



Written by [Bruce Walker](#) on November 6, 2009

Healthcare, Sausages, and the Constitution

Two things that people should never see being made, Otto Von Bismarck once quipped, were sausages and laws. The Founding Fathers intended to make it hard to pass laws. The enumerated powers of Congress to make laws were limited to a very few areas of national concern, like postal roads, patents and copyrights, and weights and measurements. As narrowly as the Constitution restricted federal legislative power, the Bill of Rights — whose adoption was an essential precondition for many states in adopting the Constitution — include two clear and emphatic amendments which should make the whole concept of federal health care a joke.



Article IX says: “The enumeration in the Constitution, of certain rights, *shall not be construed* to deny or disparage others retained by the people.” The italicized text is salient: *shall not be construed*. This language does more than limit Congress. It limits all actions by any branch of the federal government including judicial construction.

Article X says: “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.” In other words, the federal power gleaned from the plain language of the Constitution is federal power at its zenith. The rights of the sovereign states and of the individual citizens of the nation were protected as much as clear prose can.

The Constitution was intended to make the production of Bismarck’s sausages limited, difficult, and slow. Why? We need very few laws. Free human behavior and open markets of commerce and ideas provide an incomparably better way of ordering our lives with economy, efficiency, and compassion than the rough hammer blows of cold laws. How much very excellent medical research or free medical care is provided by charities? How much medical care is provided freely by good doctors? How crucial are loving family members to long term health care? How well does society work without the federal bureaucrats bossing everyone involved? Laws almost never make systems work better. That is one reason why the Founding Fathers assumed that matters like healthcare would never be the subject of federal legislation or federal offices.

If Congress is going to vote on healthcare legislation giving government the power to make life-and-death decisions, then at least the leaders of Congress owe us complete transparency, broad consensus, impartial analysis, and free, prolonged deliberation. Speaker Nancy Pelosi and her lieutenants, however, show no willingness to behave in that responsible fashion.

House Democratic leaders are intending to have the legislation voted on and passed in the House this Saturday, allowing practically no time for debate and deliberation on a gargantuan bill that no one has even read. Bismarck was quite right about sausages and legislation, but even the old German chancellor



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could never, in his worst nightmare, have dreamed of the ugliness and stench of this particular giant sausage about to be fed to the American people.



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