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This article follows on and deepens the discussion of important issues raised by Jonathan Gruber's 2014 testimony before the House Oversight Committee on Oversight and Government Reform about his work on the Affordable Care Act.

On December 9, 2014, the House Oversight and Government Reform Committee held an important hearing in which the main witness was professor Jonathan Gruber, an MIT economist and a key adviser to the Obama administration on healthcare reform. There was an element of politics in the hearing, to give Republican and Democratic representatives the appropriate opportunity to express their outrage, on behalf of their constituents, at the arrogance and cynicism of Gruber's remarks about the ''stupidity'' of the American voter. I share their outrage. My anger may be felt more keenly because, like Gruber, I have a Ph.D. from Harvard, do paid work in public economics, and have started an association as a visiting scholar with MIT in January. I feel his disturbing comments dishonor the profession and may cause people to doubt the fairness and objectivity of these essential institutions.

Moving beyond Gruber's wholly inappropriate manner of speaking, the hearing also began to delve into underlying substantive issues about the moral elements of policy analysis and discussion, the current nature of legislative processes, judicial review of the content and structure of the Affordable Care Act, and the current interpretation of and compliance with federal and state laws governing tax-exempt charitable institutions regarding private inurement. Those issues are worth further exploration.

Moral Elements of Policy Advice

There is an apparent internal contradiction and illogic in Gruber's most famous statements about the stupidity of the American voter. He describes how duplicity, in terms of minimizing and hiding the massive redistribution of wealth that is the central effect and perhaps even the main purpose of the ACA, was needed to pass the legislation. In particular, the various penalties could not be called taxes, healthcare cost control efforts were said to be strong, and there had to be no admission of the transfer of resources from rich to poor, from healthy to sick, and from young to old. Because if things were called and described as what they in fact are, then the legislation would not have passed because American voters would have opposed it as contrary to their interests. Putting it in my words now, if the experts had been loyal to their professional callings and told the objective truth, voters, who are smart and can be taught to understand the situation, would have rejected the reform law through their elected representatives. In short, average American voters are not stupid; rather their values are different: They do not embrace more redistribution or want to subsidize more healthcare spending. But then, that is a matter of a difference in value judgments from what apparently motivates Gruber in his support for the ACA, not a matter of intelligence or expertise.

Is there a different reasonable interpretation of what Gruber was trying to say? Or is he stating that the ends (more widespread health insurance coverage) justify the means (not sharing relevant information about the legislation)? Should the moral and political elements and assumptions in policy analysis and advice be clearly disclosed? This is an important topic to pursue further with Gruber in gaining a broader understanding of the current use of economic policy analysis in the realm of political action.

As a related matter, Gruber's repeated expressions of support for the ACA, combined with his compensation by the administration, do begin to call into question whether he was more of an advocate, and less of an unbiased technical expert or disinterested economics professor, thereby undercutting his responsibility to do his job as an academic. That key ethical and professional issue does not apply to just Gruber. It applies to some in the academic community who seem to operate as advocates for one side or the other or who primarily engage in political commentary. Is that the appropriate nature of an academic faculty job, even in part?

Economic Analysis in the Legislative Process

Now let's turn to the legislative process. The administration hired Gruber to score, via his model, the effect of various iterations of legislative proposals leading to the final language of the ACA. His hiring is itself odd on its face: In the past, federal research staff — mainly economists but also including actuaries, statisticians, and other policy analysts in the departments of Treasury, Labor, and Health and Human Services, and elsewhere — would have been called on to perform that analytical function. My experience within government is that many talented and hardworking staff members at the relevant agencies are good at analysis and scoring, including in the healthcare area. Why were they not used in this primary way? Did they lack the expertise or the efficiency needed to do the job? Was their judgment or discretion suspected?

It is now acknowledged that Gruber was paid $400,000 for his expertise and advice on the proposals leading to the ACA. Why was it necessary to pay Gruber so handsomely? Were the main relevant results of his research readily available in the public domain, published in peer-reviewed professional journals, including the underlying code? Was this research itself supported over the years by grants from the federal government and charitable foundations to be accessible, at no charge, to any interested party for the improvement of public welfare and general advancement of science? This is the usual pattern for accepted, credible research underlying policy analysis. Assuming that government employees were unavailable or unable to do this work, could someone else, also skilled and expert, have been hired to use the publicly available research results, at lower cost?

Media accounts explaining to congressional staff and the administration the particular attractiveness of Gruber's model emphasized its similarity to the Congressional Budget Office model. In particular, it was claimed that the Gruber model could anticipate, with accuracy and speed, the eventual results of the official CBO score and analysis of legislation put forward. This correspondence is surprising because it is rare in economics that there is a close sameness of results from two entirely independent models. Did Gruber have particular inside knowledge of the CBO's assumptions and methods, perhaps based on his membership on an advisory board to the CBO? This would be a problem because the CBO (and the Joint Committee on Taxation as well) is quite jealous of the details of its models, not sharing them externally. My understanding is that this reluctance is to minimize the communication burden on the limited resources of the CBO and to close off second-guessing, cherry-picking arguments, and other gaming from interested parties. This policy is somewhat understandable but ultimately not satisfactory in a transparent democracy; a better approach is needed. In any case, the question is: Was this nondisclosure policy applied by the CBO consistently and uniformly? This issue was hinted at in the hearing but not addressed directly; it should be.

The Judicial Review Process and the ACA

Gruber has made statements highly relevant to the judicial review of the ACA. Although he now says that he was not the legislation's architect, he has claimed that he is intimately knowledgeable about the intent and structure of the reforms because he scored them in real time as they were being developed with congressional sponsors and the administration. Indeed a former senior White House adviser is quoted in the media as saying that Gruber was ''the man'' in the administration on the topic. Therefore when Gruber said that the legislation was structured in such a way, albeit tortured, that the CBO would not consider the various penalties as taxes, should not this expression have weight even now after the Supreme Court's consideration of the matter two years ago, when it instead decided the penalties were legally to be considered taxes and therefore constitutional? Were the official views of the CBO and the knowledge of external experts ignored, appropriately, in this judicial review of legislative language and intent?

Even more significant, Gruber has stated that the ACA was designed to work in such a way that the tax credits given to individuals purchasing health insurance on the exchanges can be available only if the state sponsors the exchange, not the federal government. This issue is under review at the Supreme Court. He sensibly explained the legislative rationale as a strong incentive for the states to set up the exchanges lest their citizens not get the credits. This incentive device is a common mechanism used by Congress in our federal system and is applied to Medicaid frequently.

Gruber said in the House hearing that his statement has been taken out of context — that he was concerned that the federal government would not be able to set up an exchange in time and if the states did not do so, their citizens would miss getting their credits. But this after-the-fact interpretation or recollection is quite illogical because Gruber has also noted that it took Massachusetts only two years to set up its earlier exchange. Surely with the larger resources available to the federal government, the longer time period allowed, and the overriding political importance of the reform to the administration, Gruber would have assumed that the federal government could set up at least the rudiments of an exchange, as in fact occurred, however rocky the start. And if his concern in early

2012 was that President Obama would not be reelected, then the whole law would have been in doubt, not just whether the states set up exchanges in a timely manner. Therefore, his clear statements — made at least twice in public gatherings not long after the passage of the law — that the availability of the tax credits depends directly on the states setting up exchanges would seem to be better taken at face value. Gruber has also said in a past media interview that he was mistaken in his statements, but this is also a strange admission on such a key point from a very smart and talented economist who was intimately involved in advising on the creation of the ACA. A couple of representatives began to go down this road of questioning toward the end of the hearing but did not have time to pursue it. The whole topic is worthy of further follow-up directly with Gruber.

Compensation at Tax-Exempt Institutions

Finally, there is the issue of Gruber's compensation for his past and current work using his model, for federal agencies and state governments, which is reportedly in the millions of dollars. He refused to reveal the amount of his compensation publicly at the hearing. He repeatedly attributed this refusal to the advice of his counsel, without further explanation. Is this mysterious non-answer because of nondisclosure agreements with the governments that would lead to the sharing of model results and memos? If so, this is a troubling thought for government transparency.

One would also want to know if there is an underlying issue with his employer, MIT, a tax-exempt charitable (section 503(c)) institution. Even assuming that the relevant foundational research in Gruber's model was widely available, Gruber likely expended extra time and effort to create his model and give advice beyond the demands of pure science, research, and education. Perhaps Gruber was uniquely qualified to do the work, warranting a no-bid contract with the federal government. But then this external non-academic expenditure of time and resources by Gruber, paid for by various governments, leads us to want to know more about Gruber's employment and financial arrangements with MIT, his tax-exempt employer. If instead none of the relevant research was in the public domain and the Gruber model was entirely proprietary — as the Department of Health and Human Resources described the model, the media has revealed — it is even more critical to know the details of his arrangements with MIT and how much time he allocated to creating a large and complex econometric model (and not publishing key scientific results).

One presumes that as a tenured full professor at the height of his productivity and reputation who was recently given the Ford chair, Gruber is well compensated by MIT for his teaching, research, and administrative responsibilities. This is all fine and good; no one begrudges a highly productive and talented individual a good wage, negotiated at arm's length.

But the issue is more complex than the simple sentiment of paying people what they are worth for hard and creative work. It is well known that professors are allowed by universities to pursue consulting opportunities and outside board positions, to improve and make practical their research agenda, and to create networks of support. But outside activities are supposed to be limited. Based on my readings of conflict-of-interest policy documents at MIT and the University of Maryland (representative prominent private and public institutions, respectively), the external activity exceptions are somewhat vague and unclearly enforced. There are solid legal reasons for university conflict-of-interest restrictions on faculty; otherwise, there could be tax and legal issues over the government or other tax-exempt institution allowing its resources — including salaries paid to employees intended for their time and honest effort consistent with the educational purpose of the organization — to be used for private inurement, a serious infraction of the tax-exempt and charitable giving rules.

Gruber's circumstances show why we would want to know more about the actual interpretation and implementation of university conflict-of-interest policies: Did he spend the commensurate time to earn these payments, including past work on his model, during leaves of absence from MIT? Did he share his payments with MIT, as his questioners assumed at the House hearing? Or are professors in fact allowed to spend significant time and effort away from their academic responsibilities and earn significant sums from external sources while being paid by universities for full-time devoted work? Are they thereby competing unfairly with the taxpaying private sector, including consultants and non-academic researchers? Has there been a tendency toward leniency by universities creeping in over the years, and has this affected the content and nature of academic work?

Indeed, there are larger issues here to be explored and discussed. Should significant shares of academics' labor earnings come from outside activities — publicly disclosed or not — regardless of whether the sources are government or private? Do those payments cause the reasonable perception and perhaps reality of conflict of interest and bias? Do they inevitably lead to a diversion of commitment away from the central purposes and goals of universities? If there are good reasons for some limited exceptions, should the rules be clear and strongly enforced? And how good are our institutions of higher

education, which are blessed by society with all sorts of advantages, including tax-exempt status and the tax deductibility of donations, as stewards of this trust to donors, the people who pay tuitions, and the taxpaying public?[1] Should the conflict-of-interest rules be internally or externally designed and enforced?

Recommendation

There may be straightforward and acceptable answers to some of these questions. But if we don't pursue the questions aggressively, we miss the opportunity to learn important things about the legislative and judicial process, about the ACA, and about the implementation of compliance with the tax exemption laws by an important part of our economy and society, institutions of higher education. The House committee reportedly will follow up with Gruber. I recommend that Gruber be called back to testify before the new Congress soon, perhaps this time by the Senate Finance Committee, to address this broader set of questions.

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[1]One possibility for learning more is to create a combined examination program and study by the IRS to collect data on university private inurement rules and to conduct a focused and comprehensive assessment of compliance with those rules. I myself led such a comprehensive study and examination by the IRS in 1994 on underfunded defined benefit pension plans.