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Subject: Charlie Douglas: A Better Paradigm for Family Wealth & Estate Planning, the Pursuit of Happiness and the Importance of Spiritual Capital

"January is a great and customary time for making new and meaningful resolutions. Let us this year resolve to make family wealth and estate planning less confusing, more personal, and to help clients pass on their values. As advisors, let us collaboratively team as true counselors and adopt some new best practices.

Whether or not there is a congressional call to change the so-called "death tax" this year, we should nevertheless consider the current call from clients for change. Indeed, there is a better paradigm for family wealth and estate planning. We owe it to our clients to do our best to make it available to them; to truly act as counselors beyond creed or code."

We close the week with **Charlie Douglas**'s commentary that suggests a better paradigm for family wealth and estate planning, which includes the pursuit of happiness and the importance of spiritual capital.

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Planning and NAEPC's current Chairman of the Multi-Disciplinary Teaming Committee. He is also a member of Georgia's Fiduciary Law Section Legislative Committee and a board member of the Atlanta Estate Planning Council. Charlie is a frequent lecturer to a number of professional organizations as well as a contributor and commentator to such national publications as *The Wall Street Journal, The New York Times, CNBC, Investment News, Kiplinger* and *Forbes.*

Here is his commentary:

EXECUTIVE SUMMARY:

This newsletter was inspired by three recent events. The interplay of all three led me to believe that in this New Year we should candidly consider changing our paradigm regarding family wealth and estate planning; fundamentally change how we define it and establish some new best practices regarding same.

The first event occurred during a chance conversation with Jay Hughes, author of *Family Wealth: Keeping it in the Family,* one evening at the recent National Association of Estate Planners & Councils (NAEPC) Advanced Estate Planning Strategies Conference. Jay was speaking the next day on the dimensions of family wealth, as he originally set forth in his book, and thereafter, with Charles W. Collier's, senior philanthropic advisor at Harvard, in his book, *Wealth in Families*.

The second event transpired in taking part one of the Chartered Advisor in Philanthropy (CAP®) Program, offered through The American College, where the importance of humanities was once again impressed upon me.

The third event happened by re-reading a wonderful article by **Ron Aucutt**, *Creed or Code: The Calling of Counselor in Advising Families* as published by the American College of Trust and Estate Counsel (ACTEC) Law Journal in its Spring 2011 edition. Without all three events intersecting in recent days, I am not sure that I would have mustered-up the courage to share my sentiments below, even though I have been outspoken on some of them like spiritual capital for nearly twenty years.

I can relate to Ron Aucutt's credentials to write on the subject of "family counselor" which he bluntly admitted were "bogus." Ron confesses, "I do

not do the things I am going to talk to you about. By and large I have never done them, or, when I have tried to do them, I have not done them very well." I suppose all of our credentials are in some way bogus on the subject of "family counselor," and we often do not practice within our own families what we preach for our clients to do in theirs.

Nevertheless, there is a message worthy of consideration if we simply look to the sentiments of the marketplace and to what clients are calling for. What do Americans think of estate planning? "Confusion," best describes how Americans feel about estate planning based on WealthCounsel's Estate Planning Awareness Survey of 2016. Three-quarters of respondents (74%), in fact, answered affirmatively when asked whether estate planning is a confusing topic. Although the Treasury and unpredictable political landscape did little to bring about planning clarity in recent years, we can and should do better.

Any course to clarity should begin with simplifying and redefining estate planning, taking a good look at one's assets and values, and seeking to enhance the family's "*pursuit of happiness,*" by highlighting the importance of spiritual capital. Please know, this message is not new-age; it is not a recent discovery of the nascent science of happiness or positive psychology. Rather, much of it is found in reconnecting with the persistent wisdom of the past—a wisdom our founding fathers, St. Thomas Aquinas and Aristotle knew well. My hope is that it may inspire us all in some way to offer better, more enlightened counsel, to the families we have the privilege to serve.

COMMENT:

I am not exactly sure how I got into wealth and estate planning. Frankly, Wills and Trusts was one of my worst grades in law school. Perhaps there is much wisdom in what Bob Kirkland, Fellow of ACTEC, suggested when he said, "many of us opted for this area of practice with the desire to assist clients and their families with not only the financial aspects of family wealth planning, but also with the practical, ethical and psychological aspects of dealing with their families."

Ron Aucutt properly emphasizes that "estate planners are much more than trust or tax technicians." Ron says, "We are in many cases, the family's counselor, who are called to the fostering, feeding, fortification and

fulfillment of families." **Jay Hughes** similarly talks in terms of the family counselor "enhancing each family member's journey of happiness toward the whole family flourishing."

Ron reminds all ACETC Fellows, indeed all of us in the industry, that our number one duty is neither asset protection nor taxes. The number one duty for all of us on a multi-disciplinary planning team is to effectively collaborate, to be a counselor to the family, to put their interests first, and to "encourage the fullest and freest dialogue within the family for the sake of the survival and strength of the family."

What is Estate Planning in Family Wealth?

Keeping our number one duty in mind, the shift toward a better paradigm begins with a change in the way we have long defined estate planning within the wealth planning industry. Candidly, most definitions of "*estate planning*" are cryptic, long, boring, asset/tax driven, dated, and had we found and actually read them prior to entering the profession we might well have chosen a different line of work.

By way of example, Wikipedia defines *estate planning* as "the process of anticipating and arranging, during a person's life, for the management and disposal of that person's estate during the person's life and at and after death, while minimizing gift, estate, generation skipping transfer, and income tax."

An online study resource (Course Hero) for the CFP® Certification similarly equates "estate planning with the process of anticipating and arranging for the disposal of an estate, where estate planning generally refers to the orderly arrangement of an individual's assets to provide most effectively for his/her economic needs while living, and for the personal and economic needs of those she/he may wish to benefit after death."

No wonder three-fourths of Americans are confused regarding their thoughts about estate planning. We have mightily struggled for many years in good faith, struggling to find the right words to tell people what it is that we do when asked by them at cocktail parties. Justifiably, we had good reason to choose the less occupied corner in the party room.

Within the context of family wealth, I submit the following simplified definition of **Wealth and Estate Planning:** ***"Protecting, preserving and***

***enhancing the family through the accumulation, conservation and distribution of one's assets and values.*"** Here, there is no question that we are leading with our number one duty to the client. For there to be meaningful acceptance, however, this definition needs the collective support of advisors, law professors, and professional organizations such as ACTEC, The American College and NAEPC. Now let's take a closer at one's assets and values.

***One's assets*,** common sense tells us**,** consist of economic and non-economic assets alike. "There is more to family wealth than the financial dimension" opined Charles W. Collier. Collier goes on to cite the four well-known capitals today that were first proffered by Jay Hughes in his book, *Family Wealth: Keeping it in the Family*.

The four capitals cited by Collier are as follows:

1. **Human Capital**—refers to the individual family members: their knowledge, talents, spirituality, values, passions, dreams and aspirations. Most importantly, the term also refers to their defining who they are called to be and what they are called to do.
2. **Intellectual Capital**— involves how individuals learn over a lifetime and how families communicate, resolve conflict, make joint decisions and mentor one another.
3. **Social Capital**—refers to an individual's connections with his or her communities. It typically shows care and civic engagement.
4. **Financial Capital**—reflects the more traditional definition of wealth, such as property of the family, its financial assets, trusts, and partnerships and other investment and estate planning arrangements.

Hughes thesis essentially is that financial capital alone cannot promote long-term wealth preservation. Families around the globe routinely fall victim to the proverb of "shirtsleeves to shirtsleeves in three generations." The first generation makes the money, the second generation preserves it, the third generation spends and the fourth generation must recreate it. For Hughes, long-term wealth preservation can only be accomplished when a family invests some of its financial capital into the growth of its human and intellectual capital. Financial capital then provides a powerful tool within a family to grow its human and intellectual capitals.

When I met Jay Hughes a few weeks ago I asked him, "Don't you think there is a capital missing? Should not a 5th capital, **Spiritual Capital**, have

been included? Jay smiled and said that he tried to incorporate spiritual capital late in his book's first publication, but had to settle for incorporating sentiments around spiritual capital in the book's introduction, as the publication deadline loomed. For many years, however, Jay has consistently spoken of five capitals, with spiritual capital being the 5th.

So with Jay's permission, I'd like to offer the following definition for print regarding the fifth capital:

5. **Spiritual Capital**—refers to an act where an individual discerns and deploys their unique gifts and strengths, dreams and desires, with spiritual (*enlightened*) self-interest.

Although I will more thoroughly address the notion of spiritual capital, its connection to virtue and the pursuit of happiness later on, let me say this for now. Spiritual capital is not a matter of religiosity, of denying the importance of self-interest, or of diminishing the importance of values. Rather, spiritual capital is acting with enlightened/spiritual self-interest, of embracing virtue and of seeking to balance our own interests with those of the common good. Spiritual capital not only deserves its own category; it likely is the cornerstone capital.

One's values**,** and importantly our understanding and recordation of them, is critical to the context of financial capital and to what inheritors say they really want. ***"Family Values, Not Money, Is Best Legacy,"*** according to a timely US News article. These findings were reached in the "2012 Allianz Life American Legacies Study," sponsored by Allianz Life Insurance Co. of North America. It surveyed baby boomers, ages 47 to 66, and a group it called elders, all 72 or older.

The second survey closely matched an initial legacy study the company released in 2005, where 77 percent of the Baby Boomers polled said that the most important inheritance they could receive or pass on would be values and lessons about life. In fact, values were 10 times more important to Boomers than money. The second Allianz study reaffirmed that people thinking about their estates and inheritances continued to believe that passing along personal and family values is the most important legacy they can leave for their heirs. Not surprisingly, family stories were seen as very important to keep family history and family memories alive.

A 2013 Merrill Lynch Retirement Study conducted in partnership with Age Wave, (Americans' Perspectives on New Retirement Realities and the Longevity Bonus) found similar findings. When asked what is most important to pass on to future generations, the top priorities are values and life lessons — more than twice as important as money and financial assets!

As advisors carrying out our first duty, we must first ask about and seek to understand the family's values, mission and objectives. To do so, we may want to revise our traditional planning questionnaire and seek to ask more progressive questions like: What values are important to you? Why do you believe these would be important to your family? Can you share a story from your personal experience around this value? What shared values does your family already possess? What shared values would you like to see them possess? How much do you believe is enough for you and your spouse, for your children and for charity? What are your children's unique gifts, dreams and passions? How can your financial assets be prudently leveraged and invested in them?

We begin to build trust and come to understand our clients better when we begin asking sincere, caring and open-ended questions. Importantly, there is real value for the client when we actively listen to their responses and confirm our understanding with them.. Listening to understand, rather than speaking to be understood, is not only critically important, it can also be highly impactful.

Carl Rogers, an American psychologist and among the founders of the humanistic approach to psychology, had this to say, "Listening is the most powerful force we know of altering the basic structure of an individual and improving his relationships and communications with others. If I can listen to what he can tell me, if I can understand how it seems to him, if I can see its personal meaning for him, if I can sense the emotional flavor it has for him, then I will be releasing a potent force in him."

So it is by asking better questions and by listening well to the answers that we come to understand the family's all-important values, objectives and priorities. When we successfully do so, one's values can serve as the cornerstone for a wealth plan to be crafted around, and to be incorporated into one's estate plan. Yet, it starts with the documents themselves and with the honest admission that these essential documents are among the most legalistic, boring, boilerplate ridden documents known to humankind.

Full of legalese and often devoid of any personal touch, they can represent a distant and final exchange with one's family. Does this have to be the case?

It is not unlawful for clients to insert more of themselves into their estate planning documents (particularly trusts which are for the most part private)' and should it not be considered a best practice to take a few minutes exploring with clients the option of doing so? How can there be so many pages comprising one's estate planning documents that go in depth on such matters as trustee succession, generations skipping tax, spendthrift provisions, and no-contest clauses, but not have any part of a page devoted to clarifying the maker's heartfelt intentions for his or her family? Perhaps a love letter of intentions would be more suitable as part of a standard estate planning package?

Consider the following "Preamble" for a revocable trust as a contextual suggestion of something that could easily be inserted near the beginning of the document. This example might be appropriate for a divorced parent with two teenage children.

Make Room for the Drafter's Intent and Contextual Values

The words that follow this brief introduction may have more legal significance, but they pale in meaning as compared to my love and hopefulness for each of you. The purpose of my estate plan is not only to save on wealth transfer taxes and administration costs, but more importantly to protect and empower each of you. I have decided to keep the bulk of my estate in trust and to have each of you be a co-trustee of your own sub-trust along with a corporate fiduciary for a time-being. Please know that I trust each of you, but I also believe that keeping assets in trust can provide safeguards that outright distributions cannot.

Please know that I believe that you are both responsible young adults whom I am proud of. Nevertheless, I decided to pair you with a corporate trustee until you are age 30 (you can serve as sole trustee thereafter) to help provide professional guidance and to serve as a prudent check and balance regarding making financial decisions. Maturity can only come with life experiences and emotions can cloud our best judgments. Each of us can make foolish investment decisions when left to our own devices. That

said, no one can avoid making mistakes with money from time to time. I know that I made my share.

Above all, my desire is that you will each use the assets left to you wisely in accordance with the trust provisions to empower your unique gifts and passions, to help you provide for your own children one day (particularly in the area of education) and to be distributed to charity. While each of us must find our own road to happiness (and I am confident that each of you will), please consider advancing foremost in the virtues of gratitude, generosity and your faith because you cannot live a happy or rich life without them, irrespective of money. Please invest in good health and consider ways to invest in life experiences with each other, your friends and community over material things. Travel, make time to laugh and to have fun. Invest some time and money in compassion and in being of service to others. There are many avenues to choose from here and I believe much joy in doing so. I hope that you will continue the family tradition of giving some amount annually to Mother Teresa's Missionaries of Charity to help take care of the poorest of the poor, both here and abroad. Please feel free to make other distributions to other charities that speak to you as you see fit.

Contextual values are significant and likely can be easily incorporated into the formal planning process by such industry leaders as WealthCounsel and Interactive Legal. But what about the ability to actually pass values on aside from contextual ones? Query, can and should one's individual values really be prescribed to others? Should not values (at least in adults) be freely chosen by an individual as opposed to being compelled by another? And what about the wisdom of Thomas Paine's infamous line from *Common Sense* in 1776, when he said, "When we are planning for posterity, we ought to remember that virtue (*and by extension values*) is not hereditary."

Exposing but Not Imposing "Values" on Heirs

Values-based planning can be a delicate area to properly address. After all, if values have not been instilled in one's children during one's life, what are the chances of accomplishing this task after death? A better, more productive plan, may well be found in simply exposing our values to our children instead of imposing our values upon them.

Be that as it may, “markers of maturity” have grown in their popularity for making trust distributions. Graduating from a four-year accredited college, getting married and raising children, buying a first car or home, writing a well-crafted business plan in need of funding, career success, living free of destructive or addictive behavior, and having the trust match or multiply a beneficiary’s financial skin-in- the-game efforts may all be perfectly appropriate ways of incentivizing and making trust distributions in accordance with the descendant’s values.

Including financial incentives in the trust to encourage heirs to become well-balanced, productive members of society is a worthy goal. However, there can be problems in trying to motivate heirs’ behavior through markers of maturity. One issue involves how a trustee, corporate or individual, can routinely and effectively monitor these markers. Unless a marker is easily and objectively measurable, it can become subject to sporadic policing and subjectivity.

Of greater concern is that motivating external behavior through the decedent’s values and money may retard an heir’s ability to get in touch with his or her own passions, internal motivations and pursuit of happiness. Caution should be exercisedto prevent drafting a trust which relies too heavily on descendant’s values and external behavioral goals for heirs.

Perhaps a more effective way may be to engage heirs (when they are old enough) for their insights regarding their perceived gifts, goals and passions and then design corresponding proper behavioral activities incentivized by the trust to empower them. Oftentimes, a multifaceted approach which includes some markers of maturity is a more effective and comprehensive way of making trust distributions in accordance with values. And whose values should we use anyway?

A few years ago there was a memorable husband and wife, who not surprisingly, each looked at passing on their wealth differently. Notably, each possessed a Master’s degree from an Ivy League school in accounting and finance, respectively. For the wife’s part, she wanted to share with her children their financial success while she and her husband were still living and wanted her children to know that their assets were available to them in case of need. She didn’t want her children to have to wait until they were too old to receive their inheritance or to reward one child over the other should he or she choose to marry and raise children,

climb the corporate ladder or simply be an artist who used their gifts to pursue their passion regardless of the level of income achieved.

The husband, for his part, was concerned with deadening his children's incentive to develop their gifts and talents by making money too available. Having achieved considerable financial success with a Horatio Alger, "pull-yourself-up-by-your-own bootstraps" mentality, the husband didn't want his children to join what he perceived to be a society of consumers who were increasingly losing touch with their ability and need to produce. He favored having most all of the trust distributions based on incentives in accordance with markers of maturity.

While seemingly at odds with each other regarding crafting an estate plan, this couple found common ground by using a multifaceted approach. Some assets were distributed in accordance with age, other assets were distributed in accordance with markers of maturity, while the bulk of the estate was held in trust for the children.

Values between spouses can easily come into conflict regarding the proper use and timing of wealth. Likewise, business values and family values can, by their nature, frequently come into conflict.

Business Values vs. Family Values—Seeking Common Ground

In the world of business one often values performance, contribution and maximizing profit. Conversely, in the world of family one regularly values equality, loving unconditionally and emotional harmony. Simultaneously juggling both balls in the air can at times be awkward, even for the best of businesses, the closet of families.

It is sobering to recall what happened a number of years back to Estee Lauder, a family run enterprise, when William Lauder (then 47-years old) abdicated the CEO position he had long been groomed for. The cracks in the cosmetic conglomerate's foundation seemed to appear when William considered making an acquisition of another company that would allow Lauder to enter the cosmetic mass-marketers of the world.

The primary purpose of the acquisition was to reduce dependence on department store sales by providing access to mass-marketing distribution channels like CVS. The strategy sounded simple enough, until other family

members, namely, Leonard (William's father) and Ronald Lauder (William's uncle) began to weigh in.

Leonard took an active interest in the business, met with William weekly, and sent him numerous hand-written notes in between times. Having seen the business built on the cornerstone of leveraging department store relationships, Leonard feared alienating them and was against the acquisition.

Ronald believing the acquisition would be good for sales and the stock's share price, was in favor of the acquisition. In deciding what to do, William, was caught between the company's two biggest shareholders and also at odds with his family and other stakeholders.

William was fond of saying, "In my job as CEO, I have a responsibility to all shareholders. Virtually all of my family members have heard that, even though they don't appreciate it." Commenting further, "It isn't easy to have board members who remember you as a child and can call you at home at any time."

Then one day, William stunned the board when he informed them that he wanted out as CEO and that he wanted the new CEO to be brought in from outside the family. William spoke for many at the helm of family businesses when he stated, "It is managing all the things the CEO has to manage while managing the relationships with people to whom you are related and to whom you are devoted to in terms of affection over your entire life."

Every family has some dysfunction. Every business has its challenges. And it is foremost the breakdown of trust and communication, according Roy Williams and Vic Preisser, that accounts for the failure to retain wealth across generations within multigenerational families. Hence, seeking common ground and shared values in worthy endeavors such as in crafting family mission statements and engaging in family philanthropy may serve as higher ground to help keep both thriving together.

Family mission statements can provide a meaningful opportunity for collaboration around a family's core values. Similarly, involving family members in charitable activities can help strengthen family relationships and create a shared sense of purpose. Developing a strategic giving plan

is oftentimes essential to managing those values necessary to the wellbeing of the intergenerational family. Are we as advisors doing all that we can in this important area? It seems curious that clients often give to charity during life, but often fail to do so at death? Did the subject of death change their disposition, or could we have provided better counsel to them? Rabbi Mordechai Liebling, puts it this way, "Your last will and testament is your final teaching. What do you want it to show?"

I finally took my own advice and set up a donor-advised fund this past year for my family. Candidly, I was tired of my hypocrisy in long recommending this planning technique as a way of bringing the family together to participate in something bigger than itself. I wanted my thirteen-year-old daughter, Elizabeth, to not only be more aware of her parent's values, but more importantly, to begin forming her own benevolent values, through researching and choosing a few charities herself. Yes, children identify with their family and family values, but they must also learn to separate from their family and to form values of their own.

Effective business succession planning must seek to successfully transfer ownership and management of the business, while keeping the family intact. Jay Hughes often emphasizes the virtues of humility and gratitude in working with families and family enterprises, in looking for common ground, where each family member seeks to enhance the other's happiness. In keeping therewith, the remainder of this article will be devoted to virtue, to the pursuit of happiness and to the importance of spiritual capital.

Virtues—The Superfood of Values

Every family member, every family, has a set of values. Discovering several shared values among family members takes some doing. Thereafter, determining a family's set of limited core values to pass on across generations requires further discovery and family governance. Finally, honing in on those specific values that will lead to one's happiness, while allowing the whole family to flourish, requires a foundational understanding of virtue.

Values and virtues are oftentimes interchanged today, and while the two are connected they may well have different dispositions and outcomes. On the one hand, we as advisors may rightly value helping our clients

legitimately minimize income and transfer taxes. On the other hand, we may have societally become resigned to the "modern day value" of having far more government than we are willing to pay for with taxes. Just the same, the massive intergenerational transfer of societal debt that is sure to come is by no means an act of virtue.

All virtues are values, but not all values are virtues. The inalienable right of liberty may sound like a virtue, but it is not. One's liberty can be used for acts virtue, or for acts of vice, or for boundless acts and values in between. Virtue and liberty, do however, have an exclusive and interdependent relationship. While virtue needs liberty so that we are free to choose virtue, liberty's long-term survival squarely depends upon choosing virtue.

To more clearly illustrate the difference between virtues and values, consider that choosing McDonald's Happy Meals is a food choice, but they are by no means considered to be a superfood choice like kale, spinach or blueberries. In a like way, virtues are the superfood of values.

Supreme Court Justice Potter Stewart is famous for once commenting of pornography, "I know it when I see it." Can the same be said of virtue? Will those of us who engage in values-based planning know virtue when we see it? Will we be able to provide appropriate counsel where families seek to choose and to vet their core-values in light of virtue?

QUESTION: Consider the two groups of values below. Both groups contain sensible values, but which group better represents the notion of virtues?

Group A: Achievement, Beauty, Comfort, Creativity, Education, Freedom, Flexibility, Happiness, Exercise, Health, Knowledge, Open Communication, Personal Growth, Privacy, Property, Self-expression.

Group B: Prudence, Justice, Fortitude, Temperance, Courage, Charity, Truthfulness, Humility, Benevolence, Hope, Gratitude, Faith, Loyalty, and Honor.

ANSWER: Group B better represents virtues. But why?

Values are often broad, personal and relative. "You have your values and I have mine," the saying goes today. Virtues, on the other hand, are a

narrower term that represents a set of selected values that help advance an objective good and are morally desirable.

It is our virtues, more than our values, that allow us to become better members in a family, better citizens in society. It is virtues in particular, not values in general, that allows one's moral compass to more accurately point north in the pursuit of happiness. Our understanding of virtues can serve as a needed foundation for helping clients make wise choices since common sense tells us that not all values are the same.

Virtue is not only the right habitual disposition, but more often than not, the right action of doing good. One can profess to hold the value of courage for example, but still fail to act courageously. This person may correctly value courage, but is not virtuous in courageous behavior.

Over 2,300 hundred years ago, Aristotle taught that virtue was a sensible midpoint between two extremes. The virtue of courage, for example, would be seen as a practical midpoint between the coward who runs from danger and the reckless individual who blindly rushes into harm's way. A courageous person boldly faces up to those appropriate dangers when he or she must.

Virtue was a term that our founding fathers often used and understood well. The 56 men who dared to sign the Declaration of Independence did so understanding that their property would most likely be confiscated or destroyed, and if captured, they could face execution. Merely signing the document meant that they were committing treason. But the founding fathers had the disposition and right conduct for the civic virtue of courage. Considering inalienable rights to be paramount and the common good of their countrymen, they boldly lived out the declaration's last line: **"**And for the support of this declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other our Lives, our Fortunes, and our sacred Honor."

Theologian, St. Thomas Aquinas, applied Aristotle's reasoning and sense of virtue to faith, and established that reason and revelation should be intertwined, where the two together should lead us toward a similar course of conduct. But it was Aristotle more than anyone else, who proffered that happiness was the purpose of human life and to achieve it one must

cultivate virtue. This notion had a profound effect upon America and American's pursuit of happiness.

The Pursuit of Happiness—The Importance of Spiritual Capital

It is June 11, 1776. Congress has just appointed a Committee of Five to draft the Declaration of Independence. Both Thomas Jefferson and John Adams are on the committee and neither one wants to take a shot at the declaration's first draft. Adams ends up convincing Jefferson that Jefferson must take the first shot at the draft, arguing that a Virginian should write it, that Jefferson was more affable in the eyes of Congress and that he was clearly the better writer between the two.

So the responsibility falls to Jefferson alone to come up with the initial draft. With the weight of the new republic on his shoulders, Jefferson holes up in his hotel room. Pulling what is likely tantamount to an all-nighter, Jefferson draws on documents such as the Virginia Declaration of Rights and his own draft of a Virginia constitution.

Of greater significance, however, Jefferson relies heavily on John Locke, the seventeenth-century British political philosopher. Locke in his *Two Treatises of Civil Government*, is perhaps most famous for proffering the notion that governments are instituted to secure people's natural rights to life, liberty, and property. Yet, Jefferson prophetically makes the decision to intentionally downplay Locke's conventional notion of property and instead plays up another more broadened view from Locke, Aristotle and Epicurious, concerning the "pursuit of happiness."

Jefferson's preamble becomes the most famous family mission statement of all time and serves as the hallmark of family governance. His passage helps define the principles of which our government and our identity as an American family are based. The phrase, "We hold these truths to be self-evident, that all men are created equal, that they are endowed, by their Creator, with certain Unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness," comes to represent a moral standard to which the new republic strives.

So we can thank Jefferson (drawing from Locke, Aristotle and Epicurus) in his original draft of the Declaration of Independence for having the wisdom to recognize that happiness, although inclusive of property, is the more

expansive and fundamental inalienable right. Ironically, we in the family wealth and estate planning industry may make our living more from our client's pursuit and passing on of their property, but our highest calling as advisors is to help enhance individuals and families alike in their pursuit of happiness.

Any student of American history surely appreciates the fact that America's founding fathers, regardless of their particular religious beliefs, agreed that our inalienable rights were conferred by our Creator and that virtues were indispensable for the maintenance of the republic. For the founders, the road to happiness was seen in fully using one's gifts, passions and resources in principled pursuits with spiritual self-interest. The notions of meaningful community, the common good and civic virtue were seen as being integral and were self-evident to an enlightened citizenry.

Admittedly, The Declaration of Independence is a one-of-a-kind masterpiece. It artfully weaves together insights from theology, the Enlightenment and ancient Greek and Roman philosophy. In a way then, the founders themselves should be credited with proffering the importance of Spiritual Capital in one's Pursuit of Happiness. They may not have termed it "Spiritual Capital," but the Inalienable rights that we all are endowed with, our unique gifts and desires, and the human flourishing they envisioned, depended upon spiritual capital just the same.

Markedly, enlightened (spiritual) self-interest was a concept that Alexis de Tocqueville noted in his work, *Democracy in America (1835)*. Using the phrase "self-interest rightly understood" de Tocqueville comes to note that Americans balance the right of association for private interest with the virtue to do what was right. The following passage from *Democracy in America* sums up the concept of enlightened or spiritual self-interest:

> *The Americans, on the contrary, are fond of explaining almost all the actions of their lives by the principle of interest rightly understood; they show with complacency how an enlightened regard for themselves constantly prompts them to assist each other, and inclines them willingly to sacrifice a portion of their time and property to the welfare of the state. (Ibid., 647)*

Spiritual capital is in a sense the easiest and most fundamental capital to comprehend. Simply, it is the Creator of us all who is the Grantor of this

capital. As such, spiritual capital should not be shuffled-in indiscriminately with human capital or social capital because spiritual capital stems not from humanity or society. To the founding fathers, this transcendental capital, consisting initially of the right to life, liberty and the pursuit of happiness, could not be repealed or restrained by human laws. These hallowed rights were non-economic assets according to natural law and could not be taken away, denied or transferred. Since this priceless capital could not be sold or gifted it had no market value—it would be worth nothing on IRS Form 706. And yet, spiritual capital served as the cornerstone capital of the new republic as they risked their lives, their fortunes and their sacred honor.

Assume for a moment, that our extended multidisciplinary planning team included the likes of Aristotle, St. Thomas Aquinas and Thomas Jefferson. What might they say regarding happiness? To begin with, no one on the extended team would have been so inattentive as to say that happiness can be found primarily in self-gratification or by the pursuit of "values in general." To a person, each would have proclaimed that it is only through virtue, and more specifically civic virtue, that happiness in society can be realized.

One can almost hear their collaborative wisdom, urging us to be moral agents in the pursuit of happiness and to let the light of virtue be our guide. Only in the midst of collective virtue can government not interfere with anyone's pursuit of happiness so long as it doesn't interfere with other's right to pursue happiness. For the founders, true happiness required a social compact where they sought to balance their autonomy and their interdependence—the realization of self, of family and of community.

It may be easy to think of spiritual capital as some mystic and distant relic. Yet the comprehensive World Happiness Report in 2016 that the United Nations released would suggest otherwise. The report sets forth that happiness provides a better indicator of human welfare than do income, poverty, education, health and good government measured separately. It concludes that human flourishing is directly related to the common good and that the greatest happiness principle for one's own happiness is to care passionately about the happiness of others.

Although necessary, the pursuit of money in not the surest way to attain happiness. As we all have seen and can attest to, money can even at times, be more of an emotional burden than a financial benefit. The

documentary “Born Rich,” created by Jamie Johnson of the Johnson & Johnson pharmaceutical fortune, discusses the burdens of inherited wealth by 10 young adults, including Ivanka Trump the daughter of President-Donald Trump) and Georgina Bloomberg (the daughter of former New York City Mayor Michael Bloomberg). Johnson’s motive in making the film was kindled by his concern that those with money refuse to talk about it and often have feelings of guilt and of being overwhelmed.

Today, the science of happiness confirms much of what we intuitively knew long ago. According to the recent documentary, “*Happy*” (2011), we can increase our happiness by focusing on intentional activities such as:

- **Being grateful**—For example, the simple act of writing down five things that you’re grateful for, once a week, has measurable results toward improving one’s happiness.
- **Connecting with friends, family and community**—Individuals who focus their time and energy connecting with friends, family and community are demonstrably happier.
- **Compassion/service to others**—Individuals who focus on helping those in need and trying to make the world a better place report having more happiness.

Current studies of consumption and happiness suggest that people are happier when they spend money on experiences instead of material objects, when they value what they plan to buy before they buy it, and when they stop trying to keep one step “ahead of the Joneses.” As such, buying meaningful experiences through vacations or entertainment typically trumps buying material things such as televisions and cars.

Each of us leaves our legacy by the way we choose to live one day at a time. Perhaps the most prudent advice to clients in helping them to make theirs a happy one is to sporadically redirect the conversation from achieving or passing on financial prosperity to realizing emotional prosperity. In the end, it is this 5th capital that is indispensable to our individual and societal well-being. The cornerstone of all other capitals, spiritual capital is what allows individuals, families and societies alike to flourish--to nobly pursue happiness and to realize enduring wealth.

Conclusion

As January nears its end, there is still time for making new and meaningful New Year's resolutions. Let us this year resolve to make family wealth and estate planning less confusing, more personal, and to help clients pass on their values. As advisors, let us collaboratively team as true counselors and adopt new best practices, perhaps including some of the following:

- Update the definition of estate planning at an academic and institutional level;
- Emphasize economic and non-economic assets, as well as client values and virtues;
- Add a preamble section to standard forms or a separate letter for contextual values;
- Actively listen to clients by using better, more open-ended discovery questions;
- Expose, but do not impose heirs, to important client values and virtues;
- Seek common ground in family mission statements and philanthropic acts larger than self; and
- Strive to enhance one's pursuit of happiness by highlighting the importance of spiritual capital.

Whether or not there is a congressional call to change the so-called "death tax" this year, we should nevertheless, consider the current call from clients for change. Indeed, there is a better paradigm for family wealth and estate planning. We owe it to our clients to do our best to make it available to them; to truly act as counselors beyond creed or code.

HOPE THIS HELPS YOU HELP OTHERS MAKE A *POSITIVE* DIFFERENCE!

Charlie Douglas

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CITES:

Family Values, Not Money, Is Best Legacy; Americans' Perspectives on New Retirement Realities and the Longevity; Ellen Byron, Tensions Roil Estee Lauder Dynasty, Wall Street Journal, Feb. 27, 2008; Roy Williams and Vic Preisser, Preparing Heirs: Five Steps to a Successful Transition of Family Wealth and Values (2003); World Happiness Report 2016.