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ObamaCare and the Constitution

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The new health care law, nicknamed ObamaCare, requires every American to purchase health insurance or pay a fine. Supporters say this unprecedented requirement is permitted by the Constitution's Commerce Clause, which allows Congress "to regulate commerce...among the several states." Is that a legitimate legal interpretation? **reason** asked Robert A. Levy, a distinguished legal scholar who chairs the Cato Institute board of directors. He gave three reasons why the individual mandate should not pass constitutional muster.

The Commerce Clause was never intended, and has never been used, to compel the purchase of a private product. If Congress can force individuals to buy health insurance, then Congress can mandate the purchase of exercise equipment, diet foods, and on and on—extending the dominion of the federal government to all manner of human conduct, including nonconduct.

The penalty for violating the mandate is not a tax. That means Congress's power "to lay and collect taxes" does not apply. To justify the mandate, Congress expressly cited the Commerce Power but not the Taxing Power. The courts should be guided accordingly.

Even if the penalty is deemed to be a tax, the Constitution does not authorize it. The Supreme Court has held that Congress cannot use its taxing power as a backdoor means of regulating, unless the regulation is authorized elsewhere in the Constitution. In this case, there is no other constitutional authorization'