

Justice Scalia, the health care debate and Moral Theology 101

Maureen Fiedler | Mar. 29, 2012 NCR Today

I have been following the arguments about the health care reform law before the Supreme Court this week. I'm appalled by a lot of the argumentation against the bill, but Justice Antonin Scalia's comments are the ones that led me to talk back to my radio with, "Are you kidding? Justice Scalia, where did YOU study moral theology?"

His first comment that caused a jolt came in a discussion of the reason for the individual mandate in the law. The lawyer arguing the case was laying out what most of us understand -- health insurance is a "risk pool." We need healthy people as well as sick people in the pool to cover the cost of those who are sick or injured. Since many healthy, often young, people don't buy insurance, the rest of us pick up the cost if they are in an accident or fall prey to an unexpected illness. That's the reason for the mandate in the law -- to spread the risk.

In explaining this, the lawyer mentioned that doctors and emergency rooms have both a moral and a legal obligation to treat people who turn up without insurance -- for example, after a car accident or a heart attack. In response, Justice Scalia questioned the very idea of this obligation: "Well, don't obligate yourself to that," he said. In other words, let injured people die in an emergency room? When someone has a heart attack, check their insurance card, and if you can't find it, don't treat them?

Isn't this the justice who thinks he is staunchly pro-life? Who votes to overturn *Roe v. Wade* at every opportunity? Well, that description just went out the window.

Then, when the discussion moved to the cost of insurance for sick people (for example, those with pre-existing conditions) and healthy people, Justice Scalia said blithely: "You could solve that problem by simply not requiring the insurance company to sell it to somebody who has a condition that is going to require medical treatment, or at least not require them to sell it to him at a rate that he sells it to healthy people."

In other words, if you have a pre-existing condition -- say, diabetes or a history of cancer -- it's OK to deny you, or simply charge you ridiculously high rates. If you're sick, too bad. You're on your own.

Justice Scalia claims to be a Catholic, but I seriously wonder if he ever studied moral theology. Whatever happened to the "common good"? What happened to our duty to care for one another and share burdens?

Now, before we have a flood of responses on this, I am well aware that these Supreme Court arguments were supposed to be about the constitutionality -- not the "morality" -- of the health care law. But the Constitution was written in order to "form a more perfect union, establish justice" and "promote the general welfare." In these phrases are echoes of the "common good." They express a sense of community concern, suggesting that we should be looking out for one another and fashioning our laws accordingly.

Maybe Justice Scalia should do Constitutional Law over again, too, along with Moral Theology 101.