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# What Do We Owe Future Generations?

Neil H. Buchanan\*

## *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. Even if it is unlikely that many of our decisions (especially the smaller ones) will affect the general course of history, the possibility of doing so 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 a 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 overemphasizing 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.

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Because of these moral obligations that carry forth from generation to generation, concerns about the well-being of future generations loom large over discussions of public policy. From politicians to pundits,<sup>1</sup> from analysts at serious policy think tanks<sup>2</sup> to scholarly writers,<sup>3</sup> the notion that current generations have obligations to the fu-

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<sup>1</sup> 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, for example, Al Franken, *Addictions and Mr. Reagan*, N.Y. TIMES, July 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.”); *Scarborough Country* (MSNBC television broadcast Feb. 17, 2005) (comments of Hugh Hewitt), transcript available at <http://www.msnbc.msn.com/id/6993104> (“Republicans led by George W. Bush are laying out reasonable alternatives to fix a major problem that will affect everyone’s children and grandchildren.”); *Scarborough Country* (MSNBC television broadcast Sep. 7, 2004) (comments of Joe Scarborough), transcript available at <http://www.msnbc.msn.com/id/5942259> (“You know what I say to these 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 became a political pundit, became the junior United States Senator from Minnesota in 2009 after the Minnesota Supreme Court rejected Norm Coleman’s challenge to the election, see Al Franken for Senate, Meet Al, [http://www.alfranken.com/pages/meet\\_al/](http://www.alfranken.com/pages/meet_al/) (last visited July 5, 2009); Perry Bacon, Jr., *Franken Wins Senate Battle*, WASH. POST, July 1, 2009, at A1, and Scarborough, who has a talk show on MSNBC, is a former U.S. Representative from Florida, Joe Scarborough: MSNBC Host of Morning Joe, <http://www.msnbc.msn.com/id/3080460/> (last visited July 5, 2009). The line between pundits and politicians, in other words, can be blurry.

<sup>2</sup> See, e.g., *infra* notes 62–63 and accompanying text.

<sup>3</sup> 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, 285, 322–25 (2005) [hereinafter Buchanan, *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) [hereinafter Buchanan, *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.”); Brett M. Frischmann, *Some Thoughts on Shortsightedness and Intergenerational Equity*, 36 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.)”); Daniel N. Shaviro, *Accrual Accounting and the Fiscal Gap*, 41 HARV. J. ON LEGIS. 209, 209 (2004) (“Cur-

ture—and that we are failing to face up responsibly to those obligations—prominently animates much current policy discussion.<sup>4</sup>

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."<sup>5</sup> Mr. Bush then added a minute later: "Failure in Iraq would have serious consequences for the security of your children and your grandchildren."<sup>6</sup>

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rent fiscal policy, unfortunately, has since 2001 . . . featur[ed] huge tax cuts, a potentially opened 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."); 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 . . .").

<sup>4</sup> 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 104, 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 generally LAURENCE J. KOTLIKOFF & SCOTT BURNS, *THE COMING GENERATIONAL STORM* (2004).

<sup>5</sup> President George W. Bush, Remarks at the Intercontinental Hotel Cleveland (July 10, 2007), available at <http://georgewbush-whitehouse.archives.gov/news/releases/2007/07/20070710-6.html>.

<sup>6</sup> *Id.* For a sample of other political references to the interests of future generations, see, for example, Press Release, Senator Lindsey Graham, Graham Statement on Senator Kerry's Opposition to Personal Investment Accounts Becoming Part of Social Security (Sept. 8, 2004), available at [http://lgraham.senate.gov/public/index.cfm?FuseAction=PressRoom.PressReleases&ContentRecord\\_id=0999F0C8-162E-4328-B4DA-259574BCDEF9](http://lgraham.senate.gov/public/index.cfm?FuseAction=PressRoom.PressReleases&ContentRecord_id=0999F0C8-162E-4328-B4DA-259574BCDEF9) ("[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."); Senator Barack Obama, A Hope to Fulfill (Apr. 26, 2005), available at [http://web.archive.org/web/20080110110834/http://obama.senate.gov/speech/050426-\\_a\\_hope\\_to\\_fulfill/index.php](http://web.archive.org/web/20080110110834/http://obama.senate.gov/speech/050426-_a_hope_to_fulfill/index.php) ("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."); The White House: President George W. Bush, Strengthening Social Security, <http://georgewbush-whitehouse.archives.gov/infocus/social-security/> ("President Bush has discussed the importance of Social Security and the need to fix the Social Security system for future generations of Americans.").

Newspapers' opinion pages also regularly carry messages of intergenerational responsibility: "While philanthropy should be applauded, it can't replace the basic responsibility we all have of saving and investing in the future of the nation."<sup>7</sup> Sometimes, the message is especially blunt: "We have no responsibility greater than as stewards of our planet, and we're blowing it."<sup>8</sup> 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 Law School: "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."<sup>9</sup>

Although 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."<sup>10</sup>

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 enacting policies that, deliberately or not, are 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 intergener-

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<sup>7</sup> Anna Bernasek, *The Rich Spend Just Like You and Me*, N.Y. TIMES, Aug. 6, 2006, § 3, at 11.

<sup>8</sup> Nicholas D. Kristof, Op-Ed., *Scandal Below the Surface*, N.Y. TIMES, Oct. 31, 2006, at A25.

<sup>9</sup> Institute for Constitutional Studies, The George Washington University Law School, <http://docs.law.gwu.edu/ics/> (last visited July 5, 2009).

<sup>10</sup> 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.

ational obligations as a safe rhetorical device rather than as a serious statement of policy goals.<sup>11</sup>

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.<sup>12</sup>

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 progeny, the precise nature 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.

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<sup>11</sup> 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 Richard L. Schmalbeck, Professor of Law, Duke University School of Law (Aug. 8, 2007) (notes on file with author).

<sup>12</sup> See *supra* notes 1–9 and accompanying text.

This Article is intended to serve two purposes. First, in Part II, I 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 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. Even on the threshold question, moreover, the literature reaches no firm conclusions regarding the existence of intergenerational moral obligations. 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 Part II to a discussion of a specific policy question in Part 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 observe 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 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 counterintuitive 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. I tentatively conclude 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, Part 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 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—is the analytical focus of Part 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 egal-



itarian distribution of incomes) is potentially more promising than attempting to treat intergenerational justice as a separate moral inquiry.

This is thus 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, a concern 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 allowed 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 offered some suggestions 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 obligations to provide political stability and 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).<sup>13</sup>

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.<sup>14</sup> For example, the United States Constitution and a number of non-constitutional legal arrangements create supermajority requirements to make it difficult to reverse the policy decisions made by previous (sometimes long-dead) decisionmakers. 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.

The future value of policy flexibility thus creates a paradox. We might want to do well by future generations, but the things that we choose when trying to determine what we owe future generations

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<sup>13</sup> The list of topics—a five-page, single-spaced document summarizing the suggestions of the students—is on file with the author.

<sup>14</sup> Tricia Bushnell, *The Politics of Supermajorities: The Effects of Today’s Decisions on Tomorrow’s Citizens* (May 28, 2007) (unpublished research paper, on file with author).

might not only be wrong but also 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.<sup>15</sup>

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?<sup>16</sup> How can there be a next Greatest Generation if future generations are given everything by their dotting grandparents?<sup>17</sup> 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 offspring. 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.

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<sup>15</sup> *Countdown with Keith Olbermann* (MSNBC television broadcast Jan. 23, 2008) (comments of Rachel Maddow), transcript available at <http://www.msnbc.msn.com/id/22823687/>.

<sup>16</sup> See 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 J., May/June 2007, <http://www.wealthstrategiesjournal.com/articles/2008/09/family-incentive-trusts-dynami.html>.

<sup>17</sup> *Id.* ("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 . . .").

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 Part and the latter approach in the Part 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 issue of how to treat events occurring long into the future has long attracted significant attention from lawyers, philosophers, economists, and environmental activists."<sup>18</sup>

Although 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,<sup>19</sup> and another recent symposium issue of *The University of Chicago Law Review* focused on the question of discounting as it informs the debate over intergenerational equity.<sup>20</sup> (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."<sup>21</sup>) There is certainly a body of liter-

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<sup>18</sup> David A. Weisbach & Cass R. Sunstein, *Symposium on Intergenerational Equity and Discounting*, 74 U. CHI. L. REV. 1, 2 (2007).

<sup>19</sup> See 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); Theodore P. Seto, *Intergenerational Decision Making: An Evolutionary Perspective*, 35 LOY. L.A. L. REV. 235 (2001); Lawrence B. Solum, *To Our Children's Children's Children: The Problems of Intergenerational Ethics*, 35 LOY. L.A. L. REV. 163 (2001).

<sup>20</sup> Symposium, *Intergenerational Equity and Discounting*, 74 U. CHI. L. REV. 1 (2007).

<sup>21</sup> Weisbach & Sunstein, *supra* note 18, at 1–3.

ature 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 Part III below.

The pure theory of intergenerational justice was most significantly advanced by the appearance of Derek Parfit's *Reasons and Persons*<sup>22</sup> twenty-five years ago. In 2006, the philosopher Tim Mulgan provided an admirable summary and extension of many of the ideas advanced by Parfit and others.<sup>23</sup> 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.<sup>24</sup> Indeed, *The University of Chicago Law Review* symposium noted above includes significant contributions on questions such as global warming and other crucial environmental issues.<sup>25</sup>

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.<sup>26</sup>

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

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22 DEREK PARFIT, *REASONS AND PERSONS* (1984).

23 See TIM MULGAN, *FUTURE PEOPLE* (2006).

24 For an illustration of this point, see the extensive bibliography provided in AVNER DE-SHALIT, *WHY POSTERITY MATTERS: ENVIRONMENTAL POLICIES AND FUTURE GENERATIONS* 144–55 (1995).

25 See, e.g., Douglas A. Kysar, *Discounting . . . on Stilts*, 74 U. CHI. L. REV. 119 (2007).

26 Although I did not recall a specific quotation 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, which often addressed intergenerational issues. See, e.g., Robert Eisner, *Must We Save for Our Grandchildren?*, WALL ST. J., June 3, 1998, at A18 (“[Future generations] will almost certainly be consuming much more than their parents and grandparents anyway . . . . In 34 years, when the Social Security system is expected to be in the red, income per worker would have increased by 40% from today's level. Even allowing for a drain of some 11% to support the increased proportion of retirees, there would still be enough income and output for everybody then alive to consume 25% more than today. In this light, the case for sacrifice now is not compelling.”); see also ROBERT EISNER, *THE MISUNDERSTOOD ECONOMY* 121–44 (1994) (rebutting criticisms that Social Security spending is creating intergenerational harms).

little more than raise the basic question of intergenerational fiscal obligation in a draft article that I presented at Professor Shaviro's tax policy colloquium in early 2004.<sup>27</sup> Apparently in response to my having called attention to the issue, Shaviro then sketched out some preliminary thoughts in a small section of an article in late 2004 critiquing George W. Bush's fiscal policies.<sup>28</sup> I responded equally briefly when re-drafting my symposium piece and publishing it in 2005.<sup>29</sup> 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.<sup>30</sup> The direct issues raised in this Article, therefore, have not been entirely absent from the literature;<sup>31</sup> but the discussion has been preliminary and has not been applied to specific fiscal policy questions.<sup>32</sup>

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, nonarbitrary) sense. Even 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.

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<sup>27</sup> See Neil H. Buchanan, *What Is Fiscal Responsibility? Long-Term Deficits, Generational Accounting, and Capital Budgeting*, 38–43 (Rutgers U. (Newark) Legal Working Paper Series, Paper No. 8, 2004), available at <http://law.bepress.com/rutgersnewarklwps/fp/art8>. The article was presented at the New York University School of Law's Tax Policy and Public Finance Colloquium, April 20, 2004.

<sup>28</sup> See 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, 1331–33 (2004).

<sup>29</sup> Buchanan, *Long-Term Deficits*, *supra* note 3, at 284–85, 323–24.

<sup>30</sup> Buchanan, *Good Deficits*, *supra* note 3, at 350–52.

<sup>31</sup> See, e.g., *supra* note 3 (referencing the contributions of R. George Wright and Brett M. Frischmann); *supra* notes 19–20 and accompanying text (discussing recent symposia on issues of intergenerational justice).

<sup>32</sup> I discuss below the brief arguments that Shaviro offered in his 2004 piece. See *infra* notes 117–22 and accompanying text.

In addition, Parfit discusses the concept of “psychological continuity” and the philosophical argument that a person at one point in time might not be the same person that she was at a different time.<sup>33</sup> 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,<sup>34</sup> the authors adopt the convention of treating people in decade-long birth-year cohorts as separate generations, comparing the lifetime net tax rates of people born in different decades of the twentieth century.<sup>35</sup>

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 because the discussion generally differentiates—at most—four roughly discrete groups of people: today’s adults, today’s children, people not yet born but who will be 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.<sup>36</sup> Moreover, the analyses that have been offered to justify an affirmative answer to the question of intergenerational obliga-

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<sup>33</sup> See PARFIT, *supra* note 22, at 219–23. This theory is, admittedly, not widely accepted among philosophers today. Whether one accepts this theory or not, the larger point is that it is analytically messy to impute meaningful characteristics to a person based on her birth cohort.

<sup>34</sup> Buchanan, *Long-Term Deficits*, *supra* note 3, at 310–15.

<sup>35</sup> See Alan J. Auerbach, Jagadeesh Gokhale & Laurence J. Kotlikoff, *Generational Accounting: A Meaningful Way to Evaluate Fiscal Policy*, 8 J. ECON. PERSP., Winter 1994, at 73, 73–75.

<sup>36</sup> An excellent, indeed perhaps definitive, summary of the philosophical literature on intergenerational justice can be found in the *Stanford Encyclopedia of Philosophy*. See Lukas Meyer, *Intergenerational Justice*, in STANFORD ENCYCLOPEDIA OF PHILOSOPHY, <http://plato.stanford.edu/entries/justice-intergenerational/>.

tion 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."<sup>37</sup> 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.

To motivate the inquiry, it is perhaps worthwhile to begin by posing a provocative question. If we were to make 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 will 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 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.<sup>38</sup> 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 en-

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<sup>37</sup> Weisbach & Sunstein, *supra* note 18, at 1.

<sup>38</sup> 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. See Robert M. Solow, *Survival of the Richest?*, N.Y. REV. OF BOOKS, NOV. 22, 2007, at 38, 38. 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 hovels and wore rags" at the beginning of the Industrial Revolution. See *id.*



dured a miserable existence not because someone chose to make them live more miserably than necessary but because misery was a nearly universal human condition.<sup>39</sup> Having the choice to make someone better off, yet choosing not to exercise that choice, is very different from what transpired many 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 desert 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,"<sup>40</sup> or in layman's terms, the what-if-everyone-did-this

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<sup>39</sup> See *id.* at 38–39 (describing the "grim" pre-Industrial Revolution conditions from 1200–1800; throughout the period, the average individual saw almost no growth in living standards and survived on subsistence wages).

<sup>40</sup> See IMMANUEL KANT, *THE METAPHYSICS OF MORALS* 48–54 (Mary Gregor trans., Cambridge Univ. Press 1991) ("The categorical imperative . . . is: Act upon a maxim that can also hold as a universal law.").

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 a 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, this one is essentially tautological because, of course, organisms that do not develop in ways to pass on their genes cease to exist.<sup>41</sup> Still, it is not difficult to imagine that the desire to create and care for future generations is somehow built into our 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

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<sup>41</sup> The other disquieting aspect of evolutionary explanations is how similar they are to casual nonexplanations of people's supposedly fundamental nature. See, e.g., Verlyn Klinkenborg, *Trying Times Ahead: The Prospect of 60 Million Californians*, N.Y. TIMES, July 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.").

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?

A provocative and compelling response to this question was described by Parfit in his discussion of the “person affecting principle,” which starts from the fundamental ethical requirement that humans have an obligation not to affirmatively harm an actual person.<sup>42</sup> 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.

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.<sup>43</sup>

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, causing two people to meet at their new jobs and to fall in love, and causing their child to exist in part because of the fiscal policy choice that was made before it was 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 me?,” 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

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<sup>42</sup> See PARFIT, *supra* note 22, at 393–94. Although Parfit discusses the person-affecting principle, his contribution is to defend impersonal or non-person-affecting principles.

<sup>43</sup> See *id.* at 351–55.

never to have existed rather than to be living the miserable lives to which our choices doom 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 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 obligation not to harm people as an obligation toward *any* person who might come into existence in the future.

Taking this obligation seriously would require us 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 (even under a non-person-affecting principle) 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 individuals who would be least happy during their time on Earth. Even if one were to believe that existence itself is priceless, it is simply true that we can only bring a finite number out of an infinite range of possible people into existence. We are then obligated (assuming that non-person-affecting principles are valid) 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 distinct from 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.<sup>44</sup>

Reviewing the arguments summarized above regarding the possible philosophical foundation of intergenerational obligations, none of the arguments lends itself to anything more than the conclusion 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

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<sup>44</sup> For an example of how to fill the void from a communitarian perspective, see DE-SHALIT, *supra* note 24, at 15–16, 139 n.6.

property or economic assets with future generations. In other words, an admission by current generations that we have an obligation to future generations does not even foreclose the possibility that we might decide to pass forward some aspects of the human condition while also deciding 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,<sup>45</sup> where choosing a higher discount rate has the effect of putting less 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 the use of a discount rate undervalues “vital questions of intergenerational equity” and therefore “has the practical effect of dramatically diminishing the apparent significance of policy effects on future generations.”<sup>46</sup>

The discounting approach, therefore, leaves many questions unanswered. The most promising approach, as I discuss in Part IV, is to treat intergenerational choices the same way that we treat questions of inequality within generations, which means that we should apply familiar theories of distributive justice to unfamiliar questions. Although 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 just want my kids to do better than me.” This desire has even

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<sup>45</sup> See *supra* note 21 and accompanying text.

<sup>46</sup> Kysar, *supra* note 25, at 119.

been described as being a fundamental part of “the American dream.”<sup>47</sup> 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<sup>48</sup> thus deserves reflection.

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 gross domestic product (“GDP”) per 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 Part IV.C below.

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<sup>47</sup> Bob Herbert, Op-Ed., *Anxious About Tomorrow*, N.Y. TIMES, Sept. 1, 2007, at A15 (quoting Andrew Stern, President, Service Employees International Union, who argues that “[w]orkers are incredibly, legitimately scared that the American dream, particularly the belief that their kids will do better, is ending”).

<sup>48</sup> 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 than” to “as well as.” See *supra* text accompanying note 47.

*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),<sup>49</sup> 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 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.

Because 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

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<sup>49</sup> See Buchanan, *Long-Term Deficits*, note 3, at 291–92.



other people's progeny. One simple way to observe this is to note the extreme unpopularity of foreign aid among American voters.<sup>50</sup>

*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 man-made nuclear, biological, or chemical catastrophe, life on Earth might not last more than another one thousand years or so, simply because of changes in weather patterns or naturally-occurring diseases that could destroy all life on the planet over the span of several centuries. Although 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.<sup>51</sup> People thus know that there will be no future generations at all. Although that particular film (and the book on which it is based<sup>52</sup>) 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

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<sup>50</sup> See, e.g., Eric A. Posner, *Agencies Should Ignore Distant-Future Generations*, 74 U. CHI. L. REV. 139, 141–42 (2007).

<sup>51</sup> CHILDREN OF MEN (Universal Pictures 2006).

<sup>52</sup> P.D. JAMES, THE CHILDREN OF MEN (1992).

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 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.”<sup>53</sup> 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 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

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<sup>53</sup> Louis Kaplow, *Discounting Dollars, Discounting Lives: Intergenerational Distributive Justice and Efficiency*, 74 U. CHI. L. REV. 79, 117 (2007).

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. Although all errors are a source of regret (or we would not think of them as errors), that we are almost never operating at our maximum potential rate of 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 GDP (or income) per capita raises two separate concerns: Why use 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 economists William Nordhaus and 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 peo-

ple are enjoying by virtue of living in a given economy.<sup>54</sup> In 1995, an organization called Redefining Progress proposed an alternative to the GDP that they called the Genuine Progress Indicator (“GPI”).<sup>55</sup> The GPI explicitly takes environmental indicators into account as a means to adjust GDP, arguably to better measure real well-being.<sup>56</sup> The GPI consistently runs lower than GDP, and it has little or no upward trend, unlike GDP.<sup>57</sup> Similarly, some scholars refer to “inclusive gross domestic product . . . , not just marketed goods and services, but also leisure time, household production, and environmental amenities.”<sup>58</sup>

Although these approaches significantly overlap, each is valuable and 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 sidetrack the analysis.<sup>59</sup> 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

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<sup>54</sup> William Nordhaus & James Tobin, *Is Growth Obsolete?*, in *ECONOMIC GROWTH* 1, 4–24 (Nat'l Bureau of Econ. Research, Economic Research: Prospect & Retrospect Vol. 5, 1972).

<sup>55</sup> Redefining Progress, *Genuine Progress Indicator*, [http://www.rprogress.org/sustainability\\_indicators/genuine\\_progress\\_indicator.htm](http://www.rprogress.org/sustainability_indicators/genuine_progress_indicator.htm) (last visited July 5, 2009).

<sup>56</sup> See JOHN TALBERT ET AL., *REDEFINING PROGRESS, THE GENUINE PROGRESS INDICATOR 2006: A TOOL FOR SUSTAINABLE DEVELOPMENT 1–2* (2007), <http://www.rprogress.org/publications/2007/GPI2006.pdf>.

<sup>57</sup> See *id.* at 18–21 figs.3 & 4.

<sup>58</sup> 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).

<sup>59</sup> Cf. *id.* at 43–44 (“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).”).

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 per capita is the denominator. Perhaps we should not be trying to maximize how many marketed goods and services each person can 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 intrinsic 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).

Although the extreme version of this argument is too outlandish to merit a hearing, there are versions of the population question that fall well short of that extreme case. Even so, those more nuanced cases are better dealt with separately and must be set aside for current

purposes. 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.”<sup>60</sup> Putting an analytical structure behind such respect is the difficult work of intergenerational policy analysis.

Having noted 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 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 1980s and early 1990s were dangerously high.<sup>61</sup> The organization’s website prominently includes the following statement: “[F]iscal responsibility is as much of a moral duty as it is an economic con-

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<sup>60</sup> Dexter Samida & David A. Weisbach, *Paretian Intergenerational Discounting*, 74 U. CHI. L. REV. 145, 155 (2007).

<sup>61</sup> See The Concord Coalition, History, <http://www.concordcoalition.org/about-us/history> (last visited July 5, 2009).

cern. . . . 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.”<sup>62</sup> 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.”<sup>63</sup> This focus is understandable, but as we see below, the focus might well be misplaced or, at least, overemphasized.

A. *Competing over Whose Fiscal Policy Prescriptions Are Better for Future Generations*

Although the moral stance taken by the Concord Coalition might be stated more explicitly than one usually sees in discussions of economic policy, 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,<sup>64</sup> 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”).<sup>65</sup> Advocates of the generational accounting framework, 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

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<sup>62</sup> The Concord Coalition, *Why Is Fiscal Responsibility Important?*, <http://www.concordcoalition.org/issues/primers/fiscal-responsibility.html> (last visited July 5, 2009).

<sup>63</sup> Tax Policy Center, *About Us*, <http://www.taxpolicycenter.org/aboutus/mission.cfm> (last visited July 5, 2009).

<sup>64</sup> See Buchanan, *Good Deficits*, *supra* note 3, at 335–39.

<sup>65</sup> See Buchanan, *Long-Term Deficits*, *supra* note 3, at 307–10.

generations.<sup>66</sup> The time frame analyzed is at least seventy-five years,<sup>67</sup> even though advocates of generational accounts prefer an infinite time horizon.<sup>68</sup> Such a policy approach would make little sense unless its advocates were deeply concerned about the effects of today's policies on future generations.<sup>69</sup>

Opponents of the generational accounting 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.<sup>70</sup> 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.<sup>71</sup> 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.<sup>72</sup> Others who have critiqued the generational accounts have similarly shared its stated goals of intergenerational justice, however loosely defined.<sup>73</sup>

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-1970s showing how it is possible

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<sup>66</sup> *Id.* at 281–83 & nn.8–12.

<sup>67</sup> *See, e.g.,* Auerbach, Gokhale & Kotlikoff, *supra* note 35, at 77 (using projections from 1992 through 2066).

<sup>68</sup> *See* Buchanan, *Long-Term Deficits*, *supra* note 3, at 321.

<sup>69</sup> 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 multigenerational concerns.

<sup>70</sup> 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. *See* Michael Doran, *Intergenerational Equity in Fiscal Policy Reform*, 61 *TAX L. REV.* 241, 274 (2008). 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.

<sup>71</sup> Buchanan, *Long-Term Deficits*, *supra* note 3, at 310–15.

<sup>72</sup> *Id.*

<sup>73</sup> *See, e.g.,* Doran, *supra* note 70 at 276 (“Although they provide interesting analytic information, fiscal gap and generational accounting do not move us closer to answering the question whether current fiscal policy or any specific reform to current fiscal policy is fair to current and future generations.”).



for fiscal policy to “crowd in” private investment.<sup>74</sup> 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.<sup>75</sup> 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 concept 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 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. Although the academic literature has been generally unkind to these assertions, advocates of tax cuts are tireless in their efforts to justify such 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 oppo-

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<sup>74</sup> Benjamin M. Friedman, *Crowding Out and Crowding In? Economic Consequences of Financing Government Deficits*, 1978 BROOKINGS PAPERS ON ECONOMIC ACTIVITY 593, 639–40 (Arthur M. Okun & George L. Perry eds.).

<sup>75</sup> Neil H. Buchanan, *Debt, Deficits, and Fiscal Policy: Three Essays*, at ch. 3 (1996) (Ph.D. dissertation, Harvard University). The relevant chapter was published as *The Effects of the Fiscal Deficit on the Composition of U.S. GDP: An Analysis of Disaggregated Data*, in IMPROVING THE GLOBAL ECONOMY 133, 133–71 (Paul Davidson & Jan A. Kregel eds., 1997).

nents, 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 much as possible.<sup>76</sup>

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).<sup>77</sup> 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 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 relabeling 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 nonproductive spending” debate; though this debate is still about crowding out, it 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.

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<sup>76</sup> 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.

<sup>77</sup> See Buchanan, *Good Deficits*, *supra* note 3, at 343–46.

*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.<sup>78</sup> 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, such increases in prosperity are likely notwithstanding the aging of the Baby Boom generation, with even pessimistic forecasts showing impressively high cumulative economic growth leading to very high average future living standards. In a recent article,<sup>79</sup> 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 as-

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<sup>78</sup> See *supra* pp. 1257–58.

<sup>79</sup> Neil H. Buchanan, *Social Security and Government Deficits: When Should We Worry?*, 92 CORNELL L. REV. 257 (2007) [hereinafter Buchanan, *When Should We Worry?*].

sumptions), the Mid-Range Scenario (assumptions that are relatively pessimistic compared to recent decades but are less pessimistic than in the high-cost scenario), 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).<sup>80</sup> 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.<sup>81</sup>

I have since updated those projections based on the Trustees' 2009 report.<sup>82</sup> 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 2008 was just under 3.2%.<sup>83</sup> The High-Cost, Mid-Range, and Low-Cost forecasts assume average annual growth rates through 2085 of 1.5%, 2.2%, and 2.9%, respectively.<sup>84</sup> The difference between a 3.2% annual growth rate and a 2.9% rate might seem small, but with compound growth the difference can become significant. Over a 75-year span, for example, \$1 compounds to \$8.53 at a 2.9% annual rate but grows to \$10.62 at a 3.2% rate, meaning that 0.3% added to the annual rate of growth compounds to a 25% difference over the longer time period.<sup>85</sup>

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<sup>80</sup> *Id.* at 277.

<sup>81</sup> *Id.* at 266 n.57 (projecting an increase in per capita GDP of 131% from 2005 through 2080 under the high-cost scenario).

<sup>82</sup> THE 2009 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. 111-41, at 85–86 tbl.V.A2, 103–04 tbl.V.B2 (2009), available at <http://www.ssa.gov/OACT/TR/2009/tr09.pdf>, [hereinafter 2009 TRUSTEES' REPORT]. During my oral presentation at the Future Generations symposium in October 2008, I relied on data from the 2008 version of the *Trustees' Report*. The editing schedule for this issue permitted me to update my estimates here based on the 2009 data. As I discuss in my article replying to the comments of the scholars on the symposium's fiscal policy panel, even the severe recession in the United States that began in December 2007 has not substantially changed the long-term forecasts under any of the three scenarios. All of the forecasts continue to imply that average per capita living standards will at least double by 2085 and could triple or more than quadruple. See Neil H. Buchanan, *Four out of Four Panelists Agree: U.S. Fiscal Policy Does Not Cheat Future Generations*, 77 GEO. WASH. L. REV. 1402, 1404 (2009) [hereinafter Buchanan, *Four out of Four*].

<sup>83</sup> Author's calculations based on data provided in 2009 TRUSTEES' REPORT, *supra* note 82.

<sup>84</sup> *Id.*

<sup>85</sup> Again, these estimates are necessarily imprecise. The differences in the overall forecasts are so large, however, that it would require enormous and unprecedented changes in the economy even to begin to reduce such significant differences.

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%)."<sup>86</sup> Updating those estimates using the forecasts from the *2009 Trustees' Report*, per capita GDP is forecast to rise by 135% from 2005 through 2080 in the High-Cost Scenario, by 219% in the intermediate scenario, and by 332% in the Low-Cost Scenario.<sup>87</sup> With small variations, therefore, the results in 2009 mirror those in 2006, with even the most pessimistic scenario showing income per capita more than doubling by 2080.

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 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. (That the forecasts are essentially unchanged even after taking into account the current extreme economic downturn provides additional reason to be confident that the overall optimistic picture depicted here will not turn out to be wishful thinking.)

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<sup>86</sup> Buchanan, *When Should We Worry?*, *supra* note 79, at 266 n.57. While updating the estimates to include the more recent numbers from the *2009 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 per 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 reported here—is the key finding from these computations.

<sup>87</sup> Author's calculations available upon request. To compare the results of computations based on the *2009 Trustees' Report* with those from the *2006 Trustees' Report*, I use the same starting date (2005) and ending date (2080), even though the *2009 Trustees' Report* extends the forecasts through 2085. The results of computations based on the extended forecasts are reported in Buchanan, *Four out of Four*, *supra* note 82, at 1404–05.

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 already meeting our intergenerational obligations. If future generations will almost certainly be significantly richer than current generations, why must current generations make still more sacrifices to prevent any erosion 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 recasts 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 per 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.”<sup>88</sup>

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 sacrificing becomes self-reinforcing, and it becomes difficult to know when to declare victory. Admittedly, the United States is renowned for its supposedly low savings rates,<sup>89</sup> 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 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.<sup>90</sup> That sacrifice did indeed lead to impressive increases in living standards for a generation or two after World War II.<sup>91</sup> Interestingly, though, saving rather than consuming can lead to difficult questions of when the people will be allowed to enjoy the fruits of their sacrifice. Even aware of their country's economic might (prior to that country's “lost decade” of economic depression and stagnation in the 1990s), Japanese citizens did not believe that they were affluent.<sup>92</sup> When the reward for more saving is the admonition to save still more, the path to prosperity begins to look more like a treadmill.

Nations at war are perhaps the best example of the difficult trade-offs between sacrifice and consumption.<sup>93</sup> 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 ver-

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<sup>88</sup> Phyllis Korkki, *Yes, Retirement Still Seems an Impossible Dream*, N.Y. TIMES, Apr. 1, 2007, § 3, at 2.

<sup>89</sup> See, e.g., Robert H. Frank, *Americans Save So Little, But What, if Anything, Can Be Done to Change That?*, N.Y. TIMES, Mar. 17, 2005, at C2.

<sup>90</sup> See WILLIAM T. ZIEMBA & SANDRA L. SCHWARTZ, *POWER JAPAN: HOW AND WHY THE JAPANESE ECONOMY WORKS* 23–24 (1992) (describing Japan's comparatively high household savings rate).

<sup>91</sup> See Stephen B. Wickman, *The Character and Structure of the Economy*, in *JAPAN: A COUNTRY STUDY* 141, 192 (Frederica M. Bunge ed., 1983).

<sup>92</sup> See ZIEMBA & SCHWARTZ, *supra* note 90, at 106.

<sup>93</sup> 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.

sus 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,<sup>94</sup> 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 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.<sup>95</sup> 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 that has depreciated.<sup>96</sup>

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.<sup>97</sup> One of the key features of the Solow model, therefore, is its ability to demonstrate how it is possible to overinvest as well as to underinvest. 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

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<sup>94</sup> N. GREGORY MANKIW, *MACROECONOMICS passim* (4th ed. 2000).

<sup>95</sup> *See id.* at 90–91.

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*



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."<sup>98</sup> 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."<sup>99</sup>

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."<sup>100</sup> 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."<sup>101</sup> 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.'"<sup>102</sup>

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 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 mea-

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<sup>98</sup> *Id.* at 112.

<sup>99</sup> *Id.* at 96 (italics not reproduced).

<sup>100</sup> *Id.* at 96–97.

<sup>101</sup> *Id.* at 97.

<sup>102</sup> *Id.*

sureing 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."<sup>103</sup>

In short, although 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 intergenerational obligations is his discussion of "the problem of justice between generations."<sup>104</sup> 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."<sup>105</sup> 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.

##### *1. Rawls and the Limits of the Veil of Ignorance*

The standard Rawlsian approach to distributive justice begins with the notion of the so-called Veil of Ignorance.<sup>106</sup> 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 soci-

<sup>103</sup> ROBERT M. SOLOW, *GROWTH THEORY: AN EXPOSITION* 79 (2d ed. 2000).

<sup>104</sup> See JOHN RAWLS, *A THEORY OF JUSTICE* 251–59 (rev ed. 1999).

<sup>105</sup> *Id.* at 252.

<sup>106</sup> See *id.* at 118–23.

ety might find themselves (princes, paupers, healthy, sick, etc.) as well as the likelihood of a random person's being in any specific social position.<sup>107</sup> No person, however, can know in advance whether they will be one of the lucky ones or the unlucky ones.<sup>108</sup> 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, where the distance between the best- and least-well-off was too great).<sup>109</sup> 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

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<sup>107</sup> *See id.* at 119.

<sup>108</sup> *See id.* at 118.

<sup>109</sup> *See id.* at 130–32.

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.<sup>110</sup>

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.<sup>111</sup> 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 were excluded from full participation in society.<sup>112</sup> The Rawlsian concern with full citizenship is 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, it also prevents the rich from inappropriately dominating the political and social life of society.

None of these concerns, however, translates 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 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 equal liber-

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<sup>110</sup> As discussed below, *see infra* Part IV, this is no longer true if we disaggregate the analysis and look at income distribution within generations rather than looking at averages.

<sup>111</sup> For an excellent discussion of Rawls’s thought on questions of inequality, see generally Linda Sugin, *Theories of Distributive Justice and Limitations on Taxation: What Rawls Demands from Tax Systems*, 72 *FORDHAM L. REV.* 1991 (2004).

<sup>112</sup> *Cf. id.* at 2007 n.71 (“Rawls would assure a decent social minimum covering basic needs . . .”).

ties.”<sup>113</sup> Rawls’s concern was therefore with whether people could enjoy the full benefits of citizenship and humanity; 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.<sup>114</sup>

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 power.

## 2. 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,”<sup>115</sup> 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.<sup>116</sup>

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<sup>113</sup> RAWLS, *supra* note 104, at 257.

<sup>114</sup> See Sugin, *supra* note 111, at 2005–07 (discussing Rawls’s requirement that a just society provide everyone with a core set of “basic liberties”).

<sup>115</sup> See, e.g., Buchanan, *Long-Term Deficits*, *supra* note 3, 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” and noting “[r]edistribution from poor to rich, under such an assumption, would increase total utility”).

<sup>116</sup> 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.” Weisbach & Sunstein, *supra* note 18, at 1. They further note, though, that “[m]ost of the authors also believe the precise discount rate depends on a variety of empirical as

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.”<sup>117</sup> “[S]ubject to concern about its efficiency costs,” 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.”<sup>118</sup> Shaviro offers three brief arguments as to why the fiscal policy adopted by the Bush Administration might be too present-oriented,<sup>119</sup> the third of which is relevant here. He argues, in short, that we might push things too far, i.e., that we might take so much away from future generations that we will not equalize incomes across generations but will instead change who gets to be rich and who must live in relative poverty.<sup>120</sup> 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

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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.

<sup>117</sup> Shaviro, *supra* note 28, at 1331.

<sup>118</sup> *Id.*

<sup>119</sup> 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 buying 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 compel 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.

<sup>120</sup> *See id.* (“We simply may be imposing too great a burden on [future generations] for it to be worth the benefit to us even if our marginal utility of a dollar is greater than theirs . . .”).

in incomes more than doubling over the next seventy-five years.<sup>121</sup> The possibility of a crisis arising before then, which appears to animate Shaviro's argument,<sup>122</sup> is a very legitimate but separate concern, as I discuss below.

The utilitarian approach, therefore, suggests that we are doing too much rather than too little for the benefit of future generations.<sup>123</sup> 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 because 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.<sup>124</sup>

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 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.

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<sup>121</sup> See *supra* note 81 and accompanying text.

<sup>122</sup> See Shaviro, *supra* note 28, at 1332 (“Recall the scenario whereby the fiscal gap generates not only very high tax rates but also a capital-market meltdown.”)

<sup>123</sup> 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.

<sup>124</sup> 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 “[p]rinciple of [g]rowth,” under which policy should “maximize the rate of sustainable economic growth”).

### *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 take that conclusion seriously, however, there might be reasons not rooted in theories of intergenerational justice that justify the enactment of policies that help 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.

#### *1. 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.<sup>125</sup> Nevertheless, one of the motivating concerns about the path of fiscal policy that the generational accounts try to capture is the notion of sustainability.<sup>126</sup> Recent estimates of the fiscal gap have been in the range of \$40–\$70 trillion dollars.<sup>127</sup> 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

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<sup>125</sup> See *supra* note 68 and accompanying text.

<sup>126</sup> See, e.g., Auerbach, Gokhale & Kotlikoff, *supra* note 35, at 93; Shaviro, *supra* note 28, at 1289.

<sup>127</sup> Shaviro, *supra* note 28, at 1298–99, 1299 n.6.



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 decisionmakers 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 increase 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 solvency.<sup>128</sup> 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.

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<sup>128</sup> See, e.g., *id.* 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.”).

If policymakers became convinced that they must act immediately 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 increase investment and the growth of GDP per capita. This would mean that we would be enacting policies that are 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.

## 2. *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 society that they have no stake in continuing the status quo.<sup>129</sup>

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.<sup>130</sup> 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 that the system could collapse.<sup>131</sup> If this story is true, and it does have a great deal of explanatory power, the New Deal programs that mitigated the pain for

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<sup>129</sup> BENJAMIN M. FRIEDMAN, *THE MORAL CONSEQUENCES OF ECONOMIC GROWTH* 79–102 (2005).

<sup>130</sup> *See id.* at 267–94.

<sup>131</sup> *See id.* at 147–48.

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 per 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 but only respond to acceleration of the variable.

Such mathematical variations are interesting, to be sure, but the conclusion 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 because 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.<sup>132</sup> Although 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

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<sup>132</sup> Press Release, International Labour Organization, *New ILO Report Says US Leads the World in Labour Productivity, Some Regions Are Catching Up, Most Lag Behind* (Sept. 2, 2007), available at [http://www.ilo.org/global/About\\_the\\_ILO/Media\\_and\\_public\\_information/Press\\_releases/lang—en/WCMS\\_083976/index.htm](http://www.ilo.org/global/About_the_ILO/Media_and_public_information/Press_releases/lang—en/WCMS_083976/index.htm) (“[According to a new report,] 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.”)

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.<sup>133</sup> 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 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 given 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.<sup>134</sup> We are all distributivists now.

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<sup>133</sup> 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.

<sup>134</sup> See, e.g., Kaplow, *supra* note 53, at 99 (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.<sup>135</sup> The income distribution in the United States shows the richest quintile accounting for over half of all income earned in recent years.<sup>136</sup>

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.<sup>137</sup> Similarly, median household income rose by 0.7% from 2005 to 2006,<sup>138</sup> while mean or per capita household income rose by 1.9%.<sup>139</sup> Because “[u]nlike medians, per capita and means are affected by high incomes,”<sup>140</sup> 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 that ten-fold increase in income pulls up 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.”<sup>141</sup> During those years (2001–06), per capita GDP rose by a total of roughly nine percent,<sup>142</sup> implying that the

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<sup>135</sup> See, e.g., U.S. CENSUS BUREAU, INCOME, POVERTY, AND HEALTH INSURANCE COVERAGE IN THE UNITED STATES: 2006, at 7 (2007), available at <http://www.census.gov/prod/2007pubs/p60-233.pdf> (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”).

<sup>136</sup> *Id.* at 5 tbl.1 (showing the highest quintile with 50.4% of income in 2005 and 50.5% in 2006).

<sup>137</sup> *Id.* at 29 tbl.A-1.

<sup>138</sup> *Id.* at 4.

<sup>139</sup> *Id.* at 10.

<sup>140</sup> *Id.* at 10 n.22.

<sup>141</sup> CTR. ON BUDGET AND POLICY PRIORITIES, NUMBER AND PERCENTAGE OF AMERICANS WHO ARE UNINSURED CLIMBS AGAIN 1 (2007), <http://www.cbpp.org/files/8-28-07pov.pdf>.

<sup>142</sup> Computations by author based on Department of Labor data. See OFFICE OF PRODUCTIVITY AND TECH., U.S. DEP’T OF LABOR, COMPARATIVE REAL GROSS DOMESTIC PRODUCT

growth in the economy since the last recession has only raised the living standards of 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. For example, household income for families at the 80th percentile was \$61,077 in 1967 and rose to \$97,032 in 2007, an increase of 58.9%.<sup>143</sup> On the other hand, median household income rose 30.8% from \$36,847 to \$48,201 while income for families at the 20th percentile rose 29.5% from \$15,476 to \$20,035.<sup>144</sup>

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, but 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 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.<sup>145</sup>

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. 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, because 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 in-

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PER CAPITA AND PER EMPLOYED PERSON: 16 COUNTRIES 1960–2007, at 11 tbl.1 (2008), <http://www.bls.gov/fls/flsgdp.pdf>.

<sup>143</sup> U.S. CENSUS BUREAU, INCOME, POVERTY, AND HEALTH INSURANCE COVERAGE IN THE UNITED STATES: 2006, at 38–39 tbl.A-3 (2007), available at <http://www.census.gov/prod/2007pubs/p60-233.pdf> (using income in 2006 inflation-adjusted dollars).

<sup>144</sup> *Id.*

<sup>145</sup> See Matt Bai, *The Poverty Platform*, N.Y. TIMES, June 10, 2007, § 6 (Magazine), at 66, 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”).

creases in economic output for our own good, therefore, requires that any gains be widely distributed if not actually deliberately aimed 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.<sup>146</sup> Comparing the United States to the 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.<sup>147</sup>

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<sup>146</sup> 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 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 per 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. Cf. Michael K. Ozanian & Peter J. Schwartz, *Top Guns*, FORBES, May 21, 2007, at 102, 102, available at [http://www.forbes.com/free\\_forbes/2007/0521/102.html](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.”).

<sup>147</sup> Kaplow makes a similar claim that intergenerational analysis is in certain instances not significantly different from intragenerational analyses. See Kaplow, *supra* note 53 at 115–16.



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 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.<sup>148</sup> 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.<sup>149</sup> 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. 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

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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. *See id.* at 116. Matthew Adler makes an argument with similar implications, as I discuss below. *See infra* notes 153–155 and accompanying text.

<sup>148</sup> *See generally* Buchanan, *When Should We Worry?*, *supra* note 79, at 258–62; NANCY J. ALTMAN, *THE BATTLE FOR SOCIAL SECURITY: FROM FDR’S VISION TO BUSH’S GAMBLE* (2005).

<sup>149</sup> *See* Buchanan, *Long-Term Deficits*, *supra* note 3, at 299–301, 314–15.

the future (potential tax increases that could be targeted to the highest income earners in a future filled with relatively high income earners).<sup>150</sup>

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 justice<sup>151</sup>), but there is something to be gained by not having to invent a separate theory of justice when confronting intergenerational questions. Familiar controversies regarding the possible disincentive effects of tax policies,<sup>152</sup> 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 politi-

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<sup>150</sup> 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](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.

<sup>151</sup> See LIAM MURPHY & THOMAS NAGEL, *THE MYTH OF OWNERSHIP* 131–32 (2002) (noting the shortcomings of discussing progressivity “in terms of traditional tax equity standards alone, rather than in terms of larger standards of societal justice”).

<sup>152</sup> Every public finance textbook includes extensive 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 (3d ed. 2000).

cal 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,<sup>153</sup> 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.<sup>154</sup> He thus concludes that even if we are willing to narrow our philosophical analysis to one limited class of social welfare theories, it is still necessary to “do the hard, philosophical work of figuring out which specific social welfare function policymakers should use.”<sup>155</sup>

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 legislatures rather than scholars,” where the ultimate decision about intergenerational policies must be made through the political process.<sup>156</sup> 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.

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<sup>153</sup> In addition to utilitarianism, Adler describes Prioritarianism, which gives “greater weight to changes in well-being that affect individuals who are worse off.” Adler, *supra* note 58, at 44. At its, extreme Prioritarianism becomes the “leximin” principle—an application of the principle in which policies are chosen strictly on the basis of their effects on the poorest members of society. *Id.* at 44 n.16. 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.” *Id.* at 44–45.

<sup>154</sup> *Id.* at 45.

<sup>155</sup> *Id.* at 47.

<sup>156</sup> *See id.*

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 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 median.” That is, recasting intergenerational obligations as distributive obligations would highlight that some children have parents whose incomes are low and whose life situations are extremely disadvantaged. 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 comparatively narrow issue—budgetary policy over time—and 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. (This approach thus begins by temporarily setting aside important questions about whether the statistics underlying these forecasts accurately measure genuine well-being, accepting only for the sake of argument that there is a meaningful correlation between economic growth and quality of life.) The surprising conclusion is that there are, if anything, fairly plausible arguments that we are doing too much for future generations in terms of ensuring long-term economic growth, not too little. Feeling some discomfort with this conclusion, I then discussed how we might actually do better by future generations if we simply focused 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 measured living standards of future generations. 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 *median* living standards, we are already doing very, very well by future generations. Second, we should also be concerned about the *distribution* of living standards. 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.