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## Well-Being Supported by Family Wealth — A Foundation to Flourish

By Richard S. Franklin & Claudia E. Tordini\*  
Franklin Karibjanian & Law PLLC & Appanage LLC  
Washington D.C.

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\* Richard Franklin is a member of Franklin Karibjanian & Law PLLC. He focuses on estate planning, trusts and estate administration, and beneficiary and fiduciary representation. He is a member of the District of Columbia and Florida Bars, a Fellow of the American College of Trust and Estate Counsel and serves on its Tax Study Committee. Richard speaks on topics that reflect his deep interests, and includes specific ideas that he recommends to clients and implements on their behalf. His focus for presentations is on creative and innovative approaches to estate planning.

Claudia Tordini provides coaching and consulting through Appanage LLC. She consults with families on wealth and inheritance planning with the purpose of family wealth supporting well-being and flourishing. She brings together her background in business, humanistic psychology studies, and art to offer an integrated positive approach to wealth and well-being. Claudia has pioneered a powerful model for using art and creative expression to facilitate individuals and family's development. She is currently teaching this tool at the University of Pennsylvania.

Richard and Claudia provide consulting services to families on the human side of wealth and inheritance planning through Appanage LLC. Many of the concepts and ideas outlined in this paper have been developed through their work together.

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## INTRODUCTION

This article is foremost a call to contextualize the estate planning process by engaging families in a collaborative and inclusive journey towards “flourishing,” with each member of the family maximizing his or her potential and living a purposeful life. After all, what is the point of estate planning if not to improve family and beneficiary well-being?

Positive psychology<sup>1</sup> provides helpful ideas and empirical data to ground the process. Today, well-being theory emerges at the intersection of philosophy,<sup>2</sup> psychology<sup>3</sup> and science, giving answers to essential human quests and, most importantly, offering an efficacious approach. “The goal of positive psychology in well-being theory...is to increase the amount flourishing in your own life and on the planet.”<sup>4</sup> The core features of flourishing are defined by reference to five elements: Positive Emotions

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vide a general discussion, that critical information may be omitted, and that these ideas and strategies may not be suitable for any particular individual or family. Copyright 2020 Richard Franklin & Claudia Tordini. All rights reserved.

<sup>1</sup> 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*, 5 - 14 (Feb. 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, 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) (hereinafter “Authentic Happiness”); Seligman, *Flourish*, Atria (2011); Parks & Schueller, *The Wiley Blackwell Handbook of Positive Psychological Interventions*, Wiley (2014).

<sup>2</sup> Garnett, *Positive Psychology and Philanthropy: Reclaiming the Virtues of Classical Liberalism*, *Conversations on Philanthropy*, Vol. V, 5 (2008).

<sup>3</sup> McLeod, *Maslow's Hierarchy of Needs*, *Simple Psychology* (published 2007, updated 2016); Maslow, *The Farther Reaches of Human Nature*, *Journ of Transpersonal Psychology* (Spring 1969).

<sup>4</sup> Seligman, *Flourish*, 26 (hereinafter “Flourish”).

(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).<sup>5</sup>

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.

Psychologists categorize happiness as either “hedonic” or “eudemonic.” Hedonic happiness alludes to a temporary sense of pleasure, but eudemonic happiness is a deeper sense of satisfaction of having lived a good life consistent with one's virtues.” The ‘pleasant life’ might be had by drinking champagne and driving a Porsche, but not the good life. Rather, the good life is using your signature strengths every day to produce authentic happiness and abundant gratification.”<sup>6</sup> Promoting the deep sense of happiness and life satisfaction is the focus of this article.

The overarching ideas in this article 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 been overrated 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.

<sup>5</sup> Flourish at 24.

<sup>6</sup> Authentic Happiness, Note 1, above at 13.

- **In families of substantial wealth, estate planning should be primarily about lifetime transfers.** Abandon the outdated practice focused on testamentary transfers of wealth. This article 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.**

## FAMILY WEALTH'S SUPPORTING ROLE IN WELL-BEING AND FLOURISHING

The proposal for families is that their principal focus be always on human development, i.e., the well-being and flourishing of each family member. However, having resources is important — perhaps critical — to well-being and flourishing in the United States<sup>7</sup> This article will explore the research that supports wealth as an enhancer of well-being.

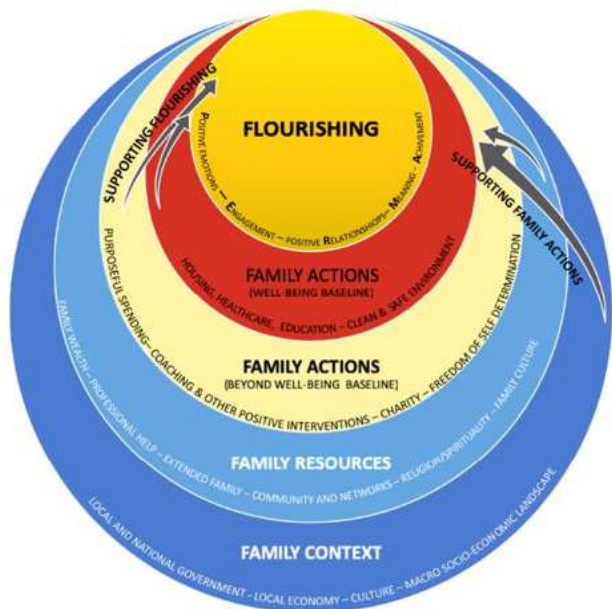
Illustrated below is a two-part model to explain the role that family and family wealth may play in supporting well-being:

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 (Beyond The Well-Being Baseline). Here again, substantial research is provided to help inform families' approach to this level too.

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

<sup>7</sup> There is no suggestion here that wealth is required for flourishing. The literature is clear that is not so. See, e.g., Authentic Happiness, Note 1, above at 51 - 61. However, the data discussed in the sections below also make clear that income and wealth are helpful to well-being.



**FAMILY AND WEALTH SUPPORTING WELL-BEING MODEL**  
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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 article is on the role that family and family wealth could have on each member’s well-being and ultimate flourishing.

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.

## Well-Being Baseline

### Housing, Healthcare, Education & Environment

The well-being baseline in a family should start with the basics,<sup>8</sup> 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;
- Be well educated, skilled, and able to contribute to society; and
- Enjoy a clean environment and live sustainably.

<sup>8</sup> The proposal is partly informed by the well-being initiatives in various countries such as New Zealand, Scotland, Wales, and United Arab Emirates.

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 beyond the Well-Being Baseline.

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 water-front of foreseeable contingencies) is critical.

### Income and Life Expectancy — the “Prince Charles Effect”

Life expectancy is fundamental to well-being, like having clean air to breathe, 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.<sup>9</sup> However, the statistics for the wealthy are substantially better: 91.9

<sup>9</sup> United States Life Tables, 2017, Vol. 68, Number 7, National

years for females and 88.8 years for males.<sup>10</sup> 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.<sup>11</sup> According to census data, the over 85 age group is the fastest growing demographic in the United States. All surviving baby boomers will be over age 85 by 2050.<sup>12</sup>

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 71, waiting to inherit the throne from his mother, Queen Elizabeth II, age 94 (her husband, Prince Phillip, is a young age 99)! Hence the “Prince Charles Effect!”<sup>13</sup> 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 Association<sup>14</sup> (JAMA Article) and *Socioeconomic Inequalities in Disability-free Life Expectancy in Older People from England and the United States: A cross-national Population-Based*

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Vital Statistics Reports (June 24, 2019).

<sup>10</sup> 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 at Note 18, below.

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

<sup>12</sup> Ortman, Velkoff & Hogan, *An Aging Nation: The Older Population in the United States*, Current Population Reports (May 2014).

<sup>13</sup> 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 (Jan. 11, 2017, Orlando, Florida).

<sup>14</sup> 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 (Apr. 10, 2016, corrected Jan. 3, 2017) (herein “JAMA Article”). Readers 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](https://healthinequality.org/documents/paper/healthineq_summary.pdf).

*Study*, published on-line on January 15, 2020, in The Journals of Gerontology<sup>15</sup> (Disability-Free Report).

### 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.”<sup>16</sup>

### 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 United States considered a representative sample of the U.S. population. The survey includes data of the population filed every two years starting on 1992, established to provide a national bank of information on the changing health and economic circumstances associated with aging at both individual and population levels.

### Implications of the JAMA Article and the Disability-Free Report for Wealthy Families and Well-Being

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

#### ***Greater Income Means Greater Life Expectancy***

Based on the JAMA Article, a 40-year-old man in the top 1% of income could expect to live, on aver-

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<sup>15</sup> Zaninotto, Batty, Stenholm, Kawachi, Hyde, Goldberg, Westerglund, 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 (Jan. 15, 2020).

<sup>16</sup> Deaton, *On Death and Money — History, Facts, and Explanations*, Editorial, Vol. 315, No. 16, JAMA (Apr. 26, 2016) (herein “*On Death and Money Article*”).

age, 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 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.

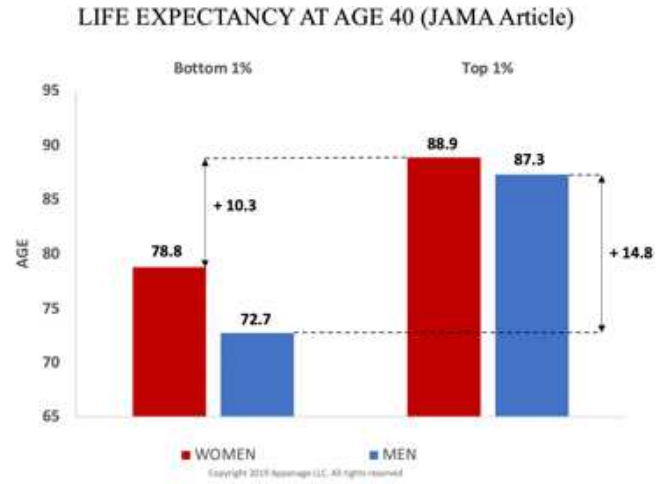


Figure 1

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.<sup>17</sup>

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 in the *On Death and Money Article*, “. . . 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. population.<sup>18</sup> They issued a report in 2015 that 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 four 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).

LIFE EXPECTANCY AT AGE 50 (Disability-Free Report)

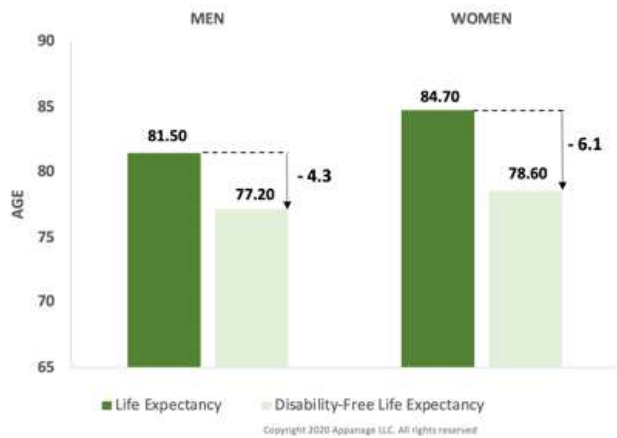


Figure 2

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.

**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 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.<sup>19</sup>

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 stun-

<sup>17</sup> *On Death and Money Article*, Note 16, above at 1704.

<sup>18</sup> National Academies of Sciences, Engineering, and Medicine (2015), *The Growing Gap in Life Expectancy by Income: 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, D.C.: The National Academies Press) (*NAS Growing Gap Article*).

<sup>19</sup> 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 Inequality; USA, 1980-2015*, Vol. 389, *The Lancet* (Apr. 8, 2017) (*Lancet Article*).

ning. For example, from the moment of birth, in Arlington County, Virginia (just across the Potomac River from Washington, D.C.), the life expectancy is 84.6 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 15.6 years lower!<sup>20</sup> Moreover, the effect at the lower economic thresholds has driven overall life expectancy for the United States 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.<sup>21</sup> These overall averages for everyone in the country are misleading; the wealthy fared better, as discussed above.

### ***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 seven 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.

### **Life Expectancy and Education — Another Eye-Opener**

Many studies have used level of education attainment as a measure or determinate in life expectancy.<sup>22</sup> 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 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.<sup>23</sup>

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 nine years between those in the high and low education cohorts.<sup>24</sup>

### **Life Expectancy Implications for Family Wealth and Inheritance Planning**

#### ***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.<sup>25</sup>

#### ***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.

<sup>20</sup> County Health Rankings & Roadmaps, <https://www.countyhealthrankings.org/>, a Robert Wood Johnson Foundation program.

<sup>21</sup> 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 (Dec. 10, 2018).

<sup>22</sup> For a review of these studies, see *Lancet* Article Note 19, above at 1480; *NAS Growing Gap* article, Note 18, above at Chap. 3.

<sup>23</sup> *Lancet* Article, Note 19, above at 1482.

<sup>24</sup> Disability-free Report, Note 15, above at 4.

<sup>25</sup> Mendelsohn, *Longevity Throws a Wild Card in Even the Best-Laid Plans*, J. Fin. Serv. Prof. (May 2017).

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 years<sup>26</sup> at the median income level, which is almost 4 years less than the 88.9 years in the top 1% of income.<sup>27</sup> 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.<sup>28</sup> 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%.<sup>29</sup> 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

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<sup>26</sup> See the interactive chart at Dr. Chetty's website, <https://healthinequality.org/>.

<sup>27</sup> 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, three years less than the 83.1 years in the richest group.

<sup>28</sup> 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).

<sup>29</sup> 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%).

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

### ***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 below in the paragraph titled Educating and Preparing Family for the Future).

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., 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 eight 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.<sup>30</sup> 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 suggestion best belongs in the section below titled *Beyond the Well-Being Baseline — Positively Supporting Flourishing*, because the point relates to flourishing, but is contextually situated here to be with the life expectancy discussion.

## Beyond the Well-Being Baseline — Positively Supporting Flourishing

After the family has determined the scope of their well-being baseline and taken steps to ensure these foundational elements are satisfied, the family can then begin focusing on the next level. Suggestions for moving beyond the baseline and actively supporting well-being and flourishing at the next level might include taking steps to ensure that each family member has the opportunity to:

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

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<sup>30</sup> 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), <https://www.sheknows.com/entertainment/articles/2064276/when-will-queen-elizabeth-step-down-retire/>.

- Be open, connected and engaged in giving back.

Furthering these higher-level elements requires consideration and thought. They are not as easily satisfied as ensuring each family member has good health care coverage and good housing in a safe community. Moreover, helping and supporting a family member discover and develop their true potential — i.e., to flourish — is less tangible than paying for education and requires full personal engagement. For many, this is an area of vulnerability, confusion and even fear. There's good news, positive psychology offers an array of tools and models to help. For example, studies show that a simple exercise such as gratitude journaling, which takes about 10 minutes of daily attention, can produce a significant increase in well-being.

This section provides some research to support a positive approach to family flourishing and some ideas for exploring and furthering the enhanced elements of well-being.

### 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<sup>TM</sup>) Theory of Well-being: **P**ositive emotion, **E**ngagement, **R**elationships, **M**eaning and **A**chievement).<sup>31</sup>

Positive psychology founder, Dr. Martin Seligman, determined that there are 24 character strengths<sup>32</sup> 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 six 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).

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<sup>31</sup> Flourish, Note 4, above at 26. PERMA<sup>TM</sup> Theory is a Trademark of Martin Seligman, PhD, the founder of Positive Psychology.

<sup>32</sup> Seligman & Peterson, *The Values in Action (VIA) Classification of Character Strengths*, *Ricerche di Psicologia*, 27(1), 63-78 (2004).



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 Survey<sup>33</sup> and determine what are each person's signature strengths. Sharing this information within the family can launch a path of convergence towards family supporting individual's well-being and flourishing.

### Risk-Reward Equation for Well-Being and Flourishing

According to Dr. Barbara Fredrickson, positivity is the difference between languishing or flourishing.<sup>34</sup> Moreover, scientific studies show that "positivity doesn't simply *reflect* success and health, it can also *produce* success and health."<sup>35</sup> Fredrickson introduces 10 forms of positivity, based on the most common emotions observed in people: joy, gratitude, serenity, interest, hope, pride, amusement, inspiration, awe, and love.

<sup>33</sup> <https://www.viacharacter.org/survey/account/register>.

<sup>34</sup> Fredrickson, 2009, *Positivity*, Harmony Books, NY, 19.

<sup>35</sup> *Positivity* at 18.



Figure 4

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: positive people make better important life decisions, are significantly more satisfied with their jobs,<sup>36</sup> are more productive and earn higher income, are more successful and better achievers,<sup>37</sup> possess better negotiation and problem-solving skills,<sup>38</sup> deal better with adversity, have better health,<sup>39</sup> live up to 10 years longer, are more creative, open-minded, empathetic, tolerant, and generous,<sup>40</sup> and are more compared to less positive people.

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.

### Positive Psychology Interventions

Positive psychology interventions (PPIs) are intentional activities that cultivate positive emotions and behaviors to enhance well-being.<sup>41</sup>

*Trusts should be designed to permit and encourage investing funds into human development by teach-*

<sup>36</sup> Diener and Seligman, *Beyond Money. Toward and Economy of Well-Being*, American Psychological Society, Vol. 5 No. 1, 11 (2004)[http://labs.psychology.illinois.edu/~ediener/Documents/Diener-Seligman\\_2004.pdf](http://labs.psychology.illinois.edu/~ediener/Documents/Diener-Seligman_2004.pdf).

<sup>37</sup> Diener and Seligman at 1.

<sup>38</sup> Norrish, *Positive Education*, Chapter 7 — Positive Emotions Transform Lives, Oxford University Press, UK, 129 (2015).

<sup>39</sup> Fredrickson, Note 34, above at 94.

<sup>40</sup> Fredrickson, Note 34, above at 89-93.

<sup>41</sup> See Sin & Lyubomirsky, *Enhancing Well-Being and Alleviating Depressive Symptoms With Positive Psychology Interventions: A Practice-Friendly Meta-Analysis*, J. Clinical Psychology, 467

ing and coaching beneficiaries on using PPIs. See the sample positive trust form below

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.<sup>42</sup> 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, engagement, relationships/support, meaning/purpose, and accomplishment/competence.*<sup>43</sup>

A 2009 meta-study of 51 PPIs determined that PPIs significantly enhanced well-being and decrease depressive symptoms.<sup>44</sup> There are now a great many PPIs. Gratitude 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.<sup>45</sup>

### **Evidenced Based Coaching**

There is a growing body of research that coaching is one of the best PPIs that families can deploy.<sup>46</sup>

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 coach-

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(2009).

<sup>42</sup> Parks & Biswas-Diener, *Positive Interventions: Past, Present, and Future* (2016) (herein “*Positive Interventions Article*”).

<sup>43</sup> *Positive Interventions Article* at 248. Parks & Schueller, *The Wiley Blackwell Handbook of Positive Psychological Interventions*, Wiley, 248 (2014) (citations omitted) (hereinafter “*Wiley Handbook*”).

<sup>44</sup> See Sin & Lyubomirsky, Note 41, above at 467.

<sup>45</sup> Importantly, the application of ideas are premised on individuals being normalized and not meeting the diagnoses criteria for mental disorders.

<sup>46</sup> See *Wiley Handbook*, Note 43, above at 459.

ing.<sup>47</sup> EBC may be particularly helpful in acting as an amplifier to other PPIs by creating greater retention and sustainability of their well-being benefits.<sup>48</sup> 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 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.

### **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.<sup>49</sup>

*[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.*<sup>50</sup>

With this introduction to meaning and why daily prioritizing is important, consider using the Best Possible Self exercise.<sup>51</sup> It is considered one of the strongest PPIs. The exercise involves the individual visualizing herself at a future moment in time having ac-

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<sup>47</sup> 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.

<sup>48</sup> Green & Palmer at 6.

<sup>49</sup> Russo-Netzer, *Prioritizing Meaning as a Pathway to Meaning in Life and Well-Being*, *J. Happiness Studies* (Sept. 27, 2018). (For a summary of this research paper, see Russo-Netzer, *Why You Should Prioritize Meaning in Your Everyday Life*, *Greater Good Magazine* (Mar. 2019)).

<sup>50</sup> Russo-Netzer at ¶11.4 (citations omitted).

<sup>51</sup> Niemiec, *What is Your Best Possible Self?*, *Psychology Today* (Mar. 29, 2013).

complished 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.<sup>52</sup> 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.”<sup>53</sup> 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.” 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.<sup>54</sup> 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.<sup>55</sup> 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 prospection 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.

### **Gratitude Visit/Letter**

Another PPI intervention that should be particularly powerful in a family context is a 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.<sup>56</sup> 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 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.”<sup>57</sup> Other research shows that writing the letter without actually delivering it also led well-being benefits.<sup>58</sup>

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.

### **Savoring**

The idea of savoring is transforming positive experiences into joy. Savoring is the positive psychological counterpart to having coping skills.<sup>59</sup>

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.<sup>60</sup>

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

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<sup>52</sup> A more detailed description of the exercise can be found at <https://www.psychologytoday.com/us/blog/what-matters-most/201303/what-is-your-best-possible-self>.

<sup>53</sup> McQuaid, Niemiec, Domain, *A Character Strengths-Based Approach to Positive Psychology Coaching*, Chap. 5, 76 of *Positive Psychology Coaching in Practice*, Routledge (2019).

<sup>54</sup> See Wiley Handbook, Note 43, above at 410.

<sup>55</sup> 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* (Oct. 7, 2016).

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<sup>56</sup> Wiley Handbook, Note 43, above at 37.

<sup>57</sup> Flourish, Note 4, above at 30.

<sup>58</sup> *Positive Interventions* Article, Note 42, above at 13.

<sup>59</sup> Bryant & Veroff, *Savoring, A New Model of Positive Experience*, Lawrence Erlbaum Associates, 2 (2007) (hereinafter “Savoring”).

<sup>60</sup> Wiley Handbook, Note 43, above at 96.

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.”<sup>61</sup> Research also shows that optimistic people get more from amplifying by savoring.<sup>62</sup> Amusingly, the research even shows that savoring interventions may also help the “Type A” personality individuals enjoy vacation more!<sup>63</sup>

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).<sup>64</sup>

### 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.<sup>65</sup> 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.*”<sup>66</sup>

In *Homo Prospectus*, Dr. Seligman devotes an entire chapter to the role that creativity can play in flourish-

ishing and aging and, at the same time, argues that “creativity *can* increase even as we age.”<sup>67</sup> 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.

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.

### 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

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*path to flourishing*, J. Positive Psychology (Nov. 17, 2016).

<sup>67</sup> *Homo Prospectus*, Note 55, above, Chap. 11 at 305.

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<sup>61</sup> Jose, Lim & Bryant, *Does savoring increase happiness? A daily diary study*, J. Positive Psychology, 185 - 186 (May 2012).

<sup>62</sup> Jose, Lim, Kim & Bryant, *Does Savoring Mediate the Relationships between Explanatory Style and Mood Outcomes?*, Positive Psychology and Wellbeing, Vol. 2(2), 161 - 162 (2018).

<sup>63</sup> Smith & Bryant, *Are we having fun yet?: Savoring, Type A behavior, and vacation enjoyment*, Int. J. of Wellbeing, Vol. 3(1) (2012).

<sup>64</sup> Savoring, Note 59, above at 113-115.

<sup>65</sup> Fujiwara, *Museums and Happiness, the Value of Participating in Museums and the Arts*, Happy Museum Project (Apr. 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”).

<sup>66</sup> Conner, DeYoung & Silvia, *Everyday creative activity as a*

death.<sup>68</sup> These concerns all combine to make this an especially difficult time to be intentional, thoughtful, and self-aware.

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 article 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 and 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

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<sup>68</sup> See O'Neill, *The Golden Ghetto*, The Affluenza Project, 72 (1997).

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.

### **Money as an "Investment" in Well-Being**

Wealthy families should be aware that research shows there are positive ways to spend (no, "invest" is the right word) money that add to well-being!<sup>69</sup> The Well-Being Baseline section covered some of these points and the Giving Back section below covers another important range of investing in the family's well-being. Of course, there are many more. There is a shocking absence of this information in the trusts and estate literature. Negative spending has garnered all the attention. Families and professional trustees should become expert at this type of positive spending — no investing!

### **Giving Back**

Strategically "giving back" and using philanthropy is an opportunity beyond the baseline for families. Families can develop an approach that gives back to their communities and the world, enhances family members' well-being, and maintains balance by pre-

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<sup>69</sup> 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.").

serving family wealth as a tool in support of flourishing. There is no one size that fits all.

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*."<sup>70</sup>

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.

Philanthropic activities have the potential to enhance human development by actualizing strengths and virtues of individuals. Moreover, in positive psychology terms, engaging in virtuous actions, such as philanthropic activities, begins a cycle of building upon strengths and virtues that generate happiness, which at the same time fuels the desire for more virtuous actions. This cycle builds psychological capital for the individual, which leads to lasting gains in happiness.<sup>71</sup> Philanthropy and giving back support human flourishing because virtuous actions are required.

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.

Recall Dr. Maslow's hierarchy of needs and motivations for a moment. He added a top layer to his 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 (Maslow, 1971, p. 269).*

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

<sup>70</sup> Garnett, *Positive Psychology and Philanthropy: Reclaiming the Virtues of Classical Liberalism*, Conversations on Philanthropy, Vol. V, 5 (2008) (citations omitted).

<sup>71</sup> Garnett, at 7 (citations omitted).

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.

### 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."<sup>72</sup> Giving increases happiness and happiness increases giving,<sup>73</sup> creating a positive feedback loop.<sup>74</sup>

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!

Greater positive emotion is possible with charitable gifts that are connected with personal involvement and the desire to achieve a specific goal.<sup>75</sup> The involvement might be helping to build a house, cleaning a watershed area, serving food to the homeless, delivering meals to the elderly, or thousands of other examples of personal involvement and commitment to giving back.<sup>76</sup> 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 con-

<sup>72</sup> See Laura McKnight, *Gratitude and Giving: Dual Benefits of Philanthropy in Every Day Life*, Embolden (Oct. 26, 2017).

<sup>73</sup> Konrath, *The Power of Philanthropy and Volunteering, Interventions and Policies to Enhance Wellbeing: Wellbeing: A Complete Reference Guide*, Vol. VI, John Wiley & Sons, Inc., 399 (2014).

<sup>74</sup> Anik, Aknin, Norton & Donn, *The Benefits (and Costs) of Self-Interested Charitable Behavior*, Harvard, 12 (2009).

<sup>75</sup> 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).

<sup>76</sup> 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."

nection, 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.

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.<sup>77</sup> 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 some research to indicate that giving for just self-oriented reasons may cause a decrease in well-being, but this research may not be conclusive.<sup>78</sup>

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. The way this is laid out is virtuous action ♦ charitable giving ♦ psychological capital and lasting happiness ♦ virtuous action. There are mutual benefits to the donor and recipient, a mutual uplift and social learning.<sup>79</sup>

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 phil-

anthropic 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.<sup>80</sup>

For these reasons, families should consider connecting philanthropy to well-being. 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.<sup>81</sup>

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

### 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. This is because each individual has unique strengths and virtues that might be gratified through charitable gifts. Remember Dr. Seligman's lesson 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."<sup>82</sup>

*Philanthropic actions thus expand our individual capacity and desire for philanthropic giving. In ad-*

<sup>77</sup> 2018 U.S. Trust® Study of High Net Worth Philanthropy, Portraits of Generosity, U.S. Trust & Indiana U. Lilly Family School of Philanthropy, 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").

<sup>78</sup> Konrath, *The Power of Philanthropy and Volunteering* at 403.

<sup>79</sup> See Garnett, Note 70, above.

<sup>80</sup> Rea, *Volunteering Reduces Risk of Hypertension In Older Adults*, *Carnegie Mellon Research Shows*, Carnegie Mellon University Press Release (June 13, 2013).

<sup>81</sup> U.S. Trust Philanthropy Study, Note 77, above at 48.

<sup>82</sup> Authentic Happiness, Note 1, above at 45.



dition 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 ...<sup>83</sup>

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 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.”<sup>84</sup> The emotional benefits of giving disappear if the individual feels the generosity is required or effectively required to evade disapproval.

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.

### ***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 Surdna<sup>85</sup> 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, has begun to focus on social justice causes relating to income and wealth inequality. Recently, 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.<sup>86</sup> 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.<sup>87</sup>

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.<sup>88</sup> Surely, that is one approach 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.<sup>89</sup>

There are other options that families should 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 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*

<sup>83</sup> Garrett, Note 65, above at 9.

<sup>84</sup> See World Happiness Report 2019, Chap. 4 (United Nations Sustainable Development Solutions Network, 2019), <https://worldhappiness.report/ed/2019/happiness-and-prosocial-behavior-an-evaluation-of-the-evidence/>.

<sup>85</sup> The name is an anagram of Andrus spelled backward.

<sup>86</sup> Piereson & Riley, *A Battle Over a Capitalist’s Legacy*, WSJ

(Jan. 30, 2019).

<sup>87</sup> Benedict, Letter to the Editor, *Surdna Foundation Honors Founder’s Wish*, WSJ (Feb. 7, 2019).

<sup>88</sup> Walter, Letter to the Editor, *Surdna Foundation Honors Founder’s Wish*, WSJ (Feb. 7, 2019).

<sup>89</sup> McCoy & Miree, *Family Foundation Handbook*, CCH, 2080 (2012) (other stories of “hijacking” are provided on 2078-2079).

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, \_\_\_\_\_ percent (\_\_\_%) 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 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). An example of this is below:

Article \_\_\_\_

#### *Distribution to Charity*

At the termination of the Unitrust Period, the Trustee shall distribute the smaller of (i) \$\_\_\_\_\_ 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.

### ***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 philan-

thropy? 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?

### ***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. 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, leaving philanthropy to stand on its own merit, and in that framework it retains its positivity and potential for enhancing well-being.

## **Well-Being and Flourishing Informing Trust Design**

Families can support well-being and flourishing by incorporating some of the principles of positive psychology and well-being theory into trust design. First and foremost, consider ending the use of negative approaches. For example, stop using sentences such as this: “If a current beneficiary is not fulfilling his or her capacity to lead a productive life, the [Trustee, Distribution Committee or Trust Protector] should make or withhold payments so as to encourage a positive change in attitude.”

Instead, consider having the trust provide for a Well-Being Baseline and beyond. Require trustees to periodically assess beneficiary well-being and flourishing. Require that the trustee improve beneficiary well-being and flourishing over time based on the assessments. Provide that the improvement of beneficiary well-being and flourishing is part of determining adequate trustee performance.

The following is a sample forms provision for creating a positive trust designed to promote well-being and flourishing:

### *1.1 Objectives*

*This Agreement shall be construed, and each trust established by this Agreement 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.*

#### **(a) Trust Primarily for Support of Descendants and Promote Well-Being and Human Development.**

*(1) My primary objective in establishing the trust is to provide a source of funds for the support of my current and future descendants. The trust is a gift of love, a legacy to enhance the lives of my family and promote the growth and freedom of each beneficiary for years to come.*

*(2) I believe and trust in the ability of my 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 this trust 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 my descendants to flourish and achieve self-transcendence to the benefit of humanity. In making discretionary distributions, my overarching intention is for the trust to support the beneficiary's positive human development.*

*(3) A core desire and goal for the trust is to improve my family's well-being and flourishing over time. From an equality point of view, my intention is for the trust to promote equality of well-being and flourishing for each beneficiary. Whether the beneficiaries economically receive equal benefits from the trust is not a primary concern.*

*(4) My intention is for the Trustee and PFC (defined below) work together to define a Well-Being Baseline for each beneficiary of this trust and then for the Trustee to ensure that this baseline is achieved for each beneficiary, even to the point of exhausting the trust. Generally, I intend that the Well-Being Baseline would include these elements as 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;*
- *Be well educated, skilled and able to contribute to society; and*
- *Enjoy a clean environment and live sustainably.*

*(5) It is my intention that each of my descendants will be able to exercise wide-ranging autonomy over his or her share of the trusts to be created under this Agreement. He or she is vested with authority to become a Trustee and sole Trustee of his or her share of the trusts to be created under this Agreement, subject to attaining the ages specified in \_\_\_\_\_. He or she is vested with authority as the beneficiary to dispose of his or her share of the trusts to be created under this Agreement by Will 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 this Agreement is to grant such freedom of self-determination and thereby be a means to unleash the true potential of the beneficiaries. The Agreement has been designed to achieve certain tax planning objectives mentioned below, but these goals are secondary to the beneficiaries' flourishing, the circumstances of which can only occur with freedom and self-determination.*

*(6) This Paragraph (a) and Section 1.2 below contains statements reflective of my intent, which are to guide the Trustee in administering the trusts under this Agreement. The statements of intent in this Paragraph (a) and Section 1.2 below are not intended to restrict or eliminate the Trustee's discretion or be considered a retention of power over beneficial enjoyment of the trusts under this Agreement.*

*(b) Generation-Skipping Transfer Tax. I intend to allocate my GST exemption to the trust with each contribution and thereafter for the trust to be exempt from the federal generation-skipping transfer tax as a result of the trust having a zero inclusion ratio.*

*(c) Exclusion of Trust Estate from My Gross Estate. I intend for the principal to be excluded from my gross estate for purposes of federal and state estate, succession, or other death taxes.*

*(d) Creditor Protection. I intend for the income and principal to be protected from each benefi-*

ciary's creditors to the maximum extent that applicable law allows.

(e) **Income Tax Status of Trust.** Unless the Trust Advisor exercises the authority granted pursuant to \_\_\_\_\_ hereof to terminate the status of the trust as a grantor trust, I intend that the gross income of the trust shall be included in my gross income for federal income tax purposes and that I shall be considered the owner of trust income and corpus within the meaning of §671 through §678<sup>90</sup> of the I.R.C.

## 1.2 Positivity To Flourishing Committee

(a) **Committee Purpose.** 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 shall form a Positivity to Flourishing Committee (PFC) of beneficiaries and advisors. The PFC's goal will be to support each beneficiary developing his or her resilience, gratitude, strengths, meaning, flow, positive relationship and positive emotions. The idea is for the PFC and the trust to support well-being and flourishing in each beneficiary's life.

(b) **Well-Being Baseline and Beyond the Well-Being Baseline.** As stated in section 1.1(a)(4), the PFC should help the Trustee establish a Well-Being Baseline for the beneficiaries. Thereafter, the PFC's goals will be primarily focused on those elements of well-being beyond the Well-Being Baseline. I intend that the Trustee and PFC would set goals for moving beyond the baseline and actively supporting well-being and flourishing at the next level. The goals might include each family member having the opportunity to:

- Grow up loved, safe and respected so that they realize their full potential;
- Be creative and experience vibrant and diverse cultures;
- Be globally competitive and entrepreneurial;

<sup>90</sup> All section references herein are to the Internal Revenue Code of 1986, as amended (the "Code"), or the Treasury regulations promulgated thereunder, unless otherwise indicated.

- Value, enjoy, protect and enhance their environment;
- Have a thriving and innovative career and businesses that provide quality jobs and fair work for everyone;
- Respect, protect and fulfill human rights and live free from discrimination; and
- Be open, connected and engaged in giving back.

(c) **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 (PERMA<sup>TM</sup>).<sup>91</sup> Therefore, the PFC should work to have each beneficiary identify his or her signature strengths and then work to discover ways to support the beneficiary utilizing these strengths. For example, each beneficiary should be encouraged to take the VIA Survey of Character Strengths. The PFC 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 trusts created under this Agreement.

(d) **Resources: Exploration.** I believe in the application of the principles of positive psychology because of it resting on a foundation of empirical study. The PFC 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 PFC should promote to bring forth and support transformation.

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

(f) **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 PFC should seek out ways to promote an appreciation for art and aesthetics of all kinds.

<sup>91</sup> Flourish, above note 4, at 24.

(g) **Investing 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 PFC should become expert at this type of investing (spending) that is positive and particularly supportive of the beneficiaries' strengths and virtues.

(h) **Assessments.** I believe that the Trustee and the PFC 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. These evaluations should also be considered in determining the performance of the Trustee and PFC in actually improving the well-being and flourishing of the beneficiaries.

(i) **No Limits.** It is my hope that my family will take this beginning and further develop the idea for the PFC and mold it over time, as circumstances and knowledge develops, to improve the ideas and approaches of this committee and the trust in its entirety. My family is not limited to what is written here. This Agreement is the beginning chapter 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.

(j) **Funding, Compensation and Reimbursement.** 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.

(k) The PFC is intended to be an advisory committee to the Trustee and a mechanism for the

beneficiaries and other advisors to participate and enhance the purposes of the trust. The advice and activities of the PFC are not intended to restrict or eliminate the Trustee's discretion or be considered a retention of power over beneficial enjoyment of the trusts under this Agreement.

### 1.3 Distributions

(a) **Income and Principal.** The Trustee may make payments from the net income and principal to my descendants, as the Trustee deems appropriate for their well-being and flourishing, including satisfying their Well-Being Baseline and elements Beyond the Well-Being Baseline, as determined in and through the process described in Sections 1.2 and 1.3 of this Agreement. Any undistributed income shall be added to principal at least annually.

(b) **Limitations.** Notwithstanding any other provision herein, no Trustee has the right to exercise any powers granted hereunder that would give such Trustee or any person to whom the Trustee's powers may be imputed a general power of appointment described in §2041 or §2514 or an incident of ownership described in §2042 with respect to any insurance policy held by the Trustee insuring the life of such Trustee or any person to whom the Trustee's powers may be imputed. Any Trustee who is a beneficiary of a trust hereunder shall make payments from the net income and principal of such trust only as may be appropriate for the health, education, maintenance and support of a beneficiary of such trust in a manner consistent with the ascertainable standard as defined in §2041 and applicable regulations, but no Trustee shall participate in the exercise or decision not to exercise any discretion concerning distributions to any beneficiary to whom such Trustee owes a legal obligation of support. In each case where a Trustee's exercise of discretion is prohibited as provided above and another Trustee is serving, the determination of the remaining Trustee or Trustees shall be final and binding upon the beneficiaries of such trust. For clarification purposes, an Independent Trustee's discretion shall not be limited to the ascertainable standard as defined in §2041 of and applicable regulations.

### 1.4 Division

(a) Upon my death, the principal 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 Descendants Trust Provisions hereof.

## Professional Trustees

National governments, such as England, Scotland, Wales, New Zealand, United Arab Emirates, 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?”<sup>92</sup> Trustees have to start asking, “Why is well-being theory not at the center of our business model?” Ideas might include the following:

### *Staffing and Learning*

Large professional trustees should consider having a staff positive psychologist, a professional with a Masters in Applied Psychology (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 60 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.

### *Measuring and Improving Beneficiary Well-Being*

10 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.

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

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<sup>92</sup> Flourish, Note 4, above at 221 (“What is wealth for? I believe it should be in the service of well-being.”).

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 Beyond the Well-Being Baseline 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.

## SUMMARY 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.<sup>93</sup>

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<sup>93</sup> 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 (Jan. 20, 2017); Franklin & Law, *Extraordinary, Efficient, Elegant, Evolutionary: The Annual Taxable Gifts Approach and Testamentary CLAT Remainder*, 51st Heckerling Institute on Estate Planning (Jan. 11, 2017).