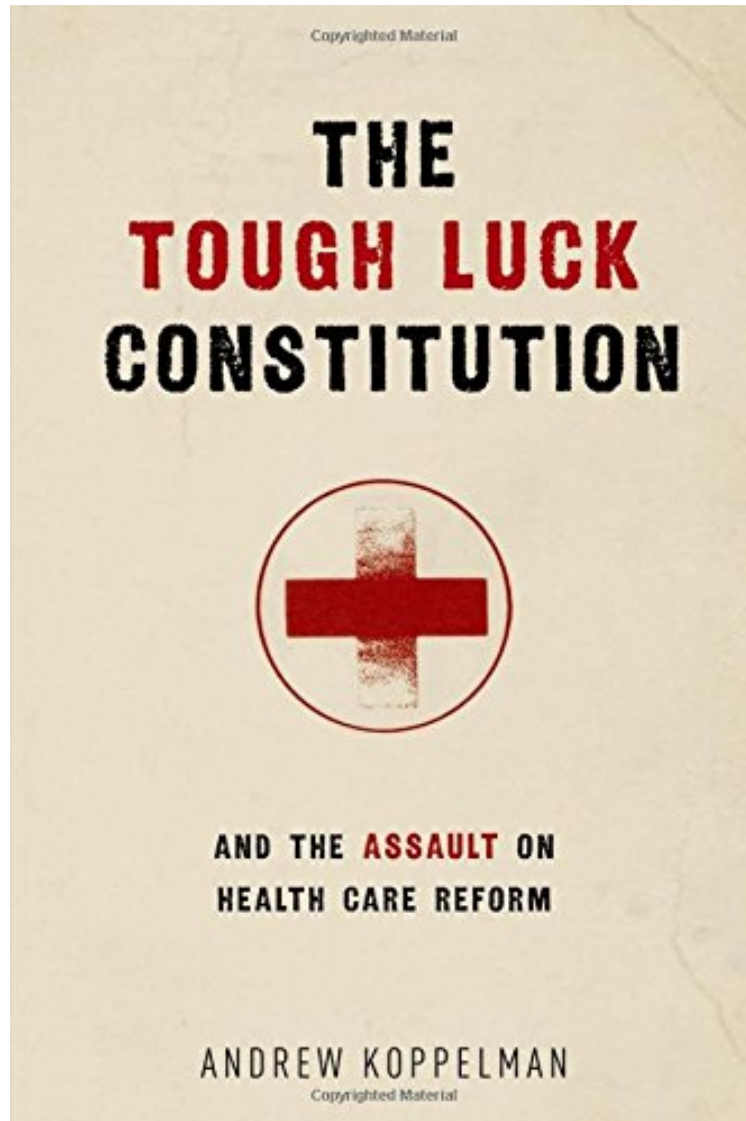


[Free download] The Tough Luck Constitution and the Assault on Health Care Reform

# The Tough Luck Constitution and the Assault on Health Care Reform

*Andrew Koppelman*

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**Andrew Koppelman : The Tough Luck Constitution and the Assault on Health Care Reform** before purchasing it in order to gage whether or not it would be worth my time, and all praised The Tough Luck Constitution and the Assault on Health Care Reform:

0 of 0 people found the following review helpful. Five StarsBy Genesis A. SlaughterThis a book about the hard truth no one wants to hear9 of 12 people found the following review helpful. How the legal case against Obamacare fared in

Federal Courts  
By Daniel D Daugherty  
I expected this book to cover the whole range of opposition to The Affordable Care Act (Obamacare): right-wing media rants, Tea Party opposition, opposition from Governors, Attorneys-General, Washington politicians, etc. Instead, the book concerns itself with the legal challenge to the ACA in the lower Federal courts, and, especially, in the Supreme Court. Particular focus is given to the ACA's mandate, a mechanism Obama had once criticized, but resorted to in hopes that it would achieve something reasonably close to universal health care coverage. Everything is presented clearly enough, but I struggled a bit with the constant references to earlier Supreme Court decisions and the precedents they set, and also with some of the legal language. Still, none of it was too off-putting for, in my case, a reader who knew little of the law in general and Constitutional Law in particular. It turns out that a book with a narrow focus on the legal arguments is a welcome one. After all, experts, reporters, and the general public alike were confused and quite surprised by Justice Roberts' decision to uphold the main argument against Obamacare's mandate, and yet find that mandate, and most of the rest of Obamacare, constitutional on a different basis. What was his judicial reasoning, and what were his personal reasons? This book gives useful background and compelling insight into both questions. Koppelman is pretty fair in presenting the legal arguments made against the Affordable Care Act and its mandate; however, his personal attitude about those challenges is clearly seen in this paragraph near the end of Chapter 4: "Isn't it odd that the mandate, which a few years earlier was the Republican alternative to Clinton's health plan, suddenly became, once Obama supported it, an intolerable intrusion on a new, unenumerated liberty? May we not suspect that, if Obama had rejected the mandate and chosen a different mechanism, those wonderfully creative Republicans would have invented a different constitutional rule, which that mechanism would have violated?"

Chief Justice John Roberts stunned the nation by upholding the Affordable Care Act--more commonly known as Obamacare. But legal experts observed that the decision might prove a strategic defeat for progressives. Roberts grounded his decision on Congress's power to tax. He dismissed the claim that it is allowed under the Constitution's commerce clause, which has been the basis of virtually all federal regulation--now thrown in doubt. In *The Tough Luck Constitution and the Assault on Health Care Reform*, Andrew Koppelman explains how the Court's conservatives embraced the arguments of a fringe libertarian legal movement bent on eviscerating the modern social welfare state. They instead advocate what Koppelman calls a "tough luck" philosophy: if you fall on hard times, too bad for you. He argues that the rule they proposed--that the government can't make citizens buy things--has nothing to do with the Constitution, and that it is in fact useless to stop real abuses of power, as it was tailor-made to block this one law after its opponents had lost in the legislature. He goes on to dismantle the high court's construction of the commerce clause, arguing that it almost crippled America's ability to reverse rising health-care costs and shrinking access. Koppelman also places the Affordable Care Act within a broader historical context. The Constitution was written to increase central power, he notes, after the failure of the Articles of Confederation. The Supreme Court's previous limitations on Congressional power have proved unfortunate: it has struck down anti-lynching laws, civil-rights protections, and declared that child-labor laws would end "all freedom of commerce, and . . . our system of government [would] be practically destroyed." Both somehow survived after the court revisited these precedents. Koppelman notes that the arguments used against Obamacare are radically new--not based on established constitutional principles. Ranging from early constitutional history to potential consequences, this is the definitive postmortem of this landmark case.

"Andrew Koppelman has magnificently captured the current legal, political and policy-related lay of the land in Washington. His insightful analysis here should be mandatory reading for anyone concerned about the future of health care in America." --Tom Daschle, former Senate Majority Leader  
"This book is a tour de force. It offers a compendium of telling facts and provocative arguments concerning the Affordable Care and the legal and political debates surrounding it. Koppelman persuasively unmask a political and constitutional vision that says 'Tough Luck!' to the disadvantaged and reveals how that vision almost killed the health care act." --Richard Fallon, Harvard Law School  
"This is the definitive book on the Affordable Care Act decision. Koppelman explains clearly and concisely the history of the lawsuit, the mandate it challenged, and the constitutional provisions on which the challenge was based. Most importantly, Koppelman explains the decision's implications for the future." --Timothy Jost, The Washington and Lee University School of Law  
"Unlike the Affordable Care Act itself, Koppelman's *Tough Luck Constitution* is a short and enjoyable read. Like the Act, this book speaks truth about the public interest and offers a hopeful vision for the health care reform." --William Eskridge, Yale Law School  
"Professor Koppelman's analysis of the constitutional fight to stop health reform is must-reading for anyone who desires a deeper understanding of the Constitutional story behind one of the most intense legal battles ever waged over a seminal advance in U.S. social welfare policy. Neither health policy nor constitutional theory and practice will ever be quite the same." --Sara Rosenbaum, George Washington University School of Public Health and Health Services  
About the Author  
Andrew Koppelman is John Paul Stevens Professor of Law, Northwestern University. His books include *Defending American Religious Neutrality*, *A Right to*

Discriminate?, and The Gay Rights Question in Contemporary American Law.