

Balkinization

[Front page](#)
[Balkin.com](#)

Balkinization
an unanticipated
consequence of
Jack M. Balkin

E-mail:
Jack Balkin:
jackbalkin at
yahoo.com
Ian Ayres:
ian.ayres at yale.edu
Mary Dudziak:
mdudziak at
law.usc.edu
Heather Gerken
heather.gerken at
yale.edu
Mark Graber:
mgraber at
law.umaryland.edu
Stephen Griffin
sgriffin at tulane.edu
Bernard Harcourt
harcourt at
uchicago.edu
Scott Horton
shorto at
law.columbia.edu
Andrew Koppelman
akoppelman at
law.northwestern.edu
Marty Lederman:
marty.lederman at
comcast.net
Sanford Levinson
slevinson at
law.utexas.edu
David Luban
david.luban at
gmail.com
Linda McClain
lmclain at bu.edu
Neil Netanel
netanel at
law.ucla.edu
Frank Pasquale
pasquale.frank at
gmail.com
Michael Stokes
Paulsen
michaelstokespaulsen
at gmail.com
Alice Ristroph
alice.ristroph at
shu.edu
Brian Tamanaha:
tamanahb at
stjohns.edu
Mark Tushnet:
mtushnet at
law.harvard.edu

[The Anti-Torture
Memos: Balkinization
Posts on Torture,
Interrogation,
Detention, War
Powers, and OLC](#)

[The Anti-Torture](#)

Tuesday, June 23, 2009

Unfair Competition from Government: "Give me your Retired, your Sick, your Impoverished Masses"

Frank Pasquale

A few hours ago CBS News broadcast [an embarrassingly bad](#) story about health reform. Worried that an "overhaul" would "hurt health care," correspondent Sharyl Atkisson strung together some quotes from a Cato Institute spokesman and spun a fable projecting that new regulations could force employers to drop coverage for their workers. (As if private insurers have [no recourse in Washington](#) if this starts happening.)

No one in this "news" story bothered to mention that a) the status quo leaves [over 45 million uninsured](#), and b) it is actually, right now, forcing more [employers to drop coverage](#).

But the *piece de resistance* of obfuscation in the piece is even more egregious:

Today, Mr. Obama also scoffed at claims that a public plan would put private insurers out of business. "If private insurers say that the marketplace provides the best quality of health care, if they tell us that they are offering a good deal, then why is that the government, which they say can't run anything, is suddenly going to drive them out of business?" Mr. Obama asked.

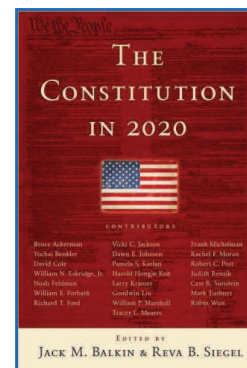
The answer, critics say, is that the government has many tools to get an unfair advantage and undercut private companies. "The government can subsidize its plan with tax revenue from other taxpayers," said [Michael] Cannon [of the Cato Institute]. "The government can enact regulations that favor its plan over other private insurers."

To see the absurdity of such rhetoric, imagine we are starting from scratch, and government officials running Medicare and Medicaid and state uncompensated care pools get together with private insurers. The government officials say: "We're taking over responsibility for all the elderly, whose health care costs are generally much higher than average. We'll also take on a large proportion of the poor. We're leaving you the best customers--those who are relatively young, and employed. But hey, we'll also [pay you far more](#) than we pay our own bureaucracy for taking on some of the Medicare population, too."

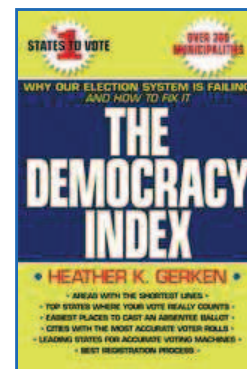
That, in actuality, is the scary government's opening negotiating position. And we're really worried that it's going to push private insurance plans against the wall? Health care costs are highly concentrated among a small portion of the population. As AHRQ notes, "Half of the population spends little or nothing on health care, while 5 percent of the population spends almost half of the total amount." Government is already taking on a great deal of responsibility for that care, and it alone has the purchasing power to control costs.

About the only way you can say that a public plan must be stopped because it will kill off private insurance is if you believe that something like Dick Cheney's "One Percent Doctrine" applies to health care finance. Of course, the fearmongering worked in the case of Iraq. And if it works again in health care, it'll probably have the same results for our fiscal situation as [the three trillion dollar war](#).

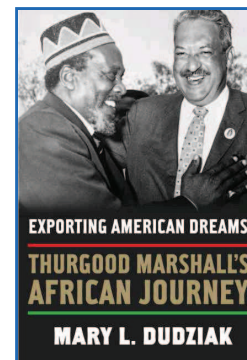
Books by Balkinization
Bloggers



[Jack M. Balkin and Reva B. Siegel, The Constitution in 2020 \(Oxford University Press 2009\)](#)



[Heather K. Gerken, The Democracy Index: Why Our Election System Is Failing and How to Fix It \(Princeton University Press 2009\)](#)



[Mary Dudziak, Exporting American Dreams: Thurgood Marshall's African Journey \(Oxford University Press 2008\)](#)