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Gregory S. Alexander

Cornell University Law School, gsa9@cornell.edu

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Gregory S. Alexander*

Intergenerational Communities

Abstract: Under the human flourishing theory of property, owners have obligations, positive as well as negative, that they owe to members of the various communities to which they belong. But are the members of those communities limited to living persons, or do they include non-living persons as well, i.e., future persons and the dead? This Article argues that owners owe two sorts of obligation to non-living members of our generational communities, one general, the other specific. The general obligation is to provide future generations with the basic material background conditions that are necessary for them to be able to carry out what I call *life-transcending projects* that their forebears have transmitted to them. The specific obligation is project-specific; that is, its purpose is to enable successive generational community members to whom particular life-transcending projects have been forwarded to be carried out in their way. The future generational members to whom the project is transferred must also be given whatever resources or goods are necessary to carry the project forward in its intended way. I argue further that each generational community owes its predecessors the obligation to accept life-transcending projects transmitted to them by their forebears and make reasonable efforts to carry those projects forward into the future. The obligation is based on the past generational community members' dependency on their successors for the projects to continue into the future, a matter that is constitutive of the project creators' flourishing. This obligation is defeasible, rather than absolute, however.

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Introduction

Do property owners owe obligations to members of future and/or past generations? Although the question can be reframed in rights-terms so that it faces rights-oriented theories of property, it seems to pose a greater challenge to those theories of property that directly focus on the obligations that property owners owe to

*Corresponding author: Gregory S. Alexander, Cornell University, Ithaca, NY, USA, E-mail: gsa9@cornell.edu

others (rather than or, better, along with the rights of owner). The challenge is compounded where such theories emphasize the relationships between individual property owners¹ and the various communities to which they belong. Do those communities include members of future generations? This paper addresses these questions as they apply to a property theory that I have developed in recent work, a theory that we can call the human-flourishing theory of property.²

In this earlier work, I have argued that our (and others') dependence creates, for us (and for them), an obligation to participate in and support the social networks and structures that enable us to develop those human capabilities that make it possible for living members of the various communities to which we belong to flourish. My concerns here are whether such an obligation extends to non-living members of our communities, past and future, as well, and if so, what is the scope of such an obligation and whether the fulfillment of the obligation is always a strictly private matter or is at least collective in some contexts. I argue that we do indeed owe obligations to non-living members of our generational communities. I argue further that with respect to members of future generational communities, there are two types of obligations, one general, the other specific.

The general obligation (GO) is to provide future generations with the basic material background conditions that are necessary for them to be able to carry out what I call life-transcending projects that their forebears have transmitted to them. This obligation is general insofar as it is not project-specific; rather, its purpose is to enable future generations to flourish. It is general, moreover, in the sense it is the obligation that any decent liberal society owes to its own members, an intra-generational obligation concerning goods that such a society ought to save rather than consume. Such goods will then remain available for future generations.

Although many other theorists have discussed the GO, what I add to the literature is a discussion of the specific obligation (SO). The SO is project-specific; that is, its purpose is to enable successive generational community members to whom particular life-transcending projects have been forwarded to be carried out in their way. The future generational members to whom the project is transferred must also be given whatever resources or goods are necessary to carry the project forward in its intended way.

1 Although I do discuss collective obligations to past and future generations to some extent in this paper, my main focus is on the obligations of individuals. More specifically, I focus on individual obligations as they pertain to property concretely.

2 See, e.g., Gregory S. Alexander, *The Social-Obligation Norm in American Property Law*, 94 CORNELL L. REV. 745 (2009); Gregory S. Alexander & Eduardo M. Peñalver, *Properties of Community*, 10 THEOR. INQ. L. 127 (2009); Gregory S. Alexander, *Pluralism and Property*, 80 FORDHAM L. REV. 1017 (2011).

I argue further that each generational community owes its predecessors the obligation to accept life-transcending projects transmitted to them by their forebears and make reasonable efforts to carry those projects forward into the future. The obligation is based on the past generational community members' dependency on their successors for the projects to continue into the future, a matter that is constitutive of the project creators' flourishing. This obligation is defeasible, rather than absolute, however. Persons to whom life-transcending projects have been forwarded for caretaking and fulfillment must be free to reject the projects that are themselves immoral or that otherwise unreasonably burden them. Concomitantly, creators of life-transcending projects, in transmitting such projects to successive generational members, are under the moral obligation not to impose immoral, unreasonable, or foolish projects on their successors.

The scope of both the GO and the SO are more restricted than some rights theorists, such as Jeremy Waldron, have claimed.³ Unlike Waldron, I argue that the obligations that property owners owe to past and future generations are grounded on dependence. Specifically, I argue that in the intergenerational context dependency involves reciprocity (and vice versa) and that there are two distinct, although related, senses of reciprocity at work here. One is a form of serial reciprocity, a “pay-it-forward” version of reciprocity that exists between one generation and its successors. The second version is a more direct form of reciprocity, what we might call a “quid-pro-quo” reciprocity. This form of reciprocity exists between the persons transferring life-transcending projects and their future generational counterparts who receive the projects. The idea is that members of future generational communities continue the life-transcending projects of their predecessors in return for the transferors' obligation to provide the project recipients with goods that are necessary to continue and, where possible, improve the project. The two versions of reciprocity, pay-it-forward and quid-pro-quo, although ping and reinforcing, are distinct from each other because each is more closely associated with one or the other obligation, the GO or SO. Specifically, quid-pro-quo reciprocity does the most work with respect to those assets that are the subject of the SO, which is project-specific. Serial reciprocity fits better with the GO, which is not asset-specific and not peculiar (although relevant) to life-transcending projects.

As the distance between the living and the future increases, the obligations between generational communities gradually weaken. Time generally mitigates or dilutes the moral obligations that generations owe to the past.⁴ After

³ See JEREMY WALDRON, *THE RIGHT TO PRIVATE PROPERTY* 115–17, 423, 425–27, 430–39, 444–45 (1988) (developing a general-rights theory of property with broadly distributive implications).

⁴ See Gregory S. Alexander, *The Complexities of Land Reparations*, *LAW & SOC. INQ.* (forthcoming, 2014); Jeremy Waldron, *Superseding Historical Injustice*, 103 *ETHICS* 4, 14–20 (1992).

an extended period of years, the possessor of the asset that began as a life-transcending project is apt to regard that asset as her own, free to use it as she wishes, and the asset loses its identity as life-transcending. No fixed period of time can be given for such a loss of identity. The matter is highly context-dependent, varying according to such factors as the type of asset (a modest personal hobby or collection vs. a family farm or business), changes that may be needed to maintain or improve the project over time, the level of personal skill necessary to carry the project forward, etc.

The primary focus of this paper is the obligations that individuals *qua* property owners owe to members of future generations. However, I also certainly recognize that collective obligations to members of future generations exist, especially with respect to GO. Both types of obligations, individual and collective, may, and as I argue, do co-exist, but it is important to keep them separate, for both their scope and respective bases may differ.

The Human-Flourishing Theory of Property: An Overview

The fundamental normative premise of this paper is that the moral foundation of property is human flourishing. By human flourishing, I mean that a person has the opportunity to live a life as fulfilling as possible for him or her.⁵

There are two key characteristics of my conception of human flourishing. First, it is morally pluralistic; that is, it rejects the notion that there exists a single irreducible fundamental moral value to which all other moral values may be reduced. Rather, it conceives of human flourishing as including (but not limited to) – individual autonomy, personal security/privacy, personhood, self-determination, community, and equality. These values cannot be reduced to a single basic value because they are incommensurable; that is, there is no available metric by which one can commensurate goods such as equality and personhood. (It's like saying that Einstein's genius was "better than" Mother Theresa's compassion – the comparison makes no sense.) They are all aspect of human flourishing and cannot be balanced one against the other.

The second defining characteristic of flourishing is that it is objective. This is why flourishing is a better translation of *eudaimonia* than happiness is. The

⁵ My use of the term "human flourishing" is Aristotelian. Aristotle's term, of course, was *eudaimonia*, which is commonly translated as "happiness." Human flourishing is a better translation of *eudaimonia*, however, for reasons explained further in the paper.

problem with “happiness” is that it connotes something that is subjectively determined. It is for me, not for you, to pronounce on whether I am happy, or on whether my life, as a whole, has been a happy one. Contrast my being healthy or flourishing. Here we have no difficulty in recognizing that I might think I was healthy, either physically or psychologically, or think that I was flourishing and just be plain wrong. It is all too easy for me to be mistaken about whether my life is *eudaimon* (the adjective from *eudaimonia*) not simply because it is easy to deceive oneself, but because it is easy to have a mistaken conception of *eudaimonia*, or of what it is to live well as a human being, believing it to consist largely in physical pleasure or luxury for example.

My account of human flourishing stresses two necessary conditions. First, following Amartya Sen,⁶ I argue that human beings must develop certain *capabilities* necessary for a well lived and distinctly human life. Among these necessary capabilities are *health*, the ability to engage in *practical reasoning*, *freedom* to make deliberate choices, and the ability to get along with other people (*sociability*). The second necessary condition for human flourishing is a social context. Flourishing occurs only in society with, indeed, *dependent* upon, other human beings. Living within webs of social relationships is a necessary condition for humans to develop the distinctly human capacities that allow us to flourish.

These two characteristics of human flourishing, developing necessary capabilities and dependency on others, are deeply interconnected. We are not born as autonomous agents; we learn it. And we do not develop autonomy by ourselves or through our own devices; we develop autonomy through the help of others. We are, in short, inevitably dependent upon various communities, both chosen and unchosen, not only for our physical survival but also for our ability to function as free and rational agents.

Communities, including but not limited to the state, are the mediating vehicles through which we come to acquire the resources we need to flourish and to become fully socialized into the exercise of our capabilities.⁷ Even (or more properly, precisely) as free, rational persons, we never cease to operate within and depend upon the matrices of the many communities in which we find ourselves in association. Each of our identities is inextricably connected in some sense to others with whom we are connected as members of one or typically more communities. Our

⁶ See, e.g., AMARTYA SEN, *COMMODITIES AND CAPABILITIES* (1999); AMARTYASEN, *FREEDOM AS DEVELOPMENT* (1999).

⁷ The conception of community which underlays my approach to the social-obligation norm owes much to the following works: ROBERT BELLAH ET AL., *HABITS OF THE HEART* (2nd ed., 1996); ROSALIND HURSTHOUSE, *ON VIRTUE ETHICS* (1999); ALASTAIR MACINTYRE, *DEPENDENT RATIONAL ANIMALS: WHY HUMAN BEINGS NEED THE VIRTUES* (1999); MICHAEL J. SANDEL, *LIBERALISM AND THE LIMITS OF JUSTICE* (2nd ed., 1998); CHARLES TAYLOR, *SOURCES OF THE SELF: THE MAKING OF THE MODERN IDENTITY* (1st ed., 1989).

identities are literally constituted by the communities of which we are members. Asked who we are, we inevitably talk about the communities where we were born and raised, our nation, our family, where we attended school, our friends, our religious communities and clubs. Indeed, individuals and communities interpenetrate one another so completely that they can never be fully separated.⁸

The communities in which we find ourselves play crucial roles in the formation of our preferences, the extent of our expectations, and the scope of our aspirations. The homeless person, accustomed to receiving little more than abuse or neglect, may come to expect little more out of life.⁹ Similarly, although membership in certain communities can obviously be based upon contract or voluntary agreement, the very possibility of these voluntarily associative relationships depends upon our prior and continuing (and typically involuntary) participation in or exposure to communal institutions. These institutions impart to us the information and capacities that give us the tools needed to permit us to understand and engage in voluntary choosing at all.¹⁰

Precisely because capabilities are essential to flourishing in a distinctively human way, development of one's capabilities is an objective human good, something that we ought (insofar as we accept these particular capabilities as intrinsically valuable) to promote as a good in and of itself. As a matter of human dignity, every person is equally entitled to flourish. This being so, every person must be equally entitled to those things essential for human flourishing, i.e., the capabilities that are the foundation of flourishing and the material resources required to nurture those capabilities. In the absence of these capabilities and supporting resources, recognition of the entitlement to flourish is simply an empty gesture. But not every society will be equally conducive to human flourishing. The cultivation of the capabilities necessary for flourishing depends upon social matrices, and the condition of those matrices varies among societies, sometimes quite widely. A society that fosters those capabilities that are necessary for human flourishing is morally better than one that is either indifferent or (even worse) hostile to their manifestation.

Human flourishing requires not only virtues but also resources. Each of us desires resources to enable development of the capabilities that are essential for human beings. Being social animals, moreover, humans want those resources

8 For an elaboration of this idea, see Gregory S. Alexander, *Dilemmas of Group Autonomy: Residential Associations and Community*, 75 *CORNELL L. REV.* 1, 21–28 (1989).

9 See SEN, *supra* note 6, at 21 (“A person who is ill-fed, undernourished, unsheltered and ill can still be high up in the scale of happiness or desire-fulfillment if he or she has learned to have ‘realistic’ desires and to take pleasure in small mercies.”).

10 See TAYLOR, *supra* note 7, at 196–98; Alexander, *The Social-Obligation Norm in American Property Law*, *supra* note 2, *passim*.

not only for themselves but also for others so that they develop the capabilities for flourishing as well.¹¹ Hence, human flourishing requires distributive justice, the ultimate objective of which is to give people what they need in order to develop the capabilities necessary for living the well-lived life (though not necessarily what they want).¹²

If human capacities such as health, the ability to engage in practical reasoning, and to make reasoned decisions about how to live our lives are components of the well-lived life, then surely we are all obligated to support and nurture the social structures without which those human capabilities cannot be developed.¹³ Consequently, from the standpoint of the capabilities necessary for human flourishing, how we participate in political and social communities cannot just be an expression of our preexisting autonomy; our participation cannot be solely a volitional act we commit for instrumental reasons such as preference satisfaction. Our participation in community is also an objectively grounded obligation rooted in our recognition of the value of the capabilities that are necessary for the well-lived life.

Acknowledgment of our human dependence upon others and upon the social matrices that nurture the capacities that enable us to flourish creates for us a moral obligation to support these matrices.

The Meanings of Community

The term “community” can be used to refer to a concept,¹⁴ a regulative ideal,¹⁵ or a social institution or practice, but all too frequently scholars do not

11 See JAMES GORDLEY, *FOUNDATIONS OF PRIVATE LAW: PROPERTY, TORT, CONTRACT, UNJUST ENRICHMENT* 8 (2006).

12 As Gordley points out, the Aristotelian concept of human flourishing also rests on commutative justice, the object of which is to enable each person to obtain what she needs for the development of the essential capabilities without unfairly inhibiting others’ abilities to do the same. *See id.*

13 *Id.* at 197.

14 Referring to community as a concept, Andrew Mason has usefully distinguished between “ordinary” community and “moralized” community. *See* ANDREW MASON, *COMMUNITY, SOLIDARITY, AND BELONGING: LEVELS OF BELONGING AND THEIR NORMATIVE SIGNIFICANCE* 21–27 (2000). By “ordinary” community, Mason means a group who act or cooperate together in pursuit of shared goals or at least who possess common interests. *Id.* at 21. A “moralized” community has two additional conditions: (1) solidarity, or mutual concern, i.e., its members must give each other’s interests some degree of non-instrumental weight and (2) no systematic exploitation among members. *Id.* at 27.

15 As a regulative or normative ideal, theorists like Michael Sandel have used the term as an alternative to the political and moral vision of “atomist” individualists, whose central doctrine

make clear in which sense they are using the term. In the context of property theory, community is more commonly used to refer to social institutions and practices.¹⁶ As a social institution, community exhibits a remarkable diversity of forms, covering a wide spectrum of practices.¹⁷ Even if we confine the term “communities” to territorial communities, it remains maddeningly ambiguous. Its use ranges from small face-to-face groups in which personal relationships are close and characterized by a high degree of mutuality and identification to the so-called global community. Part of the difficulty stems from the famous distinction drawn by Ferdinand Tönnies between *Gemeinschaft* and *Gesellschaft*,¹⁸ the former referring to small-scale, preindustrial groups whose social relations are intimate, while the latter refers to the contractual and impersonal relationships typical of industrial societies. Although most social scientists today regard that distinction as unhelpful, it continues to influence some discussions of community by a tendency to dichotomize conceptions of community as either hopelessly weak or “tightly knit,” with the latter often romanticized as the ideal toward which communities ought to aspire.

For present purposes, what matters is to understand that individual volition plays only a limited role in the context of communities, as social institutions. Membership in communities may be non-volitional as well as volitional. Moreover, communities play crucial roles in the formation of our preferences, the extent of our expectations, and the scope of our aspirations. Indeed, the very possibility of communities being based on private, individual choice depends upon our prior and continuing (and frequently involuntary) participation in or exposure to communal institutions that impart to us the information, resources, and capacities necessary to understand and engage in voluntary choice to begin with.

Non-volitional communities are non-strategic in character. This means that their members do not join them or remain in them for individual strategic

is, as Charles Taylor explains, “a principle ascribing rights to men as binding unconditionally ... [b]ut ... do[es] not accept as similarly unconditional a principle of belonging or obligation.” CHARLES TAYLOR, 2 PHILOSOPHICAL PAPERS: PHILOSOPHY AND THE HUMAN SCIENCES 188 (1985). Arguing against the primacy of rights, communitarians like Taylor have propounded what he calls a “social thesis,” which holds that the very affirmative of our right creates for us an obligation to belong to and sustain the right kind of society, i.e., the kind of society that nurtures people’s capabilities to develop as free and autonomous moral agents.

¹⁶ See, e.g., Amnon Lehari, *How Property Can Create, Maintain, or Destroy Community*, 10 THEO. INQ. L. 43, 46–48 (2008).

¹⁷ See *id.*

¹⁸ FERDINAND TÖNNIES, *COMMUNITY AND CIVIL SOCIETY* 17 (Jose Harris trans., Jose Harris & Margaret Hollis eds., Cambridge UP, 2001) (1887).

advantages. Indeed, members of some non-volitional communities sometimes find their membership disadvantageous in some personal, but very real sense. For example, family members may experience membership in their families threatening to their personal identities in some way and try to deny membership from the family or escape from it.

The nonstrategic and noncontractual character of many communities means that social relations within them will transcend demands for immediate or short-term reciprocity. It further means that members of such communities, which include but are not limited to political communities, have obligations to fellow members of their communities. These obligations result from membership itself. What members give to fellow community members are not in the nature of market exchanges, where a calculated return of greater value is expected. There may well be an expectation of reciprocity, but, as Hanoch Dagan notes,¹⁹ the expectation may well operate over an extended period of time, perhaps even extending over multiple lifetimes. Moreover, the form that such long-term reciprocity takes means that compensation may be very different in kind from what was given. Indeed, it may come from a member of the community other than the one to whom it was given, and, in some ways, its “value” relative to the original contribution is less important than that it is received at all.²⁰

Are There Intergenerational Communities?

The idea that there are communities that cross-generational boundaries has been widely contested. Without reviewing all of the objections and questions that theorists have raised regarding this concept, we must at least consider some of these doubts. For example, given that individuals do not regularly interact with members of future generations, how are intergenerational communities even possible? Second, how can such communities be said to exist when some individuals do not identify with any generation other than their own? Third, if communities are constitutive of individual identities insofar as its members share notions of the good or at least participate in open debates about shared goods, how are transgenerational constitutive communities possible where members of future generations do not directly participate in such debates?

¹⁹ See Hanoch Dagan, *Taking and Distributive Justice*, 85 VA. L. REV. 741 (1999); Hanoch Dagan, *Just Compensation, Incentives, and Social Meanings*, 99 MICH. L. REV. 134 (2000).

²⁰ See Alexander, *The Social-Obligation Norm in American Property Law*, *supra* note 2, at 770–71.

The first problem is familiar in the literature on intergenerational justice. The notion of intergenerational communities seems implausible given the fact that members of the present generation do not interact with future generations.²¹ In the absence of such interaction, there is no reciprocity between present and future generations.²² There must be, one scholar argues, “the exchange of ideas and conceptions of purposes that must be available to persons before they can be considered to stand as joint participants in a common project.”²³

This objection trades on a narrow conception of interaction. It supposes that social interaction must be face-to-face, direct, or synchronic. But interactions among groups often are diachronic. The transmission of cultural memories, shared political histories and traditions,²⁴ for example, are diachronic, yet are forms of group interaction. In the process of such transmissions, past generations speak, as it were, to the present and future generations. Those generations, in turn, speak back to the past by interpreting these histories and traditions from their own point of view. What results is a hermeneutic conversation that is certainly an “exchange of ideas and conceptions of purposes.” Indeed, this hermeneutic intergenerational conversation is sometimes more robust than that among generational contemporaries.

Related to the question of interaction is another objection that is sometimes raised. Because present and future people are not positioned so as to be able to reciprocate with each other, they cannot develop a sense of identity with each other, a feeling of being on the same side.²⁵ This objection fails to take account of the multiple ways in which people can and do identify with each other. It is not fruitful to ask whether members of one group identify in the abstract with members of another group. The more helpful question is whether there is some specific level or respect in which members of the different groups identify with each other. For example, as a practicing Roman Catholic, I identify with Catholics around the world on the various issues that concern the Church despite the fact that I am not in a position to reciprocate with many of them. Identification for purposes of community existence does not require complete or 100% identity of interests or views. Such a requirement would disqualify many groups that otherwise plainly are communities, including families. What is

²¹ See, e.g., Ernest Partridge, *Future Generations*, in *A COMPANION TO ENVIRONMENTAL ETHICS* 377 (Dale Jamieson ed., 2001).

²² See Norman S. Care, *Future Generations, Public Policy and the Motivation Problem*, 4 (3) *ENVIRON. ETHICS* 195 (1982).

²³ NORMAN S. CARE, *DECENT PEOPLE* 112 (2000).

²⁴ In the U.S., for example, a clear example is the history and tradition of the U.S. Constitution, a cultural memory that has been the subject of extraordinarily lively debates.

²⁵ See Care, *supra* note 22, at 208–09.

required is that members of the two groups experience a sense of common membership with respect to some value that is important to them both.

A third objection concerns shared purposes. Presumably, members of communities hold shared purposes or norms. Such sharing is indispensable to the existence of communities because of their constitutive nature. According to this constitutive conception of communities,²⁶ a “community [is] ... constitutive of the shared self-understandings of the participants and embodied in their institutional arrangements...”²⁷ That is, what binds members of the community together is not sentiment but identity.²⁸ Community members share understandings of whom and what they are, and these understandings are sufficiently fundamental that they constitute part of the members’ self-identities.

Avner de-Shalit refers to the experience of sharing that is necessary for constitutive communities by the term “moral similarity.”²⁹ He distinguishes that term from cultural homogeneity that may characterize groups that may lack shared ideas or purposes.³⁰ Nor does moral similarity require unanimity. Communities experience debate about the ideas and norms they share, sometimes quite robustly. Old ideas may be reexamined; new one proposed and either adopted or rejected. As the community’s normative constitution shifts, some members may become disaffected, losing their moral similarity, and drop out. The shift may attract new member in turn. The point is that debate is very much a part of, indeed even necessary for, the experience of moral similarity.

If debate is necessary for the moral similarity that characterizes communities, how is such a debate possible between members of present and future generations? Here de-Shalit introduces another concept that is useful – cultural interaction. De-Shalit points out that every community has its own history of cultural interaction, which includes political, social, and cultural experiences that they share as well as shared traditions, symbols, practices, and codes.³¹ Cultural interaction is not confined within the same generation, of course, for children interact in various ways with their parents and grandparents about the meanings and even legitimacy of their traditions and beliefs. These interactions are face-to-face, but others are not. For example, religious communities whose shared traditions include historical texts read, interpret, reinterpret, and debate those texts over many generations, sometimes centuries, in an ongoing debate

26 See MICHAEL SANDEL, *LIBERALISM AND THE LIMITS OF JUSTICE* (1982); AVNER DE-SHALIT, *WHY POSTERITY MATTERS: ENVIRONMENTAL POLICIES AND FUTURE GENERATIONS* (1995).

27 SANDEL, *supra* note 26, at 173.

28 See DE-SHALIT, *supra* note 26, at 33.

29 *Id.* at 25–31 and *passim*.

30 *Id.* at 27.

31 *Id.* at 23.

about the meaning and legitimacy of various textual meanings. These debates are between present and past generations as well as within single generations. This example is what Alasdair C. MacIntyre has in mind when he writes “[L]iving tradition then is an historically extended, socially embodied argument, and an argument precisely in part about the goods which constitute that tradition. Within a tradition the pursuit of goods extends through generations, sometimes through many generations.”³²

The contested meaning and even legitimacy of the religious group’s core texts are the topics of an ongoing argument as to the religion’s very identity. In this respect, as MacIntyre points out, “Traditions ... embody continuities of conflict.”³³

These continuities are forward looking as well as backward looking. Cultural practices commonly speak to the future, even the distant future. When originators of core religious texts (or glosses upon those texts) write, they address not only their contemporaries but also followers (including future converts) who will listen to their texts and reply, as it were, throughout the generations ahead. The conversation is not face-to-face, but it is very real nonetheless. It is as real as when an American citizen writes a letter to her President, knowing that there will be no reply. The letter writer does not think she is speaking to herself, for there is some possibility that her letter will influence the President in some well, however indirectly or slightly.

Future community members to whom the group’s cultural values, traditions, and practices are addressed receive the message. Their cultural and normative starting point is what they inherited from their forebears. But they are not merely passive receptors. They answer back by reviewing, critiquing, and sometimes revising the cultural traditions and normative material that they inherited. Revision is sometimes necessary because of changes in the community’s circumstances, economic, social, technological, or other types of changes.³⁴ Eventually, the degree of moral similarity will diminish to the point that it is no longer meaningful to consider the intergenerational community as still existing. De-Shalit explains:

When it comes about that the values of the members of the community change drastically, many members will find themselves in a state of growing alienation from the community of their ancestors. This will continue until the question arises as to whether they still regard it as the same transgenerational community, a community which defines the “self[”] of its

³² ALASDAIR MACINTYRE, *AFTER VIRTUE* 222 (1981).

³³ *Id.*

³⁴ See DE-SHALIT, *supra* note 26, at 46–49.

members. A time will come when it becomes questionable whether future generations will still speak of the same transgenerational community.³⁵

Intergenerational constitutive communities, then, are both dynamic and contingent. They change, and their duration is limited, dependent as they are upon external factors that affect their members' identification with them and their shared normative orientation.

Can Obligations Exist within Intergenerational Communities?

The human flourishing theory grounds obligation on dependence. As we have seen, it locates the source of property owners' obligations to their communities on the fact that all human beings are dependent throughout their lives on others to provide them in various ways with the means necessary to enable the development of certain indispensable capabilities. Even if one agrees, following the previous analysis, that communities are not confined to presently living persons, one may argue that, on the theory's own premises, property owners cannot owe obligations to members of future generations because the living are not dependent upon unborn persons. This is a powerful objection, and it requires careful consideration.

Looking Back: Obligations to Past Generations – Dependence and Life-Transcending Projects

Before looking forward, we must first look back. That is, we need first to discuss obligations that the present generation owes to past generations and the basis for such obligations. Much has already been written on this topic,³⁶ but what matters for my purposes is the role of dependence in establishing obligations between members of different generations. The basis for skepticism that such an obligation exists is the very fact that members of past generations are dead. Because they are gone, the skeptic argues, nothing that we do or do not do today can possibly make their lives go any better or worse. The response to this

³⁵ *Id.* at 47.

³⁶ See, e.g., THOMAS SCANLON, *WHAT WE OWE TO EACH OTHER* (1998); George Pitcher, *The Misfortunes of the Dead*, 21 AM. PHIL. Q 183 (1984).

objection that I shall make will pave the way for the case for obligations that we owe to future generations.

Life-Transcending Projects

The skeptic's argument that living persons can do nothing to affect the lives of those who are dead ultimately rests on the assumption that obligations must be based on avoidance of harm.³⁷ Whether the dead can be harmed is a matter of considerable debate in the philosophical literature,³⁸ but we need not resolve that debate to conclude that the present generation does owe obligations to the past. There is another basis for such obligations, an alternative to the harm principle. That basis is what we can call *life-transcending projects*. People have interests in having life-transcending projects carried through and realized after they deaths, sometimes many years after their deaths, but obviously they cannot do so themselves. They are dependent upon the living to honor the interest that the dead have in seeing their life-transcending projects continued and realized beyond the death of their creators.

Life-transcending projects are those projects the personal value or importance of which transcend creators or originators of the projects personally and so transcend their lifetimes. Such projects vary widely. They range from money-making personal projects, such as businesses that people have created, to public-minded projects, such as charitable foundations. Nor are life-transcending projects limited to material affairs of these sorts. They may be as abstract as ideas or theories that a person has developed and to which she has devoted a great deal of effort and time. There are many obvious examples of life-transcending projects, including important private institutions including universities (e.g., Stanford, Cornell, The University of Chicago), museums (e.g., the Barnes Museum, the Guggenheim Museum); foundations (e.g., the Ford Foundation, the Carnegie Foundation); private hospitals, and so on.

Wealthy individuals commonly create charitable trusts in their wills, and these charitable trusts typically involve life-transcending projects. Charitable trust donors usually impose restrictions on what the trustees can do with the trust funds, and these restrictions represent attempts to assure that future

³⁷ See JANNA THOMPSON, *INTERGENERATIONAL JUSTICE: RIGHTS AND RESPONSIBILITIES IN AN INTERGENERATIONAL POLITY* 56 (2009).

³⁸ See, e.g., Joan C. Callahan, *On Harming the Dead*, 97 *ETHICS* 341 (1987); Pitcher, *supra* note 36; Joel Feinberg, *The Rights of Animals and Unborn Generations*, in *PHILOSOPHY AND ENVIRONMENTAL CRISIS* 4 (William T. Blackstone ed., 1974).

trustees fulfill the donor's life-transcending project. Sometimes these restrictions become impossible or impracticable to implement, and the law must modify the terms of the trust instrument so that the trust can operate on terms as close as possible to the donor's original intent.³⁹ At other times, however, the donor's restrictions are so extreme or become irreconcilable with evolving public policy that courts are no longer willing to carry out the donor's project as originally intended. (A racially discriminatory trust is an example.⁴⁰) When that occurs, the court must decide whether the donor's project was so intimately tied to the offensive feature that he would not want to go forward without it. If that is the case, then the court must refuse to carry out the trust. But if the court concludes that in its judgment the offensive feature was not indispensable to the donor's project, then the court will revise the terms of the project to remove the offending feature and go forward with it.

Wealthy persons are not the only ones who have life-transcending projects, the fulfillment of which require the help of future generations. Owners of small businesses and family farms usually hope that the enterprises to which they have devoted the better portion of their lives will continue to thrive after their deaths, and they depend on future generations to carry out their hopes and dreams. Inventors hope that their creations will continue to be used many years after their deaths. Authors hope that their works will continue to attract readers for decades, even centuries to come. Scholars hope that future scholars will use their work, and so on.

Other examples are less obvious. For example, personal activities such as artwork (painting, sculpture, etc.), crafts (pottery, knitting, needlework, etc.), and even gardening develop into life-transcending projects for many people. So, too, do collections ranging from coins and stamps to artwork. Collectors commonly are passionate about their collections, and they pass them on to others at their death in the hope that future owners will recognize the project's significance and survive rather than simply being tossed away as if it were nothing more than yesterday's newspapers. Such activities and collections are not life-transcending for everyone, of course. Some are just hobbies or amusements that people use to pass the time. But for many people, wealthy and poor alike, activities and collections, often quite modest, are indeed life-transcending. They enable their creators in important ways to flourish. The results of these

³⁹ This is known as the *cy pres* doctrine (*cy pres* is short for *cy prescomme possible*, a phrase taken from old Law French, meaning "as nearly as possible"). It is well-established in the common law. See, e.g., UNIFORM TRUST CODE §413 (2010); RESTATEMENT (THIRD) OF TRUSTS §67 (2003–12).

⁴⁰ See, e.g., *Home for Incurables of Baltimore City v. University of Maryland Medical System Corp.*, 797 A.2d 746 (Md. 2002) (trust for "white patients who need physical rehabilitation").

activities often are weighted with self-expression and personal identity. It would be surprising if even the most modestly talented amateur artist or woodworker is indifferent to destiny of her or his creation. Creators care about the future of their creations. Creators of all sorts do not value their creations solely for the enjoyment that they give the creators during their lifetimes. Creations have deeper value than that. In a very real sense, such creations, even those limited in achievement or talent, represent a form of immortality for their creators. What such projects transcend, then, is not self-interest but time.

Even those whose lives have seemingly not been devoted to creative enterprises have their own life-transcending projects. The protection and care of family heirlooms, even though with modest or slight market value, is often a matter of great concern to ordinary people, including people of limited wealth. They pass on to their children and grandchildren objects that they themselves received from their ancestors as tokens of memory, family continuity, and love, and they depend on their children and grandchildren to care for these emotionally weighted objects and to pass them on when their turn comes.

Life-Transcending Projects and Dependence

The creators of life-transcending projects cannot realize time-transcendent value of their projects by themselves; they are dependent on others – future generations – to do so. The immortality that the creators of such projects seek for their creations requires the cooperation of future generations. The dependency of past generational members upon their living counterparts may take multiple forms, ranging from recognition of the project as something worth pursuing to execution and ongoing management of the project.

Project creators sometimes attempt to reduce the discretion of their successors to recognize and implement life-transcending projects through the same techniques discussed previously, notable legal arrangements that impose duties on the donees to comply with specified restrictions. Arrangements like trusts are especially common among wealthier creators, whose life-transcending projects often are an important part of their estate portfolio. Such arrangements often pose serious problems, both legal and moral, that we need to consider.

The Dead Hand Problem

Restrictions that now-deceased creators of life-transcending projects sometimes impose on later generation beneficiaries of these projects may pose

difficult questions concerning the obligations of the living generation when asked to implement the terms of the project. For example, when creators of life-transcending projects transfer their projects to later generation beneficiaries in trusts, they sometimes do so through family trusts that extend the duration of trust for very long periods of time, over many generations of future beneficiaries who are given only limited property interests in the projects. The creator's objective is to control the project for many generations after his death. This creates a problem known to common-law lawyers as the "dead hand" problem.⁴¹ Anglo-American law places limits on these dead hand trusts, albeit indirectly, through various rules, including the infamous Rule Against Perpetuities.⁴² Other problematic creator-imposed restrictions in trusts include prohibitions on the sale of an asset that the creator originally transferred into the trust and which later declines in value, thereby threatening the interests of the beneficiaries. Commonly, the assets in question are life-transcending projects, such as a business that the creator personally started and developed.

A good example of this problem is the case of Joseph Pulitzer's will.⁴³ Pulitzer, after whom the top American annual prizes for journalism is named,⁴⁴ left a will that gave to his trustees the large majority of shares of stock in a publishing company that he owned and created, the Press Publishing Company. This firm published several newspapers, including the now-defunct *New York World*, to which Pulitzer was particularly devoted. The trust was for the benefit of his sons. Pulitzer's will expressly withheld from the trustees the power to sell the Press Publishing Company stock "under any circumstances whatever..."⁴⁵ The will went on to give Pulitzer's reasons, reflecting the fact that the Press Publishing Company was his life-transcending project:

I particularly enjoin upon my sons and my descendants the duty of preserving, perfecting and perpetuating "The World" newspaper (to the maintenance and upbuilding of which I have sacrificed my health and strength) in the same spirit which in which I have striven to create and conduct it as a public institution, from motives higher than mere gain, it having

⁴¹ See LEWIS SIMES, *PUBLIC POLICY AND THE DEAD HAND* *passim* (1955).

⁴² The common law version of the rule, first set out in the famous case of Duke of Norfolk's Case, 22 Eng. Rep. 931 (Ch. 1681), provides that "[n]o interest is good unless it must vest, if at all, not later than twenty-one years after some life in being at the creation of the interest." JOHN CHIPMAN GRAY, *THE RULE AGAINST PERPETUITIES* §201 (4th ed., 1942).

⁴³ Matter of Pulitzer, 249 N.Y.S. 87 (Sur. Ct. 1931), *aff'd* mem., 260 N.Y.S. 975 (App. Div. 1932).

⁴⁴ See Columbia Journalism School, *The Pulitzer Prizes*, available at <http://www.journalism.columbia.edu/page/164-pulitzer> (last visited Dec. 14, 2013).

⁴⁵ *Supra* note 43, at 92.

been my desire that it should be at all times conducted in a spirit of independence and with a view to inculcating high standards and public spirit among the people and their official representatives, and it is my earnest wish that said newspaper shall hereafter be conducted upon the same principles.⁴⁶

Some years after Pulitzer's death, readership of the *World* newspaper steadily eroded, causing the value of the Press Publishing Company stock to substantially decline. The trustees sought judicial approval to sell the stock on the ground that the unanticipated changes of circumstances threatened to defeat the purpose of the trust, which, they argued, was the benefit of Pulitzer's sons. The court agreed, holding that it had the inherent power to respond to emergency circumstances that threatened total destruction of the trust asset. Regarding the will's language that the stock not be sold under any circumstances, the court stated, "A man of his [Pulitzer's] sagacity and business ability could not have intended that from mere vanity, the publication of the newspapers, with which his name and efforts had been associated, should be persisted in until the entire trust asset was destroyed or wrecked by bankruptcy or dissolution."⁴⁷

John Langbein has posed the challenging question, "Suppose ... that the settlor in *Pulitzer* had foreseen and recited in the trust instrument the danger that the newspaper might become unprofitable, and he directed the trustees to continue operating it anyhow." Langbein points out, "Such a restriction would not have been enforceable."⁴⁸ He goes on to explain, "Attempting to prevent the court from modifying the trust in response to such materially worsened circumstances would offend the anti-dead hand principle embodied in the rule that the trust must be for the benefit of the beneficiaries."⁴⁹ The "benefit-the-beneficiaries" rule to which Langbein refers expresses the public policy that once a person has placed property in trust for the benefit of third parties, their benefit must override any personal motive that the creator may have had regarding the continuing use of the property that is fundamentally incompatible with the beneficiaries' interests.⁵⁰

The *New York World* newspaper was a life-transcending project of Joseph Pulitzer, as his restriction so vividly manifests. The case is a good illustration of both the fact that there must be limits on the obligations, especially legal obligations, that the living owe to the dead to implement life-transcending

⁴⁶ *Id.*

⁴⁷ *Id.* at 95.

⁴⁸ John H. Langbein, *Mandatory Rule in the Law of Trusts*, 98 Nw. U. L. Rev. 1105, 1118 (2004) (footnote omitted).

⁴⁹ *Id.* at 1118–19 (footnote omitted).

⁵⁰ See UNIFORM TRUST CODE §404, 105(b)(3); RESTATEMENT (THIRD) OF TRUSTS §27(2) (2003–12).

projects of the dead, however fundamental they may have been, and some of the reasons why such limits must exist.

The dead hand problem creates a risk of undermining the communal character of intergenerational relations. Past generations may not only impose restrictions of the sort I have just described, but they may refuse to transfer important assets to future generations of family members altogether. For example, Joseph Pulitzer may have chosen to leave his newspaper businesses to a business associate rather than to his sons. This undermines the dependency between generations and inhibits future generations from working within the framework necessary for communal relations between the generations. The role of future generations is, after all, to participate in the life-transcending projects of past generations, enhance them, and enable them to be carried forward into the future. If members of past generations exercise their control over those projects by refusing to transmit them within the family, broadly defined, then this role will be frustrated.

There is no obvious or easy way to avoid this risk. It is a consequence of a legal system that prefers the freedom of past owners over that the interests of the living. American law imposes no restrictions upon the ability of testators to leave their property at death to whomever they wish, disinheriting any members of their family except the surviving spouse.⁵¹ We must work within whatever limits the existing legal system creates. Nevertheless, reasons of self-interest suggest that this risk is not great. Creators of life-transcending projects usually trust their children and grandchildren more than non-family members to carry through with their projects. After all, in most cases the creator's children have been with the project since its inception and are more aware than most people of its importance to their parent. The parent may even have groomed the children or grandchildren to take over care and management of the project at the appropriate time in the future. This is by no means an invariable scenario. Parents sometimes do disinherit their children, but the incidence of this is sufficiently small that the risk of this aspect of the dead hand problem is not great.

Are Intended Transferees Obligated to Accept Life-Transcending Projects?

Do the transferees of life-transcending projects owe obligations to past-generation creators to accept the projects and carry through with them, or are they free

⁵¹ American states have statutes, called elective share statutes that protect a surviving spouse from disinheritance. The statutes vary in their details, but typically give the surviving spouse a non-barrable share of 1/3 of the decedent's estate. See THOMAS P. GALLANIS, *FAMILY PROPERTY LAW: CASES AND MATERIALS ON WILLS, TRUSTS, AND FUTURE INTERESTS* 349–53 (5th ed., 2011).

to refuse to accept the projects? Normally, of course, the law of gifts provides that intended donees are free to refuse gifts – acceptance is a requirement for completion of a donative transfer.⁵² But is there a moral obligation here? There may, after all, be different considerations when asking whether a legal or moral obligation exists to the past generation.

There really are two separate questions here: first, whether the intended transferee is free to refuse the transfer entirely or instead must accept the life-transcending project; second, whether, if the transferee accepts the project, she is free to possess, use, or enjoy that project in whatever way she sees fit, regardless of the creator's original purpose or intent. With respect to the first question, autonomy considerations loom here, but they do so as to both sides. Inevitably, someone's autonomy interest must be sacrificed – that is precisely the rub of the dead hand dilemma.

I have suggested earlier that human dependence upon members of communities to which we belong, communities that enable us to flourish, creates for us a moral obligation to support, in ways that are appropriate to us, their flourishing. Does this general principle mean that intended recipients of life-transcending projects are morally obligated to accept transfers of those projects? I think it does, although the obligation that it creates must be one that is defeasible, for reasons that I shall explain. In transmitting life-transcending projects to their future counterparts, members of each generational community become dependent upon those successors to accept and carry forward the project in order to fulfill the project's life-transcending purpose. The fulfillment of that purpose is constitutive of the creator's life as one that is as well-lived as possible. Creators transmit their projects to their future counterparts with the expectation that the designated recipients will accept the projects and exercise reasonable efforts to carry the projects forward in the best possible way. If creators knew that their projects would die with them, their lives would be significantly diminished.

At the same time, this obligation is defeasible, rather than absolute. Persons to whom life-transcending projects have been forwarded for caretaking and fulfillment must be free to reject the projects that are themselves immoral or that otherwise unreasonably burden them.⁵³ The reason is the recipient's individual autonomy. Although autonomy is not a paramount value in the human flourishing theory, it is nevertheless relevant to that theory.

⁵² See RICHARD HYLAND, *GIFTS: A STUDY IN COMPARATIVE LAW* 484, 493 (2009).

⁵³ Concomitantly, creators of life-transcending projects, in transmitting such projects to successive generational members, are under the moral obligation not to impose immoral, unreasonable, or foolish projects on their successors.

This leads to the second question, whether the recipient of a life-transcending project should be free to possess, use, or enjoy that project in whatever way she sees fit, regardless of the creator's original purpose or intent. I said earlier that intended recipients are under a moral defeasible duty to accept such projects and to make reasonable efforts to carry those projects forward and promote them in their intended way. Just what does this duty of "reasonable efforts" entail? The question eludes any precise answer. Certainly, transferees are not entirely free to possess, use, or enjoy projects they possess in any way they seem fit. Nor is the duty absolute in the opposite sense: It makes no moral sense to say that, having accepted the project, the transferee is strictly and unconditionally bound to whatever terms the creator may have imposed. The matter is inevitably context-dependent, as the very term "reasonable" suggests. Among the variables that we should consider are, how of a burden the project imposes upon the possessor. The greater the burden and the more the project disrupts the recipient's life, the greater amount of freedom she should have. Displaying a painting created by the transferor is a far simpler matter than continuing, with the possible need for substantial future improvements, a family farm. Conversely, we should consider how much of a benefit the possessor is obtaining from the project. A possessor should be required to make greater efforts to promote a project from which she obtains substantial benefits.⁵⁴ Another factor that will carry weight in the reasonableness calculus is time. The further removed in time the recipient is from the creator, the weaker the obligation becomes. This is not only because it becomes more difficult to determine exactly what the creator's wishes were but also because circumstances are likely to change as more time passes, creating the need to weaken the recipient's obligations to the dead. American trust law, even while requiring that the original donor's intent be respected, recognizes the need to build flexibility into the trust arrangement to accommodate future changes in circumstances. For charitable trusts, the *cy-pres* ("as near as possible") doctrine permits courts to revise the terms of trusts where changed circumstances have made it impossible or impracticable to fulfill the donor's original plans.⁵⁵ For private trusts, the deviation doctrine permits courts to modify the terms of a trust where

⁵⁴ For example, suppose a project is a rental building that is aging and beginning to require greater maintenance if its life is to be extended. If the building's net income-stream would continue to be high enough to provide the current owner a comfortable level of support even after paying expenses necessary for the building's upkeep, the owner should be required to make improvements necessary to extend the building's lifetime, rather than "milking" the building to derive a higher rental level.

⁵⁵ See UNIFORM TRUST CODE §413 (2010).

unanticipated changes of circumstances put the trust's well-being in jeopardy.⁵⁶ Similar considerations apply with respect to moral obligations owed to past generations.

Looking Forward: Obligations to Future Generations and Forms of Reciprocity

Let us now reverse direction and look forward. Having concluded that members of the living generation owe duties, moral and at times legal, to honor and carry out certain life-transcending projects of the dead, does it necessarily follow that the same holds true of the relationship between those who are now living and the unborn? After all, the relationship between present and future generations can be seen as just the mirror image of that between the present and the past: living people are the future dead, and unborns are the future living.

Earlier, I have suggested that the basis of obligations that community members owe to each other, inter- as well as intra-generationally, is dependence. I suggested further that dependence can be understood in terms of reciprocity between inter-generational community members. Finally, I have distinguished between two different sorts of reciprocity, "quid-pro-quo" reciprocity and "pay-it-forward" reciprocity and suggested that although the two forms of reciprocity overlap with and indeed reinforce each other, each has greater valence with respect to past or future generational communities, as the case may be. Quid-pro-quo, a more direct form of reciprocity, has greater salience in the context of the relationship between present and past generational communities. As I discuss in greater detail in the next section, quid-pro-quareciprocity is more particularly relevant to specific obligation (SO), which generally involves specific assets ("in return for honoring my deceased father's desire that I take care of the family farm he passed on to me, he endowed me with the capital and other material means necessary to make it succeed.")

A dependency relationship also exists between present and future generations, and this dependency relationship, too, creates reciprocity. But the nature of the reciprocity is more serial than direct, more "pay-it-forward" than "give-back-for-what-you-get." Serial reciprocity has a kind of asymmetrical character. We pay on to the next generations what we have received from the past – clean environment, basic infrastructure, a workable public system of government,

⁵⁶ See UNIFORM TRUST CODE §412 (2010).

i.e., the goods that are the substance of the general obligation (GO). Future generations generally depend on their ancestors to leave them with such goods as their starting point.

Of course, it is possible for future generations to create these conditions themselves in the absence of such an endowment, but that seems neither realistic nor morally sound. Successive generations have forwarded material endowments to their forebears for millennia, and there are good moral reasons why they should. Just as the past has endowed us with the material background goods required for us to have the kind of lives that enable us to carry on their life-transcending projects, so we should endow the future for the same reason. Future generations are dependent upon us to provide such endowments to that end. That is the point of serial reciprocity.⁵⁷

Serial reciprocity imposes upon on an obligation not to consume the capital endowment that we have received from past generations, the capital endowment that enabled us. We are morally obligated to conserve it, maintain it, and improve it, where necessary. We cannot simply “milk” such capital endowments for our own benefit, consuming them with no investment for the future. “Milking” is a practice that effectively dissipates and ends the endowment.⁵⁸

Consider our transportation infrastructure, which as I discuss in the next section, is part of the substantive content of the GO. We inherited from the generations that preceded us a transportation system that once rivaled the rest of the world. Airlines ran on time; train service was extensive, relatively cheap, and convenient; highways, local and interstate, were well-maintained; bridges

57 This view of serial reciprocity places considerable distance between my approach and that of John Rawls. According to Rawls (*A THEORY OF JUSTICE* 287 ff. (1999)), the obligation between generations is best solved on the basis of a “just savings principle.” That principle requires each generation, acting under the veil of ignorance, to adopt a rate of capital accumulation that is appropriate to each stage of advance. Rawls says that eventually, once just institutions have been established, the required accumulation rate will be zero, and all that the society need do is to maintain just institutions and preserve their material base. RAWLS, *supra*, at 287. Rawls contends that every generation gains a reasonable rate of accumulation is maintained. “The process of accumulation, once it is begun and carried through, is to the good of all subsequent generations,” he argues. “Each passes on to the next a fair equivalent in real capital as defined by a just savings principle.” *Id.* at 288. This form of reciprocity is “peculiar,” Rawls recognizes, because rather than paying back to the generation from which it received accumulated capital, each generation pays its accumulated capital on to the succeeding generation – hence, the term “serial reciprocity.” *Id.* at 290. Unlike my theory Rawls’ view of serial reciprocity between takes no account of the role of dependency.

58 *Cf. supra* note 54.

were safe and in good repair; and so on. As anyone who has flown or who drives knows, the picture has changed. Airline service unreliability is a topic of late-night comedians; train service has dried up in many parts of the country (including my home town of Ithaca, New York); highways are pitted with endlessly unfilled potholes; bridges are rusting to unsafe conditions in familiar important crossings. Some politicians periodically urge public investment in at least some aspects of this infrastructure, but little action is taken in an environment of declining public investment in collective goods. The transportation infrastructure has become an inherited capital endowment that the current generation is milking. The current generation is seriously at risk of breaching its moral obligation, based on serial reciprocity, to pass on to future generations the same necessary capital endowment that it received from its forebears.

This example also suggests why it is a mistake to appeal to market-based discount rates in analyzing the present generation's moral obligations to future generations.⁵⁹ Discount rates value the costs and benefit accruing to future generations less than those of the current generation.⁶⁰ It is "a numerical way of expressing the value judgment that beyond a certain point the future is not worth anything to presently living people."⁶¹ There seems little room for doubt that individuals do engage in discounting in making decisions in their own lives, and their rates of discounting are, it appears, high.⁶² But it is a very different question whether discounting is appropriate, or even relevant, as to the question of whether the current generation owes obligations to the future.⁶³ As John O'Neill observes, "It is not that discount rates should be zeros, negative or positive, but that they are on the whole irrelevant to the discussion of the policy one should adopt to the future."⁶⁴ He goes on to note, "There are good principles that govern our dealings with the future – that we minimize resource depletion, that we avoid irreversible changes that we engage in sustainable economic activity and so on."⁶⁵

59 The literature on this topic is vast. A few sources that I have found especially helpful include DEREK PARFIT, *REASONS AND PERSONS* 480–86 (Oxford, 1984); Douglas A. Kysar, *Discounting ... on Stilts*, 74 U. CHI. L. REV. 119 (2007); Eduardo M. Peñalver, *Land's Virtues*, 94 CORNELL L. REV. 821, 853–856 (2009).

60 See JOHN O'NEILL, *ECOLOGY, POLICY AND POLITICS* 48–49 (1993).

61 HERMAN E. DALY, *BEYOND GROWTH: THE ECONOMICS OF SUSTAINABLE DEVELOPMENT* 35–36 (1996).

62 See Shane Frederick et al., *Time Discounting and Time Preference: A Critical Review*, 40 J. ECON. LIT. 351, 393–94 (2002).

63 See O'NEILL, *supra* note 60, at 49–59.

64 *Id.* at 59 (emphasis in original). Rawls also rejects discounting from the moral point of view. See RAWLS, *supra* note 57, at 253.

65 O'NEILL, *supra* note 60, at 57..

The Substantive Content of Obligations to Future and Past Generational Communities

Assuming, at least provisionally, that intergenerational communities exist (i.e., that such a concept is meaningful) and that members of such communities owe each other duties, just what are those duties, and, equally important, what are the limits of those duties? These duties are moral duties, although conceivably they might have legal implications. My main concern here is with the moral duties, although I have some comments regarding possible legal aspects.

More important for my purposes than the distinction between moral and legal duties is the distinction between, on the one hand, the GO, the obligation to pass on to successor generational community members the basic material conditions that any decent liberal society owes to its own members, i.e., an infra-generational obligation concerning goods that such a society ought to save rather than consume, and on the other hand, the SO, the obligation that creators of life-transcending projects owe to their recipients of such projects to provide such particular goods are necessary to carry the project forward in its intended way. As I have already indicated, the GO and SO, although overlapping and reinforcing, are distinct from each other and involve different forms of reciprocity that involve different sets of goods. After describing the substance of two types of obligations, I then discuss the extent to which each is collective rather than individual.

Paying It Forward: The GO and Necessary Background Conditions

What members of future generational communities minimally require in order to further the life-transcending projects transferred to them are certain essential material conditions. We cannot reasonably expect our future generational members to continue the projects that we have begun unless they live in circumstances within which they can live decent lives. No one can flourish without certain basic resources that provide a background for existence. They are the goods that any decent society owes to members of its own generation, i.e., they are infra-generational, and there is nothing uniquely inter-generational about them. At the same time, they constitute the substance of inter-generational obligations – the obligation owed to future generations – insofar as future generations must be enabled to flourishing generally in order to fulfill projects, their own as well as those transmitted to them by their predecessor. These goods

are constitutive of the requisite material background for flourishing. From this perspective, they are the substance of the living generation's general obligation (GO) to the future, discussed in the preceding section, to pass on to future generations the material endowments that past generations have forwarded to us.

Which resources properly belong on such a list of basic goods that provide the background conditions that are necessary for human flourishing is the subject of endless debate. Certain goods seem unarguably on such a list, however. These include a well-functioning public security system and an adequate defense regime. Both a well-functioning police force and national security system are indispensable for personal security, without which no one can live a well-lived life. The background infrastructure would also include a clean (or reasonably so) environment – air, water, and so on – that future generational communities will inhabit and in which they will work. Lacking such an environment, they simply will be unable to carry through with any life-transcending projects, including their own. As Joel Feinberg remarked, “[S]urely we owe it to future generations to pass on a world that is not a used up garbage heap.”⁶⁶ The background conditions must also include a reasonably well-functioning government (including legal) system, one that is free (or relatively so) of corruption and is responsive to the greater community's needs. The requisite background infrastructure will also include well-functioning transportation and communication networks. It will further include a health-care system that provides decent and affordable health care.

This is a list of what we minimally owe, as a moral matter, to unborn members of the various communities. The resources on this list are those goods that nurture the capabilities necessary for their flourishing. The list, as I have already indicated is not exclusive. I have kept it minimal in order to attract a broad range of agreement regarding what must be provided. Far less agreement will be reached on the questions who bears the obligations to provide these goods and what the bases of those obligations are.

Bases of Collective Obligations

I consider three possible bases for obligations owed to future generational communities, collective action problems; contract, including implied understandings; and dependency. Although it is possible that in particular cases

⁶⁶ Joel Feinberg, *The Rights of Animals and Unborn Generations*, in *PHILOSOPHY AND ENVIRONMENTAL CRISIS*, *supra* note 38, at 64–65.

they will overlap, it is important to treat them separately, for they the scope and content of moral obligations that each may justify is likely to differ.

Collective Active Problems and Other Economic Rationales

From a strictly cost-minimizing perspective, the obligation to provide some, but not all of the goods on the list of resources necessary for adequate background conditions is public. Other goods should be privately provided. Several of these resources are classic public goods, insofar as they meet the two usual characteristics of such goods, i.e., non-rivalry and non-excludability. These resources include a clean environment, and a well-functioning public security (police), and an adequate defense regime. Due to well-known collective action problems, we cannot rely on individual preferences or market forces effectively to provide such resources. The obligation to do so, both now, and into the future, must be collective, carried out by the state, through taxation and regulatory programs.

Other resources that comprise a necessary background for flourishing are not classic public goods but are goods whose characteristics are such that their social provision is nevertheless most efficiently provided through public rather than private means, both now and for future generations. These resources include at least some aspects of the health-care system that generate substantial externalities (e.g., vaccination and care for communicable diseases; arguably, prenatal care⁶⁷ – in both cases, there are substantial externalities that make these goods public goods like). However, there is much of health care that may not implicate externality concerns of this nature.⁶⁸ If we move beyond public goods analysis, we can note the many private market failures that may plague the health-care marketplace, justifying public involvement quite apart from public goods considerations. Basically, private provision of health insurance has proven itself to be plagued by high administrative costs which derive from many forces. Public provision is simply cheaper. Employment-based plans heavily subsidized by the tax code has been one good middle ground.⁶⁹

⁶⁷ Thanks to George Hay for these examples.

⁶⁸ If we start with the presumption that our society as a baseline will guarantee some forms of care – e.g., emergency care (legislatively mandated in the U.S.) – and acknowledge that some individuals cannot pay for such care, then we can see that the U.S. system and its many forms of cross subsidization imposes externalities of other sorts. I am grateful to Mike Frakes for pointing this out to me.

⁶⁹ See Jonathan Gruber, *Covering the Uninsured in the United States*, 46 J. Econ. Lit. 571 (2008).

Contract-Based Obligations

A second possible basis for the obligation to future generation members is contract. Where an agreement, explicit or implicit, existed between the transferor of the life-transcending project and the recipients, the presumption should be that the agreement, assuming that it can be satisfactorily proved, creates an obligation, both moral and legal, in the recipients. This is simply a matter of basic contract principles. The real question is whether there ought to be any limits on the scope of that moral obligation. Plainly, there are some limits, both as a matter of law and morality, to freedom of contract. Terms, conditions, or restrictions that creator–donors place on transfers that violate public policy do not and should not create obligations, moral or legal, on beneficiaries of such transfers. Transfers subject to racially restrictive conditions, to pick an obvious example, impose no enforceable obligations on beneficiaries even where the beneficiaries had previously agreed to such terms. The autonomy interests of the donor and the beneficiaries should not trump the larger stakes that society has in assuring that no group of its citizen is subordinated, dominated, or rendered unable to fully participate in the society's ongoing affairs, private as well as public.

Beyond terms or conditions of that sort, the question becomes more difficult to evaluate. Suppose, for example, that a testator bequeaths her business to her children with the understanding that the children continue to operate the business in exactly the same way that the testator had; i.e., for precisely the same business functions, with no expansion or other change in scope of business, no diversification of type of business, place of doing business, etc. Suppose further that some years later, the business's future is in jeopardy because the market for the firm's product had all but disappeared. The firm's current owners, the beneficiaries of the bequest of the firm's creator, want to save the business by diversifying its product line, but doing would clearly contradict the terms of the bequest. Would diversifying the firm's product line to save the family business breach an obligation, legal or moral, that the current owners owe to the past owner (all of whom are members of the same generational community)? From a legal perspective, it is unclear whether such an obligation exists. Normally, the law of donative transfers gives maximum effect to the transferor's wishes, but this only the baseline. There is an exception for public policy, of course, just as there is a public policy exception for the enforceability of agreements. For example, restraints that testator's impose on a beneficiary's personal conduct may be unenforceable on public policy grounds. Here, the restriction is on business conduct rather than personal conduct. Different policy considerations are involved where the restriction is on business conduct rather than on personal

affairs such as the beneficiary's right to marry, especially here where an agreement between the transferor and the beneficiaries apparently exists. No personal rights of the beneficiaries are at stake, only the well-being of the business firm. Given the law's reluctance to interfere with freedom of disposition, it is quite possible, indeed likely, that the answer to the legal question is that a legal obligation on the beneficiaries to comply with the transferor's conditions exists, even at the risk of the firm dissolving into bankruptcy in the future.

As a moral matter, there is little reason to reach a different conclusion. Although somewhat different considerations come to bear when we move from the legal to the moral sphere, the matter does not change fundamentally. The principles of freedom of disposition and freedom of contract have a moral dimension as well, and there are no overriding moral considerations that weigh in favor of relieving the beneficiaries of an obligation that they voluntarily assumed, even at the expense of the firm's future. Perhaps they regret doing so now (as in all likelihood they do), but regret alone surely is not adequate moral grounds for relieving someone of a moral obligation that they voluntarily assumed.

Dependency

The third, and strongest, basis for the moral obligations we owe to future generation communities is the very factor that is the foundation for the general claim that past, present, and future generational communities may owe each other obligations – dependency. What we minimally owe, as a moral matter, to both deceased and unborn members of the various communities that nurture the capabilities necessary for our flourishing, derives from our and their dependency on each other. Specifically, the content of our and their obligations must relate to their and our life-transcending projects and the fact that the fulfillment of those projects is dependent upon the cooperation of others who come after us.

Those life-transcending projects and our dependency of future generations for the realization of such projects provide the reference point for our moral obligations to future generation communities. But that reference point is beguilingly robust. It means, or might be taken to mean, that our obligations include providing the entire background infrastructure that is necessary for any such project's continuation or realization, i.e., all of the goods described above.

All of these background conditions – a reasonably clean environment, well-functioning transportation and communication networks, a minimally acceptable (both in terms of quality and distribution of health-care services) health-care system – are circumstances that those in present-day generation

communities take for granted. If, then, those present-day community members expect, or at least hope, that their fellow community members in future generations will continue the life-transcending projects that the living members began, it is incumbent on them to provide the same background conditions that they enjoyed to those future community members to whom they transfer the responsibility of continuing or fulfilling their life-transcending projects. That obligation should apply to the extent that such background conditions are reasonably necessary or facilitative for the implementation of the relevant projects. This is a basis upon which we can explain Brian Barry's equal-opportunity maxim: "[T]he overall range of opportunities open to successor generations should not be narrowed."⁷⁰

The obligation to provide the same background conditions that living community members enjoy to those future community members to whom they transfer the responsibility of continuing or fulfilling their life-transcending projects is foundational and general. It serves as a broad basis upon which the pursuit of life-transcending projects can be conducted, a necessary but not always sufficient for such projects to continue beyond the lives of their creators.

Beyond this minimal obligation,⁷¹ what further obligations living community members owe to future generation members will depend on the project that living members pass on to their future co-members. Additional obligations must be reasonably connected to the particular life-transcending projects in the sense that the obligations are reasonably necessary for the project's continued

⁷⁰ Brian Barry, *Circumstances of Justice and Future Generations*, in *OBLIGATIONS TO FUTURE GENERATIONS* 204, 243 (R.I. Sikora & Brian Barry eds., 1978).

⁷¹ Regarding the legal dimension of this minimal general obligation, the question is should members of future generation communities have positive legal rights to such background conditions. If they do have such rights, against whom would those rights be enforceable, at what time(s) and by whom? The question of the timing of enforcement comes up because if the rights are enforceable only when the future generation members come into existence, then it is possible that the duty-bearers may no longer be available. The timing issue relates to the question of the identity of the duty-bearer, or at least the identity of the party against whom the right is enforceable. Specifically, are such positive rights enforceable against the state, acting as the agent or representative of community members who are the real duty-holder? Further questions exist. These positive rights, like all positive rights, pose problems concerning the exact scope of the right: May the rights-holders demand that the duty-holder(s) take any and all steps necessary to provide a clean environment, etc., or is it sufficient if the duty-holder puts into place a reasonable policy or program designed to achieve a clean environment, etc., given the financial and other constraints under which the duty-holder is acting? It is worth noting that the latter is the approach that countries like the Republic of South Africa have taken in interpreting the positive socio-economic rights provisions of their constitutions. See *Government of the Republic of South Africa v. Grootboom*, 2001 (1) SA 46 (CC).

existence or fulfillment. We may think of these specific obligations as endowments that support the life-transcending projects.

What might such endowments include? It depends, of course. Suppose, for example, that the life-transcending project that a current generation community member wishes her/his future community members to continue and advance to the extent possible is a business that the current member created. S/he legally transfers the business to her/his descendants at death, enjoining them to continue and grow the business. Should the business creator be morally obligated to transfer to the recipients of the business with any additional resources by way of an endowment to carry out that project? Of course, it is possible that there has been some agreement or understanding between the transferor and the recipients, as we will see, and in that case the agreement should normally control the parties' obligations.

But suppose there is no such understanding. Does the transferor owe the transferees of her/his business an obligation to provide any sort of endowment to support that business? This is not an easy question to answer, especially given the transferor's explicit injunction to the transferees to continue and advance the business to the extent possible. Initially, we have to suppose that the transferees accept the transfer, for donees are free, at least legally, to reject attempted gratuitous transfers, both lifetime and at death.⁷² Assuming that the transferees accept the bequest and assuming further that the testator's injunction is merely precatory and creates no legal obligation, it may nevertheless create a moral obligation on the transferees, who, after all, accepted the business knowing of the testator's injunction to them and its likely importance to her/him. If such a moral obligation exists, a strong argument can be made that the testator should provide the transferees with some sort of additional endowment to the extent that additional resources are necessary to enable the transferees to fulfill their moral obligation to the testator. If additional resources are needed to allow the transferee to carry out the testator's injunction and the testator provides no further support, the transferees must deplete their own resources to do so. Of course, they could simply reject the bequest, but would present them with a Hobson's Choice: either accept the bequest with the consequence that they must deplete their own resources to fulfill their moral obligation to the testator or reject the bequest entirely (which has the undesirable side effect of frustrating the testator's life-transcending interest). Fairness seems to suggest reciprocity of moral obligations here. The moral obligation on the transferees to fulfill, to the extent reasonably possible, the testator's

72 See JESSE DUKEMINIER, ROBERT SITKOFF, & JAMES LINDGREN, *WILLS, TRUSTS, AND ESTATES* 152 (2009).

injunction should they choose to accept the bequest should be matched by a moral obligation on the testator to provide such resources as are reasonably necessary to allow the transferees to fulfill their obligation to the transferee, should they choose to accept the bequest. This approach maximizes the likelihood that the testator's wishes, particularly the continuation of her/his life-transcending project, will be carried out and at the same time achieves fairness between the testator and the transferees.

The Obligations Owed to More Remote Future Generational Communities

Thus far, the future generational communities that I have considered have all been foreseeable descendant generations – the generations of children and grandchildren of creators of life-transcending projects. The more difficult aspect of the general problem of future generational communities involves more remote generations. Such generations pose more difficult questions because project creators cannot expect to share a common life with such persons, at least not in any literal sense.⁷³ The problem is not simply that project creators will not know persons who are more than three generations removed from them or vice versa but, more fundamentally, that little connects living persons to such remote future generations other than the most basic sorts of commonalities, notably genetic ties and perhaps family names. Even those ties become more attenuated with each generation removed.

Given such more attenuated connections, one may question whether such remote future generations are members of the same generational communities as the living at all. I previously indicated that community members share understandings of whom and what they are, and one might suppose that the attenuation of ties between present and remotely future generation means that such shared understandings will be lacking. At the same time, I indicated, echoing Avner de-Shalit,⁷⁴ that part of what constitutes communities is cultural interaction⁷⁵ and that cultural interaction includes shared traditions, which may involve “historically extended, socially embodied argument[s]...”⁷⁶ As Alasdair

⁷³ See Martin P. Golding, *Obligation to Future Generations*, in *RESPONSIBILITIES TO FUTURE GENERATIONS* 61, 61–62 (Ernest Partridge ed., 1981).

⁷⁴ See DE-SHALIT, *supra* note 26.

⁷⁵ See *supra* 4.

⁷⁶ MACINTYRE, *supra* note 32, at 222.

MacIntyre observed, such arguments and such traditions may extend through many generations.⁷⁷

Assuming that the creator's generational community includes remote future generations, the question then becomes whether the same obligations that are owed to relatively near generations also are owed to remote future generations. Some years ago, Martin Golding argued that our obligations to future generations ought to be confined to our "immediate posterity"⁷⁸ because we cannot know what is good for them. We do not know what the condition of their lives will be or even whether they share with us the same conception of the good life for human beings.⁷⁹ We would be well-advised, then, Golding, simply not to plan for remote future generations.

Conceding Golding's points regarding the lack of information about the specific condition of the lives of remote future generation members and their conception of the good life, it does not follow that the living owe them no moral obligations whatsoever. The same problem may exist for some living persons who are members of cultures that are far removed from and quite alien to ours, but that fact does not warrant the conclusion that we owe no moral obligations to them. We owe such persons moral obligations by virtue of their humanity. Regardless of the specific conditions of their existence, members of remote future generations share with us certain basic features that are inherent in the human condition – the abilities to love and to enjoy; vulnerability to pain, suffering, and ultimately, death; self-consciousness; and so on.⁸⁰ Given these fundamental commonalities, the moral norms of equality and human dignity suggest that, although differences may exist between the moral obligations that we owe members of immediate future generational communities and their remote counterparts, we owe members of our remote future generational communities at least minimal moral obligations.

Nevertheless, our lack of information about remote future generational communities and their attenuated relationship to the living do have a bearing upon the content of our obligations to them. Golding's point that we cannot plan for such persons seems correct as far as it goes. It bears upon the basis of both types of obligations I have described, the GO and the SO, i.e., dependency. Although some degree of dependency may still exist between the living and the fellow community members three or more generations into the future, the extent

⁷⁷ *Id.*

⁷⁸ See Golding, *supra* note 73, at 70.

⁷⁹ *Id.*

⁸⁰ See Gregory Kavka, *The Futurity Problem*, in *RESPONSIBILITIES TO FUTURE GENERATIONS*, *supra* note 73, at 109, 112–13.

of that dependency is likely to be substantially more attenuated than it is between living community members and their counterparts one generation ahead. At any rate, we cannot possibly predict just how much dependency will exist or what its character will be as we move three or more generations into the future. For this reason, the obligations that living creators of life-transcending projects owe to remote future generational community members must be of a more basic sort. The obligations should be aimed at constituting a framework within which members of remote future generational communities who wish to continue life-transcending projects transmitted to them may do so, a background that enables such individuals to pursue these projects, if they so choose. This background condition consists of certain of the fundamental capabilities discussed in Part I, among these the capabilities of health, personal security, and freedom.

A more concrete statement this background must take into account the possible effects, allocative but especially distributive, of norms that would affirmatively seek to assure that resources are available to remote future generations. This is, of course, a familiar problem in discussions on intergenerational justice.⁸¹ The problem is complex, for it involves two uncertain variables, first, increasing scarcity of resources over the future, and second, the contingency of future generational communities. This is not the proper occasion for anything like a full analysis of the distributive problem, but a few comments on these two variables will indicate why caution is appropriate in mapping out a specific account of the background condition.

With regard to future scarcity, the dilemma posed by uncertainty is this: Whether economic growth can be sustained in a finite natural world is one of the most persistent questions in economic literature. The unprecedented rate of consumption of natural resources and the concomitant effects have given rise to acute concern with sustainability, a term that has come to be closely associated with intergenerational justice in the relevant literatures. Because the growth in the rate of consumption has been exponential, the fear is that relevant consumption rates at some future point will swamp production rates, leading to potentially catastrophic results.

But this scenario is far from certain. We cannot categorically exclude the possibility that human creativity will ameliorate increased scarcity. After all, in the past, humans have proved to be quite adept at finding solutions to the problem of scarce natural resources. Repeatedly, they have developed new

⁸¹ See, e.g., *id*; Daniel Callahan, *What Obligations Do We Have to Future Generations?*, in *RESPONSIBILITIES TO FUTURE GENERATIONS* *supra* note 73, at 73.

technologies that economize on scarce natural resources or that allow the use of resources that were previously uneconomical. There is no obvious reason to think that this pattern will not continue, allowing us not merely to avoid passing on to remote future generations a greatly degraded and depleted environment but to transmit a set of conditions that is at least as good as what we currently enjoy (thereby satisfying a future generational counterpart to the Lockean proviso⁸²).

Which scenario will transpire? We cannot know, of course, and that is precisely the problem. For if we are to develop anything like a concrete account of the background condition that we owe to members of our remote future generational communities, we must have some idea of what the probable state of resources available to such future persons is. In the absence of that basic information, we simply cannot specify our obligation in any sort of detail.

The second variable of uncertainty is the contingency of future generations. This contingency is not simply a matter of *when* but of *whether* – members of our future generational communities may not exist at all. Their existence depends, to a considerable extent, upon decisions that living members make. How does this existential uncertainty affect the moral obligations that living community members owe to potential members in the future? Gregory Kavka poses a useful analogy.⁸³ Imagine, he suggests, a poor couple that has some children and is contemplating have more. The question is whether they should treat the prospective children as being on a par with their living children with respect to the consumption of their resources, i.e., by conserving resources for unborn children. Kavka's answer is that they should not if doing so would cause the living children to suffer serious deprivation.⁸⁴ This answer seems to me to be the right one. The living have moral obligations to living members of their communities, and those obligations must be met first. This is not to say that the living owe no obligations to conserve resources for future generational members, including remote future generations. The point is one of priority – under conditions of scarcity, priority in the distribution of resources must be given to existing resource consumers. Moreover, the more remotely in the future the generational members are, the weaker the moral obligation that the living owe to them.

82 See JOHN LOCKE, *TWO TREATISES OF GOVERNMENT* (Peter Laslett ed., Cambridge UP, 1988) (1690).

83 Kavka, *The Futurity Problem*, in *RESPONSIBILITIES TO FUTURE GENERATIONS: ENVIRONMENTAL ETHICS* 109, *supra* note 73, at 114..

84 *Id.*

The Contingency of Our Obligations to Unborn Communities

Grounding our obligations to future generational communities on dependency between generations, i.e., the dependency of the living generation upon their future generational counterparts to carry on life-transcending projects, seemingly makes those obligations contingent in a way that other bases for such obligations do not.⁸⁵ The apparent vulnerability of the obligations to future generations on this account results from an implied advance deal between the generational communities: The living will provide the future counterparts with a clean environment, a well-functioning infrastructure, a reasonable efficient economy, and minimally acceptable health-care system in exchange for future generations' reasonable efforts to carry out the life-transcending projects of their forebears. This may be a troubling conclusion to some who think that our obligations to transfer such a material foundation to future generation should be unconditional and unconstrained. From one perspective, the dependency theory looks like a hold-up. More fundamentally, the theory seemingly encroaches upon future generations' autonomy interest in creating their own lives and the conditions of those lives.

This concern, although understandable, does not, I think, fundamentally undermine the dependency theory. The reason is that it misconstrues the character of the obligation to provide the background material conditions necessary to carry forward any and all life-transcending projects, i.e., the GO. That obligation is general, and because it is general it applies unconditionally, that is, to all members of all members of foreseeable future generations. That is what distinguishes the GO from the SO.

To be sure, the GO is still more limited than the broadly redistributive account offered by some rights theorists.⁸⁶ Its principle aim is not redistribution as such, and even as to the GO (certainly as to the SO) contingency still exists. But contingency is an inescapable aspect of the human condition. No one can guarantee future conditions of the world. There are too many variables over which we have little or no control. Weather conditions may change catastrophically for non-man-made reasons (as best as science can presently tell), globalization of financial markets may produce long-term economic depressions over which any single nation has little control, global changes in population and immigration (legal and illegal) – all of these possible future scenarios may seriously affect the ability of any generation to transmit to future generations stable and decent material conditions and structures. All that the living can commit themselves to do for future generations is to make reasonable efforts,

⁸⁵ I am grateful to Hanoeh Dagan for raising this point.

⁸⁶ See *supra* note 2.

under whatever circumstances happen to prevail at the given time, to transmit decent minimal material conditions. Admittedly, that commitment is limited, and it leaves future generations with risks. But that is the most the living can, or at least should, promise the unborn.

Conclusion

The living do owe moral obligations to unborn members of their communities, but those obligations are limited. They are limited in multiple ways, including the basis, or source, or the obligations, and the distance between the presently living members and unborn members. The basis of the obligations is rooted in the idea of what I have called life-transcending projects: the desire that living persons have in seeing that certain projects or interests of theirs be carried on after their deaths. This basis of the obligation helps define the range of persons, resources, and precise nature of the obligations. Moreover, the obligations that the living owe to future generational communities generally weaken as the distance between the living and the unborn increases. In an environment of uncertainty and scarce resources, our first and greatest moral obligation regarding the distribution of resources is to those members of our communities who are living with us and who continue to nurture the capabilities necessary for us to flourish. The second priority should be given to the future generational communities who come immediately after us, for the relevant ties between those generations usually will be relatively strong. The further out generational line stretches, the weaker our obligations become.

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