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SUSTAINABLE TAX POLICY THROUGH THE LENS OF INTERGENERATIONAL JUSTICE

by

Neil H. Buchanan

Professor Lind’s summary of the papers in this issue ably captures the range of topics addressed by the scholars who gathered for our conference at the University of Gävle last year. More importantly, she points out how well the various articles translate into the era of COVID-19. Even though no one could possibly have imagined the changes that we have experienced just since February of 2020, the issues of inequality, environmental degradation, international tax coordination, gender- and race-based unfairness, and so on have become even more important as the world explores how to move forward from this global tragedy.

One of my long-term research projects has involved exploring the obligations between generations, in particular the “downward” obligations from older generations to younger generations that determine whether new members of society will thrive in the future.¹ It is a source of inspiration but also some frustration that nearly every policy issue can be viewed from an intergenerational perspective—inspiration because it reminds us that all policy decisions have effects (direct and indirect) that carry into the future, but frustration because merely “having an impact in the future” does not necessarily make a policy question ripe for an intergenerational analysis and is thus too broad.

Consider, for example, financial regulation. While it is true that smart regulatory design will have positive effects both today and in the

1. See especially Neil H. Buchanan, *What Do We Owe Future Generations?* 77 GEO. WASH. L. REV. 1237 (2009); Neil H. Buchanan, *What Kind of Environment Do We Owe Future Generations?* 15 LEWIS & CLARK L. REV. 339 (2011).

future, there is little to be added to the analysis by asking, “What kind of financial system do we owe future generations?” Similarly, as important as civil rights issues are, and as much as the fight against discriminatory policies can unfortunately persist across generations, the imperative for justice in civil rights is neither stronger nor weaker when future generations are taken into account. Racism is wrong today; sexism is wrong today; and LGBTQ discrimination is wrong today. If they last into the future, they will still be wrong, and the generations that inherit the moral rot from previous generations will need to try their hands at improving matters. Even so, the ethical urgency of these issues is neither enhanced nor diminished by intergenerational concerns (other than the numbers of people involved, which is simply a consequence of looking further into the future).

By contrast, other policy issues become more important—or once unimportant issues suddenly become important—when the interests of future generations are front and center. A village that has a seemingly unlimited source of fresh water will treat water as a non-issue, especially if the members of the village expect to move to a new location sometime soon. A society that expects to stay put and to thrive, however, will treat its resource decisions differently. Is water truly unlimited? If we burn resources, will that make us sick or will we run out of them—and even if it will not affect us, will the effects accumulate over time such that we are harming the generations that will follow us? In other words, would we act differently after stopping and considering that we are not the only people who will be affected by our actions? Even the villagers who pick up stakes and move to a new location ought to think about the people of other villages who might replace them in the future.

For the conference in Gävle, Professor Lind and I invited scholars to submit work that falls within the broad framework of “sustainability.” While this framing was in the first instance in response to the European Union’s guidelines on sustainability, the concept is much broader and is, I think, best understood as a question of intergenerational justice. To ask whether current generations will bequeath systems that are *sustainable* to future generations is to ask whether the environment, the economy, social relations, the legal and political system, and so on are fated to fail at some point in the future. If we owe future generations anything, one might think that we owe it to them not to hand down systems that are crumbling.

As the world has been gripped in the coronavirus pandemic, we have been given an opportunity to consider anew the ways in which

current generations can and should make sure that what we leave to future generations is not inherently unsustainable, that is, that the world is not falling apart (or about to fall apart) when the next generation takes control. This global cataclysm allows us—indeed, it calls upon us—to make sure that we do not pass along systems that are doomed to failure (or are already failing) because current generations have not been attentive or energetic enough to fix them.

In my country, the first and most important lesson of 2020 is that our political system has shown itself to be incapable of responding with even minimal effectiveness to an enormous public health crisis. What should be entirely a matter of science and medicine has been made much worse by a catastrophically dysfunctional political system. This is having tragic effects, but it does mean that the United States is going to be forced to decide whether it is willing and able to act with some level of political maturity.

Our political immaturity, in turn, is a function of the accumulated effects of economic inequality, as concentrated wealth has allowed the system to be captured by those who have demonstrated that they will support actions that harm future generations. The same system that now so badly mismanages the pandemic was already mismanaging the climate crisis, civil rights, and all the rest. As the papers in this issue demonstrate, the tax system, both domestically and internationally, can be used to help undo generations of damage to all aspects of society, allowing our children and grandchildren to inherit a society that is more just and prosperous than what we are living with today. This is what sustainable policy design requires.