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COMMENTS ON DANIEL SHAVIRO'S *TAX REFORM
IMPLICATIONS OF THE RISK OF A U.S. BUDGET
CATASTROPHE*

*David Gamage**

Being asked to comment on Daniel Shaviro's work is a true honor. Reading Shaviro's many books and articles while I was in law school played a major role in convincing me to attempt to follow in his footsteps by pursuing my own career in tax law and policy. As usual, Shaviro's analysis in his symposium essay is poignant and provocative.

Shaviro predicts that due to (1) demographic and social change, (2) failures in U.S. political economy, and (3) problems with financial markets, the U.S. is on "an unsustainable long-term fiscal path" that could "trigger sufficient global macroeconomic disruption to make the 2008 financial crisis look like a Sunday school picnic."¹ I generally agree with these predictions.²

After painting this frightening picture, Shaviro analyzes its implications for U.S. tax reform. The central postulate underlying Shaviro's analysis is that we should not create further budgetary harm. This postulate may seem manifestly obvious. After all, if the current U.S. long-term fiscal path is dangerously unsustainable, why should we do anything that would make it worse? Even if we do not know how to fix the problem, in light of Shaviro's political economy diagnosis, should we not at least follow the physician's Hippocratic Oath to do no harm?

Nevertheless, despite the obvious attractiveness of this do-no-harm principle, I am uncertain as to its usefulness as a guide for budget policy. One might wonder to whom Shaviro's essay is addressed. Shaviro's political economy diagnosis relies on noting that because "Republicans unconditionally reject any tax increases whatsoever, and indeed repeatedly

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¹ Daniel Shaviro, *Tax Reform Implications of the Risk of a U.S. Budget Catastrophe*, 50 U. LOUISVILLE L. REV. 577 (2012) (citing Daniel Shaviro, *1986-Style Tax Reform: A Good Idea Whose Time Has Passed*, 131 TAX NOTES 817, 828-30 (2011)).

² Indeed, I have made similar predictions in the past (partially drawing on Shaviro's prior work). See, e.g., David Gamage, *Preventing State Budget Crises: Managing the Fiscal Volatility Problem*, 98 CALIF. L. REV. 749, 771 (2010) (citing DANIEL SHAVIRO, *DO DEFICITS MATTER?* 308 (1997)).

demand further huge tax cuts, the model that underlay multiple bipartisan deals in the 1980s is effectively ruled out.”³ Clearly then, Shaviro’s essay is not directed toward these Republicans. If it were, the advice would be simple. If Republicans could be convinced to accept tax hikes as part of a bipartisan compromise, then presumably we could resolve our fiscal imbalances with a bipartisan deal of the sort that Shaviro says is effectively ruled out due to the Republicans’ intransigence.

Should we then assume that Shaviro’s essay is targeted toward Democrats? Although Democrats might be unable to solve our fiscal imbalances without cooperation from Republicans, Democrats could perhaps still veto policy changes that would worsen the long-term fiscal picture. But would it really be wise for Democrats to adopt such a strategy? We might reasonably expect majority control in Washington to alternate between Democrats and Republicans in the coming decades, as it has in the past. Democrats exercising fiscal restraint might primarily then serve to grant Republicans more latitude for irresponsible tax cuts during periods in which Republicans are in the majority.

Indeed, if we take the Republicans’ “starve the beast” rhetoric seriously, tax hikes today are intended to force spending cuts in the future. The mechanism by which these future spending cuts will be forced upon the political system is rarely discussed. But a likely candidate is the very fiscal crisis that Shaviro wants to delay. Once we hit fiscal Armageddon, we will need to make painful adjustments. Consciously or unconsciously, Republicans may be working to set up dynamics to ensure that these painful adjustments will result in a post-crisis path of lower taxes and spending—thus favoring Republicans’ political goals over those of Democrats.

I do not mean to suggest that Democrats should purposefully pursue fiscal irresponsibility. But should Democrats really sacrifice other policy goals in the pursuit of fiscal prudence, in light of Republicans’ failure to do so? If the best we can hope for is to delay our looming fiscal crisis, perhaps Democrats should instead work to set up dynamics so that the post-crisis environment will more closely match Democratic values. Or perhaps Democrats should focus on more near-term policy goals without paying much attention to our fiscal imbalances.

We might conceive of our fiscal politics as resembling a game of chicken: Republicans and Democrats both want to further their fiscal goals to the extent possible, at the expense of the other party’s goals, but in the absence of compromise, everyone will be made worse off by the eventual crash. Adopting a complete unwillingness to compromise is probably not

³ Shaviro, *supra* note 1.

the ideal strategy in this game, at least if one holds out the hope of avoiding the crash. But neither is the ideal strategy to appear overly willing to compromise. Within a game of chicken, appearing overly willing to compromise can lead to the opposition taking an increasingly hard line. Unless Democrats are willing to completely surrender to Republicans' fiscal goals, it is not at all clear that Democrats should pursue a course of fiscal prudence. It may be that our best course toward a disaster-preventing compromise would be for Democrats to temporarily embrace fiscal irresponsibility and thereby (hopefully) scare Republicans into coming back to the negotiating table.

My comments here are purposefully speculative. I mean to raise questions, not to answer them. Shaviro's essay offers sound advice if we think the best way forward is prudence and fiscal moderation. My only suggestion is that perhaps we need to think more deeply about how compromise might be achieved in light of the political economy dynamics that Shaviro explains underlie our looming problems. Determining solutions to the political economy dysfunctions underlying our long-term fiscal imbalances is a herculean task. But if we as a scholarly community do not attempt this challenge, it is likely that no one will.

