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What Do We Owe Future Generations?

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Abstract:

In the United States, it is common for legal scholars, economists, politicians and others to claim that we are selfishly harming “our children and grandchildren” by (among many other things) running large government budget deficits. This article first asks two broad questions: (1) Do we owe future generations anything at all as a philosophical matter? and (2) If we do owe something to future generations, how should we balance their interests against our own? The short answers are “Probably” and “We really are not sure.”

Finding only general answers to these general questions, I then look specifically at U.S. fiscal policy and its effects on conventionally-measured living standards, exploring (using standard utilitarian and Rawlsian analyses) whether we are currently doing enough to secure the prosperity of future generations. It turns out that even pessimistic forecasts of economic growth are so promising that we could arguably either stop worrying about future generations’ economic well-being or even enact policies to shift economic well-being from the future to today. The flaw in that reasoning, however, lies in the unequal distribution of our economic prosperity, with a gap between rich and poor that is profoundly troubling. Even if future growth turns out to be as high as current forecasts predict, there is a very real chance that the least among us will not see their living standards rise at all, even as the more fortunate ascend to untold levels of affluence.

I thus argue that a better approach to analyzing intergenerational issues is to view them as straightforward matters of distributive justice, focusing on how policies change the distribution of incomes across time as well as currently. Such an approach simplifies the analysis and allows us to protect the interests of our children and grandchildren in a more meaningful and long-lasting sense.

“The point of thinking about the future is to help us think about the present.”¹

I. Introduction: Our Grandchildren and Us

Every decision that we make today can either directly or indirectly affect the interests of future generations, both those generations already born and those to be born in the decades and centuries after we are gone. This inescapable fact imposes a profound obligation on us at least to consider how our policy choices might affect our children, our grandchildren, and those who will follow. Not every policy choice must elevate the concerns of future generations over those of current generations, of course, but a conscious acknowledgement that we are making decisions for people who cannot speak for their own interests creates an absolute moral imperative to give voice to the voiceless.

This article explores the content of that moral imperative, finding that we currently fall well short of our responsibilities in many areas but – surprisingly – that we might well be over-emphasizing the interests of future generations in others. The fundamental problem that we face is not a future with too little prosperity but a future (and a present) in which prosperity is concentrated in far too few hands. This article thus emphasizes that an obligation to consider future people’s needs and desires can fit within well-known conceptions of distributive justice.

Because of these moral obligations that carry forth from generation to generation,

¹ Verlyn Klinkenborg, *Trying Times Ahead: The Prospect of 60 Million Californians*, N.Y. Times, Jul. 18, 2007, at A18.

concerns about the well-being of future generations loom large over discussions of public policy. From politicians to pundits², from analysts at serious policy think-tanks³ to scholarly writers,⁴ the notion that current generations have obligations to the future – and that we are failing to face up responsibly to those obligations – prominently animates

² There is a seemingly unlimited supply of quotations from politicians, pundits, think-tanks, and serious scholars decrying a perceived tendency of current policymakers to ignore the interests of future generations and thus to harm a defenseless class of future citizens. Among many examples of pundits and politicians invoking the interests of future generations, see Al Franken, *Addictions and Mr. Reagan*, N.Y. Times, Jul. 19, 1998, at A31 (“[A]ll the while [President Reagan] was taxing our children and grandchildren and spending like no other President ever has or probably ever will again.”); Hugh Hewitt, appearing on *Scarborough Country* (MSNBC television broadcast, Feb. 17, 2005) (“Republicans led by George W. Bush are laying out reasonable alternatives to fix a major problem that will affect everyone’s children and grandchildren.”); Joe Scarborough, appearing on *Scarborough Country* (MSNBC television broadcast, Sep. 7, 2004) (“You know what I say to Republicans and Democrats that [sic] are willing to bankrupt future generations? I’d say, read ‘Animal Farm.’ You’re no better than the pigs in ‘Animal Farm.’”); *id.* (“I think John McCain may be the only rational person left in Washington when it comes to protecting future generations from this [government] debt.”). Note that Franken, a former comedian who is now a pundit, is running for the United States Senate seat in Minnesota; and Scarborough, who has a talk show on MSNBC, is a former U.S. Representative from Florida. The line between pundits and politicians can be blurry.

³ See, e.g., notes ___ and ___ in Sec. III below and associated text.

⁴ Legal scholars regularly invoke the interests of future generations. My own work includes explicit references to intergenerational obligations, raising the questions that ultimately led me to write this article. See Neil H. Buchanan, *Social Security, Generational Justice, and Long-Term Deficits*, 58 Tax L. Rev. 275, 322-25 (2005) (hereafter “Long-Term Deficits”) (“The question is how to think about the future - what we would like to bequeath to future generations and how best to deliver it.”); Neil H. Buchanan, *Is It Sometimes Good to Run Budget Deficits? If So, Should We Admit It (Out Loud)?* 26 Va. Tax Rev. 325, 350-52 (2006) (hereafter “Good Deficits”). See also Cheryl D. Block, *Pathologies at the Intersection of the Budget and Tax Legislative Processes*, 43 B.C. L. Rev. 863, 925 (2002). (“[E]ven in times of surplus, Congress has an obligation to future Congresses and to future generations to leave the surplus available to cover unforeseen costs, such as those of social security and the like.”); Daniel N. Shaviro, *Accrual Accounting and the Fiscal Gap*, 41 Harv. J. on Legis. 209, 209 (2004) (“Current fiscal policy, unfortunately, has since 2001 [featured] huge tax cuts, a potentially open-ended new Medicare entitlement for prescription drugs, and costly foreign engagements as to which no extra financing is even suggested. Future generations will have to pay the bill for all this.”); Brett M. Frischmann, *Some Thoughts on Shortsightedness and Intergenerational Equity*, Loy. U. Chi. L.J. 457, 459-60 (2005) (“It is rather easy to understand that we ought to care for our own future and thus condemn shortsighted decision-making that will come back to haunt us. ... [I]t seems that the present generation has mastered the art of pushing the costs of shortsighted decisions onto future generations (stop for a moment and think about any of the following: Social Security, the National Debt, Global Warming, and so on). ... I believe the present generation ought to recognize and abide by its moral obligation to sustain valuable inherited resources - natural and human-created - and perhaps even to improve upon them in order to create a brighter future for generations to come (regardless of the risk of time portals.”); R. George Wright, *The Interests of Posterity in the Constitutional Scheme*, 59 U. Cin. L. Rev. 113, 141 (1990) (“[L]ow savings rates and imposed burdens of indebtedness are central to the problem of the equal protection of future generations.”)

much current policy discussion.⁵

Appeals to our duty to future generations (often referred to loosely as our children and grandchildren, but clearly encompassing the collective future) are a staple of political rhetoric, seemingly no matter the subject at hand. In an appearance before voters in the Midwest, for example, President Bush managed to invoke his listeners' progeny twice within a few paragraphs of the same speech: "I want to tell you, yes, we can accomplish and win this fight in Iraq. And ... I want to tell you, we must, for the sake of our children and our grandchildren."⁶ Mr. Bush then added a minute later: "Failure in Iraq would have serious consequences for the security of your children and your grandchildren."⁷

Newspapers' opinion pages also regularly carry messages of intergenerational responsibility. "While philanthropy should be applauded, it can't replace the basic

⁵ Some economists are also in on the act. See, e.g., Laurence J. Kotlikoff, From Deficit Delusion to Generational Accounting, *Harv. Bus. Rev.*, May-June 1993, at 105 ("[The] financial sacrifice [of today's adults] will provide the means to keep tax rates on our children and grandchildren from soaring. It's high time we started focusing on the size of the tax bill facing our kids.") Professor Kotlikoff has also written for a broader audience with a provocatively titled book invoking the problems that he foresees arising between generations as the Baby Boom generation begins to retire over the next few decades. See Laurence J. Kotlikoff & Scott Burns, *The Coming Generational Storm* (2004).

⁶ White House, Office of the Press Secretary, *President Bush Visits Cleveland, Ohio*, Jul. 10, 2007, <http://www.whitehouse.gov/news/releases/2007/07/20070710-6.html>.

⁷ *Id.* A sample of other political references to the interests of future generations includes George W. Bush, *Strengthening Social Security for Future Generations*, White House homepage, <http://www.whitehouse.gov/infocus/social-security/>, visited Sep. 2, 2007) ("Presidential Action: President Bush has discussed the importance of Social Security and the need to fix the Social Security system for future generations of Americans."); Lindsey Graham, *Graham Statement on Senator Kerry's Opposition to Personal Investment Accounts Becoming Part of Social Security*, United States Senate: Lindsay Graham homepage <http://www.senate.gov/~lgraham/index.cfm?mode=presspage&id=227037>, visited Sep. 2, 2007 ("[Social security] is too important for politics as usual. Anyone wishing to lead our nation should offer proposals to strengthen Social Security for future generations. I hope Senators Kerry and John Edwards will offer a constructive solution to this problem. Without leadership the problems facing Social Security will only get worse."); Barack Obama, *Obama's speech to the National Press Club*, United States Senate: Barak Obama homepage http://obama.senate.gov/speech/050426-_a_hope_to_fulfill/index.php, visited Sep. 2, 2007) ("Let me close by suggesting that Democrats are absolutely united in the need to strengthen Social Security and make it solvent for future generations. We know that, and we want that. And I believe that both Democrats and Republicans can work together to do that.")

responsibility we all have of saving and investing for the future of the nation.”⁸

Sometimes, the message is especially blunt: “We have no greater responsibility than as stewards of our planet, and we’re blowing it.”⁹ The urge to hold ourselves responsible for the interests of future generations also extends to unexpected areas, such as the following inspirational statement from a research center at The George Washington University: “The Institute for Constitutional Studies ... is the nation’s premier university-based institute dedicated to ensuring that future generations of Americans understand the substance and historical development of the U.S. Constitution.”¹⁰

While it would be impossible to determine who (among politicians, pundits, academics, or others) invokes future generations most frequently, or the area of policy (war, history, education, taxes, etc.) in which the interests of future generations are presented most reflexively as a crucial determinant of appropriate action, there is evidently a widely-shared assumption that policy decisions must not be made without taking into account the interests of generations yet to come. Appeals to “mom and apple pie” are now more likely to be to “mom, apple pie, and the grandkids.”¹¹

It is possible, of course, that these and other invocations of the interests of future generations are more cynical than aspirational. Politicians, knowing that mentioning grandchildren is an expected staple of stump speeches, might simply be paying lip service to the interests of future generations while (deliberately or not) enacting policies that are

⁸ Anna Bernasek, *The Rich Spend Just Like You and Me*, N.Y. Times, Aug. 6, 2006, § 3 at 11.

⁹ Nicholas Kristof, *Scandal Below the Surface*, N.Y. Times, Oct. 31, 2006, at A25.

¹⁰ Institute for Constitutional Studies, <http://docs.law.gwu.edu/ics/>, visited July 20, 2007.

¹¹ The one-liner, “Why should I care about future generations when they haven’t done anything for me?” might surface every now and then, but usually such a comment is used to ridicule anyone who might oppose taking the interests of future generations into account, not as an affirmative argument to favor the interests of the current generation.

actually likely to impoverish and otherwise harm future human beings. Pundits, policy analysts, and scholars – even when motivated by a genuine belief that their preferred policies are valuable on other criteria – might be tempted simply to invoke the notion of intergenerational obligations as a safe rhetorical device rather than as a serious statement of policy goals.¹²

For present purposes, however, the sincerity of those who invoke the interests of future generations is less interesting than the virtual unanimity of the belief that we are bad stewards of the future (whether or not we are willing to do anything about it). If people agree on little else, seemingly everyone – no matter their level of sophistication, their position on the ideological spectrum, or their degree of analytical integrity – appears to be unified in their willingness to aver that we are cheating future generations and must do more for them than we are currently doing.

Even if some (though surely not all) of the people who speak reverently of our obligations to promote the interests of future generations are less than sincere, it is important to ask what those interests are, how we could take those interests into account if we were truly motivated to do so, and how to balance those interests against our own needs and desires. In other words, if a person or policymaker genuinely wished to be responsible to the interests of future generations, what would that entail?

The Focus of This Article

Notwithstanding the shared stated commitment to protecting the interests of our

¹² Richard Schmalbeck suggests that invoking future generations might be an indirect way of simply calling on people to be less selfish. If, as seems to be the case in the United States, calls to help “the poor and disadvantaged” have lost their ability to drive political discussion, calls to help our children and grandchildren might partially bridge the gap between pure self-interest and pure altruism. (Conversation with the author, August 8, 2007. Notes on file with author.)

progeny, the precise content of current generations' obligations to those who will follow has rarely been explored. The content of current generations' obligations to future generations – both in kind and in degree – turns out to be a matter of great uncertainty. Indeed, among those who have investigated these questions deeply, the existence of *any* intergenerational obligations is not universally accepted; and even among those who agree that current generations should consider the needs of those who will follow, little else is certain. What we owe, how we can fulfill our debts, and what we might reasonably weigh against the interests of future generations are all profoundly interesting but also currently open questions.

This article is intended to serve two purposes. First, in Section II, I will frame a range of issues raised by questions of the intergenerational impacts of current policy choices, starting with the fundamental question of whether intergenerational obligations exist at all and proceeding to a discussion of the choices that must be made to make the analysis at least somewhat tractable. As I will discuss, the current literature on intergenerational justice is relatively well developed in the areas of philosophy and especially with respect to environmental policy but relatively sparse in the areas of fiscal and economic policy.

As noted, however, even in the most fully developed literatures, the discussion centers on the question of whether current generations owe *anything* to future generations, leaving relatively unaddressed the question of how much weight to apply to the putative desires of young or unborn people. Perhaps the most surprising conclusion from this review, therefore, is that there is relatively little beyond our basic intuitions to go on when determining whether there are any obligations from current to future

generations, and even less to help us determine how much we might owe to future generations.

Second, this article moves from the abstract philosophical discussion in Section II to discussion of a specific policy question in Section III, focusing on a policy choice that profoundly implicates intergenerational tradeoffs: government budget deficits. This has the advantage of allowing us to set aside for the sake of getting started several important variables that complicate the philosophical debate about intergenerational justice – variables that can be reintroduced into the analysis in future work. For example, I limit the analysis by focusing only on material living standards (with no environmental tradeoffs), attempting to determine the interests of domestic citizens only rather than all human beings, and setting aside questions such as optimal population levels. Even having confined the analysis in that way, however, it turns out that balancing the interests of current and future generations is surprisingly difficult and leads to unexpected conclusions.

Specifically, I begin with the observation that, according to even very conservative forecasts, the average living standards (as conventionally measured) of future generations of Americans are likely to be much higher than current living standards. This raises the question of whether we are already doing enough for future generations or, much more provocatively, whether we are in fact doing *too much* for future generations and should change our policies to benefit present generations more than current policies do.

As a preliminary matter, I first address the question of whether standard economic analysis provides any guidance as to whether there are technical limits to what current

generations could do to improve future living standards. The simple but counter-intuitive answer is that it is possible to do too much as well as too little *even if we are completely willing to be selfless on behalf of our grandchildren*, which means that it is possible for current generations to engage in self-sacrifice that ultimately does nothing to benefit future generations.

Within the range where current generations would be able to increase the happiness of their heirs at the cost of some of their own happiness, the issue then becomes a matter of balance. I briefly discuss how two prominent philosophical approaches – utilitarianism and Rawlsianism – might be applied to determine how to balance the interests of different people in the intergenerational context. The tentative conclusions are that utilitarian analysis argues for more present-oriented policies while Rawlsianism is at most silent on the issue.

The suggestion that we might want to do more for ourselves and less on behalf of generations to come is, to this author and no doubt to many readers, not only surprising but viscerally unsettling as well. Therefore, Section III concludes with an exploration of two reasons why current generations might well engage in policies that have the effect of enhancing the interests of future generations, even though the policies could be motivated by the purely selfish interests of currently-living generations. As I will show, considerations of financial and political stability can induce us to adopt policies that will benefit our children and grandchildren even as the policies benefit us as well. Because of these situations where there is no tradeoff between our interests and those of our grandchildren, we might not need to make decisions that make us worse off now.

The matter of distributive justice – of how to balance the interests of the rich, the

poor, and those in the middle – becomes the analytical focus of Section IV. Given the lack of precise guidance as to how to make fiscal policy choices (and, for that matter, to make other choices in public policy) that require intergenerational balancing, there are helpful formulations drawn from notions of distributive justice that offer insights into how to turn core moral precepts into guidelines for policies that are equitable both within and across generations. Treating questions of intergenerational justice in the same way that we treat questions of intragenerational justice (e.g., committing to a more egalitarian distribution of incomes) is potentially more promising than attempting to treat intergenerational justice as a separate moral inquiry.

This is thus arguably an example of an interesting and important question that is potentially worth examining even if it turns out that there is ultimately no fully satisfying answer. Opening up the range of possibilities beyond what we thought they were (for example, asking whether it might not be morally reprehensible to save somewhat less for the benefit of future generations) might itself be noteworthy. Even if we ultimately decide that we would nevertheless feel uncomfortable adopting policies that weigh the interests of current generations more heavily than those of future generations, it is important to confront directly the motivations and consequences of our choices. Moreover, adding an explicit inquiry into how distributional issues affect the analysis offers the promise of significantly improving our policy choices.

As noted and as I discuss below, this article only briefly touches upon environmental and other issues that have traditionally been thought to be outside the realm of macroeconomic policy. Instead, as an analytical choice (and definitely not as a matter of personal priorities), I focus almost exclusively upon core questions of fiscal

policy as it affects current and future generations. In a follow-up article, I will engage with the environmental aspects of intergenerational justice and integrate those issues into the fiscal policy questions discussed here, thus adding a dimension to the analytical space and confronting directly the critically important environment-versus-economic-growth tradeoffs that I do not address here. Additional future articles in this area of inquiry will discuss cross-national comparisons of social attitudes toward intergenerational obligations, religious implications of intergenerational justice, and other questions. For current purposes, however, the single dimension of fiscal policy raises sufficiently difficult questions and yields provocative and promising insights.

II. Framing the Issues: The Philosophy of Intergenerational Justice

The potential scope of an analysis of intergenerational justice is seemingly limitless. Intergenerational justice is more than a policy goal or even a philosophical puzzle. It is a universal issue, a lens through which to view every question, the issue that arises inevitably from virtually every act of commission or omission. The potential scope is so broad, in fact, that it takes almost as much effort to determine how to limit and organize the analysis as it does actually to carry out the ultimate inquiry.

For example, in the Fall semester of 2006, I taught a seminar titled “What Do We Owe Future Generations?” at New York University School of Law. Although my interests in the subject were firmly grounded in the fiscal policy issues that had motivated most of my scholarly agenda to date (as both an economist and a legal scholar), I decided to allow the students in the seminar to expand our scope beyond fiscal policy and into other areas of intergenerational justice. In response to a questionnaire about the subjects

that we might cover during the term, the students provided some responses that were easy to anticipate – that we owe future generations a vibrant economy, a good education, good health and medical care, a sound physical environment – as well as others that were quite surprising, including questions about reproductive rights, the obligation to provide political stability, to guarantee the physical safety and integrity of citizens, even the obligation to preserve citizens’ access to human history (such as the protection of antiquities from plundering).¹³

In other words, the students quickly determined that we potentially have obligations to future generations in every area of public policy (and, for that matter, in every area of the law school curriculum): criminal law, environmental law, family law, international law, property law (such as the Rule Against Perpetuities), and so on without apparent limit. Indeed, just when it appeared that constitutional law might be the only area of the standard law school curriculum that was *not* on the list of potential subjects, one student proposed (and is in the process of writing) a research paper that looks at our *negative* obligations to future generations, specifically the obligation not to tie the hands of future generations such that it is unduly difficult for them to undo any of our decisions that they might want to change.¹⁴ The United States Constitution and a number of non-constitutional legal arrangements create super-majority requirements to make it difficult to reverse the policy decisions made by previous (sometimes long-dead) decision makers. Some of those decisions, even if made in the good-faith belief that they would surely help future generations, will turn out to have been bad decisions.

¹³ The list of topics – a four-page, single-spaced document summarizing the suggestions of the students – is on file with the author.

¹⁴ Tricia Bushnell, *The Politics of Supermajorities: The Effects of Today’s Decisions on Tomorrow’s Citizens*, May 28, 2007 (draft on file with author).

The future value of policy flexibility thus creates a paradox. We might want to do well by future generations, but the things that we might choose when trying to determine what we owe future generations might be not only wrong but needlessly difficult to undo. A future generation that finds automobiles an unacceptable way to travel will not appreciate the huge sacrifices that we are currently making to remove natural habitat and replace it with large networks of highways. Even decisions that are not so difficult to reverse in a physical sense, though, can unnecessarily tie the hands of future people.

Even short of the amendment process, moreover, commitments to constitutional principles themselves can be viewed as fundamental commitments to future generations. For example, one politically liberal commentator recently argued “that it’s an insult to the Constitution, if you think that high crimes and misdemeanors have been committed, to not keep impeachment [of President Bush] on the table as the remedy to those things. If you don’t, you’re setting an evil precedent for future generations and future ... presidents that it is OK to get away with those things. I think we owe it to our kids and our grandkids ... to not take impeachment off the table.”¹⁵

A colleague offered a further thought that demonstrated the breadth of the issues potentially raised under the banner of intergenerational justice. Do we, he asked, owe future generations the opportunity to overcome adversity? How can there be a next Greatest Generation if future generations are given everything by their doting grandparents? He thus posed a generation-wide version of the question that is raised by so-called “trust fund babies,” that is, whether it is possible to be too generous to one’s

¹⁵ Rachel Maddow, appearing on “Countdown with Keith Olbermann,” MSNBC, Jan. 23, 2008, 8:43pm

offspring.¹⁶ From this perspective, questions about current generations' obligations to future generations become even more complicated. No longer are we "merely" trying to find a balance between what we are willing to give up and the welfare of our children, grandchildren, and generations beyond. Now we must also include the possibility that our sacrifices will not only hurt us but hurt our offspring as well.

In short, there is a seemingly limitless range of possible questions and policy issues implicated by an analysis of whether there are obligations between generations. Two approaches to addressing the notion of intergenerational justice might each be fruitful: examining scholarly inquiries about the general nature of intergenerational obligations, and narrowing the analysis to one hopefully more tractable question which can then serve as a starting point from which we might later expand the analysis to encompass further policy issues. I pursue the former approach in the remainder of this section and the latter approach in the section that follows.

A. Scholarly Literature on Intergenerational Justice: Conclusions and Limitations

Intergenerational equity and justice are core concerns that can dramatically transform one's analysis of virtually every area of law and public policy. Concern about our impact on future generations is not a separate area of inquiry but a key component that is at least lurking in the background of virtually every policy question. As such, "the

¹⁶ James E. McNair et al., *Family Incentive Trusts: Dynamic New Approach Employing Trust Distributions to Communicate Family Values and to Promote Productivity and Performance in Beneficiaries*, *Wealth Strategies Journal*, May 2007, http://www.wealthstrategiesjournal.com/Issue_2007_05/2007_05_ART_01_print.html ("It is a situation that many parents and grandparents, particularly those with significant wealth, dread: the trust fund baby. ... For some children of wealth and privilege, and the parents who raise them, ... a crisis of motivation can be very real.")

issue of how to treat events occurring long into the future has long attracted significant attention from lawyers, philosophers, economists, and environmental activists.”¹⁷

While it is reasonable to describe this scholarly attention as “significant,” the attention has not been extensive or sustained in the legal literature. A recent symposium published in the *Loyola of Los Angeles Law Review* produced a number of good papers discussing broad issues of intergenerational justice,¹⁸ and another symposium issue earlier this year of the *University of Chicago Law Review* focused on the question of discounting as it informs the debate over intergenerational equity.¹⁹ (As several of the authors whose pieces appear in that symposium note, though, the discount rate analysis can so dominate many analyses of intergenerational equity that “[t]he major question comes down to the choice of discount rate, how we compare cash flows occurring at different time periods.”²⁰) There is certainly a body of literature out there (much of which is cited in the various symposium pieces), but its conclusions are tentative in general, and it is to a large degree not immediately helpful in answering the limited question of fiscal intergenerational equity that is central to the analysis in Section III below.

The pure theory of intergenerational justice was most significantly advanced by

¹⁷ David A. Weisbach & Cass R. Sunstein, *Symposium on Intergenerational Equity and Discounting*, 74 U Chi. L. Rev. 1, 2 (2007).

¹⁸ See Lawrence B. Solum, *To Our Children’s Children’s Children: The Problems of Intergenerational Ethics*, 35 Loy. L.A. L. Rev. 163 (2001); Theodore P. Seto, *Intergenerational Decision Making: An Evolutionary Perspective*, 35 Loy. L.A. L. Rev. 235 (2001); Coleman Bazelon & Kent Smetters, *Discounting in the Long Term*, 35 Loy. L.A. L. Rev. 277 (2001); Axel P. Gosseries, *What Do We Owe the Next Generation(s)?* 35 Loy. L.A. L. Rev. 293 (2001);

¹⁹ *Symposium: Intergenerational Equity and Discounting*, 74 U Chi. L. Rev. 1-246 (2007).

²⁰ Weisbach & Sunstein, note __. at 1.

the appearance of Derek Parfit's *Reasons and Persons* less than twenty-five years ago.²¹ Last year, the philosopher Tim Mulgan provided an admirable summary and extension of many of the ideas advanced by Parfit and others.²² By far the largest body of scholarly work that discusses or implicates intergenerational issues – in the philosophical, legal, and economic literatures – concerns itself with environmental issues.²³ Indeed, the *University of Chicago Law Review* symposium noted above includes significant contributions on questions such as global warming and other crucial environmental issues.²⁴

On the specific question raised in this article about whether it is correct to presume that current generations should not make future generations worse off, the relevant literatures contain only hints that such a presumption is worth examining. The economist Robert Eisner remarked occasionally in books and in opinion articles on the precise point raised above, i.e., that future generations in the United States seem to be in for a particularly good intergenerational windfall, making calls for near-term sacrifice – especially by the elderly – difficult to understand or justify.²⁵

In the legal literature, there has been a passing exchange on these issues between Daniel Shaviro and me over the past few years. I did little more than raise the basic question of intergenerational fiscal obligation in a draft article that I presented at

²¹ Derek Parfit, *Reasons and Persons* (1984).

²² Tim Mulgan, *Future People* (2006).

²³ *See esp.* the extensive bibliography provided in Avner de-Shalit, *Why Posterity Matters: Environmental Policies and Future Generations* 144-55 (1995).

²⁴ *See, e.g.,* Douglas A. Kysar, *Discounting ... on Stilts*, 74 *U Chi. L. Rev.* 119 (2007).

²⁵ Although I did not recall reading anything specifically by Eisner when I first raised this issue several years ago (and therefore thought myself unique in raising it), I have no doubt that I must have absorbed the point in my extensive reading of Eisner's work prior to his death in 1997.

Professor Shaviro's tax policy colloquium in early 2004.²⁶ Shaviro then responded with some preliminary thoughts on the issues as a small section in an article in late 2004 critiquing George W. Bush's fiscal policies.²⁷ I responded equally briefly when re-drafting my symposium piece and publishing it in 2005.²⁸ Finally, I simply raised the issue again as a caveat in my recent article on public investment, highlighting my intention finally to engage with the issue here.²⁹ The direct issues raised in this article, therefore, have not been entirely absent from the literature³⁰; but the discussion has been preliminary and has not been applied to specific fiscal policy questions.³¹

The literature on intergenerational justice is, therefore, reasonably well developed in some areas and has recently benefited significantly from the symposia noted above. Even so, the big issues remain surprisingly open, and perhaps the best approach, as I describe below, is to attempt to extend to an intergenerational framework certain approaches derived from the literature on distributive justice.

Do Generations Exist?

Having reached this point, it is necessary to acknowledge that, as a literal matter, generations do not exist in any analytically rigorous (that is, non-arbitrary) sense. Even

²⁶ Neil H. Buchanan, *What Is Fiscal Responsibility? Long-Term Deficits, Generational Accounting, and Capital Budgeting* 38–43 (Rutgers Univ. (Newark) Legal Working Paper Series, Apr. 7, 2004), available at <http://law.bepress.com/rutgersnewarklwps/fp/art8> (hereinafter *Fiscal Responsibility*), presented at the New York University School of Law Tax Policy and Public Finance Colloquium, April 20, 2004.

²⁷ Daniel N. Shaviro, *Reckless Disregard: The Bush Administration's Policy of Cutting Taxes in the Face of an Enormous Fiscal Gap*, 45 B.C. L. Rev. 1285, 1330–33 (2004).

²⁸ Neil H. Buchanan, Long-Term Deficits, note __, at 289.

²⁹ Neil H. Buchanan, Good Deficits, note __, at 350-52.

³⁰ See also Frishmann, note __; Wright, note __; and the symposia in notes __ and __.

³¹ I discuss below the brief arguments that Shaviro offered in his 2004 piece. See notes __ to __ and associated text.

people who were born at exactly the same moment have no reason to believe (even if they are aware of each other and of the coincidence of their moment of birth) that they will die at the same time. The use of the term “generation” thus necessarily implies a clean demarcation that does not exist.

In addition, Parfit discusses the concept of “psychological continuity” and the philosophical arguments that a person at one point in time is not the same person that she was at a different time.³² The idea is that even individuals whom we commonly assume to be the same people might in fact be different people at different times, making it even more problematic to discuss people as being meaningfully categorized by their dates of birth.

Notwithstanding these profound questions of identity and continuity, it is of course common to refer imprecisely to generations such as Baby Boomers, the World War II generation, Generations X, Y, and Z, and so on. In the “generational accounting” literature that I have criticized at length,³³ the authors adopt the convention of treating people in decade-long birth-year cohorts as separate generations, comparing the life-time net tax rates of people born in different decades of the twentieth century.³⁴

Therefore, this article follows the common, admittedly imprecise practice of referring to generations as groups of people who are born within some limited number of years of one another. In most cases, the discussion here need not turn on fine questions of how many years should be included within a specific generation, since the discussion generally differentiates – at most – four roughly discreet groups of people: today’s adults,

³² Parfit, note __, at 219-23.

³³ Buchanan, Long-Term Deficits, note __.

³⁴ See, e.g., Alan J. Auerbach, Jagadeesh Gokhale & Laurence J. Kotlikoff, *Generational Accounting: A Meaningful Way to Evaluate Fiscal Policy*, J. Econ. Persp., Winter 1994, at 73.

today's children, people not yet born but who will have been born before those living today have died, and those people who will be born after everyone living today has passed on.

B. Are There Any Intergenerational Obligations?

As noted above, the most surprising fact about the existing literature on intergenerational justice is that there is not universal agreement that current generations owe anything at all to future generations.³⁵ Moreover, the analyses that have been offered to justify an affirmative answer to the question of intergenerational obligation are often tentative. I will briefly describe some of these arguments below, but it would be unwise to make too much of the theoretically open question of whether any obligations exist between generations. Summarizing the views of participants in the conference that led to their symposium issue on intergenerational equity and discounting, Weisbach and Sunstein concluded: “Most analysts (and we believe all of the essays in the conference) take the position that future generations should count, and most likely count equally to those currently alive.”³⁶ Thus, however tentatively (and not unanimously), an apparent majority of those who have addressed the question have affirmed what is probably a widely-held intuition that future generations matter. I provide below a brief summary of some of the arguments that have been offered in this part of the literature.

³⁵ An excellent, indeed perhaps definitive, summary of the philosophical literature on intergenerational justice can be found in the Stanford Encyclopedia of Philosophy. See *Intergenerational Justice*, Stanford Encyclopedia of Philosophy (Apr. 3, 2003), <http://plato.stanford.edu/entries/justice-intergenerational/>.

³⁶ David A. Weisbach & Cass R. Sunstein, *Symposium on Intergenerational Equity and Discounting*, 74 U Chi. L. Rev. 1, 1 (2007)

To motivate the inquiry, it is perhaps worthwhile to begin by posing a provocative question. If we were to make some policy choices that resulted in members of some future generation experiencing the same standard of living that the typical American experienced in, say, 1950, we might at least wonder how a member of that future generation could plausibly complain. They did not do anything to deserve the stock of capital (knowledge, technology, machines, structures of governance, etc.) that we will give to them, capital that is necessary to produce a rather high – by any reasonable historical measure – standard of living (just as we did not do anything to deserve what we received from our forebears). Moreover, there will be billions of people in poorer parts of the world who, for decades hence (and sadly, perhaps forever) will never even come close to the living standard that Americans enjoyed over a half century ago. Furthermore, billions of people living today and virtually everyone who ever lived prior to the Industrial Revolution received little from previous generations, making their way through life on the basis of whatever they could eke out.³⁷ In that sense, giving future generations anything at all might be a matter of grace.

Even putting such an argument to paper, however, feels uncomfortable. Most of the people who lived and died centuries ago endured a miserable existence not because someone chose to make them live more miserably than necessary but because misery was a nearly universal human condition. Having the choice to make someone better off, yet choosing not to exercise that choice, is very different from what transpired many

³⁷ This is, of course, an overstatement. The accumulation of human knowledge over the millennia was substantial. As a comparative matter, however, the advances in material living standards from the beginning of the industrial revolution to date (in the parts of the world where it has had its most significant effects) make that which came before pale by comparison in many ways. Even though mankind had invented language, mathematics, early medicine, astronomy, etc., and had made major advances in public health, the vast majority of people still “lived in rags” at the beginning of the Industrial Revolution. Robert M. Solow, *Survival of the Richest?* N.Y. Rev. of Books, Nov. 22, 2007.

generations ago.

The comparison to currently living people in the poorest parts of the world, though, becomes even more uncomfortable in this light. Here, we actually have made (mostly implicit) choices that deem the vast majority of the human race undeserving of intragenerational action to remediate their misery. If we are willing to make such choices about people whose suffering we occasionally actually see, what might cause us to think twice about people who either do not exist or whose connection to us is only greater than others due to accidents of geography and genetics?

Perhaps, however, this is both too harsh and also the wrong question. Even if people are myopic, or poorly informed, or simply believe that they actually can do nothing to help people in other parts of the world, that is not a reason to forbid a person from wanting to take into account the well-being of future generations. We need not, after all, insist on consistency in people's generosity. If people do want to care about some people and not others, it is still helpful to determine the basis of such a choice.

In asking whether future generations deserve anything, it is useful to ask first why they might *not* deserve our consideration. Although it is undeniably absurd to argue that future generations have never done anything "for us," it is simply a fact that future generations cannot yet have done anything to deserve anything. If dessert is based on reward for actions taken, future generations are out of the game before it begins. If we decide that future generations deserve something that would justify changing what we would otherwise do, then it must be because of something inherent to the very nature of being in a future generation or because of something that we believe they can or will do after they are alive and able to act.

One basis for intergenerational obligations is Kant's categorical imperative, or in layman's terms, the what-if-everyone-did-this question. If the generation before the current one had decided as a group that it did not care about future generations, and if some level of care is necessary for the next generation to exist (for example, the basic care that parents give to children), then the current generation would not exist. Given that we want to exist, we should ensure the existence of future generations who will also be glad that they were allowed to exist. To a certain degree, of course, this argument assumes its result by imagining that people will feel sufficient connection with other people that they will want to make those other people happy. Even if that merely relocates the desire to be intergenerationally just, however, it at least arguably relocates the desire to what appears to be a more primal level. Instead of asking whether people care about other people's standard of living, this argument only asks whether they are willing to share the notion of life itself.

A minor variation on this argument suggests that people do not care about future generations in general but only about their children. (Caring about other generations that they might actually know before they die supports this argument as well, but it is sufficient for parents simply to care about their children.) People who have had children must have done so because they wanted to be parents (with obvious exceptions), so if they want their children to be happy, they will want their children to experience the happiness of parenting. This makes the original parents care about their grandchildren indirectly, and this so-called generational linking thus makes each parent care about the prospects of every generation to come.

This story can also be told in an evolutionary framework, in which each organism

evolves only by developing ways for its genes to be passed on, which occurs through the survival of its offspring. Like most such explanations, of course, this one is essentially tautological, because of course organisms that do not develop in ways to pass on their genes cease to exist.³⁸ Still, it is not difficult to imagine that the desire to create and care for future generations is somehow built into our very DNA.

The Problem of Non-Specific Future People

If the explanations above do not satisfactorily justify an obligation to future generations, especially beyond those members of future generations who have already been born (and are thus knowable beings), we need to inquire more carefully into the distinction between the living and the not-yet-living. How might currently living generations treat their younger members differently from the non-specific future people who might or might not come into existence in the future?

Parfit described the “person affecting principle,” which took as a fundamental ethical principle that humans have an obligation not to affirmatively harm an actual person.³⁹ This does not, of course, provide a useful baseline for determining what level of care – that is, what constitutes “harm” – is owed to actual people (perhaps of younger generations), but once a baseline is chosen, people have a duty to respect that baseline and not harm any actual person’s legitimate interests. This is thus a rather simple way to generalize obligations toward younger living people beyond familial connections – though, again, this leaves open the question of baselines.

³⁸ The other disquieting aspect of evolutionary explanations is how similar they are to casual non-explanations of people’s supposedly fundamental nature. See, e.g., Verlyn Klinkenborg, *Trying Times Ahead: The Prospect of 60 Million Californians*, N.Y. Times, Jul. 18, 2007, at A18 (“We can’t help believing in growth. We can’t help believing that the way to create change is simply to buy different stuff, so growth doesn’t stop.”)

³⁹ Parfit, note ___, at 393.

After everyone currently alive has died, however, the content of future generations will be determined by the combination of factors that determine the path of human existence. That is, every choice and non-choice brings into existence one possible universe while destroying other possible universes. Each choice determines, in one way or another through path dependence (or what is in essence the familiar butterfly effect), which of an infinite number of potential future human beings will actually come into existence.⁴⁰

Therefore, even the mundane fiscal policy choices that we make today will contribute toward the determination of who is born and who never comes into being. An increase in government spending might create jobs where there would not otherwise have been jobs, two people to meet at their new jobs and to fall in love, and their child to exist in part because of the fiscal policy choice that was made before they were born.

If that child's economic reality turns out to be quite unhappy, he might well rue the fiscal choices that created jobs decades before but bankrupted him years later. If he were to ask: "How could you do this to us?" the honest answer is that if we had not made the fiscal choices that we made, he would never have existed at all. Thus, even if future people are miserable, they as individuals might not have a basis on which to complain – unless, of course, they would prefer never to have existed rather than to be living the miserable lives to which our choices doomed them.

Taken seriously, this idea would excuse current generations from taking into consideration any effects of their decisions on non-living future generations. Even if there were some relatively short-term intergenerational obligations, a person who could confidently believe that they could enact selfish policies but put off the day of reckoning

⁴⁰ *Id.* at 351-55.

long enough could fulfill only those intergenerational obligations that accrue to living children and grandchildren. The essential question is whether it is possible to overcome this uncomfortable conclusion on philosophical grounds that do not rely upon direct familial connections.

One possible answer is simply to assert that there is a chain of humanity to which we owe an obligation of care. If we believe that all people are deserving of respect and will be born with dignity, then we should respect that dignity by not making decisions that will surely result in their misery. Thus, we can view our obligations not to harm people as obligations toward *any* person who might come into existence in the future. Again, though, this simply asserts the conclusion, saying that we ought to care about people because people are worth caring about.

Another, arguably more satisfying, approach is to embrace the knowledge that our actions will inevitably bring some people into existence while foreclosing the possibility that others will ever be born. This means that our choices have consequences, and we have an obligation to avoid causing misery when we can do so. Given that some of our choices could bring into existence people living non-miserable lives, we have the responsibility to make the choices that bring the people into existence who will be relatively happy and not others who are fated to misery. We would thus owe it to *potential* future generations to make decisions that do not bring into existence those generations who would be least happy during their time on Earth. While this seems to implicitly deny the possibility that existence itself is priceless, it is simply a fact that we can only bring a finite number out of an infinite range of possible people into existence. We are then obligated to make the harm-minimizing choice.

Given the imperfection of our knowledge about how our decisions will affect future people, this is of course only a rough guide as to how to make choices, especially fiscal policy choices. Even so, this reasoning provides a way around the person-affecting-principle that is not the same as the argument that we owe future generations something because they are part of the continuing chain of humanity. It more directly imposes on us a duty to recognize when our decisions might cause misery and to reject those choices.

There is thus a wide variety of philosophical answers to the broad question of whether current generations owe anything at all to future generations. As noted above, it is possible to find all of the arguments lacking and to remain unconvinced that such obligations exist. I join the majority in concluding at least tentatively that we do owe a duty to future generations, which immediately raises the essential question of how to implement that obligation.

C. How Much Do We Owe?

Given the lively and interesting theorizing about the existence of an obligation to consider future generations, it is rather surprising and even disappointing that the literature is relatively silent on the question of how to balance future interests against current interests. Some philosophers acknowledge that the question is fundamental but also simply acknowledge that there is little or nothing more that is currently available to support a particular theory of how to balance current and future generations' respective interests.⁴¹

⁴¹ See, e.g., de-Shalit, note __ (who suggests a possible way to fill the void from a communitarian perspective).

Reviewing the arguments summarized above regarding the possible philosophical foundation of intergenerational obligations, none of the arguments lends itself to anything more than the argument that an obligation exists. For example, even if one believes in the chain of humanity, that notion provides nothing that would guide policy choices that require intergenerational tradeoffs. Once we have determined that a policy choice pits one group of humans against another, the obligations run in both directions. Some current decisions, after all, that might make some future generations worse off could reduce deep misery in some parts of the world today. We have an obligation not to inflict misery on ourselves or others, but beyond those polar extremes, there is no apparent guidance on how to create a balance of miseries.

There is also the possibility that our obligations to future generations would require not merely balancing present versus future interests but choosing which types of interests we are willing to balance. Current generations might, for example, acknowledge moral and cultural connections to future generations and feel that they are part of the chain of humanity but may nevertheless choose not to share their property or economic assets with future generations. In other words, an admission that an obligation exists does not even foreclose the decision to share some aspects of the human condition but to decide that, when it comes to their material existence, future generations are on their own.

The broad question of balancing generational interests is therefore still open as a theoretical matter. As I discuss below, scholars who ask how to balance generational interests must generally start from the assumption that such balancing is desirable and then explore how to determine the best way to choose among policy options. As noted

earlier, one approach is to view the balancing process as a matter of choosing the discount rate, where choosing a higher discount rate has the effect of putting lesser weight on the interests of generations further out into the future. That approach is not without its critics, however. Douglas Kysar, for example, objects that a decision to have the discount rate do the heavy lifting “purports to resolve questions, the answers to which have already been subsumed within the framework’s architecture [and subsuming] vital questions of intergenerational equity through [the] use of an exponential discount factor.”⁴²

The discounting approach, therefore, leaves many questions unanswered. The most promising approach, as I discuss in Section IV below, is to treat intergenerational choices the same way that we treat questions of inequality within generations, which means that we would apply familiar theories of distributive justice to unfamiliar questions. While our existing theories of intragenerational distributive justice are themselves well known to leave open many questions and thus to relegate final decisions to be determined in the political process, applying a familiar set of arguments as we grapple with intergenerational questions offers the promise of at least some progress toward a sensible political outcome.

The “Better Than Me” Standard

Before proceeding, it will be worthwhile to discuss one common response to the question of what we owe to future generations. Having spoken with a large number of colleagues about this subject, and having presented these ideas at a number of workshops, it is remarkable how common is the almost pre-cognitive response from listeners that “I

⁴² Douglas A. Kysar, *Discounting ... on Stilts*, 74 U Chi. L. Rev. 119, 119 (2007).

just want my kids to do better than me.” This desire has even been described as being a fundamental part of “the American dream.”⁴³ As discussed above regarding intergenerational linking, this basic desire to help one’s children can be used as a building block to justify obligations across multiple generations; but even if the logic of intergenerational concern breaks down before infinity, we should take seriously the idea that people want their children to “do better” than they have. The ubiquity of the “better than me” response thus deserves reflection.⁴⁴

There are several problems with the “better than me” standard. First, it does not even attempt to answer the question of why one’s own situation is the best baseline from which to measure one’s children’s prospects. Why are we not concerned with having our children do better than the children of the proverbial Joneses? Even taking this standard seriously, moreover, leaves open further baseline issues. For example, must children be better off than their parents were when the parents were young, or better off than their parents are later in life? Most importantly, how much better off must our children be in order to satisfy this standard? Twice as well off? Ten percent better off? One-tenth of one percent better off?

No matter the baseline, the visceral response is ultimately either nonresponsive or at least creates only the most basic requirement of not moving backward in some sense. That alone is potentially useful, though, because there might be situations where the possibility of moving backward becomes quite real, especially if increases in average

⁴³ Andrew Stern, president of the Service Employees International Union, quoted in Bob Herbert, *Anxious About Tomorrow*, N.Y. Times, Sep. 1, 2007 at A23 (“Workers are incredibly, legitimately scared that the American dream, particularly the belief that their kids will do better, is ending.”)

⁴⁴ See, e.g., Bob Herbert, *The Fading Dream*, N.Y. Times, Nov. 13, 2006, at A25 (“For perhaps the first time in history, there is a large swath of Americans who are worried that over the long haul their children will not fare as well as they have.”). Note that, in Herbert’s formulation, the aspiration has been downgraded from “better thans” to “as well as.”

GDP/capita are (as discussed below) masking a lack of progress for large groups of people. Despite its shortcomings, moreover, it is possible to marry the concern that animates the “better than me” standard with distributional concerns to make an argument that, at least over time, inequality must decline. I further discuss this possibility in Section IV.C. below.

D. Who are the Future Generations?

A further complication regarding policy analysis concerns what is meant by asking both what “we” owe future generations and who or what might qualify for membership in a future generation whose well-being we are trying to balance against our own. In the discussion below, I have chosen to ask what we as currently living adult American citizens should take into account when formulating U.S. fiscal policies, most particularly when thinking about broad aspects of fiscal policy like aggregate budget deficits, public and private investment, etc.

This is hardly the only possible choice, however, even if it is a necessary starting point for present purposes. It would certainly be possible, for example, to think in global terms about what all of the countries in the world (or perhaps the much smaller numbers of countries that are home to the vast majority of market production in the world) should do in the aggregate in determining their spending and taxing. Just as it is analytically difficult to defend the tendency in the United States to treat our fiscal policies as if only the federal government made fiscal decisions (thus ignoring states and localities),⁴⁵ it is also simply wrong to imagine that nations’ fiscal policies are independent of each other. Certainly, many analysts are acutely aware of the links between the United States federal

⁴⁵ See Buchanan, Long-Term Deficits, note ___, at 291-92.

government and its creditors (most prominently in recent years, China), making it important to think about the global economy rather than national economies.

Who might be included in the future generations about whom we are concerned? Even limiting the focus to future Americans is not enough to assume away the analytical difficulties, because the possibility of immigration and emigration means that future Americans are not simply the offspring of current Americans. This further opens up difficult questions of citizenship and other issues of inclusion and exclusion.

Since one of the points that I make in the final section of the paper is that questions of intergenerational justice cannot be removed from the political arena, we would do well to remember that the political debates about future generations can be fundamentally altered by identifying the potential beneficiaries of current sacrifice. Sacrificing for “our children and grandchildren” is one thing, but voters might well make very different decisions when considering whether to help other people’s progeny. One simple way to observe this is to note the extreme unpopularity of foreign aid among American voters.

E. How Far into the Future?

As noted above, one of the key distinctions in the philosophical literature is between future generations of people who are currently alive versus those who are yet to be born. The obligations to those already in existence (but too young to participate in the governance decisions that will, in part, determine their future prospects) might well be greater than are our obligations to those who are yet to be born. It turns out, however, that this distinction is not an important factor in confronting most of the specific policy

issues below. Knowing that there is a transition stage during which some of us who are currently living will continue to live while new beings come into existence allows us, for policy purposes, to smooth over the analytical distinction raised by not-yet-born future generations.

A somewhat more important concern arises when considering the limits of human existence. Even short of the possibility of nuclear, biological, or chemical catastrophe, life on Earth might not last more than another one thousand years or so. While that might well be far enough into the future to blur into most peoples' concept of "forever," it is interesting to consider what would happen if we knew for sure that human life would end on a specific date that is relatively soon, for example, in one hundred years.

One version of this possibility is depicted in the recent film "Children of Men," in which a virus makes all human women infertile.⁴⁶ People thus know that there will be no future generations at all. Although that particular film (and the book on which it is based⁴⁷) posit that people would respond to such a world by spiraling into despair and violence, it is also possible that it would give people less reason to fight and die for land or riches if they knew that there was no reason to accumulate riches other than the immediate gratification available in this life.

This fantasy scenario is worth discussing here because it brings into focus the similarity between our current situation, in which we take for granted the existence of future generations, and an extreme situation with no future generations at all. In either case, we are faced with the choice of whether to continue living lives that are guaranteed to end in death. In both cases, we thus have to choose between current and future

⁴⁶ "Children of Men," Universal Pictures (2006).

⁴⁷ PD James, *The Children of Men* (1992).

consumption on the basis of our own preferences, while in a world with future generations we need to add our preferences about their well-being into our calculations about how much to consume versus invest today.

The addition of considerations about future generations appears to be a major complication, but it does not ultimately change the nature of the choice between consumption and investment. As I argue later, in fact, the best approach to analyzing fiscal choices sets aside the whole question of generational membership and simply focuses on distributive issues both within and across generations.

F. Irreversibility

Although this article explicitly sets aside environmental issues, it is notable to compare the notion of irreversibility as it relates to environmental harms versus economic harms. As Louis Kaplow notes, “It may be that due to the increasing marginal harm caused by certain forms of environmental degradation, the existence of irreversibilities, and certain forms of uncertainty, efficiency requires that a great deal of investment be made to preserve the environment.”⁴⁸ Species extinction and other irreversible harms appear to be fundamentally different from lower or higher rates of growth of material living standards. Similarly, global temperature change has a potentially even greater claim as a policy concern, because it is both irreversible and universal, potentially leading to the end of life on the planet or cataclysmic alterations in patterns of human and nonhuman life.

It is also true, however, that every lost economic opportunity is tautologically

⁴⁸ Louis Kaplow, *Discounting Dollars, Discounting Lives: Intergenerational Distributive Justice and Efficiency*, 74 U Chi. L. Rev. 79, 117 (2007)

irreversible. That is, there is no way to get back a lost economic opportunity once it is gone. Leaving workers unemployed for a year cannot be made up in subsequent years even by having employees work overtime, because they could have worked overtime in subsequent years whether or not they were ever unemployed. (Thus, not working overtime is itself an irreversible loss.) Similarly, the failure to set aside consumption today for investment in future productivity can never be undone. We might regret such a decision and redouble our efforts in future years to mitigate the effects of our mistake, but that redoubling is itself precisely the central question raised by intergenerational tradeoffs. Once we have failed to make an investment in the past, any attempt to compensate for that choice is costly and must be subjected to some form of balancing test.

Economic irreversibilities, however, are qualitatively different in that what is lost is less unique than the kinds of environmental damage that seem likely over the next several decades. While a decision to invest too little will lower future living standards, typically the difference is marginal and unlikely to threaten the continued existence of life on the planet.

In that regard, errors in the economic realm are less worrisome than errors in the environmental realm. While all errors are a source of regret (or we would not think of them as errors), the facts that we are almost never operating without any slack in our resource utilization and that any failure to optimize is less than cataclysmic are a source of some peace. The decisions that we make regarding current versus future consumption are important, and in some cases can literally mean life and death, but rarely if ever are the decisions as fraught with global peril as are our environmental choices.

G. Income per Capita as the Measurement of Well-Being

Even after narrowing the analysis from implicating potentially every question of public policy to addressing “only” questions of intergenerational fiscal justice, it is necessary to justify the choice of a measure of economic well-being. Having chosen to follow the standard approach and focus on gross domestic product (or income) per capita raises two separate concerns: Why GDP and not some other measure of well-being? And why measure well-being per capita instead of trying to maximize the number of people who might enjoy being alive and receiving the benefits of our (intergenerationally informed) policy choices?

Gross domestic product and its variants within the National Income and Product Accounts have been the subject of serious debate for as long as they have existed. Decades ago, the economist James Tobin proposed a “Measure of Economic Welfare” as an alternative to GDP, attempting to incorporate leisure and other non-market amenities into the aggregate measure of what people are enjoying by virtue of living in a given economy. In the 1980’s, an organization called Redefining Progress proposed an alternative to the GDP that they called the GPI, or Genuine Progress Indicator, that explicitly takes environmental indicators into account as a means to adjust GDP, arguably to better measure real well-being. The GPI consistently runs lower than GDP, and it has little or no upward trend, unlike GDP.⁴⁹ Similarly, some scholars refer to “inclusive gross domestic product . . . , not just marketed goods and services, but also leisure time,

⁴⁹ Redefining Progress, *The Genuine Progress Indicator (GPI)*, <http://www.rprogress.org/projects/gpi/> (visited Jul. 30, 2007).

household production, and environmental amenities.”⁵⁰

Each of these approaches is valuable (and they significantly overlap) and are almost certainly superior to GDP for many types of policy analysis. For present purposes, however, it is important not to allow possible complications from tradeoffs between non-market factors and market goods and services to side-track the analysis.⁵¹ As mentioned above, I plan to pursue these tradeoffs in a follow-up article. Here, though, I am reluctantly putting the environment aside and asking only what tradeoffs we make when we raise or lower traditionally measured economic output.

For most of the analysis here, the difference between GDP and other measures will not be a central issue; but clearly one of the motivating facts noted earlier – the high levels of forecast GDP per capita for future generations – would not be nearly as dramatic if we used, for example, the GPI measure that shows little or no growth even when GDP is growing significantly. Even looking at that alternative variable, however, the core question of whether we owe future generations a higher GPI than we enjoy is no different than whether we owe future generations a higher level of GDP. We would simply be less confident that we have room to maneuver than we might be in light of the high GDP forecasts noted above.

Even if we are comfortable using GDP as an imperfect measure of well-being, though, the second concern in using GDP/capita is the denominator. Perhaps we should not be trying to maximize how many marketed goods and services each person can

⁵⁰ Matthew D. Adler, *Economic Growth and the Interests of Future (and Past and Present) Generations: A Comment on Tyler Cowen*, 74 U Chi. L. Rev. 41, 41 (2007).

⁵¹ *Cf. id.* at 43 (“Whatever the connection between GDP and happiness, it seems very plausible that there is a strong empirical connection between a society’s overall GDP and its overall well-being (or, equivalently, between its per capita GDP and the average well-being of its members).”)

consume, because that assumes that people are not valuable in and of themselves. One way to think about this is through the familiar and simple story of diminishing marginal utility of goods. If we believe that two people are likely to have identical utility functions that climb less quickly as they consume more goods, then splitting the goods between the two raises total utility.

The objection, though, is potentially more profound. If life itself is highly valuable, then it is misguided to think about policies that affect living standards but that ignore the potential increase in the well-being of future generations that could be brought about simply by making those future generations larger.

Those questions are clearly important, but I set them aside here for two reasons. First, any discussion that includes the possibility of deliberately increasing future population levels (and that thus opens up the policy analysis to matters of utility and not just production of goods and services) immediately runs up against questions of resource constraints and environmental justice. The question is thus best addressed after having first explored the more limited (but still difficult) fiscal questions raised below.

Second, depending on the assumptions that one is willing to make about the subjective value of life, this additional consideration potentially swamps all other issues raised by fiscal policy analysis. If becoming a person is infinitely valuable – or at least if it is subjectively more valuable than any imaginable cost that might be imposed on others through population pressures – then we need only worry about GDP or any other measure of economic activity inasmuch as it relates to goods and services that can be used to increase human fertility. The extreme scenario is to use policy to try to maximize the number of future births, no matter the effect that this might have on the average age at

death (except inasmuch as early death would remove potential fathers and mothers from the pool).

There are, of course, versions of the population question that fall well short of the extreme case described just above, but they are better dealt with separately. For better or worse, the analysis here implicitly takes population growth as given and considers how to allocate the potential to produce goods and services between current generations and future generations (of whatever size happens to come into existence).

III. Is it Possible that We Are Being Too *Generous* to Future Generations?

As described in the introduction to this article, the belief that we have obligations to future generations is pervasive as a normative statement, even though the content of those obligations is almost completely unexamined. The decision to take into account the interests of future generations, whether we do so because we believe that we must do so for philosophical reasons or simply because we feel an inchoate moral desire to care for future people, puts us in a difficult position. How do we strike the best balance between making ourselves happy and trying to do what we can for future people? “If respecting future generations means anything, it should mean respecting our best guess as to their wishes and helping them as much as feasible.”⁵² Putting an analytical structure behind such respect is the difficult work of intergenerational policy analysis.

Having noted above that virtually every area of public policy might well be open to claims that policy choices must take into account the interests of future generations, it

⁵² Dexter Samida and David A. Weisbach, *Paretian Intergenerational Discounting*, 74 U Chi. L. Rev. 145, 155 (2007).

would be unwise to assert here that fiscal policy commentators are uniquely preoccupied with such claims. It is clear, however, that many if not most of the central debates about fiscal policy lend themselves quite well to concerns about the interests of future generations. It would seem to require a special effort to ignore the fact that fiscal policy choices will have effects on people who are not yet born (or, if born, are not yet in a position to participate directly in the process of making decisions that will affect their economic futures).

Among the ranks of policy research organizations devoted to fiscal issues, the Concord Coalition came into existence in direct response to concerns that the levels of federal budget deficits in the 1980's and early 1990's were dangerously high. The organization's website prominently includes the following statement: "[F]iscal responsibility is as much of a moral duty as it is an economic concern. ... Fiscal responsibility is essential to creating a better, stronger, more prosperous nation for the next generation. The choices we make today -- or fail to make -- will determine what kind of future our children and grandchildren inherit 20 and 40 years from now."⁵³ Similarly, the Tax Policy Center, a joint undertaking of the Brookings Institution and the Urban Institute, "examines the implications of current policies and proposed tax changes for future generations."⁵⁴ This focus is understandable, but as we see below, the focus might well be misplaced or, at least, overemphasized.

⁵³ The Concord Coalition, *Why is Fiscal Responsibility Important?* <http://www.concordcoalition.org/issues/primers/fiscal-responsibility.html>, visited Jul. 30, 2007.

⁵⁴ Tax Policy Center, *About Us*, <http://www.taxpolicycenter.org/aboutus/mission.cfm>, visited Sep. 6, 2007.

A. *Competing Over Whose Fiscal Policy Prescriptions are Better for Future Generations*

While the moral stance taken by the Concord Coalition might be stated more explicitly than usual, the interests of future generations are never far from fiscal policy debates. The familiar question of crowding out, where the central concern is whether government policies are reducing future growth by replacing productive private investment with unproductive government consumption,⁵⁵ is of course motivated by concerns about how choices that we make today might affect the future. It is true, of course, that a person whose concerns did not extend beyond the end of her own life could still be concerned about the path of growth until her death; but the intensity of the concern grows as the time span lengthens.

The most prominent recent example of a fiscal policy debate that is centrally concerned with future generations is the controversy over so-called Generational Accounting (including the calculation of a long-term budget deficit measure called the Fiscal Gap).⁵⁶ Advocates of the generational accounts, including its creators Alan Auerbach and Laurence Kotlikoff along with other scholars in economics and legal academia, have argued that the generational accounts provide a superior method of assessing the effects of fiscal policy on future economic performance, and they argue explicitly that current generations are inappropriately ignoring the effects of current and projected levels of deficit spending on the well-being of future generations. The time frame analyzed is at least seventy-five years, while advocates of generational accounts prefer an infinite time horizon. Such a policy approach would make little sense unless its

⁵⁵ See Buchanan, Good Deficits, note __, at 335-39.

⁵⁶ See Buchanan, Long-Term Deficits, note __, at 307-10.

advocates were deeply concerned about the effects of today's policies on future generations.⁵⁷

Opponents of the generational accounts approach have not challenged the intergenerational concerns that motivate the approach but have rather taken those concerns as given, challenging instead the assumptions and methods used to generate estimates of the fiscal gap and the generational accounts.⁵⁸ In a recent article, for example, I argued that estimates of the fiscal gap are based on an inappropriate set of assumptions about which variables are assumed to change over the decades and which are held constant.⁵⁹ Although I raised the question of intergenerational justice very tentatively in that article, I explicitly took the position that the generational accounting framework was inferior to current budgetary conventions even for those who are concerned about future generations. Others who have critiqued the generational accounts have similarly shared its stated goals of intergenerational justice, however loosely defined.

Other macroeconomic debates in the fiscal policy literature have similarly been focused on means and not ends. For example, in response to the standard crowding out arguments, Benjamin Friedman wrote an influential article in the mid-1970's showing

⁵⁷ As I discuss below, there is also an aspect of the generational accounting framework that is oriented toward concerns about how current policies might lead to near-term catastrophe. The general thrust of the generational accounting literature, however, is clearly focused on multi-generational concerns.

⁵⁸ The generational accounts literature often presents estimates of the "lifetime net tax rates" faced by various generations as a way to frame the debate about fiscal policies. No matter what one thinks about intergenerational obligations, it is worth noting that future generations, if they care about their real level of well-being, would not be directly concerned with their tax rates. Tax rates, whether in a given year or over a lifetime, are only relevant in comparison to the size of the base that is being taxed. Instead, we would try to balance the real living standards (net of tax) of present versus future generations.

⁵⁹ Buchanan, Long-Term Deficits, note __, at 310-15.

how it is possible for fiscal policy to “crowd in” private investment.⁶⁰ With sufficient slack in the economy, running deficits could make it more profitable for private enterprises to increase their spending on productive investments, thus making government spending and private investment spending complements rather than substitutes. Empirical estimates included in my doctoral dissertation confirmed this effect twenty years after Friedman’s research.⁶¹ The effect would also work in the opposite direction, with contractionary policies such as tax increases (that would presumably be enacted with the intent to reduce government deficits and thus reduce crowding out) leading to reductions in output and thus paradoxically to reductions in private investment.

The consensus that emerged regarding the crowding in story was either that the effect is unimportant or that it is a short-run phenomenon (the former claim being far from universally held, the latter claim being consistent with my empirical research). Even temporary changes in investment and output can affect at least the levels of future living standards, however, so a failure to take advantage of crowding in opportunities might well end up affecting future as well as current generations. Again, the debate was never about whether it might not be a bad thing to lower future output but rather how to make our grandchildren richer – or at least how to make ourselves richer without harming our grandchildren.

In the public and political debates over fiscal policy, the question is almost uniformly framed as one of whose policy proposals will best protect the interests of

⁶⁰ Benjamin M. Friedman, *Crowding-Out and Crowding-In*, Brookings Papers on Economic Activity (1976).

⁶¹ Neil H. Buchanan, *Debt, Deficits, and Fiscal Policy: Three Essays*, at Ch. 3 (Ph.D. dissertation, Harvard University 1996).

future generations. In response to those who favor reducing deficit spending, two arguments are common in current U.S. policy debates. The first, generally associated with political conservatives, is the supply-side argument that tax cuts – even if they result in increased fiscal deficits – are needed to raise future growth rates and thus to improve the fortunes of both current and future generations. While the academic literature has been generally unkind to these assertions, advocates of tax cuts are tireless in their efforts to justify tax cuts on this basis. For this article, the point is not whether supply-siders are correct in their policy prescriptions but that they proceed from the same assumption that motivates their opponents, i.e., that it would be bad to reduce the fortunes of our descendants through fiscal policy – in the case of supply-siders, to harm future generations by failing to reduce tax rates as low as possible.⁶²

Similarly, those generally on the political left who favor public investment frame their arguments inside the familiar territory of how we can best assist future generations. In a recent law review article, for example, I argued that it is important to remember that public spending is not always wasted, and it is not even always spent on consumption (wasted or virtuous). A logical underpinning of the crowding out argument is that it is total investment that matters (and the strength of the investment projects undertaken in terms of generating future growth), not whether the investment is labeled private investment or government investment. The policy implication is that it is not deficits that matter *per se* but the composition of government spending versus the private spending that it might crowd out.

This is not so much a separate theory as a reminder that how public spending is

⁶² I am, however, unaware of any scholarship adopting the supply-side view that also provides guidance as to how low tax rates can be cut before the resulting deficits might do more harm than the tax rate cuts will do good.

accounted for can have profound effects on our ability to determine the best way to increase future growth. Skeptics are rightly concerned that policy makers might be tempted to justify wasteful spending by re-labeling it as public investment, and thus it would be important to prevent such potential abuse in any plan to separately account for government consumption and government investment spending. In a new article-in-progress, I am attempting to create just such a framework. Success along such lines would allow the “government consumption versus private investment” crowding out debate to be recast as a “productive investment versus non-productive spending” debate that is still about crowding out but that is not fixated on the public or private source of funds.

To repeat the now-familiar refrain, however, this debate also takes as a given that it would be a bad idea to enact policies that would reduce the growth rate of the economy below what it would otherwise be. The question of whether we are already doing enough for future generations – much less whether we might not be obligated to do anything for them at all – is simply not part of the policy debate. As discussed above, it is not as obvious as it might seem that we are honor-bound to frame our policy discussions around the requirement that we avoid reducing economic growth below its baseline level.

B. The Future Already Looks Surprisingly Good

The discussion above referred somewhat loosely to a baseline rate of either investment or growth that current policy makers should not only protect but should affirmatively try to improve upon. Fiscal decisions today that can raise future living standards seem to enjoy a presumption of virtue, while those that lower future living

standards are highly suspect. If the expectation were that this baseline was necessary simply to maintain current living standards, there might be at least a strong intuitive sense that we should not make future generations worse off than we are.⁶³ As I noted above, even this assumption can be challenged, but it does have the virtue of being simple and intuitive. If we believe in this simple definition of progress, then we obviously should avoid moving in the wrong direction, i.e., we must not allow living standards to fall.

As is well known, the aging of the Baby Boomers – the large cohort of people born in the two decades immediately following World War II – raises a number of important policy questions, most obviously whether various countries will be forced to alter their retirement systems as a relatively smaller work force faces the prospect of supporting a relatively larger population of retirees. Standard analyses of these policy questions have often been couched in the language of intergenerational justice, with scholars typically expressing concern that currently-living generations are harming future generations by refusing to change policies that will ultimately require large changes in future benefits or taxes. This, it is assumed (or sometimes stated bluntly), is unfair to future generations.

It turns out, however, that the probable baseline against which we are legislating includes significantly higher average living standards for future generations than we ourselves will ever enjoy. Perhaps more surprisingly, the likelihood of such increases in prosperity is diminished only in degree by the aging of the Baby Boom generation, with even pessimistic forecasts showing impressively high cumulative economic growth

⁶³ See the discussion of the “better than me” standard above.

leading to very high average future living standards. In a recent article,⁶⁴ I reported the results of calculations based on the 2006 Social Security Trustees' Report, which projects population growth rates, GDP growth rates, etc. over a 75-year horizon on the basis of three sets of assumptions: the High-Cost Scenario (relatively pessimistic assumptions), the Mid-Range Scenario (assumptions that are relatively pessimistic compared to recent decades but are less pessimistic than in the high-cost scenarios), and the Low-Cost Scenario (assumptions that are below recent trends but that are the most optimistic of the three scenarios that the Trustees provide). Even under the most pessimistic official projections of retirement obligations, I found that material standards of living in the United States will more than double by 2080.⁶⁵

I have since updated those projections based on the Trustees' 2007 report.⁶⁶ Notably, even the Low-Cost Scenario (the relatively optimistic scenario) is still based on assumed annual economic growth rates that are significantly lower than the average for the last forty years or more. Specifically, the average annual rate of GDP growth from 1960 through 2006 was just under 3.4%.⁶⁷ The High-Cost, Mid-Range, and Low-Cost forecasts assume average annual growth rates through 2085 of 1.3%, 2.1%, and 2.8%, respectively.⁶⁸ The difference between a 3.4% annual growth rate and a 2.8% rate might seem small, but with compound growth the difference can become enormous. Over a 75-year span, for example, \$1 compounds to \$7.93 at a 2.8% annual rate but grows to \$12.28 at a 3.4% rate, meaning that a difference of 0.6% per year compounds to more than a fifty

⁶⁴ Neil H. Buchanan, *Social Security and Government Deficits: When Should We Worry?* 92 Cornell L. Rev. 257 (2007).

⁶⁵ *Id.*

⁶⁶ The 2007 Annual Report of the Board of Trustees of the Federal Old-Age and Survivors Insurance and Federal Disability Insurance Trust Funds, H.R. DOC. NO. 110-30, at 94-95 tbl.V.B2 (2007), available at <http://www.ssa.gov/OACT/TR/TR07/tr07.pdf> (hereafter "2007 Trustees' Report").

⁶⁷ Author's calculations based on data provided in 2007 Trustees Report, note 66.

⁶⁸ *Id.*

percent difference over the longer time period.⁶⁹

Especially given the notable pessimism of the assumptions underlying the Trustees' forecasts, the results of these computations are, in a word, stunning: "Using the GDP growth rates in the high-cost assumptions, per capita GDP more than doubles, rising by 131% in 2080. In the intermediate scenario, per capita income more than triples (rising by 225%), while in the low-cost scenario, per capita income more than quadruples (rising by 342%)." ⁷⁰ Updating those estimates using the forecasts from the 2007 Trustees' Report, per capita GDP is forecast to rise by 124% by 2080 in the high-cost scenario, by 212% in the intermediate scenario, and by 333% in the low-cost scenario.⁷¹ With small variations (and with one less year of growth between now and 2080), therefore, the results in 2007 mirrored those in 2006, with even the most pessimistic scenario showing income per capita more than doubling in just over seven decades.⁷²

As noted, these forecasts are if anything on the pessimistic end of the spectrum. To be sure, economic forecasts are often proved wrong, with some forecasts proving to be very wide of the mark even when predicting over a one-year time frame (such as the oft-revised annual federal budget deficit forecasts). The estimates from the Social Security Trustees, however, have been very steady over the years, and the scale of revisions necessary to result in a forecast of zero net growth (or something even close to

⁶⁹ Again, these estimates are necessarily imprecise; but the differences are so large that it would require enormous and unprecedented changes in the economy even to begin to wipe out the differences.

⁷⁰ Neil H. Buchanan, *When Should We Worry?*, note ___, at 266 n.57. While updating the estimates to include the more recent numbers from the 2007 Trustees' Report, I discovered a minor computational error underlying one of the estimates reported in my Cornell article. Under the low-cost scenario, the aggregate growth in per-capita GDP through 2080 comes out to 348%, not 342%. No one should, of course, have confidence in the accuracy of these estimates to such a fine level of precision. That the estimates show GDP/capita more than quadrupling in the low-cost scenario, while it triples in the intermediate scenario and doubles even in the high-cost scenario – and that those estimated multiples carry over to the updated figures – is the key finding from these computations.

⁷¹ Author's calculations available upon request.

⁷² Note also that the Social Security Trust Fund is never depleted under the Low-Cost assumptions.

that level) over a several-decade span appear to be beyond reason. Short of unpredictable cataclysms (weather-related disasters, world war, the collapse of global capitalism), these forecasts are apparently among the most solid available.

The question posed in the title of this paper thus becomes even more pointed, because the baseline below which policy analysts are determined not to allow future living standards to dip is not our current level but a level that is at least more than double the current average living standard and possibly as high as almost four-and-a-half times the current average.

Thus, it is notable that no one seems to have asked (except in very isolated instances, as noted earlier) whether we are not already fully in line with any intergenerational obligations that we might face. If future generations will almost certainly be significantly richer than current generations, why must current generations make still more sacrifices to prevent any erosion at all in the (much higher) living standards of future generations?

Again, this formulation of the question is deliberately provocative, ignoring as it does questions about income distribution, environmental concerns, and so on. As a starting point, though, it re-casts the question of intergenerational fairness in a way that strongly suggests that current policy debates should at least take into account the differences in income levels between current and future generations as we decide whether we should enact policies that will tilt the tradeoff in favor of, or against, future generations.

C. Macroeconomic Growth Theory

As just noted, the stylized fact that to a large degree motivates the writing of this article is the observation that – notwithstanding the frequent expressions of concern by academics, politicians, and others about the effects of our current fiscal policies on future generations – even the relatively pessimistic forecasts point to a notably positive future, as measured by per capita GDP. Even with the aging of Baby Boomers, changes in productivity will apparently be more than sufficient to offset the demographic changes and allow future GDP/capita to grow dramatically over the next seventy-five years and perhaps beyond.

Perhaps this is not good enough, however. It is always possible to argue that we are not doing enough and must do more. Even for personal decisions regarding how much to save for one’s own retirement, studies “always come to one conclusion: No matter how much you are saving for retirement, it isn’t enough, and you should save much, much more. So you’d better stop spending money on anything related to your present life [and] should immediately cease eating out, going to movies and buying things so [you] can save even more.”⁷³

Applied to an intergenerational context, the argument becomes that we can always do a bit more for future generations, allowing them to have even higher standards of living if only we would stop spoiling ourselves. The logic of saving and sacrifice becomes self-reinforcing, and it becomes difficult to see when to declare victory. Admittedly, the United States is renowned for its supposedly low savings rates, but the point is not the savings rate but future growth. If we are managing our economic affairs sufficiently well that we are bequeathing real standards of living more than two to four

⁷³ Phyllis Korkki, *Yes, Retirement Still Seems an Impossible Dream*, N.Y. Times, Apr. 1, 2007, § 3 at 2

times higher than our current living standards, why is that not enough?

The country most often held up as a paragon of saving and sacrifice for the future is, of course, Japan. That sacrifice did indeed lead to impressive increases in living standards for a generation or two after World War II. Interestingly, though, by the 1980's, there was growing dissatisfaction among the citizens of Japan about when they would be allowed to enjoy the fruits of their sacrifice. When the reward for more saving is the admonition to save still more, the path to prosperity begins to look more like a treadmill than a path to future happiness.

Nations at war are perhaps the best example of the difficult tradeoffs between sacrifice and consumption.⁷⁴ Because the consequences of overconsumption are potentially so disastrous (one less weapon being built, leading to the loss of the war), there are especially strong arguments to cut back consumption to bare subsistence levels. In peaceful times, though, how can we balance the needs of current versus future generations, when it seems that we should always be convincing ourselves to do a bit more for our grandchildren?

The most well-known and widely accepted tool for analyzing the tradeoffs between present and future consumption is the Solow Growth Model, named after the economist Robert Solow. Solow's model is used prominently in a number of leading economics textbooks, including N. Gregory Mankiw's advanced undergraduate text,⁷⁵ making the Solow model the preferred method for explaining economic growth to millions of economics students worldwide.

Setting aside the technical details, the Solow model builds a framework around

⁷⁴ It cannot pass without mention that, as many have already noted, the current situation is apparently the only time in our history that Americans have not been asked to sacrifice during a war.

⁷⁵ N. Gregory Mankiw, *Macroeconomics* (4th ed. 2000).

the notion of steady-state equilibrium, in which citizens and economic policymakers make annual choices between saving and consumption, with the saving being invested in capital goods that are productive but that also wear out at predictable rates. The steady state is defined as the situation where the capital stock per worker is not changing over time, that is, where the society is setting aside sufficient saving each year to replace the capital which has depreciated.

Because a wide range of capital stocks could be maintained in a steady state, Solow asked whether there was any particular steady state capital stock that was arguably more desirable than any other. The so-called “Golden Rule” level of steady-state capital per worker is the level that will maximize steady-state consumption. One of the key features of the Solow model, therefore, is its ability to demonstrate how it is possible to over-invest as well as to under-invest. If a society attempts to maintain a capital stock that is larger than the Golden Rule level, maintenance of that large amount of capital as it depreciates requires more sacrifice of consumption than it is worth. Reducing the capital stock per worker does reduce output, but it is worth it do so because the loss of output is smaller than the amount of depreciation that otherwise had to be replaced.

The Solow model would thus seem to answer the question of intergenerational balancing, telling us how to find a level of capital that will maximize consumption for all future generations. With technological change, moreover, maintaining the Golden Rule level of capital per worker can lead to increasing standards of living over time for all future generations without requiring excess sacrifice from earlier generations.

The major complication arises when the capital stock is not at its Golden Rule level. Mankiw’s text offers a relatively simple calculation suggesting that “the capital

stock in the U.S. economy is well below the Golden Rule level.”⁷⁶ There is a surprising dearth of research on this question, but even taking Mankiw’s tentative conclusion seriously, the process of moving from a position below the Golden Rule level of capital per worker up to the Golden Rule level is costly to the current generation (and perhaps also to several generations to follow): “When the economy begins below the Golden Rule, reaching the Golden Rule requires initially reducing consumption to increase consumption in the future.”⁷⁷

Does the model itself offer a method of deciding whether to sacrifice current consumption for future consumption; and if it does, does it tell us how quickly we should do so? Mankiw’s discussion (which is simplified for his untrained audience) notes that current and future consumers “are not always the same people,”⁷⁸ After noting that a policymaker who cares more about current generations than future generations will not choose to move to the Golden Rule level, Mankiw argues that a policymaker who cares “about all generations equally” will choose the Golden Rule because, “[e]ven though current generations will consume less, an infinite number of future generations will benefit.”⁷⁹ He pushes the point further by arguing that if we heed the biblical Golden Rule, “we give all generations equal weight. In this case, it is optimal to reach the Golden Rule level of capital—which is why it is called the ‘Golden Rule.’”⁸⁰

Even though Mankiw’s analysis stipulates at least the possibility that a social planner might choose to favor one generation over another, his argument amounts to a

⁷⁶ *Id.* at 112.

⁷⁷ *Id.* at 96 (italics not reproduced).

⁷⁸ *Id.* at 97.

⁷⁹ *Id.*

⁸⁰ *Id.*

moral assertion that “an infinite number of future generations” should not be held hostage to the desires of today’s generation not to sacrifice and move toward the Golden Rule. Even a rudimentary knowledge of discounting, though, suggests that it is possible for the losses of an infinite series of future generations to add up to less than the gains of one or more current generations – even if one takes a simple utilitarian approach to measuring well-being. More broadly, it is simply an open question as to whether the potential loss of future incomes (especially if, again, future incomes are already going to be higher than today’s incomes) justifies a sacrifice on the part of current generations.

Indeed, Solow readily concedes that his theory has nothing to say about intergenerational balancing, because his model specifically includes a parameter, j , that represents the marginal social utility of consumption. “The larger j is, the more sharply the marginal social utility of consumption falls, and therefore the more the [policy maker] is likely to favour poor people—ourselves—against rich people—our descendants.”⁸¹

In short, while growth theory does an excellent job of demonstrating the fallacy that it is always more virtuous to save more and thus to build an ever-larger capital stock, it is simply not designed to answer the questions about intergenerational balancing that fiscal policymaking requires. Returning to basic philosophical approaches to justice is thus both necessary and potentially enlightening.

D. Rawlsianism, Utilitarianism, and Intergenerational Fiscal Policy

The starting point for many analyses of distributive justice, of course, is the philosophy of John Rawls. The most direct reference in Rawls’s work to the question of

⁸¹ Robert M. Solow, *Growth Theory: an Exposition* 86 (1969).

intergenerational obligations is his discussion of “the problem of justice between generations.”⁸² Unfortunately, although he at least formulates the issue in terms of a balance between the interests of different generations, Rawls concludes (without much analysis or elaboration) that each generation “must also put aside in each period of time a suitable amount of real capital accumulation.”⁸³ This leaves us to ponder how best to determine what is a “suitable amount” – a quandary that is especially tricky if we take seriously the notion that future generations are already likely to be richer than current generations.

Rawls and the Limits of the Veil of Ignorance

The standard Rawlsian approach to distributive justice, of course, begins with the notion of the so-called Veil of Ignorance.⁸⁴ Rawls posited a hypothetical choice, where a person stands outside of a society and knows the range of possible situations in which people in a given society might find themselves (princes, paupers, healthy, sick, etc.) as well as the likelihood of a random person’s being in any specific social position. No person, however, can know in advance whether they will be one of the lucky ones or the unlucky ones. Each person would then, while still ignorant of their ultimate position in a society, agree or refuse to roll the dice and allow herself to become part of a particular society.

Rawls’s supposition was that people would generally reject the risk of living in a society in which the privation of the least well-off was too extreme (as well as, possibly,

⁸² John Rawls, *A Theory of Justice* 251-59 (1971, rev’d ed. 1999).

⁸³ *Id.* at 252.

⁸⁴ *Id.* at 118-23.

where the distance between the best- and least-well-off was too great). One can, of course, imagine a self-interested individual who might agree to enter a society with some number of desperately needy members, if the likelihood of being one of the needy few is sufficiently low and the rewards of being one of the fortunate are sufficiently high.

Rawls's point, however, was not that anyone actually faces such a choice but that the intellectual exercise of imagining such a choice behind a veil of ignorance could make palpable the notion that society has a responsibility to prevent innocents from being the losers of a cosmic lottery, living their lives in extreme (absolute or relative) want.

One of the most important benefits of Rawlsian analysis, therefore, is that it provides a philosophical underpinning for the altruistic "but for the grace of God, there go I" notion of social obligation. The real-world implication of Rawls's analysis is that redistribution of income and wealth from rich to poor can be justified as a remedy against the fundamental unfairness of accidents of birth. Redistribution makes a society more appealing from behind a veil of ignorance, at least to those with sufficient empathy to imagine being one of the unlucky members of their society.

Rawls was, therefore, most concerned with the well-being of the least well-off members of society. In the context of comparing generations across time, therefore, concern for the least well-off would seemingly translate into a concern for the least wealthy generations. Using this approach, it would thus be clearly unacceptable to transfer resources from a relatively poor generation to a relatively rich one; and it would similarly seem imperative to move resources from the rich to the poor. This would suggest that – rather than heeding the oft-heard calls to reduce current living standards for the benefit of future generations – we should consume more today even though doing so

could lower future living standards, because this would effect a transfer from the relatively rich to the relatively poor.⁸⁵

The concerns that motivated Rawls, however, were not simply a matter of looking at who had the smallest incomes and trying to help those individuals by transferring resources to them from those with more to give.⁸⁶ He was not, in other words, advocating some mechanical and arbitrary narrowing of living standards for its own sake. He was instead concerned that the least fortunate members of society were excluded from full participation in society.⁸⁷ The Rawlsian concern with full citizenship was based on the recognition that being poor almost invariably means being socially and politically powerless. Narrowing the extremes of wealth and poverty not only empowers the poor to become full citizens but prevents the rich from inappropriately dominating the political and social life of society.

None of these concerns, however, translate smoothly into an intergenerational context, especially when we are comparing the well-being of different generations of Americans in a post-industrial economy. The majority of Americans, fortunately, do not live in poverty; and the concerns with basic liberties that motivated Rawls do not appear to arise when comparing the majority of Americans today to the majority of Americans who will be alive fifty or one hundred years from now. It is certainly true that each generation will face different constraints and have different opportunities, but it seems implausible – indeed, it seems to miss the point entirely – to equate the situation of the

⁸⁵ As discussed below, this is no longer true if we disaggregate the analysis and look at income distribution within generations rather than looking at averages.

⁸⁶ An excellent discussion of Rawls's thought on questions of inequality can be found in Linda Sugin, *Property, Taxation, and Distributive Justice: Theories of Distributive Justice and Limitations on Taxation: What Rawls Demands from Tax Systems*, 72 *Fordham L. Rev.* 1991 (2004).

⁸⁷ *Cf. id.* at 2005 n.71 (“Rawls would assure a decent social minimum covering basic needs.”)

current average citizen in the United States with that of a person whose position is so unacceptable that anyone behind a veil of ignorance would be unwilling to risk living in a world where a person might occupy such a position.

In fact, on a fundamental level, the concerns that motivated Rawls are reversed in the intergenerational context. As Rawls put it: “Justice does not require that early generations save so that later ones are simply more wealthy. Saving is demanded as a condition of bringing about the full realization of just institutions and the fair value of liberty.”⁸⁸ Rawls’s concern was therefore with whether people could enjoy the full benefits of citizenship and humanity; and his theory would call for us to intervene only when it is necessary to do so to prevent the subjugation of a disadvantaged person or group.⁸⁹

From an intergenerational perspective, by contrast, it is the current (relatively poor) generations who are making decisions without the participation of the future (relatively rich) generations. If anything, current generations have the power to make future people truly miserable (or even never to exist at all) with only their own consciences to stop them from doing so. Viewed from that perspective, it is actually rather impressive that human beings have done as much as they have over the millennia to improve the lives of future generations. At the very least, however, it suggests that the motivating concerns in the Rawlsian approach are simply absent in the intergenerational context. Rawlsian arguments in favor of *intragenerational* redistribution have little or no resonance *intergenerationally* precisely because it is the least well off who hold all the

⁸⁸ Rawls, note __, at 255.

⁸⁹ *See id.* at 2005-07 (discussing Rawls requirement that a just society provide everyone with a core set of “basic liberties”).

power.

Utilitarianism and Generational Transfers

Simple utilitarianism, on the other hand, would appear to argue unambiguously in favor of redistributing from future generations to current generations. Making the usual assumptions that individual utilities can be compared and are not dominated by logical difficulties such as “utility monsters,”⁹⁰ an intergenerational comparison is no different from an intragenerational one. If a future generation is going to have higher incomes than a current generation, redistribution across time from the future to the present will increase total utility. Special assumptions can always be added, but as a starting point, intergenerational redistribution in the backward direction seems to be where the theory points.⁹¹

Shaviro, for example, describes a “straight utilitarian framework” which would aim “to maximize aggregate well-being over time, [with] no specific duty to future generations other than weighing their welfare equally per capita with ours.”⁹² “[S]ubject

⁹⁰ See, e.g., Buchanan, Long-Term Deficits, note __, at 324 (describing utility monsters as “rich people whose subjective enjoyment from increased consumption is so much greater than other people’s enjoyment that a utility-maximizing social planner would continue to shift consumption to them from poor people because the monsters’ increase in happiness is, in the aggregate, worth it. Redistribution from poor to rich, under such an assumption, would increase total utility.”)

⁹¹ In an introductory note summarizing the papers in a symposium on intergenerational equity, Weisbach and Sunstein conclude that “[t]he major question comes down to the choice of a discount rate.” David A. Weisbach & Cass R. Sunstein, *Symposium on Intergenerational Equity and Discounting*, 74 U Chi. L. Rev. 1, 1 (2007). They further note, though, that “[m]ost of the authors also believe that the precise discount rate depends on a variety of empirical as well as ethical factors, such as the estimate of the future productivity of the economy.” *Id.* at 3 (emphasis added). Therefore, the likely relative income of future generations will matter in determining the justice of a decision to shift resources from a richer future to a relatively poorer present. Standard assumptions about diminishing marginal utility can easily support this conclusion, as implied in my discussion above regarding Mankiw’s arguments about the Golden Rule and in the discussion below.

⁹² Shaviro, Reckless Disregard, note __, at 1331.

to concern about its efficiency costs,”⁹³ Shaviro concedes that if one assumes that wealth has diminishing marginal utility, “one might think that utilitarianism offers support for significant redistribution from future to current generations, assuming again that technology really does assure that things will continue to improve.”⁹⁴ Shaviro offers three brief arguments as to why the current fiscal policy adopted by the Bush administration might be too present-oriented, the third of which is relevant here.⁹⁵ He argues, in short, that we might be pushing things too far, i.e., that we might be taking so much away from future generations that we would not equalize incomes across generations but would instead change who gets to be rich and who must live in relative poverty.⁹⁶ Even taking that argument at face value, this is not an argument against redistribution from the future rich to the current relatively non-rich but rather an argument that it is possible to overdo it. If the economic forecasts provided by the Social Security Trustees are at all reliable, though, the most pessimistic path implied by our current policy regime still results in incomes more than doubling over the next seventy-

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ Shaviro’s first two arguments are that it is possible that future generations might have more valuable things on which to spend their money, such as brain cancer cures that are not currently available, and that the longer lives of future generations will require them to have more resources. *Id.* at 1332. Neither argument is convincing, however, if one confines oneself to a utilitarian framework. First, if brain cancer cures become available in the future, and if people value those cures highly, then utilitarian analysis implies that those future people can decide how much of their resources to devote to curing brain cancer cures as opposed to, say, buying flying cars and facial transplants. Individual utility maximization would still, under the usual assumptions, allow people to make choices that would allocate cancer cures and all other goods to their highest-valued uses. Second, and similarly, the likelihood that future people will live longer lives does not argue for their being given greater resources. They will face the same choice faced by everyone living in any time period, i.e., how much to work (and for how many years) such that they will have a standard of living that is acceptable to them, given their preferences. If anything, that they will have more healthy years to accumulate savings for their retirement years is an argument they will require less “seed money” than do people today whose lives are shorter and less healthy.

⁹⁶ *Id.* (“We simply may be imposing too great a burden on them for it to be worth the benefit to us even if our marginal utility of a dollar is greater than theirs.”).

five years.⁹⁷ The possibility of a crisis arising before then, which appears to animate Shaviro's argument,⁹⁸ is a very legitimate but separate concern, as I discuss below.

The utilitarian approach, therefore, suggests that we are doing too little rather than too much for the benefit of future generations.⁹⁹ This leads to the interesting implication that a utilitarian might be more likely to favor a more present-oriented fiscal policy than a Rawlsian might be. Lacking data on relative marginal utilities, of course, the utilitarian would still not be able to say more than that some redistribution from the future to the present could be justified (short of strict equality of outcomes, which would be required if all personal utility functions were identical); but that would still be a significant step forward, since it would suggest not only that there is a moral obligation between generations but that the appropriate way to meet that moral obligation is to balance material well-being across generations. Strict utilitarianism thus offers a basis not present in Rawlsian analysis for affirmatively choosing to reorient current fiscal policy away from investment and toward consumption.¹⁰⁰

I should emphasize that I am neither endorsing nor rejecting utilitarian analysis as a method for assessing social policy – though it is probably by now clear that I view the approach with some skepticism. Rather, the interesting conclusion here is that a very

⁹⁷ See note ____.

⁹⁸ Shaviro, *Reckless Disregard*, note ____, at 1332 (“Recall the scenario whereby the fiscal gap generates not only very high tax rates but also a capital market meltdown.”)

⁹⁹ It is, of course, quite simple to alter a utilitarian framework to include intergenerational altruism (or any other concern). For example, if one simply asserts that current generations include in their utility functions “the material well-being of future generations,” and if one further assumes that increases in this variable increase the utility of current generations with sufficient weight, then there is no barrier to concluding that intergenerational utility could be maximized by moving resources from current to future generations. This approach, however, simply assumes its own conclusion.

¹⁰⁰ But see Tyler Cowen, *Caring About the Distant Future: Why it Matters and What it Means*, 74 U Chi. L. Rev. 5, 16 (2007) (arguing for a “Principle of Growth,” in which policy should maximize the rate of sustainable economic growth).

standard utilitarian analysis seems to argue against the conventional wisdom that we are doing too little for future generations. If we are to conclude that we owe more to future generations than we have already provided, the justification must come either from altering the assumptions of the utilitarian approach or using a different approach altogether.

E. Inadvertent Intergenerational Generosity

The analysis above thus leads to a surprising and potentially unsettling conclusion: We might want to make the deliberate choice to lower the living standards of future generations in order to raise current living standards. Because future Americans are highly likely to have much higher living standards than current Americans, we are arguably moving in the wrong direction when we call for current sacrifice in the name of intergenerational justice.

Even if we took that conclusion seriously, however, there might be reasons not rooted in theories of intergenerational justice that would justify the enactment of policies that would end up helping both current and future generations. If so, then we might find ourselves in the odd position where thinking in intergenerational terms would actually lead to policies that would make future generations worse off, whereas thinking “selfishly” could lead to policies that make future generations better off. Three such possibilities are described below.

Avoiding Economic Crises

As discussed above, the literature on Generational Accounting is frequently presented in very long time frames and with explicit reference to our obligations to future

generations. Nevertheless, one of the motivating concerns about the path of fiscal policy that the generational accounts try to capture is the notion of sustainability. Recent estimates of the fiscal gap have been in the range of \$40-\$70 trillion dollars. While there are reasons that those estimates might be too high or too low (if one concedes in the first place that the generational accounting approach provides a meaningful guideline to policy), the key warning raised by those numbers is that there is any gap at all. If there is a gap, then the current path of fiscal policy is unsustainable. The magnitude of the estimates then becomes important to determine how much fiscal tightening must be undertaken to bring the fiscal system into long-term balance.

The fact of unsustainability, if it is indeed a fact, means that the planned path of borrowing and spending must be changed. Until such changes are made, the economy might start to react to the imbalance slowly or suddenly. If it reacts slowly, interest rates begin to rise as the financial markets respond to excess borrowing by the federal government. The higher rates change the behavior of private actors, and we hope that it would change the behavior of government decision makers at that point as well. This is why it is often said that tax cuts today are tax increases in the future. Fiscal choices must always be paid for eventually.

When the reaction to long-term imbalances is slow and potentially remediable through changes in policies in intervening years, the intergenerational tradeoff – and thus the question of what we owe future generations – is presented squarely by a potential fiscal gap. We can make choices now that raise the fiscal gap and hope, if we are unconcerned about any generations but our own, that the day of reckoning will come after we are gone. We will, though, do so only because we are willing to take something

away from future generations for ourselves. Whether those future generations are likely to be significantly better off in the first place, as discussed above, has nothing to do with this approach to understanding fiscal policy. Intergenerational justice is front and center.

What if the unsustainable fiscal policy causes a sudden adjustment rather than a gradual one? A financial market collapse, perhaps centered around a currency crisis, is one possibility raised by a number of commentators who are concerned about U.S. fiscal solvency¹⁰¹. The possibility of a sudden and violent adjustment in response to fiscal unsustainability exists from the moment that we enact policies that are no longer sustainable. Thus, if the estimates of the fiscal gap that have been published over the last decade or so have been correct, our fiscal policy has been and continues to be unsustainable, and the only question is when we will be forced to change. We have been lucky so far, according to this view, but our luck might run out slowly or at a moment's notice.

If policy makers become convinced that they must act now in order to avoid a crisis and a potential economic meltdown of historic proportions, they would enact a set of policies that would by assumption be growth-inducing in the long run because they would reduce crowding out in the financial markets and thus would raise investment and the growth of GDP/capita. This would mean that we would be enacting policies that are

¹⁰¹ See, e.g., Shaviro, *Reckless Disregard*, note __, at 1326-27 (“[P]otentially even worse, however, is the scenario of fiscal distress experienced recently by such countries as Brazil and Argentina. Governments that are unable to meet their outstanding commitments in any politically tolerable way are prone to respond by printing money, thereby generating hyper-inflation. This in itself can be economically destructive, for example, by increasing financial uncertainty and forcing the use of barter rather than money. Even before hyper-inflation emerges, however, nominal interest rates may skyrocket as soon as financial markets begin to anticipate it as a likely response. Moreover, real interest rates may skyrocket even if the government initially resists the temptation to print money, leading to recession (because fewer business investments can meet the hurdle rate from borrowing) and making the temptation all the greater. Thus, actual government default becomes ever more likely because cheap borrowing to float the annual budget deficit is no longer an option.”)

in our own best interest, as determined by our newfound unwillingness to risk the financial crisis about which we have been warned. That this change in policy would also benefit future generations would be purely incidental. Therefore, a policy that makes us currently better off might also be growth-inducing, but it need not have been enacted as a result of any sense of obligation to future generations. We might feel good about ourselves, knowing that we are also making our children and grandchildren better off, but we did not go through a process where we convinced ourselves to give something up on behalf of someone else. There was no tradeoff.

Avoiding Political Crises

A second argument that involves making growth-inducing policy choices for reasons that are not, at least in the first instance, motivated by intergenerational concerns involves the potential benefits of economic growth on the social and political culture. Benjamin Friedman makes a compelling argument that we need to allow the economy to grow at some positive rate sufficient to prevent the least advantaged in society from becoming so disengaged from the economy and the society that they have no stake in continuing the status quo.¹⁰²

The most direct motivation for this argument is clearly Nazi Germany, where the economic sanctions and constraints imposed by the victors of World War I led to economic crises in Germany (including a historic hyperinflation) that paved the way for Hitler's rise and the horrors that followed.¹⁰³ Similarly, the strongest showing that the Communist Party ever made in the United States was during the Great Depression. The creation of large numbers of desperate, angry former workers clearly raised the danger

¹⁰² Benjamin M. Friedman, *The Moral Consequences of Economic Growth* (2005).

¹⁰³ *Id.* at 267-94.

that the system could collapse. If this story is true, and it does have a great deal of explanatory power, the New Deal programs that mitigated the pain for unemployed and desperate Americans might be what saved capitalism in the United States.

There are, of course, less dramatic connections between poor economic performance and political and social unrest. Friedman admittedly cannot quantify exactly how bad things can become economically before the world becomes a more dangerous place. It is also possible that people will not respond to the same variables at different times, with inflation being sufficient to ignite unrest at some times but not at others, and economic contraction leading to crises in some contexts but not others. More abstractly, even if people are reacting to a particular variable (such as the rate of growth of GDP/capita), they might begin to take growth at some levels for granted and become dissatisfied unless the economy grows faster. In other words, they might stop responding to the level of a variable and instead look to its rate of growth, or they might not respond to its rate of growth and will only respond to acceleration of the variable.

Such mathematical variations are interesting, to be sure, but the evidence seems to be that unrest can be avoided with some positive growth rate in GDP that is associated with reasonable stability in prices and reasonably good job prospects for those who wish to work. This is an argument for at least a mildly interventionist set of monetary and fiscal policies, with government officials at least committing themselves to stepping in when the economy starts to look too shaky for too long. Chances are, of course, that a minimally functioning representative democracy would generally produce such a policy regime.

As above, though, the distinction here is that such a policy regime would make

sense even if we were completely unconcerned about the prospects of future generations. Those who follow us would inherit a richer economy than their parents had inherited, which might well make them happy. No calculations about how to trade off the present against the future, however, were necessary.

In short, it could well be that there are incentives in place that will cause us to provide a rosy future for recently born and not-yet-born generations notwithstanding any debates about intergenerational obligations. If the analysis later in this article were to cause anyone to wonder whether we need to have growth, it is well to recall that there are other reasons to make an economy grow besides our concern for our grandchildren. If we are going to think explicitly about those future people, though, the guidance from the available analytical frameworks is surprisingly limited.

IV. Distributive Justice and Long-Term Fiscal Issues

The discussion in the previous two sections has led to two tentative conclusions. First, given that living standards are likely to be higher in the future than they are today, there is not only no apparent reason for current generations to feel guilty about harming their children and grandchildren but, in fact, they should probably be fulfilling their own desires more and saving less for their heirs, since future generations will likely be much better off than are today's adults (at least as measured in standard economic terms) even without additional investments in future economic capacity. Second, even if current generations are completely selfish and thus do not take into account the interests of future generations when formulating economic policies, we are still likely to adopt policies that end up making future generations better off, notwithstanding whether or not we care to do so.

For those who might feel uncomfortable with the idea that we have already done enough for future generations or who are unwilling to imagine that we might, in essence, blunder our way into a more prosperous future, the analysis can be expanded in a number of directions. First, we can look beyond the borders of the United States and note that many regions around the world are not nearly as economically prosperous as we are.¹⁰⁴ While such an analysis is likely to suggest that we should be spending more now to bring the world up to something like Rawls's minimum acceptable level rather than saving to increase future living standards, an international analysis would certainly look very different from one based on forecasts of high and rising U.S. living standards. Second, it is possible to expand our focus beyond traditional measures of economic living standards and bring back into the analysis issues such as environmental justice. As discussed earlier, the environmental dimension could radically alter our views about whether current policies are helping or harming future generations.

It is not, however, necessary to move beyond traditional measures of economic well-being to expand the analysis in useful directions.¹⁰⁵ Even continuing to set aside non-domestic concerns and non-economic issues like environmental justice, analysis of intergenerational obligations can be enriched and significantly transformed by thinking

¹⁰⁴ International Labour Organization, *New ILO Report Says US Leads the World in Labour Productivity, Some Regions Are Catching Up, Most Lag Behind*, http://www.ilo.org/global/About_the_ILO/Media_and_public_information/Press_releases/lang--en/WCMS_083976/index.htm, Sep. 2, 2007 (describing a new report showing that “1.5 billion people in the world – or one-third of the working-age population – are ‘potentially underutilized’. This new estimate of labour underutilization is comprised of the 195.7 million unemployed people in the world and nearly 1.3 billion working poor who live with their families on less than US\$ 2 per day per family member. Whereas the unemployed want to work but lack the opportunity to do so, the working poor are working but do not earn enough to escape poverty. The report also estimates that half of all women and men employed are considered vulnerable to poverty.”)

¹⁰⁵ As noted above, I plan to write a sequel to the current article in which I will expand the analysis to address concerns of environmental damage and global poverty. The goal in the present article is to explore what can be learned when we limit ourselves to traditional economic measures.

about intergenerational issues applying concepts of distributive justice to questions of poverty within and across generations. The analysis to this point, after all, has treated each generation as an undifferentiated whole, with average GDP per capita used as a measure of how one generation's well-being compares to another's. Given that incomes within a living generation are unequal, we can and should ask whether the concepts of distributive justice that are typically applied to intragenerational analysis can tell us anything useful about intergenerational obligations.

The question of intergenerational justice can thus be analyzed not only by comparing average living standards across time but by disaggregating living standards within current and future generations. The more committed we are to egalitarian principles, the more important it is to focus on the living standards of the poorest people at any give time rather than relying on averages.

Distributive justice has, in fact, been the focus of the analysis all along. Comparing the living standards of current versus future generations is fundamentally a matter of asking whether economic well-being is likely to be distributed fairly across generations. We need only expand this question to look at intragenerational distributive justice and then combine the intra- and intergenerational perspectives to embrace a more comprehensive approach to distributive justice. Those who worry about our obligations to future generations are focused too narrowly on only one dimension of distributive justice, but this is not the same as the familiar move of focusing on efficiency while setting distributive issues aside entirely.¹⁰⁶ We are all distributivists now.

¹⁰⁶ See, e.g., Louis Kaplow, *Discounting Dollars, Discounting Lives: Intergenerational Distributive Justice and Efficiency*, 74 U Chi. L. Rev. 79, 99 (2007) (arguing that “in principle, intergenerational efficiency should be pursued independently of how questions of intergenerational distributive justice are answered”).

A. “Average” People are not Average

The distribution of income or wealth over a given time period is a relatively simple matter of comparing people within an economy and describing the statistical facts about the distribution. People can be divided into population quintiles, deciles, or any other arbitrary breakdown and their incomes or levels of wealth compared.¹⁰⁷ The income distribution in the United States shows the richest quintile accounting for over half of all income earned in recent years.¹⁰⁸

Even without breaking incomes into income groups, it is possible to see distributional differences by comparing the median income in an economy with the mean income. In 2006, for example, the median income in the United States was \$48,201, while the mean income was \$66,570.¹⁰⁹ Similarly, while median household income rose by 0.7 percent from 2005 to 2006,¹¹⁰ while mean or per capita household income rose by 1.9 percent.¹¹¹ Because “[u]nlike medians, per capita and means are affected by high incomes,”¹¹² the larger increase in per capita income flows from the increases among high income earners.

To illustrate, if three people have incomes of \$25,000, \$50,000, and \$75,000 in one year and \$25,000, \$50,000, and \$750,000 the next, the median income in both years is \$50,000, while per capita income jumps from \$50,000 in the first year to \$275,000 in the second. Only one person is better off, but their ten-fold increase in income pulls up

¹⁰⁷ See, e.g., U.S. Census Bureau, *Income, Poverty, and Health Insurance Coverage in the United States: 2006*, at 7 (The Census Bureau “ranks households from lowest to highest on the basis of income and then divides them into groups of equal population size, typically quintiles.”)

¹⁰⁸ *Id.* at 4 tbl. 1 (showing the highest quintile with 50.4% of income in 2005 and 50.5% in 2006).

¹⁰⁹ *Id.* at 29 tbl. A-1.

¹¹⁰ *Id.* at 4.

¹¹¹ *Id.* at 10.

¹¹² *Id.* at 10 n.22.

the average dramatically.

Something essentially similar has been happening in the United States over the last few years and, to a certain extent, over the last few decades. For example, although the median income rose from 2005 to 2006, “this merely brought median income back to where it stood in the 2001 recession year.”¹¹³ During those years, per capita GDP rose by a total of roughly eight percent, implying that the growth in the economy since the last recession has only raised the living standards over those with higher incomes.

Over a longer time horizon, the changes in median income across different income groups have reflected an increasing concentration of income at the top of the distribution:

“Income in the period between 1967 and 1999 grew considerably faster among wealthier households than it did among poorer households. For example the household income for the 80th percentile, the lower threshold for the top quintile, rose from \$55,265 in 1967 to \$86,867 in 2003, a 57.2% increase. The median household income rose by 30% while the income for the 20th percentile (the lower threshold for the second lowest quintile) rose by only 28% from \$14,002 to \$17,984.”¹¹⁴

It is, therefore, possible that the economy can grow without actually increasing the living standards of large numbers of Americans at all over short periods, while it is similarly possible that growth over long periods does not filter to everyone equally. One could still argue that we need even higher growth to raise the incomes of middle- and lower-class Americans, it is much more plausible to focus directly on the income distribution and to make it a policy goal to redistribute income rather than to continue to

¹¹³ Center on Budget and Policy Priorities, *Number and Percentage of Americans Who Are Uninsured Climbs Again*, <http://www.cbpp.org/8-28-07pov.htm>, Aug. 31, 2007.

¹¹⁴ Wikipedia, *Household Income in the United States*, http://en.wikipedia.org/wiki/Household_income_in_the_United_States#Household_income_over_time, visited Sep. 6, 2007.

hope that GDP growth will trickle down to all income levels. Indeed, some economists who were once focused on increasing growth are now looking explicitly at reducing inequality.¹¹⁵

My argument here is that we must include in our discussions of income inequality an explicit concern with income inequality over time, including a comparison of how policies will affect the rich and the poor at different times, as I describe immediately below. Even without that combination of intra- and intergenerational distributive justice analysis, though, it bears mentioning that Benjamin Friedman's argument noted above (to the effect that increases in economic well-being are an essential element of maintaining social and political stability) clearly must presume that economic growth is widely shared, since social peace is hardly likely to be preserved in a new gilded age where a few at the top get richer while everyone else's incomes lag behind. Pursuing annual increases in economic output for our own good, therefore, requires that any gains be widely distributed, if not actually deliberately distributed toward the lower rungs of the income ladder.

B. Intergenerational Justice as a Distributive Matter

The variation in incomes within generations is much, much greater (even within a wealthy country like the United States) than variations in average income levels even over the course of a very good century or three.¹¹⁶ Comparing the United States to the

¹¹⁵ Matt Bai, *The Poverty Platform*, N.Y. Times Mag., Jun. 10, 2007, at 69 (describing Stanford economist Paul Romer, "one of the world's leading theorists on economic growth," who "has changed his focus [to] the next great challenge in American economics: mitigating inequality.")

¹¹⁶ This assertion, though stated somewhat playfully, is not an exaggeration. Imagine that an economy were to grow at a four percent annual rate, which would be historically unprecedented. See Lester Thurow, *A Chinese Century? Maybe It's the Next One*, N.Y. Times, Aug. 19, 2007, § 3 at 4 ("A 4

rest of the world only sharpens the point. It is therefore essential to disaggregate each generation's income levels and to compare the positions of various representatives of each generation in making fiscal policy decisions.

Adding an intergenerational dimension to the distributive analysis of economic outcomes appears at first glance to add a complicating dimension, forcing us to think not only about differences in income at any point in time but about differences in income over time as well. Fortunately, however, the analysis simplifies nicely. Rather than thinking about intergenerational differences in income as categorically different from intragenerational differences, all income comparisons – even those between people at different points in time – should be analyzed in the same way. Distributional analysis across time is then no different from more familiar forms of distributional analysis, and the questions (though hardly easy) at least become familiar.¹¹⁷

For example, if we are currently considering a policy that redistributes income from future generations to the current generation, we would want to know who in the

percent rate is faster than any big country has ever grown for 100 years.”) Assuming further that this translated to a 3 percent growth rate on a per capita basis, this would mean that per-capita GDP would double in 24 years and double again every 24 years thereafter, because of the effects of compound growth. Even at that rate, GDP/capita would be slightly less than 20 times higher after a century, meaning that someone currently earning \$20,000 per year would be able to earn (if they were still alive and in the same job) just under \$400,000 in a year. After two more centuries of unprecedented growth, the \$20,000 per year worker would earn almost \$142 million annually. This would almost cover the distance between the current working poor and corporate chief executives but still leave the future worker's income at a fraction of the current incomes of hedge fund managers. See Michael K. Ozanian and Peter J. Schwartz, *Wall Street's Highest Earners*, *Forbes*, May 21, 2007, http://www.forbes.com/free_forbes/2007/0521/102.html (“Reaping the rewards of percentage fees, the 20 top Wall Street fund managers earned an average of \$658 million in 2006 versus \$145 million for the 20 highest-paid chief executives. It's almost enough to think the chiefs ought to ask for a raise. James Simons, who owns an estimated 40% of Renaissance Technologies, sits atop our list with earnings of \$1.5 billion.”)

¹¹⁷ Kaplow makes a similar claim that intergenerational analysis is in certain instances not significantly different from intragenerational analyses. Louis Kaplow, *Discounting Dollars, Discounting Lives: Intergenerational Distributive Justice and Efficiency*, 74 U Chi. L. Rev. 79, 116 (2007). Although he focuses on a point not directly relevant here, he suggests that “accepted principles of policy analysis developed in the intragenerational context carry over” to inform his analysis. *Id.* at 116. Matthew Adler makes an argument with similar implications, as I discuss below. See Matthew D. Adler, *Economic Growth and the Interests of Future (and Past and Present) Generations: A Comment on Tyler Cowen*, 74 U Chi. L. Rev. 41 (2007).

current generation will gain and who in later generations will lose. If the loss in income in the future were to be equal across the board while the present gain would accrue only to the richest members of the current generation, it borders on the absurd to justify such a policy by appealing to the diminishing marginal utility of “richer” future generations or to rely on any other notion of distributive justice to justify what is in fact an upward redistribution of income. Poor and middle-class people in the future would be subsidizing the lifestyles of the current rich and famous.

Moving to a realistic example, consider policies that have been proposed to “save” Social Security by raising taxes on current workers or to reduce benefits payments to current retirees.¹¹⁸ If the Social Security Trust Fund is ultimately depleted, it will be necessary either to cut benefits for future retirees, to raise taxes on future citizens, or to engage in deficit spending (which pushes the cost onto citizens in the more distant future). Even if future policymakers immediately reduce benefits to retirees in the year of depletion, it turns out that the necessary cuts would still leave future retirees (who will have spent their lives earning more than current retirees earned, on average) with higher inflation-adjusted retirement benefits than current retirees receive.¹¹⁹ As a distributive matter, therefore, cutting benefits today to preserve benefits in the future would amount to a regressive shift in income from a relatively poor group to a relatively rich one.

Similarly, a plan to increase taxes today in order to preserve benefit levels for Social Security in the future – or to make tax increases in the future unnecessary – can only be judged if one knows whose taxes are being raised and whose taxes are being cut.

¹¹⁸ See generally Neil H. Buchanan, *Social Security and Government Deficits: When Should We Worry?* 92 Cornell L. Rev. 257 (2007); Nancy J. Altman, *The Battle for Social Security: From FDR’s Vision to Bush’s Gamble* (2005).

¹¹⁹ Buchanan, *Long-Term Deficits*, note ___, at 300.

It would be possible to raise taxes today on the highest income earners in order to finance Social Security benefits in the future, which would be distributionally progressive.

Raising payroll taxes today, by contrast, would be regressive in that it would tax only wage income today in order to finance the benefits of richer people in the future or – as an even more regressive possibility – making it unnecessary to raise income taxes in the future (potential tax increases that could be targeted to the highest income earners in a future filled with relatively high income earners).¹²⁰

The most promising way out of the intergenerational balancing question, then, is simply to view the question of intergenerational justice as equivalent to questions of intragenerational justice. While it is likely in some instances to be more difficult to make predictions about the distributive impacts of policies on future generations, we can at least look at whatever data are available to guide our policy choices. As a starting point for evaluating any policy, we would compare the distributive effects of each policy option both currently and in the future, using the same (admittedly imperfect) tools that we currently use to assess distributive justice.

It is surely true, of course, that we have not yet succeeded in agreeing how progressive the tax system should be (or even whether that is the right way to think about distributive justice¹²¹), but there is something to be gained by not having to invent a separate theory of justice when confronting intergenerational questions. Familiar

¹²⁰ As I have argued elsewhere, the payroll tax increases passed by Congress in 1983 were a relatively regressive tax policy in that they made it unnecessary to rely on the much more progressive federal income tax to prevent shortfalls in funding Social Security. *See* Neil H. Buchanan, *The Trillion-Dollar Breach of Contract: Social Security and the American Worker* (Aug. 30, 2001), http://writ.news.findlaw.com/commentary/20010830_buchanan.html. In light of the highly regressive tax cuts of 2001 and 2003, raising payroll taxes even further today would amount to a decision to pile one regressive tax increase on top of another in order to finance regressive tax cuts.

¹²¹ *See* Liam Murphy & Thomas Nagel, *The Myth of Ownership* 131-32 (2004) (discussing the shortcomings of discussing progressivity “in terms of traditional tax equity standards alone, rather than in terms of larger standards of societal justice”)

controversies regarding the possible disincentive effects of tax policies,¹²² etc., would still be relevant, as would questions of poverty thresholds, steepness of progressive rate structures, and so on. As the discussion of Social Security proposals above demonstrates, however, even if we lack definitive theories of ideal progressivity, we can still use distributive measures to inform policy debates.

An alternative approach would be to refuse to continue to muck around with the current seemingly unresolvable debates over progressivity, etc. – and certainly to refuse to extend that frustrating philosophical standoff into a new dimension of policy analysis. Instead, we might want to take the opportunity to break out of our current political and philosophical stalemate and force ourselves finally to find a satisfactory social welfare function which we would then use to determine optimal distribution of incomes and other measures of well-being. Matthew Adler offers a particularly nice summary of the variants of welfare consequentialism within the current literature on income distribution,¹²³ using that discussion to demonstrate that, even in a welfare consequentialist framework, it is possible for adherents of any of the three versions of non-utilitarianism to favor policies that do not maximize economic growth over time. He thus concludes that even if we are willing to limit our philosophical analysis to one limited class of social welfare theories, it is still necessary to “do the hard, philosophical

¹²² Every public finance textbook includes extension discussions of tax “distortions,” i.e., the effects of taxes on economic behavior. See, e.g., Joseph E. Stiglitz, *Economics of the Public Sector* 518-49 (3rd Ed. 2000).

¹²³ In addition to utilitarianism, Adler describes Prioritarianism (which gives “greater weights to changes in well-being that affect individuals who are worse off”), which at the extreme becomes the leximin principle (a strict application of the principle noted above, in which policies are chosen strictly on the basis of their effects on the poorest members of society). Comparativism expands the analysis to the effects of policy changes on other individuals beyond those directly affected by a policy, and Sufficientism gives “greater weight, or perhaps absolute priority, to welfare changes that affect individuals below some well-being threshold.” Matthew D. Adler, *Economic Growth and the Interests of Future (and Past and Present) Generations: A Comment on Tyler Cowen*, 74 U Chi. L. Rev. 41, 44-45 (2007).

work of figuring out which specific social welfare function policymakers should use.”¹²⁴

Adler does immediately note, however, that it is possible to see the determination of a social welfare function as “an irreducibly subjective matter, appropriate for legislators rather than scholars,”¹²⁵ where the ultimate decision about intergenerational policies must be made through the political process. This seems right not only as a predictive matter (that is, because it seems unlikely that more “hard, philosophical work” on social welfare functions will produce significant breakthroughs, especially in the political arena) but as a practical matter as well. Even as scholars try to sort through the arguments regarding social welfare functions and discern the implications of those arguments for policy, decisions are being made with both intragenerational and intergenerational implications. We might be able to make some improvements in our policy analysis if we can move away from the belief that intergenerational welfare comparisons are fundamentally different from intragenerational comparisons *and* if we use that as an opening to introduce distributive justice issues more directly into the analysis of fiscal policies.

C. Combining the “Better than Me” Standard with Distributive Justice

We could, therefore, improve our understanding of fiscal policy proposals by focusing on distributive questions both within and across generations. Adopting this approach would, moreover, have an additional advantage if we were to use it as a starting point to bring distributional concerns into discussions of our obligations to future generations. For example, even if we simply adopted a simple version of the “better than

¹²⁴ *Id.* at 47.

¹²⁵ *Id.*

me” approach to intergenerational justice, we would be a step ahead if we looked at generational income distributions and turned “better than me” into something like “better than our current average.” That is, recasting intergenerational obligations as distributive obligations would highlight the fact that some children have parents whose income and life situation are extremely low. Proceeding from a shared goal that everyone should do better than their parents could be an entrée into an argument about the profound disadvantages that weigh on the children of poor parents. We should not allow inequalities to pass across generations simply by being satisfied that children whose parents were at the bottom of the economic barrel might manage to nudge past their parents.

Wanting our children to do better than we have done can thus become a starting point for saying that no child should do worse than some minimum standard, where that minimum standard is determined by reference to the entire society rather than to the circumstances of one’s parents. Adopting such an approach could shine a better light on inequality, allowing us to use the most viscerally appealing argument for intergenerational justice and to apply it with a clear focus on distribution.

To be clear, the analysis above suggests that we must not only evaluate all fiscal policy proposals on the basis of their distributional impact (both within and across generations) but that we should reject any proposal that says nothing more than: “We should change our economic policies for the benefit of future generations.” That argument, standing alone, is not enough to justify a change in policy that would take from current generations for the benefit of future generations, especially given the projections of future economic growth discussed above. Even without strong growth in the future,

moreover, the best argument that we owe more to future generations starts with a distributional concern that says that children – all children – have the right to start life above (or at least at) the level that currently living people consider to be a bare minimum.

V. Conclusions

Virtually every area of social and economic policy can be viewed through the lens of intergenerational obligations. What must current generations do to provide a minimally decent world for future generations? Do they owe anything at all? If so, how should we balance the interests of current and future generations?

In this article, I briefly summarized some of the literature on intergenerational justice, showing that the threshold question of whether there are any intergenerational obligations is a surprisingly difficult one. In the course of that discussion, I identified a number of important issues that are implicated by broad questions of intergenerational justice, including questions of environmental preservation, population levels, etc. The issues implicated by intergenerational concerns can be cast as broadly as the imagination allows.

Having discussed just how broad the issues can be, I then asked whether we might at least be able to reach some simple conclusions about intergenerational justice if we strictly limit ourselves to analyzing one arguably narrow issue – budgetary policy over time – asking only whether there is a generationally equitable way to determine the balance between consumption for the present and investment for the future. This analysis is particularly important in light of the forecasts showing much higher living standards for future Americans. The surprising conclusion is that there are, if anything, fairly plausible arguments that we are doing too much for future generations, not too little.

Feeling some discomfort with this conclusion, I then discussed how we might actually do better by future generations if we simply focus on present-oriented concerns, specifically: avoiding fiscal crises, maintaining political stability, and weighing policies from a distributive viewpoint.

Paradoxically, therefore, approaching fiscal policy questions from an explicitly intergenerational perspective leads to conclusions that might lead us to lower the living standards of future generations, whereas we might do better by our grandchildren simply by enacting responsible policies that improve our current situation; and to the extent that we are able to expand our focus from average living standards to encompass distributional concerns, treating intergenerational issues in the same way that we treat equity questions within a generation is a potentially more promising approach to formulating fiscal policy. I thus conclude that we might end up doing both current and future generations a favor by thinking less about the future and more about the present.

In short, I reach two related conclusions. First, and quite surprisingly, if we are concerned only about present versus future *average* living standards, we are already doing very, very well by future generations. Second, we should also be concerned about the *distribution* of living standards; and the distribution of income and wealth both currently and in the future is grossly and unacceptably unbalanced. Quite simply, the gap between rich and poor is too large; and the depths of poverty are too extreme. We should, moreover, be concerned about distributive justice both currently and across generations, moving resources away from those with the most and toward those with the least, whenever those people might be alive. If we are to be good stewards of the future,

we must also be good stewards of the present.

Ultimately, therefore, I take a pragmatic position. Recasting intergenerational issues as questions of distributive justice provides an opportunity to improve policy analysis and social equality. We should make the most of this opportunity to improve policy analysis – for ourselves and for future generations.