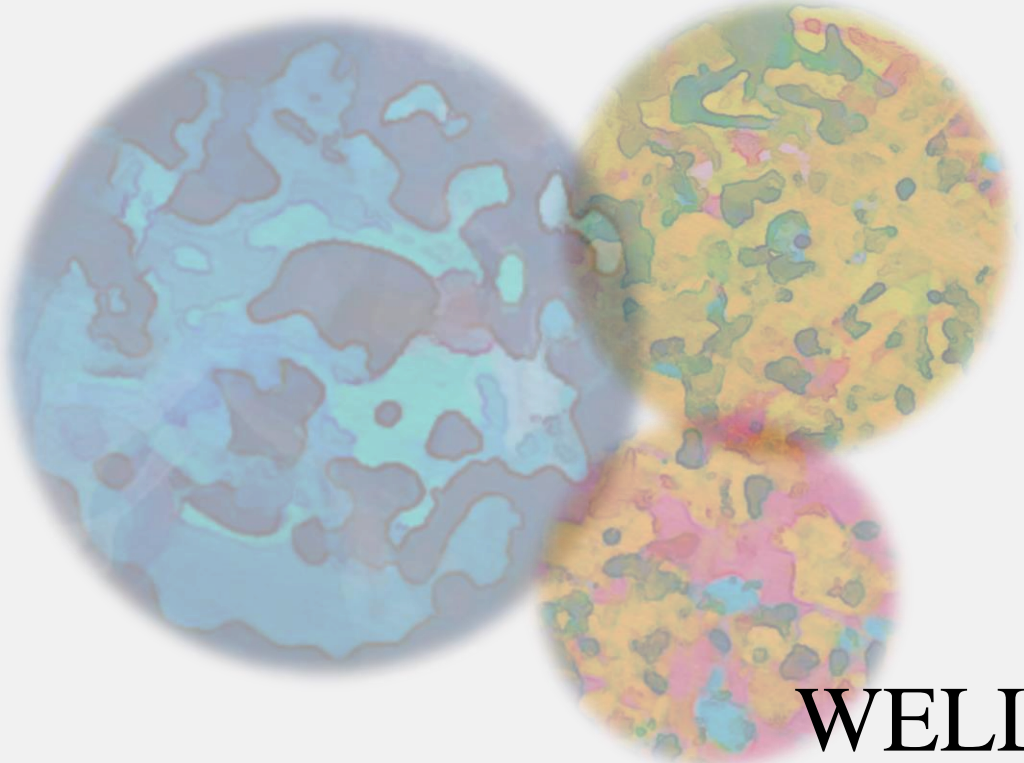




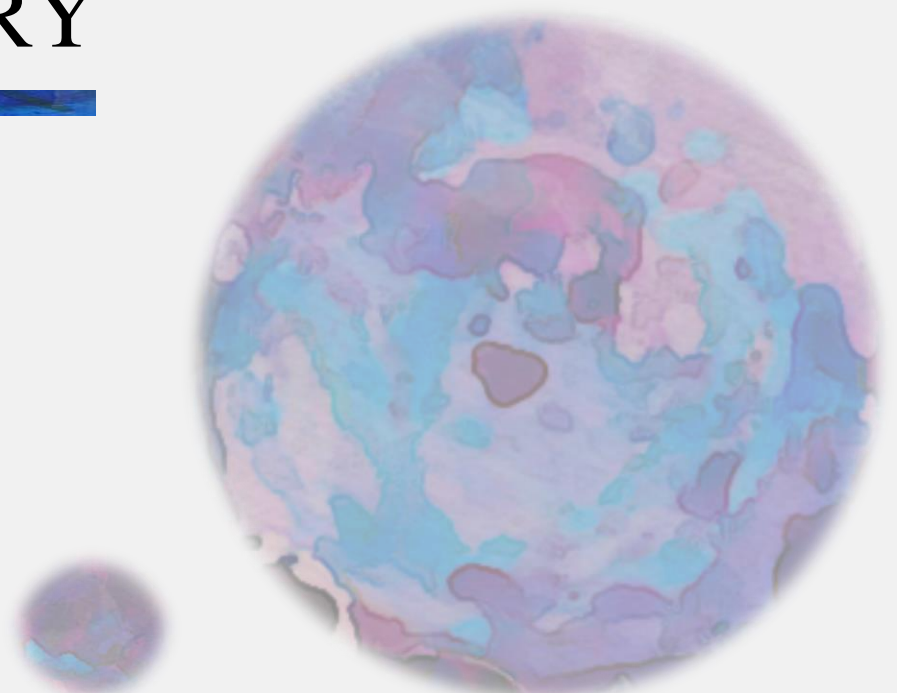
**WELL-BEING TRUSTS – THE FUTURE OF  
IMBUING TRUSTS WITH POSITIVITY,  
MEANING AND PURPOSE**

Richard S. Franklin

SAEPC ESTATE PLANNER'S DAY 2022  
Friday, January 21, 2021



# WELL-BEING THEORY



Financial



Community



Career



Physical



Social



The background features several overlapping, semi-transparent spheres with abstract, colorful patterns in shades of blue, green, yellow, pink, and purple. A horizontal bar with a similar abstract pattern is positioned below the main text.

# #1 -- Taking Responsibility and Ownership of Increasing Well-Being

“We’ll start measuring our progress as a country, not just by how our economy is growing, but by how our lives are improving; not just by our standard of living, but by our quality of life”

David Cameron, 2010

[www.gov.uk/government/speeches/pm-speech-on-wellbeing](http://www.gov.uk/government/speeches/pm-speech-on-wellbeing)

# Priorities for the 2019 New Zealand Well-being Budget



**TAKING MENTAL  
HEALTH SERIOUSLY**



**IMPROVING CHILD  
WELLBEING**



**SUPPORTING MĀORI AND  
PASIFIKA ASPIRATIONS**



**BUILDING A  
PRODUCTIVE NATION**



**TRANSFORMING  
THE ECONOMY**



**INVESTING IN  
NEW ZEALAND**

## *Transforming the Economy Example in New Zealand*

### **Recognize need and benefits to improvement:**

“Rail has huge benefits for New Zealanders’ wellbeing, including unlocking regional economic growth, reducing emissions and traffic congestion and preventing deaths and injuries on our roads. The Coalition Government is revitalising rail, with a substantial investment in KiwiRail...”

### **Invest to change:**

“Budget 2019 and the Provincial Growth Fund (PGF) provide \$1 billion to support the redevelopment of KiwiRail.”

### **Visualize a better end result and be pulled into a brighter future:**

“This funding will enable KiwiRail to become resilient and reliable through substantial investment in rail infrastructure, purchasing new locomotives and wagons, and beginning the process to replace the Interislander ferries.”

### **Assess and Adjust:**

“KiwiRail will report on progress on implementing the Government’s vision for rail and further funding will be considered in Budget 2020.”

### **Honestly recognize past (and future) mistakes and missteps and learn from it:**

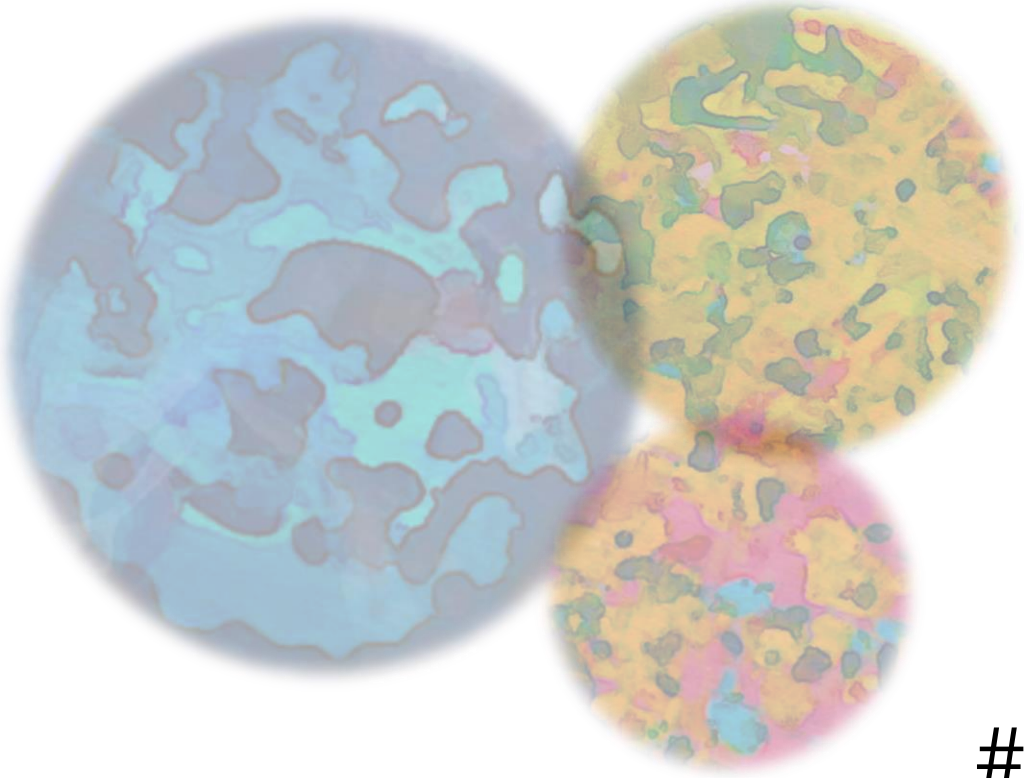
“After 155 years of rail in New Zealand, the historic misstep of privatisation and the managed decline of the past decade, securing these assets for the future is especially gratifying”

New Zealand’s Well-Being Budget 2019, at pages 84 and 85.

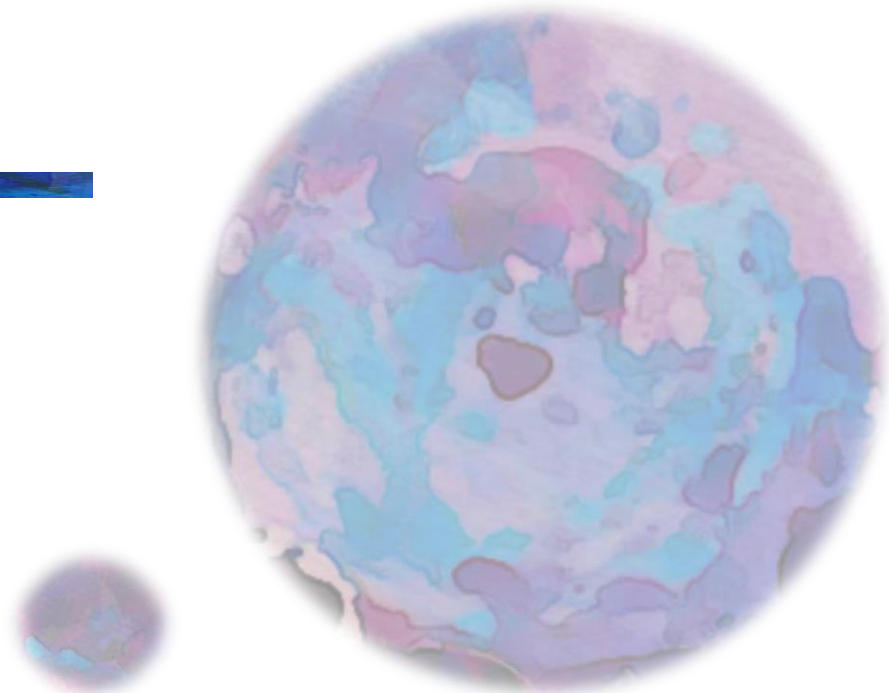
## ***Well-Being Trust Provisions – Taking Responsibility***

Section 2.2.1 *Motivation*. *My love for my children defies comprehension. It is from this place of love, respect, and admiration that motivates these Well-Being Trust Provisions. Furthermore, out of love, I feel a responsibility to improve their well-being and these Well-Being Trust Provisions are part of my intentional actions to make a positive impact.*



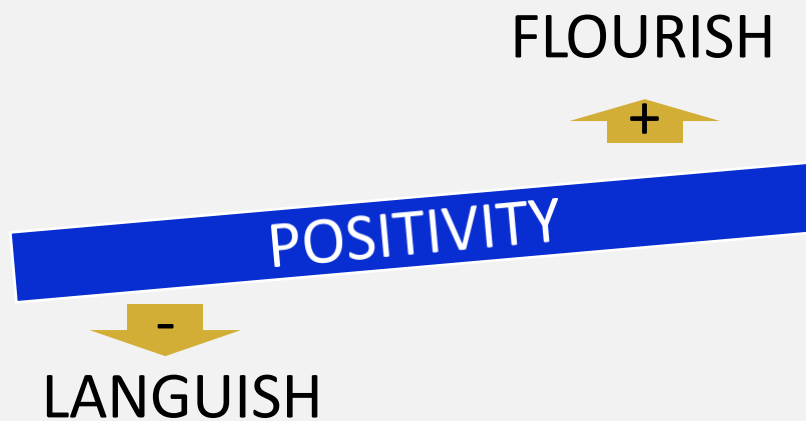


## #2 -- Be Positive



# WELL-BEING RISK-REWARD EQUATION

“Positivity sets the difference between languishing and flourishing”. (Barbara Fredrickson, PhD, *Positivity*)



## Research on positive people shows that happy people

- ✓ make better important life decisions
  - ✓ are significantly more satisfied with their job
  - ✓ are more productive and earn higher income
  - ✓ are more successful and better achievers
  - ✓ possess better negotiation and problem-solving skills
  - ✓ deal better with adversity
  - ✓ have better health and live up to 10 years longer
  - ✓ are more creative, open-minded, empathetic, tolerant and generous
  - ✓ ...
- ... compared to less positive people

“Positivity doesn’t simply reflect success and health, it can also produce success and health” . (Barbara Fredrickson, PhD, *Positivity*)

## **Well-Being Trust Provisions – *Be Positive***

Section 2.2.3.2 *Positive Approach; Purpose and Meaning.* *It is my belief that a positive approach best mediates flourishing, that behavior is often guided by future anticipated emotions and that actions are chosen that likely bring positive emotions.* It is also my belief that through actual engagement and searching for purpose and meaning that the realization of finding purpose and meaning is more likely, that prioritizing meaning on a daily basis is more likely to bring about experiencing meaning and increasing well-being. Therefore, the Trustee should support each beneficiary developing his or her resilience, gratitude, strengths, meaning, flow, positive relationships and positive emotions. It is my desire that the Trustee support what the beneficiaries do well, and support their mastery, autonomy and self-efficacy of any kind.

Section 2.2.3.4 *Resources; Exploration.* *I believe in the application of the principles of positive psychology because of it resting on a foundation of empirical study and positivity. This is partly based on my belief that life is a journey of continuous exploration, discovery and growth. Every human being is innately positive and rich in human qualities. The goal is to be ourselves, and the closest possible to our core positive nature.*

The background features several overlapping circles with abstract, multi-colored patterns in shades of blue, green, yellow, pink, and purple. A horizontal bar with a similar pattern is positioned below the main text.

## #3 – No Negative Language and No Incentive Language

“Current dogma may say that negative motivation is fundamental to human nature and positive motivation merely derives from it, *but I have not seen a shred of evidence that compels us to believe this*”

Seligman, *AUTHENTIC HAPPINESS*, p.211

**Stop using sentences such as this:**

“If a current beneficiary is not fulfilling his or her capacity to lead a productive life, the [Trustee, Distribution Committee or Trust Protector] should make or withhold payments so as to encourage a positive change in attitude.”

**Stop using any penalty clauses, including no contest clauses**

**Shift dynamic away from attempts to be controlling, to putting people in boxes, and shift to thinking and drafting in terms of unleashing:**

- Unleashing to inspire freedom – freedom for the individual’s meaning and purpose to unfold
- Unleashing to inspire creativity and innovation
- Unleashing to positivity start the journey to flourishing!

**Well-Being Trust Provisions -- No Negative Language and No Incentive Language**

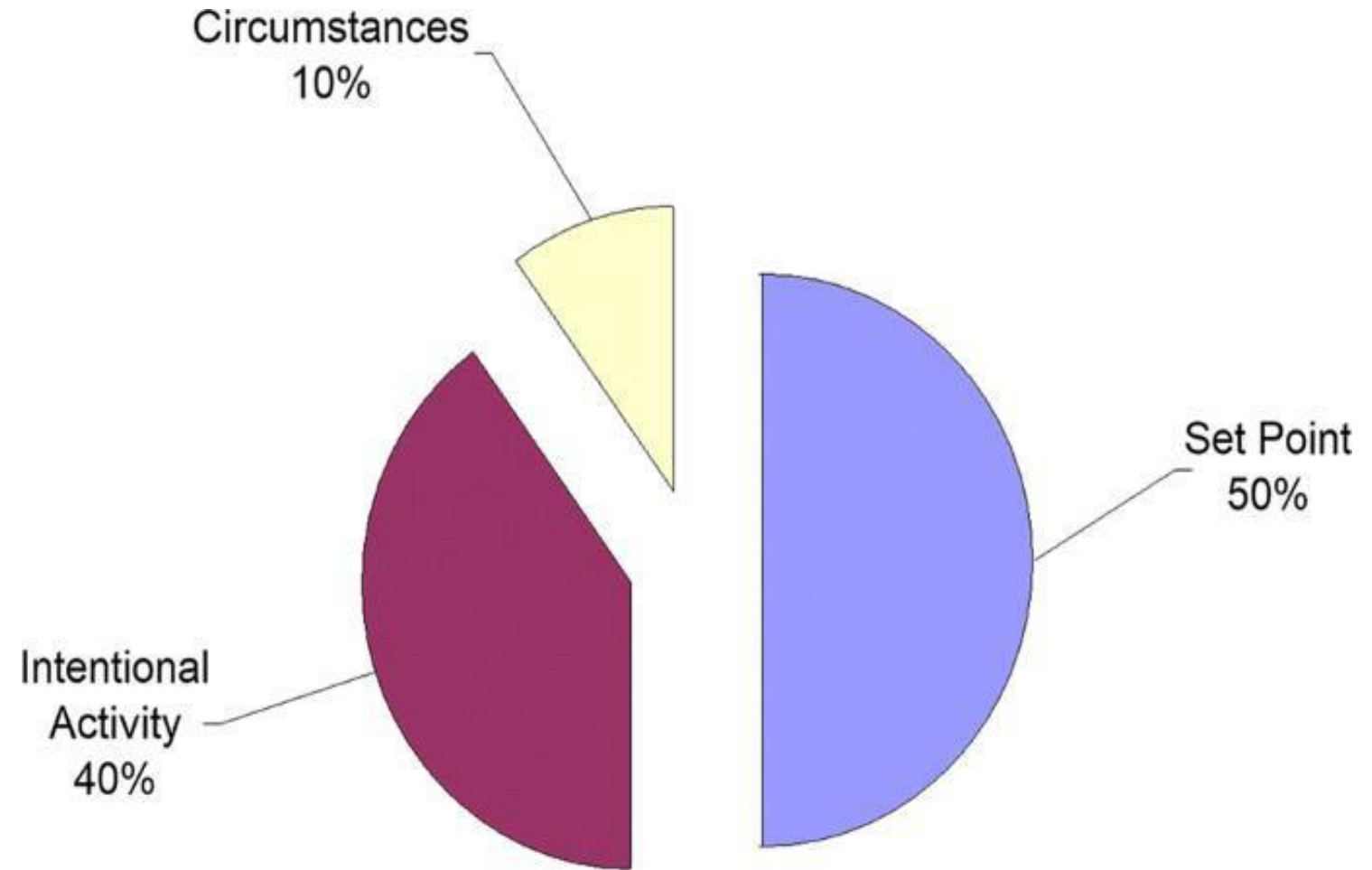
*(shift away from controlling approaches)*

Footnote #4: *The Trustee shall not attempt to use negative approaches with the beneficiaries, and in particular shall never use trust funds as an incentive to motivate desired behavior because the research is clear that external rewards decrease intrinsic motivation.*

*(shift to inspiring)*

Section 2.2.2.2 *I believe and trust in the ability of the Primary Beneficiary and his or her descendants to create a reality in which they are becoming more and more their authentic selves and actualizing in their full potential. It is my hope and intention for the Well-Being Trusts to positively support their strengths and virtues, and, by providing financial assistance for their basic support and needs, allow them to devote more of their time and talents to those endeavors that enable the Primary Beneficiary and his or her descendants to flourish to the benefit of humanity. In making discretionary distributions, my overarching intention is for the trust to support the Primary Beneficiary's positive human development and that of his and her descendants.*

# HAPPINESS PIE CHART



**Original Article:** Lyubomirsky S, Sheldon KM, Schkade D., [Pursuing happiness: The architecture of sustainable change](#), Review of General Psychology (2005).

**A Critical Article:** Brown & Rohrer, [Easy as \(Happiness\) Pie? A Critical Evaluation of a Popular Model of the Determinants of Well-Being](#), Journal of Happiness Studies, Springer, vol. 21(4), pages 1285-1301 (April 2020).

**Follow-up Article:** Sheldon & Lyubomirsky, [Revisiting the Sustainable Happiness Model and Pie Chart: Can Happiness Be Successfully Pursued?](#), Journal of Positive Psychology, Vol. 16, p. 145 (2021).





#4 – Promote Autonomy, Self-Efficacy and Mastery of any Kind

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# VIRTUES & STRENGTHS

**SIX VIRTUES** as the core characteristics endorsed by almost all religious and philosophical traditions, taken together to capture the notion of a good character

**TWENTY FOUR CHARACTER STRENGTHS** ubiquitously valued in almost every culture in the world.

**SIGNATURE STRENGTHS** are the top five strengths of a person that, if used frequently (daily if possible) increase well-being

The 24 strengths underpin all five elements of well-being: deploying your highest strengths leads to more positive emotion, to more meaning, to more accomplishment and to better relationships.



Seligman & Peterson, *The Values in Action (VIA) Classification of Character Strengths*, *Ricerche di Psicologia*, 27(1), 63-78 (2004).

## **Well-Being Trust Provisions -- Promote Autonomy, Self-Efficacy and Mastery of any Kind**

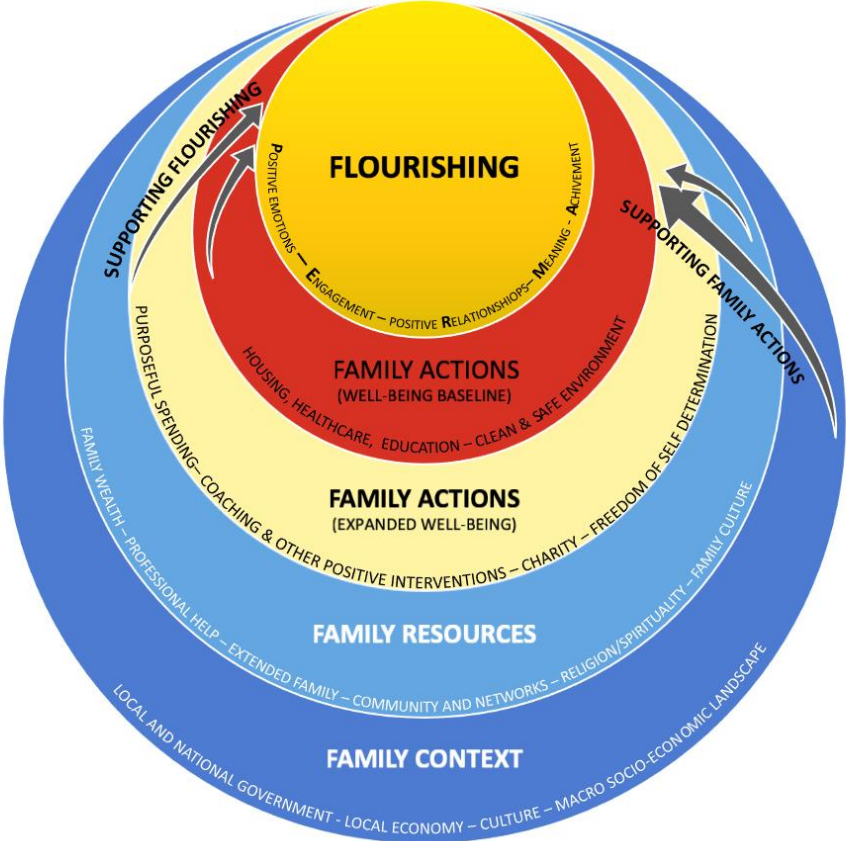
Section 2.2.2.5 *It is my intention that the Primary Beneficiary of a Well-Being Trust will be able to exercise wide-ranging autonomy over his or her trust. He or she is vested with authority to become a Co-Trustee and sole Trustee of his or her Well-Being Trust, subject to attaining the ages specified in Section \_\_\_\_\_ [successor trustee section allowing beneficiaries to become trustee]. He or she is vested with authority as the Primary Beneficiary to dispose of his or her Well-Being Trust through the exercise of a Special Power of Appointment. I believe that each descendant must be granted freedom of self-determination to experience true growth and security. Therefore, the intention for the Well-Being Trust Provisions and this Agreement is to grant such freedom of self-determination and thereby be a means to unleash the true potential of the Primary Beneficiary. The Well-Being Trusts have been designed to achieve certain tax planning objectives, but these goals are secondary to the beneficiaries' flourishing, the circumstances of which can only occur with freedom and self-determination.*

Section 2.2.3.2 *Positive Approach; Purpose and Meaning.* *It is my belief that a positive approach best mediates flourishing, that behavior is often guided by future anticipated emotions and that actions are chosen that likely bring positive emotions. It is also my belief that through actual engagement and searching for purpose and meaning that the realization of finding purpose and meaning is more likely, that prioritizing meaning on a daily basis is more likely to bring about experiencing meaning and increasing well-being. Therefore, the Trustee should support each beneficiary developing his or her resilience, gratitude, strengths, meaning, flow, positive relationships and positive emotions. It is my desire that the Trustee support what the beneficiaries do well, and support their mastery, autonomy and self-efficacy of any kind.*

The background features several overlapping circles with abstract, multi-colored patterns in shades of blue, green, yellow, pink, and purple. A horizontal bar with a similar pattern is positioned below the main text.

## #5 – Fund an Objective Well-Being Baseline of Support

# FAMILY & WEALTH SUPPORTING WELL-BEING

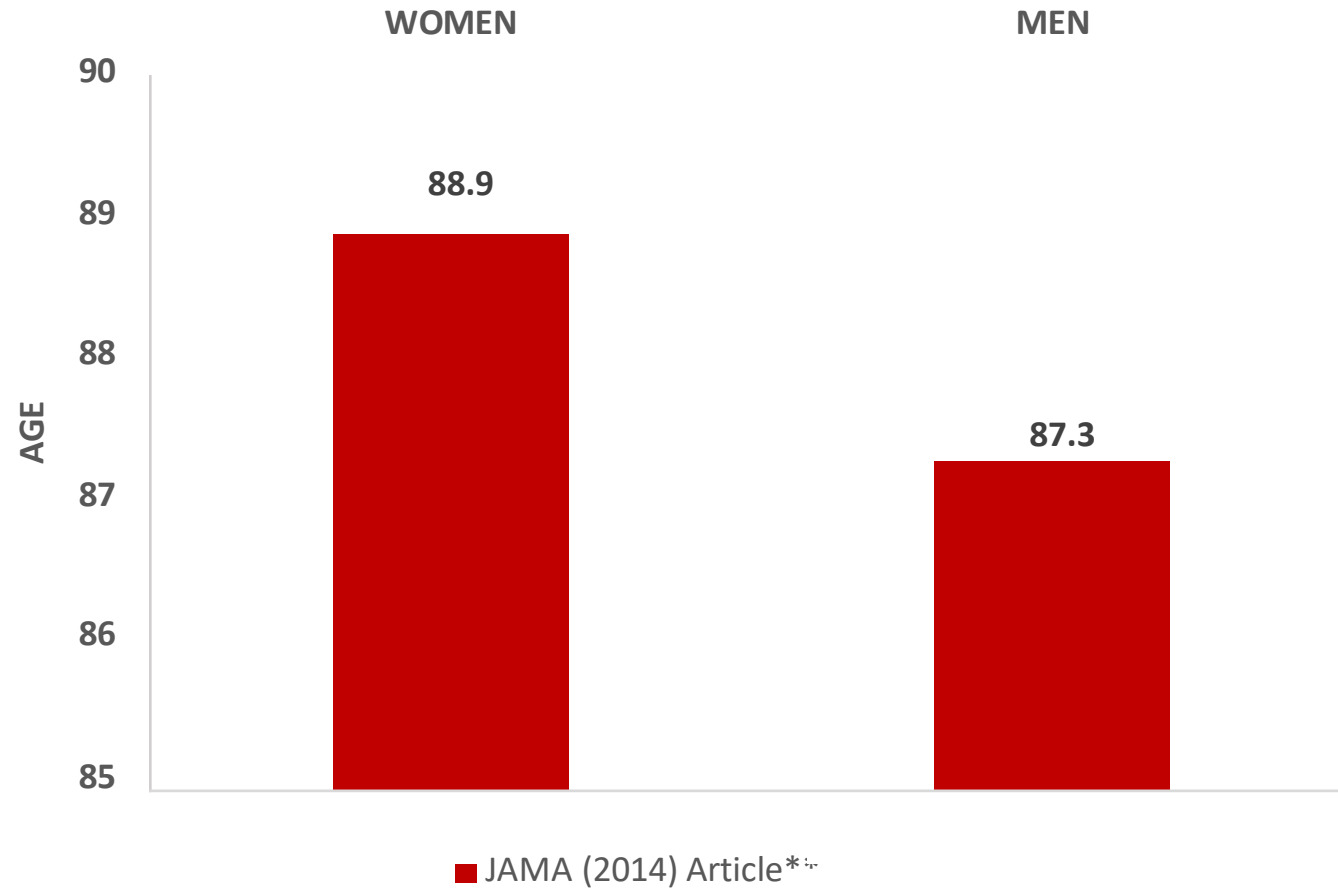


**FAMILY AND WEALTH SUPPORTING WELL-BEING MODEL**

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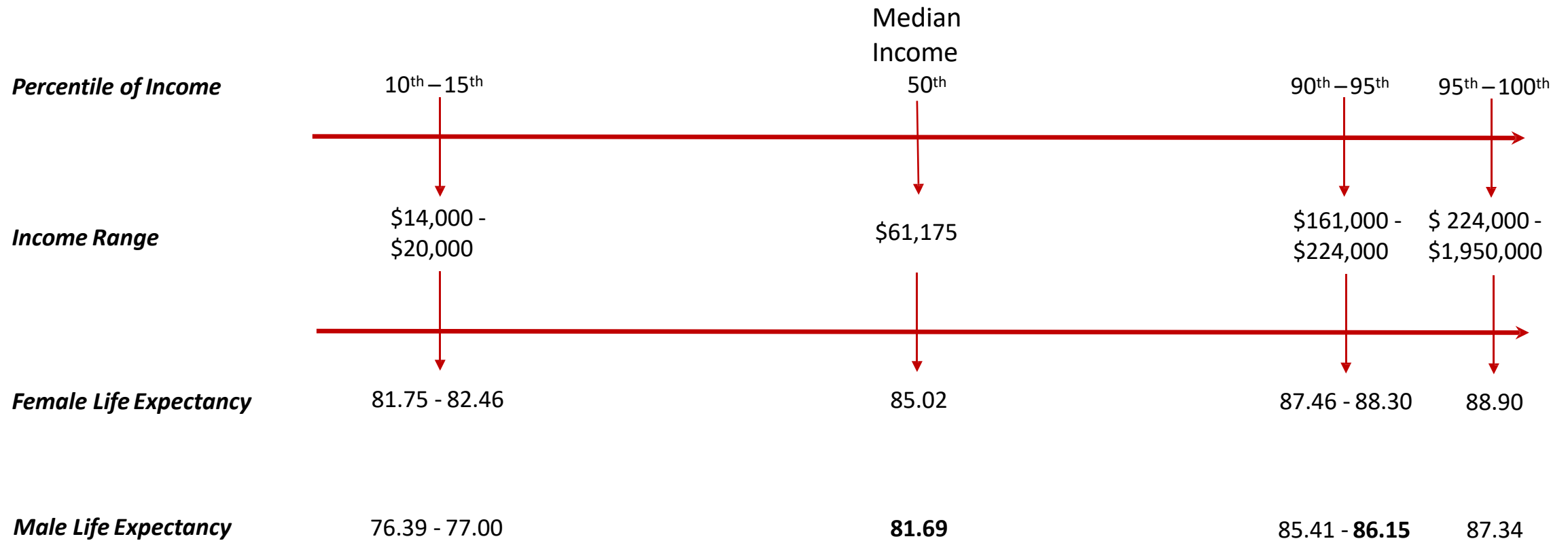
# LIFE EXPECTANCY AT AGE 40 FOR THE TOP 1% INCOME

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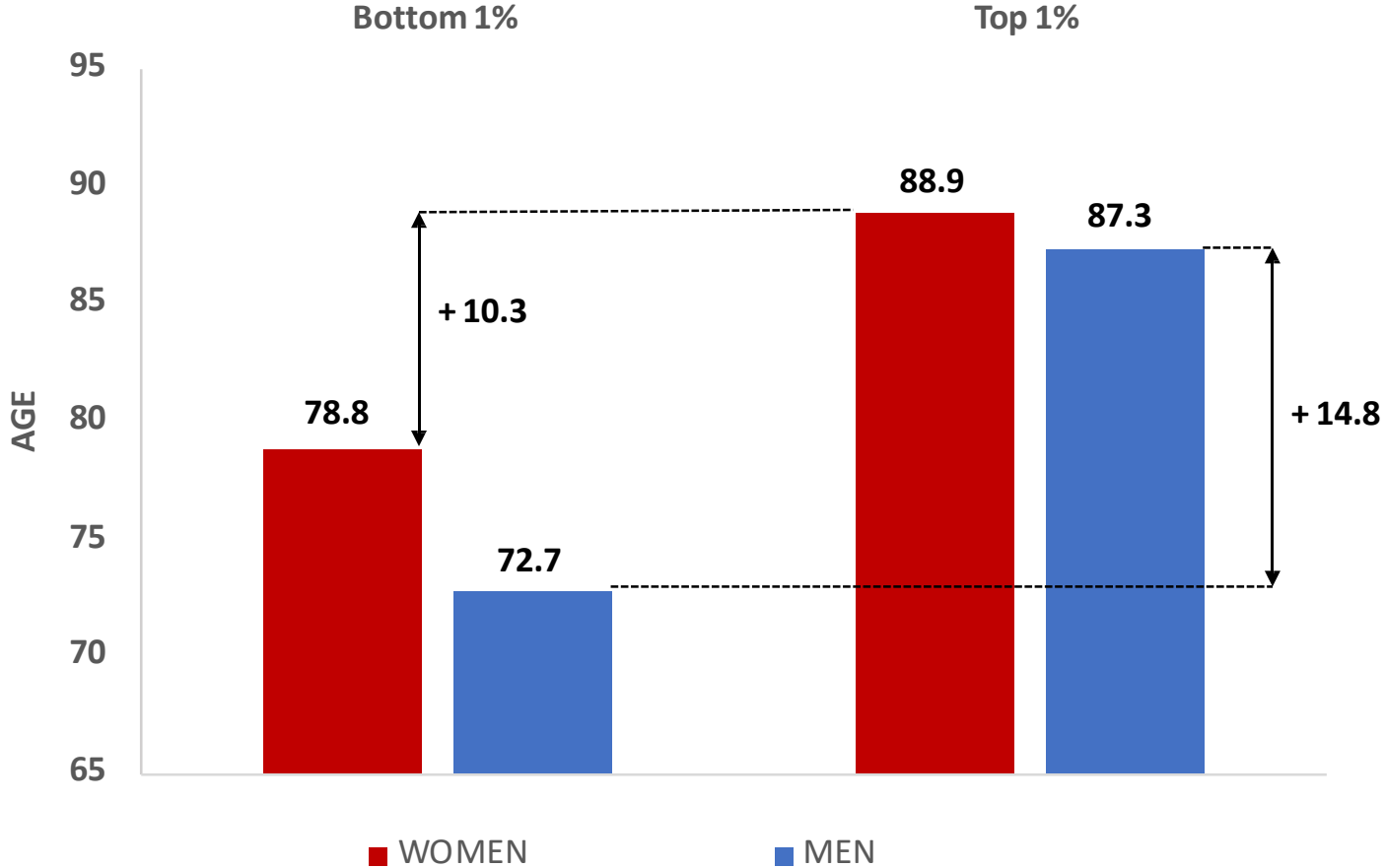
*\*The Association Between Income and Life Expectancy in the United States, 2001-2014, published on-line on April 26, 2016 in the Journal of the American Medical Association.*

# LIFE EXPECTANCY AT AGE 40 (JAMA ARTICLE\*)



\*The Association Between Income and Life Expectancy in the United States, 2001-2014, published on-line on April 26, 2016 in the Journal of the American Medical Association.

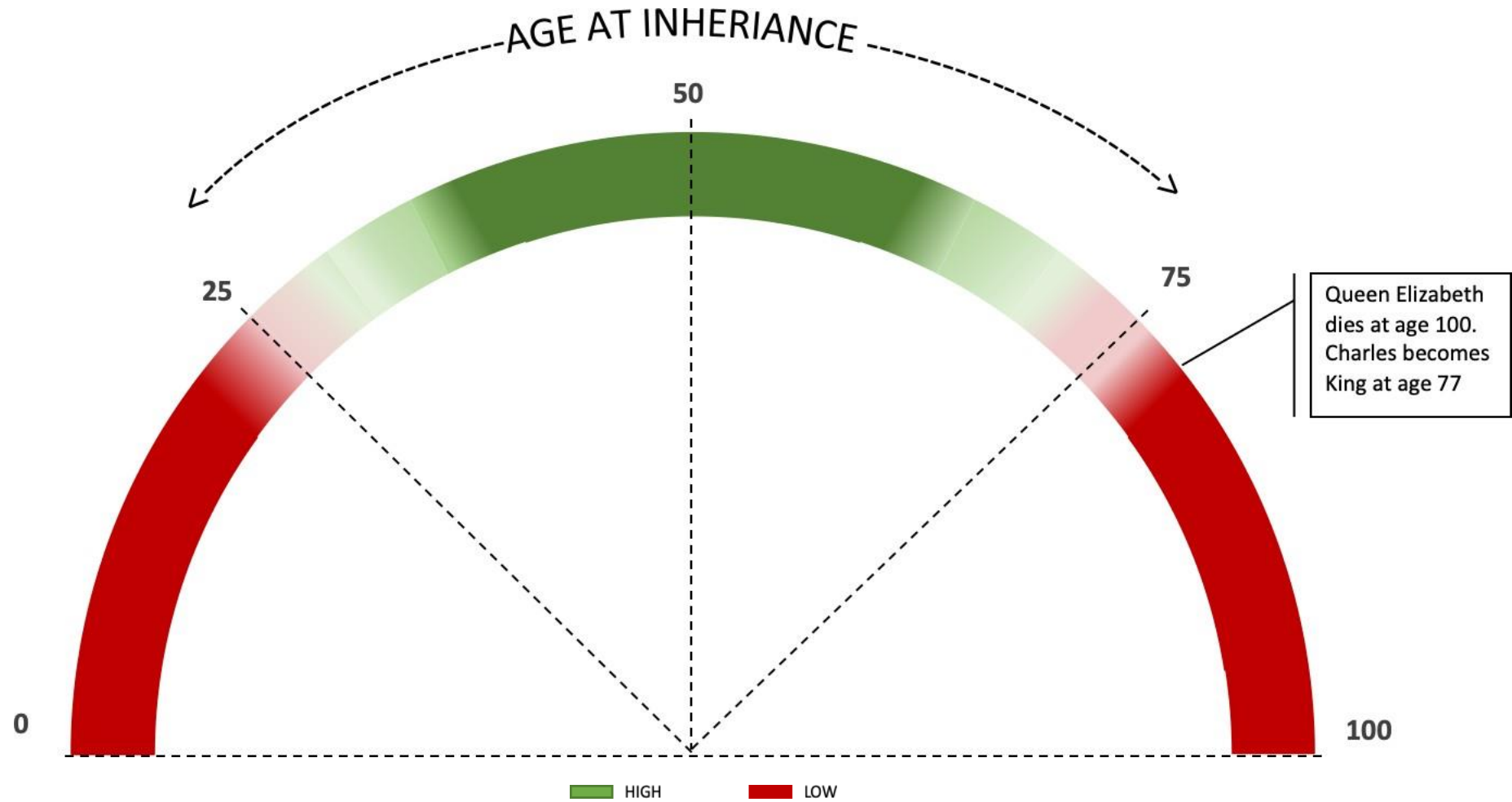
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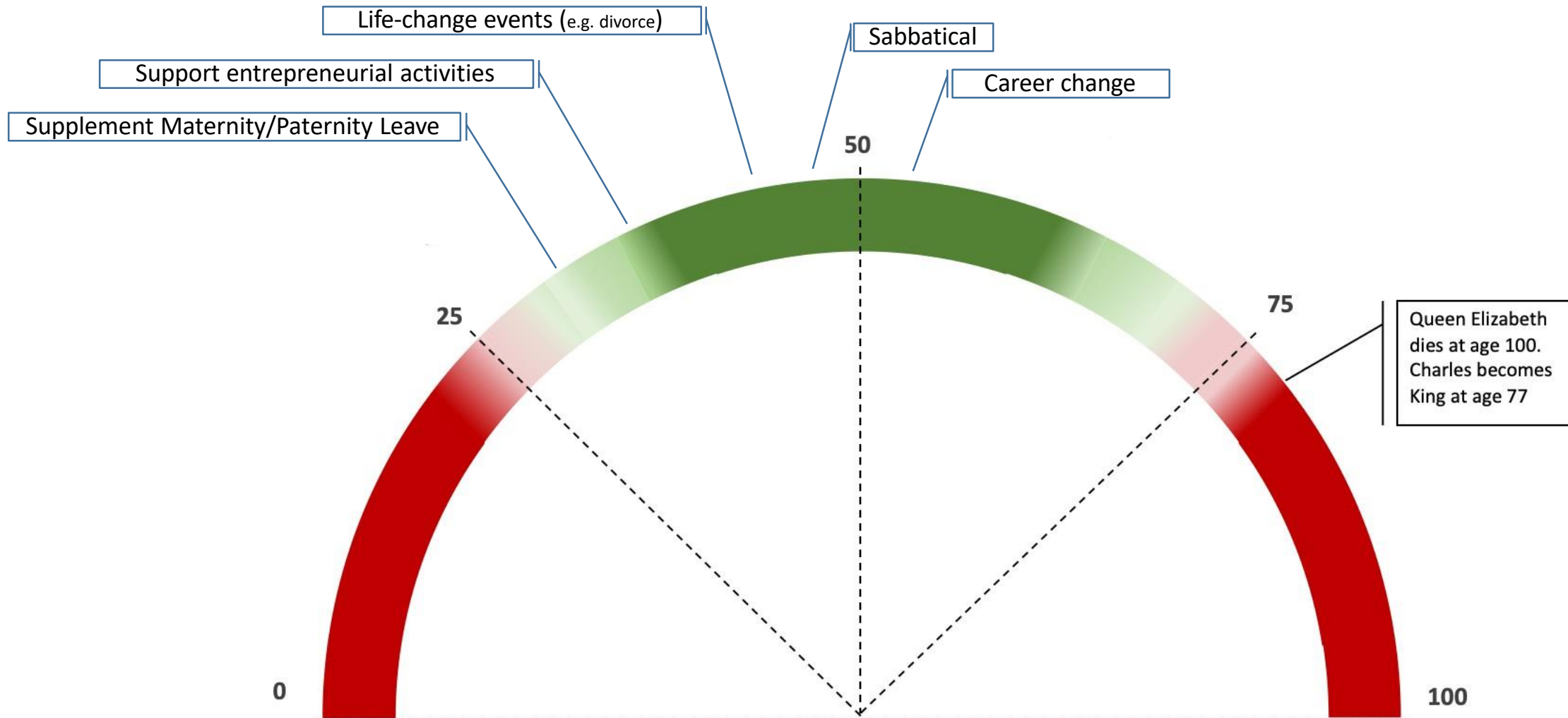
\*The Association Between Income and Life Expectancy in the United States, 2001-2014, published on-line on April 26, 2016 in the Journal of the American Medical Association.

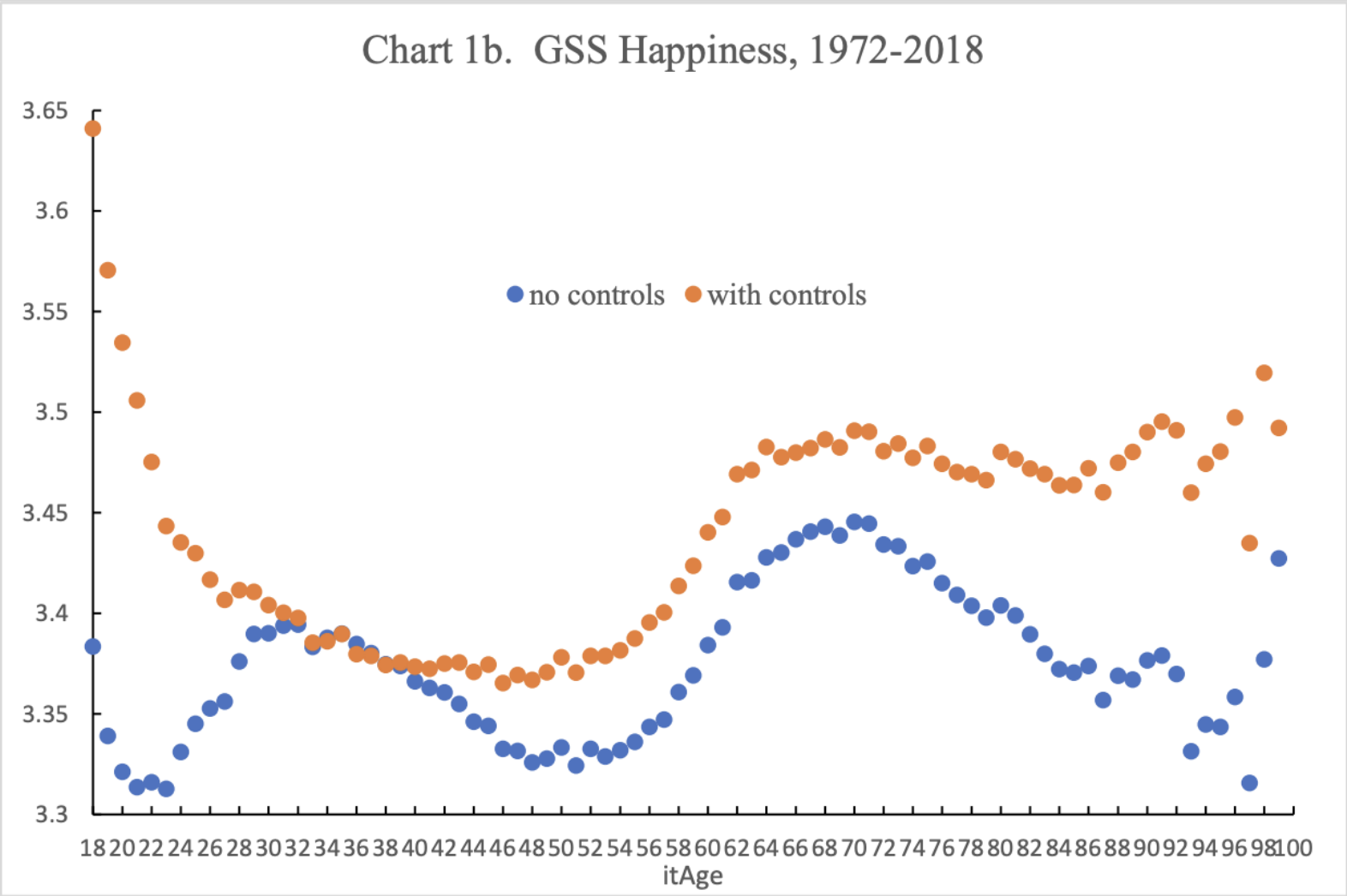


# IMPACT OF WEALTH TO WELL-BEING BASED ON AGE AT INHERITANCE



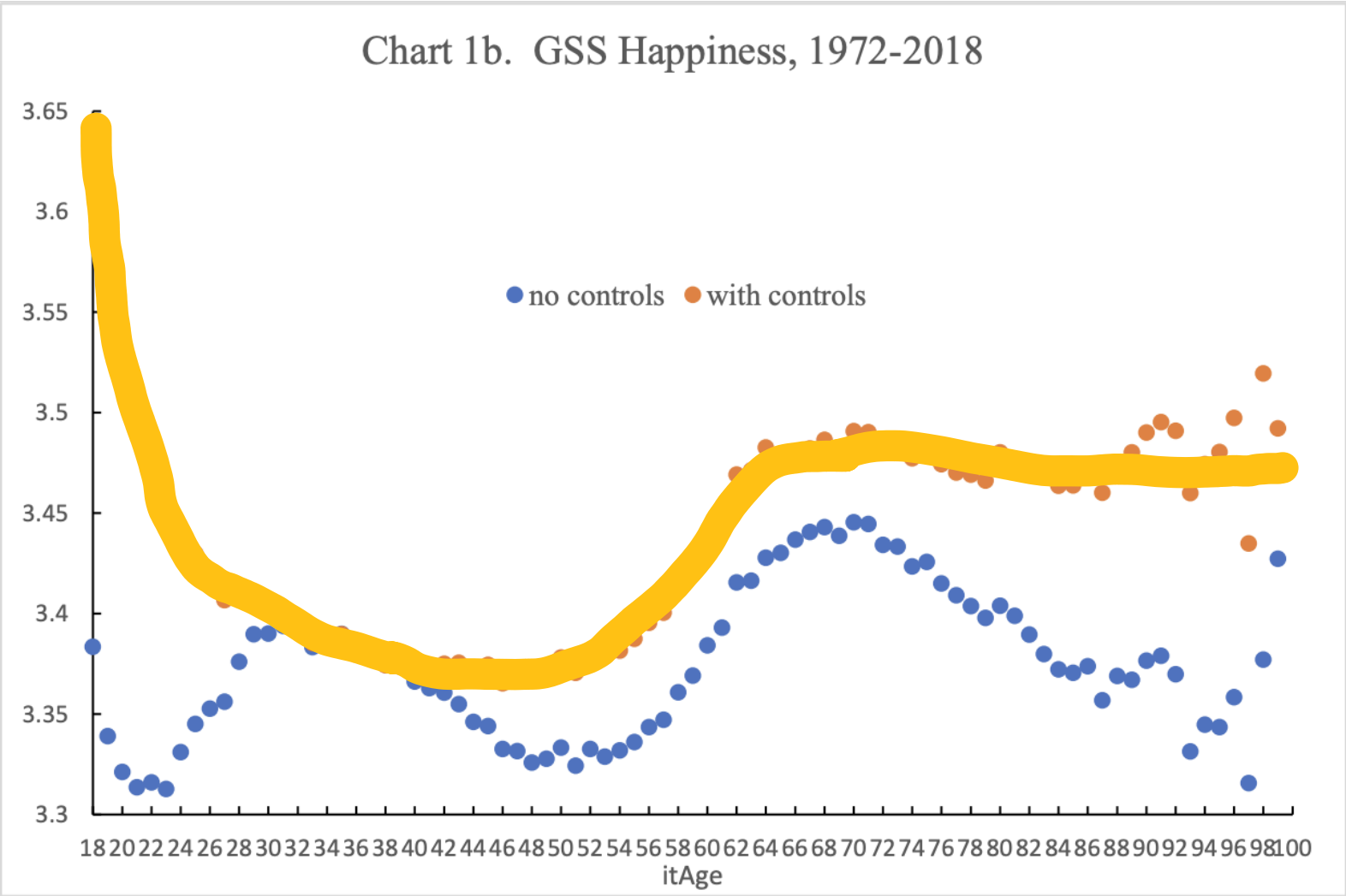
# IMPACT OF WEALTH TO WELL-BEING BASED ON AGE AT INHERITANCE EXAMPLES





Based on U.S. General Social Survey (GSS) Data from 1972-2018

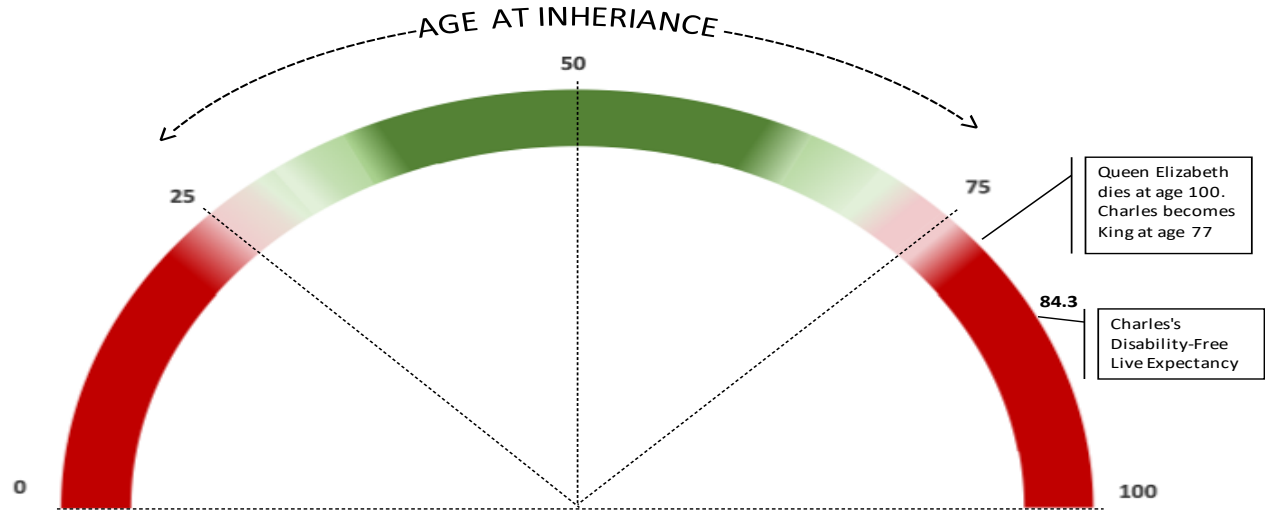
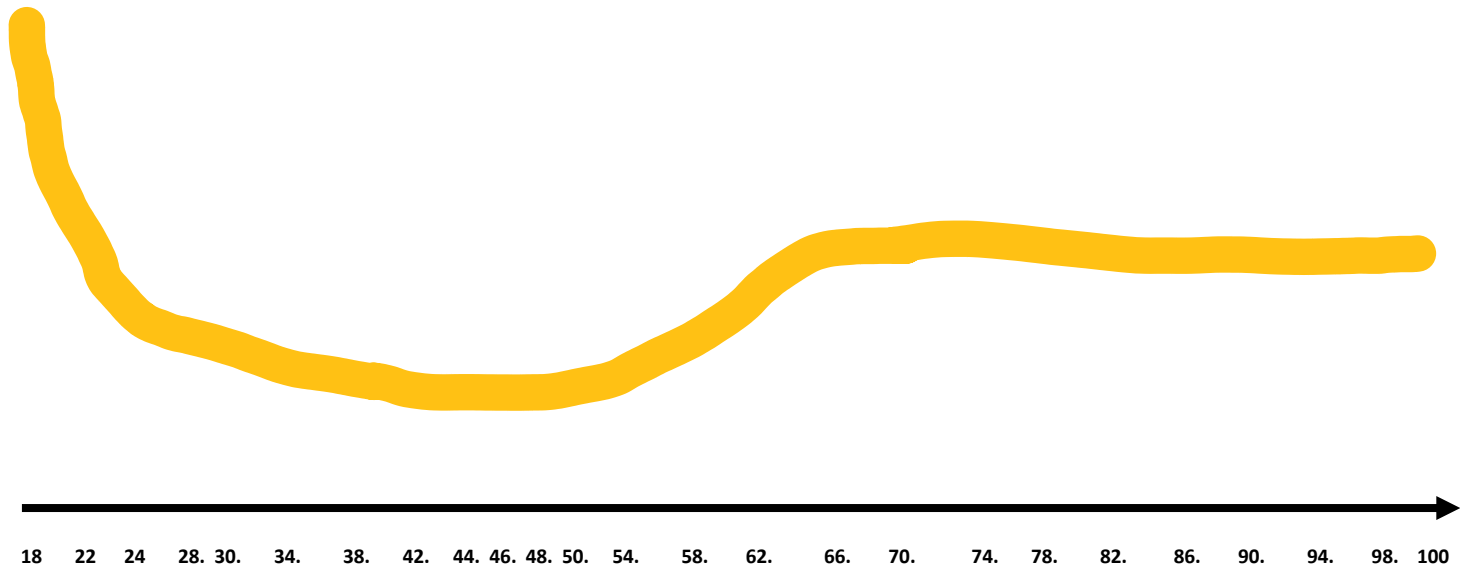
Source: Blanchflower, 2020, *Is Happiness U-shaped Everywhere? Age And Subjective Well-being In 132 Countries*, National Bureau of Economic Research



Based on U.S. General Social Survey (GSS) Data from 1972-2018

Source: Blanchflower, 2020, *Is Happiness U-shaped Everywhere? Age And Subjective Well-being In 132 Countries*, National Bureau of Economic Research

Impact Of Wealth To Well-being Based On Age



IMPACT OF WEALTH TO WELL-BEING BASED ON AGE AT INHERITANCE

HIGH LOW

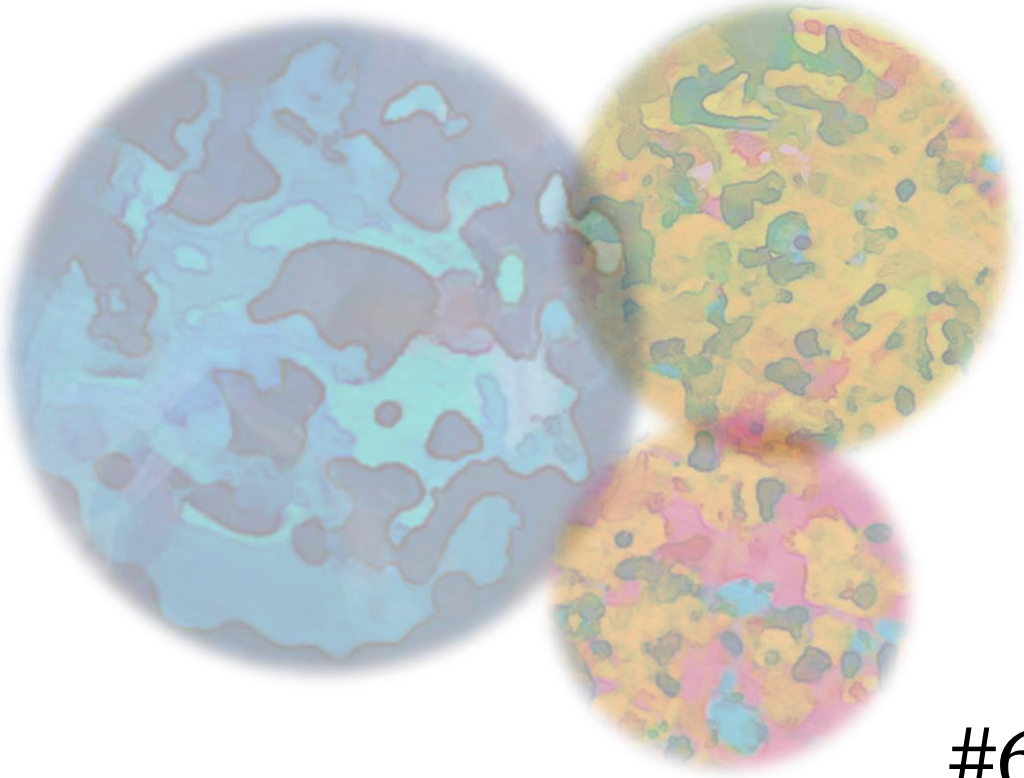
# SAMPLE EXPANDED WELL-BEING BASELINE GOALS

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- ✓ Grow up loved, safe and respected so that they realize their full potential;
- ✓ Be creative and experience vibrant and diverse cultures;
- ✓ Be globally competitive and entrepreneurial;
- ✓ Value, enjoy, protect and enhance their environment;
- ✓ Have a thriving and innovative career and businesses that provide quality jobs and fair work for everyone;
- ✓ Respect, protect and fulfill human rights and live free from discrimination; and
- ✓ Be open, connected and engaged in giving back.

**Well-Being Trust Provisions -- *Fund an Objective Well-Being Baseline of Support***

Section 2.2.3.1 Income and Principal. *The Trustee may make payments from the net income and principal to the Primary Beneficiary and his or her descendants, as the Trustee deems appropriate for their well-being and flourishing, including but not limited to satisfying their Well-Being Baseline and elements of their Expanded Well-Being, as described below. Any undistributed income shall be added to principal at least annually.*



## #6 – Spend Positively





“Visiting museums has the largest value [on well-being]. People who visit museums in their spare time value this at about £3,200 per annum.

[T]he impacts and values of (i) being audience to the arts, (ii) participating in sports and (iii) participating in the arts as pretty much the same (around £1,500 - £2,000 per year)...”

Fujiwara, *Museums and Happiness, the Value of Participating in Museums and the Arts*,  
Happy Museum Project (April 2013).

# VIRTUES & STRENGTHS

**SIX VIRTUES** as the core characteristics endorsed by almost all religious and philosophical traditions, taken together to capture the notion of a good character

**TWENTY FOUR CHARACTER STRENGTHS** ubiquitously valued in almost every culture in the world.

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Seligman & Peterson, *The Values in Action (VIA) Classification of Character Strengths*, *Ricerche di Psicologia*, 27(1), 63-78 (2004).

# POSITIVE INTERVENTIONS

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A POSITIVE INTERVENTION is an Evidence-Based, intentional act or series of actions (behavioral strategy) meant to increase Well-Being and Flourishing in non-clinical populations.

-  Evidence-Based Coaching
-  Best Future Self Visualization
-  Mindfulness
-  Gratefulness  
“The Gratitude Visit”
-  The Three Blessings



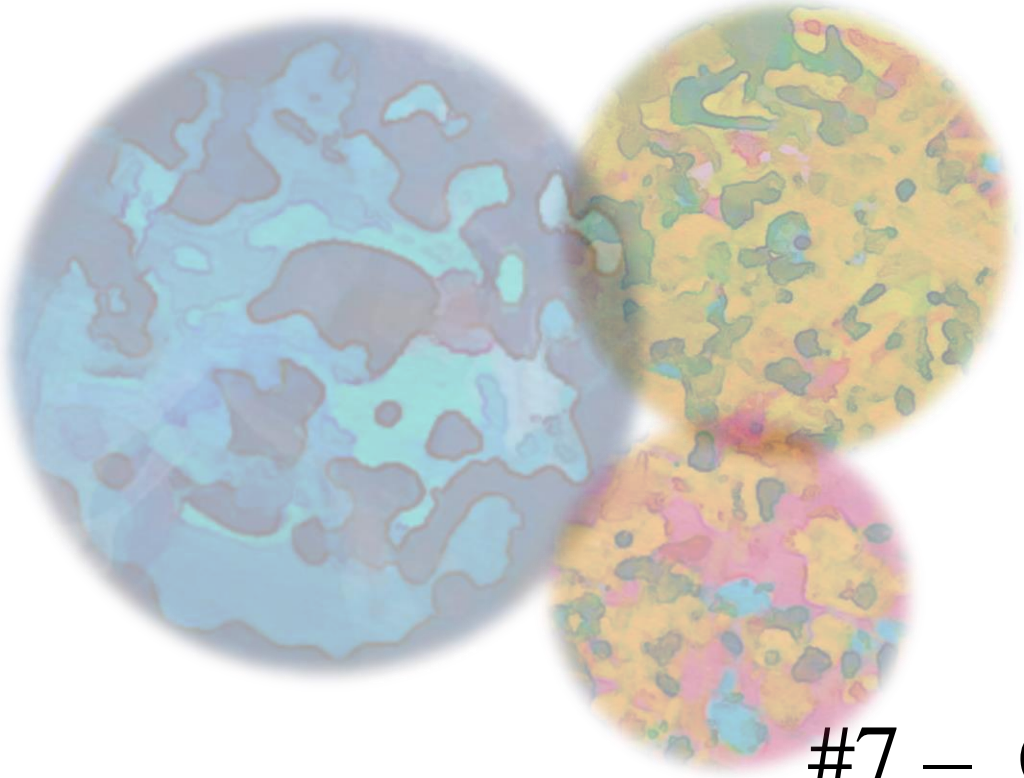
## ***Well-Being Trust Provisions -- Spend Positively***

Section 2.2.3.7 Investing in Well-Being. I believe there are positive ways to make investments in well-being. For example, I believe in spending on travel that uses the beneficiaries' strengths of love of learning, art and aesthetics, and curiosity and interest in the world. I believe the impact of this is especially powerful for a family sharing the experience together. The Trustee should become expert at this type of investing (spending) that is positive and particularly supportive of the beneficiaries' strengths and virtues.

Section 2.2.3.4 ... Therefore, the Trustee should develop a library of tools and resources to assist the beneficiaries, particularly materials related to positive psychology. The beneficiaries attending retreats, workshops and other education programs to aid in exploring and discovery of their unique gifts and passions are all useful ways that the Trustee should promote to bring forth and support positive transformation and growth. Evidenced-based coaching should be the Trustee's "go to" strategy for helping disengaged beneficiaries, and for helping all beneficiaries grow and increase well-being.

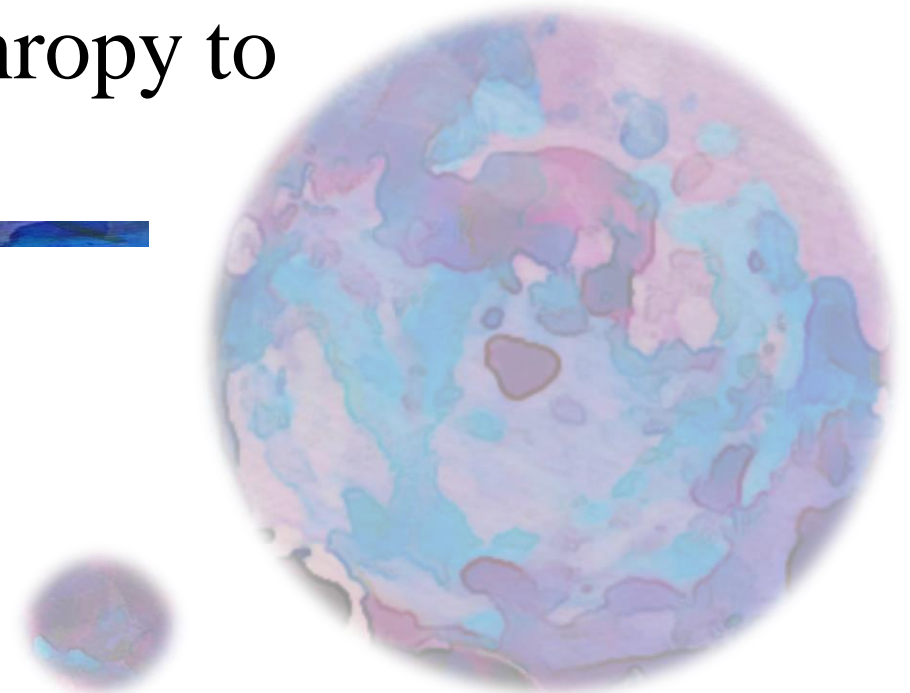
Section 2.2.3.5 Creativity and Innovation. I believe that creativity and innovation can be unleashed and encouraged, and that a creative person may have more capacity to find and discover purpose and meaning. I also believe that creativity can be learned and increased with age. The Trustee should seek out ways to promote creativity (not limited to visual arts) and innovation in the beneficiaries, old and young alike.

Section 2.2.3.6 Arts and Aesthetics. I believe that having an appreciation for arts and aesthetics, including the beauty in nature, improves well-being. For example, studies show that an appreciation of aesthetics may be associated with reduced risks for dementia. The Trustee should seek out ways to promote an appreciation for art and aesthetics of all kinds.



# #7 – Connect Philanthropy to Well-Being

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“[P]eople are more likely to derive happiness from helping others when they feel free to choose whether or how to help, when they feel connected to the people they are helping; and when they can see how their help is making a difference.”<sup>1</sup>

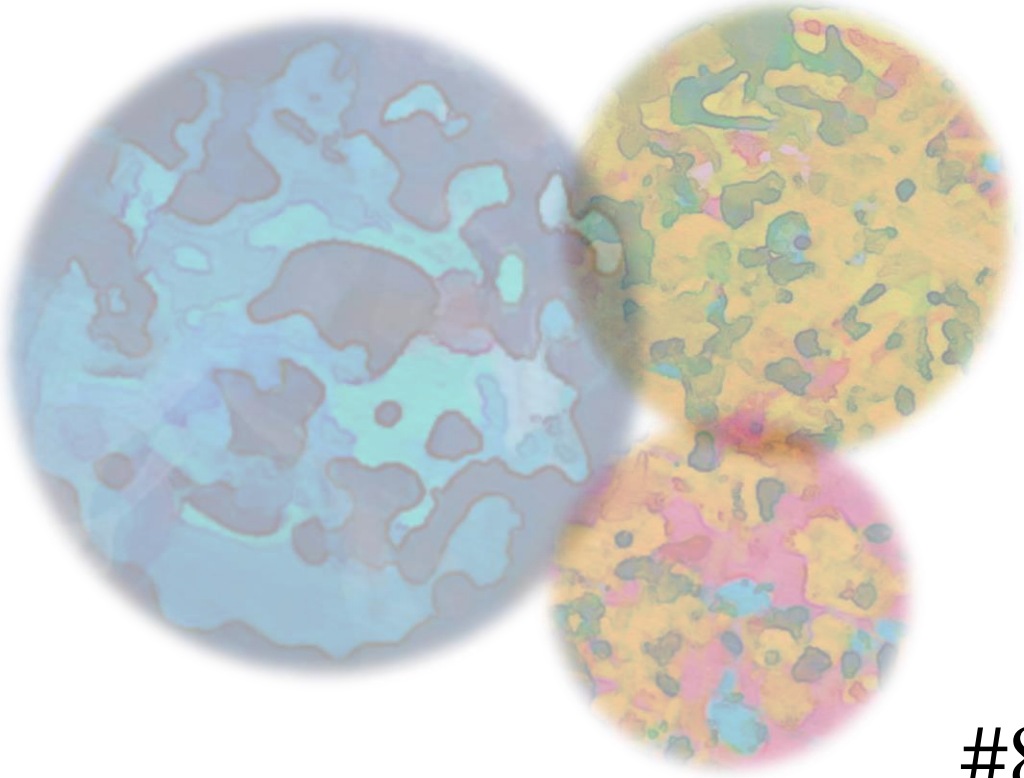
The emotional benefits of giving disappear if the individual feels the generosity is required or effectively required to evade disapproval.

<sup>1</sup>World Happiness Report 2019, Chapter 4 (United Nations Sustainable Development Solutions Network, 2019).

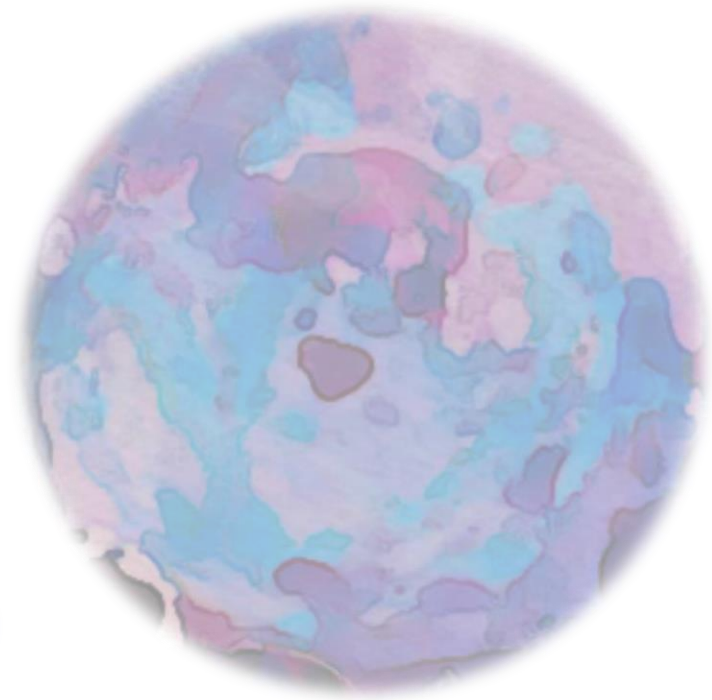
***Foundation Articles/Bylaws (Bloomberg article page 18) -- Connect Philanthropy to Well-Being***

“... the monies of this Foundation are not limited to any particular charitable mission or focus. That would be truly contrary to my desires. I believe that philanthropy is a unique pathway to connect with the world and increase happiness for the donor. Giving creates new humane resources. It transfers resources to the recipient and contributes to the donor’s emotional and physical well-being. However, for each family member to fully experience the benefits of philanthropy, each family member must have the freedom to pursue giving using his or her unique strengths and virtues. **I want each family member to actualize in his or her potential for giving and well-being, and this rests on individual self-determination. Therefore, I specifically intend the mission and purpose of this Foundation to change over time, to facilitate an enduring level of happiness for those family members that are living at any given point in time by exercise of their strengths and virtues in service of something larger than themselves.**”





## #8 – No Silent Trusts



## **Well-Being Trust Provisions -- *No Silent Trusts***

Section 2.2.4 *Trust Reports and Information*. *The Well-Being Trusts should promote autonomy and self-efficacy. The first step in this process is for the beneficiaries to have relevant information and understanding. Therefore, as to any Primary Beneficiary who has attained the age of twenty-one (21), and as to any descendant of a Primary Beneficiary who has attained the age of twenty-one (21), the Trustee shall provide all relevant information about the Primary Beneficiary's Well-Being Trust, including at least annually providing the beneficiaries with a Trust Report as contemplated by Section 64.2-775(C) of the Virginia Code and, except in extraordinary situations as consented to by the Trust Protector, the Trustee shall not seek a waiver from any beneficiary of this responsibility. Furthermore, the Trustee shall not only distribute the Trust Report annually but also annually meet with said beneficiaries to explain it, explain the trust assets, how the assets are invested, the Trustee's theory and approach to investing, alternative methods of investing, costs, fees, the successes and failures, the impact of taxes and distributions, and the Trustee's future outlook. The provisions of this Paragraph shall supersede any contrary provision of Section \_\_\_\_\_ [section covering Trustee reporting].*



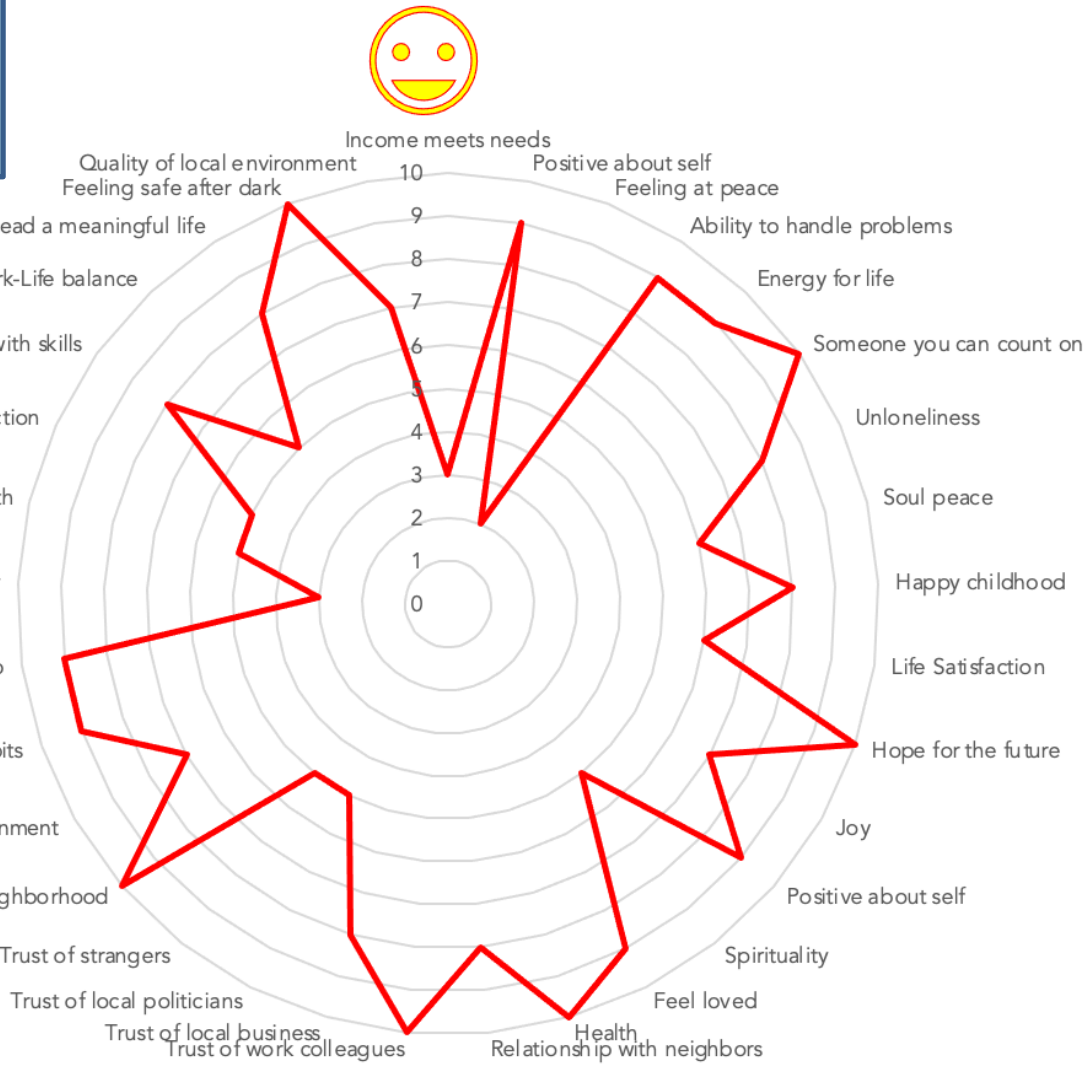
## #9 – Assess Well-Being and Adjust Strategy Over Time


**Well-Being Trust Provisions -- *Assess Well-Being and Adjust Strategy Over Time***

Section 2.2.3.8      Assessments. *I believe that the Trustee should periodically evaluate each beneficiary's well-being and flourishing. Both subjective (e.g., the Flourishing Scale (Diener 2009)) and objective evaluations should be used to track and improve the services to the beneficiaries. **The Trustee should evaluate and measure the beneficiaries' Well-Being Baseline and Extended Well-Being and determine year over year progress at meeting the objectives. The Trustee should annually prepare an assessments report and review and discuss this information with the beneficiaries.** These evaluations should also be considered in determining the performance of the Trustee in actually improving the well-being and flourishing of the beneficiaries. My intention is that the Trustee will make deliberate and incremental progress towards creating the conditions that enable the goals of the Well-Being Trusts to be achieved.*

**Types of Questions:**

- All things considered, how satisfied are you with your life as a whole these days?
- Overall, how much peace do you feel in your soul?
- I trust my work colleagues?



The background features several overlapping circles with abstract, multi-colored patterns in shades of blue, green, yellow, pink, and purple. A horizontal bar with a similar pattern is positioned below the main text.

# #10 – Evaluate Trustee Performance by Actual Beneficiary Well-Being Improvement

**Well-Being Trust Provisions -- Evaluate Trustee Performance by Actual Beneficiary Well-Being Improvement**

Section 2.2.3.8            Assessments. *I believe that the Trustee should periodically evaluate each beneficiary's well-being and flourishing. Both subjective (e.g., the Flourishing Scale (Diener 2009)) and objective evaluations should be used to track and improve the services to the beneficiaries. The Trustee should evaluate and measure the beneficiaries' Well-Being Baseline and Extended Well-Being and determine year over year progress at meeting the objectives. The Trustee should annually prepare an assessments report and review and discuss this information with the beneficiaries. **These evaluations should also be considered in determining the performance of the Trustee in actually improving the well-being and flourishing of the beneficiaries. My intention is that the Trustee will make deliberate and incremental progress towards creating the conditions that enable the goals of the Well-Being Trusts to be achieved.***

*“I’ve chosen to adopt the term “Generative” and apply it to the trustscape to describe a trust which either by design or function seeks to have a positive influence in the lives of beneficiaries.”*

*“Trust Creators’ vision around the universe of Whys for creating their trust needs to expand beyond tax minimization, asset protection and probate avoidance. A fourth Why needs to be offered: the possibility that the trust can become a positive and meaningful influence in the lives of today’s beneficiaries and tomorrow’s remaindermen.”*

*“A Generative Trust is designed to be a true gift, one that is grounded in positive emotional energy. To become a positive and sustainable emotional legacy, a trust needs to reflect the love of the trust creators and their hopes for the positive impact this gift will be in the lives of their beneficiaries.”*

John A. Warnick, *Generative Trusts: Applying Positive Psychology to the Design, Drafting and Administration of Trusts, Gifts and Succession Plans*, p. 27 (Fall 2019 ACTEC Meeting).



# CONTRASTING VINCENT AND PAUL

## Vincent van Gogh

(3/30/1853 – 7/29/1890)

## Paul Cézanne

(1/19/1839 – 10/22/1906)

### #1 Changed Career Efforts Early in Life

- Studied to be a minister and flunked out
- Age 27 decides to be painter

- Started law school and drops out
- Age 21 decides to be painter

### #2 No Financial Success

- Sold one painting to sister of friend

- Overlooked and dismissed
- Towards of end of life started to have some critical success

### #3 Enabled by Family Support

- From upper middle class family – father Protestant Pastor – father withdraws support
- Brother Theo provides financial support

- Father was fairly wealthy banker – father reluctantly agrees to career choice and provides financial support
- Provides large inheritance

### #4 Post-Death Iconic Success

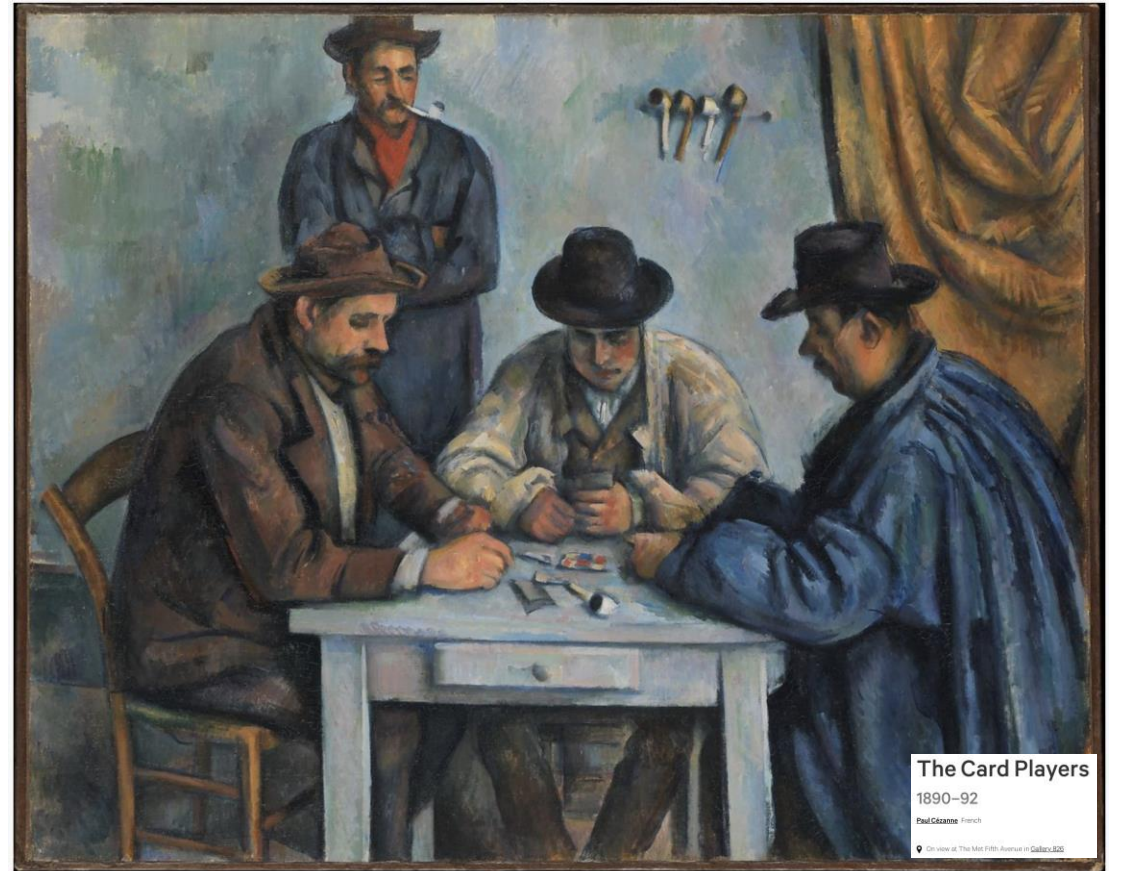


The Starry Night  
Vincent van Gogh 1889



**MoMA**

MoMA The Museum of Modern Art  
New York, United States



The Card Players

1890–92

Paul Cézanne French

View at The Met Fifth Avenue in Gallery 802



PAUL CÉZANNE

*The Artist's Father, Reading "L'Événement",*  
1866



National Gallery of Art