Reply

Four out of Four Panelists Agree: U.S. Fiscal Policy Does Not Cheat Future Generations

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Abstract

As part of The George Washington Law Review*'s symposium* What Does Our Legal System Owe Future Generations? New Analyses of Intergenerational Justice for a New Century*, participants discussed the nature of intergenerational obligations as they relate to fiscal policy. The panelists reached consensus that intergenerational justice is not an appropriate lens through which to analyze fiscal issues because there is no obvious starting point from which to build a moral consensus about whether current generations owe anything at all to future generations, much less how to quantify any such obligation. In addition, even pessimistic forecasts indicate that future generations will be much better off than current generations, meaning that we are already being quite generous to our grandchildren. The discussion then turned to possible changes in current fiscal policy. While panelists disagreed about how policies should be changed, there was at least apparent consensus that Social Security is either not a problem or at least not a major part of any long-term fiscal worries. Moreover, the biggest cause of any long-term distress*

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is health care costs for all payers, not just for the federal and state governments.

Introduction

When *The George Washington Law Review* held a symposium in October 2008 called *What Does Our Legal System Owe Future Generations? New Analyses of Intergenerational Justice for a New Century*, the U.S. and world financial systems were only a few weeks removed from the dramatic meltdown that (we now know) accelerated an ongoing recession and threatened to cause long-term global economic stagnation or worse. It is possible that scholarship written in a now-outdated context can be made irrelevant by such dramatic changes. How do the scholarly analyses offered as part of the symposium hold up under these changed circumstances? Do the participants look prescient or foolish? Viewed from the perspective of this writing in the first days of summer of 2009, the consensus reached by the fiscal policy panelists (Ms. Nancy Altman, Professor Daniel Shaviro, Professor Lawrence Zelenak, and myself[1]) as well as their individual comments not only hold up well in light of new developments but offer an important antidote to much of the current misguided commentary about the appropriate fiscal response to the developing economic crisis.

In particular, the panelists all agreed that the widely held notion that current generations are being somehow unfair to future generations through profligate fiscal policy (especially the supposed problem of "runaway entitlements") is neither an accurate nor a useful way to analyze fiscal policy. While some of us continued to disagree on the need to change various spending and taxing priorities, we at least agreed that no serious arguments are advanced by suggesting that "we are cheating our grandchildren."

In this brief reply, I will comment on the consensus that emerged during the symposium, namely, that intergenerational justice is at best an unhelpful lens through which to assess our current fiscal policies. The most notable aspect of this consensus is that Professor Shaviro

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1 The symposium's second panel, *Government Finances Today and Economic Prosperity Tomorrow*, included four papers discussing fiscal policy and justice between generations: a principal article by me, Neil H. Buchanan, *What Do We Owe Future Generations?*, 77 GEO. WASH. L. REV. 1237 (2009), a follow-up article by Daniel Shaviro, *The Long-Term U.S. Fiscal Gap: Is the Main Problem Generational Inequity?*, 77 GEO. WASH. L. REV. 1298 (2009), and scholarly comments from Nancy J. Altman, *Social Security and Intergenerational Justice*, 77 GEO. WASH. L. REV. 1383 (2009), and Larry Zelenak, *Does Intergenerational Justice Require Rising Standards of Living?*, 77 GEO. WASH. L. REV. 1358 (2009).

and I now seem to agree that justice between generations is not a point of contention, even though it at least appeared that we were in some disagreement on that question in our earlier work. Ms. Altman and Professor Zelenak also offered useful insights into the issues raised by fiscal policy and intergenerational justice.

I sincerely appreciate the care with which all participants in the symposium approached these issues. The lessons learned from our exchange, I believe, illuminate and clarify the choices facing the still-new Obama administration as we confront a very challenging immediate and long-term future.

I. Consensus on the Irrelevance of Intergenerational "Justice" to Fiscal Policy

Prior to the current economic crisis, the prospects of at least the "average" members of future generations of Americans were quite good. According to forecasts from the Social Security Trustees from 2007 (prior to the onset of the current recession in December 2007), even under the most pessimistic long-term scenario (based on assumptions that imply historically anemic levels of economic growth for the next 75 years), the average income per capita of those Americans living in 2085 would be more than double current living standards.[2] Under less pessimistic scenarios, those living in that year would enjoy average living standards that are more than triple or even nearly quintuple current living standards.[3]

Although the current downturn threatens to decrease future living standards somewhat even after the economy rebounds, the most recent annual report from the Social Security Trustees shows that the overall long-term picture has barely changed, with living standards in the later years of this century still likely to be significantly higher on

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2 Author's calculations based on data provided in THE 2007 ANNUAL REPORT OF THE BOARD OF TRUSTEES OF THE FEDERAL OLD-AGE AND SURVIVORS INSURANCE AND FEDERAL DISABILITY INSURANCE TRUST FUNDS, H.R. DOC. NO. 110-30, at 78–79 tbl.V.A2, 94–95 tbl.V.B2 (2007), *available at* http://www.ssa.gov/OACT/TR/TR07/tr07.pdf [hereinafter 2007 TRUSTEES' REPORT] (showing that GDP per capita would be 144% higher in 2085 than in 2005 for the high-cost scenario). *See also* Neil H. Buchanan, *Social Security and Government Deficits: When Should We Worry?*, 92 CORNELL L. REV. 257, 266 n.57 (2007) (showing that, under the most pessimistic scenario using 2006 data, the trustees' forecasts for 2080 imply that per capita GDP would be 131% higher than in 2005). Note that the 2006 forecasts end in 2080, whereas forecasts beginning with the 2007 TRUSTEES' REPORT extend through 2085. *See* 2007 TRUSTEES' REPORT, *supra*, at 78–79 tbl.V.A2, 94–95 tbl.V.B2.

3 Author's calculations based on data provided in 2007 TRUSTEES' REPORT, *supra* note 2, at 78–79 tbl.V.A2, 94–95 tbl.V.B2, which shows that GDP per capita would be 249% or 395% higher in 2085 than in 2005 for the intermediate and low-cost scenarios, respectively.

average than they are today (once again forecast to more than double, even in the worst-case scenario).[4]

As I discussed in my principal article, therefore, the pressing issue from an egalitarian standpoint is not justice between generations but distributive justice within and across generations.[5] It does not matter when poor people or rich people live, only that they are rich or poor. If we wish to shift resources from the haves to the have-nots, as I believe we should, then we should do so by transferring from the rich (many of whom will live in the future, but many of whom are alive today) to the poor (many of whom are desperately poor today, and whose future counterparts are likely to be faced with living standards that are still—even with continuing economic growth—likely to be below living standards that are considered minimally adequate even by today's standards).

Moreover, as I further explained in my principal article, the case against the notion that we are violating reasonable standards of intergenerational justice does not merely rely on the extremely favorable forecasts of the living standards of future Americans discussed above. The deeper questions are whether we can say with any clarity whether we have *any* moral obligations to future generations and, if so, whether we can quantify those obligations in a way that can guide policy decisions.[6] Even if we adopt (without much philosophical support) the idea that our children should inherit a world that is richer than one that we inherited, there is no agreement about how to determine *how much* richer their future should be.

As noted above, I found the symposium to be especially helpful because it made it clear that my pointed (though cordial) disagreements over the years with Professor Shaviro about fiscal policy have not, it turns out, been based on disagreements about intergenerational justice. In his paper and remarks at the symposium, Professor Shaviro emphasized that his concern is with the possibility of a "doomsday scenario" involving a financial meltdown.[7] He agrees, however, that

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4 Author's calculations based on data provided in 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 (showing that GDP per capita would be 149%, 246%, or 379% higher in 2085 than in 2005 for high-cost, intermediate, and low-cost scenarios, respectively).

5 Buchanan, *supra* note 1, at 1287–96.

6 *Id.* at 1250–58.

7 *See* Shaviro, *supra* note 1, at 1334–37. Professor Shaviro specifically used the term "doomsday scenario" in his oral remarks at the symposium.

there is no convincing case that current generations are being somehow unfair to future generations while coddling themselves.[8]

After I emphasized my delight over this consensus during my oral remarks at the symposium, Professor Shaviro commented to me that he had not meant to rest his argument in the past on the normative claim that we are being unfair to future generations. I may therefore have misunderstood his earlier writings, but the nature of any misunderstanding is at least instructive.

Professor Shaviro certainly has not engaged in the kind of heated rhetoric about intergenerational unfairness that I have documented in my principal symposium paper and elsewhere.[9] Instead, he has often tended to couch his remarks in the conditional tense appropriate to detached policy analysis:

> *If* net benefit levels must and will decline at some point, then the best course—ignoring difficult broader questions of generational distribution that I have discussed elsewhere—*may be* to spread the pain widely by requiring all age groups to share it in some measure, rather than deeply by making a few pay in full. This means that current and older Americans should bear some portion of the cost of fiscal retrenchment, no less than future and younger Americans.[10]

In other instances, the existence or absence of a moral judgment in Professor Shaviro's comments is debatable: "Washington has historically engaged in immense wealth redistribution from younger to older generations. . . . The younger generations keep having to pick up the tab for the older generations' expanding benefits."[11] In this quote, Professor Shaviro does not explicitly condemn redistribution from old to young as unjustified in terms of intergenerational equity, but a reader could surely be forgiven for finding such condemnation in words like "having to pick up the tab." Reasonable people can differ about how much normative content lies therein, but there is at least

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8 *See infra* note 14 and accompanying text.

9 *See* Buchanan, *supra* note 1, at 1237–90 & nn.1–9; *see also* Neil H. Buchanan, *"Generational Theft"? Even With Stimulus and Bailout Spending, U.S. Fiscal Policy Does Not Cheat Future Generations*, CHALLENGE (forthcoming September/October 2009), *available at* http://ssrn.com/abstract=1357772 (quoting, among other incendiary comments, Laurence Kotlikoff's claim that U.S. fiscal policy amounts to "fiscal child abuse").

10 Daniel Shaviro, *Understanding the Generational Challenge*, 75 TAX NOTES 714, 715–16 (1997) (emphasis added) (footnote omitted). Note, however, that the final sentence of that quotation drops the conditional tense and adopts a prescriptive stance.

11 Daniel N. Shaviro, Op-Ed., *How Tax Cuts Feed the Beast*, N.Y. TIMES, Sep. 21, 2004, at A27.

the suggestion that something intergenerationally inappropriate is going on.

In other instances, Professor Shaviro has adopted a less neutral tone: "The Bush administration's policy of sharply cutting taxes while increasing government spending is both misguided and harmful. . . . [I]t in fact increases the government's distributional intervention by handing money to current voters at the expense of younger and future generations."[12] Also: "This author has argued elsewhere that the impact of the current fiscal policy on future generations is unjustifiable."[13]

Rather than further reviewing what Professor Shaviro has written in the past, however, the important point is that I (and perhaps others) misread his intent. In his piece for this symposium, Shaviro states:

> The chief harm, however, is not the one perhaps most frequently voiced—that of unfairly burdening future generations relative to current ones. The pervasive uncertainties that undermine efforts to specify an optimal policy of intergenerational distribution make it hard to conclude with any confidence that too many dollars are being shifted from them to us, rather than the right amount or too few.[14]

While this language retains a certain degree of ambiguity in saying that intergenerational inequity is not the "chief harm," I take the totality of Shaviro's symposium piece and his comments at the symposium as meaning that claims of intergenerational injustice should not be a serious part of the debate. That does not remove all of our disagreements, of course, but finding agreements and noting them as we move forward is an important part of the scholarly process.

We can thus set aside the concern that current generations are being unfair to future generations, either because we view the likely inheritance of future generations already to be adequate or simply because we cannot agree on how to assess fairness or unfairness between generations.

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12 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, 1333–34 (2004).

13 Daniel N. Shaviro, *Accrual Accounting and the Fiscal Gap*, 41 Harv. J. on Legis. 209, 214 (2004).

14 Shaviro, *supra* note 1, at 1300 (footnotes omitted).

II. Responses from A (Altman) to Z (Zelenak)

In addition to Professor Shaviro's piece, the fiscal policy panel included comments on my main symposium article by Ms. Altman and Professor Zelenak. Because their responses can fairly be described as friendly, I start by thanking them for taking my work as a leaping off point for further exploration of some related issues. Their comments have surely improved my article as I revised it after the symposium, and they have suggested some fruitful areas for further research.

Contrary to my focus on what we owe future generations, Ms. Altman asks what we owe *previous* generations, that is, current retirees.[15] We surely owe them a decent standard of living. Ms. Altman focuses our attention on the reasons for the long-term deficits that worry so many people, pointing to the frequent invocation of an "entitlements crisis" that is said to threaten our fiscal future and the notion that there are greedy senior citizens out there blithely cheating their grandchildren.[16] This is misleading at best, because there are key differences between Social Security and Medicare as they relate to long-term deficits.[17]

As Ms. Altman points out, the Social Security system is the most fiscally conservative and responsible part of the federal budget, and the system is certainly not going to go bankrupt.[18] Moreover, the financial problems faced by Medicare, she reminds us, are not a problem with the Medicare system itself but arise from problems with the entire health care system.[19] The parts of the U.S. health care system that are privately funded are also in financial trouble,[20] and health spending continues to be a much larger percentage of the U.S. economy than it is in countries with fully nationalized health care systems.[21]

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15 *See* Altman, *supra* note 1, at 1385.

16 *Cf. id.* at 1400 & nn.84–87; Robert J. Samuelson, Op-Ed., *Young Voters*, *Get Mad*, WASH. POST, Oct. 22, 2008, at A19 (describing the American Association of Retired Persons as "the citadel of seniors' political power and the country's most powerful 'special interest'" and noting that it "wields a virtual veto over roughly two-fifths of the federal budget").

17 *But cf.* Samuelson, *supra* note 16, at A19 (referring to "Social Security and Medicare" without differentiation at two points in editorial while ignoring key differences in each program).

18 Altman, *supra* note 1, at 1395–97.

19 *Id.* at 1393–94.

20 *Id.*

21 *See* Paul Krugman, Op-Ed., *Ailing Health Care*, N.Y. TIMES, Apr. 11, 2005, at A19 ("We spend far more per person on health care than any other country—75 percent more than Canada or France—yet rank near the bottom among industrial countries in indicators from life expectancy to infant mortality."); *see also* Posting of Uwe E. Reinhardt to N.Y. Times Economix Blog, http://economix.blogs.nytimes.com/2008/11/21/why-does-us-health-care-cost-so-much-part-ii-

Ms. Altman's written and oral comments, therefore, usefully remind us that the debate over how we treat future generations is often really a stand-in for a debate about how we will treat current retirees, an excuse to harm current retirees in the name of generations yet unborn. She writes convincingly that there is no reason to use the problems in the health care system to undermine Social Security and weaken its role in keeping the elderly out of poverty and living with dignity.

Professor Zelenak offered perhaps the most surprising twist on the question of intergenerational justice. Rather than challenging my suggestion that current generations might already be fulfilling our obligations to future generations, he suggested that we might want to make a conscious decision to level out living standards over time.[22] If current policies will leave people in 75 years from two to four times richer than people living today, we are arguably being too generous to them and too sparing with ourselves (or at least with the less fortunate among us). Zelenak suggested that, as Rawls argued, we owe the poorest a living standard that is high enough to allow them to live a minimally decent life; and the richest countries today could easily meet such an obligation without any further economic growth.[23]

How would we accomplish this feat of smoothing out incomes over time? As Zelenak points out, this is not as easy as it might seem, because technology has shown the tendency to advance over time.[24] Therefore, if we really wanted to prevent future economic growth, we would have to do more than simply make sure that we did not pass along too much physical capital (buildings and machines) to future generations. We would have to bequeath smaller amounts of physical capital than we inherited, because the capital that we pass on will be more productive.

Professor Zelenak's thought exercise is provocative, and I do not think that he intended it to be an affirmative policy proposal. Instead, his comments shed further light on the fuzziness of our notion of justice between generations. If we really do not know whether we owe anything to future generations (or if we do, how much), we might

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indefensible-administrative-costs/ (Nov. 21, 2008, 10:34 EST) (noting that "[t]he United States spen[t] nearly 40 percent more on health care per capita than its G.D.P. per capita would predict" in 2006, where the prediction is "based on trends in other countries in the Organization for Economic Cooperation and Development").

22 Zelenak, *supra* note 1, at 1382.

23 *See id.* at 1363–64, 1381–82.

24 *See id.* at 1360–62.

want to think seriously about what we are currently doing that will make future generations so much wealthier than we are.

Conclusion

The panel on *Government Finances Today and Economic Prosperity Tomorrow* brought together four scholars who have written extensively on fiscal policy. The most notable result of the panel's papers and discussion was a consensus that intergenerational justice is not the appropriate lens through which to discuss fiscal policy. Because there is no clear moral position from which to assess what constitutes fairness from one generation to the next, and because even our most pessimistic forecasts indicate that future generations will have much higher living standards than we currently enjoy, there is no good case to be made that our current policy choices have cheated future generations of their birthright. If anything, there might even be an argument that we are doing too much for future generations and too little for ourselves, although none of the panelists (including myself) adopted that position.

There are, of course, prudential reasons why we might want to change our fiscal policies, chief among them the possibility that we are on an unsustainable path. While there is disagreement about the validity of the forecasts that make our current policies appear to be unsustainable, it is important to determine what is and is not responsible for long-term deficits. Notwithstanding the usual claims about "greedy seniors" and an "entitlements crisis," Social Security is not the problem, and the Medicare problem is not due to excess generosity toward older citizens but rather to unsustainable trends in health care costs overall.