18 – Pandemic Reveals Flawed Taxation Design: Lessons from Past Disaster Policy

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The COVID-19 calamity is visiting widespread hardship throughout American society. The Federal government has responded with the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020. Its principal provisions feature a combination of direct aid to citizens, expanded unemployment insurance eligibility, and loans to businesses. While it is too early to ascertain ramifications of a policy response of unprecedented magnitude, we have a rich history of other disaster relief responses that provides instructive insight into the effectiveness of various policy regimes.

The most significant relief packages of other natural disasters have accompanied widespread destruction associated with hurricanes. In the aftermath of Hurricane Katrina in 2005, Congress passed the Katrina Emergency Relief Act. After the devastating season that brought us Harvey, Irma and Maria, we were given the Disaster Tax Relief Act of 2017. These acts (including CARES) are all similar in several respects. All provided some immediate relief in the form of direct assistance. All provided limited relief to middle class citizens by allowing unpenalized withdrawals from retirement plans. All contained aid provisions to businesses, with such common elements as the employee retention credit. Charitable giving was encouraged. However, the temporary nature of these measures provided little lasting stabilization.

Empirical evidence reveals wide disparity in the impacts of disasters across class and ethnic lines. The economically impoverished are most vulnerable because governmental aid is generally insufficient to facilitate recovery of meager asset bases. Middle class and minority populations are forced to aggressively invade savings and retirement funds, reducing their net wealth. Wealthy parties, however, able to utilize reserve assets, actually *increase* their net wealth in the longer term, by acquiring distressed assets at post-disaster discount values.

Warning shots have been fired. Untold millions are unemployed for an indeterminate period, most in lower income strata. Over 25 million have lost health insurance coverage. Lockdowns force more in-home market labor and prolonged school closures create acute childcare shortages. Even positive trends like cleaner urban air and lower traffic congestion are decidedly temporary phenomena. This pandemic reveals chronic structural deficiencies on basic functional levels.

Remedial policies to be adopted include an integrated basic income tax. Personal care and public service must be recognized in the tax system as *real* economic activities. Fiscal revenues must be raised primarily on the basis of equity. Environmental taxes should be part of such an integrated revenue and distribution scheme.

Biographical note

Nancy E. Shurtz, the Bernard A. Kliks Professor at the University of Oregon School of Law, received her B.A. from University of Cincinnati, her J.D. from Ohio State University and her LL.M. in taxation from Georgetown University Law Center. Before coming to Oregon she taught at the Wharton School of Business at the University of Pennsylvania. Before that, she practiced with the law firm of Ginsburg, Feldman and Bress in Washington D.C. Professor Shurtz teaches in the areas of taxation, estate planning, sustainable business, and women and the law, and has written and spoken extensively in these four areas. Professor Shurtz is currently the book review columnist for the Estate Planning magazine and Senior Editor of the Books & Media Committee of the Real Estate, Trust and Estate Law Section of the American Bar Association.