

Survival of the affordable care act assessed in new commentaries

October 24 2012

As the presidential candidates clash over the fate of the Affordable Care Act, a set of seven essays by leading legal experts, economists, and scholars examines the implications of the Supreme Court's decision on the ACA and makes it clear that there is no consensus about what is economically or morally just when it comes to health care coverage in this country. The essays appear in the Hastings Center Report.

While the essays provide a range of perspectives, a few common themes emerge. Foremost among them is that the individual mandate may not work as it stands.

Mark A. Hall, a professor of law and public health at Wake Forest University, argues that the Court "significantly weakened the individual mandate" by allowing Americans to opt out of [insurance coverage](#) if they are willing to pay a tax. This [tax penalty](#) leaves the mandate vulnerable because Congress could repeal it through the budget reconciliation process, he says.

Mark V. Pauly, of the Wharton School of Business, offers a contrasting view. While he supports the idea of a mandate, he is concerned that in its present form it may not achieve its goal of getting as many people as possible to buy insurance because the penalty for not doing so is too low – for some groups, far less than the annual cost of premiums. Pauly also raises the possibility that the mandate could increase [health care costs](#) by increasing the number of procedures that the government requires insurers to cover.

Other essays raise concerns about costs. To be fair, writes Paul T. Menzel, a philosopher at Pacific Lutheran University, mandated insurance must be for care that is disciplined and cost-effective. "The cost-control provisions include some laudable next steps but are generally weak," he concludes.

James Stacey Taylor, an associate professor of philosophy at The College of New Jersey, states that the ACA's benevolent appearance is deceptive and that it is "neither economically sound nor morally acceptable." He argues that simply implementing the law will require "a small army of lawyers and bureaucrats," which will raise health care costs.

Several other essays examine what is morally acceptable in the health care arena. While none of them makes a moral case for health reform as a question about an individual's right to health care, they discuss other relevant values: responsibility, community, sympathy, and stewardship. Len M. Nichols, a health economist, professor of health policy, and director of the Center for Health Policy Research and Ethics at George Mason University, focuses on stewardship over health care resources, arguing that all Americans should be assured adequate health care. Although the challenges are great, Nichols suggests we now have the opportunity to remake our health care system into one that serves everyone. Those who oppose the government's role in attaining this goal are willing to stand by while tens of millions of Americans live without health care, he says. "A society that aspires to morality aims higher than that, and our Supreme Court has, by the narrowest of margins, allowed us to continue to dream big," Nichols writes.

William M. Sage, a professor and Vice Provost for Health Affairs at the University of Texas at Austin's School of Law, notes that the Supreme Court decision emphasizes the value of protecting personal liberty from government dominion, but in doing so both highlights the absence of

solidarity around health reform and magnifies the importance of developing it.

Timothy Stoltzfus Jost, who holds the Robert L. Willett Family Professorship of Law at Washington and Lee University, concludes his essay with a statement that might represent the only true consensus about health care reform: "The struggle for the soul of health insurance in the United States may be far from over."

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Provided by The Hastings Center

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