

# Medicare Is Facially Un-Constitutional

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## Prologue

Mount Monadnock in New Hampshire has given the world its name, which means “an isolated mountain of bedrock, resistant to erosion, rising conspicuously above an otherwise eroded area.” Visual appreciation of such a thing takes only seconds, but intellectual appreciation of human events takes thought. Since we take for granted the circumstances into which we are born, many of us have never fully appreciated the miraculous existence of these United States of America. Most of us do not realize how abruptly it could all change. When Benjamin Franklin was asked what type of government the Constitutional Convention of the Continental Congress was bequeathing to Americans, he replied “A Republic, Madam, if you can keep it.” He also warned us: “Those who would give up essential liberty, to purchase a little temporary Safety deserve neither liberty nor safety.”

We are losing our Constitutional Republic. Our written Constitution, if the people insist on adherence to it, prevents changes toward tyranny. If we are inattentive to our history, we will lose these United States to alien, virulent philosophies, which present themselves as producing dazzling Edens, but which are deadly tyrannies, leading to poverty, suffering, torture, and death.

## The Road Paved with Good Intentions

As Supreme Court Justice Louis Brandeis wrote: “Experience should teach us to be most on our guard to protect liberty when the Government’s purposes are beneficent...the greatest dangers to liberty lurk in insidious encroachment.”<sup>1</sup>

Progress along the road has been gradual. One milestone was the U.S. entry into World War I. President Woodrow Wilson claimed the good intention was to “fundamentally change international relations and promote the spread of democracy and bring peace and safety to all nations.” It was to be “the war to end all wars” and was supposed “to make the world safe for democracy.” Wilson also allowed private bankers (the Federal Reserve) to take control of the U.S. currency. No audit has ever been performed. In addition, he presided over the institution of the income tax. Our Founders knew that the interface of the federal government with the individual citizen would predispose to tyranny; therefore, there were no direct taxes. That changed with the income tax, furthering a huge increase in government power.

An unremarked coup d’état occurred in these United States of America in the 1930s, conducted by a President who received widespread approval. A supposed remedy for hard financial times was heralded, and its long-term effects and

its shredding of the Constitution were allowed by Congress and the Supreme Court with little opposition. Fundamentally, these revolutionaries transformed our government from what it was meant to be, the guarantor of our birthright of freedom, to a government of central planning dictating economic and medical policy. It is improper for government force to be used for any reason but to oppose aggressive force. The basic tenets of America—“equality, liberty, constitutionalism,” are anti-authoritarian in character, and call for limits “on the institutions of government. Individualism stressed freedom from government control and egalitarianism emphasized the right of one individual to be free from control by another.”<sup>2</sup>

Serial, seriously un-Constitutional government programs began with the election of Franklin Delano Roosevelt in 1932. His four terms gave him the opportunity to appoint eight justices to the U.S. Supreme Court. These were confirmed in an average of 13.6 days, and sat for an average of 17.4 years. William O. Douglas was on the Court for 36 years, Hugo Black for 34, Felix Frankfurter for 23, and Stanley F. Reed for 19. Hugo Black was a member of the Ku Klux Klan.

On Feb 5, 1937, FDR threatened to pack the Supreme Court with up to seven new positions, and the conditions that allowed him to appoint eight Supreme Court justices even when his threatened expansion of the Court was successfully opposed, meant that the Supreme Court became his meek, leashed lap-dog, bullied into accepting the “New Deal” as legal. When his immense un-Constitutional expansions of government power were challenged, FDR’s Supreme Court opined that the creation of the Social Security Administration was Constitutional, based on the taxing power of Congress. FDR’s Court allowed a radical departure from our Constitutional Republic’s Constitution, despite its text and clear written guidance from its framers.

## Social Security

In 1934, FDR tasked Secretary of Labor Frances Perkins, the first female Cabinet member, to draw up his “social security” scheme. She worried that it would not pass Constitutional muster and that the Supreme Court would overthrow it. FDR had his own misgivings; they knew the scheme was un-Constitutional. Americans were stressed by the Great Depression, were supine about their freedoms, and ready to become wards of the State.

Perkins recalled in her memoirs that she bumped into Justice Harlan Fiske Stone at a social event. She expressed her doubts about whether an old-age and survivors’ program would pass Constitutional muster. Stone, a Republican appointee to the Court, and future chief justice, replied “The taxing power of the federal government, my dear; the taxing

power is sufficient for everything you want and need.”<sup>3</sup>

Then as now, the scheme involved deception. FDR sold Social Security as a social insurance program in which each employee paid premiums into a personal retirement fund. In truth, it is financed by a payroll tax, and there is no personal retirement account. It is a Ponzi scheme. Medicare and the Orwellian-named Patient Protection and Affordable Care Act (ACA or “ObamaCare”) are further steps on the way to a “cradle-to-grave” socialist scheme.

Originally, what had been put into Social Security but not withdrawn, went to the decedent’s estate. That was abolished decades ago. If you die before using what you were forced to put in, you forfeit it, and so does your family. However, if you outlive what you put in, other people’s taxes are used to continue your “benefits.”

Through 1949, the Social Security tax rate was 1%. From 1950 on, both the base compensation on which the tax was levied, and the rate escalated. For example, in 1968, the first \$7,800 of earnings was taxed for Social Security, and the rate was 4.8% from both employee and employer.

Now, working Americans pay 12.4%. The employer pays 6.2% and the employee 6.2%. Of course, the employee really pays it all. That tax is paid on all compensation for labor up to \$137,700. The Medicare tax is 1.45% paid by employer and 1.45% paid by employee, with the same sleight of hand as for the Social Security tax. The worker’s earnings pay it all. There is no ceiling on the amount of compensation for labor on which the Medicare tax is paid (see Social Security Administration website, [www.ssa.gov](http://www.ssa.gov)). In 1966, it was provided that anyone 72 years old before 1968 got a check just because of age, with no requirement to pay in one cent.

Medicare and Medicaid were added to Social Security (Title 18 and Title 19, respectively) in 1965, pushed through by President Lyndon B. Johnson. The idea of making citizens dependent on government for medical insurance was imported from Bismarck’s Germany.<sup>4</sup>

### **The “General Welfare” Clause and the “Reasonable and Proper” Clause**

Like many other federal programs that Americans have come to accept and depend on, Social Security and Medicare are considered justified by the “General Welfare Clause,” a.k.a, the “Elastic Clause.” This is very far from the Founders’ intent.

Nothing in the Constitution envisions federal government control of any citizen’s medical care, or of funding medical care. It is not listed in the Enumerated Powers. There is no hint that the term “general welfare” referred to specific, individual welfare of one group of citizens, to be accomplished by forcibly transferring to them the earnings and property of other citizens. In fact, the opposite is true.

If welfare is general, it affects all citizens in an equal way. Social Security and Medicare, however, do not do so. They benefit some citizens at the expense of other citizens. Once the Social Security Act was passed, people 65 years old began immediately receiving money taken from other citizens in taxes, without ever having paid one cent. With the expansion of the life-span to the late 70s, working taxpayers

are being shamelessly robbed. The same has happened with Medicare. A person 35 years old in 1965 paid in for 30 years, and has been given an almost free ride as far as medical care is concerned for 25 years. Persons who were 20 years old in 1965 will pay for 45 years, and get 30 years of a free ride on taxpayers’ backs if they live to age 95.

There is a chasm between a definition and an interpretation. “General” means “not specific.” “Welfare” means “to go well.” General welfare is the “general condition of well-being,” a far cry from what the words “general welfare” have been intentionally twisted (interpreted) to mean.

The phrase “general welfare” first appears in the Preamble: *“WE THE PEOPLE of the United States, in order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.”*

The word “promote” is clear and unequivocal. Those who pervert the phrase “general welfare” avoid quoting the Preamble because they do not want to promote, but to provide. Government “providing” conveys power and money to those who are in charge of distributing the largesse (at someone else’s expense, of course). It means subjugation of those from whom the resources are taken.

The second recitation of the phrase is in Article 1, Section 8, Paragraph 1: “The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States.” Congress was to provide for an atmosphere of general well-being. It was forbidden to reincarnate any of the 27 abuses, injuries, and usurpations listed against the Crown in the Declaration of Independence. It was ordered by Art. 1 Sec. 8 Par. 18 and the Ninth and Tenth Amendments to exercise only those powers specifically delegated to it, and otherwise to leave the States and the people alone. A specific, tangible dollar to a specific, tangible client is foreign to the generic, benign, nebulous, conceptual nature of “general welfare” and is thus forbidden.<sup>5</sup>

Perquisites were favors such as land or money bestowed by Kings. The Constitution forbade titles of nobility in order to preclude perquisites. Article 1, Section 9, Paragraph 8 states: “No title of Nobility shall be granted by the United States.” Article 1 Section 10, Paragraph 1 states: “No state shall... grant any Title of Nobility.” Today, contrary to these clear prohibitions, the equivalent of titles of nobility abound that bestow entitlements and perquisites.

Government produces nothing, so has no material goods to give. It only consumes. What it purports to “give” to some, it must first take from others, which is legalized plunder. That is Marxism: From each according to his means; to each according to his need. The definition of “means” and “need” is determined by the takers and social engineers. Experience has shown that soon after the have-nots plunder the haves, nobody (except the rulers) has anything. Hidden in that “Care Package” are dependency, regulation, and control. Entitlements are not charity. Charity is voluntary, compassionate giving by the rightful owner to a person in need. Public charity is an incongruity, an impossibility. Government “giving” is the

buying by demagogues (with other peoples' money) of the political support of the recipients.<sup>6</sup>

In the first case challenging the Constitutionality of Social Security, *Helvering v. Davis*, 301 US 619 (1937), the Court rejected the reasoning of James Madison, who stated the General Welfare clause is no grant of "added power" but that the clause is simply in furtherance of the enumerated powers, which were designed to provide for the Common Defense and the General Welfare. In Federalist #41, James Madison wrote: "For what purpose could the enumeration of particular powers be inserted, if these and all others were meant to be included in the preceding general power? Nothing is more natural nor common than first to use a general phrase, and then to explain and qualify it by a recital of particulars. But the idea of an enumeration of particulars which neither explain nor qualify the general meaning, and can have no other effect than to confound and mislead is an absurdity."

Madison also wrote: "I cannot undertake to lay my finger on that article of the Constitution which granted a right to Congress of expending, on objects of beneficence, the money of their constituents."<sup>7</sup>

In Federalist 44, he wrote:

The powers delegated by the proposed Constitution to the Federal Government, are few and defined. Those which are to remain in the State Governments are numerous and indefinite. The former will be exercised principally on external objects, as war, peace, negotiation, and foreign commerce; with which last the power of taxation will for the most part be connected. The powers reserved to the several States will extend to all the objects, which, in the ordinary course of affairs, concern the lives, liberties and properties of the people; and the internal order, improvement, and prosperity of the State.

In 1796 a relief bill for victims of a Savannah fire was soundly defeated. Virginia's Rep. William B. Giles bluntly stated to House members that they "should not attend to what generosity and humanity required, but what the Constitution and their duty required."<sup>8, p 23</sup>

In 1828, South Carolina's Rep. William Drayton criticized Hamilton's theory that the federal government can tax and spend for the general welfare without constraint by Congress's Enumerated Powers:

If Congress can determine what constitutes the general welfare and can appropriate money for its advancement, where is the limitation to carrying into execution whatever can be effected by money? How few objects are there which money cannot accomplish!... Can it be conceived that the great and wise men who devised our Constitution...should have failed so egregiously...as to grant a power which rendered restriction upon power practically unavailing?"<sup>8, p 24</sup>

Col. Davy Crockett served in the U.S. House of Representatives from 1827-1835. A bill came to Congress for \$20,000 dollars for relief of the wife of a naval officer. Crockett stated to the House "I will not go into argument to prove that Congress has no power under the Constitution to appropriate this money as an act of charity. Every member upon this

floor knows it. We have the right, as individuals, to give away as much of our own money as we please in charity; but as members of Congress we have no right so to appropriate a dollar of the public money." The bill failed.

Crockett attempted, after voting against the relief bill, to collect money from many wealthy Congressmen for relief of the naval officer's wife, but failed. His conclusion was that "money with [the Congressmen] is nothing but trash when it is to come out of the people. But it is the one great thing for which most of them are striving, and many of them sacrifice honor, integrity, and justice to obtain it."

An unnamed Congressman related the story as explained to him by Crockett, to Edward Elis, Crockett's biographer. He related that Col. Crockett, while campaigning for re-election, spoke to a constituent, Horatio Bunce, who bluntly told Crockett that he would not vote for him. Crockett was surprised and dismayed. The constituent reminded him of a bill he had introduced for relief of constituents whose houses burned down in Georgetown. The bill passed, despite remonstrances from some Congressmen who stated that Congress did not have the right to indulge their sympathy or excite their charity at the expense of anybody but themselves. Those opposed demanded that the yeas and nays be recorded. Crockett's constituent reminded him of that bill and vote, and told him that the Constitution, to be worth anything, must be held sacred, and rigidly observed in all its provisions.

The constituent asked, "Well, Colonel, where do you find in the Constitution any authority to give away the public money in charity?" Crockett, surprised, is said to have replied "Certainly nobody will complain that a great and rich country like ours should give the insignificant sum of \$20,000 to relieve women and children, particularly with a full and overflowing Treasury." The constituent replied that the government ought to have no more in the Treasury than enough for its legitimate purposes, but explained further:

The power of collecting and disbursing money at pleasure is the most dangerous power that can be intrusted to man, particularly under our system of collecting revenue...which reaches every man in the country, no matter how poor he may be... What is worse, it presses upon him without his knowledge where the weight centers, for there is not a man in the United States who can ever guess how much he pays to the government. So, you see, that while you are contributing to relieve one, you are drawing it from thousands who are even worse off than he. If you had the right to give anything, the amount was simply a matter of discretion.... If you have the right to give to one, you have the right to give to all, and as the Constitution neither defines charity nor stipulates the amount, you are at liberty to give to any and everything which you believe...is a charity.... You will very easily perceive what a wide door this would open for fraud and corruption and favoritism, on the one hand, and for robbing the people on the other.... The people have delegated to Congress, by the Constitution, the power to do certain things. To do these, it is authorized to collect and pay moneys and for nothing else. Everything beyond this is usurpation, and a violation of the Constitution.

Mr. Horatio Bunce told Crockett that he had violated the Constitution, and that "it is precedent fraught with danger to the country, for when Congress once begins to stretch its power beyond the limits of the Constitution, there is no limit to it, and no security for the people."<sup>9</sup>

Col. Crockett then acknowledged his error, and recounted the entire sequence of events to constituents during his campaign. He vowed never to repeat his error. Character is the indispensable feature of a true patriot. Col. Crockett had character; he acknowledged an error when it was pointed out to him; had the humility to mend his ways, and warned others and counseled them regarding the error to which they too were susceptible.

In 1887, Congress appropriated \$10,000 for relief of Texas farmers suffering a drought. The bill was vetoed by President Grover Cleveland, who wrote in his veto message, "I can find no warrant for such an appropriation in the Constitution."

Madison specifically warned us, in Federalist #10, that "men of factious tempers, of local prejudices, or of sinister designs, may, by intrigue, by corruption, or by other means, first obtain the suffrages, and then betray the interests, of the people." That is exactly what has happened.

The General Welfare Clause is part of the preamble to the Constitution. The Necessary and Proper Clause, Article 1 Section 8, final paragraph, is more properly understood as the clause that allows for taxation. This clause finalizes the Enumerated Powers, and reads: "To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof."

## The New Deal vs. the Constitution

The Supreme Court initially rejected New Deal programs as un-Constitutional, because they authorized a government of central planners dictating economic policy. "FDR... was not interested in such 'legalisms'.... Roosevelt asserted that Americans 'cannot seriously be alarmed when they cry 'unconstitutional' at every effort to better the condition of our people.'" Reorganizing the Supreme Court would remove the obstacle to his empowerment of government.<sup>10</sup> We the people had never authorized State regulation of the marketplace whenever politicians decided it would serve our "general welfare." Constitutional limitations disintegrated during the New Deal coup d'etat.

"The Supreme Court has... take(n) a razor to the text of the Constitution to *remake it from the thing it was to something quite different*.... At the Court's hands, what was once a system of islands of power in a sea of individual liberty... has become islands of rights in a sea of state and federal power [emphasis in original]," stated Randy E. Barnett.<sup>11</sup>

In *Helvering v. Davis*, the Supreme Court opined that it is fine to allow Congress to take money from one group and spend it on another. In 1935, FDR actually wrote to the Chairman of the House Ways and Means Committee: "I hope your committee will not permit doubts as to constitutionality, *however reasonable*, to block the suggested legislation [emphasis added]."<sup>12</sup>

The members of the Supreme Court take this oath: "I, \_\_\_\_\_, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God."

However, Justice Frankfurter is quoted by Justice Douglas as having said to him, "If we can keep Bushy [Frankfurter's moniker for Chief Justice Charles Evans Hughes] on our side, there is no amount of re-writing of the Constitution we cannot do."<sup>13</sup>

We are seeing cavalier disregard for the solemn oath that Presidents, Supreme Court justices, and members of Congress take. In a letter to FDR in 1937, at the time of the court-packing discussion, Justice Frankfurter stated: "People have been taught to believe that when the Supreme Court speaks it is not they who speak but the Constitution; whereas, of course, in so many vital cases it is they who speak and not the Constitution."<sup>14</sup>

A former law clerk for Justice Frankfurter, Joseph Rauh, stated on Mar 5, 1980: "Precisely because the important issues that come before the Court are broad matters of public morality and political statesmanship rather than narrow questions of the law, it was inevitable that the justices and their law clerks would turn out as activists fighting for their own views on public questions."<sup>15</sup> What makes it inevitable is dishonesty, lack of character, and ability to violate their oath with impunity.

Had the federal government not grown so enormously under the un-Constitutional "Fourth Branch" known as the administrative state, instituted under FDR, the matters that come before the Court might not be such broad matters of "public morality and political statesmanship." For example, medical care is not a proper function of government, and is nowhere authorized or allowed under our Constitution. Robert G. Marshall, former member of the Virginia House of Delegates,<sup>13</sup> notes that it "might not seem harmful if judges would examine the facts and use reason and sound morality." However, Justice Douglas relates in his autobiography that Chief Justice Charles Evans Hughes once told him: "Justice Douglas, you must remember one thing. At the Constitutional level where we work, 90 percent of any decision is emotional. The rational part of us supplies the reasons for supporting our predilections."<sup>13, p 8</sup>

Again quoting Chief Justice Hughes, Marshall writes: "I had thought of the law of Moses, principles chiseled into granite. I had never been willing to admit to myself that the 'gut' reaction of a judge at the level of constitutional adjudications... was the main ingredient of the decision. The admission of it destroyed in my mind some of the reverence for the immutable principles.... No judge at the level I speak of was neutral. The Constitution is not neutral. It was designed to take the government off the backs of the people."<sup>15</sup>

Yes, the Constitution *is designed to take the government off the backs of the people*, by limiting government. Yet, under FDR's Court, and since FDR's Presidency, the federal government has become increasingly expansive, expensive,

burdensome, and intrusive, growing into areas never envisioned by any of the Founders as any proper function of government, especially medical care and retirement planning.

## The Welfare State

Social Security, food stamps, Medicare, and so on are simply wealth transfer schemes that forcibly take money from working taxpayers, and bestow it on strangers, at the behest of government. Social Security and Medicare are Ponzi schemes. The wealth transfer is not necessarily from the more affluent to the poor, but the intergenerational transfer schemes may accomplish the reverse. The schemes serve to buy the votes of the recipients. The effect is to make taxpayers second-class citizens, and to effectively bestow a privilege, an un-Constitutional Title of Nobility on all those who receive the money.

As French economist Frédéric Bastiat wrote: "The State quickly understands the use it can make of the role the public entrusts to it. It will be the arbiter, the master, of all destinies. It will take a great deal; hence a great deal will remain for itself. It will multiply the number of its agents; it will enlarge the scope of its prerogatives; it will end by acquiring overwhelming proportion."<sup>16</sup> The US government has ballooned to overwhelming proportions indeed. We are no longer free.

FDR did not let the crisis of the Great Depression go to waste. We know now that his Administration was riddled with Communist sympathizers. The Great Depression was arguably caused by U.S. government policies, according to Murray N. Rothbard in *America's Great Depression*, among others, but it allowed FDR to push through his socialist policies. Before then, private charity did an excellent job of taking care of the truly needy. Now, needier taxpayers are forced to submit to "contributing" Social Security and Medicare taxes on their very first dollar of earned income, which often are given to those who are not at all needy, but sometimes quite wealthy.

President Lyndon Johnson was, I think, a statist who wanted to complete FDR's unfinished takedown of freedom in these United States. Consider LBJ's statement, after Medicare and Medicaid had been passed. "[This] gives your boys [in Congress] something to run on if you'll just put out that propaganda. That they've done more than they did in Roosevelt's Hundred Days."<sup>17</sup> Here is LBJ's view of government. "I do not accept Government as just the 'art of the practicable.' It is the business of deciding what is right and then finding the way to do it."<sup>18</sup>

## The Medicare Statute

The Medicare statute is appended as part of the Social Security Act. Patients and their physicians have been continuously disturbed and distracted by the strictures and mysteries of the Medicare statutes' voluminous rules and regulations, about 130,000 pages long. As James Madison argued in Federalist #62: "It will be of little avail to the people that the laws are made by men of their own choice if the laws be so voluminous that they cannot be read, or so

incoherent that they cannot be understood." Additionally, the laws are not made by people of our own choice, but by unaccountable, non-elected, un-Constitutional bureaucrats in the Administrative State, in direct opposition to Article 1, Section 1, first sentence of the United States Constitution: **All legislative power herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives."**

Judge Royce C. Lamberth described the Medicare statute thus: "Picture a law written by James Joyce and edited by EE Cummings. Such is the Medicare statute, which has been described as 'among the most completely impenetrable texts within human experience.' *Rehab Ass'n of VA v. Kozlowski* 42F.3d 1444, 1450 (4th Cir 1994). Certain provisions of this labyrinthine scheme are at issue in this case, which concerns a hospital seeking review of a final decision of the Secretary of the Department of Health and Human Services, who denied it certain payments it believes it is owed for providing care to low-income patients."<sup>19</sup>

Here is a small sample of the writing by James Joyce to which Judge Lamberth refers as like the text of the Medicare statute: "She had to Spofforth, she had to kicker, too thick of the wick of her pixy's loomph, wide lickerling Jessup the smoky shiminey."<sup>20</sup> Simply open *Finnegan's Wake* at random; any page will serve to illustrate what Judge Lamberth meant.

## Where We Are Now

Medicare remains immensely popular, as it has made millions dependent on government. People do not see the termite damage to the structure behind the façade. Its enactment was quickly followed by ballooning costs and administrative rules. People flock to physicians for trivial concerns as well as actual medical problems; well-compensated procedures proliferate; and corporate interests, detecting the enormous pot of taxpayer money, are diverting it to their pockets as Medicare contractors. Medicare is victimizing patients through covert rationing, destroying medical practices, and discouraging the best and brightest from entering the profession. Why should people give up their youth to spend 60 to 80 hour weeks in hospitals learning to take care of desperately sick and injured people, surrounded by suffering, agony, and death, just to become wage slaves bereft of autonomy but bearing all responsibility for adverse consequences, and encumbered by monstrous debt?

We arrived at this point by gradual encroachments on our liberty; by giving up essential liberty for an illusion of security; by not binding down the government from mischief with the chains of the Constitution; by accepting the totally fallacious idea that free people cannot get things done; by accepting the fallacy that authoritarianism cannot be vanquished or should be removed only gradually; by suffering evils while they are sufferable, rather than abolishing the forms to which we have become accustomed, even though the future cannot sustain freedom under these present circumstances. We no longer sniff the approach of tyranny in every tainted breeze, possibly because of the decline in education and scholarship.

Dishonesty and cowardice by justices of the Supreme

Court, beginning in the 1930s and continuing into the present, and abandonment of their oaths to our Constitution by many members of Congress and several Presidents since FDR have led us into the morass in which we find ourselves today. But all along the way, the people have been complicit. The professionals who saw or should have seen the problem but did nothing about it bear a heavy responsibility.

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## REFERENCES

1. Liberty Tree Quotes. Available at: [http://libertytree.ca/quotes/Louis\\_Brandeis.Quote.CDBD](http://libertytree.ca/quotes/Louis_Brandeis.Quote.CDBD). Accessed Feb 21, 2020.
2. Ellis RJ. *American Political Culture*. New York, N.Y.: Oxford University Press; 1993:74-76.
3. Alter J. The 1934 dinner party that may have helped save Obamacare. *Daily Beast*, Jul 1, 2012, updated Jul 13, 2017. Available at: [www.thedailybeast.com/the-1934-dinner-party-that-may-have-helped-save-obamacare](http://www.thedailybeast.com/the-1934-dinner-party-that-may-have-helped-save-obamacare). Accessed Jan 31, 2020.
4. Lynch MJ, Raphael SS. *Medicine and the State*. Springfield, Ill.: Charles C. Thomas; 1963.
5. Caine CW. General welfare. *Med Sentinel* 1997;2(4). Available at: [www.AAPSONline.org/the-constitution-plain-and-simple](http://www.AAPSONline.org/the-constitution-plain-and-simple). Accessed Feb 25, 2020.
6. Caine CW. Perquisites. *Med Sentinel* 1996;1(3):23-24. Available at: [www.AAPSONline.org/the-constitution-plain-and-simple](http://www.AAPSONline.org/the-constitution-plain-and-simple). Accessed Feb 25, 2020.
7. Madison J. Annals of Congress, House of Representatives, 3rd Congress, 1st Session, Jan 10, 1794:170. Available at: <https://www.goodreads.com/quotes/113235-i-cannot-undertake-to-lay-my-finger-on-that-article>. Accessed Feb 23, 2020.
8. Giles WB. Annals of Congress; 1796. Quoted in: Levy RA, Mellow W. *The Dirty Dozen*. New York, N.Y.: Penguin Groups; 2008.
9. Elis ES. Not yours to give: Davy Crockett on the role of government. In: *The Life of Colonel David Crockett*; 1884. Available at: [http://hushmoney.org/Davy\\_Crockett\\_Farmer\\_Bunce.htm](http://hushmoney.org/Davy_Crockett_Farmer_Bunce.htm), Accessed Feb 23, 2020.
10. Del Beccaro T. The most important Supreme Court appointment since FDR. *The Hill*, Feb 19, 2016. Available at: <https://thehill.com/blogs/congress-blog/judicial/269953-the-most-important-supreme-court-appointment-since-fdr>. Accessed Feb 23, 2020.
11. Barnett RE. Restoring the lost Constitution. *Cato Policy Report*; January/February 2004:15.
12. Roosevelt FD. Letter to Rep. Samuel B. Hill, July 6, 1935. In: Rosenman SI, ed. *The Public Papers and Addresses of Franklin D Roosevelt*. New York, N.Y.: Random House; 1938:91-92.
13. Douglas WO. *Go East, Young Man: the Autobiography of William O. Douglas: the Court Years, 1939-1975*. Random House; 1980.
14. Berger R. The role of the Supreme Court. *University of Arkansas at Little Rock Law Journal* 1980;3(1).
15. Marshall RG. False assumptions and the Supreme Court. *American Life League*; February 2005. Available at: <https://www.catholicculture.org/culture/library/view.cfm?recnum=6403>. Accessed Feb 24, 2020.
16. Bastiat CF. L'État [the state]. *Jacques Bonhomme*, Jun 11-15, 1948. Reprinted in: De Guenin J, Hart DM, eds. *The Collected Works of Frédéric Bastiat*. Indianapolis, Ind.: Liberty Fund; 2012.
17. Johnson LB, O'Brien L. Conversation, Apr 9, 1965. WH Tapes, WH6504.04. Lyndon B. Johnson Library.
18. Johnson LB. Remarks at the State Capitol in Austin, Texas, Nov 2, 1964. *Public Papers of the Presidents of the United States, Lyndon B Johnson, Vol 2:1579-1580*.
19. Lamberth RC. *Catholic Health Initiatives-Iowa, Corp dba Mercy Medical Center-Des Moines v. Kathleen Sebelius, Secretary, United States Department of Health and Human Services* No 10-cv-411 (RCL).
20. Joyce J. *Finnegan's Wake*. Ware, Hertfordshire, England: Wordsworth's Classics; 2012.

## From the Archives

# "Third Party" Interference, the Practice of Medicine, and the Market Economy

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In viewing the prevailing inclination of the economic aspect of medical practice, one cannot fail to wonder at the rate and direction of change and to question the influence of such change upon the practice of medicine and the economy as a whole.

The idea that all change is progress has, to a lamentable degree, been accepted by the general public. Physicians seem prone to reject serious consideration of the eventual results of changes in the economic pattern of medical care. This lack of interest and concern may prove to be a tragedy for the medical profession and our entire economy.

Just as an understanding of the entire problem of each patient is a prerequisite for successful treatment, at least a very limited understanding of certain changes in the general economy is required for a reasonable opinion in the economics of medical practice.

The "trend" we observe today [circa 1959] is neither an isolated nor a new phenomenon. It is part of the picture which has been developing for many years. Its fruition is in the future—but that future appears uncomfortably near.

Behind the trend is more than a century of complex changes. Only recently has the impact of these changes been felt by our profession in this nation.

## Individual Responsibility

Until recently, in our nation, the pattern of economic responsibility had, to a large extent, resided in the individual, the family, or local charitable institutions. This pattern continued long after the Civil War. We enjoyed freedom from the paternalism, the serfdom and the feudalism of the old world.

Our nation grew and prospered under the system of checks and balances of a limited Federal Government. There was a predominance of religious idealism. Never before had the importance of the individual been admitted by the people of a nation and emphasized so much.

In the thirty years following the Civil War, our nation enjoyed a steadily declining cost of living which encouraged thrift and personal responsibility, as well as an ever increasing quantity of production from our industries operating with limited Federal interference.

During this period, less than 0.1% of our population was in the "poorhouse." Self-sufficiency and family solidarity was the characteristic of the day.

This was not true elsewhere. In Europe, still suffering