

Well-Being Trusts – the Future of Imbuing Trusts with Positivity, Meaning and Purpose ¹

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by

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These materials and drafting forms are for education purposes and are not designed or intended to provide financial, tax, legal, accounting, or other professional advice. The reader is cautioned that changes in the underlying materials may be applicable, that these materials only provide a general discussion, that critical information may be omitted, and that these ideas, strategies and drafting forms may not be suitable for any particular individual or family.

¹ This outline contains numerous hyperlinks, frequently in lieu of footnotes. The reader will need an electronic copy of the outline to view and access these links. Generally, underlined titles and terms are hyperlinks.

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Well-Being Trusts – the Future of Imbuing Trusts with Positivity, Meaning and Purpose

Section 1. Introduction

This paper presents ideas for being intentionally positive with inheritance and making family member well-being the core focus of estate planning. In a sense, this is a *human focused* approach. This is rooted in the idea that everyone can lead a meaningful and fulfilling life, and reach full potential.

Well-being theory provides a theoretical approach, built on research and empirical data, to inform the design and implementation of estate plans. In this approach, the goal is to focus inheritance planning on what makes life worth living by increasing well-being and flourishing. There is evidence to believe that family wealth, including family businesses, as well as other resources, can be used positively for increasing well-being. This is an enduring approach because it is an idea that family members can approach and internalize with autonomy and self-determination, each uniquely adding to the contours, depth and texture of the family's well-being approach through time.

Try to envision a framework that is positive, collaborative and inspirational, a framework that intentionally engages with research and empirical data to inform specific actions. For example, imagine a family that, incrementally and over time, recognizes needs and benefits to improving family members' well-being, invests resources to change, visualizes a better end result and is pulled into a brighter future, assesses progress, adjusts the strategy over time, and honestly recognizes past (and future) mistakes and missteps and learns from them. This dynamic approach is self-efficacy in action.²

Envision family members collaborating to inspire each other, not to control each other. Envision family members engaging with one another on a deeper basis, reaching all the domains of well-being, rather than merely superficial.

² "Self-efficacy is the belief in one's ability to influence events that effect one's life and control over the way these events are experienced." Tugsbaatar, *Albert Bandura, Self-Efficacy for Agentic Positive Psychology* (Positive Psychology.com).

Envision moving beyond such questions as “Should I stop giving money to my adult child?” Instead imagine asking: “How can I move beyond past mistakes or missteps and best uncover, understand and support my child’s strengths and virtues? How can I truly believe and trust in my child’s ability to flourish?”

Envision the family’s lawyers, accountants, and financial advisors all contributing towards advancing the family members’ well-being. They will continue protecting the family’s wealth from loss to creditors, taxes and investment declines but do so guided by the central purpose is to improve the lives and well-being of each family member. Why isn’t well-being the bottom line for success of all professionals in the estate planning process?

Dr. Martin Seligman, considered the father of positive psychology, believes positive psychology and well-being theory amount to a “Florentine” moment, akin to the Renaissance, a once in every five hundred year idea. “It is vouchsafed to us not only to witness the turning of the world but to actually turn the world toward well-being. We can remake politics, religion, the arts, medicine, and science into the engines of well-being.”³

Is Dr. Seligman correct? Is well-being theory a “Florentine” like 500 year idea? It is remaking the world? Countries and local governments are turning to well-being theory to improve the lives of their citizens (*see* Appendix D). At least seventeen Universities are awarding Master or Higher Degrees in Positive Psychology.⁴ George Mason University in Virginia is setting a goal of being the first well-being university.⁵ Many other schools are offering certificates or short-

³ Seligman, *THE HOPE CIRCUIT*, pp. 390 – 391 (Hachette Book Group 2018).

⁴ **USA:** Claremont Graduate University (Claremont, CA) – Master of Arts, with concentration in Positive Organization Psychology and Evaluation or Positive Development Psychology and Evaluation, and Ph.D based on Positive Organization Psychology or Positive Development Psychology; Life University (Atlanta) – Master of Science in Positive Psychology; University of Pennsylvania (Philadelphia) – Master of Applied Positive Psychology; **UK:** Anglia Ruskin University (Cambridge/Paris) – Applied Positive Psychology MSc; University of Bolton (Bolton) – MSc in Positive Psychology; Buckinghamshire New University (Buckinghamshire) – MSc in Applied Positive Psychology; Liverpool John Moores University (Liverpool) – MSc in Positive Psychology and Wellbeing; University of East London (London) – MSc of Positive Psychology and Coaching Psychology; **Europe:** Universitat of Jaume I (Castellon, Spain) – Master of Applied Positive Psychology; Aarhus Universitet (Copenhagen, Denmark) – Master of Applied Positive Psychology; University College Cork (Cork, Ireland) – Masters in Applied Psychology (Positive and Coaching Psychology); University of Twente (Enschede, the Netherlands) – Masters of Psychology, specializing in Positive Psychology and Technology; University of Lisbon (Lisbon, Portugal) – Master of Applied Positive Psychology; **Australia:** Central Queensland University of Australia (offered on-line) – Master of Applied Positive Psychology; University of Melbourne (Melbourne/Parkville Campus) – Master of Applied Positive Psychology; **Africa:** North-West University (Potchefstroom, South Africa) – Master of Applied Positive Psychology; **Asia:** School of Positive Psychology (Singapore) – Graduate Diploma in Applied Positive Psychology. This list is meant to be exhaustive.

⁵ “At Mason, we believe that “we thrive together” - shared success is one of our core values. We want to become the first well-being university, providing a place for all members of our Mason community in an environment where they can personally thrive while contributing to the overall mission. The university-wide Center for the Advancement of Well-Being provides a focal point for our efforts to promote positive change.” <https://wellbeing.gmu.edu/about/wbu-initiative>

term programs in positivity psychology.⁶ In business, there is a growing recognition that employee well-being leads to greater productivity and lower turnover⁷ and some companies are embracing a well-being-centered approach.⁸ The idea of well-being and flourishing is in books,

⁶**Certificates – USA:** [Coursera](#) provides Certificate in Foundations of Positive Psychology Specialization that is offered by the University of Pennsylvania, as well as a course on [Positive Psychology](#) taught by Barbara Fredrickson and offered by the University of North Carolina; EdX offers a MOOC course on the [Science of Happiness](#) sponsored by the University of California at Berkeley; The [Flourishing Center](#) (located in twelve cities across the U.S. and Canada, plus online) offers a course entitled Certificate in Applied Positive Psychology; The University of Missouri offers a 15-credit online graduate certificate in [Positive Psychology](#); The Wholebeing Institute offers a [Certificate in Positive Psychology](#); **Canada:** Wilfrid Laurier University (Canada) offers a 23-week online certificate course in [Positive Psychology](#); **UK:** The Langley Group Institute (based in Australia, but with a campus in London) offers a year-long certificate program, “[Positive Psychology and Wellbeing](#).” The School of Positive Transformation, an accredited Continuing Professional Development (CPD) academic institution, offers a year-long online applied course culminating in the awarding of the [Positive Psychology Practitioner Certificate](#); **Europe:** The European Institute of Positive Psychology (Spain, Italy, Columbia) offers a three-month online certification course in [Positive Psychology](#) among many coaching services and professional and personal development programs; **Latin America:** The Latin American Center of Applied Positive Psychology (Chile) offers a six-month postgraduate certificate in [Applied Positive Psychology](#); **Australia:** Central Queensland University offers a year-long graduate certificate in [Positive Psychology](#), specifically aimed at how to improve the mental health and well-being of society; The Langley Group Institute (Australia) offers a year-long certificate program, “[Positive Psychology and Wellbeing](#).” University of Melbourne (Parkville Campus) offers a 6-month Professional Certificate in [Positive Psychology](#); **Short-Term Programs:** City University of London (London) offers two short courses, “[Positive Psychology: Building Happiness and Flourishing](#)” and “[Positive Psychology: Becoming the Best Version of You](#)” as a ten-week on-campus class; University of London, Birkbeck (London) offers a short course, “[Critical Approaches to Positive Psychology](#)” as a stand-alone course; Positive Psychology Training Center (Bristol, UK) offers a variety of short-term programs including a two-day masterclass named “[Positive Psychology for Professionals and Workplace Well-being](#)” and an online “[Positive Psychology Foundations](#)” course. This list is meant to be exhaustive.

⁷ “We ... demonstrate that the presence of positive workplace perceptions and feelings are associated with higher business-unit customer loyalty, higher profitability, higher productivity, and lower rates of turnover.” Harter, Schmidt & Keyes, [Well-being in the workplace and its relationship to business outcomes: A review of the Gallup studies](#), in Keyes & J. Haidt (Eds.), *Flourishing: Positive psychology and the life well-lived* (p. 205–224). American Psychological Association (2003).

⁸ For example: “Lendlease, a multinational construction, property, and infrastructure company, focuses not only on using the physical workplace to support well-being, but also on developing policies and leadership approaches that embed well-being into its culture.” Agarwal, Dimple, Bersin, Lahiri, Schwartz, & Volini, “[Well-being: A strategy and a responsibility](#).” *Deloitte Insights Online* (March 28, 2018). Two floors of their corporate headquarters are dedicated to the “Wellness Hub” which features amenities such as the “Contemplation Room” and a six-meter-high “breathing wall” which contains 5,000 plants to accelerate the removal of air pollutants and cool the space. Additionally, the company’s leave policy includes two days where employees can volunteer with a charity of their choice. Vendors including Castlight Health, Limeade, and VirginPulse have created corporate platforms to deliver a wide range of well-being solutions to employees through an app. For example, VirginPulse offers an integrated app that, according to proprietary research, “is used as frequently as Facebook and whose active users are 65 percent more engaged, have 32 percent lower turnover rates, and deliver 9 percent higher productivity than their peers.” The software company Intuit has invested in its “Fit for Life” program which incentivizes employees to engage in stress-reducing activities such as practicing breathing or listening to calming music. Additionally it offers meditation and mindfulness classes as reimbursable expenses. Martis, Lily, “[7 companies with epic wellness programs](#).”

Interestingly, many companies undertake well-being programs not just as an employee benefit, but also as a business performance strategy. It was noted in the 2018 *Human Capital Trends* survey, “only 23 percent of respondents told us that their well-being program was designed to reduce insurance costs. In contrast, 43 percent believed that well-being reinforces their organization’s mission and vision, 60 percent reported that it improves employee retention, and 61 percent said that it improves employee productivity and bottom-line business results.” Agarwal, *supra* note 8. Recently on August 21, 2019, the Business Roundtable, an association of CEOs, published a 300 word statement that shifts away from the singular focus of big business on shareholder to a broader group of stakeholders:

Statement on the Purpose of a Corporation

Americans deserve an economy that allows each person to succeed through hard work and creativity and to lead a life of meaning and dignity. We believe the free-market system is the best means of generating good jobs, a strong and sustainable economy, innovation, a healthy environment and economic opportunity for all.

Businesses play a vital role in the economy by creating jobs, ...

movies, articles and all around us, once you start to notice it. For example, today marriage (and divorce) is about finding a partner that can help with flourishing (not survival)⁹ and breaking free of family obstacles to enable flourishing may be at the core of some parental estrangement.¹⁰

Even the gourmet chocolate shop that I use is named “Fleurir” (French for flourish).

The future may belong to those businesses that can explain and/or harmonize how their products, ideas or services are contributing to the well-being of the humans they serve. Well-being theory is spreading rapidly. These same principles are ripe for families to use, individually and collectively as a family system, to squeeze more out of what makes life worth living.

Estate and inheritance planning can be reengineered to foster family well-being. Family wealth and inheritance have important and perhaps critical roles to play in family well-being.

In this new human focused paradigm of estate planning, many of the old ideas are in need of updating. This paper will illustrate ideas for the application of this new human focus to the field of estate planning by recasting the principal purpose of trusts to be for improving beneficiary well-being. We will start to envision trusts as instruments of well-being.

While there is no reason to limit the application of the ideas outlined in this paper to trusts, trusts provide a practical means to illustrate the application of well-being theory through a commonly used and understood estate planning vehicle. By re-visualizing trusts, a sense of the possible will start to appear – i.e., how the principles can be applied to what has historically been a sterile property holding device. You will discover that trusts can be designed to intentionally improve

While each of our individual companies serves its own corporate purpose, we share a fundamental commitment to all of our stakeholders. We commit to:

Delivering value to our customers. We will further the tradition of American companies leading the way in meeting or exceeding customer expectations.

Investing in our employees. This starts with compensating them fairly and providing important benefits. It also includes supporting them through training and education that help develop new skills for a rapidly changing world. We foster diversity and inclusion, dignity and respect.

Dealing fairly and ethically with our suppliers. We are dedicated to serving as good partners to the other companies, large and small, that help us meet our missions.

Supporting the communities in which we work. We respect the people in our communities and protect the environment by embracing sustainable practices across our businesses.

Generating long-term value for shareholders, who provide the capital that allows companies to invest, grow and innovate. We are committed to transparency and effective engagement with shareholders.

Each of our stakeholders is essential. We commit to deliver value to all of them, for the future success of our companies, our communities and our country. *Business Roundtable Redefines the Purpose of a Corporation to Promote ‘An Economy That Serves All Americans’* (August 19, 2019). See also, McGregor, *Group rewrites role of CEOs but offers few prescriptions*, Wash. Post (August 22, 2019).

⁹ See “When Did Marriage Become So Hard?” Hidden Brain podcast with Shankar Vedantam host (Feb. 12, 2018).

¹⁰ Historian Stephanie Coontz said: “Never before have family relationships been seen as so interwoven with the search for personal growth, the pursuit of happiness, and the need to confront and overcome psychological obstacles.” Coleman, *A Shift in American Family Values Is Fueling Estrangement*, The Atlantic (Jan. 10, 2021).

beneficiary well-being, do so positivity, and reach meaning and purpose, and that you can use data and empirical research to ground the approach. You will see how trusts can be a centerpiece around which the family engages, and how professional advisors can add these new well-being components to their array of services.

Section 2. Background on Well-Being Theory and Positive Psychology

In realigning estate planning to be “human focused”, rather than principally financially focused, the concept of trusts, as well as other legal instruments used by estate planning attorneys need to be updated. After all, and this is one of the core questions, “What is the purpose of trusts if not to improve beneficiary well-being and by extension to improve family?”

Attorneys and other estate planning professionals must be involved in this process, as this approach implicates the estate planning process right down to the trust instruments. Estate planning professionals, therefore need to update their understanding of well-being theory and the science of positive psychology and incorporate this current thinking and evidence into their estate planning practices and their forms.

2.1 Why Being Well-Being Theory to Estate Planning?

Many may wonder “What’s the purpose of bringing topics such as happiness, well-being and flourishing to the trust and estate world, which traditionally has been focused on reducing risks and taxes?” First, there is now a body of research and data that demonstrates healthy people can intentionally act to increase their happiness, engage in more meaningful activity, have better relationships and more achievement – i.e., have better well-being. In fact, the field of positive psychology is founded on the idea of helping people live better lives, taking psychological study past just fixing problems. Stated another way, good psychological health is not simply the absence of mental illness.

Second, the research also demonstrates that money can be used smartly to support and increase well-being. More apropos to this paper’s focus, there is reason, again based on research, to believe that family wealthy can support good well-being.

Not sure about that? Countries are using money and resources to improve well-being, and these countries provide an excellent model for families to consider and perhaps emulate (see Appendix D). In section 3.5.2, life expectancy data is reviewed, which demonstrates that family wealth can

directly impact actual life expectancy. Research from Wharton’s Matthew A. Killingsworth finds no threshold beyond which experienced and evaluative well-being did not increase as income increased. “Larger incomes were robustly associated with both greater experienced well-being and greater evaluative well-being. ... There was no observed plateau in experienced well-being, and there was no obvious change in slope of experienced well-being or divergence between experienced well-being and evaluative well-being, either around \$75,000/y or at any other income level.”¹¹

Third, taking responsibility for increasing family well-being is the zeitgeist for wealthy 21st century families. The 2016 World Happiness Report conveys that progress should be measured by the extent to which, individually and collectively, we develop everyone’s well-being (including our own) and posits that everyone is ethically obligated to this mission:

We should assess human progress by the extent to which people are enjoying their lives – by the prevalence of happiness and, conversely, the absence of misery.

Therefore, the objective of governments should be to create conditions for the greatest possible happiness and the least possible misery. As Thomas Jefferson put it, “The care of human life and happiness ... is the only legitimate objective of good government.”

Likewise the obligation of each of us is to create the greatest amount of human happiness that we can in the world and the least misery. (Overall happiness of course includes our own).¹²

2.2 Well-Being Theory

There is no single, unified idea or theory that underlies all of positive psychology. In Dr. Seligman’s model, the central notions are well-being theory and flourishing. “The goal of positive psychology in well-being theory ... is to increase the amount flourishing in your own life and on the planet.”¹³ The core features of flourishing are defined by reference to five elements:

¹¹ Killingsworth, *Experienced well-being rises with income, even above \$75,000 per year* (National Academy of Sciences, January 26, 2021).

¹² Layard, *World Happiness Report 2016*, Volume I, p.52 (UN SDSN 2016).

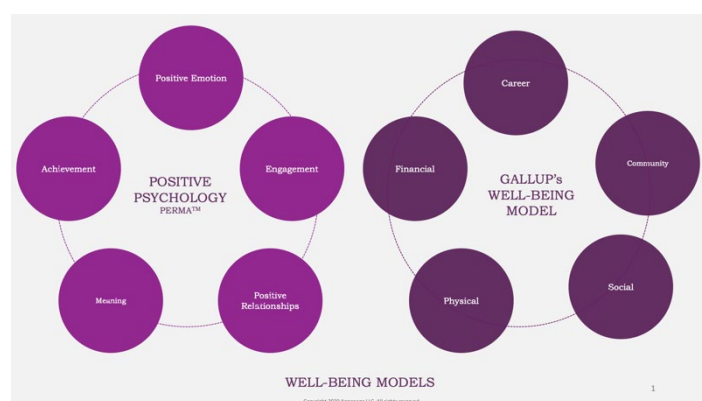
¹³ Seligman, *FLOURISH*, p. 26 (Atria 2011)(hereinafter “FLOURISH”).

- ✓ **Positive Emotions** (pleasant life, including happiness and life satisfaction)(subjective);
- ✓ **Engagement** (flow and being absorbed)(subjective);
- ✓ **Positive Relationships** (we are social beings);
- ✓ **Meaning** (serving something bigger than self)(subjective and objective); and
- ✓ **Accomplishment** (mastery and winning for the sake of it)

Hence the acronym PERMA™.¹⁴ These elements all relate to an individual's well-being.

Individuals pursue each element for its own sake and each can be measured independently.

Well-being is a construct of various domains that reflect the different dimensions of life. For



example, according to Gallup, there are five essential elements of well-being: career, social, financial, physical and community.¹⁵

A core suggestion is that the family's first focus should be on well-being and flourishing. Economics and the

maintenance and enhancement of the family wealth take on a secondary and supporting role. In this model, family wealth, as well as other resources, are for increasing well-being, including ensuring that the basics of well-being are satisfied (e.g., food, shelter, clothing, housing, healthcare, and that life expectancy is not jeopardized by being low on the income spectrum (see the "Prince Charles Effect" discussion below), and including elements of well-being associated with flourishing. From an equality point of view, one suggestion is for the family to refocus away from economic equality and towards thinking in terms of equality of well-being and flourishing in every member. This is a more holistic view of equality.

The overarching ideas in this paper are:

- ✓ **Use a positive approach in wealth and inheritance planning** by moving the focus away from economics to increasing the family members' well-being and ability to flourish. This is more likely to create the circumstances that allow for positive human development and family attachment. Negative effect, on the other hand, has long

¹⁴ *Id.* at p. 26. PERMA™ is a Trademark of Martin Seligman, PhD.

¹⁵ Rath, T. & Harter, J., *Well Being - The Five Essential Elements*, Gallup Press, 2010.

been over-rated and lacking in supportive research as concerns wealth and inheritance.

- ✓ **Emulate well-being theory that governments are implementing.** This provides a model for further development and assessment.
- ✓ **Specifically require trustees to assess beneficiary well-being and improve it over time.** Make achieving such improvement part of the trustee's performance criteria.
- ✓ **In families of substantial wealth, estate planning should be primarily about lifetime transfers.** Abandon the outdated practice focused on testamentary transfers of wealth. This paper explains why this shift is more thoughtful and provides a model for implementation.
- ✓ **Use equality of well-being and flourishing as the desired target for family members** when designing the wealth and inheritance plan – e.g., is every family member flourishing and what can the planning do to enable and support flourishing?
- ✓ **Recognize the fundamental human need for self-determination and autonomy.** For example, the well-being benefit in philanthropy is predicated on individual self-determination.
- ✓ **Families, advisors and trustees should all be more focused on engaging at the meaning and purpose level.**

Section 3. Well-Being Trusts

In this Section 3, while continuing to design trusts to save taxes, protect wealth from creditors, protect investments, and reduce ineffective spending, start now to also envision trusts as instruments of well-being. In this new human focused paradigm of estate planning, many of the old ideas are in need of updating. It is past time to recast the principal purpose of trusts to be for improving beneficiary well-being.

A Well-Being Trust is an instrument that threads the intentional goals and actions of one's inheritance plan to increase beneficiary well-being. It could, for example, ensure funding for a well-being baseline level of support that is consistent with the family's well-being goals – e.g., good housing in a community that is inclusive, empowered, resilient, and safe; having access to quality healthcare; and being well educated and skilled. The trust might also facilitate actions and behaviors that lead to better relationships, more meaning and flourishing. Being a positive emotional experience (for both trust beneficiaries and the creator) is a core feature of the Well-Being Trust.

Each Well-Being Trust is designed with substantial input from the creator. Creating a trust that is positive and transformational takes time and effort, but the potential reward is far beyond financial gain. Start with these ten foundational suggestions:

- ✓ Take responsibility and ownership of increasing well-being
- ✓ Be positive
- ✓ No negative language and no incentive language
- ✓ Promote autonomy, self-efficacy and mastery of any kind
- ✓ Fund an objective well-being baseline of support
- ✓ Spend positively
- ✓ Connect philanthropy to well-being
- ✓ No silent trusts – rather support a shift in control by requiring trust information be distributed and explained
- ✓ Assess well-being and adjust strategy over time
- ✓ Evaluate trustee performance by actual beneficiary well-being improvement

3.1 Take Responsibility and Ownership of Increasing Well-Being

The first suggestion is take responsibility and ownership of increasing well-being. Many parents likely feel as if they have been doing that since before their children were born. Parents are

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.

frequently very involved and engaged with their children’s well-being while they are

at home and during college. Typically, children enjoy good housing, healthcare, education and cultural opportunities, develop hobbies of interest, and frequently travel domestically and internationally. However, once the children graduate from college, parents frequently become much less involved.

The idea here is to start to envisioning that positive, collaborative and inspirational well-being framework alluded to in the introduction, which framework intentionally engages with research and empirical data to inform specific actions. Making that well-being framework a reality necessarily starts with accepting responsibility and ownership of the project. Try to imagine what could be accomplished if the parent, incrementally and over time, recognizes needs and

benefits to improvement (i.e., that increases well-being) and acts to make it so. Imagine the parent doing this over the balance of his or her lifetime. Above all this approach is all about being intentional.

Another especially helpful example of accepting responsibility and ownership of increasing well-being are the countries currently incorporating well-being theory – citizens thriving across multiple domains of life¹⁶ – into their policy making. This “smart country model” is one that families would benefit from trying to understand and emulate.

The smart country model is discussed in depth in the article: *Wealth and Well-Being - What Wealthy Families Can Learn from Sovereign Government Policies and Measuring Human Progress*, attached as Appendix D.

3.2 Be Positive

There is no substitute for being positive. In a human focused well-being trust, positivity frames the entire project.

3.2.1 The Science.

The Humanist psychologists predicted the importance of positivity. Dr. Barbara Fredrickson,

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.*

one of the earliest and most recognized researchers on positive emotions, wrote that she was stunned when her years of research lead her to the conclusion that positivity “was no less than a

¹⁶ Adler, A. and Seligman, M., *Using wellbeing for public policy: Theory, measurement, and recommendations*, International Journal of Wellbeing (2016).

prescription for life and how to live it.”¹⁷ Dr. Fredrickson developed the “Broaden-and-Build” theory, which explains the evolutionary as well as every day purpose of positive emotions:

*“[P]ositive emotions momentarily broaden people’s attention and thinking, enabling individuals to draw flexibly on higher-level connections and wider-than-usual ranges of percepts or ideas. In turn, these broadened and flexible outlooks help people to discover and build survival-promoting personal resources. These resources can be cognitive...psychological...social, or...physical... Put simply... positive emotions widen people’s outlooks in ways that, little by little, beneficially reshape who they are.”*¹⁸

According to Dr. Fredrickson the ten forms of positivity are joy, gratitude, serenity, interest, hope, pride, amusement, inspiration, awe, and love, love being the most important.¹⁹ These positive emotions transform humans for the better.

3.2.2 Why Positive?

The research shows that positive people make better important life decisions, are significantly more satisfied with their jobs,²⁰ are more productive and earn higher income, are more successful and better achievers,²¹ possess better negotiation and problem-solving skills,²² deal better with adversity, have better health,²³ live up to 10 years longer, are more creative, open-minded, empathetic, tolerant and generous,²⁴ and are more compared to less positive people. Therefore, families and their advisors need to reorient towards being positive and using positive approaches.

¹⁷ Fredrickson, POSITIVITY, p. 13 (Harmony Books 2009)(herein after “POSITIVITY”).

¹⁸ West & Fredrickson, Chapt. 3, *Cultivating Positive Emotions to Enhance Human Flourishing*, pp. 38-39, in POSITIVE PSYCHOLOGICAL SCIENCE, IMPROVING EVERYDAY LIFE, WELL-BEGING, WORK, EDUCATION, AND SOCIETIES ACROSS THE GLOBE, p. 237 (Edited by Donaldson, Csikszentmihalyi, & Nakamura, 2nd Ed., Routledge 2020)(hereinafter the book referred to as “POSITIVE PSY SCIENCE”).

¹⁹ *Id.* at p. 39. Dr. Fredrickson’s research seems to confirm human experience through the ages, and the many great thinkers and writers throughout history who have broached the subject of love’s potent emotional force. Perhaps the most famous of these is captured in Saint Paul’s letter to the Corinthians: “Now these three remain: faith, hope, and love; but the greatest of these is love” (I Corinthians 13:13).

²⁰ Diener and Seligman, 2004, *Beyond Money. Toward and Economy of Well-Being*, American Psychological Society, Vol. 5 No. 1, p.11.

²¹ *Id.* at p.1

²² Norrish, 2015, *Positive Education*, Chapter 7 - Positive Emotions Transform Lives, Oxford University Press, UK, p.129.

²³ POSITIVITY, *supra* note 17, at 94.

²⁴ *Id.* at p. 89-93.

3.2.3 No Sterile Trusts

More often than not, most trusts are sterile legal instruments. They do not convey any emotion of the trust creator, none of their history, their life journey, and none of their hopes, dreams or aspirations for the trust beneficiaries. This is a missed opportunity.

Our human focused Well-Being Trust should promote positive emotions for the beneficiary. Perhaps also for the trustee, the attorney, accountant, and investment advisors! Is that possible? Certainly!

John A. Warnick, founder of the Purposeful Planning Institute,²⁵ raises the possibility “that the trust can become a positive and meaningful influence in the lives of today’s beneficiaries and tomorrow’s remaindermen.”²⁶ Mr. Warnick argues for what he calls a “Generative Trust” that has two distinguishing features: Purpose and Positivity.

Instead of protecting beneficiaries from themselves, the Generative Trust serves to empower and encourage beneficiaries. It is a trust whose central purpose is the growth and well-being of the beneficiary. It’s also a trust grounded in the assumption that even though they may be young, immature or unproven, each beneficiary has the potential to become a highly functioning adult.

A Generative Trust is also built on a foundation of positive emotional energy, something completely foreign to trust design conversations but an absolute game changer for both trust creators and beneficiaries. It is a trust that could start out with these two sentences: “This trust was created out of love, faith and hope. The paramount purpose of this trust is to nurture the growth and well-being of the beneficiaries.” Love is the most obvious of the non-tax, non-legal motivating influences for a Generative Trust. Faith is the confidence of the trust creator in the goodness and capabilities of the beneficiary. Hope comes from the trust creator’s dreams for the potential positive and sustainable influence the trust and trustee will be in the life of the beneficiary.

²⁵ <https://purposefulplanninginstitute.com/>

²⁶ Warnick, *Generative Trusts: Applying Positive Psychology to the Design, Drafting and Administration of Trusts, Gifts and Succession Plans*, page 27, presented during “Estate Planning in the 21st Century: Using Positive Strategies to Foster Client Happiness and Well-Being” (Fall 2019 ACTEC National Meeting, Phil., PA).

Mr. Warnick believes, based on psychological research, that the child’s awareness of the parent’s positive emotions at the time of making the gift is strongly correlated with the child feeling gratitude for the gift. This illustrates why the “Objectives” section of the Well-Being Trust Provisions (see Section 5) cannot be put back in the administrative provisions. This positive emotional energy is critical.

As an estate planning attorney, I have seen trusts induce bewilderment, apprehension, fear, pain, anger, and mistrust. Rarely do they evoke the positive emotions identified by Dr. Fredrickson – i.e., joy, gratitude, serenity, interest, hope, pride, amusement, inspiration, awe and love. But trusts can, as Mr. Warnick suggests, be written to imbue them with positivity.

Why stop there? With imagination, our human focused Well-Being Trust could go further. It could create an overall “experience” of well-being that is positive, encouraging, and inspirational. In this sense, ask yourself, if you are the trust beneficiary, how do you wish to experience your trust?

In modern design and architecture, well-being theory is being applied to create built environments that impact our senses to improve well-being. In *An Economy of Well-Being*, Mark Anielski writes: “I believe that paying attention to well-being attributes of interior spaces has a direct positive impact on the mental, physical, emotional and spiritual well-being of the space’s users or occupants.”²⁷ Ilse Crawford, a London based designer with [Studioilse](#), believes that our senses are another form of intelligence and that in designing for our senses it can help us create habits and rituals that improve our lives. She believes the world we make around us is always an expression of our values, and as such those values need to be embedded in our physical spaces from the beginning. For more on Crawford’s innovative work watch this [short video in which she discusses design and well-being](#).

Try visualizing Anielski’s and Crawford’s ideas being applied to trusts. Sure, this involves transitioning from physical spaces to the more conceptual domain of trusts, but still stay with the project a little longer. Try thinking more broadly in designing the “experience” of trusts to reach all the beneficiary’s senses – sight, smell, sound, touch and taste – to bring forward this sensory form of intelligence, as Crawford suggests, with the goal of making trusts more a reflection of

²⁷ Anielski, M., *An Economy of Well-Being*, New Society Publishers, p.135 (Canada 2018).

our humanity, and more positive, encouraging, and inspirational, and more of an engine of well-being. But can a trust can really touch all our senses?

To reach the sense of sight, trusts could have embedded photographs. A picture is worth 1000 words goes the adage. The pictures could be of the family, beneficiaries, shared memories, etc., and could be curated as part of a positive family anecdote. As a start, every trust could have a thoughtfully selected name and corresponding picture that appears on the cover page.

The Magnificent Obsessions Trust is an example of touching the senses. When Harper was 7 years old, Disney released *Mulan*.²⁸ The protagonist is a young Chinese heroine that saves the Emperor from invading Huns and thereby saves the entire Empire. This movie captured Harper's imagination. After seeing the theatrical release, she counted down the days to *Mulan* being released on VHS (Feb. 2, 1999, well before streaming services). The time between the theatrical release and the VHS release was marked by playing the soundtrack, over and over again, crossing off days on a wall calendar, collecting all the McDonald's *Mulan* Happy Meal toys, trips to the Disney store, and many other related activities. By the time the VHS was released the whole house was in a frenzy! This dynamic, repeated with numerous other events and themes, came to be known as her "Magnificent Obsessions." Being around her meant you were going to absorb some of her passion, energy and enthusiasm – it just could not be helped. She brought you along into her world and on her journey.

The Magnificent Obsessions Trust captures this story with pictures and words. The story conveys a cherished family memory, capturing elements of Harper's unique gifts and personality.²⁹ The Magnificent Obsessions Trust was produced in physical form as book with the cover wrapped in yellow crushed velvet – as all Magnificent Obsessions Trusts should appear! Opening the book cover, it played the final chorus of "*A Girl Worth Fighting For*" from the *Mulan* album. All these elements combine to bring forward the parent's positive energy for Harper and her family.

Harper is not the only person touched by the Magnificent Obsessions Trust's creation. It provided the parent with joy, giving the opportunity to relive a magical time and once again remember the unique humanity of Harper. The attorney that helped them prepare the trust, and the trust company personnel and investment advisors all vicariously share in the joy, hope and

²⁸ MULAN, Walt Disney Pictures, released June 19, 1998 (USA).

²⁹ The trust instrument also uses much of the language of the sample Well-Being Trust in section 5, as well as addressing the traditional functions of a trust.

inspiration of the Magnificent Obsessions Trust. Imagine advisors meeting around a conference table littered with yellow crushed velvet bound copies of the Magnificent Obsessions Trust! It sets the stage that this is no typical trust, family or beneficiary. Harper’s children will share in this history and likely be awe struck that their mother inspired such an individual trust and legacy.

The Magnificent Obsessions Trust touches sight, sound and touch. It illustrates that with imagination and creativity, our conceptual world of trusts can reach our senses more fully.

3.3 No Negative Language and No Incentive Trust Language

As discussed in this paper, families can support well-being by incorporating principles of positive psychology and well-being theory into the family’s trust design, particularly by taking a

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.*

positive bent. However, that’s not all. Supporting the well-being of the trust beneficiaries also concerns not taking a negative bent and not building negative approaches into the trusts. Dr.

Seligman says: “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.”³⁰

Therefore, consider eliminating any negative language and any language that could be construed as being controlling or manipulative, including any incentive trust language. For example, stop using sentences such as this: “If a current beneficiary is not fulfilling his or her capacity to lead

³⁰ Seligman, AUTHENTIC HAPPINESS, p. 211 (Atria 2002) (hereinafter “AUTHENTIC HAPPINESS”).

a productive life, the [Trustee, Distribution Committee or Trust Protector] should make or withhold payments so as to encourage a positive change in attitude.”

3.3.1 Incentive Trusts are Misguided

So-called “incentive trusts” are misguided. Incentive trusts have been offered as a solution or encouragement to a child or grandchild to be “productive and engaged.”³¹ These trusts are “designed to address the client’s apprehensions that large inheritances and trust distributions could harm, if not ruin, his children’s lives.”³²

Such trusts often pay for expenses that the settlor values, such as education, but perhaps only if certain benchmarks are satisfied, such as achieving a certain grade point average, the trustee being satisfied that the beneficiary is pursuing the education in good faith, require that a certain school or type of school be attended, require a specific field of study, limit the duration of benefits to a set period of time determined to be reasonable for completing the degree requirements. These requirements might also be coupled with forcing the beneficiary to take drug tests and be drug free. The other types of beneficiary behavior the settlor wishes to encourage or discourage through incentive trusts could cover the waterfront.

Perhaps the most common type of incentive trust is focused on economics and matching the beneficiary’s earnings or some portion of it. The thought behind this approach is to reward “productivity.” For example, the trust might instruct the trustee to match the beneficiary’s W-2 earnings. For an extra measure of control, a spending and/or savings component might be added on to “productivity” provisions. The beneficiary might have to prove the earnings side of the ledger and that he is saving at least a set percentage of such earnings.

Of course, the incentive trust metrics focused on productivity and engagement must be verified. Therefore, frequently, the trust instruments require that the beneficiary prove the satisfaction of the benchmarks – i.e., provide a copy of the beneficiary’s transcripts before providing reimbursement, provide a copy of his W-2 before providing the matching payment.³³

³¹ Redd, The Ultimate in Dead Hand Control – Incentive Trusts Part I, Trusts & Estates (April 28, 2015).

³² See generally, How Not to Raise a Spoiled Brat, Town & Country (June/July 2017).

³³ For an excellent review of incentive trusts and why they are misguided, see M. Stephens, Incentive Trusts: Considerations, Uses and Alternatives, Vol. 29, No.1, ACTEC J., p. 5 (Summer 2003).

The misguided part of incentive trusts is that the research says monetary rewards decrease intrinsic motivation. That is, the central premise of an incentive trust is flawed. ACTEC fellow Marjorie Stephens writes:

[A]ttempts to gain control over our children by using rewards to encourage certain types of behavior are ineffective. Our ultimate objective is for our children to take control over their own lives. Paradoxically, we have used control over our children in order to “teach” them to take control over their own lives. Extensive research has been conducted in the area of control, and in fact, control is very important, but it is our control over ourselves and all things that impact our lives that is deemed essential. Not only is actual control important to an individual’s ability to function at high levels and to cope with stress, but also perceived control or knowledge of factors over which the individual has no control is important as well.³⁴

Intrinsic motivation relates to activities that individuals pursue for their own sake, activities they enjoy and which provide their own satisfaction. It is believed that intrinsically motivated behavior is responsible for the majority of human learning as opposed to mandated learning. Extrinsic motivation relates to activities driven by external rewards and punishments. These activities are more controlled and involve less autonomy. There is a substantial body of data indicating that attempting to control achievement and motivate behavior with external rewards generally fails, leads to less autonomy, lowers well-being and psychological growth, and may actually be harmful.³⁵ Rather, as outlined in Section 3.4, the keys to intrinsic motivation are promoting autonomy, self-determination and mastery; positively encouraging, listening and understanding; acknowledging improvement and mastery; and providing meaningful choices and opportunities for growth.

3.3.2 Don’t Make “Circumstances” Worse

Keep in mind that when a trust is established for a beneficiary, that trust becomes part of the beneficiary’s circumstances. The trust has the potential of being positive, neutral or damaging.

³⁴ *Id.* at p. 13.

³⁵ Ryan & Deci, [Intrinsic and extrinsic motivation from a self-determination theory perspective: Definitions, theory, practice, and future directions](#), Contemporary Education Psychology (2020).

Start to imagine the impact of an inheritor having to navigate a manipulative and controlling ancestral trust.

The research of positive psychologists Lyubomirsky, Sheldon, and Schkade (“Lyubomirsky et al.”) is helpful to illustrate the point.

Back in 2005,³⁶ Lyubomirsky et al.

proposed a pie chart (the “Happiness Pie Chart”) illustrating the relative impact of

three domains on an individual’s

subjective well-being: (1) The set point

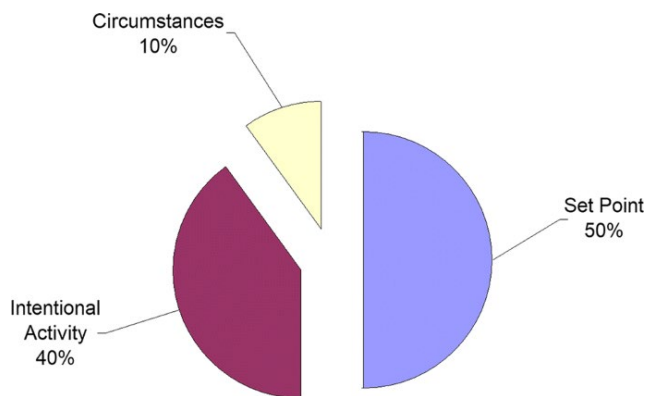
(genetically determined), (2) life

circumstances (national, geographical,

income, family, marital status, health, or religiosity), and (3) intentional activity (positive

cognitive, behavioral, and goal-based activities). They suggested percentages to the three factors

based on prior research.



The set point is rooted in neurobiology and relatively immune to influence or control. In effect, each individual has a genetic set point of subjective well-being. It is difficult to achieve a long-term increase to that set point. A positive event – such as an achievement or award – may lead to an uptick in happiness, but soon the individual will return to the set point.

Circumstances can be change but Lyubomirsky et al. estimated that circumstances represent the smallest variable in determining one’s well-being. Moreover, Lyubomirsky et al. believe that changing circumstances, such as moving to a sunnier climate or salary increase, would typically produce an increase in subjective well-being of limited duration because people quickly adapt to new circumstances and return to their set point (the so-called hedonic adaptation).

Lyubomirsky et al. posited that the intentional activity part of the model was the most fertile ground for focus and intervention to bring about lasting improvement to an individual’s well-being. Lyubomirsky et al. estimated that intentional activity accounted for approximately 40% of a person’s subjective well-being.

³⁶ Lyubomirsky S, Sheldon KM, Schkade D., *Pursuing happiness: The architecture of sustainable change*, Review of General Psychology (2005)(“LYUBOMIRSKY 2005”).

Over the ensuing years, their article and the Happiness Pie Chart have been subject to considerable criticisms.³⁷ Recently, Lyubomirsky and Sheldon published a new article in which they revisited their 2005 article following the criticisms and in the wake of positive psychology's continued development over the subsequent 14 years.³⁸ They acknowledged that some of the criticism was justified, including that they over-estimated the 40% assigned to intentional activity. However, based on a continued stream of empirical data since the 2005 article, they reaffirmed their basic idea that individuals can deliberately act to increase their own subjective well-being or happiness and set point. While it may be harder to do and in a narrower range than they originally thought, meaningful shifts in an individual's happiness level are possible as a result of intentional changes. A key take away is that there is a range of potential happiness that a person can move within and he or she has some capacity to move to the top of that happiness range.

This is consistent with positive psychologists' belief that individuals do have great control over whether they experience positive or negative emotions. For example, the Broaden-and-Build theory of positive emotions can lead to upward spirals and can steer clear of negative spirals.³⁹

On the other hand, in the 2005 article, Lyubomirsky et al. noted that an individual who had not achieved basic subsistence and security should focus on addressing that situation first before maximizing happiness. They assumed that once those basic needs were satisfied, that would only move the individual to his or her set point, not beyond.⁴⁰ Stated another way, if a person's circumstance is below basic subsistence and security, the person may be stuck someplace below his or her set point. By analogy, Dr. Maslow wrote that if a person's food and security needs are chronically unsatisfied, everything else becomes less important.⁴¹

With this background on the three domains of an individual's subjective well-being, start to imagine the impact of an inheritor having to navigate a manipulative and controlling ancestral trust. Such a trust would become part of the inheritor's circumstance, and perhaps an obstacle to development. Would such a negative trust cause the individual to feel unsafe such that the

³⁷ See e.g., 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) ("EASY AS PIE").

³⁸ Sheldon & Lyubomirsky, Revisiting the Sustainable Happiness Model and Pie Chart: Can Happiness Be Successfully Pursued?, *Journal of Positive Psychology*, Vol. 16, p. 145 (2021).

³⁹ POSITIVE PSY SCIENCE, *supra* note 18, p. 39.

⁴⁰ LYUBOMIRSKY 2005, *supra* note 36, at p. 118.

⁴¹ Maslow, A.H., *A Theory of Human Motivation*, *Psychological Review*, vol. 50, p. 382, p. 383 (1943)(hereinafter "Maslow I").

person is stuck below his or her set point, or simple make the individual's progress beyond the set point more difficult?

Also consider that the circumstances may account for a smaller *or larger* share of the Happiness Pie Chart. One group of researchers who questioned the 10% assignment to circumstances. They reviewed the data of two prior studies relied Lyubomirsky et al. in their 2005 article to derive the 10% assignment to circumstances and found that a reanalysis of the data produced a wide range of estimates, between 1.92% and 17.90%. These other researchers believed that the set point and circumstances were likely to both be responsible for a greater share of the pie than originally estimated by Lyubomirsky et al.⁴² Therefore, there is reason to believe that the circumstances created by a family for an inheritor have the potential to be quite impactful. This is more reason for the family to be careful in not being negative or manipulative in their trust structures.

Moreover, contrast the controlling and manipulative family circumstance to a positive, inspiring and thoughtful family circumstance. In this approach, the family is taking into account such research as (i) life expectancy and the "Prince Charles Effect", (ii) the U-Shape Happiness Curve, (iii) and the broader impact of ensuring a baseline of support and striving to impact elements of expanded well-being, which are all discussed below. See also 3.5.4.

3.3.3 Attorney may be writing the wrong family prescription

Lawyers are trained to be controlling and to draft clauses designed to punish bad behavior, like default and attorney's fees provisions, and, in trusts, no contest clauses, and on and on. In AUTHENTIC HAPPINESS, Dr. Seligman devoted 8 pages to lawyers because he identified lawyers as the highest paid professionals, passing doctors in the 1990s, but also being the least happy.⁴³ He reviewed how lawyers are trained cynics, questioning and negative – i.e., focused on what can go wrong. In the context of a family's wealth and inheritance plan, lawyers may be writing

⁴² EASY AS PIE, *supra* note 37, ("[C]hanges in these circumstances can have remarkable effects on well-being, as indicated by the World Happiness Report (United Nations 2015), which is based on the Gallup World Poll. This report periodically measures the self-reported well-being of the inhabitants of most of the countries of the world on a "ladder" from 0 to 10. The 2015 report showed that between the measurement periods of 2005–2007 and 2012–2014, self-reported well-being in Greece fell from 6.327 to 4.857, a drop that represents almost one and a half steps down the ladder from the best possible life towards the worst. This reduction of 1.470 points also corresponds to 31.0% of the range of country-average well-being scores in the 2015 report from the highest (Switzerland, at 7.587) to the lowest (Togo, at 2.839). It seems unlikely that more than a trivial part of this decline in well-being over the better part of a decade can be accounted for by a change in the genetic characteristics of the population of Greece, or a decision by Greek citizens to eschew *en masse* the forms of intentional activity that might contribute to their individual happiness.") (citations omitted).

⁴³ AUTHENTIC HAPPINESS, *supra* note 30, at pp. 171 - 184.

the wrong prescription. Families need a more positive approach and lawyers need to become a positive part of the process to remake wealth and inheritance planning an engine of well-being.

3.4 Promote Autonomy, Self-Efficacy and Mastery of Any Kind

Fundamental to good well-being is having freedom to make important life choices. Each must have the freedom to pursue his or her own expression, which Dr. Maslow noted is a precondition to the satisfaction of the basic needs:

There are certain conditions which are immediate prerequisites for the basic need satisfactions. Danger to these is reacted to almost as if it were a direct danger to the basic needs themselves. Such conditions as freedom to speak, freedom to do what one wishes so long as no harm is done to others, freedom to express one's self, freedom to investigate and seek for information, freedom to defend one's self, justice, fairness, honesty, orderliness in the group are examples of such preconditions for basic need satisfactions. Thwarting in these freedoms will be reacted to with a threat or emergency response. These conditions are not ends in themselves but they are almost so since they are so closely related to the basic needs, which are apparently the only ends in themselves. These conditions are defended because without them the basic satisfactions are quite impossible, or at least, very severely endangered.⁴⁴

Therefore, not enabling autonomy is, in effect, handicapping the person and working counterproductively. Moreover, in the words of Columbia University Professor Dr. Scott Barry Kaufman, “Recent research suggest that the more people feel psychologically free (autonomy), the more they take personal responsibility for their actions and the more likely that are to accept blame for their failures.”⁴⁵

In the context of a family, the wisdom of ACTEC fellow Marjorie Stephens is noteworthy:

The goal of a parent is for their children to be independent. In business independence isn't the final goal but it produces better results. The parent would encourage their children to choose tasks, areas of mastery and careers. What worked for the parent in what, when, and how success was achieved will not be the same for his children or anyone else. The challenge of leaving one's desired legacy is apparent. Money does not motivate. The parent's exercise of control over their own life provided the parent with success. But the child's life is not another area for the parent to master, but to model mastery. Our first guide to encouraging motivation

⁴⁴ Maslow I, *supra* note 41, at p. 382.

⁴⁵ Kaufman, *TRANSCEND, THE NEW SCIENCE OF SELF-ACTUALIZATION*, p. 180 (Tarcher Perigee 2020).

*is that everyone wants autonomy. Everyone wants control over their own life and will resist any effort to control them.*⁴⁶

Key to positive psychology is determining what works, what a person does well, and then act to support and strengthen those existing positive attributes rather than focus on the person's weaknesses. By focusing on the person's strengths or positives, the person becomes more proficient with the positive attributes and builds psychological capital. This focus on positives

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.*

and strengthening those attributes also has the effect of indirectly lessening the impact of the person's weaknesses and negatives without addressing them. For example, in well-being theory

this basic idea is demonstrated through using signature character strengths more, which leads to greater well-being. See section 3.5.4.

3.5 Fund an Objective Well-Being Baseline of Support

Having resources is important – perhaps critical – to well-being and flourishing in the U.S.⁴⁷

This paper will explore the research that supports wealth as an enhancer of well-being.

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

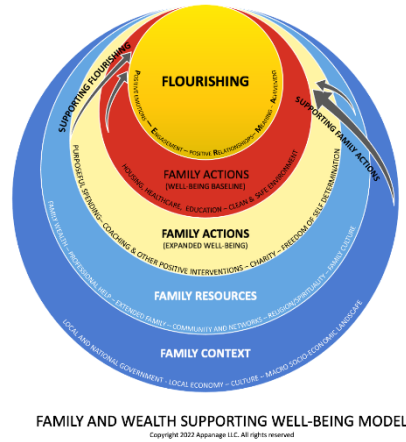
Section 2.2.3.1 Income and Principal. *The Trustee may make payments from the net income and principal to the Primary Beneficiary and his or her descendants, as the Trustee deems appropriate for their well-being and flourishing, including but not limited to satisfying their Well-Being Baseline and elements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

Illustrated below is a two-part model to explain the role that family and family wealth may play in supporting well-being.

⁴⁶ Stephens, *Our Lives, Our Legacies*, presented at the 2019 ACTEC Fall National Meeting during the panel program *Estate Planning in the 21st Century: Using Positive Strategies to Foster Client Happiness and Well-Being* (Lowes Hotel, Philadelphia, Pennsylvania, October 2019).

⁴⁷ There is no suggestion here that wealth is required for flourishing. The literature is clear that is not so. See e.g., AUTHENTIC HAPPINESS, *supra* note 30, at pp. 51 - 61. However, the data discussed in the Sections below also make clear that income and wealth are helpful to well-being.

At a minimum, the family wealth can create a baseline of support for well-being (“Well-Being Baseline”). Substantial data is provided below to help inform the family’s determination of baseline support.



Moving beyond the baseline, the wealth can support growth, development, and ultimately flourishing (“Expanded Well-Being”). Here again, substantial research is provided to help inform the approach.

The model highlights the importance of family actions in creating a positive and inclusive context for well-being and flourishing. Family actions are the link between the family wealth and the family members’ well-being. This calls for families to be deliberate and intentional in supporting well-being and flourishing when designing the wealth and inheritance planning. Each person’s individual responsibility for his or her own well-being is not being ignored or minimized. Rather the focus of this paper is on the role that family and family wealth could have on each member’s well-being.

The model also includes the vital context of government, economy, and culture, and the reality that an individual’s well-being cannot exist in isolation.

3.5.1 Housing, Healthcare, Education & Environment

The well-being baseline in a family should start with the basics,⁴⁸ such as the following, applied to each family member:

- Have reasonable housing in a community that is inclusive, empowered, resilient, safe, and with low government corruption (i.e., a wealthy democracy);
- Be healthy and active, and have access to quality healthcare;

⁴⁸ The proposal is partly informed by the well-being initiatives in various countries such as [New Zealand](#), [Scotland](#), [Wales](#) and [United Arab Emirates](#)

- Be well educated, skilled and able to contribute to society; and
- Enjoy a clean environment and live sustainably.

At first, one might presume that every wealthy family provides for these basic elements. Perhaps that is true to a certain point, but there is a purpose in being deliberate about it. Being deliberate and thoughtful as to these baseline elements of well-being creates a foundation upon which more can be built. Our proposal here is to provide an analytical framework to help families build not only a baseline but also some aspects Expanded Well-Being.

Families could consider this information and settle upon a baseline for well-being of all family members and a financial plan to assure that particular baseline is met. This should be written, revisited and refined as time passes (much in the same way as a business sets a business plan, forecasts into the future, budgets and revisits periodically as events evolve). Over time, as new research and information becomes available, the family should revisit their approach. The planning should involve the family's financial planners and lawyers – i.e., it should be incorporated into the family's trusts! It is hard to overstate the importance of these foundational elements; thus being intentional and committing to a written plan (including the backup and emergency planning to cover the waterfront of foreseeable contingencies) is critical.

3.5.2 Income and Life Expectancy – the “Prince Charles Effect”

Life expectancy is fundamental to well-being, like having clean air to breathe and clean water to drink, and access to good health care services. Assuming the family's first focus is on well-being and flourishing, not economics, then the family should consider using its resources to ensure that life expectancy is not jeopardized by being low on the income spectrum. Families considering their wealth and inheritance planning should understand these statistics and that income and wealth have direct consequences to life itself in the United States. For wealthy families that can provide an inheritance, this information directly implicates the timing and relative economic impact of a potential inheritance on the life expectancy of the inheritor. In other words, the quantity and timing of the inheritance matters.

For the affluent in the United States, life expectancy is nearing 100 years. Based on 2017 data as reported in the Centers for Disease Control and Prevention (CDC), National Center for Health Statistics (NCHS), and National Vital Statistics System (NVSS), the average life expectancy

presently stands at 81.1 years for females and 76.1 years for males.⁴⁹ However, the statistics for the wealthy are substantially better: 91.9 years for females and 88.8 years for males.⁵⁰ Over the past 30 years, life expectancy of this upper income group has increased dramatically, from 86.2 years for females (an increase of 5.7 years) and 81.7 years for males (an increase of 7.1 years). Other reports show a current 13 to 15 year life expectancy edge for the affluent.⁵¹ According to census data, the over-85 age group is the fastest growing demographic in the U.S. All surviving baby boomers will be over age 85 by 2050.⁵²

This actuarial data mean that children are often in their 70s before inheriting wealth from parents at their passing. This is analogous to Prince Charles, age 73, waiting to inherit the throne from his mother, Queen Elizabeth II, age 95 (her husband, Prince Phillip, died April 9, 2021 at 99 years of age)! Hence the “Prince Charles Effect!”⁵³ Thoughtful family wealth planning should take account of this increasing life expectancy.

Two particularly important studies that all trusts and estates professionals as well as wealthy families should read are *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 Association⁵⁴ (“JAMA Article”) and *Socioeconomic Inequalities in Disability-free Life Expectancy in Older People from England and the United States: A cross-national Population-Based Study*, published on-line on January 15, 2020 in The Journals of Gerontology⁵⁵ (“Disability-Free Report”).

⁴⁹ United States Life Tables, 2017, Vol. 68, Number 7, National Vital Statistics Reports (June 24, 2019).

⁵⁰ See Ehrenfreund, The stunning — and expanding — gap in life expectancy between the rich and the poor, Wash. Post (Sept. 18, 2015). The data for this article came from the *NAS Growing Gap* Article, *infra* note 58.

⁵¹ See Steverman, The Rich Are Living Longer and Taking More From Taxpayers, Bloomberg (April, 24, 2017); Rich Americans Live Up To 15 Years Longer Than Poor Peers, Studies Find, The Guardian (April 6, 2017); Dizikes, New Study Shows Rich, Poor Have Huge Mortality Gap in U.S., MIT News (April 11, 2016).

⁵² Ortman, Velkoff & Hogan, An Aging Nation: The Older Population in the United States, Current Population Reports (May 2014).

⁵³ Richard Franklin first coined the term “Prince Charles Effect” in 2016 to illustrate a benefit of lifetime transitions of wealth because of the expanding life expectancy of the affluent. See e.g., Franklin & Law, *Extraordinary, Efficient, Elegant, Evolutionary: The Annual Taxable Gifts Approach and Testamentary CLAT Remainder*, II.W, 51st Annual Heckerling Institute on Estate Planning (January 11, 2017, Orlando, Florida).

⁵⁴ Chetty, Stepner, Abraham, Lin, Scuderi, Turner, Bergeron & Cutler, The Association Between Income and Life Expectancy in the United States, 2001-2014, Vol. 315, No. 16, JAMA (April 10, 2016, corrected January 3, 2017)(herein “JAMA Article”). Readers can find a copy of the article from the hyperlink above in the title, or can buy or rent the full version of this article by visiting: <https://jamanetwork.com/journals/jama/article-abstract/2513561> and selecting “Download PDF”. Readers will then be prompted to either subscribe to the journal, rent or buy the article. A free summary is available here: https://healthinequality.org/documents/paper/healthineq_summary.pdf.

⁵⁵ Zaninotto, Batty, Stenholm, Kawachi, Hyde, Goldberg, Westerlund, Vahtera & Head, Socioeconomic Inequalities in Disability-free Life Expectancy in Older People from England and the United States: A cross-national Population-Based Study, The Journals of Gerontology Series a (January 15, 2020)(herein “Disability-free Report”).

3.5.2.1 JAMA Article

This study measured the relationship between income and life expectancy by using mortality data from the Social Security Administration for all individuals having a Social Security Number and dying between 1999 - 2014 and income data from the IRS from the tax records for every individual for every year from 1999 – 2014 (1.4 billion person-year observations for individuals age 40 to 76). According to Princeton Professor Angus Deaton’s editorial regarding the JAMA Article: “It seems unlikely that another study of income, location, and mortality will ever have more or better data.”⁵⁶

3.5.2.2 Disability-Free Report

This study examined socioeconomic inequalities in disability-free life expectancy in older men and women from England and the United States. The analysis brings more significant data than just life expectancy by incorporating the quality of the remaining years of life – years with favorable states of health or without disability.

For the United States the data is coming from *The Health and Retirement Study (HRS)*, an ongoing longitudinal research project that includes more than 37,000 individuals age 50 or above from 23,000 households in the USA considered a representative sample of the US population. The survey includes data of the population filed every 2 years starting on 1992, established to provide a national bank of information on the changing health and economic circumstances associated with ageing at both individual and population levels.

3.5.2.3 Implications of the JAMA Article and the Disability-Free Report for Wealthy Families

Three major conclusions from the JAMA Article and the Disability-Free Report should be understood and incorporated into estate planning:

3.5.2.3.1 Greater Income Means Greater Life Expectancy

⁵⁶ Deaton, *On Death and Money – History, Facts, and Explanations*, Editorial, Vol. 315, No. 16, JAMA (April 26, 2016)(herein “*On Death and Money Article*”).

Based on the JAMA Article, a 40-year-old man in the top 1% of income could expect to live, on average, to age 87.3, whereas a 40-year-old man in the bottom 1% could only expect to live to age 72.7 (a 14.8 year gap based on income – see Figure 1). For women at the top 1%, the life expectancy would be age 88.9, whereas in the bottom 1% it would be age 78.8 (a 10.3 year gap based on

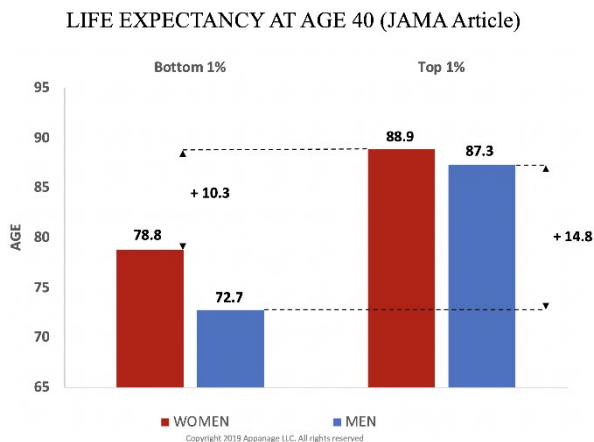


Figure 1

income). The article makes clear that greater income results in longer life expectancy and that there is no saturation point at which greater income does not equal greater life expectancy.

For context, the 10th to 15th income percentiles were from \$14,000 to \$20,000, the 90th to 95th income percentiles were from \$161,000 to \$224,000, and the 95th to 100th percentiles were from \$224,000 to \$1.95 million. The median income was \$61,175 at approximately the 50th percentile. Each 5% increase in income was associated with approximately the same proportionate increase in life expectancy, i.e., an average of 0.7 - 0.9 years. Increases in the dollar amount of income in the higher percentiles were associated with a smaller gain in life expectancy.⁵⁷

In addition, the life expectancy of the top 1% grew at a faster rate than that of the bottom 1% over the study period. For men in the top 5%, the average life expectancy from 2001-2014 increased by 2.3 years and for women by 2.9 years. For the bottom 5%, the average life expectancy barely budged and is better stated in days — i.e., an increase of 117 days for men and 15 days for women. Moreover, according to Professor Deaton, “... the bad news is that the report likely understates the rate at which the gaps between expected life expectancies of rich and poor are widening.”

A committee of the National Academies of Sciences has been studying the long-term macroeconomic effects of the aging U.S. population⁵⁸. They issued a report in 2015 that

⁵⁷ *On Death and Money* Article, *supra* note 56, at 1704.

⁵⁸ National Academies of Sciences, Engineering, and Medicine (2015), *The Growing Gap in Life Expectancy by Income*:

analyzed the life expectancy of two cohorts, one born in 1930 and one born in 1960. They compared the life expectancy consequences of the 1930 cohort at age 50 to the projected life expectancy of the 1960 cohort at age 50. They did this for males and females in different generations by quintile of lifetime earnings between ages 41 and 50 as reported to the Social Security Administration. Their report confirms that the gap in life expectancy is expanding rapidly: for men at age 50, the gap between highest and lowest quintile’s life expectancy increased by 7.6 years while for women at age 50, the gap is projected to expand from 4 to 13.6 years.

A deeper dimension of the life expectancy analysis can be uncovered using data from the Disability-Free Report. On average, a woman aged 50 can expect to live 6.1 years with some type of health problem or disability while a man aged 50 would expect 4.3 years with some disability (Figure 2).

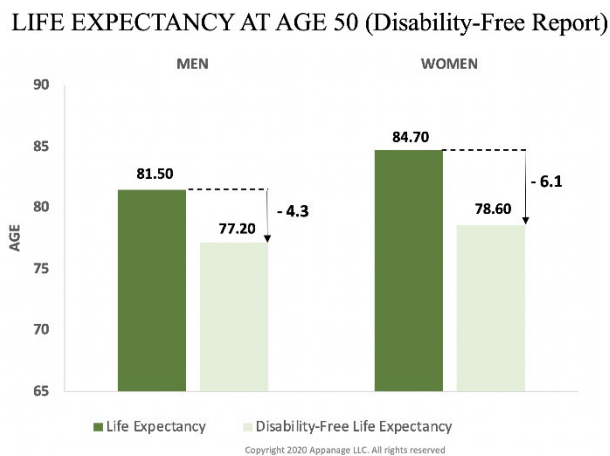


Figure 2

Wealth, again, benefits disability-free life expectancy: 31.1 years for the wealthiest 50-year-old men vs. 22.2 years in poorest wealth groups (an 8.9-year gap based on income) and 32.8 for the wealthiest 50-year-old women vs. 24 years in the poorest wealth groups (an 8.8-year gap based on income). As expected, life expectancy decreases at higher ages but the socioeconomic difference remains: at age 80, the richest men and women are expected to live 3.8 and 4.5 more disability-free years, respectively, than the poorest.

3.5.2.3.2 Wealth & Income Inequality Means Significantly Shorter Life Expectancy for Poor People

As the JAMA Article illustrates, the gap between rich and poor is dramatic and not just about income but life itself. According to these scientists, being in the bottom 1% in the United States

Implications for Federal Programs and Policy Responses, Committee on the Long-Run Macroeconomic Effects of the Aging U.S. Population-Phase II. Committee on Population, Division of Behavioral and Social Sciences and Education. Board on Mathematical Sciences and Their Applications, Division on Engineering and Physical Sciences (Washington, DC: The National Academies Press)(“NAS Growing Gap Article”).

means a life expectancy on par with Sudan and Pakistan. The 10-year gap in life expectancy for women between the top 1% and bottom 1% has approximately the same impact that a lifetime of smoking has on life expectancy.⁵⁹

Moreover, in the United States, location is also a factor in life expectancy, especially for those in the bottom of the income stratification. In the \$30,000 and below annual income group, the JAMA Article estimates a 72.3 year life expectancy for a 40-year-old man in Detroit as compared to 78.6 year life expectancy in New York City. In the over \$650,000 income group, the difference in life expectancy attributed to these locations was reduced to less than one year.

For the world's largest economy, the differences in life expectancy for the haves and have-nots is stunning. For example, from the moment of birth, in Arlington County, Virginia (just across the Potomac River from Washington, D.C.), the life expectancy is 85.9 years (this is a total average of male and female, and across the economic spectrum), but in McDowell County, West Virginia (360 miles away from Arlington County), the life expectancy is 69 years – a whopping 16.9 years lower!⁶⁰ Moreover, the effect at the lower economic thresholds has driven overall life expectancy for the U.S. down in recent years. Without regard to location, the CDC has reported that the average life expectancy decreased 0.2 years in 2015 to 78.7 years, remained steady in 2016, and then decreased again in 2017 by 0.1 year to 78.6 years,⁶¹ but increased in 2018 to 78.7 years and in 2019 to 78.8 years.⁶² These overall averages for everyone in the country are misleading; the wealthy fared better, as discussed above.

An eye opening 2021 study by the National Academies of Sciences found that 2017 was the 3rd year that life expectancy in the US declined, the longest sustained decline since 1918 Pandemic (and that's prior to COVID-19).⁶³ It compares the US to 16 peer countries.⁶⁴ Key findings include:

- The US has the lowest LE (by 2016, US female life expectancy was 3.2 years lower than peers' average, and US male life expectancy was 3.7 years lower)

⁵⁹ For another deep dive into life expectancy, see Bor, Choen, & Galea, *America: Equity and Equality in Health 5; Population Health in an Era of Rising Income Inequity; USA, 1980-2015*, vol. 389, The Lancet (April 8, 2017) (“Lancet Article”).

⁶⁰ County Health Rankings & Roadmaps, <https://www.countyhealthrankings.org/>, a Robert Wood Johnson Foundation program.

⁶¹ *United States Life Tables, 2017*, Vol. 68, Number 7, National Vital Statistics Reports (June 24, 2019); Devitt, *CDC Data Show U.S. Life Expectancy Continues to Decline*, AAFP News (December 10, 2018).

¹³² *Mortality in the United States, 2019*, No. 395, NCHS Data Brief (Dec. 2020).

⁶³ Harris, Majmundar, & Becker (Editors), *HIGH AND RISING MORTALITY RATES AMONG WORKING-AGE ADULTS*, (Washington, DC, The National Academies Press, National Academies of Sciences, Engineering, and Medicine 2021).

⁶⁴ The peer countries are: Australia, Austria, Canada, Denmark, Finland, France, Germany, Italy, Japan, Norway, Portugal, Spain, Sweden, Switzerland, the Netherlands, and the United Kingdom.

- The current gap between the US and 16 peers is the largest ever and expected to grow
- Compared to peers, the US alone has a declining life expectancy
- By 2010, the US had the lowest life expectancy for all age groups under 80 years old
- By 2001, the US had highest female working age mortality, by 2006 the highest male working age mortality
- In 2010, working age mortality began increasing in the US, while continuing to decline in peers

The researchers propose systemic changes needed to right this trend.

This study is also important for detailing the disturbing new phenomena of “deaths of despair.” The researchers devote an entire section to “The Role of Despair” and the current research and gaps in understanding:⁶⁵

“Despair” has been among the more controversial potential explanations for the rise in substance-related deaths. Despair signifies hopelessness, which is a feature of depression and other affective disorders but is not itself a formal mental health diagnosis. The notion that the past 30-year rise in working-age mortality is due in part to increasing psychological distress among working-age adults with lower education is appealing because it accords with long-term economic, family, and social changes that have increased disconnection from the people, activities, and institutions that provide support and give people purpose and meaning. While the committee could find no causal studies on the effects of changing psychological health on U.S. substance use and mortality trends, there is ample empirical support for the hypothesis that psychological health has been worsening among U.S. working-age adults and that proxies for despair (e.g., hopelessness, sadness, worry) are connected to substance use. Ultimately, measuring despair and determining causality remain key challenges for understanding the true role of despair in recent mortality trends. Qualitative research, which provides compelling evidence for the role of increasing despair in substance use and overdose, can offer insights for demographers,

⁶⁵ *Id.* at pp. 258 – 265.

economists, and epidemiologists who seek to develop and test strong measures of despair.”⁶⁶

For 2020, COVID-19 drove down life expectancy in the US. In July 2021, the National Center for Health Statistics released a provisional report on life expectancy estimates for 2020 and it’s dismal: “U.S. life expectancy at birth for 2020, based on nearly final data, was 77.3 years, the lowest it has been since 2003. Male life expectancy (74.5) also declined to a level not seen since 2003, while female life expectancy (80.2) returned to the lowest level since 2005.”⁶⁷ According to the report, COVID-19 accounted for 74% of the decline in life expectancy.

The final report on 2020 life expectancy, issued in December 2021, is even more gloomy – COVID-19 becomes the 3rd leading cause of death and mortality increases during 2020 for every age group (other than age 1 – 4). “In 2020, life expectancy at birth was 77.0 years for the total U.S. population—a decrease of 1.8 years from 78.8 years in 2019. For males, life expectancy decreased 2.1 years from 76.3 in 2019 to 74.2 in 2020. For females, life expectancy decreased 1.5 years from 81.4 in 2019 to 79.9 in 2020.”⁶⁸ From the provisional report, the final report has overall life expectancy, as well as male and female life expectancy, all declining another .3 years. One can imagine this trend continuing into 2021.

Studies have also found a correlation between income inequity and COVID-19. “Income inequality may increase opportunities for infection, as the most disadvantaged individuals need to stay in the labor force to afford to live in a region that also includes much wealthier residents. Moreover, individuals with lower incomes are more likely to reside in crowded housing and have public-facing jobs, such as service, child and elder care, and cleaning or janitorial services, which can increase the risk of exposure to SARS-CoV-2.”⁶⁹

In case you are wondering, yes, the US experience with COVID-19 and increasing mortality is worse than in peer countries. In general, life expectancy in peer countries also decreased in 2020

⁶⁶ *Id.* at p. 272.

⁶⁷ Provisional Life Expectancy Estimates for 2021, Rept. #15, NVSS Vital Statistics Rapid Release (July 2021).

⁶⁸ Mortality in the United States, 2020, NCHS Data Brief No. 427 (December 2021).

⁶⁹ Tan, Hinman, Magid, Nelson, & Odden, Association Between Income Inequality and County-Level COVID-19 Cases and Deaths in the US, JAMA Network Open (May 2021).

because of deaths from COVID-19, but the US fared worse than the rest.⁷⁰ Only Norway and Denmark saw overall mortality decrease during 2020 and life expectancy increase.⁷¹

3.5.2.3.3 Female Life Expectancy Advantage Narrows for Wealthy

Estate planners have long noted the female advantage in life expectancy. The common understanding has been that females live on average approximately 7 years longer than males of the same age. However, the JAMA Article clarifies that the female advantage narrows as income increases. At the bottom 1% of income, women at age 40, on average, live 6.2 years longer than men, but at the top 1% of income women only live 1.5 years longer than men.

Likewise, according to the Disability-Free Report, while the total 50-year-old female population of the study is expected to outlive men of the same age group by 3.2 years, the gap between both narrows to 1.4 years of disability-free life expectancy. At age 80, the difference disappears.

Another way to look at the data is making a relative comparison of life expectancy shortened by disability. On average, while a woman's disability-free life expectancy shortens overall life expectancy by 6.1 years or 7.2% at age 50, a man's life expectancy is reduced by 4.3 years or 5.3% at age 50. In effect, men enjoy some catch-up to women in disability-free life expectancy.

Knowing this data should force a realignment of thinking. For instance, frequently, spousal limited access trusts (so-called "SLATs") and qualified personal residence trusts ("QPRTs") are established based on the idea that the female in a heterosexual couple of the same age will enjoy the longer life expectancy. With this new life expectancy data, planners should approach that assumption more cautiously, especially when dealing with a very wealthy couple.

3.5.2.4 Life Expectancy and Education – Another Eye-Opener

Many studies have used level of education attainment as a measure or determinate in life expectancy.⁷² Similar to the correlation between higher income and longer life expectancy, higher education levels correlate with longer life expectancy. Likewise, survival gaps have also widened over the past 30 years by reference to education's impact on life expectancy: from 1990

⁷⁰ Aburto, Schöley, Kashnitsky, Zhang, Rahal, Missov, Mills, Dowd, & Kashyap, *Quantifying impacts of the COVID-19 pandemic through life-expectancy losses: a population-level study of 29 countries*, International J. of Epidemiology, (Sept. 26, 2021).

⁷¹ *Id.* See also, Juul, Jodal, & Barua, *Mortality in Norway and Sweden during the COVID-19 Pandemic*, Scandinavian J. of Pub. Health (Oct. 5, 2021).

⁷² For a review of these studies, see *Lancet* Article *supra* note 59 at p. 1480; *NAS Growing Gap* Article, *supra* note 58, at Chap. 3.

to 2008, overall men’s education-related life expectancy gap increased by 0.8 years while for women the gap increased by 2.6 years. For men and women with fewer than 12 years of schooling, the gap is even wider.⁷³

Level of education is also a socioeconomic indicator used by the Disability-Free Report. In line with the above, at age 50, for example, there is an absolute difference of 9 years between those in the high and low education cohorts.⁷⁴

3.5.2.5 Life Expectancy Implications for Family Wealth and Inheritance

Planning

3.5.2.5.1 Wealth Holder’s Needs

One implication of this expanding life expectancy data is that wealth holders must plan for their own financial security with a longer time horizon. Some companies are now offering individually prepared longevity analyses to enable individuals to better plan for their future needs, as well as engage in estate and wealth transfer planning. This may provide some individuals with greater confidence than just relying on age-based tables.⁷⁵

3.5.2.5.2 Inheritor’s Life Expectancy Impact

Families considering their wealth and inheritance planning should understand these statistics and that income and wealth have direct consequences to life itself in the United States. For wealthy families that can provide an inheritance, this information directly implicates the timing and relative economic impact of a potential inheritance on the life expectancy of the inheritor. In other words, the quantity and timing of the inheritance matters.

The JAMA Article relates to how long individuals will live on average measuring from age 40. For example, suppose that the potential inheritor is a daughter, age 40, productively working as an English literature teacher, which she describes as her calling and mission in life (i.e., she feels that she is flourishing!). Suppose she earns \$61,175 (the median household earnings among working individuals according to the JAMA Article). Her life expectancy is projected to be approximately 85 years⁷⁶ at the median income level, which is almost 4 years less than the 88.9

⁷³ *Lancet* Article *supra* note 59, at p. 1482.

⁷⁴ Disability-free Report, *supra* note 55, at p.4

⁷⁵ Mendelsohn, *Longevity Throws a Wild Card in Even the Best-Laid Plans*, J. Fin. Serv. Prof. (May 2017).

⁷⁶ See the interactive chart at Dr. Chetty’s website: <https://healthinequality.org/>

years in the top 1% of income.⁷⁷ Also, add another year or two to this difference in life expectancy to account for the point that future increases in life expectancy are likely to continue to be skewed in favor of the higher income earners.⁷⁸ Assuming that the daughter was born when her mother and father were both 30 years of age, and that one of her parents lives to age 100, the daughter would then be age 70 (*a la* Prince Charles) at the time. If the daughter inherits wealth at the death of her surviving 100-year-old parent, under the traditional approach to inheritance, she will have already lived at the median income with its median life expectancy results for over 30 years (i.e., from her age 40 to age 70). Alternatively, suppose that the parents supplement the daughter's income such that over this 30-year period her income is at the 95th percentile of \$224,000 (giving her approximately \$160,000 per year, which would be a moving target with inflation), after which she inherits the balance at the surviving parent's death. At the 95th percentile for income, the daughter's life expectancy is 88.3 years, within 0.57 years of the top 1%.⁷⁹ The parents approach to the financial inheritance may directly impact the longevity of this inheritor as distinct from Prince Charles waiting to inherit the kingdom!

This approach could also dovetail with the idea of equality of well-being and flourishing. The daughter in the above example is not being pushed to make more money because that is not the primary objective. The assumption is that she is flourishing in her career as she self-reports. She and the family can celebrate and savor her flourishing and the family can further support her well-being by supplementing her income consistent with the data points above.

These data points are so clear and critical. So much so, that professional trustees should start to consider this life expectancy/income correlation because it presents a definitive target for distributions driving well-being and for not jeopardizing beneficiaries' life expectancies. Perhaps distribution standards in trust instruments should also be reconsidered in light of this data – i.e., should the trust instrument require a minimum level of distributions such that the beneficiary's income (considering other income) is increased to a desired level as concerned life

⁷⁷ Using available data from the Disability-Free Report, her disability-free life expectancy is estimated to be 80 years of age, at the median income level, 3 years less than the 83.1 years in the richest group.

⁷⁸ Also, there are differences in life expectancy based on where the daughter lives (e.g., less life expectancy in Nevada vs. more in Washington, D.C. or Vermont).

⁷⁹ If the daughter in the example were a son, at the 50th percentile his life expectancy would be 81.69 years, at the 95th percentile it would be 86.15 years, and 87.34 at the 100th percentile (or top 1%).

expectancy, such as the 95th percentile of income as as illustrated in the English teacher example above?

3.5.2.5.3 WELLBYs

In "Living Long and Living Well: The WELLBY Approach," researchers from the London school of Economics merge the metrics of well-being theory with life expectancy to provide a more comprehensive analysis of human progress.⁸⁰ They posit that people want to live well and long, and created a new “WELLBY” measure. Adding life expectancy to the analysis, they suggest, transforms the understanding of human progress.

The US is 20th among nations in WELLBYs and significantly declined from 2006-08. The Nordic countries and Australia, New Zealand and Canada, which are best at promoting the well-being of their citizens, are also high in WELLBYs. While much of the world’s population experienced an increase in life expectancy over the past 15 years, the US’s increase was smaller and the US also had a fall in well-being, hence the US decline in WELLBYs.

The researchers believe that all government spending should be smartly used to produce the greatest possible WELLBYs. Likewise families can start to use quantitative information about well-being and life expectancy to drive spending.

3.5.2.5.4 Inheritor’s Well-Being and Flourishing

A benefit of transferring at least some of the financial inheritance during the lifetime of the parents is that it will be available sooner to the children and more remote descendants – perhaps through irrevocable trusts, designed as the parents deem appropriate. This enables a portion of the family wealth to be available to assist the descendants in their quest for well-being and flourishing. This likely also reduces the negative energy associated with a prolonged anticipation of inheriting wealth upon death, as well as mitigates the possibility of a cliff event (as noted in Section 3.5.5.3 below).

Consider the possible impact for a child to inherit a substantial inheritance in her 70s. For example, it is common knowledge that many 50-somethings reach a reflective point at the modern “middle-aged” and start to reconsider existing career choices. Frequently, they desire more meaning from their work and to know that their contributions are having an impact (i.e.,

⁸⁰ *Living Long and Living Well: The WELLBY Approach*, Chpt. 8, World Happiness Rpt. (March 20, 2021).

they want to flourish and be more self-transcendent). In some cases, prior career experience helps to define the new mission and how to pursue it, but people are frequently stymied by the high costs associated with a mid-life career change. Inheriting in their 70s is still helpful, of course. It may help with life in retirement, but the additional resources may be too late, at that age, to support pursuing the path they thought would provide more purpose and meaning as identified in their 50s.

If Queen Elizabeth lives to 100 years, Prince Charles would then be age 77. Imagine becoming King at 77. Chances are he might be able to reign approximately 8 years free of illness or disability. As extraordinary as that will be, there might be some sense of frustration at it coming so late in the life expectancy curve. Queen Elizabeth has said that she is anointed by God to be Queen for life, and that it is her duty to so serve.⁸¹ Therefore, in this construct, Prince Charles's fate is in God's hands (not his mother's). Contrary to the Windsors and their divine construct, an ordinary wealthy family could consider life expectancy and the real impact that the timing of an inheritance holds.

The suggestion is to transition wealth in a manner and time to allow the maximum well-being benefit. This research outlined above is important to families because it demonstrates that “circumstances,” as defined by Lyubomirsky et al. (see section 3.3.2), are objectively deteriorating US, especially for the economically disadvantaged, and therefore the families must work harder to maintain each family member's well-being.

3.5.3 U-Shaped Happiness Curve

In addition to the “Prince Charles Effect” and the life expectancy discussion above that supports moving to more of a lifetime transition of wealth, there is another body of interesting research that bears on the timing of inheritance and that is the so-called U-shaped happiness curve. This research reflects that an individual's well-being tends to change over that arch of his or her lifetime. Researchers have documented a particular pattern. Well-being starts to decline in early adulthood, then bottoms around the age of 48, and in later years starts to rebound, such that by age 70 most of the lost well-being has been restored. A longitudinal study looking at data from 132 countries shows this happiness U-shaped curve exists across the board:

⁸¹ Recently, reports indicate that in 2021, Prince Charles will start to take on more of the Queen Elizabeth's duties, but she is not expected to renounce or abdicate the throne. See, Pham, *Queen Elizabeth Is Expected to Step Down Sooner Than We Thought & We're Not Ready*, she knows (July 9, 2019).

*No ifs, no buts, well-being is U-shaped in age. I found evidence of that in one hundred and thirty-two countries, including ninety-five developing and thirty-seven developed. I found it in Europe, Asia, North and South America, in Australasia and Africa. I identified it in every member country of the European Union as well as a further thirteen European countries.*⁸²

The reasons for this pattern are not totally clear and may be situational for different people. Possible reasons include the “mid-life crisis,” financial hardship, dying parents, and career and life aspirations not matching lived reality. “In short, there is little convergence of explanations about the U-shape’s origins.”⁸³ The good news is that “studies show quite strongly that people’s satisfaction with their life increases, on average, from their early 50s on through their 60s and 70s and even beyond...”⁸⁴

Armed and forewarned about the impact of the U-shaped happiness curve, engaged families can establish interventions designed to blunt the impact declining mid-life well-being. For example, wealthy families can reduce or eliminate any financial hardship, which points more towards a lifetime transmission of wealth.

3.5.4 Expanded Well-Being

Expanded Well-Being in our model involves thoughtful family actions that help bring forward flourishing.

⁸² © Blanchflower, *Is Happiness U-Shaped Everywhere? Age and Subjective Well-Being in 132 Countries*, Nat. Bureau of Econ. Research (Jan. 2020).

⁸³ Weiss, King, Inoue-Murayama, Matsuzawa, Oswald, *Evidence for a 'midlife crisis' in great apes consistent with the U-shape in human well-being*, IZA Discussion Papers, No. 7009, Institute for the Study of Labor (Bonn 2012).

⁸⁴ Rauch, *The Real Roots of Midlife Crisis*, The Atlantic (Dec. 2014).

3.5.4.1 Flourishing

Flourishing is a state of being in which a person experiences an expansion of well-being. That happens when the person taps into his or her signature strengths in each of the five components of well-being (PERMA™ Theory of Well-being: **P**ositive emotion, **E**ngagement, positive **R**elationships, **M**eaning and **A**chievement).⁸⁵

Positive psychology founder, Dr. Martin Seligman, determined that there are 24 character strengths⁸⁶ that are 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. These 24 character strengths can be associated to 6 virtues endorsed by almost all religious and philosophical traditions that taken together to capture the notion of a good character (see figure 3 for detail).



Figure 3

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.

A way to start the route to flourishing is for every family member to take the VIA Character Strength Survey⁸⁷ and determine what are each person’s signature strengths. Sharing this information within the family can launch a path of convergence towards family supporting (emotionally and financially) individual’s well-being and flourishing.

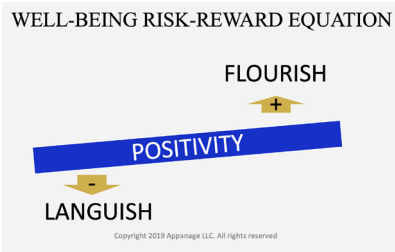
⁸⁵ FLOURISH, *supra* note 13, at p. 26. PERMA™ Theory is a Trademark of Martin Seligman, PhD, the founder of Positive Psychology.

⁸⁶ Seligman & Peterson, *The Values in Action (VIA) Classification of Character Strengths*, *Ricerche di Psicologia*, 27(1), 63-78 (2004).

⁸⁷ <https://www.viacharacter.org/survey/account/register>

3.5.4.2 Risk-Reward Equation for Well-Being and Flourishing

Figure 4



According to Dr. Barbara Fredrickson, positivity is the difference between languishing or flourishing.⁸⁸ Moreover, scientific studies show that “positivity doesn’t simply *reflect* success and health, it can also *produce* success and health.”⁸⁹ Fredrickson introduces ten forms of positivity, based on the most common emotions observed in people: joy, gratitude, serenity, interest, hope, pride, amusement, inspiration, awe and love.

For many, positivity is risky. The need to constantly monitor what can go wrong and be ready to react to adversity sets negativity or even pessimism as a safer effort. However, there is a vast amount of research proving otherwise as noted in section 3.2.2.

In particular, positivity has two main effects: it broadens a person’s mind and builds up the person’s best future. Through these two benefits and over time, the person is able to flourish.

3.5.4.3 Positive Psychology Interventions

Positive psychology interventions (PPIs) are intentional activities that cultivate positive emotions and behaviors to enhance well-being.⁹⁰ Trusts should be designed to permit and encourage investing funds into human development by teaching and coaching beneficiaries on using PPIs.

Likely the most refined definition of PPIs involves these component parts: (1) it builds on a positive variable (e.g., an element of well-being); (2) empirical data supports its efficacy; and (3) empirical data supports that improving the targeted variable will lead to a positive outcome.⁹¹

Importantly, the last two requirements eliminate self-help ideas with no research basis.

Positive interventions therefore aim to build character strengths and promote well-being, as opposed to simply fixing what is deficient or maladaptive. Such interventions foster positive outcomes by cultivating one or more facets of well-being, including positive emotions/pleasure,

⁸⁸ *Positivity*, *supra* note 17, p.19.

⁸⁹ *Id.* at p. 18.

⁹⁰ See Sin & Lyubomirsky, *Enhancing Well-Being and Alleviating Depressive Symptoms With Positive Psychology Interventions: A Practice-Friendly Meta-Analysis*, J. Clinical Psychology, p. 467 (2009).

⁹¹ Parks & Biswas-Diener, *Positive Interventions: Past, Present, and Future* (2016)(herein “*Positive Interventions Article*”).

*engagement relationships/support, meaning/purpose, and accomplishment/competence.*⁹²

A 2009 meta-study of 51 PPIs determined that PPIs significantly enhanced well-being and decrease depressive symptoms.⁹³ There are now a great many PPIs. Gratefulness and mindfulness are two of the most popular nowadays, but the menu of options is extensive.

Families should consider retaining a positive psychologist, coach or facilitator to assist them (and their other advisors) in developing and a plan of interventions designed to increase well-being and flourishing, which plan could be supported by the overall wealth and inheritance plan.

Rather than attempt to describe all the possible PPIs, below are a few specific ideas that families might consider. These are provided to convey an idea of the possible.⁹⁴

3.5.4.3.1 Evidenced Based Coaching

There is a growing body of research that coaching is one of the best PPIs that families can deploy.⁹⁵

Evidenced based coaching (EBC) uses the best current knowledge and practitioner experience to deliver coaching services. EBC relies on scientific theory and research and is distinguishable from typical coaching.⁹⁶ EBC may be particularly helpful in acting as an amplifier to other PPIs by creating greater retention and sustainability of their well-being benefits.⁹⁷ For example, after a family attends a workshop on identifying and using signature strengths, follow-up coaching would support and assist the family members in applying the new-found knowledge in a personally meaningful and relevant way, which makes the learning more personal, accessible and long-lasting.

Coaching is a valuable way for families to help individual family members grow and increase well-being, implement and sustain other PPIs, and help move disengaged members to flourishing. It can also help well-functioning and flourishing individuals to increase the quality

⁹² *Id.* at p. 248. Parks & Schueller, THE WILEY BLACKWELL HANDBOOK OF POSITIVE PSYCHOLOGICAL INTERVENTIONS, p.248 (Wiley 2014)(citations omitted)(hereinafter “WILEY HANDBOOK”).

⁹³ See Sin & Lyubomirsky, *supra* note 90, at p. 467.

⁹⁴ Importantly, the application of ideas are premised on individuals being normalized and not meeting the diagnoses criteria for mental disorders.

⁹⁵ See WILEY HANDBOOK, *supra* note 92, at p. 459.

⁹⁶ Green & Palmer, POSITIVE PSYCHOLOGY COACHING IN PRACTICE (Routledge 2019) (hereinafter “Positive Psychology Coaching”). There is a broad offering of coaching practices by coaches of diverse background and training. Only some of them offer EBC services.

⁹⁷ *Id.* at p. 6.

of their performance – i.e., up their game. Coaching is likely the “go to” PPI for families. Investing in coaching is one of positive ways to spend.

3.5.4.3.2 Prioritize Meaning in Daily Life

Parents want their children to have meaningful lives. Desiring a meaningful life is so fundamental to human nature that citing authorities is pointless. Recent research now shows that focusing on meaning and prioritizing it on a daily basis can lead to more meaning with all the attendant well-being benefits.⁹⁸

[T]hrough actively organizing daily routines to include meaningful activities, individuals can become aware of what is personally meaningful and of value to them, consciously focus their intention and energies to invest in them, and eventually contribute to their wellbeing. Prioritizing meaning may therefore be a useful construct to increase understanding of the role of these intentional activities and what it means to live a eudemonic lifestyle.⁹⁹

With this introduction to meaning and why daily prioritizing is important, consider using the Best Possible Self exercise.¹⁰⁰ It is considered one of the strongest PPIs. The exercise involves the individual visualizing herself at a future moment in time having accomplished her goals and committing this visualization to writing. When doing this, the individual could tie the exercise into her strengths by considering the signature (or lesser) strengths that she will use and the “meaning” that she will find by achieving her goals. A more detailed description of the exercise can be found [here](#). By imagining her best self and the steps to get there, she may start to see that she is actually beginning to increase prioritizing meaning on a daily basis. For example, “[r]esearch has found that positive images of the future pulls us forward into positive action by fueling us with hope and putting us on the road to finding solutions, helping us to realize we have the power to make things happen.”¹⁰¹ Part of the idea is that the individual committing her best possible self to writing helps to establish a more concrete plan and makes it more “real.”

⁹⁸ Russo-Netzer, *Prioritizing Meaning as a Pathway to Meaning in Life and Well-Being*, J. Happiness Studies (September 27, 2018). (For a summary of this research paper, see Russo-Netzer, *Why You Should Prioritize Meaning in Your Everyday Life*, Greater Good Magazine (March 2019).)

⁹⁹ *Id.* at ¶ 11.4 (citations omitted).

¹⁰⁰ Niemiec, *What is Your Best Possible Self?*, Psychology Today (March 29, 2013).

¹⁰¹ McQuaid, Niemiec, Domain, *A Character Strengths-Based Approach to Positive Psychology Coaching*, Chapt. 5, p. 76 of POSITIVE PSYCHOLOGY COACHING IN PRACTICE (Routledge 2019).

The visualization pulls her towards it. Perhaps she can also prioritize meaning on a daily basis then by taking daily steps towards this visualized goal.

This Best Possible Self exercise could be shared with the family.¹⁰² While each family member would do the exercise with self-determination and autonomy (i.e., what the daughter believes is her best possible self, and not what her mother believes is the daughter's best possible self), the family group might brainstorm on how the family could “positively” support the visualization becoming a reality. It would be critical that any such support not interfere with the self-determination of the individual family member.

According to a renowned group of professors collaborating from the fields of psychology, psychiatry, philosophy and neuroscience, the ability to think about possible futures is the defining human quality.¹⁰³ This capacity to conceive possible futures separates humans from all other species. Rather than “homo sapiens,” meaning wise man, these scholars believe that the apt term for humans is “homo prospectus” because of this forward-looking capacity. They state that forecasting positive future emotion drives one to deliver his or her best work.

If parents cannot be prospectively positive on behalf of their children, then who can? Parents ought to thoughtfully sharpen their future prospecting into a positive framework, one in which their children and grandchildren are not burdened by past mistakes or missteps. This involves truly believing and trusting in their ability to create a new reality in which they are becoming more and more their authentic selves and actualizing in their full potential. Think “future positive.” At a minimum, this is one way that families could support each family member's visualization of his or her best possible self.

3.5.4.3.3 Gratitude Visit/Letter

Another PPI intervention that should be particularly powerful in a family context is Gratitude Visit. Studies show that an individual writing a letter to someone to whom she is grateful and then delivering the letter in person increased happiness and reduced depression.¹⁰⁴ Expressing gratitude is especially powerful and meaningful when not done quickly and in passing. The task is to “write a letter of gratitude to this individual and deliver it in person. The letter should be

¹⁰² See WILEY HANDBOOK, *supra* note 92, at p. 410.

¹⁰³ Seligman, Railton, Baumeister & Sripada, HOMO PROSPECTUS (Oxford Univ. Press 2016) (hereinafter “HOMO PROSPECTUS”). See also, McCarthy, *Prospection: Psychology Turns to the Future*, The Psychology of Wellbeing (October 7, 2016).

¹⁰⁴ WILEY HANDBOOK, *supra* note 92, at p. 37.

concrete and about three hundred words: be specific about what she did for you and how it affected your life. Let her know what you are doing now, and mention how often you remember what she did. Make it sing.”¹⁰⁵ Other research shows that writing the letter without actually delivering it also led well-being benefits.¹⁰⁶

Parents might consider unilaterally employing this gratitude letter writing exercise – e.g., the parent writes a letter to the children expressing the parent’s genuine gratefulness for having the children in the parent’s life. The letter can then be read in their annual family meeting or gathering. Consider adding part or all of such letter to the Well-Being Trust and make it part of the permanent record.

3.5.4.3.4 Savoring

The idea of savoring is transforming positive experiences into joy. Savoring is the positive psychological counterpart to having coping skills.¹⁰⁷

For families of wealth, where access to the world and all it has to offer is available with ease, cultivating and nurturing a savoring capacity should be especially beneficial. The savoring PPIs might cover past, present and future experiences, and address savoring the experience, the process, response or beliefs. There is a growing body of research that these interventions provide significant well-being benefits.¹⁰⁸

One of the savoring exercises is for the individual to take a daily 20 minute walk and try to notice as many positive things around her as possible. Just becoming more fully aware of the positivity around her should increase her happiness. Research shows “that ‘habitual’ savorers are more likely to maintain happy mood in the absence of discrete positive life events, compared to people who do not consistently savor positive daily events.”¹⁰⁹ Research also shows that optimistic people get more from amplifying by savoring.¹¹⁰ Amusingly, the research even shows

¹⁰⁵ FLOURISH, *supra* note 13, at p. 30.

¹⁰⁶ *Positive Interventions* Article, *supra* note 91, at p. 13.

¹⁰⁷ Bryant & Veroff, *SAVORING, A NEW MODEL OF POSITIVE EXPERIENCE*, p. 2 (Lawrence Erlbaum Associates, 2007)(hereinafter “SAVORING”).

¹⁰⁸ WILEY HANDBOOK, *supra* note 92, at p. 96.

¹⁰⁹ Jose, Lim & Bryant, *Does savoring increase happiness? A daily diary study*, *J. Positive Psychology*, p. 185 – 186 (May 2012).

¹¹⁰ Jose, Lim, Kim & Bryant, *Does Savoring Mediate the Relationships between Explanatory Style and Mood Outcomes?*, *Positive Psychology and Wellbeing*, vol. 2(2), p. 161 – 162 (2018).

that savoring interventions may also help the “Type A” personality individuals enjoy vacation more!¹¹¹

Sharing with others is one of the strongest ways to savor an experience (e.g., going to a movie with a friend and talking about it afterward prolongs the experience). Why not use this savoring research and the resulting interventions within a family to increase their bonds. By sharing with other family members, the family can extend the savoring over time through reminiscing and recalling (e.g., recalling the grandparents’ 60th wedding anniversary celebration), sharing the moment (e.g., looking through a book of family photographs), and celebrating (e.g., family graduation party).¹¹²

3.5.4.4 Investing in Art and Beauty

While art is not yet considered a PPI (though that is the subject of current study), there is a vast amount of research that shows art has a positive impact on well-being.

Art experiences have been proven to contribute significantly to well-being. The Happy Museum project published a research study (by an economist at the London School of Economics) showing that visiting museums yields twice as much value to well-being as attending a sports performance.¹¹³ Research on creativity supports that creativity (without the need of personal creative skills) is an intervention to increase flourishing - “*kind of upward spiral for well-being and creativity: engaging in creative behavior leads to increases in well-being the next day, and this increased well-being is likely to facilitate creative activity on the same day.*”¹¹⁴

In *Homo Prospectus*, Dr. Seligman devotes an entire chapter to the role that creativity can play in flourishing and aging and, at the same time, argues that “creativity *can* increase even as we age.”¹¹⁵ Moreover, art has a quality of bringing forward individual’s positive nature and inner beauty building positivity. By deliberately engaging in art experiences, families can support flourishing.

¹¹¹ Smith & Bryant, *Are we having fun yet?: Savoring, Type A behavior, and vacation enjoyment*, Int. J. of Wellbeing, vol. 3(1), (2012).

¹¹² SAVERING, *supra* note 107, at pp. 113-115.

¹¹³ Fujiwara, *Museums and Happiness, the Value of Participating in Museums and the Arts*, Happy Museum Project (April 2013)(“finding that the individual wellbeing value of museums is over £3,000 a year, the report makes a strong case for investing in museums”).

¹¹⁴ Conner, DeYoung & Silvia, *Everyday creative activity as a path to flourishing*, J. Positive Psychology (Nov. 17, 2016).

¹¹⁵ HOMO PROSPECTUS, *supra* note 103, Chap. 11, at p.305.

The purpose of this section is not to provide an extensive list of research on the benefits of art and creativity but to raise the awareness of the potential that art and creativity carry for supporting flourishing. Positive psychology has proven a connection between the arts and well-being and this is another area in which thoughtful families can work to improve the well-being of their members.

3.5.4.5 Educating and Preparing Family for the Future

Supporting well-being and flourishing also means adopting a positive and inclusive education approach, but the idea here is to increase each family member's financial and estate planning acumen, and for each member to be aware of the social and psychological implications of living with wealth.

Traditionally, the death of a parent or other relative was the event that triggered a wealth transfer to the next generation. The timing of death is, of course, beyond a person's knowing. Therefore, in large measure, the traditional approach makes the entire process of wealth transfer subject to the vagaries of circumstances beyond the family's control. In families of substantial wealth, consider abandoning this outdated approach and taking more control of the wealth transfer process – e.g., the Well-Being Baseline section outlined some reasons why lifetime transfers of wealth may support greater life expectancy and well-being benefits.

Without planning, the infusion of a substantial inheritance upon an ancestor's death can be disruptive. It is by analogy a "cliff event" – meaning the inheritor has to scale the cliff face. The wealth should be beneficial and it certainly holds that potential. However, the inheritor may not be prepared for the wealth. The cliff face becomes a series of challenges: How will the wealth be invested and managed? Who can be trusted to assist the inheritor? How should the inheritor use the wealth (i.e., for new cars, houses, art, jobs, education, travel, gifts, investments)? How will the wealth affect the inheritor's relationships with other family members and friends? Moreover, these questions frequently come at a heartbreaking and emotionally charged time following a family member's death.¹¹⁶ These concerns all combine to make this an especially difficult time to be intentional, thoughtful and self-aware.

¹¹⁶ See O'Neill, THE GOLDEN GHETTO, p. 72 (The Affluenza Project 1997).

For example, if the inheritor quickly moves to a new and more affluent neighborhood, will he or she feel comfortable and connected in the new area? What are the occupations and backgrounds of the other homeowners? What commonalities are present? How will such a move affect the other family members, inside and outside the immediate household? Will the friends and neighbors left behind still feel comfortable being friends with the inheritor who now lives in a more upscale area? Newton's third law of motion – “for every action, there is an equal and opposite reaction” – may be apt here too, *but in the family context the reaction may be far greater than equal!*

A large inheritance has the potential to impact all aspects of the inheritor's life, both positively and negatively. Being prepared and knowledgeable is essential.

To prevent the inheritance from being an abrupt cliff face for the inheritor to climb (and perhaps tumble from), consider a model in which wealth is largely transferred during the ancestor's lifetime. Having a gradual transition over a long period of time can transform the cliff face into a steady incline that is far more easily climbed. A significant advantage of this approach is that the ancestor could simultaneously work with the inheritor to impart both her knowledge of wealth management and her philosophy relating to wealth. Think of how valuable it will be to the inheritor to have the benefit of the ancestor's approach to investment management and financial literacy, including introductions to investment advisors, accountants, attorneys, and the various other professionals who assist with the ancestor's wealth management. This is also the time for the inheritor to acquire a greater understanding of what it means to live with wealth and to prepare the inheritor for all of the ramifications – i.e., financial, social and psychological.

To be sure, the core suggestion of this paper is that families should be primarily focused on well-being and flourishing. These are the principal elements that should occupy the majority of the family's attention, but some attention is required to maintain the foundation, such as the family's capital, which is a critical resource supporting well-being in a modern, complex society.

It does not make any sense to expect the inheritor to handle her inheritance responsibly unless she is prepared adequately in advance. If not the ancestor, whose job is it to prepare the inheritor? Of course, this does not mean the ancestor must or should conduct all the training. Others can assist — for example, the specified professionals can explain their background and roles, and review their statements and work products. Similarly, wealth counselors can flesh out

some of the social and psychological complexities to create a deeper awareness of the effects that wealth can have upon a person’s life. All of this training should be focused on preparing the inheritor to use wealth as a resource for supporting his or her well-being and flourishing. Keeping the wealth protected for future generations to benefit from it in the same way might also be part of the approach.

Thoughtful education and a deliberate and ongoing transition should help avoid cliff events and prepare the inheritor for what lies ahead. The suggestion is to frame this approach as a shared journey that includes everyone, rather than just teaching or lecturing the young family members. After all, it really is a lifelong process of exploring individual and family values, strengths, and virtues, while simultaneously educating everyone and positively supporting the well-being and flourishing of all family members (young and old alike). As to the younger family members, a lifelong process is suggested because transitioning slowly over the arc of the parents’ lifetimes avoids the risk of an abrupt and unpredictable transition at the time of a parents’ passing – i.e., moving from cliffs to inclines.

3.6 Spend Positively

3.6.1 Money as an “Investment” in Well-Being

Wealthy families should be aware that research shows there are positive ways to spend (no,

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.

“invest” is the right word) money that add to well-being!¹¹⁷ There is a shocking absence of this information in the trusts and estate literature. Negative spending has garnered all the

¹¹⁷ Odom, *Family Benevolence: Money Transfer as an Investment in Well-Being*, presented at 2019 Fall ACTEC Meeting program entitled *Estate Planning in the 21st Century: Using Positive Strategies to Foster Client Happiness and Well-Being* (2019)(“People’s lives can be enriched by redirecting expenditures from things that provide fleeting joy to those that provide more substantial and lasting contributions to well-being.”)

attention. Families and professional trustees should become expert at this type of positive spending – no investing!

Reading the article “*A wonderful life: experiential consumption and the pursuit of happiness*,” which outlines many of the studies and their findings, is a good place to start.¹¹⁸ Highlights include:

- ✓ Experiential purchases can provide substantial and lasting contributions to well-being.
- ✓ People tend to lose satisfaction with material purchases more than with experiential purchases, and often satisfaction increases over time with experiential purchases.
- ✓ People then to later regret missing an experiential purchase more (missing the vacation) than having not bought a material item.
- ✓ The connection felt with others having the same experiential purchase is stronger than with the same material purchase.
- ✓ The story value and social reward of experiential purchases is greater than with material purchases.¹¹⁹
- ✓ Experiential purchases are associated with less social comparison.

It seems that experiential purchases also beat material purchases in the moment and not just when anticipating a future experience or reflecting back on a past experience. A recent study finds “greater hedonic return on experiential investments is broader still, with consumers getting more experienced utility [in the moment] from their experiential than their material purchases. Compared to buying possessions, purchasing experiences results in greater anticipatory, remembered, and experienced utility.”¹²⁰

3.7 Connect Philanthropy to Well-Being

3.7.1 Giving Back

Strategically “giving back” and using philanthropy are opportunities for families to promote within their members. Families can develop and harmonize an approach that gives back to their communities and the world, enhances family members’ well-being, and maintains balance by preserving family wealth as a tool in support of flourishing. There is no one size that fits all. This paper addresses why self-determination is a critical element in the family’s giving back.

¹¹⁸ Gilovich, Kumar & Jampol, J. Consumer Psychology (Elsevier, Aug. 2014).

¹¹⁹ *Id.*

¹²⁰ Kumar, Killingsworth & Gilovich, *Spending on doing promotes more moment-to-moment happiness than spending on having*, J. Experimental Social Psychology (Elsevier, Feb. 2020).

3.7.2 Giving back is Fundamental to Human Nature

Giving back, and doing good for others is part of human nature and experience – i.e., it is in our DNA. However, is philanthropy the only way? If so, is money the only vehicle for it? In answering these questions, consider the underlying forces that drive the human impulse to give and do good for others.

Philosophers, from Aristotle to our days’ theologians, economists and psychologists, have noted this desire: “human motivation includes an irreducible ‘hunger to help others’ ... ‘as powerful as the desire for profit or power’.”¹²¹ This motivation to give back is core to living a purposeful life.

Viktor Frankl believed that purpose comes from devotion to causes beyond one’s self. He thought that true happiness and self-actualization came as a result or by-product of promoting the happiness and well-being of others.¹²² “In other words, self-actualization is possible only as a side effect of self-transcendence.”¹²³

This human motivation and predisposition to give back comes first, with philanthropy being one way that society developed to actualize the need to help others. The former, not only precedes the latter, but it also gives origin to it. Philanthropy has been a convenient way to canalize human motivation to give back.

3.7.3 Philanthropy and Virtuous Action

Philanthropic activities have the potential to enhance human development by actualizing strengths and virtues of individuals. Moreover, in positive psychology¹²⁴ terms, engaging in virtuous actions, such as philanthropic activities, begins a cycle of building upon strengths and virtues that generate eudemonic happiness, which at the same time fuels the desire for more

¹²¹ Garnett, *Positive Psychology and Philanthropy: Reclaiming the Virtues of Classical Liberalism*, Conversations on Philanthropy, Vol. V, p. 5 (2008) (citations omitted).

¹²² Bronk, Chapt. 5, *The Importance of Purpose*, in POSITIVE PSYCHOLOGICAL SCIENCE, IMPROVING EVERYDAY LIFE, WELL-BEGING, WORK, EDUCATION, AND SOCIETIES ACROSS THE GLOBE, p. 237 (Edited by Donaldson, Csikszentmihalyi, & Nakamura, 2nd Ed., Routledge 2020).

¹²³ Frankl, *MAN’S SEARCH FOR MEANING*, p. 111 (Beacon Press, 1959).

¹²⁴ Positive psychology is recognized as the scientific study of the conditions that enable individuals and communities to flourish. Seligman & Csikszentmihalyi, *Positive Psychology: An Introduction*, American Psychologist, pp. 5 – 14 (February 2000). The field is founded on the belief that people want to lead meaningful and fulfilling lives, to cultivate what is best within themselves, and to enhance their experiences of love, work, and play. To gain a foundation in humanist psychology, see these resources: Maslow, A.H., *A Theory of Human Motivation*, Psychological Review, vol. 50, p. 370 (1943)(accessible [here](#)); Maslow, *The Farther Reaches of Human Nature*, Journal of Transpersonal Psychology (Spring 1969); Rogers, *ON BECOMING A PERSON* (Houghton Mifflin Harcourt Publishing Co., 1961). To gain a foundation in positive psychology, see these resources: Seligman, *AUTHENTIC HAPPINESS* (Atria 2002); Seligman, *FLOURISH* (Atria 2011); Parks & Schueller, *THE WILEY BLACKWELL HANDBOOK OF POSITIVE PSYCHOLOGICAL INTERVENTIONS* (Wiley 2014).

virtuous actions. This cycle builds psychological capital for the individual, which leads to lasting gains in life satisfaction and a deeper sense of happiness.

Philanthropy and giving back support human flourishing because virtuous actions are required.

Virtuous actions are variously defined by positive psychology literature as gratifications, excellences, or flow activities that ‘engage you fully, draw on your strengths, and allow you to lose self-consciousness and immerse yourself in what you are doing.’ By linking virtue to each person’s unique strengths, the positive psychologists emphasize the subjective, discovery dimension of virtuous action.¹²⁵

Virtuous actions, as defined, are not limited to philanthropic activities nor are they related to money. The key is to align personal strengths and virtues in doing good for others. This opens up the discussion to include other ways to give back. See the stories in Appendices A and B as illustrations of other ways to give back.

3.7.4 Self-Transcendence

Recall from college psychology, Dr. Maslow’s hierarchy of needs and motivations for a moment. He added a top layer to his original pyramid to include self-transcendence as a last stage after self-actualization.

Transcendence refers to the very highest and most inclusive or holistic levels of human consciousness, behaving and relating, as ends rather than means, to oneself, to significant others, to human beings in general, to other species, to nature, and to the cosmos.¹²⁶

In Dr. Maslow’s vision, once an individual reaches a stage of self-transcendence, he or she gains a consciousness that includes others and, potentially, the whole of creation. From that point of view, individuals grounded in their core self – unfolding their strengths and virtues – are prone to desires to do good for others.

3.7.5 Philanthropy and Family Wealth

¹²⁵ Garnett, *supra* note 121, at p. 7 (citations omitted).

¹²⁶ Maslow, *The Farther Reaches of Human Nature*, p. 269 (New York, 1971).

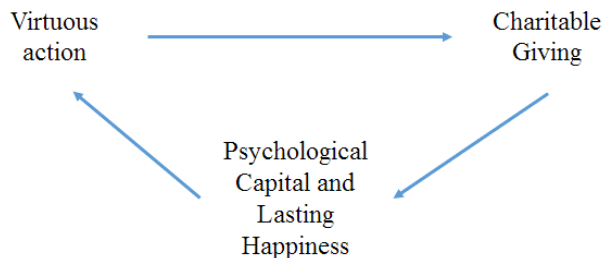
3.7.5.1 Connect Philanthropy to Well-Being

Families should consider connecting philanthropy to well-being. Philanthropy offers a modality for human development and a meaningful pathway to lasting happiness. It has the potential of playing a supporting role in family wealth planning.

Positive psychology teaches that charitable giving can contribute to an enduring level of happiness and well-being. “People who practice gratitude report stronger immune systems, more positive emotions, lower blood pressure, increased happiness, more compassion, and fewer feelings of loneliness.”¹²⁷ Giving increases happiness and happiness increases giving, creating a positive feedback loop.¹²⁸

[The] research literature provides pretty strong evidence that feeling happy causes people to give and help more, and that giving and helping cause increases in happiness and subjective wellbeing, and decreases in negative affect. In fact, there seems to be a positive feedback loop such that happiness begets giving and giving begets happiness and so on.¹²⁹

Exercising strengths and virtues and experiencing personal growth and happiness are connected. In the charitable context, think of the transcendent character trait of gratitude. One impact is that when a person gives, he or she becomes grateful for having something to give. The long and short of it is that personal growth through virtuous activities, such as philanthropy, leads to lasting happiness and well-being!



This might come from the satisfaction of having given money to a cause that the donor finds worthy. For example, I recently learned of a local initiative that sounded thoughtful, and its goal appealed to me. I had no personal involvement in the initiative, but it still made me feel good to financially support the dedicated efforts of others working towards this goal. Even though personally disconnected, I felt positive emotion by supporting the initiative.

¹²⁷ Gratitude and giving: Dual Benefits of Philanthropy in Every Day Life (Embolden 2017).

¹²⁸ Anik, Aknin, Norton & Donn, *The Benefits (and Costs) of Self-Interested Charitable Behavior*, p. 12 (Harvard 2009).

¹²⁹ Konrath, *The Power of Philanthropy and Volunteering*, p. 399 (INTERVENTIONS AND POLICIES TO ENHANCE WELLBEING: WELLBEING: A COMPLETE REFERENCE GUIDE, Vol. VI, John Wiley & Sons, Inc., 2014).

Positive emotion might also come by following faith-based principles, which for millennia have guided individuals to give. Even today, a religious connection appears to motivate greater charitable giving to both religious and secular charities. A 2013 study found that among religiously affiliated Americans, 65% made charitable gifts compared to 56% of those claiming no such affiliation.¹³⁰

Greater positive emotion is possible with charitable gifts that are connected with personal involvement and the desire to achieve a specific goal.¹³¹ The involvement might be helping to build a house, cleaning a watershed area, serving food to the homeless, delivering meals to the elderly during a pandemic,¹³² or thousands of other examples of personal involvement and commitment to giving back.¹³³ It might also be acting as a director on a charitable board and giving of professional talent. The personal involvement may have originated from having been personally affected by an event such as a disease or natural disaster. Whatever the personal connection, giving to these causes is more meaningful and organic – often closely related to the individual’s values – and likely to provide the greatest emotional gratification.

Philosophically, some might be bothered that the proposal to connect philanthropy to positive emotion is not consistent with pure altruism – i.e., a truly selfless act. Ignore this concern, or perhaps adopt a definition of altruism that contemplates the extension of self to include the concerns and needs of others.¹³⁴ Either way, charitable giving that produces positive emotion for the donor is a virtuous and proper exchange, and society is all the better for it. If one starts from the assumption that people are good and positive at their core, it makes perfect sense that someone feels good from doing good. It is a natural and human character trait.¹³⁵ So embrace the humanity in philanthropy.

¹³⁰ Daniels, *Religious Americans Give More, New Study Finds*, The Chronicle of Philanthropy (November 25, 2013).

¹³¹ A closely related point is that research suggests the greatest emotional reward comes from spending on someone close in relationship. Aknin, Sandstrom, Dunn & Norton, *It's the Recipient That Counts: Spending Money on Strong Social Ties Leads to Greater Happiness than Spending on Weak Social Ties*, (PLOS ONE Feb. 10, 2011).

¹³² Christakis, *APOLLO'S ARROW*, p. 206 (Hachette Book Group 2020).

¹³³ Training the next generation of philanthropic leaders, the University of Maryland’s *Do Good Institute* seeks to transform students’ “idealism into extraordinary outcomes through rich learning experiences built on real-world application.”

¹³⁴ Zwick & Fletcher, *Levels of Altruism*, Portland State Univ., p. 4 (October 21, 2015).

¹³⁵ Research suggests that the “benefit” to the donor does not impact the desire to give: “While offering donors monetary or material incentives for giving may undermine generosity in the long-term, our preliminary research suggests that advertising *the emotional benefits* of prosocial behavior may leave these benefits intact and might even encourage individuals to give more.” Anik, Aknin, Norton & Donn, *The Benefits (and Costs) of Self-Interested Charitable Behavior*, p. 17 (Harvard 2009)(emphasis supplied).

It is important, however, to understand what is not being suggested. The potential for greatest positive emotion and enhanced well-being comes from giving to projects that have a close personal meaning to the donor.¹³⁶ That is, giving of time, money or resources to a cause about which the donor actually cares has the potential to increase well-being. For example, a donor who has creativity as a signature strength might derive well-being by supporting a local charity (with funds and time) that gives theatre and art classes to underprivileged students in the summer. In this dynamic, the act of giving is connected to the donor's strengths and virtues. The resulting boost in well-being is a natural result – it is authentic – and the science is there to indicate the boost is long-term. Giving solely to receive the boost in well-being may not be the best approach.

There is more here than meets the eye. Positive psychologists view philanthropy as a unique pathway to connect with the world and increase happiness for the donor. They recognize that the act of giving creates new resources – i.e., it transfers resources to the recipient and creates a lasting psychological benefit to the donor. The donor's benefit is described as “gratification” rather than a pleasure because the act requires the donor to use his or her strengths to meet the challenge. There are mutual benefits to the donor and recipient, a mutual uplift and social learning.¹³⁷

Beyond the benefits to psychological well-being, studies demonstrate an association between generous behavior and physical well-being, which thoughtful families will not ignore. The data shows that giving helps to reduce the risk of illness and mortality and lowers rates of depression. Teens participating in philanthropic activities may see health benefits 60 or 70 years later. Adults over age 50 who volunteered on a regular basis were less likely to develop high blood pressure than non-volunteers.¹³⁸

For these reasons, families should consider connecting philanthropy to well-being.

¹³⁶ *2018 U.S. Trust® Study of High Net Worth Philanthropy. Portraits of Generosity*, U.S. Trust & Indiana U. Lilly Family School of Philanthropy, p. 27 (2018) (“Further reinforcing the notion that giving is an expression of personal values and circumstances, 77 percent of donors at least sometimes give to remedy an issue that has affected them personally, or the lives of a family member or close friend. Nearly as many (73 percent) at least sometimes make a donation to honor someone they know or respect.”)(hereinafter “U.S. Trust Philanthropy Study”).

¹³⁷ Garnett, *supra* note 121, at p. 7.

¹³⁸ Rea, *Volunteering Reduces Risk of Hypertension In Older Adults. Carnegie Mellon Research Shows*, Carnegie Mellon University Press Release (June 13, 2013).

3.7.5.2 Find Opportunities to Connect to Well-Being

In the context of family well-being, not connecting philanthropy to well-being is a missed opportunity. Philanthropy can thoughtfully connect with positive emotion and meaning by helping to establish shared values, as well as expand life experiences and stimulate connections with diverse people and places of the world. Think of the possibilities! For example, research shows that giving time to charitable causes helped young people develop a sense of purpose and a healthy connection to their community.

Imagine a wealthy business owner says: “Daughter, I am giving \$10 million to the XXYYZZ Foundation because I believe in their goal of ridding the world of infectious diseases.” Making such a significant gift ought to provide positive emotion to the business owner. Now, reimagine the situation if the business owner instead says “Daughter, I have been thinking about our family making a significant and lasting impact on ridding the world of infectious diseases. The XXYYZZ Foundation is involved in ground-breaking work in this area and the potential social impact is too significant to ignore. I would really like you to explore this with me. Please come with me to their world headquarters in Geneva, and then we will visit several of their field hospitals in sub-Saharan Africa.” Research shows that older family members are not frequently involving younger family members in their charitable giving:

Yet when it comes to the management of multi-generational wealth and the importance of charitable giving to it, just one in five donors involves multiple generations of family members in their giving discussions and decision-making. Similarly, 21 percent of those who have children, grandchildren or younger relatives involve them in charitable discussions. Only one percent talk with parents or grandparents, while three percent are talking to both younger and older generations in the family.¹³⁹

Philanthropy holds the potential to be a positive force that helps each family member pursue a good life as he or she defines it, including contribution and engagement in their communities and beyond. Thoughtful families should use charitable giving to cultivate and promote the best in

¹³⁹ U.S. Trust Philanthropy Study, *supra* note 136, at p. 48.

their members by connecting it with each member's well-being, perhaps particularly thinking in terms of their strengths and virtues.

3.7.5.3 Sterile Philanthropy and Vicarious Positive Emotion

Families should question the purpose of charitable giving not connected with positive emotion and well-being. This may occur in many ways. For example, Warren Buffett has for years been promoting his "Charitable Pledge" to the world's billionaires. This is a commitment by the world's wealthiest individuals and families to dedicate the majority of their wealth to philanthropy. However, without a personal connection or involvement, the potential impact to well-being will be dulled. Is this a form of "sterile philanthropy" and what is the justification? Is it evolving from a sense of guilt or shame, or from a sense of duty, or desire to make a positive impact, or other reasons related to mitigating the risks of inherited wealth?

Will Mr. Buffett's surviving family vicariously enjoy some degree of positive emotion related to his philanthropy? Perhaps! There are many cases where the surviving family share the same passion that originated with the ancestor for a particular cause or project.

For example, Andrew Mellon was instrumental in establishing and seeding the National Gallery of Art in Washington, D.C. In 1936, Mr. Mellon offered to donate his art collection and substantial funds for a new national art museum.¹⁴⁰ His descendants likely feel pride at the accomplishment and vicariously enjoy a degree of positive emotion. After all, researchers have noted that the boost to well-being is possible by shifting one's thoughts to making others happy.¹⁴¹ It is an astonishing feat and gift to the Nation, which likely involved Mr. Mellon using some of his strengths and virtues in pursuing the project. Mr. Mellon's children seemed to share his passion for art and were themselves charitably inclined. They also made significant donations of art and funds to the National Gallery, including financially supporting the construction of the contemporary East Wing in 1967. It appears that the Mellon family remain supporters of the gallery.¹⁴²

Mr. Mellon and his family's efforts are, in large measure, an act of project-based philanthropy. Their project lives on in perpetuity as an enduring tribute. It is a tangible physical place that they

¹⁴⁰ National Gallery of Art, [About the Gallery](#) (2019).

¹⁴¹ Konrath, *supra* note 129, at p. 414.

¹⁴² On the 75th anniversary of the gallery, the Andrew W. Mellon Foundation pledged \$30 million if the gallery raises \$45 million within five years. Roberts, [The National Gallery celebrates 75 years, thanks to old-fashioned philanthropy](#) (Wash. Post 4/7/16).

can go and touch. If one can envision vicarious positive emotion emanating from an ancestor's philanthropy, consider if the tangible existence of the gift makes any difference in being able to summon the emotion.

Contrast the Mellon example with simply deciding that an arbitrary amount or proportion of a donor's wealth will be directed to charitable causes without a defined purpose or project, which might be described as the more sterile form of philanthropy. Also, in the context of a family, consider whether philanthropy should be primarily designed with a present and forward-looking prospective – i.e., to facilitating an enduring level of happiness for those family members that are living from time to time by exercise of their strengths and virtues in service of something larger than themselves.

3.7.5.4 Freedom of Self-Determination

What is meant by taking a “forward-looking perspective?” This reaches the point that self-determination and autonomy by the donor is a key element of philanthropy designed to increase positive emotion and well-being.¹⁴³ This is because each individual has unique strengths and virtues that might be gratified through charitable gifts. Dr. Martin Seligman, regarded as the father of positive psychology, teaches that authentic happiness derives from exercising strengths and virtues (gratifications) and these are decidedly individual character traits. According to Dr. Seligman, voluntary action in developing each family member's happiness is “the single most important issue in positive psychology.”¹⁴⁴

*Philanthropic actions thus expand our individual capacity and desire for philanthropic giving. In addition to material resources, “humane capital” includes the individual's unique strengths and virtues, the local and tacit knowledge of where and how these strengths and virtues might most effectively be exercised ...*¹⁴⁵

The 2019 World Happiness Report provides an excellent discussion of the factors likely to encourage prosocial behavior, considering research from around the world, and specifically

¹⁴³ “Interventions that people freely choose to engage in – and carry out with a high degree of autonomy – tend to be more successful for reducing depressive symptoms and enhancing well-being than interventions to which people are assigned.” Wen, Lyubomirsky & Sin, Chapt. 13, *Positive Activity Interventions Targeted to Improve Depressive Symptoms*, in POSITIVE PSYCHOLOGICAL SCIENCE, IMPROVING EVERYDAY LIFE, WELL-BEING, WORK, EDUCATION, AND SOCIETIES ACROSS THE GLOBE, p. 237 (Edited by Donaldson, Csikszentmihalyi, & Nakamura, 2nd Ed., Routledge 2020)(citations omitted).

¹⁴⁴ AUTHENTIC HAPPINESS, *supra* note 30, at p. 45.

¹⁴⁵ Garnett, *supra* note 121, at 9.

recognizes the importance of autonomy in philanthropy to derive the well-being benefit. “[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.”¹⁴⁶ The emotional benefits of giving disappear if the individual feels the generosity is required or effectively required to evade disapproval.

An interesting illustration of the power of self-determination in philanthropy is that of rock legend Freddie Mercury as depicted in the academy award nominated film *Bohemian Rhapsody*.¹⁴⁷ At the beginning of the movie, Freddie’s father says to him “good thoughts, good words, good deeds,” which comes from their Parsi community's Zoroastrian faith. With indignation, Freddie questions what that philosophy has done for his father, as he storms off to a nightclub to see a rock band. His father seems to disapprove of Freddie’s pursuit of music, but Freddie is called by his overwhelming unique strength of vocal gifts. The story concludes with Freddie commanding one of the all-time greatest rock performances at Live Aid, thereby individually exercising his strengths and virtues in service of philanthropy. In the end, the film comes full circle with Freddie repeating the phrase “good thoughts, good words, good deeds” to his father, who at this point is astonished by the power of his son’s virtues. Freddie had heard his father’s words, but it took time for Freddie to actualize in their potential, and this rested on his self-determination of using his distinctive strengths and virtues in giving back.

Therefore, families should consider adopting and adhering to a principle that each individual family member has the knowledge of how best to deploy and exercise his or her strengths and virtues through charitable giving. Allowing each family member this degree of freedom and self-determination is an impactful way families can use philanthropy to support their respective growth and development.

¹⁴⁶ [World Happiness Report 2019, Chapter 4](#) (United Nations Sustainable Development Solutions Network, 2019).

¹⁴⁷ [BOHEMIAN RHAPSODY](#), 20th Century FOX, released November 2, 2018 (USA). For this purpose, the depiction in the movie is simply being used without any attempt to ascertain the true facts of Freddie Mercury’s life, relationship to his parents or philanthropic nature. The imagery of the movie is being used for the sake of illustrating the power of connecting philanthropy to an individual’s unique strengths and virtues.

3.7.5.5 Self-Determination in Foundations, CRTs and CLTs

When John Emory Andrus, a chemical manufacturer and investor, died a century ago, he left 45% of his estate to establish the Surdna¹⁴⁸ Foundation, which is now one of the 100th largest foundations with about \$1 billion in assets. The current board, still consisting of a majority of family members, began to focus on social justice causes relating to income and wealth inequality. Some of the now 5th-generation descendants complained that with this new focus, the board betrayed the founder's wishes. Reportedly, Mr. Andrus's charitable giving was devoted to an orphanage, homes for the aged, hospitals and churches. One of the complaining descendants said, "This is not what John Emory Andrus wanted. Shouldn't we honor him?" In a January 30, 2019 opinion article, the Wall Street Journal published an account of the family's squabble.¹⁴⁹ The family member serving as the current chair of the board responded in a letter-to-the-editor that the foundation's documents did not list any specific wishes for spending, and that the board felt that it was carrying out Mr. Andrus's intentions.¹⁵⁰

Another commentator on the Surdna Foundation story asserted that many such foundations had gone astray, and if one was to start a foundation, he or she should consider giving while alive or requiring the foundation to spend its assets within a defined period of time before it could be hijacked.¹⁵¹ Surely, those are some approaches to prevent "hijacking" and the related ailment of "mission drift." Another remedy to these perceived problems is that "a charity formed trust has the distinct advantage of being difficult to hijack." This is because trusts are subject to the higher burden to effect changes, typically requiring a court proceeding to prove the charitable purposes are impossible to fulfill.¹⁵²

Fortunately, there are other options for families to consider. If the living members of Mr. Andrus's family are to use their own strengths and virtues in spending the foundation's money, they must do so with self-determination. This allows the living family members to connect their philanthropic efforts to the causes they find meaningful. Simply continuing to spend the funds in the same way that Mr. Andrus found meaningful in 1918 may not be the most helpful for his

¹⁴⁸ The name is an anagram of Andrus spelled backward.

¹⁴⁹ Piereson & Riley, *A Battle Over a Capitalist's Legacy* (WSJ, Jan. 30, 2019).

¹⁵⁰ Benedict, Letter to the Editor, *Surdna Foundation Honors Founder's Wish* (WSJ, Feb. 7, 2019).

¹⁵¹ Walter, Letter to the Editor, *Surdna Foundation Honors Founder's Wish* (WSJ, Feb. 7, 2019).

¹⁵² McCoy & Miree, FAMILY FOUNDATION HANDBOOK, p. 2080 (CCH 2012)(other stories of "hijacking" are provided on pp. 2078 - 2079).

family 100 years later. There is a choice here. Whose positive emotion and well-being is being supported by the philanthropy? Does the founder wish to design the foundation and charitable giving with a forward-looking perspective?

The Surdna Foundation documents are apparently not specific as to the foundation's grant making parameters. Families should intentionally design their foundation documents (or any planned charitable gifts) to be specific, but in terms of a forward-looking perspective. For example, the foundation's controlling instrument, such as its bylaws, might provide as follows:

[Article __

Vision

The vision of this Foundation is that "giving back" is an opportunity for us to contribute to our communities and the world. Giving back and doing good for others is a reflection of our human nature.

My own philanthropic mission and passion is related to the arts because of my belief that art is a transformative experience that provides positive emotion and contributes to well-being. I wanted to help share this experience with others. I would like, but do not require, that the Board continue supporting the arts by using up to, but no more than, twenty-five percent (25%) of the Foundation's annual net income. I would like the balance of the Foundation's annual net income to be used as described below.

Except for my stated desires in the preceding paragraph, 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.

The Board should become expert at facilitating circumstances that allow each family member to deploy and exercise his or her own strengths and virtues, with self-determination, through charitable giving. It is my belief that this will unleash creativity, innovation and the power of individual freedom, and that this will enable our family to do even more towards making the world a better place.

For example, subject to final Board approval, each family member, respectively, could “advise” the Board as to making grants with respect to a set amount or percentage of the Foundation’s net income.

Alternatively, the Foundation might set-up separate donor advised funds named for each family member, respectively, with such family member designated as the fund’s advisor. A set amount or percentage of the Foundation’s net income could be given annually to each such donor advised fund.

It is my hope that the Board and my family will take this beginning and further develop and improve the power of connecting philanthropy to an individual’s unique strengths and virtues, as circumstances and knowledge develops. My family is not limited to what is written here. The Foundation and these bylaws are the beginning chapter of what I hope is a long and enduring story of our family’s philanthropy. I encourage my family to create and innovate something meaningful beyond my imagination for the future. I trust that they will do just that.

In this sense, the founder recognizes that an evolution in the foundation’s mission is likely, and that such evolution is expected and desired because this structure best supports the living family members and their flourishing. After all, history has taught us that the only constant in the passage of time is “change”!

Of course, families need not consider this an all or nothing, zero-sum game. The family could agree that some portion of the family’s foundation assets and grants be devoted to the causes that

the founder supported, but another portion, perhaps the larger portion, be devoted to supporting the causes that the family members, living from time to time, find meaningful because this is best for their well-being and flourishing.

This same idea of connecting philanthropy to the unique strengths and virtues of each family member could be used for charitable remainder trusts (CRTs) and charitable lead trusts (CLTs). For example, a CRT could end on the death of a parent with part of the remainder passing to the charity of the parent's choice, and the other part of the remainder divided among separate donor advised funds for each child and/or grandchild (i.e., each descendant becomes the advisor of his or her fund).

Article ____

Distribution to Charity

At the termination of the Unitrust Period, the Trustee shall distribute the smaller of (i) \$Two Hundred Fifty Thousand (\$250,000) as adjusted for inflation and (ii) the then principal and income of the Trust (other than any amount due the First Recipient and/or the Second Recipient under the terms of this Trust) to the State University of Great State, for the purpose of funding scholarships to needy law students (like I was when I attended). The balance of such remaining principal and income (the "Residue") of the Trust, if any, shall be distributed as follows: The Trustee shall establish a separate donor advised fund at the Metropolitan Area Community Foundation named for each of my then-living children (or in the case of a then deceased child, a separate donor advised fund shall be established for each then-living child of the deceased child, and so on). The Trustee shall appoint the descendant for whom a donor advised fund is named as the advisor to the fund, with the power to name his or her successor. The Trustee shall distribute the Residue in equal shares to such donor advised funds named for each of my then-living children (or such an equal child's share shall be further divided into equal shares among the donor advised funds established for the then-living children of a then deceased child of mine, and so on). In the event that the Metropolitan Area Community Foundation is not a Qualified Charity at the termination of the Unitrust Period, then the

Trustee shall establish the donor advised funds at another community foundation that is a Qualified Charity, in the Trustee's sole discretion.

The reasoning for the Residue distribution as provided above is based on my belief 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 well-being benefits of philanthropy each family member must have the freedom to pursue giving using his or her unique strengths and virtues. I want my children to actualize in their potential for giving and well-being, and this rests on individual self-determination. Therefore, I intend and hope that funding separate donor advised funds with the Residue will help facilitate an enduring level of happiness for my children by each of them respectively exercising of their strengths and virtues in service of something larger than themselves.

Likewise, CLTs could pay the lead interest each year to separate donor advised funds for each child (or descendants of a deceased child). For large CLTs that are distributing substantial lead annuity or unitrust amounts each year, separate foundations for each child could be used in place of donor advised funds to allow for greater flexibilities in pursuing the philanthropic activities.

3.7.5.6 What's the Essential Nature of the Family's Philanthropy?

Families should also consider the essential nature of their philanthropy. Mr. Andrus focused his philanthropy on the underprivileged, orphaned, and the aged without resources. The current board of the Surdna Foundation is by some measure also focused on addressing one of the concerns that may be a barrier to social advancement – i.e., wealth and income inequality. Arguably this is another side to helping the underprivileged. From this point of view, Mr. Andrus might be thrilled at the engagement of his descendants. Is engagement the point?

Philanthropic families could consider the following questions: What is the enduring legacy of the philanthropy? Is it one project, such as Andrew Mellon and the National Gallery of Art? Is it the concept of engagement on something beyond or larger than themselves? If the founder accomplishes having the family engaged on something beyond or larger than themselves, and

this is enduring in the family over time, does the “something” really matter, and if so, to what degree?

3.7.5.7 Stand on Its Own Merit; Not a Panacea

Few would question the idea that philanthropy has merit on its own. It has the potential of being positive and life affirming, for the people and causes that receive and the donors and families that give. The suggestion here is to keep charitable gifts on this positive plane. Avoid the temptation to use charitable gifts as a means to limit or punish the family. Some wealth holders have seized on the idea of giving the bulk of their wealth to charity, rather than their families, over concerns associated with the risks of inherited wealth – i.e., that inherited wealth could produce lazy, profligate heirs.¹⁵³ This shifts the purpose of the philanthropy away from being based on its own merit to the best alternative for addressing the risks of inherited wealth. In this dynamic, the potential well-being benefit for the family is lost. Even the wealth holder may feel that it is not what he or she really desired, but that it is the course pursued to address the wealth risk concern. The heirs may likewise feel negatively about it. There are better ways to mitigate the risks associated with inherited wealth than disinheritance,¹⁵⁴ leaving philanthropy to stand on its own merit, and in that framework it retains its positivity and potential for enhancing well-being.

3.7.6 Conclusion on Giving Back and Philanthropy

Frequently parents are bewildered with how to promote values and virtues among their children and grandchildren. This section 3.7 presents one deliberate, positive and inclusive step that parents can take. Establish an approach to giving back and philanthropy that is centered on the self-determination of each family member. The research shows that this approach best mediates the children and grandchildren’s strengths and virtues being developed and deployed in service of prosocial causes that are meaningful to them. This in turn increases their well-being.

3.8 No Silent Trusts – Rather Support a Shift in Control by Requiring Trust Information be Distributed and Explained

¹⁵³ See e.g., Halpert, *Boomers mimic Warren Buffett when it comes to inheritances* (CNBC, March 9, 2015); Roxanne Roberts, *Why the super-rich aren’t leaving much of their fortunes to their kids*, (Wash. Post, Style section, Aug. 10, 2014).

¹⁵⁴ Franklin & Tordini, *Well-Being Supported by Family Wealth – A Foundation to Flourish*, Bloomberg, Vol. 45, Estates, Gifts and Trusts Journal, Number 3 (May 7, 2020).

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].*

3.9 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.*

3.10 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.*

National governments, such as England, Scotland, Wales, New Zealand, UAE and Bhutan are incorporating some of the principles of positive psychology and well-being theory into improving the lives of their citizens. If national governments can do this, so can trustees. After

all, if the family wealth is not for improving well-being, then “What’s it for?”¹⁵⁵ Trustees have to start asking, “Why is well-being theory not at the center of our business model?” Ideas might include the following:

3.10.1 Staffing and Learning

Large professional trustees should consider having a staff positive psychologist, MAPP, or positive psychology coach to help design and implement well-being theory into the trustee’s model of services.

For those not large enough to have a full time staffing, consider what the UAE did. They appointed sixty happiness officers and sent them to five-month programs at Oxford University and the University of California at Berkeley to learn the science of happiness. Bringing consultants and coaches to train the staff in-house would be another approach.

3.10.2 Measuring and Improving Beneficiary Well-Being

Ten years ago, U.K. Prime Minister David Cameron essentially said his government would begin measuring their government’s success by how much they were increasing the well-being of British citizens. This should be the standard for professional trustees – maybe it should also be their mission! Professional trustees should measure beneficiary well-being initially and periodically thereafter to ensure it is improving. They should create the infrastructure to make sure they are making a positive and consistent impact on the beneficiary’s well-being over time.

For example, at the Well-Being Baseline, objectively review each family member’s health care insurance coverage and actual access to health care services, and improve it. But also determine the beneficiary’s subjective assessment of these elements. Suppose Ella’s coverage is improved from a Silver plan to a Gold plan. At the end of the year with the Gold plan, actually check if Ella feels better about it, while also looking objectively at the differences between the two plans, and if her access improved (or course, access is also in part determined by Ella’s location – e.g., specialists may not be present in some locations versus others). If both objectively and subjectively the Gold plan is not a sufficient improvement, then adjust the strategy until the budgetary investment represents a good return on Ella’s well-being.

¹⁵⁵ FLOURISH, *supra* note 13, at p. 221 (“What is wealth for? I believe it should be in the service of well-being.”).

When considering Expanded Well-Being, note that professional trustees are frequently successful at engaging clients and beneficiaries at the positive emotion level, such as inviting them to golf and tennis tournaments, and many other similar functions. That is commendable and there is every reason to continue that practice. Moreover, some of the programs to which clients and beneficiaries are invited reach a deeper level. However, there is considerable room for a more deliberate and intentional focus on engaging with clients and beneficiaries at the meaning and purpose level. This might start with discovering each client's and beneficiary's signature strengths and talents, and then focusing on how the trust can support those strengths. Engaging at this level likely supports the professional trustee's business model by helping to establish long-term family relationships and perhaps shifting focus from fluctuating investment returns. Imagine starting every periodic update meeting by reviewing how, based on objective and subjective assessments, the family's Well-Being Baseline and Expanded Well-Being is being supported by the trust and trustee. After which, the trustee can review resources that support the family's well-being and flourishing, including the investment and estate planning review!

Section 4. Conclusions

Individuals and families can deliberately and intentionally increase their happiness – i.e., create more positive emotion, improve their relationships, find more meaning and accomplish more. There is no point at which more money and wealth does not increase well-being and life expectancy. Families can intentionally use family wealth to support well-being and flourishing.

Families can incorporate well-being theory into their estate planning. One major conclusion is that wealth and inheritance planning should be much more about lifetime transfers of wealth than transfers upon death. This will better support each family member's well-being, including life expectancy results, and avoid the "Prince Charles Effect." A transition over the arc of the wealth holder's life expectancy, along with educating the inheritor about the financial, social and psychological implications of inherited wealth, should help mitigate the risks associated with inherited wealth and minimize cliff events. Transitioning wealth during the wealth holder's life expectancy is also more efficient for wealth transfer tax purposes.¹⁵⁶

¹⁵⁶ See e.g., Franklin & Law, *Never Pay Estate Taxes - The Annual Taxable Gift Approach with a CLAT Remainder*, 46th Annual Estate Planning Seminar, Estate Planning Council of Portland, Oregon (January 20, 2017); Franklin & Law, *Extraordinary, Efficient, Elegant, Evolutionary: The Annual Taxable Gifts Approach and Testamentary CLAT Remainder*, 51st Heckerling Institute on Estate Planning (January 11, 2017).

Families, like the countries implementing well-being theory, can implement a framework that recognizes their family members' needs and takes ownership and responsibility for improvement. At its core, it is building within the family the idea of a positive, human focused, well-being framework that is supported with the family's financial wealth and other resources. By periodically assessing well-being in their members, they can help to ensure that their intentional actions are having a positive impact. If national governments can do this, so can families and their advisors!

Section 5. Sample Well-Being Trust Provisions for Revocable Trust:

1.1 Residuary Trust Estate

The Residuary Trust Estate shall be divided into per stirpital shares representing my descendants and each share representing a then-living descendant of mine shall be held in a separate trust for such descendant (who shall be the “Primary Beneficiary” of such trust) pursuant to the Well-Being Trust Provisions hereof.

2.1 Well-Being Trust Provisions

If any insurance policies, retirement accounts, or other assets passing by beneficiary designation as a result of my death are made payable to the Trustee hereof, subject to these Well-Being Trust Provisions, and without having been allocated into separate trusts for my descendants, such property shall be allocated into per stirpital shares representing my descendants, and each share representing a then-living descendant of mine shall be held in a separate trust for such descendant (who shall be the “Primary Beneficiary” of such trust). A separate trust created for any descendant of mine by this paragraph and any other separate trust created for a descendant of mine that is made subject to these Well-Being Trust Provisions (the “Well-Being Trust”) shall be administered and distributed as follows:

(a) 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.

(b) Well-Being Objectives. These Well-Being Trust Provisions shall be construed, and each Well-Being Trust established hereunder shall be administered, to accomplish the following objectives. Any provision of this Agreement that may appear to conflict with or in any way defeat such objectives shall be construed or applied to accomplish them.

(1) *My intention is that the Well-Being Trusts are a gift of love, a legacy to enhance the lives of the Primary Beneficiary and his or her descendants and promote the growth and freedom of the Primary Beneficiary and his or her descendants for years to come.*

(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.¹⁵⁷ 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*

¹⁵⁷ I understand that the road to authenticity may be more or less difficult and include times of failure and doubts. These latter times are best considered as learning opportunities.

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.

(3) *A core desire and goal for each Well-Being Trust is to improve the Primary Beneficiary's well-being and flourishing over time and that of his and her descendants.*

(4) *My intention is for the Trustee to establish a "Well-Being Baseline" for the Primary Beneficiary and his or her descendants and then for the Trustee to ensure that this baseline is achieved for the Primary Beneficiary and his or her descendants, even to the point of exhausting the trust. Generally, I intend that the Well-Being Baseline would include these elements as applied to the Primary Beneficiary and his and her descendants:*

- *Have reasonable housing in a community that is inclusive, empowered, resilient, safe,¹⁵⁸ and with low government corruption (i.e., a wealthy democracy);*
- *Be healthy and active, and have access to quality healthcare;*
- *Have sufficient resources and income to ensure that his or her life expectancy is not jeopardized;*
- *Be well educated, skilled and able to contribute to society; and*
- *Enjoy a clean environment and live sustainably.*

(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*

¹⁵⁸ *Particularly, to be objectively safe in her own house, and safe at work and within her inner circle of family, friends and coworkers.*

are secondary to the beneficiaries' flourishing, the circumstances of which can only occur with freedom and self-determination.

(6) *This Paragraph contains statements reflective of my intent, which are to guide the Trustee in administering the Well-Being Trusts. These statements of intent are not intended to restrict or eliminate the Trustee's discretion.*

(c) Well-Being Trust Terms.

(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.*

(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.¹⁵⁹ 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.*

(3) *Well-Being Baseline and Expanded Well-Being.* *As stated in Section 2.1(b)(4), the Trustee should establish a Well-Being Baseline for the Primary Beneficiary and his or her descendants. Additionally, the Trustee should also focus on elements of well-being beyond the Well-Being Baseline ("Expanded Well-Being"). I intend that the Trustee would set goals for moving beyond the Well-Being Baseline and actively support well-being and flourishing at the next level. The Trustee should consult with the beneficiaries when setting goals. The Expanded Well-Being goals might include the Primary Beneficiary and his or her descendants having the opportunity to:*

- *Grow up loved, safe and respected so that each has the opportunity to realize his or her full potential, and that each*

¹⁵⁹ *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.*

is proud of his or her life and appreciative of who he or she has become at any given time of his or her life;

- *Be creative and experience vibrant and diverse cultures;*
- *Be globally competitive and entrepreneurial;*
- *Value, enjoy, protect and enhance his or her 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.*¹⁶⁰

(4) *Strengths. I believe that deploying a person's highest strengths leads to more positive emotion, to more meaning, to more accomplishment and to better relationships. Therefore, the Trustee should work to have the Primary Beneficiary and his or her descendants each identify his or her signature strengths and then work to discover ways to support each beneficiary utilizing these strengths. For example, each beneficiary should be encouraged to take the VIA Survey of Character Strengths (www.authentic happiness.com). The Trustee should keep a family tree of strengths and work to develop new and creative ways to use and deploy these strengths individually and as groups, including in service of the Well-Being Trusts hereunder.*

(5) *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.¹⁶¹ 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.*

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.

¹⁶⁰ *These goals are adapted from Scotland's National Performance Framework, which sets forth a vision for measuring and improving their national well-being. This illustrates that the Expanded Well-Being Goals should be grounded in the science of well-being.*

¹⁶¹ *The Trustee should eschew approaches based on anecdotal evidence.*

(6) 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.

(7) 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.

(8) 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.

(9) Diversity, Equity and Inclusion. I envision and welcome our family becoming more diverse. I also believe well-being is collective and not just an individual's state. I cannot be happy if my neighbor, my colleague, or someone I love is not. This means everybody counts, everybody is unique and has the potential to enrich the family. It is in bridging the differences that we enrich the tapestry of our lives making it wiser, more creative, and more powerful. The Trustee should be welcoming, appreciative and inclusive of all individuals, regardless of race, religion, political views, age, sexual orientation, age, culture and socio-economic status.

(10) 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.

(11) No Limits. *It is my hope that my family will take this beginning and further develop the idea for the Well-Being Trust and mold it over time, as circumstances and knowledge develops, to improve the ideas and approaches. My family is not limited to what is written here. These Well-Being Trusts Provisions are intended to be part of what I hope is a long story of our family flourishing. I encourage my family to create and innovate something meaningful beyond my imagination for the future. I trust that they will do just that. The Trust Protector may amend these provisions to accomplish these results.*

(12) Positivity to Flourishing Committee. *The Trustee may form a Positivity to Flourishing Committee (PFC) of beneficiaries and advisors. The PFC's goal would be to support the Trustee in developing each beneficiary's resilience, gratitude, strengths, meaning, flow, positive relationship and positive emotions. If formed, the Trustee is authorized to use income and principal of the trust to support the PFC's efforts, research, programs, and activities. The Trustee is authorized to pay reasonable compensation to non-beneficiary members of the PFC. Member of the PFC who are beneficiaries of the trust shall serve without compensation. Each member of the PFC shall be entitled to reimbursement for any and all costs, charges and expenses reasonably incurred and necessary or proper for service on the PFC. Any compensation and reimbursements may be paid without court approval and always in the Trustee's reasonable discretion. The Trustee may retain and rely on the advice of professional advisers who shall be compensated from the trust as recommended by the PFC.*

(13) Advisors and Consultants. *Consistent with Section _____ [section of powers provisions authorizing the employment of advisors], the Trustee may employ and compensate counselors, psychologists, positive psychologists, MAPPs, coaches, advisors and trainers to assist with implementing the Well-Being Trusts, including but not limited to establishing the Well-Being Baseline, the goals for Extended Well-Being, and designing an assessment program.*

(d) 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].

(e) **Primary Beneficiary's Death.** Upon the death of the Primary Beneficiary, the Trustee shall pay the remaining principal as the Primary Beneficiary may appoint pursuant to his or her exercise of the Special Power of Appointment that I hereby give to the Primary Beneficiary. To the extent not effectually appointed by the Primary Beneficiary, the remaining principal shall be divided in per stirpital shares representing the Primary Beneficiary's descendants; or if none, divided in per stirpital shares representing the descendants of the Primary Beneficiary's closest ancestor who is a descendant of mine and who has a descendant then living; or if none, divided in per stirpital shares representing my descendants.

All such shares representing a descendant of mine, in default of appointment, shall be held in a separate trust for such descendant (and he or she shall be the "Primary Beneficiary" of such trust) or, in the discretion of the Trustee, such share may be added to any trust then held by the Trustee for such descendant of which he or she is the Primary Beneficiary, and in either case, shall be held pursuant to these Well-Being Trust Provisions.

(f) **Tax Limitations.** Section _____ [section containing limits on an interested trustee] limits the Trustee's powers and discretion consistent with certain tax principles. If no other Trustee is acting that may exercise such discretion, the acting Trustee or Trustees may appoint an Independent Trustee consistent with the authority granted in Section _____. For clarification purposes, an Independent Trustee's discretion under this Section shall not be limited to the ascertainable standard as defined in section 2041 of the Code and applicable regulations.

(g) **Discretionary Distributions.** The Trustee shall give primary consideration to the needs of my children, and then to the needs of other beneficiaries. An Independent Trustee is authorized to make distributions to a child of mine without any concern for preserving funds for more remote descendants of mine.

Appendix A



VIA Classification of Character Strengths and Virtues

Virtue of Wisdom



Creativity

Original, adaptive, ingenuity, seeing and doing things in different ways



Curiosity

Interest, novelty-seeking, exploration, openness to experience



Judgment

Critical thinking, thinking through all sides, not jumping to conclusions



Love of Learning

Mastering new skills & topics, systematically adding to knowledge



Perspective

Wisdom, providing wise counsel, taking the big picture view

Virtue of Courage



Bravery

Valor, not shrinking from threat or challenge, facing fears, speaking up for what's right



Perseverance

Persistence, industry, finishing what one starts, overcoming obstacles



Honesty

Authenticity, being true to oneself, sincerity without pretense, integrity



Zest

Vitality, enthusiasm for life, vigor, energy, not doing things half-heartedly

Virtue of Humanity



Love

Both loving and being loved, valuing close relations with others, genuine warmth



Kindness

Generosity, nurturance, care, compassion, altruism, doing for others



Social Intelligence

Aware of the motives and feelings of oneself and others, knows what makes others tick



Teamwork

Citizenship, social responsibility, loyalty, contributing to a group effort



Fairness

Adhering to principles of justice, not allowing feelings to bias decisions about others



Leadership

Organizing group activities to get things done, positively influencing others

Virtue of Temperance



Forgiveness

Mercy, accepting others' shortcomings, giving people a second chance, letting go of hurt



Humility

Modesty, letting one's accomplishments speak for themselves



Prudence

Careful about one's choices, cautious, not taking undue risks



Self-Regulation

Self-control, disciplined, managing impulses, emotions, and vices

Virtue of Transcendence



Appreciation of Beauty & Excellence
Awe and wonder for beauty, admiration for skill and moral greatness



Gratitude
Thankful for the good, expressing thanks, feeling blessed



Hope
Optimism, positive future-mindedness, expecting the best & working to achieve it



Humor
Playfulness, bringing smiles to others, lighthearted – seeing the lighter side



Spirituality
Connecting with the sacred, purpose, meaning, faith, religiousness

Appendix B

When Should I Stop Supporting My Child?

By Richard Franklin and Raymond Odom

“Should I continue to financially support my adult child after their formal education is complete? When is continued support just enabling a “failure to launch”? When should I pull support from what appears to be a failed pursuit? “ These are particularly vexing questions for the parent of a child pursuing non-traditional jobs or careers particularly those children that pursue art, entertainment and other creative endeavors that do not receive adequate compensation or capital return, even when the child makes a very diligent effort to succeed.

For example, suppose “your son” (or daughter) has until age 27 pursued one professional career path, albeit unsuccessfully. He then decides to terminate that pursuit in favor of being a painter, having no previous training or academic background in the arts. He moves back home. To complicate matters further, suppose that he has multiple romantic connections that you cannot endorse. Suppose further that he has undiagnosed and untreated mental and physical conditions that make relationships difficult to sustain on either side. Still your son believes he is called to this new path and pursues art with deliberateness, dedication and passion.

*In my view I am often immensely rich, not in money, but *** rich because I have found my métier, something I can devote myself to heart and soul and that gives inspiration and meaning to my life.*

Suppose that during the following 10 years of pursuing his artistic dreams he sells only one painting, and that to the sister of a friend. Would you believe in your son under these conditions?

“Your son” in the above example is Vincent van Gogh. Reading Vincent’s letters, and there are hundreds of them, reveal a brilliant, sensitive, sublime and creative genius.¹

For most of his “artist” years, Vincent received financial support from his younger brother, Theo. From his salary as an art dealer in Paris, he provided Vincent with a regular allowance.² Vincent

¹ See e.g., “Top 10 Artists”, Oxford, UK. www.biographyonline.net, 23rd May 2013; [101 Western painters you should know, theartwolf.com](http://101.Westernpaintersyoushouldknow.theartwolf.com) (2018).

² Suh, VAN GOGH’S LETTERS (Black Dog & Leventhal Publishers, 1st Ed. 2013)(“LETTERS”). The quote in the text above is from #274 (March 11, 1883).

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recognized that Theo's support was critical to him continuing to his art. In August 1882, Vincent wrote to Theo:

*It stands to reason that many people are unable to carry on because of expenses, and I cannot express how grateful I am that I can work regularly. To catch up on the time I lost by starting later than others, I will have to try twice as hard, but even with the best will in the world I would have to stop if I did not have you.*³

It is even speculated that Vincent cutting off much of his left ear was in part over fear of Theo's financial abandonment. Much has been written regarding Paul Gauguin's departure from the Yellow House after a bitter argument, but that day, December 23, 1888, Vincent also received a letter from Theo announcing his planned marriage to Johanna Bonger. Some art historians have suggested that Vincent may have been terrified by the prospect of Theo's marriage would impact their relationship and perhaps Theo's ability to continue the financial support.⁴ And there seems to be almost universal agreement that housing and financial pressures were a significant and ongoing struggle for Vincent.

After leaving the Yellow House forever on May 8, 1889, Vincent voluntarily admitted himself, with Theo's assistance, for a year-long stay in the asylum of Saint-Paul-de-Mausole. Some of Vincent's most famous works were created during this painful year, including *Starry Night*. In February 1890, Theo reported to Vincent the sale of his painting *The Red Vineyard* in Brussels for 400 francs. The painting was bought by Anna Boch, the sister of Vincent's friend Eugene Boch, and is the only recorded sale during the artist's lifetime.

Less than three months after leaving the asylum, Vincent died of a self-inflicted gunshot wound on July 29, 1890. However, Vincent's work was gaining recognition and he was likely on the verge of seeing commercial success at the time of his death.

Vincent suffered physical and psychological difficulties, and that makes his story particularly relevant for American families in the 21st century where addictions, depression and other mental

³ LETTERS, #222 (August 1882).

⁴ Bailey, *STARRY NIGHT, VAN GOGH AT THE ASYLUM*, p. 22 (White Lion Publishing, 2018).
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health challenges must be considered by every American parent doing estate planning designed for their children to flourish.

For example, it is hard to overstate the value of Theo's gift of emotional and financial support to Vincent, personally. Also consider that Theo's support allowed Vincent to actualize in his potential, and in terms of Vincent's art for posterity, it is hard to overstate the gift that Theo has made to the world. Without Theo, the art of Vincent is unlikely to exist. When you consider giving back (i.e., charity, community and such), consider Theo's gift and that helping someone to become self-transcendent is itself a gift to the world.

It is also interesting to consider what could have happened if Vincent's family could have consistently shown more understanding of Vincent and genuine empathy with him during his frustrations and set-backs.

Just in terms of financial support, Vincent was constantly under stress. For example, to live at the Yellow House, Vincent invited Paul Gauguin to join him at least in part as a cost sharing arrangement. About nine weeks later this ended in disaster, with Gauguin's abrupt departure and Vincent's self-mutilation. If Vincent were under less financial stress (e.g., not needing a roommate), would this have made a positive difference in his physical and psychological health?

Theo assisted with Vincent's admission (even negotiating his ability to continue painting) and fee for the asylum of Saint-Paul-de-Mausole, 100 francs per month for a third-class accommodation. If, with broader support from Vincent's family, they could have afforded first-class, would that have made a difference at that critical juncture of Vincent's life?

How might we have advised Vincent's father to do his wealth transfer for his family? The dilemma faced by the father is "how do I financial assist my son to be the best version of himself". Imagine an estate planning conversation with the father about how to draft a will or trust that continues the necessary support for his wife and other children, but also supports the unique challenges and opportunities faced by Vincent.

Here is the stunning fact of the matter, his father died before Vincent reached age 33! What could the father have done to better provide for Vincent – more gifts, more encouragement?

Theo seemed to provide support that Vincent found meaningful. Theo was transformative in creating the circumstances that allowed Vincent to follow his passion and purpose in life and

Theo's wife Johanna was transformative in preserving and curating Vincent's correspondence and his art.

All of Vincent's art was produced in 10 years' time and he died at the young age of 37. Now imagine a world where Vincent van Gogh enjoyed a long life, such as Pablo Picasso who lived to age 91, Claude Monet age 86, Salvador Dali age 84, or Edgar Degas age 83. What paradigm of parental and family support would have allowed Vincent more time? What if they had taken more steps to support his strengths and virtues as positive psychology teaches?

Behavior is often guided by future anticipated emotions, and actions are chosen that likely bring positive emotions. Imagine Vincent's family having a positive prospection for his art and creativity. Imagine his parents not burdening him with his past mistakes or missteps and truly believing and trusting in his ability to create a new reality in which he would become "Vincent van Gogh" – i.e., one of the all-time greatest artists of the western world.

What if his family could have better understood Vincent's signature strengths? Would this insight into Vincent have influenced the family to better provide the financial and emotional support he needed?

Consider that Vincent enjoyed virtually no professional success as an artist or otherwise during his lifetime. Imagine the impact it may have had for Vincent to know some degree of the esteem to which his art is held today? It is stunning to consider that 130 years after his death, his *Starry Night* would be the marquee piece, drawing the biggest crowds, in the Museum of Modern Art in New York City!

As you consider these questions, advisers should also help parents move away from the question "Should I stop giving money to adult child?" Instead parents should be asking: "How can I move beyond past mistakes or missteps and truly believe and trust in my child's ability to flourish? How can I best uncover, understand and support my child's strengths and virtues? These are the important questions!

Appendix C

The “Wretched Painter”

(Cézanne and Autonomy of Determining and Using Strengths)

By Harper M. Franklin and Richard S. Franklin

How Paul Cézanne found his strengths and his father found a path to support this son’s strengths makes for a powerful story, particularly as it relates to wealth and inheritance planning. A core feature of positive psychology and strengths interventions is that each person needs freedom to exercise self-determination and autonomy in deciding his or her strengths. The parents cannot control this aspect. Thoughtful parents can, however, help facilitate children discovering their strengths and virtues and support their development.

Paul Cézanne is widely acknowledged as one of the greatest artists of the nineteenth century, an incredibly influential Post-Impressionist.¹ Behind the story of Paul’s art, is the story of his father, who made Paul’s art possible through his life-long financial support. While Louis-Auguste Cézanne wished his son to follow his path into banking, he eventually accepted his son’s chosen creative path. Louis-Auguste provided financial support to Paul until the day he died, then leaving Paul with a substantial inheritance. Paul was completely dependent on his father’s money as he never met with financial success. Like many artists, he was overlooked and discredited during his lifetime, only meeting with critical success in his final years.² This led to a strained and difficult relationship with his father, who resented the fact that his adult son could not provide for himself. Despite this, Louis-Auguste never stopped sending his son money.

Louis-Auguste was a self-made man, creating his initial capital in the booming hat trade and eventually purchasing a bank in Aix-en-Provence, becoming one of the richest men in town.³ His wealth did not result in popularity; he was not from Aix, an outsider, and his country, unpolished manners often offended the townspeople. He solidified his outcast status when he had a son out of wedlock with his mistress, Anne-Elisabeth-Honorine Aubert, on January 19, 1839. While he eventually married Elisabeth, a low-class working girl, it was too late to be

¹ Voorhies, PAUL CÉZANNE (1839-1906), The Metropolitan Museum of Art (hereinafter “CÉZANNE 1839-1906”).

² Huyghe, *Paul Cézanne, French Artist*, Britannica Online.

³ Hanson, MORTAL VICTORY: A BIOGRAPHY OF PAUL CÉZANNE, pp. 2-3, (Holt, Rinehart, and Winston, 1960)(hereinafter “MORTAL VICTORY”).

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accepted by prudish nineteenth-century society.⁴ Louis-Auguste also could have a sharp tongue and was open regarding his opinions of others, positive or negative.⁵ He began to settle all his hopes for the family's fame and acceptance on his young son, who with his father's wealth and encouragement might flourish in society.⁶ That son was Paul Cézanne.

The elder Cézanne was determined that Paul should follow his footsteps in banking; after all, it was a steady, respectable profession, and would protect the family's fortune and status. When Paul passed his secondary school baccalaureate, his father pushed him to attend law school because a lawyer would be endlessly useful to the bank and convey an air of distinction that Louis-Auguste had not achieved.⁷ However, Paul had never been particularly drawn to the bank. He had always been more drawn to creative pursuits, particularly after he formed a childhood friendship with the future novelist Emile Zola. Beginning in 1857, at the age of eighteen, Paul began spending evenings and free time at the Free School of Drawing at the Musee d'Aix.⁸

Louis-Auguste did not mind Paul pursuing painting in his spare time and thus had no issue with Paul joining the academy.⁹ Biographer Lawrence Hanson wrote that Louis-Auguste "took the view that as long as [Paul] worked toward the desired end of banking, or if [Paul] preferred, a distinguished career in the law, [Paul] could do just as he pleased with the rest of his time...he was proud of this versatile son."¹⁰ But, unbeknownst to his father, Paul was feeling increasingly torn between his father's wishes and his own hatred of the law. Paul began spending less and less time on his legal studies throughout 1859, and considering seriously relocating to Paris and pursuing art with Zola. Indeed, Zola was extremely persistent in his encouragement of Paul's artistic leanings.¹¹

After about a year of this existence torn between art and law, Paul found the courage to ask his father for permission to go to Paris. At first, Louis-Auguste resisted, worried that his son could not be financially secure, insisting that his son first prove he could make a living as a painter

⁴ Rewald, *CÉZANNE: A BIOGRAPHY*, p. 21 (H.N. Abrams, 1986)(hereinafter "BIOGRAPHY").

⁵ Callow, *LOST EARTH: A LIFE OF CÉZANNE*, p. 22 (Allison & Busby, 1995)(hereinafter "LOST EARTH").

⁶ *MORTAL VICTORY*, *supra* note 3, at p. 4.

⁷ *Id.* at p. 22.

⁸ Danchev, *CÉZANNE: A LIFE*, p. 57 (Pantheon Books, 2012)(hereinafter "CÉZANNE").

⁹ *BIOGRAPHY*, *supra* note 4, at p. 27.

¹⁰ *MORTAL VICTORY*, *supra* note 3, at p. 24.

¹¹ *BIOGRAPHY*, *supra* note 4, at pp. 22-26; *MORTAL VICTORY*, *supra* note 3, at pp. 22-24.

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before giving up the law.¹² But by the end of 1860, it was clear that Paul was determined to abandon the law and pursue an artistic career in Paris. After many discussions and arguments, Louis-Auguste finally relented in April 1861 and allowed Paul to leave home. He believed that young Paul would not actually like Paris, become homesick for his beloved Aix, and return to the law. Louis-Auguste even accompanied Paul to Paris, found him acceptable rooms in the Rue Coquilliere,¹³ and supplied him with a decent monthly allowance of 125 francs.¹⁴

Louis-Auguste felt he was proven correct when a mere few months later, Paul abandoned Paris, discouraged, and returned to the bank in Aix. However, within weeks Paul left the bank, fully realizing how unsuited he was to office work. One scholar wrote, “Monsieur Cézanne took the hint. Always practical, he realized that Paul would never become a businessman; and as he had no wish to make one of his children wretched or to foist on the bank an inefficient clerk, he abandoned the twenty-year old dream of a successor. No more was heard in the Cézanne home of Paul’s duty.”¹⁵ In November 1862, Paul left for Paris again and planned to apply to the *École des Beaux-Arts*, at his father’s insistence. Louis-Auguste had accepted his son’s chosen career but still felt it should be pursued in a serious, official manner.¹⁶

Interestingly, despite his hesitation about Paul’s choice of art as a career, Louis-Auguste nonetheless indulged Paul’s love of painting in general. This is evidenced by the *Jas de Bouffan*, the sprawling country estate Louis-Auguste purchased for the family in 1859. In 1860, when Paul was still vacillating between the law and art, at a time one might assume that his father would be discouraging artistic pursuits, Louis-Auguste allowed Paul to decorate the expensive estate by painting murals on the walls. Over the next ten years, Paul completed four panels entitled *The Four Seasons*, and in the center, a portrait of his father, *Portrait of Louis-Auguste Cézanne, Father of the Artist*.¹⁷ In fact, Louis-Auguste sat for Paul more than once. One of the most celebrated paternal paintings is one Paul completed in 1866, *The Artist’s Father, Reading L’Evenement*, now hanging in the National Gallery of Art in Washington, D.C.¹⁸ This work is a

¹² MORTAL VICTORY, *supra* note 3, at p. 25.

¹³ *Id.*, at p. 32.

¹⁴ CÉZANNE, *supra* note 8, at p. 62.

¹⁵ MORTAL VICTORY, *supra* note 3, at p. 44.

¹⁶ BIOGRAPHY, *supra* note 4, at p. 35.

¹⁷ CÉZANNE, *supra* note 8, at p. 38.

¹⁸ <https://www.nga.gov/collection/art-object-page.52085.html>
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profound examination of Paul’s strained, but nevertheless loving, relationship with his father.¹⁹ The Jas de Bouffan, while still his father’s estate, became the center of Paul’s creativity. He was permitted to use one of the bedrooms as a studio²⁰ and nowhere else did Paul work as often. The house and its surrounding grounds are frequent features in Paul’s work.²¹

Paul continued to work and paint, overlooked and dismissed by critics. However, his father continued financial support, despite his apparent growing disappointment. There were moments throughout their relationship where finance stressed their already difficult situation. In the late 1870s, Louis-Auguste cut Paul’s allowance in half upon his correct suspicion that Paul had a mistress and illegitimate son.²² However, the banker never intended to fully eliminate financial support to his son. He was punishing Paul for lying about the child and within a few months, he had restored the full allowance.²³ During this reduced allowance period, Paul wrote to his friend Zola, on June 1, 1878, asking for supplemental financial help and added: “My good family, otherwise excellent for a *wretched painter who has never been able to do anything*, is perhaps a little miserly; it’s a minor failing, doubtless quite understandable in the provinces.”²⁴

Unfortunately, Paul did not meet with critical success any time soon. An in-depth telling of his years of struggle are not necessary here but consider this: Paul did not enjoy a one-man exhibition of his art until 1895.²⁵ That means that his father never lived to see his son find any significant success since he died in 1886 — i.e., 26 years into Paul’s painting career. Still, his father left him a significant fortune.²⁶ After he died, Paul expressed respect and love for the banker with whom he so often battled, saying “My father was a man of genius.”²⁷ Even Paul sometimes admitted that his father was “the author of my days.”²⁸

Many biographers of Paul Cézanne paint his father as a tyrant, a miserly old man manipulating his son with his financial support. While Louis-Auguste could certainly be a harsh judge, and it is clear in Paul’s letters that their relationship was far from easy, the banker never cast out his

¹⁹ CÉZANNE, *supra* note 8, at pp. 42-45.

²⁰ CÉZANNE, *supra* note 8, at p. 37.

²¹ BIOGRAPHY, *supra* note 4, at p. 21.

²² MORTAL VICTORY, *supra* note 3, at p. 140;

²³ BIOGRAPHY, *supra* note 4, at p. 122.

²⁴ Danchev, *The Letters of Paul Cezanne*, p. 173 (Getty Publications 2013)(emphasis added).

²⁵ CÉZANNE 1839-1906, *supra* note 1.

²⁶ BIOGRAPHY, *supra* note 4, at p. 123.

²⁷ *Id.*

²⁸ CÉZANNE, *supra* note 8, at p. 37.

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son. He always provided means for Paul to explore his art, even if at times begrudgingly. One may wonder how differently Paul's art may have developed if his father had not only supported him financially, but emotionally as well. Still, for a self-made man of the nineteenth century, Louis-Auguste seems rather progressive. Perhaps, biographer Gustave Coquit summarized the banker best: "For some, old Cézanne was a sort of Pere Goriot, authoritarian, very shrewd and miserly...For others he was, on the contrary, a human specimen of the rarest kind."²⁹

If this father had not supported his son's artistic pursuits, what might the world have missed? The art of Paul Cézanne likely does not exist without the support of Louis-Auguste. Therefore, in terms of posterity, Louis-Auguste made a significant contribution to the world. Helping someone flourish may be an extraordinary gift to humanity! Perhaps this proves the wisdom of the old adage "charity starts at home."

In positive psychology terms, Paul exercised his autonomy and determined his strengths were in the creative domain. Louis-Auguste found a way to support Paul's strengths. However, in real life, helping someone else is hard and messy work. Trusting and believing in someone is stressful, especially over a long period of time and even more so in the absence of outward indicia of success.

Imagine the questions that must have been in Louis-Auguste's mind: What if, after 5 years, Paul has not found any financial success – should I continue to support him? What if, after 10 years, there is no financial success – should I still believe in him? If he is a good, committed artist, surely there must be some tangible success after 10 years, right? Suppose 20 years pass, do I still believe in him and support his passion for painting if commercial success remains elusive? Should I leave an inheritance to continue the support after my death? For some parents, these are real questions that consume them emotionally and financially. Surely Louis-Auguste questioned if he was just "enabling a failure to launch" as so many parents do today.

Also consider that neither Louis-Auguste nor Paul could possibly know the esteem to which the world would come to hold Paul's art. Consider that the marquee item in the Barnes Foundation's collection in Philadelphia is the largest of Paul's five "*Card Players*," which was likely painted at the Jas de Bouffan. In 1925, Dr. Barnes concluded a 5-year "subterfuge-filled" quest to

²⁹ LOST EARTH, *supra* note 5, at p. 21.
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purchase it (approximately 19 years after Paul's death).³⁰ In 2011, Qatar acquired the last privately owned "*Card Players*" for more than \$250 million, which was then the highest price ever paid for an artwork.³¹ Indeed, a wretched painter!

Challenging as it may have been, Louis-Auguste found a path by which to hold faith with his son. He supported Paul's strengths and virtues as Paul defined them. Imagine for a moment Paul taking Louis-Auguste to the Barnes Foundation and pointing to his "*Card Players*" made at his father's home and saying: "Father, they now say in art theory that I am the bridge between post-impressionism and modern art. My art exists because of you." That would likely give Louis-Auguste joy beyond comprehension. In the story of Paul Cézanne, both father and son's contributions are worth celebrating!

³⁰ Dolkart & Lucy, *THE BARNES FOUNDATION MASTERWORKS*, p. 14 (Skira Rizzoli 2012).

³¹ Peers, *Qatar Purchases Cézanne's The Card Players for More Than \$250 Million, Highest Price Ever for a Work of Art*, Vanity Fair (February 2, 2012).

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Wealth & Well-Being — What Wealthy Families Can Learn from Sovereign Government Policies and Measuring Human Progress

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Countries are beginning to incorporate well-being theory — citizens thriving across multiple domains of life¹ — into their policy making. This is a model that families would benefit from trying to understand and emulate. In this article we describe the many encouraging developments in countries around the world and, drawing lessons from these macro shifts, we then provide suggestions for families to consider in creating their own well-being framework. On May 22, 2006, David Cameron, at that time Prime Minister of the United Kingdom, addressed the Google Zeitgeist's audience with a new political agenda:

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¹ Adler, A. and Seligman, M., Using wellbeing for public policy: Theory, measurement, and recommendations, International Journal of Wellbeing (2016).

Gross domestic product. Yes it's vital. It measures the wealth of our society. But it hardly tells the whole story.

Wealth is about so much more than pounds, or euros or dollars can ever measure. It's time we admitted that there's more to life than money, and it's time we focused not just on GDP, but on GWB — general well-being.

Well-being can't be measured by money or traded in markets. It can't be required by law or delivered by government.

It's about the beauty of our surroundings, the quality of our culture, and above all the strength of our relationships.

Improving our society's sense of well-being is, I believe, the central political challenge of our times.²

Cameron was not the first one to bring to people's attention the limitations of the world-wide adopted GDP (Gross Domestic Product) as the measure of a nation's progress but he might have been the earliest western, first world prime minister to act on it.

SOME HISTORICAL BACKGROUND ON GDP

GDP is attributed to Simon Kuznets who in 1934 succeeded at calculating National Income in the United States and who later in 1971 was awarded the Nobel Prize for his work. The purpose was assessing the impact of the Great Depression and measuring progress to reactivate the economy.³

An underlying assumption in using National Income as sole metric was that Income was a good in-

² Cameron, D. David Cameron's speech to Google Zeitgeist Europe 2006, The Guardian (2006).

³ Kuznets, S., National Income, 1929-1932, Senate doc. no. 124, 73d Cong., 2d sess. (1934).

indicator of Production (Income equals Production).⁴ In 1942, the first in the series of U.S. gross national product (GNP) statistics was issued to support President Roosevelt's administration in assessing the capacity of the economy to support the U.S. citizens' recovery from the depression and supply means for fighting the Second World War.⁵ But the war took a toll in many countries producing instability and discriminatory trade practices that discouraged international trade. In 1944 leaders of the 44 allied nations gathered at the Bretton Woods Conference in New Hampshire and entered in a cooperation agreement to facilitate progress and foster peace. For this purpose, GDP became the standard metric to measure national economies.

The thinking was always that improving economic well-being was key to creating lasting world peace: international trade would create jobs that would allow citizens of all the countries to access adequate food, housing, medical care, and other needs. In line with this philosophy, the Bretton Woods party established the International Monetary Fund — for collaborative international monetary exchange — and the Bank for Reconstruction and Development — now part of the World Bank — to lend money to European countries devastated by the war.

Arthur Okun, economist, Yale professor and member of the Council of Economic Advisers during John F. Kennedy's term, determined the negative correlation between GDP and unemployment in 1962: for every point of increase in unemployment, real GDP decreases by 3%. Okun's Law⁶ has informed policy by feeding the belief that increasing GDP would decrease unemployment⁷ hence, the better the country and its citizens do.

On December 1999, the Bureau of Economic Analysis declared that GDP was its achievement of the century and remarked “*very positive effect on*

America's economic well-being, by providing a steady stream of very useful economic data.”⁸ However, during the recovery after the tech bubble and the 9/11 attack crisis, although GDP rose between 2002 and 2006, personal income fell.⁹

During the Great Recession of 2007-2009, the longest recession since Second World War, the correlation also broke when real GDP fell only 4.3% while unemployment grew 5% peaking at 10%.¹⁰ At this point, several governments were already changing gears about how to measure real national progress while Nobel Prize economist Joseph Stiglitz called for ending the GDP Fetishism.¹¹

Divergent Paths

*Our Gross National Product [. . .] counts air pollution and cigarette advertising, and ambulances to clear our highways of carnage. It counts special locks for our doors and the jails for the people who break them. It counts the destruction of the redwood and the loss of our natural wonder in chaotic sprawl. It counts napalm and counts nuclear warheads and armored cars for the police to fight the riots in our cities. It counts Whitman's rifle and Speck's knife, and the television programs which glorify violence in order to sell toys to our children. Yet the gross national product does not allow for the health of our children, the quality of their education or the joy of their play. It does not include the beauty of our poetry or the strength of our marriages, the intelligence of our public debate or the integrity of our public officials. It measures neither our wit nor our courage, neither our wisdom nor our learning, neither our compassion nor our devotion to our country, it measures everything in short, except that which makes life worthwhile.*¹² Robert F. Kennedy, March 18, 1968.

Disagreements about GDP being the right indicator of progress have always existed. Kuznets himself ar-

⁴ Marcuss, R. and Kane, R., U.S. National Income and Product Statistics Born of the Great Depression and World War II, Bureau of Economic Analysis, Survey of Current Business 87, pp. 32-46 (2007).

(“The proposition that for a country as a whole, goods and services produced must equal incomes earned by its residents is precisely true only for a closed economy. In the 1930s, when statistical measures were being formulated and international flows were relatively small, the identity was retained by using a measure of production derived from labor and capital supplied by U.S. residents wherever the production takes place — that is, gross national product rather than gross domestic product.”) p. 32, n. 2.

⁵ See Note 4, above.

⁶ Okun, Potential GNP: Its Measurement and Significance, Proceedings of the business and economics statistics section, American Statistical Association, Washington, D.C., 98-103, p. 2 (1962).

⁷ Bernanke, B., Recent Development in the Labor Market, National Association for Business Economics Annual Conference, Washington, D.C. (Mar. 26, 2012).

⁸ Daley, W., GDP: One of the Great Inventions of the 20th Century, Press Conference Announcing the Commerce Department's Achievement of the Century, December 7, 1999, Survey of Current Business (Jan. 2000).

⁹ Labonte, M., Why Has Household Income Fallen in the Current Expansion While GDP Has Risen?, CRS Report for Congress, Library of the Congress (Aug. 30, 2006).

¹⁰ Rich, R., The Great Recession, Federal Reserve History (2013).

¹¹ Stiglitz, J., GDP Fetishism, The Economist's voice (Sept. 2009).

¹² Kennedy, R., Remarks at The University Of Kansas (Mar. 18, 1968).

gued that it “should not be used as a measure of living standards or well-being.”¹³

In the 1970s, Bhutan’s king introduced the concept of happiness as a policy making metric. In the 1990s, the Royal Government of Bhutan decided to implement a Gross National Happiness Budget with the purpose of promoting social cohesion in the midst of a domestic social fracturing and border security crisis.¹⁴

Rather than a single metric to measure happiness, Bhutan’s government uses a construct of 33 indicators that assess education, health, living standards, ecological diversity and resilience, governance, time use, cultural diversity, community vitality, and psychological well-being.¹⁵ These metrics do not account for the country’s economy but household per capita income as a measurement of living standard.

In 1990, Mahbub ul Haq, former financial, commerce and planning minister of Pakistan and a special advisor to the United Nations Development Program administrator, set up the Human Development Report Office.

Mr. Haq and his team created the Human Development Index supplementing economic performance with measurements of health (life expectancy at birth), education (years of schooling) and standard of living (gross national income per capita).¹⁶ The Human Development Report has been issued every year since launched over 30 years ago and served a key role in policy making affecting developing countries. The Human Development Index has been expanded to include carbon dioxide emissions and its footprint.¹⁷

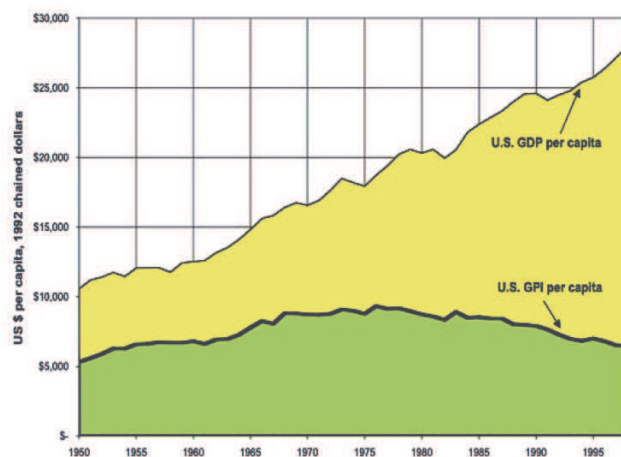
¹³ Dorgan, B., Rethinking the Gross Domestic Product as a Measurement of National Strength. United States Senate. Committee on Commerce, Science, and Transportation. Subcommittee on Interstate Commerce, Trade, and Tourism, p. 2, Washington, D.C. (Mar. 12, 2008).

¹⁴ Munro, L., Where Did Bhutan’s Gross National Happiness Come From? The Origins Of An Invented Tradition, Vol. XLVII, no. I, Asian Affairs, p. 86 (2016).

¹⁵ Anielski, M., *An Economy of Well-Being*, New Society Publishers, p.66 (Canada 2018).

¹⁶ United Nations Development Programme, Human Development Report 1990, p. iii (Oxford University Press 1990).

¹⁷ United Nations Development Programme, Human Development Report 2020 Press Release (New York, Dec. 15, 2020).



Source: Data derived from spreadsheets from the U.S. Genuine Progress Indicator (GPI) for 1999. Redefining Progress, Oakland, CA.

USA GDP growth (per capita) versus GPI (per capita), 1950 to 1999¹⁸

In 1996, Redefining Progress, a San Francisco-based economic think tank produced the Genuine Progress Indicator (GPI) intended to provide a more comprehensive measure of progress of a society or country.¹⁹ GPI is designed to measure sustainable economic welfare rather than economic activity alone. It includes 26 indicators that account for income inequality, include non-market benefits that are not included in GDP and identify and deduct inefficiencies and negative impact in the environment and social life such as environmental degradation, human health effects, and loss of leisure time. The chart shows a comparison of the historical U.S. GDP and GPI per capita making it evident that increasing GDP does not necessarily mean increasing well-being.

The states of Maryland²⁰ and Vermont have implemented a GPI metric and other states, including Hawaii,²¹ are in the process of doing so.

The 21st century sparked the interest of many leaders, professionals, and organizations that progressively focused more on the importance of people-

¹⁸ Anielski, M. and Soskolne, C. Genuine Progress Indicator (GPI) Accounting: Relating Ecological Integrity to Human Health and Well-being, Chapter 91, p. 90, in *Just Ecological Integrity: The Ethics of Maintaining Planetary Life* (Rowman & Littlefield Publishers Inc., 2002).

¹⁹ See Note 18, above, at p. 12.

²⁰ Maryland’s information is available online at <https://dnr.maryland.gov/mdgpi>.

²¹ A Bill for an Act. Relating to a Sustainable Economic Development Strategy. House of Representatives. Twenty-ninth legislature, State of Hawaii (2018).

centered government and policies. Some of their initiatives are focused on improving the measurement of a society's progress, hence finding a better-than-GDP metric. Others are focused on measuring well-being based on the now developed knowledge of well-being and under the belief that well-being is the ultimate goal of individuals and societies. Other governments have taken direct action into creating regional and/or national programs and budgets. We will expand on this in sections below.

GDP, a Great Invention But Overused

GDP is a great metric but its application as indicator of progress and well-being has been oversimplified or misused. Several reasons can be identified for this. One of them is related to the arguable validity of equating economic progress to living standard and well-being. Those who do not accept this premise point out that the risk of using the wrong metric is not just the wrong measurement but, mostly, that policy is wrongly informed: *The G.D.P. [. . .] has not only failed to capture the well-being of a 21st-century society but has also skewed global political objectives toward the single-minded pursuit of economic growth.*²²

The list of factors that GDP misses in its calculation is extensive, as Robert Kennedy argues in his remarks to the University of Kansas. Most prominent are depletion of the environment carried by economic activity, changes in human capital and health, and social and economic inequalities.²³ When looking at these variables, the argument is that *"GDP not only falls short in evaluating critical aspects of quality of life, but it also triggers and fosters activities that are contrary to long-term societal well-being[:]"*²⁴

*For instance, "developing countries may be encouraged to allow a foreign mining company to develop a mine, even though the country receives low royalties, even though the environment may be degraded, and even though miners may be exposed to health hazards," the report says, "because by doing so G.D.P. will be increased."*²⁵

There is also an aggiornamento issue: the historical adjustment of the country's stability and priorities. It

²² Gertner, J., The Rise and Fall of G.D.P. The New York Times Magazine (May 13, 2010).

²³ Giannetti, B., Agostinho, F., Almeida, C. and Huisingh, D., A review of limitations of GDP and alternative indices to monitor human wellbeing and to manage eco-system functionality. 87 Journal of Cleaner Production, 11-25, p.12 (2015).

²⁴ See Note 23, above.

²⁵ Olly, D., GDP Seen as Inadequate Measure of Economic Health, The New York Times (Sept. 14, 2009).

was sound in the 1930s and following decades to focus on economic growth and its indicators based on the impacts of the depression and wars. However, once the economy achieved a certain level of maturity, societies grow wealthier and well-being is less related to income and more related to other variables such as social life, enjoyment, and meaning.²⁶

Together with the change in the nation's economic strength, there is also the growth in the understanding and measurement of well-being that allows us now to measure well-being directly. *"After all, if economic and other policies are important because they will in the end increase well-being, why not assess well-being more directly?"*²⁷

WHAT CAN WEALTHY FAMILIES LEARN FROM THIS HISTORIC EVOLUTION?

Wealthy families have historically been very intentional to maximize the financial return of their assets, and protecting their wealth from loss to creditors, taxes and investment declines. Family business are frequently the principal focus of attention. More often than not, however, these efforts are undertaken with little attention to defining the purpose of financial and business assets, and even less attention is devoted to the family members' humanity or well-being. The reasons for this disconnect are beyond the scope of this article. However, some similarities can be drawn from the way countries' resources have been managed for the purpose of understanding historical behaviors, assessing the status quo, and offering insights.

Literature, research, and political discourse agree that the purpose of a nation's wealth is to support its society's well-being. Likewise, what's the purpose of family wealth if not to support the individual family members' well-being? Criticism that is applied to the short-sighted nature of using GDP for policy-making is equally applicable in the family context discussed below:

a. Increase in financial return does not necessarily mean increase in family member's well-being. Parents are frequently very involved and engaged with their children's well-being while they are at home and during college. Typically, children enjoy good housing, healthcare, education, and cultural opportunities, develop hobbies of interest, and frequently travel domestically and internationally. However, once the children

²⁶ Diener, E. and Seligman, M., Beyond Money. Toward an Economy of Well-Being. Vol. 5, No. 1, American Psychological Society. Psychological Science in the Public Interest, p. 2 (2004).

²⁷ See Note 26, above.

graduate from college, parents become much less intentional, frequently leaving children on their own under the belief that they need to forge their path and prove they are productive and engaged in their lives.

At this point, some children experience a sudden decrease in their material means that translates into an environment that may decrease their well-being, such as living in areas that are not environmentally safe or have higher crime and corruption. Some children even fall prey to addiction and other behavioral problems that require tremendous emotional and relationship management to overcome, money aside. Problems associated with income and wealth inequality, which have been significantly growing in the U.S. and other countries, can also be experienced within a wealthy family. We have suggested for example that families supplement any child's income that is below the 95th percentile of the U.S. average income to ensure access to appropriate housing, food and healthcare that constitute the baseline of their well-being.²⁸ This yearly income supplement has a current impact on the children's well-being, rather than waiting for a lump sum at a later age.

b. Focus on financial return might skew family decisions toward a single-minded pursuit of increasing wealth. Warren Buffett's daughter once asked her father for money to fix up her kitchen — “*not to go to the beach for six months.*”²⁹ Her father told her to get a loan from a bank like other people. It is common for parents to want their children to be productive, typically meaning that the parent wants the child to be a high earner. This, as we have seen with national GDP, is not well correlated to human development and individual well-being.

While there is a correlation between money and life satisfaction, well-being is a much more complex construct. According to Dr. Martin Seligman, considered the father of positive psychology,³⁰ well-being is a construct of five main domains: positive emotion, engagement, positive

relationships, meaning, and achievement.³¹ Wealth, according to Dr. Seligman, should be in service of well-being — it has a supporting role as a resource.³² It is more than sophistry to keep the proper alignment of these concepts — i.e., seek positive relationships, meaning and achievement, which may lead to wealth, rather than seek wealth, in hopes of it leading to positive relationships, meaning and achievement.

We encourage wealthy families to think in terms of equality of well-being and to move away from a ridged adherence to financial equality. Equality of well-being is a more comprehensive construct because it encompasses all of the domains identified above. The economics of supporting the well-being of unique individuals is by definition different for each of them.

c. Trigger and foster activities that are contrary to the long-term well-being of individuals. “*If you're the child and you see your father with all this dough and you get some but not much, I just can't help thinking resentment will enter in*”³³ Buffett's daughter mentioned in an interview. She added: *All my life my father has been teaching us. Well, I feel I've learned the lesson. At a certain point you can stop*³⁴

Parents' focus on their children being economically successful on their own may come with an emotional loss and difficult relationships. For example, incentive trusts are a common, but misguided, instrument employed by some parents to coerce their children into being “productive.” These trusts are designed, for example, to distribute proportional to the beneficiary's earned income as reported on the beneficiary's income tax return.³⁵ These devices frequently incentivize children to pursue careers that are not meaningful to them but that allow for high pay — i.e., diverting beneficiaries from their path to happiness, meaning and achievement.

²⁸ Franklin, R. and Tordini, C., *Well-Being Supported by Family Wealth — A Foundation to Flourish*, 45 Tax Mgmt. Est., Gifts & Tr. J., No. 3 (May 7, 2020).

²⁹ Kirkland, R., *Should you leave it all to your children?*, Fortune (Sept. 29, 1986) (Kirkland).

³⁰ Positive psychology is recognized as the scientific study of the conditions that enable individuals and communities to flourish. Seligman & Csikszentmihalyi, *Positive Psychology: An Introduction*, American Psychologist, pp. 5-14 (February 2000). The field is founded on the belief that people want to lead meaningful

and fulfilling lives, to cultivate what is best within themselves, and to enhance their experiences of love, work, and play.

³¹ Seligman, *Flourish*, p. 24 (Atria 2011) (hereinafter “*Flourish*”).

³² See *Flourish*, Note 31, above at p. 221.

³³ See Kirkland, Note 39, above.

³⁴ See Kirkland, Note 39, above.

³⁵ While there is much debate around the topic, most likely extrinsic monetary rewards decrease intrinsic motivation. See Pink, Daniel H., *DRIVE: The Surprising Truth about What Motivates Us* (New York: Riverhead Books, 2009).

In working with families, we propose to replace the use of incentive trusts by a well-being trust.³⁶ We also encourage families to shift to a model of distributions throughout the arc of the parents' life rather than at death.

Similarities to families focusing mainly on financial return can also be drawn to the reasons why GDP has long been overused by governments and policy makers. Focusing on economic growth was critical for the United States to recover from the Great Depression and World War II, but once the economy reached a certain level of maturity, other issues needing attention started to emerge.

Wealth opens Pandora's Box, in a way. Once a certain level of material means has been achieved, other higher level human needs start to emerge and claim attention.³⁷ A family that succeeds in having wealth substantially beyond the basics, has the means to support these evolving higher level needs. Arguably the family has the responsibility to support such needs because the wealth gives space for them to surface. This cycle represents the family's economic system maturing and reaching a natural and healthy outcome, similar to a country such as the U.S. maturing beyond the historic rationale for GDP as the sole metric of determining progress.

Families can also benefit from the vast progress that social science has achieved in terms of understanding well-being and its measurement. Positive psychology is now a maturing science. Its many scholars and professionals have established an abundant and growing pool of empirical data and research that proves well-being theory can help individuals lead meaningful and fulfilling lives and cultivate what is best within themselves.³⁸

³⁶ See Franklin, R. and Tordini, C., Note 28, above.

³⁷ In 1943, Abraham Maslow published *A Theory of Human Motivation*. In this paper, he presented a pyramid chart to identify a hierarchy of human needs and motivations. On the bottom of the pyramid are physiological needs, shelter and clothing, etc., above this he lists safety and security followed by love and belonging, esteem, self-actualization and self-transcendence. According to Maslow, if a person's physiological needs are unsatisfied in an extreme fashion, all other needs may become non-existent or pushed to the background. When the essentials are satisfied, the person's motivations will become dominated by the next higher need. Maslow, A.H., *A Theory of Human Motivation*, *Psychological Review*, Vol. 50, p. 370 (1943) (accessible here); Maslow, *The Farther Reaches of Human Nature*, *Journal of Transpersonal Psychology* (Spring 1969).

³⁸ See, e.g., *Positive Psychological Science*, edited by Donaldson, Csikszentmihalyi, Nakamura, 2 ed. (Routledge, 2020) ("A recent systematic review of the peer reviewed theory-driven psychological science literature found that there have now been more than 860 published scientific studies conducted across five continents and 63 countries.").

Families can learn from the history of countries, their government and policies and shift their philosophy, approach, and legacy ahead of the curve:

- GDP was born in 1934 with the intention to support recovery and growth. It grew for about 60 years until it was declared the best invention of the century in 1999.
- About 30 years after its invention, in 1968, Robert Kennedy was already being vocal about the limitations of GDP and the need to focus on "what makes life worthwhile." Professionals of a broad array of backgrounds launched a search for better metrics.
- Another 30 years later, positive psychology and well-being theory was institutionalized when Martin Seligman became president of the American Psychological Association in 1998.³⁹

— In the last 20 plus years, well-being theory has been adopted by governments, educational institutions, military institutions, judicial systems, leadership theory, and more. Many metrics have been created to measure social progress and well-being. Countries such as New Zealand have started institutionalizing well-being budgets and other initiatives.

It is sound to predict that in the next 10 years or so there will be a significant shift in the way governmental policies are set, how they allocate their budgets and how their progress is measured. Families can be more nimble than governments and more quickly focus on what supports their members' flourishing.

NEW WAYS TO MEASURE PROGRESS AND INFORM POLICY

Most of the GDP critics agree that there is the need to complement GDP with additional metrics rather than replace it. With that purpose, several organizations have created metrics and significant work has been done to find ways to measure well-being in a comprehensive way. Additionally, many countries have already taken steps to incorporate some of these metrics into their policy-making and, in some cases, have even created "well-being" budgets.

Some of the main initiatives that inter-governmental organizations and countries have pur-

³⁹ Dr. Martin Seligman launched the field of positive psychology with his presidential speech to the American Psychological Society in 1998. Seligman, *President's Address from The APA 1998 Annual Report*, appearing in the August, 1999, *American Psychologist*. See also Seligman, *Authentic Happiness*, chapt. 2 (Atria 2002); Flourish, Note 34, above, at p. 5.

sued and implemented are summarized below. The purpose of this section is not to provide an extensive description of their work but to provide a sense of the sovereign commitment to improving the well-being of their people and to finding sensible structures and purposes that justify shifting from their historical course of action. Billions of dollars have been invested so far across the world to support this realignment. This is just another indicator of the importance of these commitments.

In 2007, the European Commission,⁴⁰ European Parliament,⁴¹ Club of Rome,⁴² The Organization for Economic Co-operation and Development (OECD)⁴³ and World Wide Fund for Nature⁴⁴ hosted the “Beyond GDP” Conference⁴⁵ with the goal of clarifying which indices are most appropriate to measure progress — as clear as GDP but more inclusive of environmental and social aspects of progress, and how these can best be integrated into the decision-making processes. The opening remarks by Jose Barroso, president of the European Commission explained:

For many years now, there has been a growing consensus that Gross Domestic Product is not, on its own, sufficient to guide high quality, policy and business decisions. The European Union is facing today a whole series of global and new challenges,

⁴⁰ The European Commission is the executive branch of the European Union, responsible for proposing legislation, implementing decisions, upholding the EU treaties, and managing the day-to-day business of the EU.

⁴¹ The European Parliament is one of three legislative branches of the European Union and one of its seven institutions. Together with the Council of the European Union, it adopts European legislation, commonly on the proposal of the European Commission. The Parliament is composed of 705 members.

⁴² The Club of Rome consists of one hundred full members selected from current and former heads of state and government, UN administrators, high-level politicians and government officials, diplomats, scientists, economists, and business leaders from around the globe. It was created to address the multiple crises facing humanity and the planet. Drawing on the unique, collective know-how of its 100 members, the group seeks to define comprehensive solutions to the complex, interconnected challenges of our world.

⁴³ The Organization for Economic Co-operation and Development (OECD) is a unique forum where the governments of 37 democracies with market-based economies collaborate to develop policy standards to promote sustainable economic growth. The OECD provides a setting where governments can compare experiences, seek answers to common challenges, identify good practices, and develop high standards for economic policy.

⁴⁴ The World Wide Fund for Nature is an international non-governmental organization founded in 1961 that works in the field of wilderness preservation and the reduction of human impact on the environment. It was formerly named the World Wildlife Fund, which remains its official name in Canada and the United States.

⁴⁵ European Commission, “Beyond GDP” Conference, Brussels (Nov. 19, and 20, 2007).

*in order to safeguard our prosperity and wellbeing.*⁴⁶

This conference kicked off a significant number of initiatives,⁴⁷ research and analysis⁴⁸ including the production of multiple well-being indexes and frameworks that led to a milestone in October 2019 when the Council of the European Union⁴⁹ adopted conclusions on the Economy of Wellbeing.⁵⁰

The Council today adopted conclusions on the Economy of Wellbeing inviting the member states and the Commission to include an economy of wellbeing perspective horizontally in national and Union policies and to put people and their wellbeing at the centre [sic] of policy design.

*The concept of the Economy of Wellbeing is a priority for the Finnish presidency. Its core claim is that while people’s wellbeing is a value in itself, it is also vitally important for the Union’s economic growth, productivity, long-term fiscal sustainability and societal stability.*⁵¹

OECD held a two-day international workshop on Putting Well-being Metrics into Policy Action,⁵² in October 2019. They rolled out a framework for inclusive policy making.

⁴⁶ Barroso, J. Beyond GDP — Opening Speech, Brussels (Nov. 19 2007).

⁴⁷ In 2008, French President Nicolas Sarkozy launched the so-called Stiglitz-Sen-Fitoussi Commission, chaired by Nobel Prize-winning economist, Professor Joseph E. Stiglitz of Columbia University. The main motive behind setting up the Commission on the Measurement of Economic Performance and Social Progress, or the Stiglitz Commission, was the increasing gap between the standard measures of growth, inflation and unemployment, and the way socio-economic trends were perceived by public opinion. In 2010, The Stiglitz Report was published with the main theme being about moving beyond GDP.

⁴⁸ For further illustration refer to The European Commission Website.

⁴⁹ The Council of the European Union or The Council, is formed by government ministers from each EU country who meet to discuss, amend and adopt laws, and coordinate policies. The ministers have the authority to commit their governments to the actions agreed on in the meetings. Together with the European Parliament, the Council is the main decision-making body of the European Union.

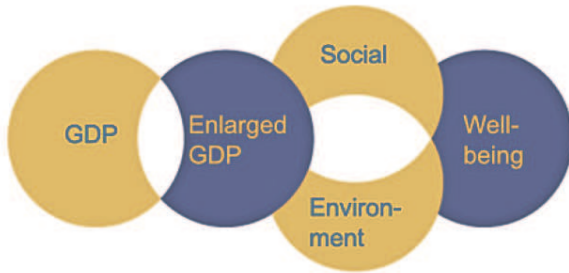
⁵⁰ European Council. Draft Council conclusions on the Economy of Wellbeing. Brussels (Oct. 17, 2019).

⁵¹ European Council, Economy of Wellbeing: the Council adopts conclusions, Press Release (Oct. 24, 2019).

⁵² OECD, Well-being Metrics into Policy Action, Paris, (Oct. 3-4, 2019).

The framework includes several indicators aggregated by theme, as follows:⁵³

Indicators



European Commission “Beyond GDP” Indicators⁵⁴

- **Gross domestic product (GDP):** *The Gross Domestic Product is the sum of the market value of all final goods and services produced in a country in a given period. GDP per capita has traditionally been used to illustrate a country’s material standard of living, but today its usage is meeting increased criticism.*
- **Enlarged GDP:** *Enlarged GDP indicators start from GDP but adjust for some of its limitations to deliver a more comprehensive overview of a country’s wealth or well-being.*
- **Social indicators:** *Social indicators give insights into a broad range of social issues, concerns and trends such as life expectancy, poverty rates, unemployment rates, disposable income, and education levels, etc. They are also used to give insights into broader notions of social progress.*
- **Environmental indicators:** *Environmental indicators cast light over the state and development of issues such as natural resources, environmental pollution and waste, as well as related issues such as human health.*
- **Well-being:** *Well-being indicators are used to broadly illustrate people’s general satisfaction with life, or give a more nuanced picture of well-being in relation to their jobs, family life, health conditions, and standards of living.⁵⁵*

Many European countries have already taken steps to include well-being metrics into policy making. The

following list provides a few examples of them but it is not complete:



Scottish National Performance Framework⁵⁶

Scotland’s National Performance Framework:⁵⁷ the framework measures Scotland’s progress against the national outcomes that describe the kind of Scotland it aims to create. To do this, it uses indicators that give a measure of national wellbeing. They include a range of economic, social, and environmental indicators.

U.K.’s What Works Network:⁵⁸ a network of nine independent What Works Centers (including the What Worlds Center for Wellbeing) covering the public sector at national and local levels. These centers use evidence-based decision-making processes for policies and public spending of more than £250 billions. In addition to working with the What Works Centers, the initiative supports government in developing policy, programs, and services in a fundamentally different way: continually testing and evaluating to improve the effectiveness of public spending.

The All-Party Parliamentary Group on Wellbeing Economics:⁵⁹ an officially recognized cross-party group of Members of Parliament and Lords in the U.K. Parliament seeking to include well-being in making policy decisions and for setting a vision for the United Kingdom.

Ireland’s Equality Budgeting:⁶⁰ focused on enhancing the government’s decision-making frame-

⁵³ European Commission “Beyond GDP” Indicators.

⁵⁴ See Note 53, above.

⁵⁵ A variety of reports and tools are available at the European Council’s website. European Commission, Beyond GDP, Reports and Tools.

⁵⁶ Scottish Government, National Performance Framework.

⁵⁷ See Note 56, above.

⁵⁸ U.K. Government website (Gov.uk). What Works Network.

⁵⁹ All-Party Parliamentary Group on Wellbeing Economics’ website.

⁶⁰ Government of Ireland website. Department of Public Ex-

work by analyzing and informing the expected impact of budgetary measures. The focus is on a wide range of areas such as income, health and education, and how outcomes differ across gender, age, ethnicity and so on.

Finland’s Economy of Wellbeing:⁶¹ “The economy of well-being approach means that a virtuous circle of policies is created where well-being and economic growth reinforce each other and profit both people and society as a whole.”⁶² The focus of spending is to improve citizens’ well-being upon the belief that when their well-being increases, people are healthier, more innovative and productive, work better, and pay taxes.

Italy’s Equitable and Sustainable Well-being:⁶³ Italy uses an extended GDP approach complementing the indicators of production and economic activity with well-being indicators and measures of inequality and sustainability. In 2016, the “Equitable and sustainable well-being” became part of the economic planning which poses the Economic and Financial Document⁶⁴ to include an analysis of the trends for selected indicators as well as an impact analysis of proposed policies. Every year in February, a monitoring report is presented to the Parliament.

Well-being Goals



Wales’ Well-being Goals⁶⁵

penditure and Reform. Equality Budgeting.

⁶¹ Ministry of Social Affairs and Health. Finland. Increased wellbeing and economic growth through the economy of wellbeing.

⁶² See Note 61, above.

⁶³ Istituto Nazionale di Statistica, The Measurement of Well-Being.

⁶⁴ The Economic and Financial Document is the main instrument for financial and economic planning, as it sets out the public finance and economic strategies for the mid-term. It is submitted to the Government and approved by the Parliament.

⁶⁵ Welsh Government, Wales’s First “Future Generations Report” by the Future Generations Commissioner for Wales.

Wales’s Wellbeing of the Future Generations:⁶⁶

Well-being of the Future Generations (Wales) Act became Welsh law in 2015. It measures seven pre-defined well-being goals with the purpose to improving the social, economic, environmental, and cultural well-being of Wales. It aims to make the public entities think more about the long-term, work better with people and communities and each other, look to prevent problems, and take a more collective approach.

One of the interesting features of the Welsh program is that the initiative is led by an independent Commissioner, responsible for publishing a five-year report on the state of achievements.



Canadian index of Wellbeing⁶⁷

In the Americas, some initiatives include the **Canadian Index of Wellbeing** aimed to use “well-being as the lens for decision-making in Canada.”⁶⁸ The index tracks changes in eight quality of life categories or domains including: community vitality, democratic engagement, education, environment, healthy populations, leisure and culture, living standards, and time use. This information is used by policy shapers, government leaders, media, community organizations, and everyday Canadians to understand trends in Canadian wellbeing; advocate for change that responds to their needs and values; and make decisions, based on solid evidence, as to whether Canadians’ well-being will improve.

Santa Monica’s Wellbeing Project: In the United States, while there is no national initiative, in 2013 the City of Santa Monica, California, launched the Santa Monica’s Wellbeing Project,⁶⁹ which set out to define wellbeing, to measure it, and to use the results to overhaul government’s structure and decision-making.

⁶⁶ See Note 65, above.

⁶⁷ See Note 65, above.

⁶⁸ Canadian Index of Wellbeing.

⁶⁹ Office of Wellbeing, Community & Cultural Department, The Wellbeing Project Summary (May 2013).

The Wellbeing Project helped Santa Monica use growing partnerships between government and non-governmental organizations. The city also used the index to build on established efforts that track progress in environmental health, open space and land use, economic development and housing, and human dignity.⁷⁰

Creating the Wellbeing Index also helped the city of Santa Monica establish the current state of wellbeing of the city and its residents; discover new ways to include city administrative and program data, resident experience data, and social media data to better understand wellbeing; use wellbeing dimensions to frame its strategic plan and to inform all policy and program decisions; and help other cities integrate wellbeing into their measurement and planning through the dissemination of Santa Monica's results and outreach efforts.

India's Ease of Living Index: As a first step in the direction of moving beyond GDP, the Indian Ministry of Housing and Urban Affairs has developed the **Ease of Living Index** to measuring quality of life of its citizens across Indian cities, as well as economic ability and sustainability. It is as well expected to evolve into a measurement tool to be adopted across districts. The expectation is that this more holistic measure will provide more accurate insights into the state of development of the Indian economy.⁷¹

National Well-Being Budgets

As previously noted, Bhutan has pursued happiness as a state policy, and in fact was the first country to do so. In its 1996-1997 National Budget, Bhutan introduced publicly the concept of Gross National Happiness (GNH) to take priority over the Gross National Product in policymaking. However, GNH had been implemented in early 1970s as a development strategy that yielded significant gains to the country.⁷²

For the government of Bhutan, GNH is *“holistic, recognizing people’s spiritual, material, physical or social needs; it emphasizes balanced progress; it views happiness as a collective phenomenon; it is both ecologically sustainable, pursuing well-being for both current and future generations, and equitable,*

*achieving a fair and reasonable distribution of well-being among people.”*⁷³

In 1999, with support from the United Nations Development Program, Bhutan published the Bhutan 2020: A Vision for Peace, Prosperity and Happiness, making GNH the “central development concept” but subordinated it to the “overarching goal” of “the future independence, sovereignty and security of our nation state.”⁷⁴

The Gross National Happiness Commission was created to ensure that all projects in the national development plan were ‘GNH cleared.’

The GNH Index includes nine domains: (1) Psychological wellbeing, (2) Health, (3) Education, (4) Time use, (5) Cultural diversity and resilience, (6) Good governance, (7) Community vitality, (8) Ecological diversity and resilience, and (9) Living standards.

We strive for the benefits of economic growth and modernization while ensuring that in our drive to acquire greater status and wealth we do not forget to nurture that which makes us happy to be Bhutanese. Is it our strong family structure? Our culture and traditions? Our pristine environment? Our respect for community and country? Our desire for a peaceful coexistence with other nations? If so, then the duty of our government must be to ensure that these invaluable elements contributing to the happiness and wellbeing of our people are nurtured and protected. Our government must be human.

*The Madhavrao Scindia Memorial Lecture delivered by His Majesty the King, 23 December 2009.*⁷⁵

On May 30, 2019, **New Zealand** stepped farther forward than any other western country and adopted “The Well-Being Budget.” According to the New York Times, “all new spending must advance one of five government priorities: improving mental health, reducing child poverty, addressing the inequalities faced by indigenous Maori and Pacific islands people, thriving in a digital age, and transitioning to a low-emission, sustainable economy.”⁷⁶ The new budget is a stunning government document to read, starting

⁷⁰ Rand Corporation, Measuring Wellbeing to Help Communities Thrive.

⁷¹ Kapoor A. and Debroy B., GDP Is Not a Measure of Human Well-Being, Harvard Business Review, Economic Development (Oct. 4, 2019).

⁷² Munro, L., *Where Did Bhutan's Gross National Happiness Come From? The Origins Of An Invented Tradition*, Vol. XLVII, no. I, Asian Affairs, p. 71 (2016).

⁷³ Sithey, Thow, & Lia, Gross national happiness and health: lessons from Bhutan, Bull World Health Organ, 93(8): 514 (Aug. 15, 2015).

⁷⁴ Planning Commission, Bhutan 2020: A Vision for Peace, Prosperity and Happiness. Thimphu: RGOB, p. 43 and 45 (1999).

⁷⁵ Centre for Bhutan Studies, An Extensive Analysis of GNH Index (2012).

⁷⁶ Graham-McLay, New Zealand's Next Liberal Milestone: A Budget Guided by 'Well-Being,' New York Times (May 22, 2019).

with the introduction by Minister of Finance Hon Robertson:⁷⁷

To set the priorities for this Budget, we used evidence and expert advice to tell us where we could make the greatest difference to the wellbeing of New Zealanders. Each bid for funding required a wellbeing analysis to make sure that funding would address those priorities. We have broken down the silos of government to support programmes that bring together agencies to solve the big challenges of our time.

In this first Wellbeing Budget our priorities are tackling long-term challenges facing New Zealand.

* * *

We do not claim perfection in this first Wellbeing Budget, and we will not fix everything in one go. This is just the start of a programme of change. The Coalition Government is committed to the wellbeing approach, now and in the future. I want to thank all three parties that make up this Government for their commitment, and to doing the right thing for New Zealand for generations to come. Budget 2019 is a landmark moment, and I am proud to present it.

New Zealand's 2020 Wellbeing Budget continued: “[. . .] and in some cases expanding, the work those priorities started. The Wellbeing Budget 2020 priorities were selected using a collaborative and evidence-based approach. Evidence from the Treasury's Living Standards Framework (LSF) was combined with advice from sector experts and the Government's Chief Science Advisors to identify areas where the greatest opportunities exist to make a difference to New Zealanders' wellbeing”⁷⁸

An example from New Zealand's budget is helpful because it reveals the self-efficacy⁷⁹ of the approach. This example is from their priority to transform their economy for a low-emissions future and addresses KiwiRail.

⁷⁷ Government of New Zealand, The Treasury, The Wellbeing Budget 2019 (May 30, 2019).

⁷⁸ Government of New Zealand. Budget Policy Statement 2020, Wellbeing budget priorities.

⁷⁹ “Self-efficacy is the belief in one's ability to influence events that effect one's life and control over the way these events are experienced.” Tugsbaatar, Albert Bandura, Self-Efficacy for Agentic Positive Psychology (Positive Psychology.com).

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.

WHAT CAN WEALTHY FAMILIES LEARN FROM THESE COUNTRIES?

First, families can emulate the lesson of taking responsibility. David Brooks' February 13, 2020, New York Times editorial explained that Nordic countries take responsibility for a “lifelong development model to instill the mode of consciousness people need to thrive in a complex pluralistic society.”⁸⁰ Essentially, they take responsibility for their citizens' well-being. Families can do that too.

Second, families can learn from these countries to question their goals and approach with wealth and resources, and learn why these countries have taken a more intentionally human focus. Prime Minister Cameron believed that improving the United Kingdom's sense of well-being should be the central political challenge. The rationale driving this sovereign realignment may likewise inform the approach of families.

Third, from looking at what these countries are doing, it is clear that the future of family wealth management should be in line with family members' well-being. There is a growing world-wide understanding that financial resources are a means to support human development. There is no justifiable reason to believe that families would be better off if their material resources continued being managed with a narrow focus on financial return. Simply put, wealth — like other resources — is to support well-being.

Fourth, families can learn to develop a framework for family well-being. Many parents are intentional about their legacy. They invest time and money understanding the legacy they are passing on to the coming generations. Legacy goes well beyond their material assets. It includes values, family's culture and traditions, religion and spiritual beliefs, charities, and more. The family's well-being should be considered

⁸⁰ Brooks, D., This Is How Scandinavia Got Great, Editorial, New York Times (Feb. 13, 2020).

part of the parents' legacy to their children too, and it should be intentionally designed.

Well-being is affected by values, beliefs, culture, health, material resources, relationships and social support, among other things. All these factors are tied to the individual as well as the family's nature. Each family member's well-being cannot escape the family's nature and therefore each family member's well-being is a component of the parents' legacy. With that in mind, parents can draw from countries' initiatives and design a strategy that focuses on family members' well-being. What is important about this is the intentionality of the family in pledging their wealth to flourishing. This is broader and deeper than the "Giving Pledge"⁸¹ because, while it may very well include a charity component, it is also a moral commitment to use family assets to develop and support family members' flourishing.

This framework allows us to shift the family discussions to a more positive and constructive space. Instead of searching for weaknesses and flaws in the family dynamic, we focus individuals in identifying strengths and sources of potential upon which the family can build over time. A family well-being framework is crafted following the collective decision of what is important to family well-being.

For example, a family whose members are committed to support sustainability can make a plan to invest in making the family and its members more sustainable. This plan might include moving all the members to electric cars, fitting their houses solar panels and other green components, buying enough renewable certificates to offset their carbon footprint, supporting businesses that promote a clean environment, including airlines that offer carbon offsets, and engaging in green community projects.

A plan like this (see Exhibit I for more details) offers multiple benefits. Sustainability not only touches on the family and its individuals' sense of meaning, engagement, and achievement, but it also creates a healthier environment that improves each individual's well-being.

Following the example of countries, a family well-being framework includes the following components: a list of goals or "priorities," a "budget," "implementation" strategy, and a "measurement" plan which are discussed below.

a. Priorities: A well-being framework includes the domains and indicators selected by the fam-

ily as their priority, which can be informed by the research and empirical data from well-being theory. The domains could encompass a wide array of interests and priorities such as mental health, education, environment, culture, leisure, social connection, meaning and positive emotion, etc. The indicators would provide a way to measure the involvement, experience and progress of family members in each of the domains. Again, they are defined by the family based on what is important for them and each domain can include several indicators. For example, culture can be objectively indicated by number of museum visits and concerts/other cultural events attended in the year, as well as lectures, readings, family experiences exploring cultural diversity, and so on.

b. Budget: A budget component allows the family to be intentional about their allocation of resources to support the well-being priorities. This endeavor should be informed by the results of the measurement of well-being via quantification of the indicators. As OECD General Secretary, Angel Gurría said in his opening remarks to the Putting Well-being Metrics into Policy Action Workshop, "If it ain't in the budget, then it is not a priority."

c. Implementation Plan: The implementation component feeds from the budget and measurement components and focus on designing, funding, and engaging the family in the steps of an action plan to increase family members' well-being.

d. Measurement/Assessments: A measurement component includes the indicators selected to assess, measure progress, and quantify the well-being of the family, according to the domains selected by the family as their priority for well-being. A starting point could very well be a feedback loop by family members but there are numerous well-being assessment tools available, to measure both objective and subjective well-being, and many of them for free.⁸² Families can also adopt a system similar to Wales using an external party to assess and report well-being to better ensure accuracy of measurement.

While this framework might seem complex and difficult to put into practice, it is probably already practiced at least in part by many families, except perhaps not as intentionally designed and focused as described above. For example, every year families decide on a vacation plan, a traveling destination, restaurants they

⁸¹ The Giving Pledge is a movement of philanthropists who commit to giving the majority of their wealth to philanthropy or charitable causes, either during their lifetimes or in their wills.

⁸² See, e.g., the assessment tools available at <https://www.authentic happiness.sas.upenn.edu/testcenter>.

want to visit, social events to attend and to offer at their home, extra-curricular classes for their children, and much more. We are suggesting to supercharge the efforts with more intentionality and thoughtfulness.

The well-being framework is also scalable. That is, the family might identify one priority to focus on during the first year, such as ensuring that each family member has good quality healthcare insurance. In each subsequent year, they might add an additional priority, while also assessing and adjusting the strategy as they incrementally build the framework.

Families can take full ownership of this plan and they can seek professional assistance in the process. Families' well-being strategy and framework need not follow the structure suggested above. This article is not intended to develop or suggest a unique framework. The purpose of this article is to invite parents, families, and estate and wealth planning practitioners to consider expanding their structure of wealth management to be more inclusive of their members' well-being and to build a legacy of flourishing.

CONCLUSION

Families and the estate planning professionals assisting them, like the countries implementing well-being theory, can implement a framework that recognizes their family members and clients' needs and potential and takes ownership and responsibility for improvement. At its core, it is building within the family the idea of a positive, human focused, well-being framework that is supported with the family's financial wealth and other resources. By periodically measuring well-being in their members, they can help to ensure that their intentional actions are having a positive impact. If national governments can do this, so can families and their advisors!

EXHIBIT I

Smith Family's Green Energy Activities and Investment Plan

As a family, we are collaborating on the following green energy activities and investment plan:

(1) **Environmental and Social Attributes** — We believe that our well-being and that of our communities, nation and planet are inseparable and directly connected to nature and the environment. As family, we will dedicate time and resources to living sustainably, to the use of sustainable renewable energy and reducing environmental pol-

lutants such as carbon dioxide and other gas emissions that cause the greenhouse effect.

(2) **Sustainable Renewable Energy** — When possible, we will use energy and invest in energy derived from sustainable renewable sources, including the following sources: (i) solar energy; (ii) wind energy; (iii) geothermal energy; (iv) renewable biomass combustion; (v) renewable biomass gas combustion; (vi) combustion of biofuel derived from renewable biomass or from other sources such as microalgae; (vii) green hydropower; and (viii) green marine and hydrokinetic renewable energy.

(3) **Investments** — As a family, we will begin to invest in companies and projects that (i) have at least 25% of their gross revenue devoted to the production, operation, storage, management or retail distribution of sustainable renewable energy at a commercial scale, (ii) own or involve real property, including lands and improvements or parts thereof, as well as any addition equal to not less than 25% of the area of the main facility devoted to the production of sustainable renewable energy, (iii) have at least 25% of their gross revenue derived from the design, manufacture, sale, maintenance or operation of machinery and equipment necessary for the production of sustainable renewable energy, or (iv) have at least 25% of their gross revenue derived from the design, manufacture, sale, maintenance or operation of products designed to use sustainable renewable energy and/or that otherwise reduce gas emissions that cause the greenhouse effect, such as electric automobiles and other forms of electric transportation.

(4) **Personal Use** — As a family, over one year period, we will shift over to electric cars and retro fit personal homes with solar panels and other green technology (strategically taking advantage of any tax benefits associated with the same), and any new construction will be designed to achieve zero emissions. During this time, we will retain a consultant to help design a long-term personal plan of action to live more sustainably.

(5) **Carbon Offsets** — As a family, we will begin to calculate our carbon footprint and buy carbon offsets to achieve a level of carbon neutrality. We will, in time, try to achieve carbon zero living.

(6) **Government and Regulation** — Through the family’s private foundations and social welfare organizations, we as a family, will study and prepare a plan of action towards being prosocial in funding projects aimed at reducing environ-

mental pollutants such as carbon dioxide and other gas emissions that cause the greenhouse effect and lobbying for the same through governing bodies.