THE ETHICAL WILL: BEQUEATHING BOTH WEALTH AND VALUES

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Studies of the effects of inherited wealth have shown that it can either be a blessing or a curse. Whether an inheritance is put to productive or destructive use often depends on the core values that any given heir or heiress learned from his or her benefactor. Values and examples passed down and memorialized in some fashion for posterity are likely to be reflected in the lives of inheritor as adults and parents themselves. But in many families children and grandchildren are not made aware of or don't remember much about their grandparents or even parents, where they came from, how they lived their lives, or what they stood for.

The adage "easy-come, easy-go" is particularly apt in describing the behavior of unprepared heirs, particularly young ones. One study shows that buying a new car is the last thing parents want their children to spend an inheritance on. However, in affluent Orange County, California, the study revealed that an heir waits an average of only 21 days after an inheritance before getting a new set of wheels. Inherited wealth used to buy consumables and other wasting assets is depleted by the end of the second generation in over 80% of the cases studied. It is gone entirely by the third generation. By contrast, adults who as children earned their allowance with household chores or had part-time jobs growing up to pay for their own bikes, clothes, smart phones, cars or college tended to invest their inheritance in retirement savings, mutual funds, business start-ups, home equity and income-producing real estate. Such well-adjusted beneficiaries are much more likely to have the discipline to defer gratification and consider themselves to be fortunate stewards of their inherited wealth rather than conspicuous consumers of their entitlements.

The humility and appreciation for the non-economic values in life that was demonstrated during the depression and after World War II by the "greatest generation" is reflected in the classic "Americana" paintings of Norman Rockwell. They learned their values and developed work ethic in environments of scarcity and deprivation. The children born to these heroes in the post-war boom years of late 40's and 50's and early 1960's are today's baby boomers. Unlike their parents, they had the luxury of spending years experimenting and "finding themselves" in environments of relative abundance since they didn't face the financial struggles their parents did. Their children are now gen-xers and millennials who have been criticized for failing-to-launch into adulthood because their neurotic helicopter parents indulged their children's every maternal desire, micromanaged their lives and repeatedly rescued them from peril. In many cases they enabled dependency and prevented some members of these generations from becoming self-reliant, resourceful problem-solvers who are able to think and act for themselves.

The parental instinct to coddle one's children is natural. All parents want their kids to have it "better" than they did. But in their zeal to insulate their children from feeling pain and experiencing failure, these parents fail to equip their kids with a moral compass that will guide them in how to discover their unique talents and avoid the mistakes of many unprepared heirs.

Many planners advising such parents ignore these "soft" issues by focusing their clients' attention exclusively on technical intergenerational wealth transition strategies. As a result, estate planning, retirement and financial planning are singularly focused on the management and transmission of inheritances through traditional wills, trust documents, and arcane tax avoidance techniques rather than how these useful tools can also reflect the vision and goals of the parents. The formal documents are laden with tax and legal jargon that is unintelligible to both the parents who implement them and their children and further descendants who must live with them, in many cases over multiple generations.

Notwithstanding the often considerable time spent in the legal aspects of the estate planning process, little time and attention is given to the transfer of wisdom, insight, experience and related intangibles. This results in an unnecessary loss of real value to families, friends, and the communities in which these families live. Particularly as they age, parents often find themselves wondering who will offer advice and guidance to their children after they're gone. Their children are often left wondering what advice mom or dad would have given. Supplementing the abstract, dispassionate contents of the legal documents with some statement of values that will survive somewhere other than in the fleeting memories of children and grandchildren can provide a touchstone and a context for the beneficiaries of these arrangements to make values-based decisions, particularly during difficult times.

Historically, professional advisors have too often neglected the opportunity to provide such counsel. But that is changing as more of them see the consequences in lost wealth and wasted lives. Lawyers can offer at least a partial solution to the problem by introducing their clients to an ancient but relatively unknown tool known as an "ethical will."

What is an Ethical Will?

It is best described as not a formal document couched in the stilted prose of a legal document, but rather a letter or other form of permanent narration intended in the author's own words to share and convey important values, lessons, and encouragement to loved ones. Everyone has their own unique voice. Your intimates will recognize and be more moved by yours versus some lawyer's. An ethical will can be directed to family members, friends, and even charitable organizations. New forms of technology allow ethical wills to be kept on electronic storage media. Some ethical will-makers even engage a production company for a professional quality presentation.

Preparing your Ethical Will

What does the typical ethical will contain? Because it is an intensely personal document, there is no conventional wisdom to draw on or template to ape. Contents might include insights into the author's thinking concerning achieving happiness or business success, how to deal with losses of loved ones and living through hard times and dealing with difficult people. Historical information that might otherwise be forever lost can be transmitted in a form that will provide a family archive for future generations.

For example, one might impart lessons learned from the founding and building of a family business, meeting and courting a spouse, the birth of a child, the value of an education, overcoming adversity, or the memories from travel or a particularly significant moment in time. Recounting major life decisions and advice received or lessons learned from a wise relative or mentor might also be included. The following list may help focus an ethical will drafter and overcome writer's block and being feeling overwhelmed about where to begin:

1. Start with a statement of values and examples of how they were used to help make difficult decisions or deal with loss or failure.
2. Include the most important lessons from loved ones and mentors, including parents, spouse, teachers, coaches, clergy, business leaders, children and friends.
3. Express hopes, aspirations and advice for the future.
4. Relate some important events in life -- marriages, graduations, births and deaths, and how they can both inspire and motivate.
5. Describe favorite books, movies, quotations, and special places visited, and lessons and insights gleaned from each.
6. Indicate the role, if any, of spirituality in your life and how faith may have sustained you through life's challenges.

Those of our clients who take the time to prepare ethical wills not only discover a very personal, intimate way to share important sentiments with their loved ones. They often tell us that the process of outlining, composing, editing and rewriting can also provide a bonus -- a sense of clarity concerning what is most important to the author. It can produce a feeling of completion of the author's important work as a parent or grandparent.

Adjunct to a formal business succession plan

The need for this kind of integrated approach to the technical and emotional issues that one must confront in the process of estate planning is particularly important for owners of family businesses. The unique challenges of family businesses succession planning are evidenced by a high statistical failure rate. Many attorneys have watched helplessly as their client's businesses implode following the death of the founder. Without the benefit of clear guidance from a parent who started and grew the enterprise, each child who succeeds the founder is confronting the responsibilities of management but is left on his or her own to figure things out.

Many such business succession debacles are, in part, attributable to the failure of the departed leader to demonstrate his or her intentions, aspirations and wisdom to the surviving family members. Lacking direction, surviving children often allow selfishness, resentment and jealousy to dictate their actions, taking down the business and leaving a legacy of litigation, bitterness and hostility.

The professional literature is replete with suggestions on how to assist in the technical and mechanical processes of succession plans (e.g. family councils, codes of conduct, family constitutions, etc.). All of that is helpful, even necessary. An ethical will can provide an equally important complimentary resource that can create and reinforce a higher level of cooperation and trust among the successors who often struggle in the vacuum created by a founder's abrupt departure.

Traditional estate or succession plans detail the ***mechanics of how*** ownership interests in a business are to be transferred. An ethical will can ***explain why*** the interests are being transitioned in a particular way. It can explain why the founder allocated the stock of the family corporation exclusively or disproportionately to one, but not all, of the founder's three children who were all active in the business at the time of the founder's death. It might describe, for example, the basis for the founder's conclusion that the favored child demonstrated extraordinary business acumen and earned-into some of the value he or she received as an important member of the senior management team. While the anointed child's siblings might be disappointed in the outcome, understanding the decision-making process and rationale behind what was done might soften the blow and make it less likely that the less-favored siblings will leave in a huff or worse sabotage the efforts of their brother or sister to continue the business successfully.

Timing for disclosing contents

Many choose to withhold their ethical wills and make arrangements that they be provided to the intended recipients after the author's death. It may be better, however, to review the document as a family while the author is still alive. This creates a better learning opportunity for the beneficiaries who can ask questions and not be left guessing should they have questions or seek clarification after the author's death.

Tweaking content as time passes and circumstances change

Lawyers often counsel their will and trust-making clients to periodically review the contents of their formal documents and make adjustments as time passes and family and financial circumstances change. Ethical will authors should follow the same advice and update and edit the document over the years to reflect additional experiences and insights. Ethical wills can be used throughout life to help clarify values and guiding principles as they evolve.

Finally, it is important to understand that unlike a legal will, an ethical will is not a legally enforceable document. If there are particular aspects that an author would like to be legally binding, such as a succession plan for a family business, include them in other documents such as a legal will, trust document or shareholders agreement.

An opportunity to share your wisdom in a highly personal way

A parent's insight, knowledge and wisdom are the most important legacy that he or she can leave for a child. In traditional wills, lawyers and their clients limit their focus to how money and tangible assets can be given away. An ethical will can be an important adjunct for those who wish to provide context and impart wisdom and values as well. Attached is one example of an elaborate ethical will that is an amalgam of some such statements that we have encountered in our practice.

A Sample Detailed "Ethical Will" Authored By Hypothetical Parents With Substantial Means and Directed to Their Young Adult Children

How We Acquired Our Wealth

We entered our marriage with very little monetary wealth. We acquired that wealth during our marriage. Both of us grew up in solid, middle class families. Dad's father worked his entire life as a manager at a factory, earning a good living and an adequate retirement. He was always employed and, although there were few frills, there was also never a time of extreme want or deprivation.

In contrast, Mom experienced wide swings in her family's financial fortunes. Her father ran the family manufacturing business. When Mom was in early grade school, she watched her father lose that business during an economic downturn despite his heroic efforts to save it. This left the family finances in ruin. Mom knew (even at that young age) that her parents were having difficulty paying their bills. For the next few years, her family barely scratched by. Then their fortunes turned when her father started a new business. After a short period of time it too became very profitable.

Both of us began working at an early age (11 and 12) and learned young about financial responsibilities because we were purchasing our school clothes and other "necessities".

At the time of our marriage, Dad was working as a contractor and earning a good living. Mom was working in her family's business and also earning a good salary. After we married, Mom's father rewarded her work with a small percentage of the business. As the business grew, so did her income.

After a few years, we started our own business. Although the business struggled for many years, it is now very successful. We could survive the struggles of its early years because of the security we had from Dad's job and both Mom's work and profits from her father's family business.

A few years ago, Mom's father died and left her a larger share of the family business. This greatly increased our economic wealth, cash flow and lifestyle. Through self-discipline we worked hard to ensure that our work commitments did not diminish our emotional and familial wealth by trying to be there for you as parents and supporters of your academic and athletic endeavors while still spending time building the business. Unfortunately, we did not always strike the balance as well as we could have and we regret the times that we were not there for you.

Our Financial Responsibility

When you were all younger, our financial responsibility was to first take care of you and to provide you with a solid base for moving into your adult lives. We are almost finished with that phase. We now feel our primary responsibility is to each other and to make sure we never become a burden on you. If we have more than enough to take care of ourselves, we would like to help you in ways that would allow you to continue to pursue your hopes, dreams and aspirations; particularly if those hopes, dreams and aspirations lead to helping others. We have been, and will continue to be, very involved with our church and community. We tithed 10% of our income during the lean times and intend to tithe a much larger amount now, out of our surplus cash flow and accumulated savings. We have consistently supported local charities that help the needy in our community through annual gifts to the food bank and the United Way.

Although we do not feel particularly wealthy relative to some other families, and we have tried at all times to live below our means and not flaunt our successes, we know we have been blessed and that with those blessings comes responsibility. We both believe we have a moral duty and responsibility to help those less fortunate around us; particularly those who are in need due to no fault of their own.

Because Mom witnessed the loss of great wealth through no fault of her father, we realized the fragility of our economic fortunes and the preciousness of our emotional and familial wealth. We never want our economic wealth to become an impediment to the continued growth and unity of our family. We have witnessed families being torn apart due to inheritances or perceived injustices in economic and family business matters. Because economic wealth is transitory and temporary, and unity and love is eternal and should transcend generations and death, we would much rather have economic poverty and a strong family than the opposite.

Our Financial Plan

Our experiences have taught us to be very frugal and conservative in financial matters. We enjoy the economic wealth we have attained and feel no concerns that we may outlive our money. However, we will not spend frivolously. We have attained sufficient wealth so that we no longer need to acquire any more. As Mark Twain once said: "I am much more concerned about a return **of** my money than a return **on** my money."

We have sufficient economic wealth to pay for all of your college educations, help you acquire a first home, and live in the relatively modest lifestyle that we all have become accustomed to. We intend to use our surplus funds to help others achieve their hopes, dreams and aspirations, and to help our church and other charities that we hold so dear.

Our Estate Plan

Warren Buffet once said something like: "The perfect inheritance is enough so my children can do anything they want, but not so much that they can do nothing at all." Although we are not sure how to measure that inheritance, we firmly agree with his assessment. We see economic wealth as a privilege and responsibility to be used for great benefit to our family and those around us.

We believe that we have instilled those same values in you. And, we hope that they will retain those values and pass them on to your children. Consequently, we will plan our estate to provide you with sufficient resources to weather any foreseeable storm. We will structure the remainder of wealth in a manner that will allow you to help others, including your churches and other charities that you may choose to support. Our estate plan should divide our assets equally among you, and to give each of you some say in how your inheritances are managed and distributed among you, your spouses and descendants, and your chosen charities.

We also know from watching you grow and mature that you will continue to evolve as unselfish, resourceful and self-reliant adults well beyond the completion of your educations. We will not distribute large sums of money to you when you are under age 30. We are aware from observing others how the receipt of a windfall by a young person can corrupt that heir's values and work ethic. However, we want our surplus wealth that we are not earmarking for our church and charities to be available to you for prudent investments and extraordinary needs, such as purchasing a house, the reasonable costs of a first wedding, and purchasing or establishing a business or professional practice.

Our advisors have crafted our estate plan to take every advantage of estate tax planning and income tax planning available at the time of our deaths. We have no desire, however, to take extraordinary actions to minimize our tax obligations. We feel strongly that taxes are the price that we all should pay to have had the privilege of taking advantage of the bounty of citizenship.

Our Wealth and How We Hope That Wealth Will Help Our Descendants

Our economic wealth may be substantial relative to others in our generation, but does not even begin to measure our success as parents and contributions to those around us. We have many friends with more money, and less happiness than we have. To us, money is a tool and something that God has provided to us for our use and stewardship.

Consequently, we hope that you will invest the economic wealth that you receive from us rather than consume it, and that you will use that wealth to enhance your careers, your families, your lives and those of friends, families and deserving charities around you. Your inherited wealth should allow you to provide more time and service to those less fortunate and allow you to contribute both time and money to charities and causes that you believe in.

At your current ages, we are sure you would view inherited wealth as nothing but a positive thing that would give you freedom. We have found, however, that increased wealth leads to increased responsibilities and increased time spent on financial matters. Sometimes it seems we are working as hard to retain our money as we did to make it.

For this reason we do not want you to become over-burdened with management of your inheritances. We want you to use this wealth as a means to an end - - happiness and personal fulfillment, and not to allow the wealth to consume you. Although wealth tends to open doors, we have found that some of those doors are traps and that many people become slaves to their economic wealth. Working with our professional advisors, we will take every precaution we can to make sure that this does not happen to you. We have established relationships with advisors who have experience in working with people like us, and they will help us to create trusts and other wealth management structures to foster good business and economic decision-making for you and your families.

We believe that you learn by doing, not by watching. You can read all the books in the world about learning to swim. However, you will not actually learn to swim until you get in the water. We intend to establish opportunities for you to participate in the economic decisions relating to the management and deployment of the assets in your trusts as you continue to grow and mature. We also want you and your children to participate in charitable giving and to learn both the joys and necessity of those endeavors. So, for example, we intend to establish a relatively modest "donor-advised fund" with our community charitable foundation and allow you and later your children to participate in making grants from that fund or organization. By researching the needs of others, and making a case for helping those in need, we hope that you and your descendants will learn the responsibilities and joys of charity.

Our family and spiritual values are far more important to us than our economic wealth. We intend to spend much more of our time during our lifetime, and devote much more of our planning efforts, to ensuring that we foster and nurture in you those values and that you learn to use the economic wealth that we have built as a way to demonstrate and live by those values. We have seen too many people who believe that their wealth somehow enhances their character or says something about who they are as important members of their communities. It does not. It does, however, allow a wealth creator to take concrete action to show the compassion that the wealth creator or owner feels for others.

Finding Mr. Buffett's ideal balance between how much is enough for your inheritances and how much is too much is very difficult. And, that balance will change over time, both due to your own circumstances, and to the economic world around us. We will do our best to find and maintain that balance, and have tried to build and will continue to refine an estate plan that will allow our successor trustees and other advisors to maintain that balance. As noted above, we want your inheritances to enhance your, your families' and your communities' lives. It is not our desire that you and your children become "trust fund babies" and to live-off these funds. We expect each of you to discover and use your unique talents to build and support your own careers, family, lives and passions. But, we want to make sure that you have sufficient funds available to you (either directly or indirectly) and to allow you to finance your children's college education, provide for unforeseen medical or financial disasters, and allow you to spend time with your families rather than being slaves to your work lives. In our generation, it has been very difficult to spend a lot of time with our extended families. Joint vacations tend to be expensive, and time away from work is very difficult for some members of our family. We would like to provide you with the opportunity to spend more time with your siblings and extended families.

Hopefully, with the charitable training that we will be providing to you over the next few years, you will understand why we are setting aside a portion of our economic wealth to allow you to best deploy what we refer to as our family's "social capital". We are not giving money to charity because we love charities more than our descendants. In fact, it is just the opposite. Hopefully, we will live long enough to teach this principle to you and your children before we die.

Family Council

In order to teach some of the values and principles we have described above, and to nurture them in you so that you can pass them down to your children, we intend to bring you into family economic decisions at relatively early ages. Consequently, we will be establishing a "Family Council" to advise us in the management and distribution of our wealth. While you are still young, we intend to maintain control over the Family Council. However, as you become older, more mature, and more responsible, we intend to release more and more of the decision making authority to you. Even while we retain control, we want the Family Council to allow you, and your children as they reach their adulthood, the opportunity to learn and to participate in both economic and charitable decisions.

You will be non-voting council members from the day we begin the Council. You will become voting members when you reach age 23, or graduate from college, whichever occurs first. Once you become voting members, each of the four of you will have one vote in each decision. As your parents, we will each have 4 votes. Therefore, you will retain minority voting rights for a period of time. As each of you reaches age 30, you will have 2 votes in every matter. As a result, after all four of you have reached age 30, the four of you will each have 2 votes, and we as parents will each have 4 votes. Upon the death of one of us parents, the survivor will retain all 8 parental votes.

We will structure the Family Council much like a business. However, we intend to rotate the functions of the Council between you, as you become old enough to understand and carry out those responsibilities. The Family Council structure is likely to change dramatically over the next 10 years, as you grow from teenagers to young adults with families of your own. And, we intend to bring our grandchildren into the Family Council as soon as they are able to understand some of these economic issues. We are not sure what age that will be. However, based on the experiences with you, we expect that may be when each grandchild begins high school.

Through the Family Council, we hope to establish strong and secure relationships with trusted advisors, who will continue to help you upon our deaths.

It is our goal to impart our values and our morals upon you long before our deaths. When we die, we hope the only thing left to impart to you is some economic wealth. And that economic wealth will be used wisely by you due to the legal structures that we will have established to carry out these wishes. However, we also intend to make decisions based on their long-term strategic ramifications, and not based on short-term tax results.

We have been blessed with wonderful children and wealth beyond what we ever expected. We want that wealth to be a continued blessing to you, your children, and to generations beyond. We know that, statistically, is unlikely. But, we will take every action we can to help us beat those odds.