

AMERICAN VALUES AND HEALTH CARE REFORM 2010

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Abstract: *The passage of Health Care Reform in 2010 revealed a conflict over American values and the continuation of a highly partisan political process. The Republicans successfully blocked President Clinton's Health Plan in 1993 and renewed their opposition to 'Obamacare.' They were aided by the rise of a group self-identified as the Tea Party, a loose coalition of ideological conservatives and libertarians united via the internet. President Obama's political style reflected his earlier work as a community organizer who sought pragmatic solutions in a hostile political environment. The Democrats with a controlling majority in Congress were able to pass the bill without Republican support. Immediately after its passage, the constitutionality of the law was challenged.*

Key words: *America, health reform, politics, values*

Introduction

The passage of the Patient Protection and Affordable Care Act of 2010 (PPACA) marks a milestone in a century long effort to enact universal health insurance in the United States. In 1912 President Theodore Roosevelt campaigned on a progressive platform of social and health insurance. Under President Franklin D. Roosevelt health insurance was dropped from the 1935 Social Security Act, but in 1965 President Lyndon B. Johnson and a Democratic Congress passed health insurance for the elderly (Medicare) and for the poor (Medicaid). Republicans blocked President Bill Clinton's 1993 health plan and Congress never voted on it.

In his 2008 presidential campaign, Barack Obama promised to enact affordable and accessible health insurance for all Americans. Specifically, he indicated that he would create a National Health Insurance Exchange through which individuals and businesses could purchase private health insurance, and would require employers to cover their workers or pay a payroll tax to help subsidize government coverage for the uninsured. His election resulted in the Democrats gaining a 60 percent majority in the US Senate, which would enable the party to pass legislation without Republican support.

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This paper begins with a discussion of American values and whether or not the US Constitution empowers the federal government to promote the general welfare and health of the people. It will review President Obama's strategy for passing health care reform, the conservative backlash led by the Tea Party, the roadblocks to final passage, and the subsequent constitutional challenges that will eventually result in a US Supreme Court decision, probably in June, 2013.

American values and US Constitution

More than many other peoples, Americans value individual freedom, autonomy, self sufficiency and personal responsibility. In general Americans are not strongly committed to the mutual aid and support of all members of society, except in cases of national security (the attacks on Pearl Harbor or 9/11) or natural disaster (Hurricane Katrina). Americans exhibit low social solidarity. In contrast, Europeans have higher social solidarity and are more concerned about the well-being of people. This comes from both the Catholic Church (Catechism 1908) and socialist political parties.

Americans as a society and as individuals firmly believe in controlling their own destiny and in being responsible for their own well-being. Americans also do not trust big government (Jones, 2009). In contrast to the English folk hero Robin Hood, who supported King Richard the Lion Hearted against the sheriff of Nottingham, Americans support their local sheriff, a western frontier hero, to protect them from bandits and bullies. In general, Americans oppose federal government intrusion into their state or community politics and individual lives, and it is not surprising that many oppose government mandates to purchase health insurance.

The first ten amendments to the US Constitution are known as the Bill of Rights. They guarantee the right to trial by jury and to keep and bear arms as well as the freedoms of speech, press, assembly, religion, and association. The ninth and tenth amendments reserve for the people any rights not specifically mentioned in the Constitution and reserves all powers not specifically granted to the federal government to the people or the States.

The Bill of Rights enumerates civil and political rights rather than social and economic ones. The Constitution then does not explicitly guarantee or promote an individual's right to health or health care (Gunnar, 2006; Yamin, 2005). Conservatives argue that health is therefore a state or local responsibility and not one assigned to the federal government. Therefore, they postulate, it is unconstitutional for the federal government to provide or regulate health insurance.

Liberals point to the phrase in the Preamble to the Constitution: "to promote

the general welfare.” This phrase has served as a justification for federal programs addressing national problems including social security and health insurance for the elderly (Medicare) and the poor (Medicaid). They also argue that Article I, Section 8 Clause 3 grants Congress the power to regulate interstate commerce, which could include the sale of health insurance.

Obama’s pragmatic strategy

During his career, President Obama has developed a style of principled pragmatism (Hammack, 2010). Pragmatism is a philosophical school of thought that originated in the US. It holds that theories, beliefs or ideologies are to be evaluated in terms of their successful application (Hookway, 2010). In Max Weber’s (1978) terms, it means that politics and policies should be more goal- or solution-oriented (*Zweckrational*) rather than value- or ideologically driven (*Wertrational*).

Before he was a US and Illinois state senator, and before he became an attorney and lectured on constitutional law at the University of Chicago, President Obama worked for three years as a community organizer and director of the Developing Communities Project, a church-based community organization, covering eight Catholic parishes on Chicago’s far south side.

Like many community organizers, he identified the problems in the community, encouraged the key leaders and stakeholders to come together to discuss and propose solutions to the problems while emphasizing the need for shared responsibility and compromise. He was a facilitator who provided information, avoided divisive language and mediated between the interest groups.

President Obama, like President Clinton before him, faced the challenge laid out by Machiavelli (2003, p. 21) in chapter VI of *The Prince*:

There is nothing more difficult to take in hand, more perilous to conduct, or more uncertain in its success, than to take the lead in the introduction of a new order of things. For the reformer has enemies in all those who profit by the old order and only lukewarm defenders in all those who would profit by the new order.

President Obama’s first step was to make health care reform deficit neutral, that is, it would not increase the national debt. Congress passed the FY 2010 budget resolution which included the creation of a \$635 billion reserve fund to partially finance the new US health care system. It would be fully funded by FY 2020. Roughly half (\$326) would come from new revenue (taxes) and half (\$309) from savings in Medicare, Medicaid and other health programs. All cost estimates for the

proposed legislation would be judged against this criterion.

In the late spring of 2009, President Obama held substantial negotiations with the key stakeholders: pharmaceutical companies, physician and hospital associations, business groups and labour unions. The drug industry and hospitals agreed to reduce costs over the next 10 years and to contribute to the reserve fund.

President Obama then deliberately avoided the major pitfalls of the Clinton Health Plan. The Clinton plan was created in the executive branch by a task force and working groups headed by the President's wife Hillary Clinton. The drafting went on behind closed doors with very little information shared with Congress or the media.

Even before the plan was ready to be unveiled, staff of Senate Minority Leader Robert Dole, Republican from Kansas, told Republicans they were not to meet with Mrs. Clinton. In addition, Representative Newt Gingrich, Republican from Georgia, promised no Republican support for any Clinton plan. When President and Mrs. Clinton finally briefed members of Congress and their staffs, they failed to distribute copies of the plan.

By the time the Clinton plan was formally introduced in Congress on 20 November 1993, several alternative bills had already been introduced, most notably by Representative Jim Cooper, a Democrat from Tennessee and Republican Senator John Chafee of Rhode Island (Shah and Rosenberg, 1996). Strategist William Kristol called on Republicans to oppose the Clinton plan on ideological grounds, and, in the 1994 midterm elections, the Republican party gained a majority of seats in the House for the first time since 1954.

In sharp contrast to the Clinton strategy, President Obama let Congress develop legislation without a detailed plan. On 31 July 2009, the House of Representatives passed a consensus bill and sent it to the Senate. The bill included a public option of a federally operated health insurance plan designed to compete with private insurance plans, both national and state health insurance exchanges to market the plans, and individual and employer mandates for insurance with exceptions for people with very low incomes and small businesses.

Despite President Obama's distance from the legislative process, opponents quickly and pejoratively labelled the bill 'Obamacare' (Tanner, 2009).

The Tea Party backlash

In early August 2009 Congress adjourned and members returned to their home districts to hold town hall meetings to discuss health care reform. Much to their surprise they were greeted by a predominantly hostile audience consisting of

conservative and libertarian voters. A loosely organized group known as the Tea Party Patriots had encouraged opponents of health care reform via the internet to attend these meetings. The Tea Party believed in constitutionally limited government, fiscal responsibility and free markets, all of which they thought were threatened by the House-passed bill (Tea Party Patriots, n. d). Tea Party supporters were encouraged to pack halls and challenge Representatives' statements early. Tea party supporters were instructed to stand up, shout out and sit right back down.

For several days national television showed members of Congress being shouted down and taunted by crowds. Some were hanged in effigy and in several cities, noisy demonstrations led to fistfights and arrests (Urbana, 2009).

On 11 August, President Obama attempted to clear the muddy waters by urging people to disagree over things that were in the bill, and not wild misrepresentations that did not resemble anything that had actually been proposed. He was referring to former Republican Vice Presidential candidate Sarah Palin's contention, based on erroneous conservative blogs and chain emails, that the health bill authorized 'death panels' composed of bureaucrats who would decide whether or not her parents or her baby with Down syndrome was worthy of health coverage (Palin, 2009).

But much to the dismay of the political left, over the weekend of 15 August the Obama administration indicated that the public option of a federal government health insurance plan was not an essential element in the health care overhaul.

The Tea Party barrage continued relatively unchallenged until 19 August. At a town hall meeting a young woman asked Representative Barney Frank of Massachusetts why he was supporting President Obama's "fascist" health policy? Frank, an outspoken liberal Democrat, retorted, "On what planet do you spend most of your time? [...] Trying to have a conversation with you would be like trying to argue with a dining room table" (Barney Frank, 2009).

Senate politics as usual

In the early fall the Senate Finance Committee created a special *ad hoc* subcommittee of three centrist Democrats, and three Republicans, one centrist and two conservative. They reached agreement and the full committee passed its version of the bill with one Republican Senator, Olympia Snowe of Maine, voting for it. But after that vote all Republicans voted as a bloc against the health care bill.

The US Senate considers itself to be the world's greatest debating society. It takes 60 votes from among the 100 senators to end a filibuster, an attempt to block or delay action on a bill by lengthy debate. Democrats had exactly the 60 votes

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needed as long as every party member plus the two independents, Senators Bernard Sanders of Vermont and Joseph Lieberman of Connecticut voted to end debate.

The Democratic leadership was then forced to cut deals with several senators to gain the necessary 60 votes. Senator Bill Nelson was able to win a provision to exempt Florida seniors exempted from Medicare part C changes; Mary Landrieu successfully had \$100 million added to the federal share of Medicaid funds for Louisiana; Bernard Sanders of Vermont obtained extra federal Medicaid funding for his state as well as \$10 billion for community health centers nationwide; and finally Ben Nelson of Nebraska, who had negotiated compromise language on abortion coverage, saw to it that Nebraska would never have to pay anything for the costs of expanding Medicaid. With the votes secured the Senate passed its version of health care reform on Christmas Eve morning.

While this was Senate politics as usual, the whole world was watching. Surprisingly, it was the voters of liberal Massachusetts who reacted first. In the summer of 2009, Senator Ted Kennedy of Massachusetts was dying from brain cancer. He requested that the Massachusetts law be changed to allow an interim appointment after his death. This was done and the governor appointed a Democrat to replace him, thereby maintaining the Democrats' ability to muster 60 votes to end debate.

But a special election was held in January 2010, which was won by Republican Scott Brown. The last time Massachusetts had a Republican in the US Senate was 1980 and the last time the state cast its electoral votes for a Republican was for the re-election of President Ronald Reagan in 1984. As a result, Democrats no longer had the 60 votes in the Senate and could do little, in the face of united Republican opposition, to work out the differences between the House and Senate versions of the bills.

Obama takes charge

The only possibility for final passage of health care reform legislation was for the House to agree to the Senate version without any changes, since the Senate Democrats no longer had the necessary number of votes to bring any amendments up for a vote. President Obama shifted into his facilitator role and sought support from moderate and independent voters as well as convincing wavering House Democrats to support the Senate version. He held long-promised televised meetings. The first was with House Republicans who invited him to attend their retreat in Baltimore. The second was with Senate Democrats in Washington DC.

After President Obama left the meeting with the Democrats, senior White

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House adviser David Axelrod remained to field additional questions. At one point Senator Bill Nelson of Florida told Axelrod that the president needed to be more hands-on with the health care bill. Axelrod responded that the White House had a plan, prompting Senator Carl Levin of Michigan to ask “What exactly is the plan? What is the strategy?” (Connolly, 2010). Up to that point President Obama had stayed out of the Congressional negotiations and not taken any specific stands except to signal back in August that he might remove the public option.

President Obama then invited House and Senate leaders from both parties to meet together with members of the administration at a televised conference at Blair House on 25 February. Three days earlier he finally presented his own proposal for the health care overhaul, essentially supporting the Senate version while calling for the removal of the special deals on Medicaid for states like Nebraska.

His one new idea was to create a Health Insurance Rate Authority to work with state insurance regulators to reject excessive rate increases and other “unfair” insurance practices. He was responding to reports in early February that Anthem Blue Cross, California’s largest for-profit insurer, would raise premiums for approximately 800,000 customers who buy individual coverage by 25 percent on average starting 1 March and that the rates could be adjusted more frequently thereafter (Helfand, 2010).

The seven and one half hour health summit was televised live. Like a good community facilitator, President Obama guided the discussion giving both sides a chance to make their case and raise questions about his proposal. At the end he announced that he would wait up to six weeks for constructive proposals from Republicans, but would then move ahead.

Divine intervention

The one remaining issue holding back several House Democrats from voting for the Senate version involved federal funding of abortions. With the removal of the public option, the federal government would not be providing health insurance directly. But the Senate compromise required those who wanted private abortion coverage to write two separate checks each month, one for abortion coverage and the other for all other health coverage. This was attacked by the women’s rights groups as unfair and unmanageable. The anti abortion groups did not like the provision because it allowed insurance coverage for abortions.

On 15 March, Sister Carol Keenan, CEO and President of the Catholic Hospital Association, wrote a letter supporting the Senate bill. She was satisfied with the dual payment system and auditing controls to keep the payments for

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abortions separate from all other health insurance funds and that no federal dollars would be used to pay for abortions. She praised a section of the bill that would provide \$250 million over 10 years to pay for counselling, education, job training and housing for women who are pregnant or parenting.

Two days later NETWORK, a National Catholic Social Justice Lobby, came out in support of the Senate bill. A letter to Congress was signed by more than 50 women who were members of the Leadership Conference of Women Religious, an association of religious congregations of Catholic women in the US.

On 21 March President Obama promised to issue an executive order after the passage of the health insurance reform law reaffirming its consistency with longstanding restrictions on the use of federal funds for abortion. The House then passed the Senate bill and President Obama signed it into law on 23 March 2010.

Challenging the new law

Even as President Obama signed the Patient Protection and Affordable Care Act (PPACA) into law, several states took action to limit, alter or oppose selected state or federal actions regarding health care reform (Cauchi, 2011). Virginia, Idaho and Utah quickly passed state health freedom acts that challenged the federal law's mandate requiring individuals to purchase health insurance. The health freedom acts declared that every person within the state is and shall be free from government intrusion in choosing or declining to choose any mode of securing health insurance coverage without a penalty or threat of penalty.

This was an attempt to assert values of individual freedom of choice and state's rights within the US federal system. However, the supremacy clause in the US Constitution (Article VI, Clause 2) makes federal law the supreme law of the land. Constitutionally enacted federal law would pre-empt some or all of these acts.

On 23 March, the same day President Obama signed the PPACA into law, two legal cases challenging the constitutionality were filed in federal district courts. The attorney general of Virginia filed a complaint in Richmond, Virginia against Secretary of Health and Human Services Kathleen Sebelius. The complaint alleged that since health insurance does not involve interstate commerce, the PPACA should be declared unconstitutional as Congress had exceeded its authority in requiring the individual mandate.

The second case was filed in Pensacola, Florida by the attorneys general of Florida and 15 other states, all but one a Republican, and four Republican governors. It sought to have the PPACA declared unconstitutional not only because the individual mandate exceeded the authority under the interstate commerce clause

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but also violated the Ninth and Tenth Amendments to the Constitution that reserve to the states powers over issues not explicitly granted to the federal government. Specifically, the case claimed that the expansion of Medicaid imposed burdens on the states that they did not have to honor.

These and several similar cases, whatever their outcome, will likely be appealed and probably reach the US Supreme Court in the fall of 2012. The court may hear the case during the presidential election campaign but will not announce its decision until June 2013. The Supreme Court decision may come approximately six months before the individual mandate and insurance exchanges are scheduled to go into effect on 1 January 2014.

Conclusion

It has taken progressive forces in the United States 100 years to bring universal health insurance coverage to America. The Patient Protection and Affordable Care Act of 2010 and the way in which it was passed appear to infringe on core American values of individual choice and responsibility, states' rights and a distrust of government programs and spending.

The opponents remained steadfast and united with increasing support from grass roots and internet groups of conservatives and libertarians. They have the resources to carry the issue all the way to the Supreme Court. The fate of this latest round of how the United States is to provide and fund health care for its citizens is likely to rest in the nation's highest court. Nonetheless, the electorate will surely have an important say on the matter.

More than 100 years ago, Chicago newspaper columnist Finley Peter Dunne created Mr. Dooley, a fictional Irish American, who commented upon political and social issues. One of Mr. Dooley's more famous witticisms was that "No matter whether the Constitution follows the flag or not, the Supreme Court follows the election returns" (Dunne, 1901).

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