BIGBY: Thank you, Susan.

Every man, woman and child in the United States should have access to health care. Hundreds of thousands of people in the United States die every year, simply because they do not have health insurance.

As a physician, I can tell you firsthand how outrageous it is for someone to die because he waited too long to get care because he had no insurance.

This is unacceptable in a country that has signed the United Nations Declaration of Human Rights, which states everyone has the right to a standard of living adequate for

the health and well-being of himself and his family, including food, clothing, housing and medical care and necessary social services.

In 1977, the United States also signed the International Covenant on Economic, Social and Cultural Rights, which recognizes the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

The core argument for the right to health care is the value we place on the individual's right to live a full, productive and happy life. A child's right to education, a worker's right to a safe workplace and the public's right to a safe and healthy environment are guarantees that we have come to expect of American society.

We also recognize the need to ensure access to certain basic medical treatments for the good of society. Public health laws require individuals to be immunized against communicable disease that, if left to spread, can cause death and disability. Prisoners have a right to health care while they are incarcerated.

These policies stem from recognition that individuals have a right to health and government can guarantee that right.

If health care is not a basic right, it means we are a society that believes that we should allow individuals, including children, the elderly, the disabled and all others to suffer or die when they are sick or injured simply because they cannot pay for effective care or treatment.

The only alternative to health care as a right is health care as a privilege for those who can't afford it.

Those who argue against health care as a guaranteed right ignore the fact that, historically, the definition of right to which Americans are entitled has evolved over time. These include the right to vote, the right to own property and the right to education.

There was little available in the way of medical treatment in the time the Constitution was signed. Health care as we know it today could not have been envisioned by our forefathers.

We have made advances in public health knowledge and practice in medical care over the last century.

It's clear that having a sensible social policy on the applicability of this knowledge for the greater good is a role that only government can assume. Government must ensure that everyone has access to health care. This does not mean that government must run the health care system. However, it must ensure that individuals have access to affordable quality health care, and if individuals do not have insurance, government must provide a functioning public health system and providers who will see individuals who cannot pay for their care any other way.

Services provided by either the public or private sector must be accessible, scientifically and medically sound, and delivered in an ethical manner.

Massachusetts has a public-private partnership that is working to ensure access to quality care. There are more than 300,000 newly insured individuals in Massachusetts. Because we have required individuals to have insurance and changed regulations, premiums for individuals are affordable and provide more comprehensive care.

In summary, everyone is entitled to health care based on the inherent value that we in the United States place on an individual's right to live a full, productive and happy life.

SUSAN DENTZER: And now opposing the resolution, Dick Arme.

DICK ARMEY: Thank you, ma'am.

If you don't mind, I'll stand up, because I think it's useful for us every now and then to remind ourselves and people from the government that we can, in fact, stand on our own two feet.

I'm inspired by the genius of our founding fathers. I'm inspired by words such as, "We are endowed by our creator with certain inalienable rights, to life, liberty and the pursuit of happiness." I take that to mean from people smarter than myself, greater than myself, more genius and entrepreneurial than I could be, that liberty is a gift given to us by the Lord God Almighty and that it is the duty of governments to protect, and therefore they give us the one sacred promise of the United States that sets us aside from all other nations of the world: the right to pursue the blessings of liberty for ourselves and our posterity.

Within these rights, we have the right to freely choose to have had engaged in transactions with one another for any number of things, any number of which might be considered be central to life – food, clothing, shelter, health care, water; if you happen to be from Boston and Irish, beer.

(LAUGHTER)

But the important thing is to be free to choose to do for yourself.

All big government that intervenes against our right to be free to choose for ourselves and to acquire for ourselves is in doubt within audacity of the deplorable character.

And I want to exemplify my position in this debate by discussing one of the audacities of big government. It's called Medicare.

At some point, the United States government, in its wisdom, decided all people over the age of 65 should be the recipients of free federal health care – indeed shall be made to be. For, you see, it's a mandate.

My entire life up until the age of 65, until July 7th of the fateful year, I tended to my own business and I did it well. And it was assumed that I was capable of purchasing for myself in the marketplace that blend of goods I wanted, including health care.

But the government decided to take care of me by first presuming me to be an abject idiot. At the age of 65, all of a sudden I lost my senses and can no longer do.

Now, they didn't require me to sign up for Medicare. But like all federal mandates, like all government mandates, they enforced their will by punitive sanctions, not on me -- I'm free to choose to not sign up on Medicare – but on anybody who would provide me services for which I would otherwise be covered by Medicare, they will suffer punitive mandates by the government.

Is this consistent with liberty? I think not. I believe it's an imposition of the state to impose this. This is what I call the invisible foot of government. They say, "You will be covered by Medicare, irrespective of your desire to not be a ward of the state."

A free, loving, cantankerous, ornery old coot like me, who would rather be free has to live out the promise of Patrick Henry: "Give me liberty or give me death."

So I got Medicare. And I was free to choose – either sign up or do without health care services.

I will have more to say about this later on.

But my summary statement is very simple: Federal government has a responsibility for my liberty, not my liver.

SUSAN DENTZER: And with that, we'll turn to you, Regina Herzlinger, arguing that health care is a right.

REGINA HERZLINGER: Thank you, Susan.

I'd like to add to Secretary Bigby's eloquent statement and take the argument in a different way. Health care is killing the U.S. economy. American health care costs are about 17 percent of our economy. We compete with countries that spend 11 percent of their economies on health care.

General Motors spends \$1,500 per car on health care. Toyota spends \$100 per car on health care. Is General Motors going to be able to survive? I don't see how, because of its health care costs, among other reasons.

So why are our health care costs so high? You all know Pareto's Law. Pareto's Law is the 80/20 rule – it says that 20 percent of anything explain 80 percent of what happens.

For example, 20 percent of the beer drinkers account for 80 percent of the beer that's drunk.

So who are the 80/20 in health care? Well, there's sick people. And sick people in the United States get very poor care, and they get it in a very inefficient way. They don't get integrated care. They have to run all over town to get the care that they need.

If they got efficient, effective care, our health care costs would go way down.

So, how do we get sick people to lower the costs of health care? Well, first of all, we've got to make sure they're insured. The top 1 percent of U.S. spenders spend \$36,000 a year on health care. The average family income in the United States is \$60,000. You don't need a CPA to figure out that sick people cannot afford to buy their own health insurance.

So how can we make it affordable?

Well, the best way is to have universal coverage, where the well subsidize the sick. That's what insurance is all about.

But we have to do it in a way that gives the sick control over the system, so that they can choose the providers who give them the quality of health care they want at a price they can afford.

Do we want universal coverage? Absolutely.

What is the role of the government? Not to run the health care system. It is to do what our government is meant to do, and that is to help the poor, help the infirm, help the sick, make sure that the system is run in a decent way, and then get the heck out of the way.

Thank you.

SUSAN DENTZER: And, Professor Epstein, your opening statement?

RICHARD EPSTEIN: I think I agree a great deal with what has been said on the other side, but I want to put the issue in a somewhat different way.

If you're trying to figure out how you deal with health care, there are two ways that you could try to handle it.

One is to create a system of additional subsidies in which you tax one group of individuals in order to supply health care to another, but to do nothing whatsoever to undermine the current system of crazy-quilt regulations, which drive up the cost of health care by creating massive sorts of inefficiencies, which essentially drive down our ability to gain access to the health care system.

In the introductory remarks, one of the most instructive things that were said was that the percentage of people who are insured by employer plans has dropped from 69 to 60

percent in the last decade or so. And the question I ask you to ponder is, why is it that that particular decline has taken place?

And the answer isn't because health care is less important today than it was then. Everybody knows it's as important now as it ever was. But if you start looking at the system of regulation and mandates that have been imposed upon the system, the government that we're trying to work with in fact has become the greatest enemy toward the provision of health care.

Take, for example, just the simple question of imposing various kinds of mandates, so that when you want to buy health care what you have to do is to purchase a package which is not determined by what the buyers and the sellers want, the employers for the employees. The government, who will be heavily influenced by interest group politics, will, in fact, put into those particular packages things that providers of these services are eager to sell at very attractive rates, but which consumers themselves may not want.

And so what you will do is you'll get heavy neonatal coverage, you'll get alcoholism coverage, you'll get mental health coverage – a whole variety of mandates. And when it turns out that the employers and the employees don't like the mandates in question, what will happen is that they will essentially pull out of the system, leaving people to fend for themselves.

So when you want to deal with the question of universal coverage, you have to ask the question, not only do you want to cover everybody, you have to ask them exactly what you're going to provide them and whether or not you have the budget to deal with the kinds of things that you need to provide in order to make the system go.

And as I listen to what has been said by Secretary Bigby and by Ms. Herzlinger, it turns out you cannot balance the accounts. If you were to take something like Medicare, it turns out that the huge amounts of subsidy have led to an enormous amount of demand and it's almost impossible to figure out exactly which people overuse the system and which are not.

The reason we need a price mechanism is to ration. And if we do not ration by using prices, then we will have to ration in some other fashion, and the way in which we turn out to ration when we (inaudible) money is to (inaudible).

So there's no way in which we can achieve the impossible, which is to bring other people into the system, have a system of cross-subsidies and to make sure that the level of care that is provided is as good for everybody as private plans today after it is that you impose the government subsidies upon them in order to fund other individuals.

It is, in fact, I think when you look at this, a mistake to put the question in the form in which it is done. Let me just mention a couple of the problems.

We talk about Americans having a fundamental right to health care. We have millions of legal and illegal aliens within the United States, and the question of whether or not

they're going to be included on the cost side or the benefit side is one that we have to deal with.

And it's wrong, I think, also to say that it's an obligation of government to secure these particular rights. Governments can secure no rights for anybody by the way of funding. Governments are a transfer mechanism between the individuals who pay and the individuals who receive.

So the right question to ask in each and every one of these situations is, can we do better by a system of competitive markets and liberalization, or do we do better by having more regulation?

And my answer is deregulate. Have, in effect, Wal-Mart supply health care and you'll do a lot better than having the state of Massachusetts. And that's the choice that you have, in effect – kill private enterprise and make government flourish, or allow private enterprise to come back in and to get rid of the queues and the incompetence and the over-course that mark the current system and we'll only get worse if we go down the path that's been suggested by the pros.

Thank you.

SUSAN DENTZER: Thank you, Richard Epstein.

Now we'll get a rebuttal from each time, starting with the team in favor of the resolution. And, again, to you, Regina Herzlinger.

REGINA HERZLINGER: Thank you.

I thank the Representative and professor. Your arguments were stated so brilliantly and so eloquently.

But the fact remains that health care costs are killing the United States. And in your arguments, there was the supposition that government will take over the health care system and that it will constrain our liberties and that it will do so inevitably.

Universal coverage is not necessarily about government running the health care system. It is about government providing the funding so that the poor and the sick can participate in the health care system.

There is a system in Switzerland, that wonderful country, where everybody is insured, but it is run entirely by the private market. People in Switzerland have to buy health insurance. The Swiss government helps them, if they need help to be able to afford it, but they buy it using their own money and they buy it from private health insurers. And the entire delivery system is run by the private sector.

The insurance companies price. It is not the government that sets the prices. It is a private sector mechanism within the context of universal coverage.

What we have in Switzerland, we have universal coverage. We have tremendous health care. Their costs are 40 percent lower than ours. And their costs are lower not the way that the U.K. and Canada achieve lower costs. Their costs are lower not by rationing health care, not by putting poor sick people on waiting lists for years, and sometimes for a much longer time than is appropriate for them. Their health care costs are constrained through private market mechanisms.

The Commonwealth of Massachusetts is attempting to do the same thing -- to have universal coverage while maintaining a private insurance and a private health care delivery system.

So I think your comments were excellent and articulate and very witty, but I think they pointed at the wrong issue, and that is, universal coverage is not about government running health care. Universal coverage is about the great, generous American people making money available so that everybody can be covered.

SUSAN DENTZER: And, Congressman Arney, now to you for your rebuttal for your team.

DICK ARMEY: I hate to sound so much like Howard Roark, the greatest architect that never lived.

But America is about the liberty of the individual, not the well-being of the collective. Switzerland may well be about the collective, I don't know, but America's about the individual.

And I would go back to the individual, the question of individual liberty. You spoke so eloquently about our responsibility as a community to care for the needy and for the poor, and I would be the first to agree. Public clinics, any number of things to be made available for those who cannot provide for themselves, if we make them available in such a manner that they're free to choose to go there.

I'm 67 years old. I make approximately \$1.5 million a year. There is no reason for the government to force me into their program against the notion that I can't take care of myself. That's an imposition against my individual liberty, and as an American citizen, I have every right to be offended by that audacity.

And if you take in all the millionaires, all the people making \$600,000 a year, and you force them in that program, how then can you afford to take care of the poor folks?

Ronald Reagan broke the back of inflation in the early '80s. For those of us who remember the '70s, it was quite an impressive thing, except for two industries: education and health care.

What sets these two apart from all others? These two industries, more than any other industries, have been dominated increasingly, year in and year out, by third-party payment when the government is the third party making the payment.

Arney's axiom is, nobody spends somebody else's money as wisely as they spend their own, and that is particularly true if you're the government.

Inflation is caused by too many dollars chasing too few goods, and we have too much administrative red tape, too much regulation, too much compulsion, too many mandates, and too many enforcements to have an efficient industry that can resist the inflation that is born out of pouring billions of dollars of our children's money into a system that is defunct in the first place.

And let me leave you with one notion. Had I come to you in the year 1965 and said food is such an essential thing of life. I presented a bill that would require everybody in America at the age of 65 to purchase food stamps only through food stamps and anybody that sold them groceries for cash would have severe sanctions by the state, you either called me a tyrant and a moron.

Why, then, do you accept it for health care?

SUSAN DENTZER: Now we'll move to our question and answer period.

I'd ask that each member of a team -- only one member of each team, rather, respond. Others of you, though, may feel free to jump in if you want to amplify or extend the debate.

And actually, Congressman Arney, I'd like to stick with you, because you seem to be arguing that the main problem is that Medicare or some other government-financed program conflicts with your inherent right to go without that if you want to, in fact, go without that, you could be free to go without that.

But Medicare is not a mandatory program. In fact, you can only get into Medicare if you've worked for 10 years in covered employment. And the part of Medicare that pertains to doctors and out-patient services and drugs is entirely voluntary, and you can freely not enroll in that.

So, why are you so upset about a program which is not in fact mandatory, as you said?

DICK ARMEY: It is mandatory. And I'll tell you the way it's mandatory. I'm a healthy guy. I intend to stay healthy. I don't drink, I don't smoke and I don't cheat on my wife. I may live a long time.

But should the day come that I am required to be hospitalized, at the age of 67, there's not a hospital that can take me without being severely punished by the federal government unless I present a Medicare card.

The sanctions against that hospital make it prohibited for them to honor my personal liberty to come and pay cash.

SUSAN DENTZER: So you're worried about the rights of providers here? This doesn't have an effect on you.

DICK ARMEY: Bless your little old heart, you just don't get Howard Roark. It's about my personal liberty. I'm talking about I love a nation that gives me the right to be me as God made me, to be free, to choose to myself that compels me to become a ward of the state. They started with everybody over 65; now they're going with the children. How long do you think it will be before it is all of us?

Are you free? My mother paid – I remember when I broke my arm as a child – she paid the bill to the doctor with a delivery of coal. Do you think this government could find it in its heart to tolerate that?

Well, they would be appalled by that.

But I'm just saying, we want to take care of the poor. We want to take care of people.

Now, when we proceed with this debate – I might as well just be a little preemptive here – we're eventually going to get to this point: It's not right for a poor person to have less health care than a rich person. Not right for a poor person to walk while I drive a Lincoln. That's the difference between being rich and poor.

Take care of the poor to the extent that society will afford it, but leave us alone if we can do it for ourselves.

SUSAN DENTZER: Well, let's take that question back to the other side.

And, Secretary Bigby, why is health care special? Would we tolerate, as Congressman Armeay said, disparities, as we do have now in health care and in health overall, or, and we actually -- why is health care any different from food or shelter, other areas where we don't think of ourselves as having necessarily rights to those things, and we also tolerate huge disparities in the level of, say, food or shelter that are available to Americans?

JUDYANN BIGBY: Yes, I think that the problem with the metaphor, a poor person can walk while I drive my Lincoln, eventually, that poor person could get to the same place and maybe not in the comfort of a Lincoln.

That's not true with health care. And the reason it should not be tolerated in our society for some people to go without health care is that we know that it plays an important role in determining a child's ability to learn in school. Education brings the fruits of freedom and abilities for people to participate fully and to become the millionaire that Congressman Armeay is.

Health care is necessary if people are going to work at Toyota or G.M. and to make the United States a productive society with a churning economic engine.

Health is an essential factor that determines one's possibilities, just as education is, which we all agree everyone has a right to education.

There is no double standard that we can apply to health care. We need high-quality health care for everyone. We already see what happens when it's applied disproportionately. We have people who suffer and die and are ill, and, as Professor Herzlinger said, actually end up costing society much more.

So it is irresponsible of us to assume that health care can be viewed the same way as whether somebody has access to a car and whether that car is a Toyota or a Lincoln, or whether somebody takes the bus or drives the Lincoln.

SUSAN DENTZER: Regina Herzlinger, if we have this right to health care, are there any limits on that right? Or is it entirely open-ended? Or how would we decide what is an appropriate level of health care to provide to the entire population?

REGINA HERZLINGER: Well, I think that that is a political decision. It's a very good question. It's a decision that society as a whole must make about how much we're willing to devote to health care.

But in a consumer-driven health care system, people decide for themselves how much they're going to spend. They have to buy health insurance, but they decide for themselves whether they're going to buy a soup-to-nuts kind of health insurance policy or something that's more limited.

So I think there are two things that are being confused here. One is, do we want to have a system where poor people and sick people are covered? Another issue is do we want the system run by the federal and state governments?

The reason I talked about Switzerland is it achieves the best of both worlds – it covers everybody and yet it does so through the private sector. The Swiss health care costs are 40 percent less than ours. Forty percent in the United States would mean \$800 billion that we could spend on other goods or services or for reducing taxes or the deficit. Huge sum of money.

SUSAN DENTZER: And, Richard Epstein, you've called for competitive markets and deregulation as being a better way to go in terms of health care. But why would that be incompatible with the kind of system that Professor Herzlinger is describing? Couldn't the government, in fact, say, yes, you shall have competitive markets, and you will have universal coverage through these competitive markets?

RICHARD EPSTEIN: It turns out, politically, it's impossible. We've always tried this with respect to Medicare and it becomes a command-and-control system with a heavy

degree of cross-subsidy that's unsustainable if given to the general population. You cannot, in effect, subsidize, say, \$7 out of \$8 that people receive.

And if you look at the political dynamic in this country, you have to cut back on the money that these people are going to receive. They're going to resist the very program that she wants. That's the first problem.

The second problem is: You have to understand that there's a little cook in what she has said. She says, "We'll let them determine the kind of coverage they'll get, thick or thin."

Well, now what happens is she's actually inconsistent with the secretary, because suppose somebody decides to buy thin coverage, and thin coverage doesn't cover a disease which causes a fatal condition.

Under Regina's world, what happens is you die. Under her world, you didn't buy the insurance, we give you the coverage anyhow, so that what happens is you buy thin and you end up thick whether you like it or not.

The last point I would make is that you're trying to get from here to there. I think I could run a relatively good cross-subsidy program in a state like Switzerland, small population, relatively homogeneous in wealth and so forth.

You'd expand the scale by, perhaps, 50-fold. You increase the enormous regional disparities – education disparities and everything else and you're trying to make the sums come out – it's not going to work.

This is the simple proposition I would want you to live with, is we are much worse than Switzerland on the degree of regulation that we have in these voluntary markets.

The simple and securest way to increase access today is to reduce the cost so that people could re-enter the market. We have driven people out of the market in droves, in millions.

And then having regulated them out of the voluntary market, we assume that the same people who busted that up beyond all recognition can figure out how to make it coherent when they call the shots.

And remember this point: If you're paying the money, you'll attach conditions to the way the money is spent, and the idea that you could have subsidies without government restraints is one of the great political pipe dreams of all time.

SUSAN DENTZER: Now, in your book, again, you sketched out the kind of system we've just discussed and you said that to the degree there are others who don't have health care under this system, there should be charity, but purely voluntary charity.

What if there is no charity?

RICHARD EPSTEIN: Well, I mean, it's interesting. If you go back to a time in the United States when wealth was much smaller – and even recently – and try to find the number of instances of people in obvious need who have been simply left to go (inaudible) it hasn't happened.

There's a funny causal relationship. If you put in mandatory programs, what happens is nobody sees the need for voluntary assistance. And the secret for success in this state of creating a huge voluntary health care system in the 19th century was to give every institution the right to turn away anybody for good reason, bad reason or no reason at all, because that's the only legal regime that will get people to come into the charitable business.

And so I think, in effect, if you work this thing correctly, you will have gaps in coverage to be sure, but don't think that you don't have gaps in coverage under the current system which are far broader and far more comprehensive than anything that we've seen before.

SUSAN DENTZER: And does government have a responsibility...

RICHARD EPSTEIN: Yes, it has...

SUSAN DENTZER: ... to step in to plug those gaps?

RICHARD EPSTEIN: Yes, it has the responsibility to get out of the way so that the kinds of regulations that make it impossible for people to go to a Wal-Mart in order to get health care provided by a business that knows what it's doing will not be blocked by a series of entry restrictions of one kind or another.

It has the responsibility to remove programs like HIPAA, which spend billions of dollars trying to ensure an insane sense of privacy which nobody would want to choose in a voluntary market.

It has a responsibility to think again about the mandates with respect to medical malpractice in health care, where you force people to buy a level of protection through the civil justice system that they will not want to buy in a voluntary market.

None of these things exist in Switzerland. And so if you really want to make these comparisons, you can't cherry pick one issue to the exclusion of others. You actually have to go down and look at the whole system.

And, you know, even in Canada their malpractice system, 10 percent the cost of ours, their level of performance about exactly the same. We're wasting 90 percent of our money on this thing, and as far as I'm concerned, if we started to unravel that, we would solve many of the access problems which were created by our own regulatory ingenuity, which somehow or other always manages to backfire.

SUSAN DENTZER: Go ahead, Regina.

REGINA HERZLINGER: I'd like to respond to this.

Switzerland, you paint a picture of this wonderful country where people are bucolics and they're yodeling in the Alps and milking cows for that wonderful Swiss milk chocolate.

(LAUGHTER)

But you and I both know where Needle Park is. It is in Switzerland. The Swiss have very disruptive and severe social problems and health care problems, just like the United States. They are no different from us. We're all God's children.

Switzerland is not regulated? Don't be silly. It is as regulated in the delivery of health care as the United States. The only difference between Switzerland and the United States is that they have, number one, universal coverage, and number two, it's consumer driven.

Now, will consumer buy these cheap policies and kill themselves in the process? Forty percent of the Swiss buy cheap policies. And you know what? They don't kill themselves. They have incredible health care statistics.

SUSAN DENTZER: And as much as we're enjoying our excursion to Switzerland, let's come back to the United States here and...

(LAUGHTER)

... back to the point of, Congressman Arme, that Secretary Bigby made, which is the U.N. Universal Declaration of Human Rights in 1948 did call for a right to a standard of living that would include medical care.

Now, virtually every other major industrialized country observes this. Virtually every other country has a system that guarantees something close to universal coverage, often through a publicly financed program.

Why should the United States be an outlier? What – why American exceptionalism on that issue?

DICK ARMEY: Well, because – I keep going back to this point. America gives a better promise. You know, the U.N. resolution says we all agree we're going to deliver the goods.

America says, no, we're going to set you free. We're going to protect your liberty.

I don't know why that's so hard for people to grasp. Your personal liberty is such a precious thing. In little ways the government trespasses against it.

You know, government exists for the purpose of compelling people to do what they will not do voluntarily. Sometimes that's necessary. Sometimes it's even good. But most times, it's excessive and abusive to your liberty.

Now, I just don't put a great deal of store in the U.N. in general, but their agreements, but why would we reduce ourselves to the rest of the world, when we are so special?

The fact is, America is the leading nation in the world in providing health care resources...

SUSAN DENTZER: Now...

DICK ARMEY: ... and discovery and invention and creation, which the Swiss, by the way, don't spend the money on. And if we were just free to let ourselves engage in private transactions, we would excel.

The government can't do much with any enterprise, except, what should I say -- stalemate it. You're going to have to -- Arme's axiom number one, study on this, the market's rational, the government's dumb.

Government is a fundamentally stupid enterprise. And I don't mean to be unkind about that. They are dumb for a clearly obvious reason. They don't know what they're doing.

And I'll give you a quick example.

SUSAN DENTZER: And then we'll give Dr. Bigby a change to respond.

DICK ARMEY: Let me finish (OFF-MIKE) very declarative. I know and love my wife better than any person in the world. I absolute adore her. I study everything about her with a fervor. I love her. And in 25 years, I have never once bought that woman the right birthday present. How can somebody in Washington do better for her? I don't get it.

The fact of the matter is, when you're free to do for yourselves, you will do better and you'll keep the cost down.

SUSAN DENTZER: And not that I want to take us all the way back to Switzerland, but I think Congressman Arme's said, "Why would we reduce ourselves to the level of other countries?"

Either of you want to respond to that?

JUDYANN BIGBY: Well, I want to acknowledge the United States is a great country and we're all proud of it. And I'm also going to acknowledge, I don't want the federal government buying my birthday present. Thank you, Congressman Arme's.

(LAUGHTER)

However, it's simply not true that we excel in health care or in health. The United States ranks last among industrialized countries in terms of health status; we have higher rates of infant mortality than some countries that are quite a bit poorer than we are; we have a lower life expectancy than countries that are quite a bit poorer than we are; and we have

the biggest disparities in health care and health status of any industrialized country in the world, practically.

So, whether or not we are the best at health care or medical care, if you measure it by how much we spend, we might be. If you measure it by the wonderful universities and medical schools where this wonderful research goes on that you're talking about, we might be.

However, we don't provide access to it for everyone who needs it, and it makes us suffer as a result. We have people who are not ready to learn, they're not good workers because they're in poor health, we have kids who are dying unnecessarily, and that is what the health system in the United States has created.

Now, you talk about the government being in a position to protect people's freedoms. I have never, ever, ever heard somebody say that they do not think that having access to health care and the same access as their neighbor has is somehow imposing on their freedom.

We talk about cost, we talk about the role of government and how government is not an effective manager of the health care system; all of that may be true. So let's fix it. But let's not deny the fact the everybody needs access to health care.

(CROSSTALK)

DICK ARMEY: I do feel like I have a right to respond.

RICHARD EPSTEIN: No, no, no, no.

DICK ARMEY: The fact of the matter is...

EPSTEIN: Jesus.

DICK ARMEY: ... the federal government, at the age of 65...

SUSAN DENTZER: A right to respond is not a right...

DICK ARMEY: ... reduced my access to health care. They forced me to have reduced access to health care and reduced liberty. So you've now heard somebody say it.

SUSAN DENTZER: And let's go to Richard Epstein.

RICHARD EPSTEIN: Dick, I mean, actually, I'm going to now disagree with my partner on this thing.

(LAUGHTER)

The problem that we have with respect to Medicare is not so much that it reduces the liberty of a few of us. It's that it's an enormous subsidy to many people, so the reason you find people marching there with such eagerness is they spend one dollar of their own in order to get eight from everybody else. That's a program you can't resist signing up.

But it's also extremely important to understand that there is a vast difference in this thing – this goes to what the secretary says – between health care and health outcome.

There's been a lot of research on this issue done lately. And, in fact the Robert Wood Johnson Foundation, no paradigm (ph) of the right, has finally concluded that most of the stuff having to do with health outcomes relatively little to do with health care. It has to do with levels of alcoholism, level of, you know, levels of various kinds of abuses, obesity, smoking, all sorts of other things that take place long before you get into the health care system.

And therefore, in order to make these international comparisons, you really have to control for that, levels of violence and other sorts of things.

And here's the way in which I would put it. Take what Secretary Bigby says. We have spent more money on health care, much of it coming through these government programs, with a worse set of accidents (ph) – of outcomes – than you get in other places. It's not quite right, but it's close enough.

Why would you want to increase the level of government spending if, in fact, you have no promise whatsoever that you're going to be able to reverse these things?

What you do when you tax is you take money that people could spend not on health care as such, but on a new set of tires, on an evening out on the town or whatever it is, much of which will improve their health care.

The optimization problem we're trying to solve is to keep people out of the health care system as long as we can and then care of them in it. If we put all the money once they're in the system, we become experts in intensive care, and what we do is we lengthen their life in the emergency for a week and we shorten it for a year by making them having less resources to do other things.

So you've got to look at it globally.

SUSAN DENTZER: But, Professor Epstein, more than half of what we spend on health care in this country is spent privately. The governments – all governments together are just under 0.5 percent of total spending. So why hold the government completely responsible for all the flaws that you see in health care, when we have half of it private?

(CROSSTALK)

RICHARD EPSTEIN: ... because the way the money is spent is in large sense today dictated by the kinds of regulations for which you have to do compliance. So that if you

have a health care mandate that you must cover certain kinds of things, it's privately expended and government directed. And that's the kind of thing that you have to worry about. If you want to do these comparisons to Switzerland, it's not about yodeling; it's about the question of whether they have the same rules on neonatal care that we provide.

It's in fact a more dramatic situation. You can spend a fortune on health care to keep somebody alive at \$100,000 for an extra week or you could put it into school lunches and you can manage to keep children alive for a very long period of time.

We don't make any sensible comparisons across fields.

And as to education, we spend more on that than everything else, and we mess it up beyond all recognition as well.

So, again, the areas in which we have the strongest set of public rights, we have the worst level of performance. You can do one of two things: Either you're going to have positive rights imposed on you by government, or you could actually get the services somewhere else.

And, by and large, whenever I hear somebody says we're going to guarantee you something, I think that they're not going to know how to provide it, but they will figure out how to tax somebody else in order to make sure that those services will go through government.

SUSAN DENTZER: Regina Herzlinger?

REGINA HERZLINGER: May I ask these gentlemen...

SUSAN DENTZER: Please.

REGINA HERZLINGER: ... a question?

How would you cover the sick who cannot afford to buy their own health insurance?

RICHARD EPSTEIN: Well, look, the current situation, the reason they cannot afford to buy it is that the way in which the price of the stuff is there.

I would go back to who killed health care? And I would give you the same answer that you would give: Well, the reason we have high costs of trying to get health care is every time somebody wants to start up with a specialized hospital, there's somebody who comes along and passes a law which says that we're going to prohibit entry into that particular market.

And so, what we do is we, in effect, go into a straight libertarian world, and taking every one of your reforms that are perfectly consistent with everything that I've said, as you well know.

I mean, you're talking competition. She's talking state regulation. Just as Arney and I are not really on the same side on every issue, the two of you are not on the same side on it.

REGINA HERZLINGER: Who puts (inaudible) in your account?

(LAUGHTER)

RICHARD EPSTEIN: Well, nobody. Unfortunately, we're closer than you actually want to think on this, because in every one of your prescriptions which deals with the question of interference with voluntary relationships, you are taking an argument that state monopolies have to be broken up for competitive forces to work. And that's my first program.

And before I begin on the redistribution side, I want to exhaust the gains that you get from productivity, because those are unambiguously positive, whatever program of redistribution, as you know, has a set of correlative costs that are difficult to measure but impossible to ignore.

SUSAN DENTZER: And I'm afraid we have to bring the question-and-answer period to a close, and I guess we better do that lest we have blood on the floor. In a health care debate, that could be quite messy.

RICHARD EPSTEIN: Ohh.

SUSAN DENTZER: We've allotted two minutes for a closing...

REGINA HERZLINGER: We're all insured, so...

SUSAN DENTZER: We've allotted two minutes for a closing statement from one member of each team.

And, Richard Epstein, you'll speak, we understand it, for those opposed to tonight's resolution.

RICHARD EPSTEIN: And, in fact, I think it's important when we try to talk about this issue to remember what is at stake. When you start talking about putting obligations on governments, that is an impossibility. The only question is which individuals are going to have to bear these kinds of obligations and how they're going to be structured.

And in this particular world, unfortunately, the only way in which a government can discharge these obligations is through a system of taxation in which it imposes burdens upon all individuals for a capricious redistribution of goods.

We have, for example, the Massachusetts program, which tries to use a set of mandates and so forth. But of course, this program was initiated in part, so I learned just this

afternoon, because there was a large pot of federal money which was going to be used in order to seed it.

So, essentially, you're trying to run a Massachusetts program on revenues derived elsewhere in the United States. If you try to nationalize the program, it's Peter is going to be stealing from Paul and Paul is going to be stealing from Peter so that by the time you're done you'll have a bloated health care sector, you'll neglect the other portions of the economy and things will turn south.

None of these things are independent of everything else or anything else. So, if you decide to tax employers, you will break down the employment relationship. You will see a rise in independent contractors exactly as we've seen today.

And so, the basic program I think that one has to have in this system is a question of priorities. So, instead of trying to figure out how it is that we care for the chronically sick and ill as a first approximation, try to figure out how it is you could reduce the cost of insurance and market access so that everybody could climb into the system when they're well, and at that particular point gain the coverage for the things that are going to take place for them later in life.

And what happens is, we will never get the kind of program that we need on that Regina supports and that I support if we start be talking with fundamental rights to health care.

What we need to do fundamentally is to rationalize this market. And the only thing that does this well is repeal, repeal, repeal. Once you've gotten rid of the draws, it may well be that the problem of taking care of the poor will be less difficult because the private access will be far greater.

SUSAN DENTZER: And the last word goes to our team arguing in favor of the resolution and to you, Dr. JudyAnn Bigby.

JUDYANN BIGBY: Thank you, Susan.

I think that we've heard a lot this evening, some of which has to do with the fundamental right to health care and a lot that doesn't seem to have to do with whether or not there is a fundamental right to health care.

I have not heard anything that would suggest that we don't value, as a society, an individual's right to health and to be healthy as their individual right and for their individual good, but also for the good of the American society.

We've heard a lot about the fact that health care costs too much, and I would ask that we separate these two things because one does not preclude the other.

Cost in health care are high because we pay a lot of money for services that, quite frankly, don't add a lot of value to the system or to the health of individuals.

If we can redirect that money, we have plenty of resources to cover everyone in the United States and to provide the highest quality of care that the United States is capable of providing.

The problem is that through much competition, much of the money that we invest in the system is taken out and it goes elsewhere to those who profit from that competition.

We also cannot go back to a system that we had in the 19th century when, quite frankly, there wasn't much health care to give, so being charitable about it was pretty easy.

That would be a disaster in our system today with the advances that we have in health care and what we know about the importance of providing care and the importance of providing care in an equal fashion.

We can do better, and we should. We need a lot of the changes that we've discussed tonight, but that does not mean that health care should not be a fundamental right for everyone.

SUSAN DENTZER: And that is the last word and we do have to end it now. I think you'll agree, our debaters have given us a lot to think about.

The next Miller Center debate will be in May in New York City. The topic will be immigration. Check out the Miller Center web site for more information and your local PBS station for our broadcasts.

On behalf of the Miller Center of Public Affairs, I'm Susan Dentzer. Thank you for watching.

(APPLAUSE)

END