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Tax Policy and Personal Identity over Time

[I]deally, two taxpayers should be compared on the basis of a whole lifetime of circumstances, and this is taken here to be a general goal of tax system design: lifetime burden should depend upon lifetime circumstances.

David F. Bradford and the U.S. Treasury Tax Policy Staff, *Blueprints for Basic Tax Reform* 24 (2d ed. 1984)

For “horizontal equity,” two individuals with similar lifetime income should pay similar total lifetime taxes. In addition, for “vertical equity,” higher lifetime incomes could be associated with higher lifetime tax burdens.

Don Fullerton and Diane Lim Rogers, *Who Bears the Lifetime Tax Burden?* 19 (1993)

On my proposed way of talking, we use “I”, and the other pronouns, to refer only to the parts of our lives to which, when speaking, we have the strongest psychological connections. When the connection has been markedly reduced—when there has been a significant change of character, or style of life, or of beliefs and ideals—we might say, “it was not I who did that, but an earlier self.” We could then describe in what ways, and to what degree, we are related to this past self.

Derek Parfit, *Reasons and Persons* 304-05 (1984)

I have no connection with that person at all. That person has gone.

Julie Christie, speaking in 2007, about Julie Christie in the 1960s (quoted in Alan Riding, *A Role About Winter for Julie Christie, a Star in Eternal Spring*, *New York Times*, April 18, 2007, at E1)

I. Introduction

Tax policy analysts often claim that tax distributional analysis should be based on a lifetime perspective, at least as a theoretical ideal.⁰ Thus, persons with equal lifetime economic resources should bear equal lifetime tax burdens, and those with greater lifetime economic resources should bear heavier lifetime tax burdens than those with lesser lifetime economic resources. Two prominent tax reform proposals explicitly appeal to this lifetime equity perspective: the argument (most closely associated with David Bradford) that consumption

⁰ *The author thanks Anne Alstott, Reuven Avi-Yonah, Lee Fennell, Richard Schmalbeck, and Ethan Yale for their comments on an earlier version of this paper.

¹See the sources cited and discussed *infra* text accompanying notes 77-114.

taxation produces a more equitable distribution of lifetime tax burdens than does income taxation,² and the argument (most closely associated with William Vickrey) that effective tax rates should depend on lifetime income rather than on annual income.³

These appeals to lifetime equity assume, in most cases without discussion, that personal identity over time is an unproblematic concept, so that the whole-life person is clearly the ideal unit for purposes of distributional analysis.⁴ However, in *Reasons and Persons*, Derek Parfit takes (and develops at length) the position that personal identity is not stable over time; to Parfit, there is an important sense in which a person today is not the same person he was several decades ago.⁵ To one who is persuaded by Parfit's view, the merits of the whole-life approach to tax equity analysis will be far from self-evident. This article describes Parfit's account of the nature of personal identity over time, and considers how tax policy analysis changes if one takes the Parfitian view rather than the standard view of personal identity.

At the outset, a paradox should be noted. Although the theoretical superiority of the lifetime approach to tax equity is taken for granted by most analysts, the lifetime perspective has had little influence on the design of the actual income tax. The current federal income tax generally distributes tax burdens based on single-year income, rather than on lifetime income (or consumption).⁶ In other words, current tax law generally distributes burdens among single-year person segments, rather than among whole-life persons. The failure of current law to embrace—or even approach—a lifetime perspective cannot be explained simply by the practical problems posed by tax accounting periods of longer than a single year. Vickrey's lifetime averaging proposal retains the annual tax accounting system and requires annual assessment and payment of tax, but nevertheless embodies a lifetime perspective. Similarly, the lifetime equity argument for consumption taxation is that a year-by-year consumption tax—based on annual accounting, assessment, and payment—produces a fairer distribution of lifetime tax burdens than does a year-by-year income tax. The Social Security tax-and-transfer system—which imposes annual taxation on individuals during their working years, and makes annually-computed transfer payments to retirees—also manages to pursue a lifetime vision of distributional equity (by basing one's retirement benefits on one's lifetime earnings history) despite its reliance on annual taxes and transfers.⁷

²David F. Bradford & the U.S. Treasury Tax Policy Staff, *Blueprints for Basic Tax Reform* 36-38 (2d ed. 1984), discussed *infra* text accompanying notes 91-99.

³William Vickrey, *Averaging of Income for Income Tax Purposes*, 47 *J. of Pol. Econ.* 379 (1939), discussed *infra* text accompanying notes 100-114.

⁴The exception is William Vickrey, who does consider (and reject) the possibility that personal identity over time is too unstable to justify the use of the whole-life person as the unit of distributional analysis. William Vickrey, *Tax Simplification Through Cumulative Averaging*, 34 *Law & Cont. Prob.* 736, 747-48 (1969), discussed *infra* text accompanying notes 130-42.

⁵Derek Parfit, *Reasons and Persons* 199-347 (1984).

⁶See IRC § 441(a) ("Taxable income shall be computed on the basis of the taxpayer's taxable year"). There are a number of limited exceptions to the general rule that each year stands on its own for tax purposes. See, e.g., IRC §§ 172 (permitting net operating losses to be carried back two years and carried forward twenty years), 1212(b) (permitting net capital losses of individuals to be carried forward indefinitely), 1301 (permitting farmers to average their income over a four-year period, under certain circumstances).

⁷See Jeffrey B. Liebman, *Should Taxes Be Based on Lifetime Income? Vickrey Taxation Revisited* 1

Given the considerable potential for improving the lifetime equity of the income tax (or its consumption tax replacement) without abandoning the practical advantages of year-by-year taxation, and the virtual unanimity among tax policy analysts on the theoretical superiority of the lifetime perspective,⁸ it is perhaps surprising that Congress has remained committed to distributing income tax burdens among single-year person segments.

It is also somewhat surprising that the policy literature has devoted much less attention to the time-based aspect of the question of the proper unit for tax distributional analysis than it has devoted to the person-based aspect of the same question. There are, after all, two dimensions to consider in choosing units for purposes of tax (and transfer) distributional analysis—across time (i.e., the choice between using whole-life persons, or person segments of one year or some shorter or longer period), and across persons (i.e., the choice among using individuals, married couples, nuclear families, or perhaps even more extensive family groups).⁹ As it happens, the current income tax generally takes a rather expansive approach to defining the taxable unit across persons, by strongly encouraging married couples to file joint returns,¹⁰ and by taxing most unearned income of minor children at their parents' marginal tax rates (pursuant to the so-called "kiddie tax").¹¹ The policy literature on the merits and demerits of aggregating marital or family income is voluminous.¹² By contrast, the literature on the appropriate time segment for

(John F. Kennedy School of Government, December 2003) (contrasting the "very different time horizons" of the income tax and the Social Security system—a single year horizon in the case of the income tax, and "a measure that approximates lifetime earnings" in the case of Social Security).

⁸Only a few commentators have questioned the attractiveness of the lifetime perspective, and even they have generally focused on practical problems in pursuing lifetime equity, rather than on questioning the theoretical case for the lifetime view. Neil Buchanan, in a recent article arguing against William Vickrey's proposal for lifetime averaging, does not deny the theoretical appropriateness of the lifetime perspective, but argues that the improvements in horizontal equity (among high-income taxpayers with different income-timing patterns) that would be produced by lifetime averaging would not be significant enough to justify the added complexity. Neil H. Buchanan, *The Case Against Income Averaging*, 25 Va. Tax Rev. 1151, 1185 (2006) ("As we look at higher income levels, progressivity matters relatively less and other issues such as administrability and simplicity matter relatively more."). In questioning the desirability of attempting to achieve lifetime equity in taxation, Michael Graetz emphasizes the fact that one Congress cannot bind a later Congress, making it "impossible for any group of legislators to make a viable binding political commitment to fair taxation over a person's lifetime." Michael J. Graetz, *Paint-By-Numbers Tax Lawmaking*, 95 Colum. L. Rev. 609, 655 (1995). However, Graetz also mentions (without endorsing) Parfit's "that our future selves might better be thought of as persons different from whom we are now," and comments that lifetime equity would be an inappropriate goal under Parfit's account of personal identity. *Id.* at 653.

⁹There are important interactions between the two dimensions of choice. For example, if one's ideal along the time dimension is the lifetime, and one's ideal along the person dimension is the married couple, problems arise when marital status changes within a lifetime. For a discussion of issues of this sort in the context of Vickrey-style lifetime averaging, see *infra* text accompanying notes 111-14.

¹⁰IRC § 1(a). Married persons may file separate returns under the rate schedule set forth in IRC §1(e), but the combined tax burden on the two spouses will almost always be less if they file a joint return under the rate schedule of IRC §1(a).

¹¹IRC § 1(g).

¹²See, e.g., Congressional Budget Office, *For Better or Worse: Marriage and the Federal Income Tax* (1997); Edward J. McCaffery, *Taxing Women* (1997); Grace Blumberg, *Sexism in the Code: A Comparative Study of Income Taxation of Working Wives and Mothers*, 21 Buff. L. Rev. 49 (1972); Boris I. Bittker, *Federal Income Taxation and the Family*, 27 Stan. L. Rev. 1389 (1975); Martin J. McMahon, Jr., *Expanding the Taxable Unit: The*

distributing tax burdens is quite thin. In addition to Vickrey's expositions of his lifetime averaging proposal,¹³ there have been a few recent articles evaluating his proposal from various perspectives.¹⁴ There are also two significant older articles, not focused on Vickrey's proposal, but considering the merits of income averaging in more general terms.¹⁵ Finally there are two articles proposing replacing the single year tax accounting period with a two year period—for all taxpayers in the case of one article,¹⁶ and for low-income wage earners with fluctuating incomes in the case of the other article.¹⁷ There is not much more. In particular, there is no sustained discussion in the tax policy literature of whether the continuity of personal identity over time is sufficient to justify the usual assumption that entire lifetimes are the ideal units for purposes of tax distributional analysis. This article attempts to fill that gap.

The next section of this article (Part II) describes Parfit's view of the nature of personal identity over time, and Parfit's thoughts on the implications of that view for self-interested rationality, for personal morality, and for questions of distributive justice. Part III describes the contexts in which a lifetime perspective on tax equity is commonly invoked—for purposes of empirical distributional analysis, in support of an argument for the fairness advantages of consumption taxation over income taxation, and in support of Vickrey's proposal for lifetime income averaging. Part IV considers how the tax policy arguments based on a lifetime equity perspective are affected if one adopts Parfit's view of the nature of personal identity. In general terms, the conclusion is that the arguments based on lifetime equity are seriously damaged under the Parfitian view, but that they are not necessarily demolished. The lifetime equity arguments

Aggregation of the Income of Children and Parents, 56 N.Y.U. L. Rev. 60 (1981); Patricia A. Cain, Same-Sex Couples and the Federal Tax Laws, 1 Law & Sexuality 97 (1991); Marjorie Kornhauser, Love, Money, and the IRS: Family Income Sharing and the Joint Income Tax Return, 45 Hastings L.J. 63 (1993); Frederick R. Schneider, Which Tax Unit for the Federal Income Tax, 20 Dayton L. Rev. 93 (1994); Lawrence Zelenak, Children and the Income Tax, 49 Tax L. Rev. 349 (1994); Lawrence Zelenak, Marriage and the Income Tax, 67 S. Cal. L. Rev. 399 (1994); Anne L. Alstott, Tax Policy and Feminism: Competing Goals and Institutional Choices, 96 Colum. L. Rev. 2001 (1996); Amy C. Christian, The Joint Return Rate Structure: Identifying and Addressing the Gendered Nature of the Tax Law, 13 J. L. & Politics 241 (1997); John F. Coverdale, Missing Persons: Children in the Tax Treatment of Marriage, 48 Case W. L. Rev. 475 (1998); Henry E. Smith, Intermediate Filing in Household Taxation, 72 S. Cal. L. Rev. 145 (1998); Nancy C. Staudt, The Theory and Practice of Taxing Difference, 65 U. Chi. L. Rev. 653 (1998); Robert S. McIntyre & Michael J. McIntyre, Fixing the "Marriage Penalty" Problem, 33 Val. U. L. Rev. 907 (1999); Shari Motro, A New "I Do": Towards a Marriage-Neutral Income Tax, 91 Iowa L. Rev. 1509 (2006).

¹³Vickrey (1939), *supra* note 3; William Vickrey, Agenda for Progressive Taxation (1947); Vickrey (1969), *supra* note 4; William Vickrey, Cumulative Averaging After Thirty Years, in *Modern Fiscal Issues: Essays in Honor of Carl S. Shoup* 117 (Richard M. Bird & John G. Head eds, 1972); William Vickrey, An Updated Agenda for Progressive Taxation, 82 Am. Econ. Rev. 257 (1992).

¹⁴Lee Anne Fennell & Kirk J. Stark, Taxation Over Time, 59 Tax L. Rev. 1, 27-36 (2005); Buchanan, *supra* note 8; Liebman, *supra* note 7; David Weisbach, Long Period Taxes (unpublished paper, 2004); Mitchell L. Engler, Tax Neutrality, Vickrey Averaging, and Income versus Consumption Taxation (unpublished paper, 2007).

¹⁵Wilbur A. Steger, On the Theoretical Equity of an Averaging Concept for Income Tax Purposes, 13 Tax L. Rev. 211 (1958); Richard Schmalbeck, Income Averaging After Twenty Years: A Failed Experiment in Horizontal Equity, 1984 Duke L.J. 509 (1984).

¹⁶Jay A. Soled, A Proposal to Lengthen the Tax Accounting Period, 14 Am J. Tax Pol'y 35 (1997).

¹⁷Lily L. Batchelder, Taxing the Poor: Income Averaging Reconsidered, 40 Harv. J. on Legis. 395 (2003) (proposing to allow low wage workers to average their income over two years, for purposes of the earned income tax credit, the standard deduction, and personal and dependency deductions).

might survive Parfit—albeit in weakened form—for two reasons. First, Parfit does not deny the existence of some significant degree of connectedness across entire lifetimes. Second, even if one adopts an extreme version of the Parfitian view—so that a younger self and older self are understood as two completely different persons—it does not necessarily follow that they should be treated as two different units for purposes of distributional analysis. After all, no one believes that a husband and wife (or a nuclear family) are just one person, yet many policy analysts claim that a married couple (or a family) is nevertheless an appropriate unit for tax equity determinations. Part V discusses an important recent article by Lee Anne Fennell and Kirk J. Stark,¹⁸ which describes a tension between two different ways a tax system might tax persons from a perspective broader than annual accounting—either attempting to achieve lifetime equity through the use of long-term averaging, or attempting to accomplish *intrapersonal* redistribution within a single lifetime. Although Fennell and Stark do not attempt to resolve the tension between these two approaches, Part V claims that the adoption of a Parfitian perspective on personal identity would influence the resolution, by making the lifetime equity goal less attractive while strengthening the case for intrapersonal redistribution. Part VI considers Richard Schmalbeck’s claim that the theoretically ideal approach to income averaging would be to allow a taxpayer to average her income within each of as many distinct consumption-smoothing periods as she might happen to have in her lifetime,¹⁹ and whether that claim might be understood in Parfitian terms—that is, as a claim that personal identity changes (or at least, should be treated as changing for tax purposes) each time a person moves from one consumption-smoothing period to another. Part VII briefly concludes.

II. Reasons and Persons, and Personal Identity over Time

A. Parfit on the Nature of Personal Identity

Reasons and Persons consists of four more-or-less self-contained parts, of which Part Three is a book-length (about 150 pages) examination of personal identity.²⁰ Parfit begins by posing two questions: “What makes a person at two different times one and the same person? What is necessarily involved in the continued existence of each person over time?”²¹ Parfit notes John Locke’s answer—that the persistence of personal identity over time depends on the continuity of memory, so that (for example) “someone cannot have committed some crime unless he now remembers doing so.”²² Parfit labels this view “clearly false,” because it implies

¹⁸Fennell & Stark, *supra* note 14.

¹⁹Schmalbeck, *supra* note 15.

²⁰Parfit, *supra* note 5, at 199-347.

²¹*Id.* at 202.

²²*Id.* at 205, citing John Locke, *Essay Concerning Human Understanding*, Chapter 27, Section 16. Parfit’s views on personal identity also bear some similarity those of David Hume, although Hume’s views are much more extreme and much less fully developed than Parfit’s. According to Hume,

If any impression gives rise to the idea of self, that impression must continue invariably the same, through the whole course of our lives; since self is supposed to exist after that manner. But there is no impression constant and invariable. Pain and pleasure, grief and joy, passions and sensations succeed each other, and never all exist at the same time. It cannot, therefore, be from any of these impressions, or from any other, that the idea of self is derived; and

that a person could not forget any of his experiences without losing his identity.²³ Parfit claims, however, that Locke's view can serve as a building block in a plausible account of personal identity over time.

For Parfit, continued personal identity, in the ordinary case, is a matter of two things.²⁴ The first is direct psychological connectedness—of memory, and of other psychological features, such as intention, belief, and desire. There is a direct memory connection between Z today and X twenty years ago if Z can remember having had some of X's experiences. Similarly, there are direct connections of intention, belief, and desire between Z and X to the extent intentions, beliefs, and desires have persisted from X to Z.²⁵ Parfit emphasizes that “[c]onnectingness can hold to any degree.”²⁶ Thus Z might remember many of X's experiences or only a few, might share many of X's beliefs or only a few, and so on. The second element of continued personal identity is psychological continuity—“the holding of overlapping chains of *strong* connectedness.”²⁷ Even if Z remembered none of X's experiences (so that there was no memory connectedness between Z and X), there would be memory continuity if Y of ten years ago remembered many of X's experiences, and Z today remembers many of Y's experiences. Parfit gives the name “Relation R” to the combination of the two criteria—“psychological connectedness and/or continuity.”²⁸ He is not consistent on the relative significance of the two components of Relation R. Initially he claims that “connectedness is more important both in theory and in practice,”²⁹ but almost a hundred pages later he takes a different position: “I believe that both relations matter. Others may believe that one matters more than the other. But I know of no argument for such a belief. I shall assume that neither relation matters more than the other.”³⁰

Relation R will not serve, by itself, as an adequate standard for the continuity of personal identity, because of the theoretical possibility of branching R-relations. If it were possible, for example, to divide a person's brain in half and place the two halves in different bodies, the two resulting persons might both be strongly R-related to the single pre-division person. Yet it will not do to say that both of the resulting persons are the same person as the pre-division person, because identity relationships are necessarily transitive,³¹ and transitivity would not obtain here. That is, if each post-division person is the same person as the pre-division person then they must

consequently there is no such idea.

David Hume, *A Treatise of Human Nature*, Book I, Part IV, Section VI (1739).

²³Parfit, *supra* note 5, at 205.

²⁴Id. at 205 - 07, 215, 262.

²⁵Id. at 205.

²⁶Id. at 206.

²⁷Id.

²⁸Id. at 215.

²⁹Id. at 206.

³⁰Id. at 301.

³¹Id. at 206.

also be the same person as each other, but they obviously are not.³² To deal with this problem, Parfit adds a uniqueness (U) criterion; he stipulates that Relation R produces continuity of personal identity only if the continuity “has not taken a ‘branching’ form.”³³ Personal identity requires R and U: PI = R + U.³⁴ Under this definition, neither of the post-division persons is the same person as the pre-division person, despite their strong R-connectedness. Parfit argues, however, that branching hypotheticals demonstrate that personal identity, as such, is not important; rather, R is what really matters: “If I will be R-related to some future person, the presence or absence of U makes no difference to the intrinsic nature of my relation to this person. And what matters most must be the intrinsic nature of this relation.”³⁵

Because direct connectedness diminishes over time,³⁶ Relation R (and personal identity in the ordinary, non-branching, case) also weakens over time. Parfit argues that in some cases of significant reduction in the strength of Relation R, identity is not determinate. Although “[w]e are inclined to believe that there is *always* a difference between some future person’s being me, and his being someone else [and] that this is a deep difference,”³⁷ Parfit argues that this is a mistake. In some cases of diminished Relation R, “it would be an empty question whether the resulting person would be me.”³⁸

Parfit acknowledges that his view—that personal identity over time is a matter of degree, rather than all-or-nothing—is contrary to both the intuitive beliefs of most people and a great deal of philosophical tradition.³⁹ He calls his position the Reductionist View, and distinguishes it from the dominant Non-Reductionist View. Under the Non-Reductionist View, a person is a “Cartesian Ego,” and his persistence over time “does not just involve physical and psychological continuity.” Rather, “It is a separate further fact, which must, in every case, either hold completely, or not at all.”⁴⁰ The Reductionist View does not deny the difference between lives, but it does make that difference less significant than under the Non-Reductionist View. “There is still a difference between my life and the lives of other people,” Parfit explains. “But the difference is less. Other people are closer. I am less concerned about the rest of my own life, and more concerned about the lives of others.”⁴¹

Parfit suggests that Reductionists might make greater use of a way of talking which is already “often useful and natural in our own lives”:

On my proposed way of talking, we use “I”, and the other pronouns, to refer only

³²Id. at 254 - 261.

³³Id. at 207.

³⁴Id. at 263.

³⁵Id.

³⁶Id. at 276, 306.

³⁷Id. at 239.

³⁸Id.

³⁹He even concedes that, although he is convinced by his own arguments “at the intellectual or reflective level,” he may “always have doubts” at some deeper level.” Id. at 279.

⁴⁰Id. at 275.

⁴¹Id.

to the parts of our lives to which, when speaking, we have the strongest psychological connections. When the connection has been markedly reduced—when there has been a significant change of character, or style of life, or of beliefs and ideals—we might say, “it was not *I* who did that, but an earlier self.” We could then describe in what ways, and to what degree, we are related to this past self.⁴²

This way of talking is suitable, however, only for cases of sharp discontinuities between successive selves. For reduced degrees of psychological connectedness without dramatic discontinuities, Parfit does not recommend the language of former selves: “Though it is less rigid than the language of identity, talk about successive selves cannot be used to express such smooth reductions in degrees of connectedness. In such cases we must talk directly about the degrees of connectedness.”⁴³

Towards the end of his discussion of personal identity, Parfit considers the implications of the Reductionist View for how persons and governments should act. A Reductionist should reject the widely-held view that a rational self-interested person should have equal concern for all parts of his future existence. To the contrary, “My concern for my future may correspond to the degree of connectedness between me now and myself in the future. Connectedness is one of the two relations that give me reasons to be specially concerned about my own future. It can be rational to care less, when one of the grounds for caring will hold to a lesser degree.”⁴⁴ Accordingly, Parfit proposes “a new kind of discount rate . . . not with respect to time itself, but with respect to the weakening of one of the two relations which are what fundamentally matter.”⁴⁵ He suggests this discounting will not generally apply over a few months, and will have only slight effect over a few years, but may become very significant over several decades.⁴⁶ As the domain of self-interest contracts, however, the domain of morality should expand. Just as parents are in a fiduciary relationship with their children, to whom they owe moral duties, so present selves are in a special relationship with their future selves, and are morally obligated to protect the interests of those future selves.⁴⁷ To a Reductionist, great imprudence may not be irrational (in terms of self-interest), but it is immoral.

Turning from personal morality to distributive justice, Parfit observes that Reductionism increases the scope of distributive principles—in addition to applying across lives, distributive principles may apply within a single life.⁴⁸ It may be appropriate for a government redistribute resources from younger selves to older selves, or *vice versa*. To the extent that those successive

⁴²Id. at 304-05. As a recent example of this way of talking, consider a comment by the actress Julie Christie, about herself in the 1960s: “I have no connection with that person at all. That person has gone.” Alan Riding, *A Role About Winter for Julie Christie, a Star in Eternal Spring*, *New York Times*, April 18, 2007, at E1.

⁴³Parfit, *supra* note 5, at 306.

⁴⁴Id. at 313.

⁴⁵Id. at 314.

⁴⁶Id.

⁴⁷Id. at 319.

⁴⁸Id. at 333-35.

selves are understood as separate persons, the usual anti-paternalism objection to such interventions disappears.⁴⁹ At the same time, however, the case for applying distributive principles between persons based on notions of lifetime equity becomes less compelling. Parfit analogizes a lifetime person to a nation; as a nation is composed of its citizens, so a lifetime person is made up of a number of successive selves. As it is more plausible to apply distributive principles with respect to people than with respect to nations, so it may be more plausible to apply distributive principles with respect to shorter-term persons rather than lifetime persons.⁵⁰ Parfit quotes with approval Thomas Nagel's comment that "[t]he criteria of personal identity over time . . . determine the size of the units over which a distributive principle operates," so that the appropriate units under Reductionism may be considerably shorter than entire lifetimes.⁵¹ Parfit offers an example of how rejection of the lifetime perspective can change the dictates of distributive justice. Suppose two people are now suffering, and we have the resources to help only one of them. We can relieve more suffering now if we focus our relief on A, but B has suffered more on a lifetime basis. A lifetime equity perspective might call for relief efforts focused on B, but a Reductionist may reach a different conclusion: "If we accept the Reductionist View, we may decide otherwise [than to help B]. We may decide to do the most we can to relieve suffering."⁵²

Finally, Parfit suggests that the Reductionist View not only changes the unit for distributional analysis, but that it also implies that distributive principles should be given less weight (relative to utilitarian principles). He explains:

These principles [of distributive justice] are often held to be founded on the separateness, or non-identity, of different persons. This fact is less deep on the Reductionist View, since identity is less deep. It does not involve the further fact in which we are inclined to believe. Since the fact on which they are founded is seen to be less deep, it is more plausible to give less weight to distributive principles.⁵³

It is debatable whether this less-weight implication necessarily flows from the Reductionist View. In contrast with Parfit's claim, Thomas Nagel believes that Reductionism merely changes the appropriate unit for distributional analysis, without having any effect on the weight to be given to distributive principles.⁵⁴

B. Reasons and Persons in Legal Scholarship

Reasons and Persons has had significant impact on several areas of academic legal

⁴⁹Id. at 321.

⁵⁰Id. at 340 - 41.

⁵¹Id. at 343, 346, quoting Thomas Nagel, *Mortal Questions* 124-25, n. 16 (1979). Parfit also describes, without necessarily endorsing, a radical view of Reductionist distributive justice, under which the appropriate units for distributive principles, far from being complete lives, are extremely short-term—"the states that people are in at particular times." Parfit, *supra* note 5, at 344.

⁵²Id. at 341.

⁵³Id. at 346.

⁵⁴Nagel, *supra* note 51, at 124-25, n. 16.

thought. Most notably, Parfit's view of personal identity has played a central role in the debate over whether the medical treatment of an incompetent patient should be governed by an advance treatment directive executed by the patient when competent. Rebecca Dresser has argued for a Parfitian view of personal identity under which such a directive would carry little or no weight.⁵⁵ Several ethicists have countered with strenuous objections to the Dresser/Parfit position.⁵⁶ Dresser has also written a detailed analysis of the implications of Parfit's personal identity analysis for theories of criminal punishment.⁵⁷ She acknowledges that, at first glance, Parfit's analysis calls into question the propriety of punishing a person for a crime he committed long ago, especially if the person has undergone significant psychological change since then.⁵⁸ She concludes, however, that "Parfit's work can be reconciled with, and indeed, provide a richer understanding of, the reasons we punish people for their past criminal acts."⁵⁹ Another part of *Reasons and Persons*, dealing with issues relating to future generations rather than personal identity,⁶⁰ has been influential in the environmental law literature.⁶¹

In an important recent paper, Matthew D. Adler considers at length the "time-slice" question: "Should egalitarians be concerned with the inequality of individuals' well-being or resources over their lifetimes, or with inequality during what I shall call 'sublifetimes,' such as annual or even momentary inequality?"⁶² Adler asks this question with respect to legal rules and institutions generally—including redistributive taxes, but also including (for example) environmental regulations and healthcare policies. The bulk of Adler's paper assumes the standard (non-Parfitian) view of personal identity, and not surprisingly concludes that under that assumption egalitarians should be concerned with lifetime inequalities. Adler acknowledges that his conclusions might be different under Parfit's account of personal identity, but he offers only a brief (and rather conclusory) discussion of how Parfit's account might affect a social welfarist's choice between a lifetime and sublifetime perspective.⁶³

⁵⁵Rebecca Dresser, *Life, Death and Incompetent Patients: Conceptual Infirmities and Hidden Values in the Law*, 28 *Ariz. L. Rev.* 373 (1986); Rebecca Dresser, *Relitigating Life and Death*, 51 *Ohio St. L.J.* 425 (1990). See also Linda Hirshman, *The Philosophy of Personal Identity and Life and Death Cases*, 68 *Chi.-Kent L. Rev.* 91, 98-100 (1992) (reaching a similar conclusion concerning the implications of the Parfitian view for the treatment of incompetent patients, but without citing Dresser and without endorsing the Parfitian view).

⁵⁶See, e.g., Allen Buchanan & Dan W. Brock, *Deciding for Others: The Ethics of Surrogate Decision-Making* 152-189 (1990); Nancy Rhoden, *Litigating Life and Death*, 102 *Harv. L. Rev.* 375, 412-16 (1988); Ben A. Rich, *The Values History: A New Standard of Care*, 40 *Emory L.J.* 1109, 1122-32 (1991); Jeffrey Blustein, *Choosing for Others as Continuing a Life Story: The Problem of Personal Identity Revisited*, 27 *J. L. Med. & Ethics* 20 (1999).

⁵⁷Rebecca Dresser, *Personal Identity and Punishment*, 70 *B.U.L.R.* 395 (1990).

⁵⁸*Id.* at 397.

⁵⁹*Id.*

⁶⁰Parfit, *supra* note 5, at 351-441.

⁶¹See, e.g., Anthony D'Amato, *Do We Owe a Duty to Future Generations to Preserve the Global Environment*, 84 *Am J. of Int'l Law* 190 (1990); Aaron-Andrew P. Bruhl, *Justice Unconceived: How Posterity Has Rights*, 14 *Yale L. & Human.* 393 (2002).

⁶²Matthew D. Adler, *Well-being, Inequality and Time: The Time-slice Problem and its Policy Implications* (2007) (available at <http://ssrn.com/abstract=1006871>).

⁶³*Id.* at 31-34. For a description and critique of Adler's views on this issue, see *infra* text accompanying

Despite the attention *Reasons and Persons* has attracted in these law-related fields, it has not played a major role in tax policy analysis. As far as I have been able to discover, Parfit's analysis of personal identity has been invoked only twice in the tax policy literature.⁶⁴ In an article making a number of arguments for greater regulation of employees' investment decisions with respect to tax-deferred defined contribution retirement savings, Susan J. Stabile offers Parfit's theory of personal identity over time as a possible answer to the objection that her proposal is paternalistic: "If the future beneficiary is regarded as another person, even under the most conservative notions of what justifies government intervention we can justify steps to prevent current contributors from causing harm to future beneficiaries."⁶⁵ And Michael J. Graetz contends that public finance economists have too readily "embraced the view that distributional burdens of taxes should be estimated with respect to a lifetime rather than an annual measure of income,"⁶⁶ citing Parfit on personal identity in support of his claim.⁶⁷ Graetz's discussion of lifetime distributional analysis ends with a call for more discussion of the arguments for and against the lifetime perspective: "[T]he appropriate role of lifetime or multi-year income perspectives for assessing ability to pay in the political process deserves ongoing attention and debate."⁶⁸ This article aims to supply some of that deserved attention.

III. The Lifetime Perspective on Tax Distributional Analysis

Tax policy analysts commonly assume that the ideal method of measuring tax burdens, for purposes of determining whether the distribution of burdens comports with notions of horizontal and vertical equity, is to consider the total tax burdens imposed on different individuals over their entire adult lifetimes. This view is especially popular among public finance economists; it is less frequently espoused by tax lawyers and legal academics. This section describes three contexts in which a lifetime perspective on tax equity appears in the tax policy literature—as the preferred approach to empirical studies of the distribution of tax burdens, as the foundation for an argument that a consumption tax is fairer than an income tax, and as the foundation for an argument that tax rates should be based on lifetime income rather than on annual income. Before describing those three contexts, however, this section begins with a discussion of the fundamental difference between tax equity analysis based on horizontal and vertical equity, and tax equity analysis based on a specified social welfare function.

A. Horizontal and Vertical Equity versus Social Welfare Functions

As the descriptions below will show, the tax policy analysts who favor a lifetime perspective on tax distributional analysis argue in terms of horizontal and vertical equity. They claim that persons with equal lifetime resources should face equal lifetime tax burdens, and that

notes 115-22.

⁶⁴If tax policy literature is defined very broadly, however, Adler's paper might constitute a third instance.

⁶⁵Susan J. Stabile, *Freedom to Choose Unwisely: Congress' Misguided Decision to Leave 401(k) Plan Participants to Their Own Devices*, 11 *Corn. J. L. & Pub. Pol'y* 361, 391 (2002).

⁶⁶Graetz, *supra* note 5, at 651 (1995). For a somewhat different version of the same essay, with the same reference to Parfit, see Michael J. Graetz, *Distributional Tables, Tax Legislation, and the Illusion of Precision* 15, 19, in *Distributional Analysis of Tax Policy* (David F. Bradford, ed., 1995).

⁶⁷Graetz, *supra* note 5, at 653.

⁶⁸*Id.* at 657.

persons with higher lifetime resources should face higher lifetime tax burdens than persons with lower lifetime resources. Quite apart from the issue of the appropriate time frame over which to perform distributional analysis, the approach of these analysts is questionable in another respect. To think in terms of horizontal and vertical tax equity is to assume that fairness in taxation is a matter of imposing appropriate tax burdens relative to pretax levels of economic resources. That assumption has been challenged, however, by both philosophers and social welfare economists.

The philosophical critique comes from Liam Murphy and Thomas Nagel. They argue that pretax income is a “myth”, because people would be unable to earn any income in the absence of the government made possible by taxation.⁶⁹ If pretax income is a myth, then it has no moral significance, and “we cannot evaluate the legitimacy of taxes by reference to pretax income.”⁷⁰ In the view of Murphy and Nagel, fairness in taxation depends not on the distribution of tax liabilities, but on the distribution of after-tax incomes—hence their slogan, “Outcomes, not Burdens.”⁷¹

Economists engaged in social welfare analysis attempt to determine what government policies will maximize social welfare under various assumed conditions. With respect to the examination of tax-and-transfer policies, this is known as optimal tax analysis.⁷² In addition to assumptions about the state of the world (such as the distribution of abilities within a society, and the elasticity of labor supply), optimal tax analysis requires the selection of a social welfare function (SWF), which specifies how the well-being of each individual in a society contributes to overall social welfare. Simple utilitarianism (i.e., determining social welfare by summing the utilities of all individuals) is one type of SWF, but equity-regarding social welfare functions are also possible. As Matthew Adler explains, to be equity-regarding an SWF must satisfy the Pigou-Dalton axiom, under which “a transfer of a unit of utility from a higher utility individual to a lower utility individual, holding constant total utility, . . . increase[s] social value.”⁷³

Regardless of the choice one makes among the myriad possible SWFs, the optimal tax approach differs fundamentally from the horizontal-and-vertical-equity approach, in that it attaches no normative significance to the difference between the pretax and after-tax distributions of income (or utility). Optimal tax analysis is concerned solely with finding the tax-and-transfer system which will produce the welfare-maximizing after-tax outcome; under this approach tax burdens have no independent moral significance. Thus, optimal tax economists agree with Murphy and Nagel that fairness in taxation is a matter of “Outcomes, not Burdens.” In this, both the optimal tax economists and the philosophers disagree with the proponents of analyzing tax fairness in terms of horizontal and vertical equity.

Adler suggests that those who invoke the concepts of horizontal and vertical tax equity

⁶⁹Liam Murphy & Thomas Nagel, *The Myth of Ownership* 9, 32 (2002).

⁷⁰Id. at 33.

⁷¹Id. at 98.

⁷²The seminal work is James Mirrlees, *An Exploration in the Theory of Optimum Income Taxation*, 38 *Rev. Econ. Stud.* 175 (1975). For an excellent monograph on the subject, see Matti Tuomala, *Optimal Income Tax and Redistribution* (1990). For a nontechnical introduction to the basic concepts of optimal taxation, see Lawrence Zelenak & Kemper Moreland, *Can the Graduated Income Tax Survive Optimal Tax Analysis?* 53 *Tax L. Rev.* 51 (1999).

⁷³Adler, *supra* note 62, at 7.

may understand those concepts as second-best approaches to SWF analysis: “The traditional criteria for evaluating tax policy, such as ‘horizontal equity’ or ‘vertical equity’ . . . , are second-best, proxy criteria, which are justifiably employed in some contexts given the computational demands of the first-best technique.”⁷⁴ Although Adler may be right with respect to some analysts, I suspect that most of those who think in terms of vertical and horizontal tax equity consider theirs the first-best approach. They believe in the moral significance of the pretax distribution of income (and other economic resources), with the result that for them fairness in taxation is matter of identifying fair departures from the pretax distribution. Murphy and Nagel describe this belief (which they emphatically do not share) and label it “everyday libertarianism.”⁷⁵

Although I happen to be on the side of the optimal tax economists and the philosophers on this issue, it is necessary to give the everyday libertarians—the proponents of vertical and horizontal tax equity analysis—their due. This means recognizing (1) that they are not (for the most part) using their approach as a second-best means of approximating SWF analysis, and (2) that they are not simply benighted in their failure to grasp the moral triviality of the pretax distribution of resources. Rather, they are in deep philosophical disagreement with Murphy, Nagel, and the social welfare economists, and their disagreement deserves to be respected. Accordingly, this paper does not attempt to argue the proponents of the lifetime approach to tax distributional analysis out of their focus on the equitable distribution of tax burdens. Rather, the paper accepts (for the sake of argument) their focus on horizontal and vertical equity, and considers how their equity analyses would be affected if they were to accept Parfit’s account of the nature of personal identity over time.

This paper focuses on the impact of Parfit’s views on burden-based (rather than outcome-based) arguments for a lifetime perspective on tax policy, for the simple reason that those who have appealed to the lifetime perspective in advocating the adoption of particular tax policies have employed to burden-based analysis. It should be noted, however, that the question of the appropriate time-slice for distributional analysis arises whether one believes tax equity depends on the distribution of burdens or the distribution of outcomes. Just as tax burden analysts may focus on either single-year tax burdens or on lifetime tax burdens, so optimal tax analysts may focus on maximizing an SWF over either a single year or whole lives. With rare exception, optimal tax analysts have adopted the single-year approach,⁷⁶ but that choice has generally been based on convenience rather than on any considered philosophical preference. Under the standard account of personal identity—as unproblematically stable over an entire lifetime—the ideal approach to optimal tax analysis would presumably consider each person’s lifetime well-being rather than annual well-being. Under Parfit’s account, however, a sublifetime approach may be preferable. To a large extent, this paper’s analysis (in Part IV, below) of the impact of Parfit’s account of identity on burden-based arguments appealing to lifetime equity would also apply to with respect to the effect of Parfit’s account on the choice between lifetime and sublifetime SWF analysis.

B. Empirical Studies of the Distribution of Lifetime Tax Burdens

⁷⁴Adler, *supra* note 62, at 50.

⁷⁵Murphy & Nagel, *supra* note 69, at 31-37.

⁷⁶For a rare exception, see Liebman, *supra* note 7.

It is conventional wisdom among public finance economists that the person over her entire adult lifetime is the most appropriate unit for the distributional analysis of tax burdens. To date, the most impressive and comprehensive empirical study adopting this approach is a 1993 monograph by Don Fullerton and Diane Lim Rogers, appropriately titled, *Who Bears the Lifetime Tax Burden?*⁷⁷ Fullerton and Rogers categorize individuals according to their lifetime incomes, which they define as “the present value of labor endowment over the lifetime,”⁷⁸ plus the present value of gifts and bequests received over a lifetime.⁷⁹ Having so categorized individuals, they proceed to examine how tax burdens are distributed among persons with different lifetime income profiles, under both then-current law and selected tax reform proposals.⁸⁰ Although Fullerton’s and Roger’s study remains the most ambitious example of lifetime tax incidence analysis, the lifetime approach is generally acknowledged as the ideal by public finance economists. As Fullerton and Rogers note in an essay published two years after their book, “[T]he academic community widely accepts the concept of lifetime tax incidence.”⁸¹ Fullerton and Rogers argue for the superiority of lifetime tax incidence analysis to annual tax incidence analysis, based on their implicit assumption that the nature of personal identity over time is not problematic.⁸² They explain that adoption of the lifetime perspective does not require the replacement of tax laws based on annual accounting with tax laws based on lifetime accounting:

Tax collections can still be based on annual accounts. But the lifetime perspective provides a useful yardstick to help evaluate any such system. For “horizontal equity,” two individuals with similar lifetime income should pay similar total lifetime taxes. In addition, for “vertical equity,” higher lifetime incomes could be associated with higher lifetime taxes.⁸³

⁷⁷Don Fullerton & Diane Lim Rogers, *Who Bears the Lifetime Tax Burden?* (1993).

⁷⁸*Id.* at 95.

⁷⁹*Id.* at 19-20. The definition thus includes the value of income which a person *could* earn but chooses not to earn, and it excludes all capital income.

⁸⁰*Id.* at 154-232.

⁸¹Don Fullerton & Diane Lim Rogers, *Distributional Effects on a Lifetime Basis* 262, 294, in *Distributional Analysis of Tax Policy* (David F. Bradford, ed., 1995). For other examples of the lifetime approach, see Milton Moss, *Income Distribution Issues Viewed in a Lifetime Income Perspective*, 24 *Rev. Income & Wealth* 119 (1978) (opining, at 120, that “differences in total lifetime income which arise from differences in the level and time shape of income for different persons are properly objects of social concern”); James Davies, France St-Hilaire & John Whalley, *Some Calculations of Lifetime Tax Incidence*, 74 *Am. Econ. Rev.* 633 (1984) (noting, at 633, that “[a] repeatedly stated qualification to annual calculations in the empirical tax incidence literature is that it would be more satisfactory to make calculations on a lifetime basis”). See also Anthony B. Atkinson & Joseph E. Stiglitz, *Lectures in Public Economics* 286 (1980) (indicating that lifetime incidence calculations of tax burdens are theoretically preferable to annual incidence calculations).

⁸²Fullerton & Rogers, *supra* note 77, at 17-21.

⁸³*Id.* at 19.

Nowhere in their book do Fullerton and Rogers consider the possible Parfitian objection—that personal identity over a lifetime is too weak to make lifetimes appropriate units for distributional analysis. In their essay published two years after the book, they devote several pages to responding to those who question their claim that the lifetime horizon should play an important role in policy analysis.⁸⁴ They identify as the “most fundamental criticism of the lifetime perspective” the claim that it too readily assumes “life-cycle [i.e., consumption-smoothing] behavior.”⁸⁵ They also note the less fundamental criticisms that legislative tax policies never last a lifetime, and that the available data on lifetime incomes leave much to be desired.⁸⁶ They make no mention of the possible criticism—a criticism which, if made, would be the most fundamental of all—that their analysis is premised on the questionable assumption that personal identity over time is strong enough to justify their emphasis on the lifetime perspective.

I am not aware of this criticism of lifetime distributional analysis ever having been made, even to this day, by any public finance economist.⁸⁷ Unnoted by Fullerton and Rogers, however, the Parfitian objection to the lifetime perspective is briefly mentioned (without either endorsement or rejection) by Michael Graetz—a prominent academic tax lawyer—in an essay published in the same volume as Fullerton’s and Rogers’ essay. Graetz remarks that “a philosophical grounding for a lifetime basis for measuring relative well-being has yet to be developed,” and notes that Derek Parfit “contends that our future selves might better be thought of as persons different from who we now are.”⁸⁸ According to Graetz, the problematic nature of personal identity over time “suggests philosophical difficulties that cannot be solved by discounting future income to present values as a basis for comparing people’s well-being.”⁸⁹ Graetz rightly observes that economists who have endorsed the lifetime perspective for purposes of tax policy analysis “have done so without either serious argument or defense.”⁹⁰ With respect to the question of personal identity over time, his statement is as true now as when he made it, more than a decade ago.

C. The Argument for the Superiority of a Consumption Tax over an Income Tax from a Lifetime Perspective

⁸⁴Fullerton & Rogers, *supra* note 81, at 290-293.

⁸⁵*Id.* at 291. They have a persuasive response to this objection: “We have argued, however, that lifetime income should not be taken as a measure of current ability to pay taxes. It is simply a measure of lifetime ability to pay taxes. That interpretation applies even when the life-cycle model does not. . . . Policy makers might worry that current taxes reflect current ability to pay *and* that lifetime taxes reflect lifetime ability to pay.” *Id.* The relationship between consumption-smoothing behavior and the identification of the appropriate duration of tax equity units is discussed *infra* text accompanying notes 165-73.

⁸⁶*Id.* at 292.

⁸⁷But see *infra* text accompany notes 130-42 (discussing William Vickrey’s consideration and rejection of a possible objection to his proposal for lifetime income averaging, based on doubts about the stability of personal identity over time).

⁸⁸Graetz, *supra* note 66, at 59. Graetz makes the same observations in the other published version of his essay. Graetz, *supra* note 5, at 653.

⁸⁹Graetz, *supra* note 66, at 59-60; Graetz, *supra* note 5, at 653-54.

⁹⁰Graetz, *supra* note 66, at 61; Graetz, *supra* note 5, at 654.

Under an income tax, two people may have the same lifetime labor endowment—i.e., the same present value of their lifetime earnings capacity, viewed from the beginning of their adult years—yet face different lifetime tax burdens. This can happen because of either (1) differences in the timing of the earning of income, or (2) differences in preferences for the timing of consumption.

As an example of the first sort, consider a very simple two-period model. Individual A earns \$100 in period 1 and nothing in period 2; individual B earns nothing in period 1 and \$110 in period 2. The discount rate is 10 percent, so in present value terms each person has a lifetime labor endowment of \$100. Each person wants to defer all his consumption until period 2. An income tax with a flat rate of 10% applies to both labor income and capital income. A pays tax of \$20 in period 1 and invests the remaining \$80, which grows to \$88 by period 2. A pays tax of \$1.60 on the \$8 investment return, leaving him \$86.40 to spend on consumption in period 2. B simply pays tax of \$22 on \$110 of income in period 2, so B is able to spend \$88 on period 2 consumption—which is \$1.60 more than A can spend.

As an example of the second sort—using the same two-period model, the same discount rate, and the same income tax regime—suppose individual C and individual D each earn \$100 in period 1 and nothing in period 2. C prefers to do all his consumption spending in period 1, while D prefers to defer all his consumption spending until period 2. C pays income tax of \$20 in period 1 and consumes \$80 in the same period. D’s situation is identical to A’s in the previous example. D will have \$86.40 available, after tax, for consumption in period 2. From the perspective of period 1, the present value of \$86.40 in period 2 is only about \$78.55. This is less than the \$80 present value of C’s period 1 consumption; thus the income tax burdens D more heavily than C despite their equal labor endowments.

Under a consumption tax, by contrast, the heavier taxation of A than B is eliminated, as is the heavier taxation of D than C. With a 20% consumption tax, A and B will each have \$88 available for consumption in year 2. A pays no tax in period 1 and invests the entire \$100. The \$100 grows to \$110 in period 2, and A is left with \$88 after paying a (tax-inclusive) consumption tax of \$22. B’s tax treatment is unchanged from B’s treatment under an income tax; thus, B also pays \$22 tax in period 2 and has \$88 available for consumption. C’s treatment is also unchanged under the consumption tax; C pays \$20 tax in period 1 and spends \$80 on consumption in the same period. D’s tax treatment, on the other hand, does change. Like identically-situated A, D has \$88 available for consumption after paying tax of \$22 in period 2. Given the prevailing 10% discount rate, \$80 consumption in period 1 and \$88 consumption in period 2 have the same present value (as do \$20 tax in period 1 and \$22 tax in period 2), so the consumption tax imposes equal burdens on equally-endowed C and D, despite their different consumption timing preferences.

A number of public finance economists have used examples similar to the above to argue that a consumption tax can produce horizontal equity from a lifetime perspective, but an income tax cannot. (Although the argument is usually couched in horizontal equity terms—as in the above examples—it easily translates into a vertical equity argument that a consumption tax will reliably tax those with larger lifetime labor endowments more heavily than those with smaller endowments, while an income tax will not.⁹¹) The argument is most strongly associated with

⁹¹See, e.g., Bradford & Treasury Tax Policy Staff, *supra* note 2, at 36-38 (using examples focused on horizontal equity, but claiming (at 36) that the examples also demonstrate “that a consumption base would be more likely to maintain the same relative rankings of individuals ranked by endowment than an income base, if

David Bradford, who made an especially clear and influential statement of the position in *Blueprints for Basic Tax Reform*. Bradford starts from the claim—which he treats as so self-evidently correct as to be in no need of justification or defense—that “[i]deally, two taxpayers should be compared on the basis of a whole *lifetime* of circumstances, and this is taken here to be a general goal of tax system design: lifetime tax burden should depend upon lifetime circumstances.⁹² Starting from this premise, he offers examples (similar to the ones set forth above) to demonstrate the superiority of a consumption tax to an income tax from the perspective of lifetime horizontal equity,⁹³ enabling him to conclude that “the Cash Flow Tax [Bradford’s preferred form of consumption taxation] is more equitable [than an income tax] because it treats alike all individuals who begin their working years with equal wealth and the same present value of future labor earnings.”⁹⁴

Criticisms of the income tax similar to Bradford’s, based on the assumption that the individual over a lifetime is the appropriate unit for distributional analysis, have been made by other prominent public finance economists. Henry J. Aaron and Harvey Galper have stated, without any attempt at explanation or justification, that it is “compelling” as a “principle of fairness in taxation” that “people with the same lifetime capacity to consume, discounted to present value, pay equal lifetime taxes.”⁹⁵ They note that the income tax fails to satisfy this criterion when the timing of income realization or consumption timing preferences differ between persons, but that a cash flow tax produces results consistent with their principle of lifetime fairness in taxation.⁹⁶ Similarly, Martin Feldstein claims that an “individual’s utility depends on his lifetime path of *consumption* and labor supply,” and that “[i]f every individual’s labor supply is fixed and equal and tastes are assumed to be identical, the present value of the individual’s lifetime income is an appropriate tax base.”⁹⁷ Under these assumptions, a flat rate consumption tax would produce lifetime tax equity.⁹⁸ A tax imposed on labor income and gifts–

‘endowment’ is defined as an individual’s wealth, in marketable and nonmarketable forms, at the beginning of his working years”).

⁹²Id. at 24.

⁹³Id. at 36-38.

⁹⁴Id. at 9. Bradford restates the lifetime horizontal equity case for consumption taxation in David F. Bradford, *Untangling the Income Tax* 165-66 (1986). He adds a caveat, however. Taxpayers with equal labor endowments in present value terms but different timing of their earnings will not be identically situated in terms of their lifetime consumption opportunities, if imperfections in the capital markets make it impossible for the person with later earnings to shift consumption to earlier periods by borrowing. Id. at 165. As Bradford sees it, however, this is merely a practical difficulty in determining which persons are truly similarly situated, rather than a fundamental challenge to the lifetime equity perspective. Id.

⁹⁵Henry J. Aaron & Harvey Galper, *Reforming the Tax System*, in *Economic Choices* 1984, 87, 101-02 (Alice M. Rivlin, ed. 1984).

⁹⁶Id. at 102. They mention, in a footnote, that strict compliance with the lifetime equity objective requires that the cash flow tax have a single (flat) rate, rather than progressive marginal rates. Nevertheless, they indicate they would be satisfied with a cash flow tax with progressive marginal rates. Id. at 102, n. 13. In the same footnote, they insist that their cash flow tax is not a consumption tax, because their tax cash flow tax would include gifts and bequests in the tax base of the transferor, whereas a consumption tax (as defined by them) would not. Id.

⁹⁷Martin Feldstein, *On the Theory of Tax Reform*, 6 J. of Pub. Econ. 77, 88 (1976) (emphasis in original).

⁹⁸Id.

but exempting interest and other capital income—would also be consistent with the lifetime equity goal, but a comprehensive income tax would not.⁹⁹ As with Bradford, neither Aaron and Galper nor Feldstein consider the possibility that personal identity over long periods of time is too weak to support the claim that equity in taxation is best determined over entire lifetimes.

D. Lifetime Income Averaging and the Lifetime Equity Perspective

In an article published in 1939, William Vickrey remarks, “It has long been considered one of the principal defects of the graduated individual income tax that fluctuating incomes are, on the whole, subject to much heavier tax burdens than incomes of comparable average magnitude which are relatively steady from year to year.”¹⁰⁰ To see the problem, imagine an income tax system based on annual accounting, which taxes the first \$50,000 of income of any individual at the rate of 10%, and all additional income at the rate of 20%. Individual A earns \$50,000 in year 1 and \$50,000 in year 2. Individual B earns \$20,000 in year 1 and \$80,000 in year 2. Although the two persons have the same total income over the two years, and would pay the same tax if the tax system were based on biannual accounting,¹⁰¹ with annual accounting A pays only \$10,000 tax over the two years (\$5,000 each year), while B must pay \$13,000 (\$2,000 in the first year and \$11,000 in the second). To remedy perceived inequities of this sort, Vickrey proposes a system of cumulative income averaging, under which a taxpayer’s effective tax rates would be based not on the taxpayer’s income for the current year, but on the taxpayer’s income over a multi-year income averaging period, which might be as long as a taxpayer’s entire adult life.¹⁰² Vickrey claims the adoption of this proposal would produce “substantial gains in equity as between taxpayers with steady and those with fluctuating incomes.”¹⁰³

Under the proposed system of cumulative averaging, taxpayers would continue to file annual returns, and to make annual tax payments, but the applicable rates would depend on each taxpayer’s income from the beginning of the multi-year averaging period to the current year. In addition to tax rate averaging, the proposal also includes a feature intended to make the timing of the reporting of income within the averaging period a matter of indifference. This is accomplished by giving taxpayers credit in later years not only for the income tax actually paid in earlier years, but also for deemed interest—from the time of payment to the present—on those tax payments (with the deemed interest amounts included in taxable income). The steps in the process, for any given year, would be as follows: (1) each year the taxpayer would determine his “adjusted total income” from the beginning of the averaging period to the present, by summing his incomes for all years within the period (including the deemed interest income on previous tax payments within the period); (2) the taxpayer would determine the amount of tax he had already paid on this adjusted total income, by considering both the tax actually paid in prior years and the deemed interest credit; (3) the taxpayer would consult the appropriate multi-year tax rate schedule or tax table to determine the total tax on the adjusted total income; and (4) the taxpayer would subtract the amount determined under step (2) from the amount determined under step (3),

⁹⁹Id.

¹⁰⁰Vickrey, *supra* note 3, at 379.

¹⁰¹For a proposal for an income tax system based on biannual rather than annual accounting, see Soled, *supra* note 16.

¹⁰²Vickrey, *supra* note 3, at 390.

¹⁰³Id. at 395.

with the resulting amount being the required tax payment for the current year.¹⁰⁴ Although Congress never demonstrated any serious interest in the proposal, Vickrey continued to advocate it for the rest of his life.¹⁰⁵

In addition to the claimed equity improvements for taxpayers with fluctuating incomes, Vickrey also claimed a major simplification advantage for his proposal—that the reporting timing neutrality created by the crediting of interest on earlier tax payments would make it possible to dispense with a large number of complex statutory provisions governing the timing of income and deductions,¹⁰⁶ since “postponement of tax [would] amount[] simply to borrowing from the government at the stipulated interest rate.”¹⁰⁷ In later decades, Vickrey came to view reporting timing neutrality as a more important benefit of his proposal than the equity gain from rate averaging: “Although cumulative averaging was originally thought of as simply an elegant and precise way of achieving the equity which is the main *raison d’etre* of most averaging proposals, it has become increasingly clear that the principal and unique achievement offered by cumulative averaging lies in the drastic simplification of the tax laws and regulations which it makes possible”¹⁰⁸ But as Neil Buchanan has recently noted, the rate averaging and timing neutrality aspects of Vickrey’s proposal are severable, both as a technical design matter and as a policy matter.¹⁰⁹ For purposes of the present essay, the important part of Vickrey’s proposal is its multi-year rate averaging, and in particular his claim “that the increase in equity afforded by the averaging method of assessment will become greater as the period is made longer.”¹¹⁰

Implicitly assuming the stability of personal identity over time, Vickrey concludes that “[t]he logical limit would seem to be to extend the averaging period from the majority of the taxpayer until his death.”¹¹¹ In his 1939 article he struggles, however, with how to integrate the two aspects of the determination of the appropriate taxable unit—across persons within a marriage or family unit, and across time: “The problem immediately arises . . . of how to treat taxpayers whose family status changes.”¹¹² He considers several possibilities: (1) a rule that an averaging period ends, and a new one begins, upon a marriage, divorce, or death of a spouse; (2) disregarding marital and family status for tax purposes, so that a person is a single taxable unit

¹⁰⁴Id. at 383-84; Vickrey (1947), *supra* note 13, at 174-75.

¹⁰⁵See the sources cited, *supra* note 13.

¹⁰⁶Vickrey (1969), *supra* note 4, at 742-44.

¹⁰⁷Id. at 741.

¹⁰⁸Id. at 742. In unpublished papers, David Weisbach and Mitchell Engler have both pointed out, however, an important caveat to Vickrey’s claim of timing neutrality. Although it is true (as Vickrey claimed) that his proposal would produce reporting timing neutrality within an averaging period, his proposal would not be neutral with respect to the timing of the actual accretion of income within an averaging period. The later the economic accrual of income within an averaging period, the higher would be the effective tax rate under Vickrey’s proposal. Weisbach, *supra* note 14, at 1-5; Engler, *supra* note 14, at 3-4. Accretion date neutrality would be achieved, however, if Vickrey-type cumulative averaging were applied to a consumption base rather than an income base. Id. at 4.

¹⁰⁹Buchanan, *supra* note 14, at 1173.

¹¹⁰Vickrey, *supra* note 3, at 390.

¹¹¹Id.

¹¹²Id. at 391.

over his entire adult lifetime, and a married couple or a family is never a taxable unit; and (3) consolidating the income of all the members of a nuclear family, assigning (for tax purposes) the total family income among its members according to a statutory formula, and then treating each family member as a separate taxable unit (so that the averaging period for each family member would not need to end because of changes in family composition).¹¹³ By 1947 he has decided that the “best compromise” is the assignment of half of marital income to each spouse, along with “the continuation of the averaging period of each spouse throughout all changes of status.”¹¹⁴ Under this approach, Vickrey’s version of tax equity across entire adult lifetimes could be achieved.

IV. The Impact of the Reductionist View of Personal Identity on Tax Policy Arguments

Appealing to Lifetime Equity

A. Three Possible Responses Upon Being Persuaded by the Reductionist View

Suppose a person is either an equity-regarding welfarist (i.e., one who believes government policies should be aimed at maximizing an SWF under which social welfare is increased when a unit of utility is transferred from a person with higher utility to a person with lower utility), or a proponent of horizontal-and-vertical tax equity analysis. Suppose also that the person has accepted (explicitly or implicitly) the standard account of the nature of personal identity over time, and thus believes that his preferred analytic approach should be applied with respect to individuals’ entire lifetimes. How might that person change his views on the dictates of distributive justice, if he became persuaded by Parfit’s account of personal identity?

Matthew Adler considers the above question from the perspective of an equity-regarding welfarist, but most of his discussion of the question would apply equally to a proponent of horizontal and vertical equity analysis. Adler suggests that there are three reasonable responses. One response would be not to change one’s views at all. The lifetime equity-regarding welfarist might “insist that similar deflations . . . can be created for all normative concepts, and [therefore] stick by his lifetime equity-regarding view.”¹¹⁵ This suggestion is based on what seems to me to be a misunderstanding of Parfit. According to Adler:

[Parfit’s challenge to whole-lifetime equity analysis] does *not* involve the claim that personal identity is normally indeterminate. Rather, the challenge rests on a different aspect of Parfit’s account of personal identity: its reductive or deflationary character. Once we see that personal identity, determinate or not, is reducible to facts about psychological and physical connectedness and/or continuity, personal identity will become less *significant*.¹¹⁶

Reasonably enough, Adler questions the notion that understanding a moral concept (such as identity) in “reductive” terms automatically reduces the moral significance of the concept: “[I]t is not clear that reducing some moral concept to its physical or psychological basis weakens the

¹¹³Id. at 392.

¹¹⁴Vickrey (1947), *supra* note 13, at 286.

¹¹⁵Adler, *supra* note 62, at 34.

¹¹⁶Id. at 32.

hold of the concept. If, for example, we reduce the concept of ‘life’ to its physical terms, does that mean that morality must care less about killing?”¹¹⁷

In my view, however, Adler’s conclusion that a person persuaded by Parfit’s account of personal identity might nevertheless “stick by his lifetime equity-regarding view” is based on two misreadings. First, Adler reads too much into Parfit’s failure to claim that personal identity is indeterminate in the ordinary case; and, second, Adler misunderstands Parfit’s view of the moral significance of reductionism. On the first point, although Parfit acknowledges that there is normally sufficient continuity and connectedness over an entire lifetime to justify the conclusion that personal identity persists throughout the lifetime, Parfit’s central claim is that personal identity over a lifetime is a matter of degree, rather than all-or-nothing. Although personal identity may persist over a lifetime, it does so more weakly than is usually supposed (because of the weakening of connectedness over long periods of time), and this factual weakening of personal identity over a lifetime weakens its moral significance. On the second point, Parfit does not claim (contrary to Adler’s reading) that understanding a concept in “reductive or deflationary” terms—for example, viewing identity solely as a matter of continuity and connectedness—*necessarily* reduces the moral significance of that concept. It just happens to do so, in the case of personal identity, because of the way connectedness diminishes over time. If connectedness did not work that way, then the mere fact that Parfit understands identity in terms of its psychological bases would not diminish the moral significance Parfit attaches to the concept.

If my reading of Parfit is correct, then a lifetime equity-regarding welfarist could not reasonably reach the dismissive conclusion Adler suggests. That is, he could not reasonably accept—as a descriptive matter—Parfit’s account of the nature of personal identity over time, and yet conclude that Parfit’s account does nothing to weaken the case for treating whole lives as the units with which distributive justice ought to be concerned.

Adler’s other two suggestions, as to how a lifetime-equity regarding welfarist persuaded by Parfit might change his views, are more persuasive. One possibility is that the lifetime welfarist would respond, simply enough, by “shift[ing] to sublifetime equity-regarding welfarism.”¹¹⁸ That is, he might continue to believe that public policy should be aimed at maximizing an equity-regarding SWF, but he might newly believe that the relevant units for distributional analysis are persons over periods shorter than entire lifetimes. Finally, the welfarist might respond to Parfit by abandoning equity-regarding welfarism altogether, and converting to utilitarianism: “Having excised or deflated the concept of ‘person,’ . . . we might respond . . . by saying that fair distribution—across persons or temporal stages—is not important at all.”¹¹⁹ In support of this possibility, Adler quotes Parfit’s own suggestion that the Reductionist View may lend some support to utilitarianism:

If we . . . come to believe that the unity of a life involves no more than the various relations between the experiences in this life, it becomes more plausible to be more concerned about the quality of the experiences, and less concerned

¹¹⁷Id. at 33.

¹¹⁸Id. at 34.

¹¹⁹Id. at 33.

about whose experiences they are. This gives some support to the Utilitarian view.¹²⁰

Several points are worth noting in connection with this possible Parfitian push in the direction of utilitarianism. First, although utilitarianism is not equity-regarding (i.e., it does not place a higher social value on a unit of utility of a lower-utility individual than on a unit of utility of a higher-utility individual), utilitarianism nevertheless generally supports redistributive tax-and-transfer policies (because of the standard assumption of the declining marginal utility of money). Second, since utilitarianism calls for the maximizing of the sum of the utilities *of individuals*, a shift to utilitarianism would not eliminate the need to specify the individuals—whether whole-life or of shorter duration—the sum of whose utilities is to be maximized. A person who subscribed to both utilitarianism and the standard account of personal identity, and who believed that each individual allocates her lifetime resources among the various periods of her life in the manner which maximizes her lifetime utility, would favor tax-and-transfer policies designed to maximize the sum of the utilities of whole-life individuals. On the other hand, if one were driven to utilitarianism by Parfit’s account of personal identity, then one would favor tax-and-transfer policies aimed at maximizing the sum of the utilities of “person-slices” covering periods much shorter than entire lifetimes.¹²¹

In any event, these issues—concerning the choice between a sublifetime equity-regarding approach (either welfarist or concerned with horizontal and vertical equity) and sublifetime utilitarianism, and concerning the appropriate “person-slice” under either approach—will be set aside for the remainder of this Part IV. The goal of this Part is not constructive, but destructive—not to design a tax-and-transfer system based on Parfit’s account of personal identity, but to show how familiar tax equity arguments implicitly premised on the standard view of personal identity are undermined by Parfit’s account.¹²²

B. Parfit and the Case for Consumption Taxation

One may, of course, simply reject Parfit’s view of the nature of personal identity, clinging instead to the usual understanding that each person is a “Cartesian ego,” whose personal identity persists without change over an entire lifetime. Suppose, however, that one is persuaded by Parfit’s claim that there is no “separate further fact [of identity], which must, in every case, either hold completely, or not at all.”¹²³ Thus, one believes that personal identity over time is a matter of psychological connectedness and continuity, that connectedness greatly weakens over long periods of time, and that personal identity weakens as connectedness weakens. What impact would the holding of that belief have on the persuasiveness of the lifetime equity argument (set forth most powerfully by David Bradford) for the superiority of consumption

¹²⁰Parfit, *supra* note 5, at 346, quoted by Adler, *supra* note 62, at 33-34.

¹²¹Parfit’s appeal to “the quality of the experiences,” in the passage quoted by Adler and set forth above, suggests a Parfitian utilitarian might favor redistribution with respect to “person-slices” covering very short periods indeed. Under this interpretation, the preferred “person-slice” for tax purposes would be the shortest slice administratively feasible—either the twelve-month slice of current law, or perhaps something even shorter.

¹²²A constructive use of Parfit’s account of personal identity in tax system design is offered, however, in Part V, *infra*.

¹²³Parfit, *supra* note 5, at 275.

taxation over income taxation?

Under the Reductionist View the lifetime equity argument for consumption taxation would be seriously weakened. To the extent a whole-life person is a problematic concept, any argument based on an appeal to fairness among different whole-life persons becomes a problematic argument. It is possible, however, to overestimate the effect of Parfit's position on the pro-consumption tax claim. Parfit understands personal identity over time as being dependent on both connectedness and continuity. Although connectedness may become very weak over many decades, it does not normally disappear; competent octogenarians ordinarily retain some childhood memories. More importantly, continuity—unlike connectedness—is *not* a matter of degree; in the normal case psychological continuity extends from childhood until death. Parfit does not deny that, even under his view, personal identity can and generally does persist (albeit with significant weakening over time) throughout an entire lifetime: “There is still a difference [under the Reductionist View] between my life and the lives of other people.”¹²⁴

Even if one were to take the Reductionist View further than Parfit himself takes it, and conclude that young self and old self are completely different persons, it would remain an open question whether the two should be treated as a single unit for tax distributional analysis. After all, when the question is not the appropriate tax unit across time, but merely the appropriate tax unit within a single accounting period, many policy analysts take the position (and Congress has tended to agree with them) that income should be aggregated between spouses, and between parents and their minor children (in the case of unearned income).¹²⁵ They take this position without ever denying the moral and philosophical status of each spouse and each child as a separate person.

If the argument for treating a married couple—or an entire nuclear family—as a single tax unit is based on the (supposed) tendency of the spouses or family members to identify with the economic interests of the other persons within the unit, or on the moral responsibility of some persons within the unit for the economic well-being of other persons within the unit, then a similar argument could be made for treating a younger self and an older self as a single tax equity unit, even if their status as separate persons is conceded. Parfit establishes the foundation for this argument when he claims that a younger self has a moral responsibility to his older self to avoid great imprudence (which imprudence might make sense, purely in terms of the younger self's own interests), and when he supports this claim with an analogy to the obligation of parents to their children.¹²⁶ If the fiduciary duty owed by a parent to her child is sufficient to justify taxing the unearned income of a minor child at the parent's marginal tax rate, then perhaps the fiduciary duty owed by a younger self to an older self is sufficient to justify the way in which consumption tax proponents assume a younger self and an older self should be treated as a single unit for tax equity analysis. An example of an argument of this sort—that is, a claim that concededly different persons, following one another over extended periods of time, should be treated as a single unit for tax equity analysis—already exists in the tax policy literature. In a

¹²⁴Id. at 281.

¹²⁵For policy analysts, see, e.g., Bittker, *supra* note 12 (spouses); McIntyre & McIntyre, *supra* note 12 (spouses); Smith, *supra* note 12 (spouses); McMahon, *supra* note 12 (children). For Congress, see IRC §§1(a) (joint return tax rate schedule for married couples), 1(g) (taxing unearned income of minor children at parents' marginal tax rates).

¹²⁶Parfit, *supra* note 5, at 319.

discussion of the proper tax treatment of gifts and bequests, David Bradford suggests that the appropriate units for distributional analysis are multi-generational “dynasties”:

Consider two dynasties, identically endowed in the form of earning power of their successive generations. In one dynasty each generation consumes what it earns. . . . Suppose a generation of one dynasty chooses to pass some of its earnings forward to future members. Is there a basis for assessing it with a heavier tax?¹²⁷

But the placement of admittedly different persons within a single tax equity unit will generally be controversial. There are many who argue against joint returns for married couples,¹²⁸ there is no movement to extend the “kiddie tax” from children’s unearned income to earned income, and Bradford’s claim that dynasties are appropriate units for distributional analysis has few adherents. Conversion to the Reductionist View—even in a strong form, in which younger and older selves are understood as completely different persons—would not *ipso facto* result in the rejection of the lifetime equity case for consumption taxation. It would, however, greatly weaken the lifetime equity case, for the simple reason that an argument that several people should be taxed *as if* they were one person is always weaker than an argument that one person should be taxed as one person. Under Parfit’s view, a whole-life person is not *self-evidently* the appropriate unit for distributional analysis, just as married couples and nuclear families are not self-evidently appropriate tax equity units. Rather than fighting for consumption taxation on these highly contestable grounds, consumption tax proponents may prefer to base their case on other arguments, which do not depend on assumptions about the nature of personal identity over time.¹²⁹

C. Parfit and the Case for Lifetime Income Averaging

Most of the preceding discussion, with respect to the effect of the Reductionist View on the lifetime equity case for consumption taxation, also applies with respect to the case for lifetime averaging. Although the case for lifetime averaging becomes much less compelling under the Reductionist View, it does not become wholly implausible—both because the Reductionist View does not deny that personal identity persists over long periods of time to some significant extent, and because one can argue for treating two or more distinct—but closely related—persons as a single tax equity unit. There is an important difference, however, between the consumption tax and the lifetime averaging situations: unlike Bradford and other consumption tax proponents, Vickrey anticipates objections based on something akin to the Reductionist View, and attempts to respond to those objections.

¹²⁷Bradford, *supra* note 94, at 159. Neil Buchanan makes a similar suggestion (although perhaps somewhat in the spirit of *reductio ad absurdum*) in his critique of lifetime income averaging, commenting that “even a lifetime is arbitrary” as a unit for distributional analysis, and that “[t]he time periods can be longer [than a lifetime], and the complexity of the taxable unit can rise almost without limit.” Buchanan, *supra* note 14, at 1211, n. 200.

¹²⁸See, e.g., McCaffery, *supra* note 12; Kornhauser, *supra* note 12; Zelenak (*Marriage*), *supra* note 12.

¹²⁹See, e.g., Joseph Bankman & David A. Weisbach, The Superiority of an Ideal Consumption Tax over an Ideal Income Tax, 58 Stan. L. Rev. 1413, 1413 (2006) (claiming, without appealing to equal taxation of those with equal lifetime economic opportunities, that “a properly designed consumption tax is Pareto superior to an income tax: it is either more efficient, more redistributive, or both”).

In a 1969 essay, Vickrey considers a number of possible objections to his cumulative averaging proposal.¹³⁰ Although he is writing well before the publication of Parfit's views on personal identity, and although no critic of his proposal has explicitly questioned the stability of personal identity over time, Vickrey nevertheless notes "a somewhat loosely articulated philosophical feeling that a lifetime of income is too much to consider as a unit for a tax assessment," because of doubts about the durability of personal identity over many decades.¹³¹ Anticipating Parfit, Vickrey concedes that "[t]here may be, indeed, a sense in which a man in his fifties is a different person from the same man in his twenties,"¹³² and proceeds to consider how the acceptance of this "separate incarnation" concept would affect the policy analysis of his averaging proposal. Vickrey's several defenses of lifetime averaging against what he called the "separate incarnation concept" are described and discussed below. The defenses are not particularly well-developed, nor are they particularly persuasive. Vickrey deserves credit, however, for having noted the debatable nature of personal identity over time, and the fact that the nature of personal identity over time has tax policy implications, well before anyone else had done so.

Vickrey asks the reader to consider two persons who have equal lifetime incomes: C, who earns \$30,000 per year for his entire career, and G, who earns \$10,000 per year for the first portion of his career and \$50,000 per year for the later portion. G would have liked to smooth his lifetime consumption pattern by borrowing in anticipation of his higher income in his later years, but because of capital market imperfections he could not. His lifetime utility is thus less than C's, despite their equal lifetime incomes. According to Vickrey, imposing a higher lifetime tax burden on G than on C—the result under an income tax with progressive marginal rates, in the absence of lifetime averaging—"would seem to be adding insult to injury."¹³³ This is an odd comment in the context of a consideration of what follows for tax policy if younger G and older G are thought of as two different persons; the "insult to injury" comment is clearly made with respect to *lifetime* utilities and *lifetime* tax burdens, and so is nonresponsive to the objection Vickrey is supposedly addressing.¹³⁴

¹³⁰Vickrey, *supra* note 4. Vickrey revisits the relationship of concepts of personal identity over time to his cumulative averaging proposal in Vickrey (1972), *supra* note 13, at 124-29.

¹³¹Vickrey, *supra* note 4, at 747. Vickrey cites only one source for this identity-based criticism of his proposal, and the cited source does not explicitly raise any identity concerns. 3 Report of the [Canadian] Royal Commission on Taxation 257 (1966) ("[W]e could see no justification for using a lifetime . . . as the interval over which income should be averaged").

¹³²Vickrey, *supra* note 4, at 747. In his 1972 essay he states this objection in a more developed form: "[I]n some sense, after the lapse of a sufficient number of years, an individual's personality changes to such an extent that his current income tax liability should not be made to depend on what his income was a long time ago." Vickrey (1972), *supra* note 13, at 124.

¹³³Vickrey, *supra* note 4, at 747. For a fuller consideration of the issues raised by comparisons of the C-G sort, see *infra* text accompanying notes 165-73 (discussing Richard Schmalbeck's policy analysis of income averaging).

¹³⁴Vickrey's 1972 essay also responds to the objection based on the instability of personal identity over time largely by refusing to accept the premise of the objection. For example, he conjures up "a childless old prospector P with a life expectancy of only five years, [who] after grubbing around for fifty years eking out a bare subsistence, suddenly strikes a bonanza worth \$1,000,000." Vickrey (1972), *supra* note 13, at 126. He suggests that, if anything, lifetime averaging would be insufficiently generous to the prospector: "Even total tax exemption

Vickrey suggests that a utilitarian would not be interested in G's "adding insult to injury" complaint, and would instead favor the denial of the benefit of income averaging to G as promoting the maximization of aggregate utility: "A utilitarian . . . could claim that the heavier taxation of G in the later years would cut into a relatively more frivolous and luxurious level of consumption than would additional taxation of C, and that, therefore, the heavier rate on G's later income than on C's income would be needed to maximize total utility."¹³⁵ Although Vickrey is correct that a utilitarian might make this argument, it is not clear how this relates to the question of personal identity over time; a utilitarian could make the same argument, for the same reason (i.e., a lack of interest in questions of distributive justice), whether the utilitarian believed younger G and older G to be the same person or two different persons. Perhaps Vickrey's point here—although he never so states—is that the utilitarian argument for denying older G the benefit of lifetime averaging has more force if it stands unopposed by competing considerations based on lifetime equity—as it would stand if younger G and older G are understood as completely different persons.

Vickrey then compares G with individual W, of the same age as G and with the same \$50,000 of current income as G, but with a history of having earned \$50,000 annually for his entire adult life.¹³⁶ Vickrey argues that W is better off in the current year than G, "even if one considers [G] to be in effect an entirely new person with no recollection of his previous incarnation,"¹³⁷ because W will probably have a higher level of accumulated consumer durables (producing tax-free imputed income) and G will have additional expenses in adopting his consumption habits to his recently-improved circumstances. Thus, G should be subject to a lower tax burden in the current year than W (despite their identical \$50,000 incomes), and allowing current G to average his income with that of the poorer former G would produce the desired lower tax on G than on W. One objection to Vickrey's argument on this point is that it may assume too much; if younger W has been profligate and G has recently received a bequest, G's consumer durables may equal or exceed W's. More fundamentally, the problem with Vickrey's argument is that it suggests no reason why the reduction in older G's tax liability

would hardly enable him to make up for the grubby years sufficiently to leave him well enough off to make most of us willing to choose his *lifetime* lot rather than that of a salaried man X who had enjoyed a steady income throughout the fifty years of \$20,000" Id. (emphasis added). Of course, this assumes away the objection that entire lifetimes are not the appropriate units for distributional analysis. The 1972 essay makes essentially the same move in its consideration of whether cumulative averaging should apply in the case of a taxpayer who experiences in middle age a sudden, unexpected, and permanent drop in his earnings capacity. If cumulative averaging does apply in such a case, the result will be to require lower annual tax payments after the decline in income, than would be required of a taxpayer who had earned at the lower rate for his entire career. Vickrey notes that this result would be inappropriate if one assumes "a clean break with the past and no 'carryover of personality.'" Id. at 127. He refutes this objection by noting that the effect of cumulative averaging in a situation of this sort resembles the effect of the social security system: "Accordingly, it seems difficult to justify the pattern of the social security system without *assuming some carryover of identity even over fairly long periods*, and difficult to allow such considerations as justifications for the social security system without also allowing them on behalf of cumulative averaging." Id. at 128 (emphasis added). Again, Vickrey's response to the objection assumes away the premise of the objection.

¹³⁵Id. at 747.

¹³⁶Id. at 747-48.

¹³⁷Id.

produced by averaging his income with younger G's (who Vickrey has conceded, *arguendo*, is a different person from older G) would be in the amount appropriate to reflect the assumed difference in their collections of consumer durables. Indeed, it would be a sheer accident if the reduction in G's tax produced by income averaging rules—motivated by a belief in the stability of personal identity over time—happened to produce an appropriate distribution of tax burdens under a contrary belief in the instability of personal identity over time.

Vickrey offers yet another response to the personal identity-based objection to lifetime averaging: “It is particularly hard to defend the ‘separate incarnation’ concept when the younger self is observed to provide specifically for the older self.”¹³⁸ From one perspective, this argument obviously proves too much. Parents are routinely observed providing for their children (both minor and adult), and spouses for one another, yet these observations do not make it hard to defend the proposition that children are “separate incarnations” from their parents, and spouses from each other. However, the comparison of successive selves with family members suggests a more persuasive reworking of Vickrey's argument, along the lines developed in this article's earlier discussion of the impact of the Reductionist View on the consumption tax argument. The treatment of a married couple as a tax equity unit under the current income tax, and the similar practice with respect to parents and their minor children (in the case of unearned income), suggest that the boundaries between concededly different persons need not define the boundaries of tax equity units.¹³⁹ And including more than one person within a single taxable unit may be particularly attractive when some people within the unit are observed providing for the consumption needs of others within the unit. One might be a firm believer in the separate personhoods of successive selves, and yet think that a lifetime of such selves—with earlier selves displaying, in the typical case, considerable solicitude for later selves—constitutes an appropriate taxable unit, possibly justifying lifetime income averaging.

Finally, Vickrey contends that the “separate incarnation” concept is hard to square with various existing features of the income tax which seem to recognize the stability of personal identity over time.¹⁴⁰ He cites, as examples, the fact that one's basis in assets one sells this year may depend on actions one took many years ago, and the fact that the provisions relating to tax-preferred retirement savings are designed to produce specified tax treatments for persons over spans of many decades. There are two problems with this argument. First, the normative appeal to existing law is dubious; perhaps existing law is wrong to the extent it seems to recognize the stability of personal identity over time. Second, this argument also appears to prove too much, as application of the two sets of rules mentioned by Vickrey are not limited to single lives. As Vickrey himself notes, the tax basis in an asset may go back several generations, if the asset has been transferred down the generations by inter vivos gifts.¹⁴¹ Similarly, distributions from qualified pensions will be subject to the same basic treatment—being taxable in full as ordinary income—whether they are received by the retired taxpayer before his death or by an alternate

¹³⁸Id. at 748.

¹³⁹See IRC §§ 1(a) (providing tax rates applicable to married couples filing joint returns), 1(g) (taxing most unearned income of minor children according to their parents' marginal tax rates).

¹⁴⁰Vickrey, *supra* note 4, at 748.

¹⁴¹See IRC § 1015, providing for transferred basis treatment for gifts.

beneficiary after the death of the original taxpayer.¹⁴² On the other hand, to the extent these rules function to treat concededly different persons as a single taxable unit (for very limited purposes), they again suggest the possibility that more than one person—including, perhaps, successive selves—may appropriately be treated as a single unit for purposes of distributional analysis.

V. *The Reductionist View of Personal Identity, and Fennell and Stark on Taxation over Time*

In a recent article, Lee Anne Fennell and Kirk Stark identify and discuss two very different ways a tax system might approach the taxation of individuals from a broader perspective than annual accounting.¹⁴³ The first approach is Vickrey-style lifetime income averaging,¹⁴⁴ under which “any given taxpayer’s total tax liability would be a function of her total lifetime income rather than the income allocable to any given year.”¹⁴⁵ The Vickrey proposal is founded, of course, on the belief that individuals over their entire lifetimes are the appropriate units for purposes of tax equity analysis. As Fennell and Stark remark, “[P]ublic finance theorists generally maintain that . . . it is the taxpayer’s lifetime income or consumption that offers the best measure of individual welfare.”¹⁴⁶ The second approach is age-based taxation, under which taxpayers would face different tax rate schedules (and perhaps differing entitlements to receive transfer payments) at different ages.¹⁴⁷

Fennell and Stark explain that age-based taxation could be used to accomplish *intrapersonal* redistribution, moving resources from one period to another within the same lifetime.¹⁴⁸ The typical individual, whose earned income reaches a peak in middle age, might like to shift some of that income to earlier periods (to finance consumption in young adulthood) and some of that income to later periods (to finance consumption beyond the peak earning years), but may find it difficult to achieve the amount of shifting required to maximize lifetime utility. “Capital market imperfections”—the often severe limitations on the ability to borrow against anticipated future earnings—inhibit shifting to earlier years,¹⁴⁹ while self-control problems may inhibit the savings required for shifting to later years.¹⁵⁰ The tax system could help taxpayers

¹⁴²See IRC §691, governing the tax treatment of income in respect of a decedent.

¹⁴³Fennell & Stark, *supra* note 14.

¹⁴⁴*Id.* at 27-36.

¹⁴⁵*Id.* at 28.

¹⁴⁶*Id.* at 27 (citing Joseph J. Cordes, Horizontal Equity, in *The Encyclopedia of Taxation and Tax Policy* 164 (Joseph J. Cordes, Robert B. Ebel & Jane Gravelle, eds., 1999), and R. Glenn Hubbard, Commentary, Measure Tax-Cut “Fairness” Over a Lifetime, *Wall St. J.*, Jan. 8, 2003, at A14).

¹⁴⁷Fennell & Stark, *supra* note 14, at 36-64.

¹⁴⁸*Id.* at 47-49.

¹⁴⁹*Id.* at 48.

¹⁵⁰*Id.* at 13-16. Fennell and Stark describe the behavioral life-cycle analysis of Hersh Shefrin and Richard Thaler, which models the savings-related self-control problem “as an intrapersonal conflict between a ‘planner’ and a ‘doer’ who have different ‘time horizons.’” *Id.* at 13, citing Hersh M. Shefrin & Richard H. Thaler, *The Behavioral Life-Cycle Hypothesis*, 26 *Econ. Inquiry* 609 (1988). The problem highlighted by this model is that the preferences of the future-regarding planner are vulnerable to being undermined by the preferences of the present-oriented doer. The model is interesting from a Parfitian perspective, because it suggests not a temporal succession

overcome these obstacles to consumption smoothing, by heavily taxing people in their peak earning years in order to make possible light (or even negative) taxation in their lower earning years. For individuals whose lifetime earnings profiles have the typical middle-aged peak, and who are unable to accomplish on their own the optimal amount of income smoothing (because of borrowing constraints or self-control problems), the smoothing produced by such a tax system could increase their lifetime utility. In the view of Fennell and Stark, a considerable amount of this sort of tax-induced intrapersonal redistribution occurs even in the absence of explicitly age-based taxation: “Any periodically-assessed tax system that redistributes resources from higher to lower income households—including, for example, an age-neutral, flat-rate wage tax—not only will redistribute among different persons but also among different temporal versions of the same taxpayer over time.”¹⁵¹ And an age-neutral progressive-rate tax (in other words, a system such as the current income tax) will accomplish more of this sort of redistribution than a flat-rate tax. If even more such redistribution is desired, however, it could be produced by explicitly age-based taxation, under which middle-aged taxpayers face a more burdensome marginal tax rate schedule than younger or older taxpayers.¹⁵²

Fennell and Stark explain that there is a fundamental tension between Vickrey-inspired lifetime income averaging and age-based taxation. Lifetime averaging is intended to make the determination of tax burdens independent of the timing of the earning of income within a lifetime, whereas the point of age-based taxation is to make the timing of income even more significant for tax determinations than it is under current law. In their words, “It is not possible to give younger people lighter tax burdens while employing a lifetime averaging approach that wipes out internal variations in earnings over the life cycle. Conversely, it is not possible to apply tax rates differentially based on age without treating different lifetime earning patterns differently.”¹⁵³ They view their own contribution as describing, rather than resolving, the conflict between the two approaches to taxation over time: “Our goal is not to convince the reader of the normative desirability or undesirability of any specific proposal, but rather to start a

of different persons over a lifetime, but rather the simultaneous existence of two wills within a single person. The model can be given a Parfitian twist, however, if the planner is understood as a fiduciary for a future self (or selves), projecting that self from the future back to the present.

¹⁵¹Fennell & Stark, *supra* note 14, at 42. Of course, no tax system redistributes resources viewed in isolation from government spending and transfer payments. Thus, the unstated assumption of Fennell and Stark must be that their hypothetical flat-rate wage tax is used to finance government spending (direct government spending, transfer payments, or both), with the net result of the tax-and-spending system being a transfer of resources from higher wage workers to lower-wage workers (and non-workers).

¹⁵²*Id.* at 47-49. If one is persuaded by the claim of Liam Murphy and Thomas Nagel that pre-tax income is a myth (because people would be unable to earn any income in the absence of the government made possible by taxation), it follows that pre-tax income cannot serve as a baseline from which to measure the redistribution produced by a tax-and-spending system. See generally Murphy & Nagel, *supra* note 69. In other words, under the view of Murphy and Nagel redistribution of pre-tax income is an incoherent concept, because there is no meaningful pre-tax baseline from which to measure redistribution. On the other hand, even under the view of Murphy and Nagel one can talk about how a change in tax-and-spending practices would redistribute resources relative to the distribution produced by current practices. Thus, if spending practices are held constant, it makes sense to describe an age-neutral progressive-rate tax as redistributing from middle-aged selves to younger and older selves relative to an age-neutral flat-rate tax, and to describe an age-sensitive progressive-rate tax as redistributing from middle-aged selves to younger and older selves relative to the current age-neutral progressive-rate system.

¹⁵³Fennell & Stark, *supra* note 14, at 64.

dialogue in which the problem of taxation over time is conceptualized in a more comprehensive, holistic fashion.”¹⁵⁴

Responding to their call for a dialogue, I here consider how a person persuaded by the Reductionist View might adjudicate the conflict between lifetime averaging and age-based taxation. One point is readily apparent—compared with those who believe in a “Cartesian ego” or some other strong version of personal identity over an entire lifetime, a Parfitian will have little interest in lifetime averaging’s goal of achieving tax equity on a lifetime basis. Under the Reductionist View, personal identity over a lifetime is simply too weak to make equity among different whole-life persons an important goal; whole-life persons are not compelling as units for distributional analysis. As noted earlier,¹⁵⁵ Parfit himself suggests that, under his view of the nature of personal identity, utilitarianism (i.e., seeking to maximize total welfare, without regard to the distribution of welfare among persons) becomes more plausible.

On my suggestion, the Utilitarian View may be supported, not by the conflation of persons, but their partial disintegration. It may rest upon the view that a person’s life is less deeply integrated than most of us assume. Utilitarians may be treating benefits and burdens, not as if they all came within the same life, but as if it made no moral difference where they came from. And this belief may be partly supported by the view that the unity of each life, and hence the difference between lives, is in its nature less deep.¹⁵⁶

In short, the *weight* to be given to distributive principles is decreased under the Reductionist View,¹⁵⁷ and this makes concerns about lifetime equity—which motivate proposals for lifetime averaging—less compelling.

At the same time the Reductionist View suggests assigning less *weight* to distributive principles, however, it suggests giving them more *scope*. As Parfit writes, “Since we regard the subdivisions within lives as, in certain ways, like the divisions between lives, we may apply distributive principles even within lives”¹⁵⁸ Fennell and Stark, by contrast, write from the usual Non-Reductionist assumption of the unproblematic identity of persons over time. Thus, although they contradict the conventional wisdom by claiming that “intrapersonal redistribution [is] highly relevant to tax policy,”¹⁵⁹ they stop short of claiming that issues of intrapersonal distribution implicate equity concerns. According to them, “[I]t is clearly problematic to conflate intrapersonal and interpersonal inequality, given the very different reasons that society might have for caring about these two types of inequality.”¹⁶⁰ They see the case for intrapersonal redistribution purely in utilitarian terms. Principles of distributive justice may be

¹⁵⁴Id.

¹⁵⁵Supra text accompanying note 120.

¹⁵⁶Parfit, supra note 5, at 336.

¹⁵⁷Id. at 334-36.

¹⁵⁸Id. at 334.

¹⁵⁹Fennell & Stark, supra note 14, at 47.

¹⁶⁰Id. at 43.

important in determining the appropriate allocation of tax burdens among different people, but not in determining the appropriate allocation of tax burdens within a single life: “Intrapersonal redistribution responds to shortcomings in the life-cycle hypothesis—cognitive or capital market difficulties that keep people from being able to rearrange their permanent income into desired consumption patterns. Interpersonal redistribution, in contrast, is based on normative judgments about the appropriate allocation of tax burdens among different people.”¹⁶¹

A Reductionist will disagree with the claim of Fennell and Stark that there are “very different reasons” for caring about intrapersonal and interpersonal inequality, and that it is therefore “clearly problematic” to conflate the two.¹⁶² The Parfitian view strengthens the case for age-based redistributive taxation. In the case of age-based taxation to promote the welfare of younger selves, the Parfitian view leaves intact the utility gains identified by Fennell and Stark, and adds a distributive justice argument for shifting resources from the middle-aged self to the younger self.¹⁶³ In the case of age-based taxation to promote the welfare of older selves, the Parfitian view again leaves intact the utility gains identified by Fennell and Stark and adds an equity-based argument to the efficiency-based argument. In addition, however, it provides an answer to what might otherwise be a powerful anti-paternalist objection to age-based taxation in favor of older selves. The anti-paternalist would argue that people can decide on their own how much they want to save for the benefit of their future selves, and that any self-control problems with respect to savings behavior do not justify the use of age-based taxation to disrupt their preferred allocation of resources between present and future consumption.¹⁶⁴ Under the Reductionist View, however, a present self and a future self can plausibly be understood as

¹⁶¹Id. at 49-50.

¹⁶²Id. at 43.

¹⁶³Bruce Ackerman and Anne Alstott have proposed a system of near-universal transfers of \$80,000 (at the rate of \$20,000 per year for four years) to young adults, to be financed in large part by a tax on gratuitous transfers, with the tax conceived of as a paying back (with interest) of the \$80,000 the transferor received as a young adult. Bruce Ackerman & Anne Alstott, *The Stakeholder Society* (1999). Their proposal can be viewed as a very aggressive form of intrapersonal redistribution from older selves to younger selves, and could be advocated in Parfitian terms. Ackerman and Alstott themselves, however, emphatically reject Parfit’s “discontinuous view of the self.” The rejection comes not in their discussion of the financing of the proposed transfer payments, but in their discussion of the choice between a program of large one-time transfer to young adults, and a program of much smaller annual transfers throughout adulthood. In that discussion, they note that the “discontinuous view” provides an argument for annual transfers over one-time transfers:

[I]s Joan at age twenty-one really the same person as Joan at forty? If not, this supports the case for basic income over stakeholding. If the forty-year-old Joan is really a completely different person, or so the argument goes, the older Joan would take cold comfort in the fact that *somebody else* called Joan received eighty thousand dollars long ago—especially if that somebody else had spent the money on activities that the forty-year-old found valueless.

Id. at 212 (emphasis in original). Because they are “profoundly unconvinced” by the “discontinuous view” of personal identity, Ackerman and Alstott reject this argument for basic income over stakeholding. Id. at 213.

¹⁶⁴There is no analogous anti-paternalist objection to using age-based taxation in favor of younger selves, because in that situation age-based taxation is being used to counteract market imperfections, rather than individuals’ choices.

different units for purposes of distributional analysis. The paternalistic objection—to interference with the present self’s allocation of resources between itself and the future self—disappears if they are so understood.

In sum, if one is persuaded by Parfit’s view of the nature of personal identity over time, that will have significant implications for how one views the conflict identified by Fennell and Stark between the two approaches to taxation over time. Compared to the usual view of personal identity over time, the Reductionist View makes the lifetime equity goal of income averaging less important, and makes the case for age-based taxation considerably stronger.

VI. *The Reductionist View of Personal Identity and Schmalbeck on Income Averaging*

In a wide-ranging discussion of income averaging—published, as it happened, in the same year as *Reasons and Persons*—Richard Schmalbeck offers a policy critique of income averaging, largely focused on the income averaging provisions of then-existing law, which allowed averaging over a five year period in the case of a taxpayer whose income in the current year substantially exceeded his average income for the four preceding years.¹⁶⁵ Although Schmalbeck does not explicitly address the question of personal identity over time, his analysis can be understood in Parfitian terms—that is, as an argument against entire lifetimes as appropriate units for distributional analysis. Schmalbeck’s premises are: (1) that the burden of a tax ought to be distributed among individuals according to the principle of equal proportional sacrifice, so that the tax reduces the pre-tax utilities of all taxpayers by the same percentage;¹⁶⁶ and (2) that an individual’s utility is a function of his consumption opportunities.¹⁶⁷ His conclusions are: (1) that income averaging within a multi-year period is appropriate if a taxpayer anticipates income changes within the period and is able to shift consumption among years within the period (by borrowing or saving), so that the taxpayer bases his consumption decisions for each year of the period on his income for the entire period, but (2) that averaging between high- and low-income years is not appropriate if the years are not within the same consumption-smoothing period (i.e., if the conditions specified in (1) are not satisfied).¹⁶⁸ He concludes that in most cases “the annual accounting period seems roughly accurate for sacrifice evaluation purposes,”¹⁶⁹ apparently because he views consumption-smoothing—even between adjacent years—as the exception rather than the rule. This seems doubtful as an empirical matter, but for present purposes the identification of the consumption-smoothing period as the appropriate unit for distributional analysis is more important than the question of how short or long such periods might typically be. Schmalbeck acknowledges the theoretical case for multi-year periods under certain circumstances, such as a lottery winner who knows winning the lottery is a once-in-a-lifetime event, and who accordingly smooths over her remaining lifetime (but who cannot,

¹⁶⁵Schmalbeck, *supra* note 15. The income averaging rules were codified at former IRC §§ 1301-1305, repealed by the Tax Reform Act of 1986, Pub. L. No. 99-514, 141, 100 Stat. 2085, 2117.

¹⁶⁶This is a version of horizontal and vertical equity tax analysis, and so is subject to the criticisms of such analysis described in Part III.A of this paper.

¹⁶⁷Schmalbeck, *supra* note 15, at 549 (equal proportional sacrifice), 552 (consumption opportunities).

¹⁶⁸*Id.* at 546-57.

¹⁶⁹*Id.* at 552.

of course, retroactively smooth over earlier years).¹⁷⁰

It is easy to see Schmalbeck's analysis in Parfitean terms. Under Schmalbeck's approach, a person becomes a new person—that is, a new unit for purposes of distributional analysis—each time he enters a new consumption-smoothing period. Since different individuals might have consumption-smoothing periods of different durations, this would make the identification of appropriate tax units individual-specific. In some cases Schmalbeck's analysis might call for the current law's approach of treating the single-year person as the appropriate unit (apparently the most common situation in Schmalbeck's own view), while at the other extreme it might call for treating a lifetime as the appropriate unit (under the hypothesis that individuals smooth consumption of lifetime incomes over their entire lifetimes¹⁷¹). In many cases, however, it would call for the use of multi-year (but less than lifetime) person segments.¹⁷² It is not obvious that the move from one consumption-smoothing period to another—as by a large unanticipated upwards or downwards change in earning capacity, or even by an anticipated upwards change if credit market imperfections prevented borrowing against the anticipated future earnings—would generally be significant enough in Parfitian terms to justify treating the move as the dividing line between tax equity units. Parfit suggests we speak of “an earlier self” only “where there is some sharp discontinuity marking the boundary between two selves,” such as “a significant change in character, or style of life, or of beliefs and ideals.”¹⁷³ A shift from

¹⁷⁰Id. at 556. See also id. at 553 (“[T]he ability of the taxpayer to anticipate his future income levels with some precision is the key. If one knew at the beginning of a two-year (or a five-year) period what one's income would be during that period, then that period would surely be the appropriate period over which to measure utility and sacrifice.”).

¹⁷¹For an excellent survey of the empirical and theoretical literature on the life-cycle hypothesis (i.e., the hypothesis that individuals engage in consumption smoothing over their entire adult lifetimes), and the behavioral life-cycle model (which examines cognitive impediments to consumption smoothing), see Fennell & Stark, *supra* note 14, at 6-21. For whatever reason or reasons, individuals typically fall far short of perfect consumption smoothing over their entire lifetimes; there is considerably more “forward smoothing” (from high-earning years to retirement years) than “backward smoothing” (from high-earning years to young adulthood). Id. at 19.

¹⁷²In a more recent article, Lily Batchelder offers a view which appears to be very similar to Schmalbeck's:

[L]ifetime income would be the best gauge of whether two people are similarly situated if they could save and borrow without constraint, perfectly foresee their future income for the rest of their lives, and plan their savings and spending over their lifetimes. Conversely, annual accounting would be most accurate if they could not save or borrow for more than a year, had no ability to predict next year's income or recall last year's income, or could only take into account one year of income when making economic decisions. In reality, neither of these situations holds, and the most “accurate” accounting period is person-specific.

Lily L. Batchelder, *Taxing the Poor: Income Averaging Reconsidered*, 40 Harv. J. on Legis. 395, 401 (2003). She offers these views with little elaboration, so it is unclear whether she is implicitly adopting a Parfitean view of personal identity over time. (She may have been influenced on this point by Schmalbeck, whom she cites elsewhere in her article, but does not cite in this connection.) Notice the extremely strict conditions she states for the normative superiority of annual accounting, especially the inability to recall last year's income. If Batchelder would recognize different units for distributional analysis within a single lifetime only in cases of complete memory loss, her nod in the direction of the Reductionist View would have minimal practical consequences.

¹⁷³Parfit, *supra* note 5, at 305-06.

one consumption-smoothing period to another might constitute such a sharp discontinuity (note Parfit's reference to a change in "style of life"), but it is not clear that would usually be the case. In many instances of consumption discontinuities, overall psychological connectedness (in terms of memories, intentions, beliefs, desires, and the like) between the two consumption-smoothing periods might be strong indeed.

On the other hand, it could be argued that the tax system—which is, after all, about money—should be concerned with an economic concept of identity rather than a comprehensive concept of identity. If so, then the economic discontinuity between consumption-smoothing periods might be much more important than the various psychological continuities between the periods. Whatever one's views of the merits of defining tax equity units according to consumption-smoothing periods, it is doubtful whether administrable and reasonably accurate income tax rules could be devised for determining the boundaries between periods. If, for example, unanticipated changes in earnings capacity generally indicate breaks between consumption smoothing periods, but anticipated changes generally do not, it may not be possible to design fair and workable rules to distinguish the two types of changes. The task of designing rules to identify breaks between consumption-smoothing periods might be easier if the income tax were replaced by a consumption tax, since the tax administrator would then be able to track taxpayer's consumption levels and identify sharp discontinuities. Even then, however, the ability to identify discontinuities would be obscured to the extent important aspects of consumption—especially the rental value of owner-occupied housing and other consumer durables—were excluded from the tax base.

VII. Conclusion

One may not be persuaded by Parfit's analysis of the nature of personal identity over time. In that case, of course, the Reductionist View will have no impact on one's thinking about tax policy issues. Even if one is persuaded (or at least cast into doubt) by the Reductionist View, no clear-cut tax policy prescriptions follow from its acceptance. However, the Reductionist View does make some tax policy proposals considerably more or less attractive than they appear under the usual understanding of personal identity. Because personal identity over long periods of time is much weaker under the Reductionist View, the lifetime equity argument in favor of consumption taxation is correspondingly weakened (although other arguments for taxing consumption are unaffected). Parfit's analysis also works against the case for lifetime income averaging, for the same reason. In these two respects, the Reductionist View has a conservative influence on tax policy—that is, it supplies reasons for rejecting proposals for major changes in the tax system. However, the Reductionist View certainly does not suggest that the current income tax is the best of all possible tax systems. By making intrapersonal redistribution a matter of distributive justice rather than merely a matter of efficiency, and by providing an answer to the anti-paternalist objection to intrapersonal redistribution, the Reductionist View strengthens the case for age-sensitive tax rate schedules. And if the Reductionist View suggests that a lifetime is an unreasonably long period over which to attempt to achieve distributive justice, it does not follow from the Reductionist View that personal identity changes sufficiently from one year to the next to make the single-year person the ideal taxable unit. In fact, by calling attention to the issue of the appropriate duration of tax equity units, the Reductionist View may increase the attractiveness of some modest moves in the direction of multi-year taxable unit units, such as biannual tax accounting periods or two-year averaging for purposes of

the EITC.