

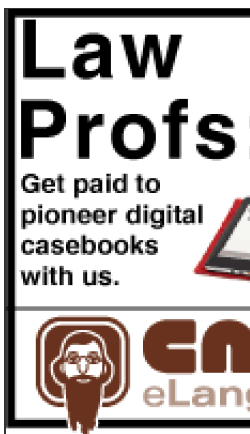
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SATURDAY, FEBRUARY 19, 2011

Should libertarians applaud the Individual Mandate as a matter of policy?

Set aside the constitutional argument against the PPCACA's individual mandate. (I've already offered [horse doctor's doses of my opinions](#) on that score). I've got a different question: Shouldn't libertarians like Randy Barnett *applaud* the individual mandate as good health care policy that, if somehow precluded to the feds by Article I, ought to be pursued by the states? I ask, because the leading libertarian book on health care seems to embrace the mandate. [John C. Goodman & Gerald L. Musgrave, Patient Power: Solving America's Health Care Crisis \(Cato Institute 1994\)](#) provides that non-purchasers of insurance be subject to a special tax (aka fine) to compensate institutions that provide them with free health care services like emergency room access. (Id. at 68-69). Daniel Shapiro, a prominent libertarian philosopher on health care financing, thinks that this tax does not go far enough for indigent persons: He'd "force the indigent to take the refundable tax credit and purchase health insurance." [Daniel Shapiro, "Why Even Egalitarians Should Favor Market Health Insurance," 15 Soc. Phil. & Poly 84, 99 \(1998\).](#)

This libertarian support for an individual mandate should hardly be surprising: Libertarians stand for personal responsibility, and people who do not buy health insurance, based on these principles, are parasites on the public fisc. The individual mandate forces these wastrels to internalize the cost of their own medical care. Of course, one could imagine the provident "ants" kicking the improvident and uninsured "grasshoppers" into the gutter when the latter get sick. But who'd clean up the mess? At the very least, even the most stony-hearted liberatarian would insist that the uninsured get *burial* insurance. And libertarians actually are not a stony-hearted bunch, as Goodman's and Musgrave's book indicates: They understand that improvident (or, more likely, unlucky) uninsureds impose a "Good Samaritans' externality" on the rest of us by getting sick, because we will inevitably come to their aid despite their lack of foresight (or resources) in not saving

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for their own sicknesses.

So why are libertarians now denouncing the individual mandate as an outrageous intrusion on individual liberty -- you know, "can Congress force you to eat broccoli?" and other silliness -- when just sixteen ago, the Cato Institute declared it to be an essential part of market-based health care? My best guess: They do not really mean it. Attacks on the Individual Mandate are just a convenient way to beat up on the PPACA, which they dislike for other (and perhaps better) reasons. But this hypocrisy comes at a cost: Anti-paternalism rhetoric directed against a program that everyone knows libertarians actually embrace sounds either cynical or unintelligent.

In light of these realities, here's my advice to libertarian critics of PPACA: Enough with the anti-paternalism rhetoric in denouncing PPACA's Individual Mandate. Stick to your Article I technicalities (for what they are worth). Unless you reject every libertarian, market-based health care plan yet proposed in favor of euthanasia, you are on board as favoring such a mandate at *some* level of government.

Posted by Rick Hills on February 19, 2011 at 10:30 AM | [Permalink](#)

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I have some libertarian leanings, though I do not claim to represent "libertarian thought" on this issue. Nor do I claim that the following represents my all-things-considered view. Now that that's out of the way...

You write: "Libertarians stand for personal responsibility, and people who do not buy health insurance, based on these principles, are parasites on the public fisc."

But that claim is - or appears to be - false. It's too general. Well-off people who can afford to pay their medical expenses out-of-pocket are not (or need not be) free-riding on the public because they (can) pay their medical bills themselves. Nor are those who are less-well-off but who do not require (many) medical services and so can afford their bills out-of-pocket. These people do not (or at least need not) externalize the costs of their medical care. Only those who cannot/do not pay their bills out-of-pocket AND who do

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not have health insurance (necessarily) externalize the costs of their medical care onto others.

If I understand the economics of the mandate correctly (and I'm open to the possibility that I do not), the point is to get those who do not externalize their costs onto others (particularly those who consume few medical services) to buy health insurance in order to lower the cost of insurance and thereby indirectly subsidize insurance for those who cannot afford it at market prices and who consume more medical services. But that is just to externalize the medical expenses of the less-well-off (or the subset of the less-well-off who consume more medical services than they can afford out-of-pocket) onto others. So the libertarian is not inconsistent to say that (a) we should force the less-well-off (or the relevant subset of these) to purchase insurance as a way of internalizing costs, and (b) we should not force everybody to purchase health insurance.

So I think the libertarian's response might look something like this. Not all uninsured impose externalities on others. (It is possible that) we should in some way penalize those who *do* impose such externalities on others. But that does not get us all the way to the individual mandate.

In fact, it appears that individual mandate *does* externalize the costs of at least some people's consumption of medical services. It might spread out these costs among more people, and might internalize them to some degree for some people (depending on the way the externalities are distributed in the current system, compared with their distribution in an "individual mandate world"), but it does not come anywhere close to genuinely internalizing the costs of medical services.

That's a rough first-pass at reconstructing how I think the libertarian would/might respond here. But I think it at least gets at something like the basic (principled) objection. I have no doubt that some people's motives in advancing libertarian-style arguments are not principled, but I do think that at least some libertarians who argue against the mandate are doing so on principled grounds that are - or can be - consistent with endorsing a requirement that some people purchase insurance.

Posted by: Corwin | Feb 19, 2011 11:34:55 AM

No, Libertarians should not endorse compulsory insurance of any kind. Health care is one thing, insurance is another. Insurance is a form of religion that comes down on the side of risk avoidance.

Real individuals do not take out insurance to cover their losses when motorcycling, climbing Everest, sailing around the world or having sex with a person of unknown "back story."

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Nor do the states of Wisconsin, New Hampshire or even California or Texas require automobile liability insurance as a prerequisite for driving a car.

What Libertarians can endorse is: killing off of tax-free employer-subsidized health insurance, elimination of certification and licensing in the medical profession, requirement that providers publish prices charged per procedure and offer most-favored-nation status for all private payers, ending price discrimination among payers. These steps alone would increase competition, lower prices, and make medical care available to the masses.

Posted by: Jimbino | Feb 19, 2011 11:39:29 AM

Bravo, Rick, for exposing the hypocrisy in the Libertarian critique of the insurance mandate. Colvin has obviously spent more time in the library reading tea-party dogma than in hospitals (or their billing offices). There are extremely few self-insured individuals who pay for their major care (that involving the emergency room, surgery, or in-patient care) out of pocket for an obvious reason: they have the wealth to purchase insurance and invariably do either through their employer (how they got their wealth) or on their own account. The vast bulk of the uninsured do not have the resources to cover their medical care, and medical care is something that all Americans ultimately consume in their life. Until Libertarians propose an alternative to mandated insurance to stop free-riders in our health care system, their protestations of concern for happily self-insured, care-avoiding individuals who can and will forever be able to pay for all their medical care throughout their life rings hollow.

Nor is there any force to the Libertarians' criticism that mandated insurance is unfair because healthy people will subsidize hypochondriacs who "over-consume" health care. I agree that mandated health insurance does not perfectly internalize on an individual-by-individual basis the various externalities involved -- insurers do not and cannot tailor premiums to each individual's actual benefit payout -- but that is true with insurance generally: good drivers who rarely file auto insurance claims subsidize bad drivers who file more damage claims or get into more accidents. Such perfect tailoring is impossible. No one can know how much healthcare (or auto benefits) they will consume in their life because we cannot predict the future, and therefore neither can insurers or the government on an individual-by-individual basis. As a result, there will always be winners (people who, in net present value terms, receive more care than the cost of their insurance premiums) and losers (people who, in net present value terms, pay more in premiums than the value of their lifetime care). Those disparities will be less, however, than under a system in

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which millions receive much care for nothing in cost to themselves. The moral hazard that Colvin perceives is more appropriately addressed by enhancing co-payments than leaving in place a system that guarantees that all the insured overpay for care so as to fund care for the uninsured.

Posted by: Norman Williams | Feb 19, 2011 1:48:22 PM

Norman, you write: "There are extremely few self-insured individuals who pay for their major care (that involving the emergency room, surgery, or in-patient care) out of pocket for an obvious reason: they have the wealth to purchase insurance and invariably do either through their employer (how they got their wealth) or on their own account."

Nothing in my prior post contradicts this claim (or anything else that you say - though my name is Corwin, not Colvin, and I am not a Tea Partier). My point was only that it is false to claim that all uninsured persons are (necessarily) free riders, and thus that the "internalizing externalities" argument, does not lead straightaway to the individual mandate. All I'm arguing is that the argument in the original post, which tries to show that libertarians should support the individual mandate, is unsuccessful.

Re: your second paragraph. You're right that insurance markets generally do, in essence, have the same kind of "subsidy-structure" in. And you're right that in that case it is certainly not unfair. But that fact that, in ordinary insurance markets, buyers freely choose to purchase their insurance seems to be a relevant difference. At the least this means that the two cases are not (obviously) equivalent.

Posted by: Corwin | Feb 19, 2011 2:15:38 PM

You say that the Goodman and Musgrave book "seems to embrace the mandate" yet on page 93 they write: "Nearly all other proposals for health care reform involve some form of mandate either on businesses to provide insurance or on individuals to purchase insurance. Not only do such mandates violate the American tradition of individual responsibility, they lead inevitably down the road to socialized medicine. Once government mandates the purchase of insurance, it must define what is to be included. The debate over the extent of coverage and soon over cost will become a political one, followed by increased government involvement in the marketplace."

That doesn't sound like they seem to embrace a mandate? Am I missing something...?

Posted by: LATB | Feb 19, 2011 2:17:08 PM

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The "Stick to your Article I technicalities (for what they are worth)" message seems rather inconsistent with your message to Randy on the conscription post only a couple of weeks ago.

Posted by: TJ | Feb 19, 2011 3:56:41 PM

Corwin,

Sorry for misstating your name -- it was an inadvertent mistake. As to the second point about the fairness of mandating the purchase of insurance, I don't see how Libertarians can object on that point once they concede (as you reasonably do) that there are free riders in the system. Government mandates that individuals do a lot of things to protect against free riders (such as mandating that people serve on juries, register with the selective service, pay taxes to support a military, police force, etc.). What is the difference between the insurance mandate and those other mandates? If Libertarians concede the propriety of the latter, the former seems to follow ineluctably. Alternatively, if Libertarians condemn those other mandates too, I concede the consistency but doubt few Americans would want to live in a robustly Libertarian world where the military's budget is dependent on voluntary contributions.

Posted by: Norman Williams | Feb 19, 2011 4:21:43 PM

To carefully qualify (again), I wouldn't pretend to speak for "libertarians" in general, but mean only to present the things about the mandate that tweak my sometimes-libertarian instincts.

That said. I can concede the existence of free riders. I can (perhaps) concede that free riders ought to be coerced into not being free riders (perhaps by purchasing health insurance). So I can get myself all the way to a mandate *for some people*, i.e., those who would - otherwise - be "freely riding".

But not all uninsured people are freely riding. It might be that most uninsured are, but not all. And at least it is not necessarily the case that all uninsured are free riders. So this rationale (preventing free-riding / internalizing costs), only goes so far as to say that some subset of the uninsured can rightfully/should be compelled to purchase health insurance. It doesn't get us all the way to the individual mandate (everybody must have health insurance). It get's us to a "some individuals mandate".

Posted by: Corwin | Feb 19, 2011 5:37:02 PM

Corwin, so what? Legislation by its very nature is general. Almost all laws apply to individuals who do not pose the risk the law seeks to address. Such overbreadth is a necessary corollary of having a workable system of lawmaking that can respond to public policy

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issues, and, outside the context of the First Amendment, such overbreadth poses no constitutional obstacle. Perhaps many people would contribute to the military budget voluntarily, but that is no argument against adopting a system of taxation that ensures all of us pay for defense; likewise, many people could self-insure and pay for the costs of their auto accidents, but that has hardly stopped states from demanding that all drivers purchase auto insurance.

Posted by: Norman Williams | Feb 19, 2011 6:58:55 PM

FYI I'm really enjoying this discussion. (That seemed worth noting.) Also, you may be right about the constitutional issues w/r/t the individual mandate. I'm not well-enough informed to have much of an opinion on that.

Re: your examples (I'll come back to the point about generality in a moment):

(1) Anyone who refuses to pay for national defense is free riding, so I - in my libertarian mood - have no problem with compulsory taxation to pay for national defense. As I've already argued, however, not everyone who refuses to purchase insurance is free riding.

(2) The auto-insurance example raises a few issues, though for the sake of brevity I'll stick to two. Firstly, the point of mandating auto-insurance is to make sure that, if I cause an accident, my "victim" will be able to collect for the cost of any damages. So I may be willing to "bite the bullet" (which doesn't taste too bad to me) and say that people who could afford to pay for the costs of their auto accidents out-of-pocket (the costs of the damage they inflict on others and their property at least), should not be required to purchase auto insurance.

Secondly, there is a sense in which we have a choice whether to drive, and thus whether to engage in the behavior which triggers the "purchase auto-insurance" requirement. At the least there is a stronger element of voluntariness present here than there is w/r/t the individual mandate: breathing is non-optional in a way that driving is not. Driving is too important to say that it is completely optional, but it's certainly not non-optional in the way that breathing is.

Re: generality in law.

True, many laws are over-broad and in many cases this is a necessary consequence of the need to have laws which are both easily understood and easily enforced. But, firstly, it is possible that some or many over-broad laws are not morally justified. Some might be, of course, and perhaps the individual mandate is one of them. I'm willing to concede this possibility, though I admit

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that I am skeptical. The only point I'm really pressing is that, contra the claim of the original post, consistent application of libertarian principles need not lead to endorsement of the individual mandate.

Posted by: Corwin | Feb 19, 2011 9:05:30 PM

It was not also such, but to my knowledge, most major areas have police and fire protection paid out of general taxes. This also true regarding the federal government. You are required to "opt in" to the system.

I don't see this as anything but a form of mandatory police and fire insurance. The tax dollars "insure" and pay for the services, if we need it or not. There is no way to opt out. And, a lot more people are required to pay [e.g., there is not religious exemption] than in the health insurance law case.

Some refuse to accept the analogy, but I really don't see why. As to free riders, the thing is that we never know when someone will become one. Recent events showed that those well off financially might suddenly be in fiscal trouble, and whoosh, free rider when they need health coverage. The law is quite fair in that respect. If you have the means (the poor get Medicaid), insure.

The Art. 1 arguments are pretty lame, but the "injustice" of it all is lamer.

Posted by: [Joe](#) | Feb 21, 2011 10:42:22 AM

I brought the free rider problem up to one "libertarian" once and he said "oh well, that's an unfortunate price of liberty" ... it's risible after awhile.

Posted by: [Joe](#) | Feb 21, 2011 10:43:48 AM

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