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JOURNAL OF THE TEXAS TECH UNIVERSITY ETHICS CENTER

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A NOTE FROM THE EXECUTIVE EDITOR

Welcome to the second issue of the Journal of the TTU Ethics Center. This multidisciplinary journal aims to capture a variety of current trends, present diverse research and opinions from across disciplines. Our goal is to share this work with a wide readership. The journal includes insight from thought leaders in their fields about current and future challenges that may influence our well-being. From the Carnegie Council for Ethics in International Affairs' Global Ethics Day partnership and the Ethics Center's Ethics Faculty Symposium, top research papers from each program appear in this issue. Also included are papers from the TTU School of Law and the Texas Tech Health Sciences Center, as well as submissions from student and faculty paper award winners.

The Ethics Center's symmetrical approach to multidisciplinary scholarship is meant to expand intellectual disciplinary engagement with the numerous complex issues that impact the university and broader communities. As a multidisciplinary vehicle, the hope is that the journal can bring vision builders together to facilitate innovative engagement and identify pathways to address social and scientific problems. Hopefully, readers will be inspired by our journal to connect across disciplines and professions. Local, national, and international events are reshaping the conversation making it necessary to acquire greater knowledge and the ability to be agile and to adapt in order to innovate and improve research.

The future is promising. Our goal is to prepare for this future through knowledge and wide-ranging engagement. The Ethics Center looks forward to sharing more diverse opinions and research through our multidisciplinary journal.

A handwritten signature in black ink, appearing to read 'Ralph Ferguson', with a stylized, overlapping flourish at the end.

Ralph Ferguson, Director, TTU Ethics Center

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MEA CULPA: ETHICS REFORM CAN BE A HARD PILL TO SWALLOW

Seana Willing, Executive Director of the Texas Ethics Commission

In November of 2016, the New York Times ran a story about New York Governor Mario Cuomo, with the headline, “Cuomo, Stung by a Scandal, Offers Ethics Reforms.” While the particulars of the Governor’s proposed ethics reforms were scant, the details of the scandals themselves (FBI investigations into bribery and bid-rigging schemes involving the Governor’s close associates, former aides and advisors) dominated this story and the many media reports that followed. At first blush, offering up ethics reform would seem to be a noble response to allegations of political corruption within your inner circle, but looking at this approach from the long lens of history (superficially covered in this paper) should tell us that actions don’t always speak louder than words.

While the fallout from political scandals can be devastating and long-lasting, the silver lining is that scandal can often be a source of change and progress. Sometimes, the champions of ethics reform are the victims of scandal; occasionally, it’s the offender himself who leads the charge. But are the mea culpas from the accused sincere or just a calculated PR maneuver? Often, it’s hard to tell.

Examine any political scandal and the common element in nearly all cases is greed. Greed is defined as “an excessive desire to acquire or possess more than what one needs or deserves, especially with respect to material wealth,” and those who act on that desire tend to reinforce the biblical truth - “for the love of money is the root of all evil.”

While the love of money can be traced back to biblical times, money’s corrupt influence in politics resulted in some of our nation’s earliest political scandals. By way of example, examine the 1896 presidential race between William McKinley and William Jennings Bryan. A lot of money – corporate money – flowed into that race. McKinley’s campaign manager, Mark Hanna, was said to have strong-armed corporate leaders into making financial “assessments” which were then funneled into the McKinley campaign. As a result, McKinley was able to outspend Bryan, by 10 to 1, and won the election. After shepherding the as-yet-unheard-of amounts of corporate money toward election victory, Hanna would go on to say, “There are two things that are important in politics. The first is money, and I can’t

remember what the second one is.” According to Hanna, “All questions in a democracy are questions of money.” This sentiment carried into McKinley’s bid for re-election in 1900. After Theodore Roosevelt was re-elected President in 1904, he urged Congress to ban corporations from making political contributions and pushed for other campaign finance reforms. Not long after, Congress banned corporate contributions with the passage of the Tillman Act of 1907, followed by the Federal Corrupt Practices Act of 1910. Forty years later, Congress followed up with bans on indirect expenditures by corporations and labor unions with the Taft-Hartley Labor Act of 1947.

Not all attempts at ethics reform following a scandal were as successful. Some saw mixed results. Concerns about ethics and conflicts of interest grabbed the nation’s attention in 1920, after Federal Judge Kenesaw Mountain Landis was named the nation’s first Baseball Commissioner following the 1919 World Series cheating scandal, also known as the Black Sox Scandal. When Landis supplemented his \$7,500 annual salary as a judge with the \$42,500 salary he made as Baseball Commissioner, the American Bar Association censured him. In late 1921, after much of the public criticism died down, Landis quietly resigned as judge and served out the rest of his 7-year term as Commissioner of Baseball. Shortly thereafter, the American Bar Association created a commission on judicial ethics to study ethical rules for judges and adopted the first ever (non-binding) Canons of Judicial Ethics in 1924.

Modern ethics laws really took shape in the 1970s in response to campaign abuses in the 1972 Presidential election and the Watergate scandal. Congress passed the Federal Election Campaign Act in 1971 and President Nixon signed it into law in February 1972. The Federal Election Commission followed in 1974. One of the lasting lessons from Watergate has been the requirement that all law students take an ethics course in law school, pass an ethics exam before becoming licensed, and take a minimum of 3 hours of continuing legal ethics education every year. These requirements were a direct and pointed response to the fact that so many lawyers were involved in the Watergate cover-up.

Ethics reform in Texas has also enjoyed a long, tortuous history steeped in political scandal, mirroring the pattern seen on the national scene – scandal followed by the response to scandal. Modern day ethics laws in Texas have been shaped almost entirely by the response to these Texas-sized scandals.

Some of the earliest reforms came in the late 1950s following scandals involving insurance companies paying improper fees to influence legislators; the Texas Veterans Land Board scandal that led to the conviction of General Land Office Commissioner Bascom Giles; and the bribery conviction of Texas State Representative James Cox. In response to these scandals, the 1957 Legislative Session concluded with a first-ever Code of Ethics. Unfortunately, not many lawmakers complied with the Code, many complaining that it simply wasn't needed and that no law could make someone ethical if they were not. By 1969, newspapers around the State were roundly criticizing lawmakers for their lack of compliance. That lax attitude toward ethics would be the tone adopted by each Legislative Session until 1971.

Modern ethics law in Texas was really shaped by two big events – the Sharpstown Bank Stock Fraud Scandal in the 1970s, followed by a series of political scandals in the late 1980s and early 1990s.

Much like Watergate, which captured the nation's attention in the early 1970s, the Sharpstown Bank Stock Fraud scandal was BIG. It started in 1969 because Frank Sharp, a Houston businessman who owned the Sharpstown Bank, was tired of dealing with the Federal Deposit Insurance Corporation. He supported proposed legislation that would have allowed his bank to be insured by a state chartered corporation instead of the stricter FDIC. Sharp provided hundreds of thousands of dollars in unsecured loans from the Sharpstown Bank to Legislators, elected officials, and their staff who in turn used the money to purchase stock in National Bankers Life, an insurance company owned by Sharp. Sharp artificially inflated the value of the insurance stock, allowing his investors to sell their shares for huge profits. The bill he was interested in was pushed through a Special Session by Speaker of the House Gus Mutscher. It was later vetoed by Governor Preston Smith, but not before he sold off his shares of stock for a significant profit. In the end, Sharp was convicted of banking and securities fraud violations; Mutscher was indicted and convicted (later overturned on appeal) of bribery. Though not criminally charged, the political careers of Smith and Lieutenant Governor Ben Barnes were brought down by the scandal. Several legislators and their staff were later caught up in other criminal investigations spawned by Sharpstown.

With the specter of Sharpstown driving the 1971 legislative agenda, one would think passing comprehensive ethics reform would have been easy. It was not. In fact, after a long, contentious fight between both chambers, the ethics package (HB 203) finally passed just before

midnight on Sine Die. It was not cause for celebration. The following year, the Texas Attorney General declared HB 203 unconstitutional. Legislators went back to the drawing board.

The real fall-out from Sharpstown was evident in the 1972 elections, with more than half of the Legislature defeated or embarrassed into not running again. Holding themselves out as “reformers,” the largest group of freshman Legislators in history, including a new Governor and a new Lieutenant Governor, took over as the Legislature entered the 1973 Session.

The 1973 Session was dubbed the “Reform” Session for that reason. House Bills 1-9, known as the “Campaign Reporting and Disclosure Act,” eventually passed without much controversy, but in reality, despite the impact of Sharpstown, lawmakers’ appetite for ethics reform never really lived up to the public clamor and expectations. The “reformers” filed a flurry of tough ethics bills, which were met with the filing of competing bills. Legislators wanted to look good to their constituents, so many jumped on the “ethics reform” bandwagon creating a lot of competition to arrive at the best ethics reform bill. Instead of working together, fights over details ensued. Republicans fought against Democrats and Senators fought against House members. With too many choices and too much fighting, it became more and more unlikely that any bill would pass. When Legislators did reach an agreement, the result was often just a “watered down” version of an ethics bill.

In the end, there were some significant reforms that came out of the 1973 Session, including laws governing lobby disclosure, greater disclosure in annual personal financial reports, more disclosure in campaign finance reports for candidates and political committees, a prohibition on accepting honorariums, stronger open meetings laws, and the first open records laws. However, against this backdrop and faced with lawmakers’ sentiments that “something is better than nothing,” the public’s expectations for true ethics reform would have to wait another 20 years.

In the meantime, there were smaller scandals and smaller ethics reform victories that followed. In the early 1980s, Speaker of the House Billy Clayton was indicted and tried for bribery after accepting thousands of dollars in cash as part of an FBI sting. Clayton was acquitted because he never deposited the cash and testified that he had intended to return the money, which had been stored in a credenza in his office. In the tradition of mea culpas past and future, Clayton would go on to create an advisory committee whose

recommendations led to new ethics laws passed in the 1983 Session. Among the new laws that would pass was a prohibition against accepting more than \$100 in cash contributions.

The ethics laws that came out of the 1983 Legislative Session were essentially a response to the Speaker scandals. Even though he had been acquitted of bribery, Clayton lost credibility after his trial and was succeeded by Gib Lewis. Lewis had been elected as one of the “reformers” in 1972 in the wake of Sharpstown. He soon found himself frequently criticized by the press for failing to disclose business ties to racing and liquor industries with interests before the Legislature. Lewis would remain among a group of several lawmakers who routinely took a casual approach to filing disclosure reports. However, new laws were passed in response to omissions in financial disclosure reports and because Legislators were regularly using campaign contributions for personal items such as clothing, vacations, college tuition for their kids, paying off personal debt (Speaker Lewis reportedly used \$200,000 to pay off a debt on his private airplane). Despite these reforms, one Legislator lamented that “all the legislation in the world won’t stop lying and cheating.”

1989 was not a good year for the public image of Texas Legislators, perceived by many as living extravagant lifestyles thanks to gifts from lobbyists and campaign contributions. As a signal of their loss of confidence, in November 1989, voters rejected a constitutional amendment that would have tripled the salary of Legislators. Many critics of the proposed pay raise suggested voters were demanding real ethics reform before they would agree to pay lawmakers more. That same year, the public was stunned when a wealthy businessman, Bo Pilgrim, handed out \$10,000 checks to Legislators on the Senate Floor as they debated and voted on a workers comp bill that Pilgrim favored.

The Speaker scandals culminated in December 1990, when Lewis was indicted for allegedly accepting and failing to report a trip to a resort in Mexico paid for by a law firm, and for accepting a \$5,000 payment from the firm for county taxes owed by a business owned by Lewis. Earlier in the year, Lewis had been vocal in his criticism of the press, accusing them of “exploiting” ethics issues and often chiding them for taking the fun out of serving in the Legislature by expecting lawmakers to account for where they got their outside income and how they spent it. After his indictment, however, Lewis came out with public support for, among other ethics reforms, the creation of an independent Ethics Commission.

In 1990, with the Lewis indictment and Bo Pilgrim's checks fresh on everyone's minds, Ann Richards and Bob Bullock successfully campaigned for election on ethics reform. A Special Session was called in 1990 specifically for ethics reform, but no agreement was reached. With the failed Special Session in the rear mirror and the 1991 Regular Session approaching fast, Travis County District Attorney Ronnie Earle summed up the growing public sentiment in a December 1990 editorial calling for real ethics reform and lamenting that Texas had "Mr. Smith-Goes-to-Washington" expectations but a "Bo Pilgrim reality" that needed to be fixed.

The 1991 Regular Session ultimately became a watershed moment for real ethics reform, but the bill that mattered - SB 1 - almost didn't make it to the floor as the clock struck midnight on Sine Die. In fact, the clock reportedly was stopped to allow the bill to be printed and handed out to members before the final vote. In any event, what came out of the 1991 session were much tougher ethics laws. Candidates and officeholders were prohibited from using contributions to purchase real property or to pay a spouse, child, or business for services; acceptance of contributions in the Capitol or a Courthouse was banned; lobbyists were further restricted; a revolving door ban and stricter bans on accepting honoraria were put in place. A constitutional amendment was placed on the November 1991 ballot, which led to the creation of the Texas Ethics Commission. And the first ever computerized campaign finance disclosure system with reports available online came into existence.

While perhaps cynical and an over-simplification, political scandal was, and continues to be, the surest route to ethics reform. Sometimes, whether out of sincere remorse or political survival, it's the public official caught up in the taint of a corruption investigation who spearheads the call for ethics reform.

Today, in the midst of concerted efforts to undermine the advancements made over the years to bring more transparency to the electoral process, the Ethics Commission continues to administer and enforce the state's myriad campaign finance and disclosure laws. Its mission: to control and reduce the cost of elections; eliminate opportunities for undue influence over elections and governmental actions; fully disclose information related to expenditures and contributions for elections and for petitioning the government; enhance the potential for individual participation in electoral and governmental processes; and ensure public confidence and trust in government.

Passing comprehensive, effective ethics laws is difficult, but not impossible. While it's an inconvenient truth that change follows scandal, we should take some comfort in the fact that political scandals (at least in Texas) seem to have a 10-20 year cycle. Although it will always seem like a Sisyphean challenge to get lawmakers to regulate themselves in a way that lives up to public expectations, it's important not to forget the critical role played by the press, government watchdogs, the Ethics Commission, and others who report on these important issues.

In the end, how we as individuals strive to pursue ethics in both our public and personal lives will continue to drive positive change. The challenge with today's non-stop, 24-hour news cycle will be not to succumb to scandal "fatigue," which can cause people to feel exhausted from trying to stay on top of the latest scandal. In fact, the real danger may no longer be the scandal itself but the burnout and disengagement we begin to experience from exposure to too much scandal and the lowering of the bar for acceptance of bad behavior. That cannot be our legacy.

THE ETHICS OF DISSENT: LESSONS FROM THE U.S. SUPREME COURT

Jack Wade Nowlin, Dean and W. Frank Newton Professor of Law, Texas Tech University School of Law

Most Americans are familiar with the U.S. Supreme Court—including its issuance of decisions with majority opinions and dissents. We know that the Supreme Court hands down decisions each term accompanied by carefully-crafted written opinions to explain and justify the Court's actions. We also expect there to be assorted dissents written by various justices to express disagreement.

Many of us, especially the lawyers among us, know that the justices also complexify cases by writing other kinds of opinions as well, including “concurrences” to make additional points or express qualified agreement with a decision. Sometimes the justices even write “concurrences in the judgement” to communicate basic agreement with the outcome of a case but basic disagreement with the reasoning of the Court in reaching that outcome.

We lawyers certainly know that judicial decisions today are often marked by a multiplicity of disagreements and a proliferation of dissents and concurrences. It can all become very complicated, confusing, and divisive.

Most Americans and even many lawyers, however, would be surprised to learn that it was not always thus and that in fact in some earlier eras concurrences and dissents were quite rare. Notably, under the leadership of Chief Justice John Marshall in the early 1800s, the Supreme Court established the then-new tradition of issuing unanimous opinions of the Court without either concurrences or dissents to express divergent views.

Chief Justice Marshall forged this new tradition of unanimity so that the Court would speak with one voice in order to build its institutional power among the branches of government. Marshall was reacting to an even earlier judicial tradition on the Court of issuing decisions with “seriatim” opinions in which each justice of the Court wrote individually in a series to express views on a case, a practice that encouraged divergence and disagreement.

What motivated Chief Justice Marshall's single “opinion of the Court” approach was promoting the unity and power of the Court, especially its ability to defend the Constitution and the rule of law.

Echoing Alexander Hamilton in the *Federalist Papers*, Chief Justice Marshall viewed the Court as the “least dangerous” (i.e., the weakest) branch of American government, an institution chiefly dependent on the force of its public reasoning in cases rather than on the brute political power which the executive and legislative branches could wield.

In Marshall’s view, the power of the Court could be found in its written opinions, and the proliferation of public disagreement among the justices expressed in written dissents dissipated that power and weakened the Court. Thus Chief Justice Marshall encouraged the justices to compromise and to join the Court’s opinions even when they disagreed with them rather than express their disagreement openly and formally in written dissents. Marshall himself joined many opinions with which he disagreed rather than write a dissent.

What one might call the Marshall Court’s “ethics of dissent” reserved the public expression of disagreement in dissents for only the most important of cases. Building a consensus, compromise, and a willingness to put aside individual views in particular cases for the greater good of the Court, the Constitution, and the country were the order of the day in the Marshall era.

Are there lessons to be learned from the broad spirit of the Marshall Court’s tradition—with its emphasis on unity and compromise? I would argue yes, even though the Marshallian view of the “ethics of dissent” eroded over the years on the Court and completely disappeared by the middle of the twentieth century. Disagreement is inevitable, and dissents can be very valuable—but that can all be taken too far and balance is called for. Compromise and consensus are too easily undervalued, and not just on the Supreme Court.

Perhaps all our institutions of government today need the kind of institution building that Chief Justice Marshall aspired to for the Court in the early 1800s. Public confidence in our institutions is low. Politics is too often marked by ideological polarization, political partisanship, and self-righteous incivility. The quest for political purity and absolute victory too often trump the willingness to work to find common ground, promote compromise, and build a consensus. We are all too eager to find fault and too quick to dismiss what might be right with the world. Not all the glasses are half-empty.

A dose of Marshallian respect for institution building, compromise, and unity might be a good thing. What if more often the justices, whatever their views, emphasized the value of compromise and

sought broader support for the Court's decisions instead of settling for narrow five-to-four victories? What if more often members of Congress put aside their ideological and party-based disagreements and instead were willing to support legislation with broader centrist appeal? What if presidents did the same? What if voters, especially in primaries, more often supported candidates with experience, good temperaments, and middle-of-the-road views rather than voting for candidates at the political fringes?

What, in short, if there were a new willingness to accept compromise and a return to the vital center in American life, the common-sense core of our broad political spectrum, a place where we could all meet more easily to find commonalities, solve problems, and craft solutions with widespread public support?

Some might say that this not a realistic prescription—for all the obvious reasons that could be cited—but, notably, few in 1801 would have predicted the new path of the Marshall Court or the rise of the Supreme Court to new levels of power and prominence. We might be on the cusp of a new era, if we have had enough of extreme division and dissent. Hope springs eternal.

IMPORTANCE OF ETHICS IN INTERNATIONAL RESEARCH PROGRAMS

Dr. Stephen Ekwaro-Osire, Professor, Mechanical Engineering

It has been noted that most of the top US research universities pursue extensive international research programs. The common goals for these research programs are access to unique sites and populations, promotion of economic development, improvement of research areas of weakness, recruitment of students and faculty, increase in research productivity, increase of the capacity of civil society, and engendering goodwill¹. The focus on ethics in international research programs has been motivated by:

- (i) the numerous ethical challenges in international research during sudden epidemics²,
- (ii) the advancement of world-class research as inherently international^{3,4}, and
- (iii) the need for continued emphasis on ethics education to mitigate the scandals in the global industry such as by Volkswagen⁵.

To address ethical challenges that often arise during international collaborations, international frameworks for ethics need to be constructed. These frameworks are often divergent from the classical western ethical frameworks. The international frameworks for ethics are often informed by cross-cultural perspectives⁶, the difference in value systems (e.g., about ownership of ideas), gender perspectives⁷, lack of institutions, and lack of trained human resources². These international frameworks have recently been used to develop ethics curricula for university students. Recently, an interdisciplinary team⁶ (with backgrounds in engineering, social science, linguistics, and art) located in diverse countries (including the US, India, and China) developed a new curricular model that emphasizes ethics and its cultural contexts. The proposed model had the following learning outcomes:

- (i) understanding of ethics & ethical decision-making as a process,
- (ii) complex relationships between researchers and the communities being studied,
- (iii) scholarly integrity within an international context,

- (iv) imagining alternative and conflicting ethical positions, and
- (v) the larger societal context for ethical decisions.

It was argued that on completion of this curriculum, the students acquired the skills necessary to effectively conduct international research collaborations. A different approach to ethics education that has also been proposed is modeling ethics after the design process. Here the ethics model is such that:

- (i) there is no singularly correct solution or response,
- (ii) some solutions are wrong answers,
- (iii) none of the solutions are clearly superior to the others⁸,
- (vi) the decisions often involve weighing subjective values⁹, and
- (v) ambiguities and uncertainties¹⁰ are appreciated.

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ETHICS AND THE ESTATE PLANNER

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Introduction

*"This thorn in my side is from the tree I've planted."*¹

All it takes is one careless act to place you in the hot seat for months or years where you might watch your personal, professional, and financial life crumble around you.

This article focuses the reader's attention on ethical issues that may arise while preparing or executing an estate plan. I hope that by pointing out potentially troublesome areas, the reader will avoid the ramifications of having a lapse of ethical good judgment, which may lead to the frustration of the client's intent, financial loss to the client or the beneficiaries, personal embarrassment, and possible disciplinary action.

Estate Planning for Both Spouses²

Today you are meeting with a new estate planning client. During the initial telephone contact, the client indicated a need for a simple plan, "nothing too complex" were the exact words. As you enter your reception area to greet the client, you are surprised to see *two* people waiting — the client and the client's spouse. The client explains that the client wants you to prepare estate plans for both of them. Your mind immediately becomes flooded with thoughts of the potential horrors of representing both husband and wife. You remember stories from colleagues about their married clients who placed them in an awkward position when one spouse confided sensitive information that would be relevant to the estate plan with the admonition to "not tell my spouse." You also recall the professional ethics rules which prohibit representing clients with conflicting interests. What do you do? What is the best way to protect the

¹ METALLICA, *Bleeding Me, on LOAD* (Blackened Recordings 1996).

² Portions of this section are adapted from GERRY W. BEYER, TEXAS LAW OF WILLS §§ 53.4–53.7 (9 Tex. Prac. 3d ed. 2002).

interests and desires of the client and the client's spouse and still avoid ethical questions as well as potential liability?

This scenario is replayed many times each day in law offices across Texas and the United States. The joint representation of a husband and wife in drafting wills and establishing a coordinated estate plan can have considerable benefits for all of the participants involved. However, depending on the circumstances, joint representation may result in substantial disadvantages to either or both spouses and may subject the drafting attorney to liability. The attorney's duties of loyalty and confidentiality in joint representations, as well as how conflict situations should be handled, whether the conflict is apparent initially or arises during the representation, can be gleaned from the Texas Disciplinary Rules of Professional Conduct.

A. Models of Representation for Married Couples

When a married couple comes to an attorney's office for estate planning advice, it is likely they are unaware of the different forms of representation that are available, in addition to the specific factors they must consider to determine which form of representation is appropriate. The attorney has the burden to use his or her skills of observation and information gathering and apply the relevant professional conduct rules to help the couple to make a choice that best fits their situation.

1. Family Representation

Under the concept of family representation, the attorney represents the family as an entity rather than its individual members. This approach attempts to achieve a common good for all of the participants, and thus the attorney's duty is to the family interest, rather than the desires of one or both of the spouses. However, representation of the family does not end the potential for conflict between the spouses; instead, it broadens the potential basis of conflict by adding other family members to the equation. Further, even where there is no conflict of purposes between the spouses, the attorney may feel an obligation to the family to discourage or even prevent the spouses from effectuating their common desires where those desires do not benefit the family as a whole (e.g., where the spouses choose not to take advantage of tax-saving tools, such as annual exclusion gifts, in favor of retaining the assets to benefit themselves). This type of representation, at least for spousal estate planning purposes, is unnecessarily complicated and may even

frustrate the common desires of the spouses. The courts have not recognized this model of representation.

2. Joint Representation

Joint representation is probably the most common form of representation estate planners use to develop a coordinated estate plan for spouses. Joint representation is based on the presumption that the husband, wife, and attorney will work together to achieve a coordinated estate plan. In situations where the attorney does not discuss the specific representative capacity in which he or she will serve, joint representation serves as the “default” categorization. Despite its widespread acceptance, however, joint representation has its pitfalls.

A critical issue faced by an attorney who represents multiple parties is the attorney’s obligation to make sure that the representation complies with the Texas Rules of Professional Conduct. Most relevant in the joint representation of husband and wife is Rule 1.06 which prohibits representation where it “involves a substantially related matter in which that person’s interests are materially and directly adverse to the interests of another client of the lawyer”³ Additionally, the Rule provides that if in the course of multiple representation such a conflict becomes evident, the lawyer must withdraw from representing one or both of the parties.

The rule does, however, contain a savings clause which permits the attorney to accept or continue a representation where a conflict of interest exists if: (1) the attorney believes that the representation will not be materially affected, and (2) both of the parties consent to the representation after full disclosure of all of the potential disadvantages and advantages involved. Many attorneys, regardless of whether potential conflicts are apparent, take advantage of this part of the rule and routinely disclose all advantages and disadvantages and then obtain oral and/or written consent to the representation. This approach exceeds the minimum requirements of the rule and helps protect all participants from unanticipated results. Of course, there are still situations which cannot be overcome by disclosure and consent, such as where the attorney gained relevant, but confidential, information during the course of a previous

³ TEX. DISCIPLINARY RULES PROF’L CONDUCT R. 106(b)(1), *reprinted in* TEX. GOV’T CODE ANN., tit. 2, subtit. G, app. A (West 2013) (Tex. State Bar R. art. X §9).

representation of one of the parties. In this type of situation, the attorney has no choice but to withdraw from the joint representation and recommend separate counsel for each spouse.

The dangers of joint representation are discussed in greater detail below.

3. Separate Concurrent Representation of Both Spouses

The theory of separate concurrent representation in a spousal estate planning context is that a single attorney will undertake the representation of both the husband and the wife, but as separate clients. All information revealed by either of the parties to the attorney is fully protected by confidentiality and evidentiary privileges, regardless of the information's pertinence to establishing a workable estate plan. Thus, one spouse may provide the attorney with confidential information that undoubtedly would be important for the other spouse to have in establishing the estate plan, but the attorney would not be able to share the information because the duty of confidentiality would be superior to the duty to act in the other spouse's best interest. Proponents of this approach claim that informed consent given by the parties legitimizes this form of representation. However, due to the confusion it creates for the attorney regarding to whom the duty of loyalty is owed and whose best interest is to be served, it is hard to understand why any truly informed person would consent. The dual personality that this form of representation requires of the attorney has resulted in it being dubbed a "legal and ethical oxymoron."⁴

4. Separate Representation

A final option for the attorney and the married clients is for each of the spouses to seek his or her own separate counsel. This approach is embraced by many estate planning attorneys as the best way to protect a client's confidences and ensure that the client's interests are not being compromised or influenced by another. By seeking independent representation, spouses forego the efficiency, in terms of money and time spent, that joint representation offers, but they gain confidence that their counsel will protect their individual priorities rather than be diluted by the priorities of the spouse. Additionally,

⁴ Geoffrey C. Hazard, Jr., *Conflict of Interest in Estate Planning for Husband and Wife*, 20 PROB. L. 1, 11 (1994).

separate representation substantially decreases the potential that the attorney will be trapped in an ethical morass because of unanticipated conflicts or unwanted confidences.

B. Dangers of Joint Representation

1. Creates Conflicts of Interest

A conflict of interest between the spouses or between the spouses and their attorney can arise for many reasons. These conflicts often do not become apparent until well into the representation. If the attorney is skillful (or lucky), the conflict can be resolved and the joint representation continued. In other cases, however, the conflict may force the attorney to withdraw from representing one or both of the spouses.

a. Accommodating the Modern Family

With the frequency of remarriage and blended families in today's society, it is not surprising that non-traditional families are a ripe source of conflict. A step-parent spouse may not feel the need or desire to provide for children that biologically are not his or her own. This fact can come into direct conflict with the expectations of the parent spouse who may feel that the children are entitled to such support and that the step-parent spouse is just being selfish. Alternatively, the spouses may be in conflict over how the estate plan should provide for "our" children, "your" children, and "my" children, and whether any of these classifications should receive preferential treatment.

b. Bias Toward Spouse if Past Relationship With Attorney Exists

Where one of the spouses has a prior relationship with the drafting attorney, regardless of whether that relationship is personal or professional, there is a potential for conflict. The longer, closer, and more financially rewarding the relationship between one of the spouses and the attorney, the less likely the attorney will be free from that spouse's influence.⁵ Because the spouses rely on the attorney's independent judgment to assist them in effectuating their

⁵ See James R. Wade, *When Can A Lawyer Represent Both Husband and Wife in Estate Planning?*, PROB. & PROP., Mar.-Apr. 1987, at 13.

testamentary wishes, it is important that neither of the parties has any actual or perceived disproportionate influence over the attorney.

c. Opposing Objectives Between Spouses

Spouses may also have different ideas and expectations regarding the forms and limitations of support provided by their estate plan to the survivor of them, their children, grandchildren, and so forth. By including need-based or other restrictions on property, one spouse may believe that the other spouse will be “protected” while that spouse may view the limitations as unjustifiable, punitive, or manipulative. If one spouse has children from a prior relationship, that spouse may wish to restrict the interest of the non-parent spouse via a QTIP trust or other arrangement to the great dismay of the other spouse who would prefer to be the recipient of an outright bequest. No one distribution plan may be able to satisfy the desires of both spouses.

d. Power Struggle Between Spouses

One spouse may dominate the client side of the attorney-client relationship. If one spouse is unfamiliar or uncomfortable with the prospect of working with an attorney or if one spouse is unable, for whatever reason, to make his or her desires known to the drafting attorney and instead simply defers to the other spouse, it will be difficult for the attorney to fairly represent both parties.

e. A Faltering Marriage

If the attorney seriously questions the stability of the marriage, it will be practically impossible to create an estate plan which contemplates the couple being separated only by death. As one commentator explained:

[N]o court would permit a lawyer to go forward when such a situation involves partners in a partnership or the principals in a close corporation, or a trustee and beneficiary of a trust, or a corporation and its officers. The courts will not take a different view

when the clients are husband and wife.⁶

The case of *In re Taylor*, is instructive.⁷ A law firm represented both the husband and wife in the preparation of their estate plans, including wills and powers of attorney, as well as some business matters.⁸ Later, the law firm undertook to represent the husband in divorce proceedings against the wife.⁹ The wife sought to have the law firm disqualified from representing the husband.¹⁰ The trial court denied her motion and she appealed.¹¹

The appellate court conditionally granted the wife's request for a writ of mandamus directing the trial court to vacate the order denying her motion to disqualify the law firm.¹² The record was clear that the law firm represented both the husband and wife with regard to the business and estate matters and thus there would be a conflict of interest for the law firm to represent the husband in the divorce action.¹³ The wife did not consent to the law firm's representation of the husband in the divorce, and the law firm was disqualified.¹⁴ The trial court's failure to grant the wife's motion was a clear abuse of discretion.¹⁵

f. Unbalanced Estate Assets Between Spouses

Significant conflict may arise if one spouse has a separate estate that is of substantially greater value than that of the other spouse,

⁶ Hazard, *supra* note 4, at 1.

⁷ *In re Taylor*, 67 S.W.3d 530 (Tex. App. – Waco 2002, no pet.).

⁸ *Id.* at 531.

⁹ *Id.* at 532.

¹⁰ *Id.*

¹¹ *Id.* at 533.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.* at 534.

¹⁵ *Id.*

especially if the wealthier spouse wants to make a distribution which differs from the traditional plan where each spouse leaves everything to the survivor and upon the survivor's death to their descendants. The attorney may generate a great deal of conflict among all of the parties if, to act in the best interest of the not-so-wealthy spouse, the attorney provides information regarding that spouse's financial standing under the contemplated distribution, if the wealthy spouse were to die first.

Conflict may also exist in situations where one spouse wants to make a gift of property which the other spouse believes is that spouse's separate property and therefore not an item which the first spouse is entitled to give. The potential for this type of conflict is especially great where the spouses have extensively commingled their separate and community property.

2. Forces Release of Confidentiality and Evidentiary Privileges

Joint representation may force spouses to forego their normal confidentiality and evidentiary privileges. Disclosure of all relevant information is the only way to work toward the common goal of developing an effective estate plan. In subsequent litigation between the spouses regarding the estate plan, none of the material provided to the attorney may be protected. However, release of these privileges protects the attorney by eliminating the potential conflict between the attorney's duty to inform and the duty to keep confidences.

3. Discourages Revelation of Pertinent Information

The fact that there is no confidentiality between the spouses in joint representation situations may not be a problem if the spouses have nothing to hide and have common estate planning goals. On the other hand, joint representation can place one or both of the spouses in the compromising position of having to reveal long held secrets in the presence of his or her spouse, e.g., the existence of a child born out-of-wedlock. Even worse is the scenario where the spouse withholds the information leaving the other spouse vulnerable and unprotected from the undisclosed information which, if known, may have resulted in a significantly different estate plan.

4. Increases Potential of Attorney Withdrawal

A potential conflict which becomes an actual conflict during the course of representation may not prevent the attorney from continuing the representation if the spouses previously gave their informed consent. However, if the conflict materially and substantially affects the interests of one or both of the spouses, the attorney must carefully consider the negative impact that the conflict will have on the results of the representation and on the attorney's independent judgment. The prudent action may be withdrawal. A midstream withdrawal can be very disruptive to the estate planning process and result in a substantial loss of time (and even money) to both the spouses and the attorney.

5. Creates Conflicts Determining When Representation Completed

There is some question as to whether a spouse who sought joint representation in the creation of his or her estate plan can, at a later date, return to the same attorney for representation as an individual. The determination as to when the joint representation ends is quite settled with respect to subsequent attempts to unilaterally revise the estate plan—it does not end. Any subsequent representation of either spouse which relates to estate planning matters would constitute information that the attorney would be obligated to share with the other spouse/client. Regarding other legal matters, representation “should be undertaken by separate agreement, maintaining a clear line between those matters that are joint and those matters that are individual to each client.”¹⁶

C. Recommendations

Decisions regarding the form of representation most appropriate for a husband and wife seeking estate planning assistance could be made by the attorney alone, based on his or her past experiences, independent judgment, and skills of observation regarding the potential for conflict between the spouses. The better course of action is for the attorney to explain the choices available to the spouses along with the related advantages and disadvantages and then permit the spouses to decide how they would like to proceed. The

¹⁶ Teresa Stanton Collett, *And the Two Shall Become One . . . Until the Lawyers Are Done*, 7 NOTRE DAME J.L. ETHICS & PUB. POL'Y 101, 141 (1993).

only two viable options are joint representation and representation of only one spouse.¹⁷ As previously mentioned, representation of the family as an entity and separate concurrent representation by one attorney are appropriate forms of representation for a husband and wife only in extremely rare cases.

1. Representation of Only One Spouse

This form of representation allows each of the spouses to be fully autonomous in dealing with their attorney. Only the information the client spouse is comfortable with sharing is revealed to the other spouse. As one commentator explained, “it [separate representation for each spouse] is consistent with the present dominant cultural view of marriage as a consensual arrangement, and is most consistent with the assumptions about the attorney-client relationship”¹⁸ Where it is obvious to the attorney that the couple would be best served by this style of representation, it is the attorney’s responsibility to convince the couple of this fact. Examples of facts that alert the attorney that separate representation is probably the best choice include situations where the marriage was not the first for either or both of the parties, where there are children from previous relationships, where one party has substantially more assets than the other, and where one spouse is a former client or friend of the consulted attorney.

When recommending separate representation, the attorney should take care to point out that this suggestion is not an inference that their relationship is unstable or that one or both parties may have something to hide. Instead, it is merely a reflection that each spouse has his or her own responsibilities, concerns, and priorities which may or may not be exactly aligned with those of the other spouse. Accordingly, and the best way to achieve a win-win result and reduce present and future family conflict is for each spouse to retain separate counsel.

¹⁷ See Malcolm A. Moore, *Representing Both Husband and Wife Ethically*, A.L.I.-A.B.A. EST. PLAN. COURSE MATERIALS J., Apr. 1996, at 5, 7.

¹⁸ Collet, *supra* note 16, at 128–29.

2. Joint Representation of Both Spouses

Despite the potential dangers to clients and attorneys alike, joint representation is the most common form of representation of husband and wife for estate planning matters. With appropriate and routine use of waiver and consent agreements, the attorney may undertake this type of representation with a minimum of risk to the attorney and a maximum of efficiency for the clients. Unfortunately, however, use of disclosure and consent agreements is far from a standard procedure. One survey revealed that over forty percent of the estate planning attorneys questioned do not, as a matter of practice, explain to the couple the potential for conflict that exists in such a representation, much less put such an explanation in writing. One attorney stated that he only felt it was necessary to discuss potential conflicts where the representation involved a second or more marriage, and that he only put it in writing if he felt a real problem was indicated in the first meeting. Another respondent failed to disclose the potential for conflict because he was afraid it would appear as if he were issuing a disclaimer for any mistakes he might make. Finally, it seems that denial of the existence of potential conflicts occurs on the part of the attorney as well as the spouses, as evidenced by one practitioner's statement, "I have a hard time believing that I should tell clients who have been married for a long time and who come in together to see me that there may be problems if they get a divorce."¹⁹ The A.B.A. Standing Committee on Ethics and Professional Responsibility issued Formal Opinion 05-434 that addresses conflicts which may arise when an attorney represents several members of the same family in estate planning matters.²⁰

The Opinion validates the common practice of one lawyer representing several members of the same family.²¹ The basis of this authorization is that the interests of the parties may not be directly adverse and that more than conflicting economic interests are needed before the attorney may not represent both.

¹⁹ Francis J. Collin, Jr., et al., *A Report on the Results of a Survey About Everyday Ethical Concerns in the Trust and Estate Practice*, 20 ACTEC NOTES 201, 219 (1994).

²⁰ ABA Comm'n on Ethics & Prof'l Responsibility, Formal Op. 05-434 (2004).

²¹ *Id.*

The Opinion recognizes, however, that current conflict of interest may result even without direct adversity if there is a significant risk that representation of one client will materially limit the representation of another.²²

Despite the “permission” granted by this Opinion, I continue to think the representation of more than one family member in estate planning matters is problematic. A potential conflict may turn into a real conflict at a later time leaving the attorney in an untenable position. It is simply not worth the risk. I believe it is better for a lawyer to owe 100% of his or her duties to one and only one family member. This way, there will never be doubt whom the attorney represents or what actions the attorney should take if something “gets sticky.” True, practitioners may lose some business and some clients may have higher legal fees but I believe this is preferable to the alternative.

Many attorneys, nonetheless, will continue to represent spouses jointly. Attorneys who do so are strongly recommended to (1) provide the spouses with full disclosure and (2) obtain the spouses’ written informed consent, regardless of the perceived potential for conflict.

Informed consent is not possible without full disclosure. Because estate planning attorneys often meet one or both of the spouses for the first time the day of the initial appointment, it is not possible for the attorney to know more about the couple than what he or she sees and hears during the interview. Because there is no way to be sure which specific issues are relevant to the spouses, it is extremely important for the attorney to discuss as many different potential conflicts as are reasonably possible. Even if the attorney has some familiarity with the couple, it is better to cover too many possibilities than too few.

The amount of disclosure that must be provided for the consent given to be considered “informed” is different for each client. The attorney has the responsibility to seek information from the parties to be sure that all relevant potential conflicts are addressed as well as the effects of certain other incidents, such as divorce or death of one of the spouses. It is also a good idea to include a discussion of the basic ground rules of the representation detailing exactly what is and is not

²² *Id.*

confidential, rights of all parties to withdraw, and other procedural matters such as attendance at meetings and responsibility for payment of fees.

An oral discussion of potential conflicts that exist or that may arise between the couple will allow the attorney to gather information about the clients while disseminating information for them to use in making their decisions. Oral disclosure also permits a dialogue to begin that may encourage the clients to ask questions and thereby create a more expansive description of the advantages and disadvantages of joint representation as they apply to the couple.²³

Representation of Non-Spousal Relatives

Representation of more than one family member raises a number of ethical concerns such as avoiding conflicts of interest, maintaining confidences, and preserving independent professional judgment. These issues are analogous to those discussed with regard to the representation of both spouses. The safest course of action would be to decline to represent two individuals from the same family, especially a parent and his or her child.

Naming Drafting Attorney, Attorney's Relative, or Attorney's Employee as a Beneficiary

Attorneys are often asked by family members, friends, and employees to prepare wills, trusts, and other documents involved with the gratuitous transfer of property. These same individuals may also want the attorney to name him- or herself as one of the beneficiaries of the gift. This common occurrence is fraught with legal and ethical problems, since the attorney may not be able to claim the gift and may be subject to professional discipline.

²³ Though there is no rule or standard which requires that disclosure or the clients' consent be evidenced by a written document, the seriousness and legitimacy that go along with a signed agreement serve as additional protection for all participants. By documenting the disclosure statement and each client's individual consent to the joint representation, the couple may be forced to reconsider the advantages and disadvantages of joint representation and may feel more committed to the agreement. Additionally, if there are any issues which they do not feel were addressed in the document, they may be more likely to express them so that the issue can also be included in the agreement. Finally, reducing the agreement to written form helps protect the attorney should any future dispute arise regarding the propriety or parameters of the representation. (Excellent forms are available on the website of the American College of Trust and Estate Counsel:

<http://www.actec.org/publications/engagement-letters/> (last visited Jan. 26, 2018).

D. Effect on Validity of Gift

Under Roman law, the drafter of a will could take no benefit under the will.²⁴ Under modern law, the general rule still prohibits the drafter of a will from taking a benefit under the will. However, forty-six states and the District of Columbia have adopted the Model Rules of Professional Conduct (MRPC), including Rule 1.8(c), which prohibits an attorney from preparing a will giving the attorney or a person related to the attorney a substantial gift, unless the recipient is related to the client.²⁵ The MRPC prohibits the drafter of the will from benefiting under the will, but with an exception, if the attorney or person related to the attorney is related to the client. Although forty-six states and the District of Columbia have adopted the MRPC, there are various exceptions to the rule of the drafter being a beneficiary under the will, which varies from state to state. This also brings up the question concerning the validity of such gifts.

If the drafter of the will is a beneficiary under the will, many states provide that this benefit raises a presumption of undue influence, while some states automatically void the gift.²⁶ Generally, a violation of the MRPC Rule 1.8(c) will not automatically void the gift, but instead the appropriate authority can impose a penalty ranging from a private reprimand to disbarment (determined on a case-by-case basis).²⁷

E. Effect on Ethical Duties

The MRPC Rule 1.8(c) states, “[a] lawyer shall not solicit any substantial gift from a client, including a testamentary gift, or prepare on behalf of a client an instrument giving the lawyer or a person related to the lawyer any substantial gift unless the lawyer or other recipient of the gift is related to the client. For purposes of this paragraph, related persons include a spouse, child, grandchild,

²⁴ See Elmo Schwab, *The Lawyer as Beneficiary*, 45 TEX. B.J. 1422 (1982) (discussing ancient doctrine of “qui se scrip sit heredem”).

²⁵ ACTEC Commentaries on the Model Rules of Professional Conduct, ATEC.ORG, <http://www.actec.org/publications/commentaries/> (last visited Jan. 24, 2018).

²⁶ Gerry W. Beyer, *Wills, Trusts, & Estates*, § 10.3.3.1 (Aspen Publishers, 6th ed. 2015).

²⁷ *Id.*

parent, grandparent or other relative or individual with whom the lawyer or the client maintains a close, familial relationship.”²⁸

The MRPC Rule 1.8(c) does not apply if the gift is not a *substantial* gift.²⁹ While it is unclear whether a non-substantial gift is acceptable, the comment to Rule 1.8(c) indicates that it is, “a simple gift such as a present given at a holiday or as a token of appreciation is permitted.”³⁰ However, the standard for what constitutes a substantial gift and should not be relied on by a drafter of the will who is also the beneficiary.

The MRPC provides an exception for attorneys (or someone related to the attorney) to receive gifts from clients. The exception applies when the recipient is related to the client. However, a prudent attorney should look to see how “related” is defined, as it may vary from state to state. Additionally, the rule does not prohibit the attorney from appointing another lawyer to draft the will, but the appointment would be subject to the general conflict rules.³¹

Naming Drafting Attorney as a Fiduciary

The former Ethical Considerations provided that “[a] lawyer should not consciously influence a client to name him as executor [in a will]. In these cases where a client wishes to name his lawyer as such, care should be taken by the lawyer to avoid even the appearance of impropriety.”³² This rule was interpreted to mean that a lawyer may be named as the executor for an estate “provided there is no pressure brought to bear on the client, and such appointments represent the true desire of the client.”³³

²⁸ MODEL RULES OF PROF’L CONDUCT r. 1.8(c) (AM. BAR ASS’N 2017).

²⁹ N. Gregory Smith, *Beware of Clients Bearing Gifts*, 54 LA. B.J. 250, 251 (Dec. 2006/Jan. 2007).

³⁰ MODEL RULES OF PROF’L CONDUCT r. 1.8(c) cmt.6 (AM. BAR ASS’N 2017).

³¹ *Id.*

³² TEX. STATE BAR R., EC 5–6 (Tex. Code of Prof’l Resp.), *reprinted in* 23 BAYLOR L. REV. 697, 763 (1971).

³³ Comm’n on Interpretation of the Canons of Ethics, State Bar of Tex., Op. 71 (1953), *reprinted in* 18 BAYLOR L. REV. 195, 226–27 (1966).

Despite the authority to do so, the attorney must exercise great care to avoid potential claims of overreaching or conflict of interest.³⁴ It is wise to have the client sign a plain language disclosure statement that explains the ramifications of the attorney serving as the executor.³⁵ It is not uncommon for a will to have a provision exonerating the executor from liability for acts of ordinary negligence. A standard such clause is: “No executor shall be liable for its acts or omissions, except for willful misconduct or gross negligence.” These exculpatory clauses are generally upheld by Texas courts.³⁶ However, if the executor doubled as the attorney who drafted the will, it is not clear whether such a clause would be upheld in light of Rule 1.08(g) of the Texas Disciplinary Rules of Professional Conduct which states:

A lawyer shall not make an agreement prospectively limiting the lawyer’s liability to a client for malpractice unless permitted by law and the client is independently represented in making the agreement, or settle a claim for such liability with an unrepresented client or former client without first advising that person in writing that independent representation is appropriate in connection therewith.³⁷

³⁴ See Howard M. McCue III, *Flat-Out of the Will Business – A Recent Malpractice Case Results in an Expensive Settlement for Both Lawyer and Executor*, TR. & EST., Sept. 1988, at 66 (discussing San Antonio lawsuit which was settled when law firm agreed to pay over \$4 million to plaintiff; the attorney who drafted the will had named attorneys employed by the firm as executors).

³⁵ See Larry W. Gibbs, *The Lawyer’s Professional Responsibility in Estate Planning and Probate – Common Solutions and Practical Problems*, in STATE BAR OF TEXAS, PRACTICAL WILL DRAFTING AND REPRESENTING THE ESTATE AND BENEFICIARIES IN HARD TIMES, ch. F, 2-6, 24-26 (1987) (includes sample disclosure form).

³⁶ See *Corpus Christi Nat’l Bank v. Gerdes*, 551 S.W.2d 521 (Tex. Civ. App. – Corpus Christi 1977, writ ref’d n.r.e.).

³⁷ TEX. DISCIPLINARY RULES PROF’L CONDUCT R. 1.08(g), *reprinted in* TEX. GOV’T CODE ANN., tit. 2 subtit. G, app. A (West 2013) (Tex. State Bar R. art. X §9).

Naming Drafting Attorney as Fiduciary's Attorney

The Model Rules do not prohibit an attorney from including a provision directing a fiduciary to retain a particular lawyer's services.³⁸ Most wills and trusts, however, do not contain these types of provisions; hence, the inclusion of such a clause may raise suspicions that the attorney improperly influenced his or her client. In addition, many courts will treat this type of provision as merely precatory and thus not binding on the fiduciary.

Fiduciary Hiring Self As Attorney

A fiduciary with special skills may be tempted to employ him- or herself to provide those services to the estate or trust. For example, the trustee may be an attorney, accountant, stockbroker, or real estate agent. If the trustee succumbs to the temptation, the trustee will create a conflict of interest situation. As a fiduciary, the trustee should seek the best specialist possible within the trust's budget. However, as a specialist, the trustee wants to get the job and secure favorable compensation. Dual roles permit the trustee to engage in schizophrenic conversations such as, "This is too complicated for my trustee mind, so I need to consult myself using my attorney brain."

Courts typically presume that self-employment is a conflict of interest and will not permit trustees to recover extra compensation for the special services. However, the court may permit the trustee to receive compensation in dual capacities if the trustee can prove that the trustee acted in good faith for the benefit of the trust and charged a reasonable fee for the special services.

Attorney as Document Custodian

It is important for estate planning documents to be stored in appropriate locations. If documents are unavailable to the appropriate person when needed, the client may lose the benefits of executing the documents. The disposition of an executed document is simple in some cases. For example, a medical power of attorney should be delivered to the agent. In other cases, however, the proper receptacle for the document is less easily ascertained.

The proper disposition of a will is often a controversial issue. The original will should normally be stored in a secure location where it may be readily found after the testator's death. Thus, some testators

³⁸ See MODEL RULES OF PROF'L CONDUCT r. 1.8 (AM. BAR ASS'N 2006).

keep the will at home or in a safe deposit box, while others prefer for the drafting attorney to retain the will. The attorney should not suggest retaining the original will because the original becomes less accessible to the testator. When the drafting attorney retains a will, the testator may feel pressured to hire the attorney to update the will, and the executor or beneficiaries may feel compelled to hire that attorney to probate the will. In other jurisdictions, some courts hold that an attorney may retain the original will only “upon specific unsolicited request of the client.”³⁹

If a will contest is likely, the client must be informed of the dangers associated with retaining the will (i.e., it increases the opportunity for unhappy heirs to locate and then alter or destroy the will). The attorney may need to urge the testator to find a safe storage place that will not be accessible to the heirs, either now or after death, but rather a location where the will is likely to be found and probated. Simultaneously, make certain not to suggest that the attorney retain the will.

Capacity of Representation

Generally, when an attorney represents a client, it is clear as to whom the attorney owes a duty. However, it is not as clear as to whom the client is when the attorney represents a fiduciary, such as custodian or guardian for a minor, an executor, trustee, or personal representative.⁴⁰ Most jurisdictions have no laws regarding this issue, and those that have tried to provide some guidance adopts one of three major approaches: (1) the traditional theory, (2) the joint-client theory, or (3) the entity theory.⁴¹

The traditional theory dictates that the fiduciary is the client. The American Bar Association has adopted this approach and those jurisdictions that have provided a clear ruling regarding who the client is, the traditional theory also seems to be the most prevalent theory.⁴² Some states that have indicated following the traditional

³⁹ State v. Gulbankian, 196 N.W.2d 733, 736 (Wis. 1972).

⁴⁰ Kennedy Lee, *Representing the Fiduciary: To Whom Does the Attorney Owe Duties?*, 37 ACTEC L.J. 469 (2011).

⁴¹ *Id.*

⁴² *Id.* at 471.

approach are South Carolina, Michigan, and California (although California has not enacted specific legislation, California's case law indicates the adoption of the traditional theory).⁴³ Indiana recently enacted legislation adopting the traditional theory.⁴⁴ Additionally, the Texas Supreme Court also adopted the traditional theory in *Huie v. DeShazo*.⁴⁵

The joint-client theory finds that a "beneficiary is entitled to essentially the same duties as the fiduciary is entitled" and therefore is a joint-client with the fiduciary.⁴⁶ Professor Hazard illustrates the joint-client theory with a triangle metaphor: the first leg is the attorney-fiduciary relationship, the second leg is the fiduciary-beneficiary relationship, and the third leg is the attorney-beneficiary relationship. Although courts that follow the joint-client theory recognizes that the beneficiary and the fiduciary are both clients of the attorney, there is disagreement as to whether the two clients are equal in relation to the attorney.⁴⁷ Jurisdictions that seem to follow the joint-client theory include Nevada, Washington, Delaware, New Jersey, and Arizona.⁴⁸

Under the third approach, the entity theory, "the estate is considered a separate legal entity and the estate, not the fiduciary or the beneficiary, will be considered the client."⁴⁹ The estate is treated as if the client was a business entity.⁵⁰ Similar to how a corporation would act through an agent, the estate "would act through the fiduciary as its agent."⁵¹ Under the entity theory, the attorney for the fiduciary would become a co-agent of the estate and therefore, responsible to

⁴³ *Id.*

⁴⁴ 2013 Ind. Acts 99.

⁴⁵ *Huie v. DeShazo*, 922 S.W.2d 920 (Tex. 1996).

⁴⁶ Lee, *supra* note 40, at 477.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.* at 485.

⁵⁰ *Id.*

⁵¹ *Id.*

the estate instead of the fiduciary agent.⁵² As a co-agent of the estate, the attorney would owe not only a duty to the estate, but also to all interested parties, including beneficiaries.⁵³ Michigan used to follow the entity approach, however, an amendment to the Michigan Probate Code clarified to whom an attorney owes a duty to and adopted the traditional theory.⁵⁴

Conclusion

*"Sleep with one eye open. Grippin' your pillow tight."*⁵⁵

Now that doesn't sound like any fun, does it? However, if you are careful and follow the advice in this article, you can endeavor to make your estate planning practice free from ethical issues. And then, you can get the good night's sleep you deserve.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ METALLICA, *Enter Sandman*, on METALLICA (Blackened Recordings 1991).

USING FAMILY EDUCATION AS A TOOL FOR RAISING ETHICAL AND FINANCIALLY RESPONSIBLE CHILDREN

Jennifer Lehman, M.S., Personal Financial Planning

Introduction

Imagine yourself nearing full retirement age, but being unable to retire because you have undersaved and overspent. Or so you thought. Then your parents, who lived quite frugally, pass away and leave you an inheritance that's significant enough that you can now retire and live the lifestyle you have grown accustomed to. Research suggests this is happening to baby boomers in record numbers. In fact, some economists estimate that baby boomers will complete the biggest wealth transfer of all time by passing on \$59 trillion by the year 2061 (Davies, 2016).

However, not every parent plans to pass their small fortune on to their adult children (nor is every parent able). Although concentration of wealth at the top has been steadily rising, many business tycoons in the top 1% of wealth suggest either cutting children out of inheritance completely or giving a minimal percentage of wealth to children and the rest to charity (Davies, 2016). For instance, Warren Buffett is planning to give away 99% of his wealth to charity and only 1% to his kids. His reasoning: so the heirs have "enough to do anything but not enough to do nothing (Davies, 2016, para 3)." Likewise, Bill and Melinda Gates are not leaving their \$78 Billion fortune to their three children, but to charity (Graff, 2016). The Gates' will pay for their children's college, but then they need to have careers (Graff, 2016). They will have a safety net, but not a trust fund to blow through however they choose (Graff, 2016). "It's not a favor to kids to have them have huge sums of wealth," Gates said. "It distorts anything they might do, creating their own path" (Graff, 2016, para 5). We have all heard stories about spoiled rich kids, trust fund babies, and whatever other phrase you want to coin. We may even know one or two of them personally. A family friend's daughter inherited \$1 million from her very frugal engineer father, after growing up in a middle class home. She had already gone astray in terms of drug use and lifestyle, but her parents were divorced and she was the only child, and really the only person in her father's life. She proceeded to spend down the inheritance by living at the Ritz Carlton, doing more drugs, wrecking a new car and then simply abandoning it by the side of the road and purchasing another new

car. When I heard these stories from my mother, I thought “*Who does that?*” In reality, it may be more common than we think. If the father in this case had set up a trust, the money would have lasted for a longer period of time, and if he had put stipulations or left it in the trustee’s discretion, she may not have received funds at all.

What is family education?

There are two types of intergenerational transfers: *inter vivos* (gifts made during life) and bequests (a plan to leave money to someone upon death). Family education can be helpful for either type of transfer. Family education refers to estate planners sitting down with multiple generations within a family at one time, usually for the parents to discuss their bequest motives with the children and for the professional to educate the children about how to wisely manage the inheritance once it’s received. This is an appropriate time to discuss restrictions on the money – for example, it is being put in a trust with a trustee who can release funds periodically under certain conditions. Stipulations often include drug-free living, completion of a college degree, and attainment of a certain age. This prevents the party animal son or daughter from spending their inheritance on drugs and alcohol. Although the assumption is that most of the family education is focused on future inheritance, which is usually in the form of a bequest, lifetime gifting may also be part of the strategy. There are compelling reasons to do so. For one, \$14,000 per person per recipient per year can be gifted without any gift tax liability under current tax law. In addition, lifetime gifting can help spend down one’s estate, both to avoid estate tax liability later on (although most families are below the estate tax threshold of \$5.45 million for 2016) and to possibly qualify for Medicaid if needed for long term care while avoiding the Medicaid five-year lookback. Finally, a recipient might have immediate needs such as higher education or a down payment on a home that will be moot by the time a healthy donor passes away; sometimes it makes sense to provide help when needed rather than making the person wait.

Inheritance and Productivity

That brings up the million dollar question: how can you leave an inheritance to your children and still encourage them to work hard and be good citizens? Let’s look at what has been done in the past, and whether those things have been effective.

In early farming communities in Japan and Europe, parents gave a bequest only to the youngest child, as an incentive for that youngest child to stick around and look after the parents (Davies, 2016). The

older siblings had already moved away and established a life of their own (Davies, 2016). Nowadays, at least in the United States, children tend to move away and have lives of their own. Sometimes they move back when a parent is in need, but it's not always the youngest child who does this.

In the 1980s, economists at Harvard (including Larry Summers) looked at data for thousands of families and found that the higher the transferable wealth, the more phone calls and visits parents received from their children, especially if the parents were rich and sick and multiple children were competing for an inheritance (Davies, 2016). Although the phone calls and visits are nice, it's preferable that they be heartfelt, and not just in hopes of a later financial reward.

Gary Becker suggested gifting different inheritance amounts for each child as a way to make sure they took the parents' wishes seriously (Davies, 2016). In reality, bequests are usually spread evenly among children, with small amounts going to grandchildren and others (Finch, 2013), although *inter vivos* transfers from parents to adult children or grandchildren tend to be targeted toward the ones considered more needy (Kohli, 2004). In many ways, this makes sense; \$2,000 means a lot more to a child unable to pay rent than to a child who earns that much per hour. This is known in economics as diminishing marginal utility. However, it depends on whether the goal is equity or fairness, as "fair" and "equal" are not one and the same; if equity is a concern, giving more to the needy child may not meet the standard. It can also cause resentment among siblings. What if one child is middle class and the other is fully disabled? Middle class does not equate to "rich" or "has it made," and a substantial inheritance can make a quality of life difference. Good intentions by parents may backfire. Consider the mentally ill son who inherits the family house and a functioning son who inherits \$10,000. If the functioning son resents his brother's inheritance, and won't have anything to do with him, the mentally ill brother may now be on his own to fend for himself without an advocate. If the meds stop working, or he stops taking them, things may not end well. Although community services may be in place for such a situation, someone has to request the services. It might be a more amenable situation if the parents set up a trust for the healthy son and make caring for the mentally ill sibling a condition of receiving a portion of the trust funds.

According to Morgan Stanley, use of incentive trusts has been increasing over the last 20 years (Davies, 2016). Most common in incentive trusts are: payout for completion of an undergraduate

degree, payout matching post-graduation salary or for starting a new business, and payout for good behavior such as attending church or avoiding drugs and/or alcohol (Davies, 2016). If designed properly, these generally work well, although evidence is mixed (Davies, 2016). It's hard to account for every future contingency, and writing such a long contract would be a nightmare – but then what about the child who drops out of college because of a disability, medical condition, or accident (Davies, 2016)? The child needing the most money, through no fault of his/her own, may end up with the least. If the parents have already passed away, then it's up to the siblings to assist, out of the goodness of their hearts. If the disability occurs at a young age, and the person lives long enough, this can be a serious drain on a sibling's finances. It's better for the parents to set up a special needs trust for the disabled child, with instructions to be followed. But see the previous paragraph regarding the resentment that may follow.

Even if the story is not that extreme, unbridled gifts may not be spent the way one envisions. Consider the recent story of a long time University of New Hampshire library employee who left the university \$4M upon his death, unrestricted. The university chose to spend \$1M of the bequest to install a new video scoreboard at the football stadium (Ettinger Law Firm, 2016). How would the decedent feel about this? We will never really know. But, if he had given some guidelines for how the university could spend the money, then we would know. Although this is not a family scenario, the lesson still applies: if you care how your money is spent in the future, provide guidelines.

Inheritance and its impact

Bequest transfers from elderly parents to adult children can accumulate over time and impact the financial position of recipients upon retirement if the money is invested when received and not spent until retirement (Harrington, 2008). Homeownership potentially increases the inheritance because it is one more asset to pass along to heirs (Finch, 2013). Harrington uses PSID data from 1984-2005 and compares the impact of private savings and pensions to that of inherited wealth (Harrington, 2008). She finds that inheritance has only a negligible impact for the most poor and the most wealthy Americans, but is “surprisingly significant” for the middle class (Harrington, 2008, pg. 1). While inheritance only represents 1% of wealth for retired households in the PSID sample, it represents 7.5-8% of retirement wealth for those in the middle class (Harrington, 2008). Larger inheritances may enable some recipients to retire prior to age 65 and live comfortably even if they have

undersaved and overspent up until the point of receiving the inheritance. It was projected that 60% of the baby boom generation will receive an inheritance or *inter vivos* gift that will amount to more than double what their parents and grandparents received (Harrington, 2008). Although these are nominal dollars, real return is still positive. In general, current baby boomers have been purported to have undersaved and overspent while their parents lived frugally (Salsbury, 2006), and an inheritance could narrow or fill what would otherwise be a shortfall between accumulated wealth and retirement spending needs (Harrington, 2008). Lifetime total inheritance, on average, was \$29,500 in 2008 when this article was written (Harrington, 2008). All but the wealthiest Americans are dependent on pensions during retirement (Harrington, 2008), and given the movement away from defined benefit pensions and toward defined contribution plans, these pensions may be a thing of the past. An inheritance can provide a significant supplement for retirement, especially if the money has some years to grow.

This brings up another point: seemingly small amounts, such as \$10,000, can make a big difference. Considering that inheritance makes the most significant difference for those in the middle class, think about what \$10,000 could help someone buy - a year of tuition, part of a down payment for a home, a decent used car, enough to renovate a bathroom or kitchen. Alternatively, it can be used to significantly pay down existing debt, or be invested for future use such as retirement spending, the focus of Harrington's article. Larger amounts can make an even bigger impact - perhaps the recipient is able to start a small business.

Bequests to Grandchildren and Relatives other than Children

If the baby boomer recipients continue overspending, they may not have anything left to pass along to their own kids when they die (Salsbury, 2006). For this reason, as well as others, if a donor wants grandchildren to have some of the money, the donor should specifically leave some money to the grandchildren, even if it's in the form of a trust. If it all goes to the children with instructions to leave the unused amount to the grandchildren, it may all get used.

Much of what has been written is geared toward traditional families. However, it is estimated that 40 - 50% of first marriages end in divorce (Doherty, n.d.), with a median duration of eight years (Ellis, 2011). To add to that, statistics show that 67% of second marriages and 73% of third marriages end in divorce (Banschick, 2012). The end

result may be a marriage later in life between two people with kids from previous marriages. Even if the adult children are on their own and paying their own bills, how things are divided after the death of both spouses can become a bit more complicated. It may be even more crucial to have family education under these circumstances. For instance, if he has two kids from a prior marriage and she has five kids from a prior marriage, does each kid get $1/7$, or does each side of the family get $1/2$? A planner can help the couple decide, and open things up for discussion. This is a good start, but the next step would be to involve the children in the discussion. Meeting with an estate planner with expertise in multiple marriage situations could be beneficial if there is any concern about the surviving spouse changing beneficiary designations and excluding the late spouse's kids. Perhaps a qualified terminable interest property (QTIP) trust is needed rather than a marital trust.

Same sex marriage is now recognized in all 50 states, but some of the legal implications are not yet clear. With any kind of non-traditional relationship – same sex, cohabitation – it's important to involve family members to the extent possible. There may still be a will contest, but a contestant is less likely to prevail if the couple's wishes were clearly known.

These issues also apply to childless adults. An increasing number of adults do not have children. In fact, the percentage of American women who have at least one child has fallen from 64.9% in 1976 to 52.4% (Luckerson, 2015; U.S. Census Bureau, 2014). People without children may still have bequest motives. Perhaps there are siblings, nieces or nephews, or close friends that are like family. If anything, discussion between the childless adult and close friends and relatives is even more important in this instance, because it's harder to guess what that person's wishes are. Even if the decedent had a will listing specific bequests, the gifts may be given outright unless other provisions are made. One could argue that having a niece or nephew blow through an inheritance is not any better for them or society than a son or daughter blowing through an inheritance. Financial education for the future recipient is always important, no matter the relationship between donor and recipient.

Positive Psychology

Positive psychology aims to help already well-functioning clients achieve goals they didn't even know existed (Pavia, 2016). Family education can be one of these hidden goals that financial planners and estate planners can strategize about and add value to their

services. On a broad level, clients can figure out their transfer motives, which can be one of three options: unconditional giving (if they need help, I will provide it), conditional giving (people should do something in exchange for the inheritance), and separation (children need to be self-supporting and not dependent on their parents for support) (Kohli, 2004). Results from the German Aging Survey indicate that more highly educated women are the most likely to give unconditionally (Kohli, 2004). This means the recipients receive an inheritance with no strings attached. Other demographic groups are more likely to give the bequest only under certain conditions. A similar survey in the United States could determine if the effect of being a highly educated woman is the same. Different countries present different needs for inherited money – for example, higher education in the United States is expensive, and housing in Israel is expensive.

Teaching Financial Responsibility

Let's say you read this paper and become convinced that family education is a good idea. You call an estate planner and schedule the meeting with the planner and various multigenerational family members. That's just one meeting. What else can you do to teach your kids to be financially responsible? How do you assess their level of responsibility? Joline Godfrey provides what she calls "Ten Basic Money Skills":

How to save, how to keep track of money, how to get paid what you are worth, how to spend wisely, how to talk about money, how to live a budget, how to invest, how to exercise the entrepreneurial spirit, how to handle credit, and how to use money to change the world (Godfrey, 2003, pg. 44).

Godfrey then goes through suggested age appropriate activities for each of the ten money skills. In addition, she provides a set of values related to money: 1) Money is a tool to help us achieve and maintain independence, 2) It's good to save, it's not good to accumulate for the sake of accumulating, 3) It's best to spend wisely and within one's means, 4) Greed is bad, 5) Part of one's responsibility to humanity is to give generously, 6) Steering wealth can be a respectful act, 7) Money is an energy that can be used for good or evil; it is not a commodity (Godfrey, 2003).

Discussing Financial Responsibility

Carl Richards explains that we often use money as a front in order to avoid discussing deeper issues (Richards, 2012). “We can’t afford that” and “Our money is better spent on higher priority items” are two different states of being, but parents often say the former when they mean the latter (Richards, 2012). Framing the issue in a way that is meaningful to others is important. Money is a sensitive topic that can arouse uncomfortable feelings, and thus conversations about it are often avoided (Richards, 2012). However, more frequent meaningful family conversations about money lead to better decision making. Do not limit the conversation to stock market performance. Discuss the role money plays in the family’s life, what financial goals are being met and which ones are on the table for the future, and what really matters (Richards, 2012). This also involves discussing limitations and past mistakes (Richards, 2012).

Richards then goes on to discuss delayed gratification, and that people who figure out how to live with delayed gratification experience greater success than those who give in to immediate desires (Richards, 2012). He suggests the following ways to save more and spend less: 1) Force yourself into a “holding pattern”. Write down what you want, sit on it for three days, and then reconsider. 2) Go on a “buying fast”. See how long you can go only spending money on necessities. 3) Track your spending. 4) Figure out how much your goals will cost. 5) Consider the effect of taxes. 6) Calculate how much you could earn if you were to invest the money rather than spend it (Richards, 2012). We are wired to avoid pain and pursue pleasure (Richards, 2012). It’s best to come to terms with past financial mistakes and get a fresh start (Richards, 2012).

Conclusion

In this paper I discussed two types of intergenerational transfers: *inter vivos* (gifts made during life) and bequests (a plan to leave money to someone upon death). I then looked at how family education can be helpful for either type of transfer. There may be restrictions on how the money is spent, and there may be compelling reasons to donate more to charity and less to family. Whatever the *inter vivos* and bequest motives are, they should be discussed with family members, especially potential recipients and those who expect to receive. It’s bad enough if an inheritance is blown. What could be even worse is having family members splurge on a few items, expecting to be able to repay the loan in a lump sum when they inherit money someday, only to not receive that inheritance. The person may end up with debt they cannot get out of, and they may end up bitter.

I also speculate on the issue of how to leave children an inheritance while still encouraging them to work hard and be good citizens. This involves looking at what has been done in the past, and exploring how behavioral biases might help or hinder bequest planning. This is considered for traditional and non-traditional families. Finally, I look at ways to financially educate family members on your own as a supplement to the multigenerational meetings between family members and a planner. Although it's beyond the scope of this paper to summarize them all, know that there are dozens of good books to help parents raise financially responsible kids, initiate money discussions, develop budgets, figure out one's money history and its impact on current financial decisions, and numerous other relevant topics.

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MUST WE MAXIMIZE THE GOOD WHEN WE DO GOOD?

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Suppose I am the beneficiary of a modest inheritance. After spending much of it on myself, I decide to donate the remaining \$2000 to a charitable organization.¹ I might think that I am morally free to indulge my preferences in deciding which charity (or charities) to support: Oxfam, UNICEF, CARE, the ACLU, the Humane Society, Doctors Without Borders, etc.²

According to the 'effective altruism' movement,³ I should donate to the organization(s) that do the most good (or that are most likely to do the most good). Their argument is supported by a powerful analogy. Suppose I am walking along a lake and two canoes tip over. One contained two people and (being a strong swimmer), I could easily rescue both of them. The other canoe was carrying only one person. The two canoes are too far apart for me to have a chance of rescuing all three persons; it would take too long to swim between them (even if I was strong enough). It seems obvious that, other things being equal,⁴ I should rescue the two canoeists rather than the one canoeist.

Discussions about the duty of beneficence (or what is often called charity) have traditionally focused on the question of how much ought I give to, say, UNICEF. Peter Singer (the father, or godfather) of the effective altruism movement, has sometimes suggested (at least) 10% of your income (Singer, 1999). I want to sidestep the question of how much (thus I stipulate that I have \$2000 that I am willing to donate) and to focus on the question of whether I am obligated to try to maximize the good that my donation will do (analogous to the obligation to rescue the two canoeists instead of the lone canoeist. I shall argue that we have no such obligation.

The duty to rescue the drowning canoeist (or, in another frequent example, the duty to rescue a toddler who has fallen into a shallow pond) falls under the relatively uncontroversial duty of (easy) rescue. There is dispute about how much I must be willing to sacrifice or to risk in order to save one (or two) people from drowning (or from dying in a burning building). But if I can rescue the two canoeists, or the drowning toddler, if I can save a life or two at minimal risk and cost to myself, it seems uncontroversially true that I ought to; it would be wrong not to. And in Rescue Cases, I ought to try to save as many as I can (at whatever risk and cost is reasonable). It would be wrong to rescue the lone canoeist if I could just as easily and safely

rescue the two. To save only one would be to allow gratuitous harm (Pummer, 2016).

Effective altruists argue that in deciding whether to send my extra \$2000 to Charity A or Charity B, I should try to figure out which charity does the most good (and often that involves which one saves the most lives at the lowest cost). Let's suppose that I could give the money to any of the following charitable organizations:

- (1) PSI (Population Services International (which fights malaria by distributing insecticide-treated bednets);
- (2) Habitat for Humanity (for its work both in the United States and abroad);
- (3) Big Brother Mouse (which writes, illustrates, prints, and distributes free books to children in Laos); or
- (4) Big Brother Mouse for a one-year scholarship (including room and board) for high school graduates in Laos.⁵

PSI says that each bed net it purchases and distributes costs \$4.00. Does that mean that with an extremely modest \$20.00 contribution, I can save five lives (or more, since a whole family may be able to sleep under one bed net)? Leif Wenar cites research by GiveWell that arrives at a much higher cost: "donors can save a life that would not otherwise be saved through donations to PSI of between \$623 and \$2367. GiveWell settles on \$820 as a reasonable estimate" (Wenar, 2010, p. 22).

Suppose that's right. It seems clear that supporting Habitat for Humanity, or sponsoring books for Laotian children, would not (reliably) save any lives. If we are obligated to do the most good possible, it seems that it would be wrong for me not to give my money to PSI for bed nets (or to some other equally efficient humanitarian organization).

An effective altruist could easily acknowledge that judgments of comparative goodness are often not easy. One proponent concedes that in many cases, there is no best act. Instead, there may be only an "upper set" of acts, such that any act in this upper set is better than any act outside it, and such that those acts within the upper set are roughly equally good, on a par, or incommensurable--or perhaps it is indeterminate how acts in the upper set rank in comparison to one another, or we are utterly clueless as to how they do. Arguably, such cases are especially likely to arise in the context of giving to charity, as many charitable causes are difficult to compare. Thus, there may be no best charity, but only an upper set of charities (Pummer, 2016, p. 85).

I agree that in some cases the goodness of the different outcomes is indeterminate or incommensurable. This is especially true if we are comparing the goodness of saving, say, one life compared to the goodness of preventing many cases of blindness. But not always. Suppose I could write a check either to Charity A which distributes a relatively expensive medicine (each life-saving dose costs \$2.00) or to Charity B which distributes a less expensive medicine for a different disease (each life-saving dose costs only \$1.00).⁶ Would it be wrong for me to favor Charity A rather than Charity B? The 1000 deaths I failed to prevent by supporting Charity A instead of Charity B are (what I shall call) gratuitous deaths.⁷

But that can't be right. Surely it cannot be wrong to contribute to the fight against the more recalcitrant disease just because the drugs to fight it are more expensive than the drugs to fight the more easily treated disease. It would be absurd to say that no one should try to fight diseases that are more expensive to prevent or cure until the more easily prevented diseases are eradicated,⁸ or that I ought to donate \$2000 to PSI (because I can thereby save one or two lives) rather than contribute to the roughly \$400,000 that it costs for a lifetime treatment of someone with AIDS (or to the \$100,000 it costs for a year's worth of cancer drugs for one person) (Choueiri, 2017).

I agree that in Rescue Cases, we should try to maximize the good we can bring about (which usually involves minimizing the harm—minimizing the number of deaths). If we must choose, we should save the two people who fell out of the first canoe instead of the one person who fell out of the other canoe. But there is no such obligation in what I shall call philanthropy cases, the paradigmatic example of which is donating money to charitable organizations like Oxfam. What, then, is the difference? Why not follow Peter Singer and think of donating to PSI on the model of rescuing the drowning toddler (Singer, 1972)? If I could, but do not, donate \$800 to PSI, why isn't that morally equivalent to allowing the toddler to drown?

I shall argue that we ought to distinguish between two different kinds of duties: the duty of (easy) rescue, on the one hand, and the duty of beneficence, on the other hand. The duty of (easy) rescue is exemplified by cases like the toddler drowning in a shallow pond: if I can rescue the child at little or no risk or cost to myself, I ought to do so. It would be wrong not to. Perhaps the toddler has a right to be rescued (if there is someone who is able to do so), perhaps not. In either case, there is an individual duty—a duty that falls on any individual who happens to be able to save the child. I agree that if two toddlers have fallen into the pond and I can easily rescue both of them, it would be wrong not to.

Turning to the duty of beneficence, a popular (if clichéd) example is giving spare change to a homeless person: that person has no right to anything from me, but I ought to perform that kind of act—an act of generosity. But in deciding where to send my \$2000, I am thinking about global poverty, and the hundreds of thousands who die from malaria each year,⁹ and the lack of educational opportunities for millions of children (especially girls). Some will say that sending \$2000 to any of those organizations is an act of generosity and no one has a right to my generosity. But let's raise the bar. I suggested above that the toddler drowning in the pond might have a right to be rescued. Let's now suppose that there is a right to subsistence—a right to a minimally adequate standard of living.¹⁰ On this supposition, does it follow that I ought to try to do as much good as possible with my \$2000 contribution (and, specifically, that I ought to try to save as many lives as possible)? I think not. The right to subsistence does not give rise to individual duties (like the duty of (easy) rescue does); rather, it gives rise to collective duties which do not generate individual duties in the way that effective altruists suppose they do. Here are my arguments.

First, the Imperceptibility Argument. Garrett Cullity argues that we should reject the Life-Saving Analogy—between saving the drowning toddler and sending money to, say, Oxfam. He argues that, if I do not donate my \$2000 to Oxfam for famine relief, no one will be worse off.

Had I refrained from making my donation, no one would have failed to receive food: the available food would have been spread a little more thinly across everyone. And only very slightly more thinly. If there are a thousand people in the camp, their each receiving a thousandth of a food ration more or less each day will not make much difference. Indeed, the effect of this increment of food upon a person's hunger and health is likely to be imperceptible (Cullity, 1996, p.54).¹¹ Cullity calls this the Imperceptibility Objection and concludes that it defeats an extremely demanding individual duty to contribute to aid agencies.¹² Instead, since the good that our contributions do collectively is not imperceptible, there is a relatively demanding collective duty. I agree.¹³ The problem now is how to figure out what collective duties imply about the duties of individuals. Let's consider some examples.

Suppose that children have a right to an adequate education,¹⁴ but the Gotham City public schools are woefully underfunded, and Gotham's children do not receive the education to which they have a right. This right, I would argue, correlates with a collective duty. The fact that the children have this right does not give them any direct

claim against me (for example, that I tutor some of them after work).¹⁵ Their right to an adequate education does not correlate with a duty against me in the way that their right not to be kidnapped does correlate with my duty not to kidnap them.¹⁶

Who, then, are the duty-holders?¹⁷ The answer: the citizens, or taxpayers, of Gotham City, or of the Commonwealth of Gotham, or perhaps the United States. The citizens are collectively obligated to do what is necessary to provide an adequate school system. This can include voting for a school bond, or for a new school board, or to increase property taxes, or to work for a more equitable way of funding public schools. But no citizen is obligated to become a teacher.¹⁸

Suppose there is a right to (physical) security.¹⁹ That right does correlate with various individual duties (e.g., not to assault or kill), and it does impose a duty of easy rescue. But for the most part we have socialized the burden of fulfilling this duty: we pay some people (the police) to try to ensure that our right to security is fulfilled (Smith, 1990, p. 21). If the police force needs to be expanded, my obligation is not to volunteer (in whatever way would be appropriate and helpful), but to support (e.g., by voting for) a larger budget for the police department. We often fulfill our collective duties by paying other people to protect the rights in question. It is more effective (many of us would be poor police officers, or soldiers, or elementary school teachers) and it is less burdensome.²⁰

Return now to the right to subsistence.²¹ Who has the correlative duty (or duties)? Obviously, governments have a duty to try to ensure that the rights of their citizens are fulfilled. But if governments fail to fulfill their obligation, who has the back-up obligation? Does it default to the affluent individuals in that country (or in other countries)? I think not. The collective duty to ensure that this right is fulfilled does not decompose in that way. To return to the first example: Suppose that if each Gotham taxpayer paid \$5000 annually, that would be sufficient to finance an adequate school system. If most taxpayers do pay \$5000 (because it is legally required), then Robin's payment will not be futile,²² and he is morally obligated to pay it. But suppose each taxpayer is legally required to pay only \$4000. In that case, I contend, Robin is not morally obligated to pay an additional \$1000. He is not obligated to make up the difference.²³ The duty to finance an adequate school system is a collective duty, and it does not decompose in that way. Similarly, the right to subsistence imposes a collective duty (on government, and on affluent people), but if they default, no one has an individual duty

to (try to) bring any given poor person up to subsistence level, e.g., by giving to GiveDirectly.²⁴

So what do collective duties demand of individuals? I contend that they give rise to (what philosophers call) imperfect duties. Beneficence is the paradigmatic example of an imperfect duty. John Stuart Mill explained it as the duty to perform a particular kind of action – beneficent actions – even if no particular beneficent action was morally required. Immanuel Kant explained imperfect duties as duties to adopt and promote certain ends (which he called obligatory ends).²⁵ I would argue that in addition to the happiness of others (which is the object of the duty of beneficence) there is another obligatory end: the rectification of injustice. In addition to the perfect²⁶ duty not to act unjustly, not to violate the rights of others, there is also an imperfect duty to make it one of our ends that injustices are rectified and wrongs are righted. If global poverty is unjust,²⁷ or if the lack of adequate schools in Gotham City is an injustice, or if it is unjust that innocent people are punished, then I have an imperfect duty to fight those (and other) injustices (just as I have an imperfect duty of beneficence).

Neither of these imperfect duties has priority over the other (certainly not lexical or absolute priority²⁸). Suppose I would save one life by donating \$800 to PSI, or I could donate that amount to the Innocence Project (where my contribution would do an imperceptible amount of good). I contend that I am morally free to send my money to either organization. If I am justified in supporting the Innocence Project, it is not because overturning an injustice (or that particular kind of injustice) is more important than saving a life; if I may send it to PSI, it is not because my money does more good than if I send it to the Innocence Project. Rather, I have two obligatory ends and I have a morally free choice to decide which to promote.²⁹

Remember our original question: If I am willing to pay or absorb the cost of bringing about the lesser good, why am I not obligated to promote the greater good at the same cost? If I am willing to give \$2000 to charity, why am I not obligated to pick the charity that will do the most good?

Cullity's Imperceptibility Objection entails that it is not true that failing to send money to, say, UNICEF, is analogous to allowing a toddler to drown in a shallow pond. The good that results from such contributions is often imperceptible, and for that reason Singer's Life-Saving Argument fails. No villager is worse off if I donate to AIDS research, or to the Environmental Defense Fund, or to the Innocence Project, instead of donating to Oxfam for famine relief. Insofar as the

good I do is imperceptible, not donating is not morally equivalent to allowing someone to die (e.g., by not rescuing the drowning toddler). That is one argument for distinguishing rescue cases from philanthropy cases.³⁰

But what about cases where the good is not imperceptible? Suppose that Melinda (a multimillionaire) could give \$10,000,000 either to the Humane Society to build more no-kill shelters, or to PSI to distribute over two million bed nets. Presumably the good she does in both cases is not imperceptible—even if no one else donated to either organization, her contribution would do much good. But to justify choosing the Humane Society instead of PSI, Melinda need not argue that saving the lives of cats and dogs is more important than saving the lives of human beings (or that the good of saving the lives of thousands of cats and dogs is greater than the good of saving many fewer human beings).³¹

Nor need she argue that these goods are incommensurable. If we had a choice between saving one dog (or even ten dogs) from being run over and killed and saving a child from being run over (killed or not), most people would agree we ought to save the child. But that is a rescue case where we should try to maximize good consequences (or minimize bad consequences) (and I am assuming—for the sake of argument—that preventing a person from being killed (or even seriously injured) is a better outcome than preventing one (or ten) dogs from being killed). My point, then, is that even when the goods are commensurable and perceptible, there is no such obligation in non-rescue (i.e., philanthropy) cases.³²

Is it really true that the generous Melinda has the moral freedom³³ to donate to the Humane Society instead of to PSI, even if we grant that the latter does more good than the former with her \$10,000,000? That is precisely what the effective altruist denies. I have several replies.

First, if Peter and Barry are morally free to dedicate themselves (or their *pro bono* legal work) to exonerating the wrongfully convicted, rather than to some other legal activity that would do more good (overturning convictions is extremely costly and time-consuming) and even if the good they do each day (or probably each month or even year) is imperceptible (whereas they could do perceptible good doing something else, e.g., as public defenders), then they are surely also morally free to form an organization (the Innocence Project) for that same purpose, even if the good it brings about is perceptible. And if Peter and Barry are morally free to form an organization devoted to the lesser good,³⁴ then other individuals are morally free to support their organization, even if their donations (either

individually or collectively) would do more good if directed elsewhere.

Second, in the "Postscript" to his classic article, "Famine, Affluence, and Morality," Peter Singer says that "assistance with development, particularly agricultural development," as opposed to direct famine aid, "is usually the better long-term investment" (Singer, 1999).³⁵ But why should we have to choose? What made Singer's original example – the toddler drowning in the pond – so compelling was the urgency of the toddler's plight. But people who are starving, or who have been left homeless by a natural disaster, are also urgently in need of assistance. Singer (or the effective altruist) should therefore conclude that it is wrong to spend any money on famine relief (if that is less effective than long-term development or population control). But that cannot be right. The right answer (with which Singer surely agrees) is that we ought to do both: we ought to fight famines and we ought to support long-term development (and, as Singer mentions, population clinics). We ought to help those suffering from hurricanes and earthquakes (and famines) even if it is true that, in the long-term, we could save more lives by using that money to establish family planning centers and to fight desertification.³⁶ But this is a collective duty. We (e.g., affluent people and our governments) ought to provide assistance when famines occur, and we ought to assist agricultural development, and we ought to support population control. But I as an individual am not obligated to try to promote any one of those ends, nor all of them. I am morally free to contribute it to one organization (ignoring all others) or to many.

In contrast to rescuing the drowning toddler, my sending \$2000 to Oxfam will not prevent anyone from starving, nor will it make a perceptible contribution to long-term development (nor will it prevent any unjust executions if sent to the Innocence Project). That is why my individual duty differs from what it is in rescue cases. The rights in question – the right to subsistence as well as the rights to an adequate education and to security – generate only collective duties,³⁷ and these impose on individuals imperfect duties to promote the two obligatory ends (the happiness of others and the rectification of injustice). The fact that there are many injustices standing in need of rectification gives individuals the freedom to decide which injustice to fight (e.g., by financial contributions, or by volunteer work, or by working for an aid agency). There is no reason to think that they ought to donate (equally?) to fighting all of them (if that even makes sense); for one thing, the good done by their individual contribution would be even more imperceptible. Individuals are morally free to concentrate their efforts on one

particular injustice (whether they think it is the worst injustice or not). Their obligation is to promote the two obligatory ends. There is no reason to prioritize one over the other. Even if (as is widely – and rightly – believed) we may not violate someone’s rights in order to promote the happiness of others, it does not follow that fighting injustice has priority over trying to prevent harms that are not unjust. It is (typically) not unjust that people get cancer, but that does not mean it is not important to fight cancer, and fighting cancer – e.g., by supporting cancer research – need not take a backseat to fighting injustices. (Even if smokers who develop lung cancer are completely responsible for their cancer (even if, for example, there had been no social pressure to start smoking in junior high school), it does not follow that we ought to devote research dollars to fighting only diseases that are not, in that sense, voluntarily contracted.)

Conclusion

I conclude, then, that, holding the cost (or risk) to ourselves constant, we are not obligated to (try to) do the most good with our charitable contributions. I am justified in donating my \$2000 to the Humane Society instead of the Innocence Project, or to the Mercy Corps instead of the Sierra Club, or to Habitat for Humanity instead of the Red Cross, without worrying about whether the disfavored organization would do more good with the money. As long as my donation promotes one of the obligatory ends – the happiness of others³⁸ or the rectification of injustice – it doesn’t matter whether another organization could have saved more lives (or done more good). In these philanthropy cases, there is nothing wrong with deliberately choosing to bring about the lesser good.

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Notes

¹I shall call these organizations 'charities' without meaning to imply anything about the nature of our obligation (if any) to support the work they do (or claim to do). It is just a convenient term.

²Or to Catholic Relief Services, Amnesty International, the Mercy Corps, the American Red Cross, the International Committee of the Red Cross, the NAACP, Habitat for Humanity, the Innocence Project, the United Negro College Fund, PETA, the Sierra Club, the Human NORights Campaign, the National Alliance to End Homelessness, American Indian College Fund, the Children's Defense Fund, Americans United for Separation of Church and State, the Family Violence Prevention Fund, the National Organization for Women (NOW), the Mexican-American Alliance, Nothing But Nets, PSI (Population Services International), the Against Malaria Foundation, Save the Children, etc.

³Effective Altruism, 2017, and Open Philanthropy, 2017.

⁴If the lone canoeist were my mother, or one of my children, that might affect the moral permissibility of saving the one instead of the two.

⁵"1900 U.S. provides a scholarship, including room and board, for a college-age student for the 2017-18 year. At our new Big Sister Mouse learning center, we're offering post-high-school education of a different sort: Not memorizing facts

from a teacher or textbook, but hands-on activities; thinking through ideas through reading, discussion, and writing; and taking on projects, such as devising and testing out ways to build interest in reading. A one-year scholarship supports a student (usually, but not limited to, recent high school graduates) through this program for 12 months" (Big Brother Mouse, 2017).

Big Brother Mouse also funds daily reading programs in schools in Laos (cost: \$600-\$1000). AWe'll go to a rural village and hold a book party at the school. We'll talk about books, read aloud, play games, and give 50 to 300 children a free book of their choice, often the first book they've ever owned. Then we'll leave another 80-100 books with every classroom so students can read every day. On average, we leave 500 to 900 books at every school (Big Brother Mouse, 2017).

⁶>From the Centers for Disease Control and Prevention: AThe lifetime treatment cost of an HIV infection can be used as a conservative threshold value for the cost of averting one infection. Currently, the lifetime treatment cost of an HIV infection is estimated at \$379,668 (in 2010 dollars)@ (Centers for Disease Control and Prevention, 2017). According to other researchers, AThe estimated discounted lifetime cost for persons who become HIV infected at age 35 is \$326,500 (60% for antiretroviral medications, 15% for other medications, 25% non-drug costs). For individuals who remain uninfected but at high risk for infection, the discounted lifetime cost estimate is \$96,700. The medical cost saved by avoiding one HIV infection is \$229,800. The cost saved would reach \$338,400 if all HIV-infected individuals presented early and remained in care. Cost savings are higher taking into account secondary infections avoided and lower if HIV infections are temporarily delayed rather than permanently avoided (Schackman et al, 2015, p. 293).

⁷According to a UNAIDS Fact Sheet, A1 million [830 000B1.2 million] people died from AIDS-related illnesses in 2016. 76.1 million [65.2 millionB88.0 million] people have become infected with HIV since the start of the epidemic. 35.0 million [28.9 millionB41.5 million] people have died from AIDS-related illnesses since the start of the epidemic@ (UNAIDS Fact Sheet).

Given how little it costs to save one life by the use of bed nets (about \$800), it would seem enormously inefficient to spend any money on treating people with AIDS as long as anyone lacks access to bed nets.

I agree with Pummer that the good brought about by donations to charities may be indeterminate (too much depends on what other people do) and the goods may even sometimes be incommensurable (education vs. saving a life). But I think that the example of the two drugs shows that there are cases where the goods are neither indeterminate nor incommensurable. This is also a case where the good brought about by the less expensive drug is clearly much greaterBan additional 1000 lives savedBthan the good brought about by the more expensive drug.

I am not arguing that cost-effectiveness is completely irrelevant. If Charity B could make the life-saving dose for a particular disease at half the cost as Charity A, then obviously (*ceteris paribus*) it would be wrong to support Charity A instead of Charity B.

⁸If the more expensive disease is fatal and the less expensive one is not, then complicated questions arise about the metric for comparing them. Pummer could say that the harms are then incommensurable and so we are permitted to contribute to either medicine. My reply is, first, that even when the harms are commensurate (e.g., when both diseases are fatal), we are not obligated to maximize the good (or minimize the harm), and, second, that the more we allow that harms are incommensurable, the less demandingBand the less interesting--the injunction (to try) to promote the best

consequences.

⁹According to the World Health Organization (as of December 2016), ANearly half of the world's population is at risk of malaria. In 2015, there were roughly 212 million malaria cases and an estimated 429 000 malaria deaths. Increased prevention and control measures have led to a 29% reduction in malaria mortality rates globally since 2010. Sub-Saharan Africa continues to carry a disproportionately high share of the global malaria burden. In 2015, the region was home to 90% of malaria cases and 92% of malaria deaths@ (World Health Organization, 2016).

¹⁰Article 25 of the Universal Declaration of Human Rights: AEveryone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.@"

¹¹The full passage reads: ASuppose that, in response to a distant food crisis, I donate enough money to an aid agency to sustain one person for its likely duration. What will the effect of my donation be? Hopefully, it will enable the agency to buy more food. But the extra food bought with my money will not be used (nor would it be proper for it to be used) to feed one extra person. It will be sent to a food distribution camp, and shared among the hungry people there. Had I refrained from making my donation, no-one would have failed to receive food: the available food would have been spread a little more thinly across everyone. And only very slightly more thinly. If there are a thousand people in the camp, their each receiving a thousandth of a food ration more or less each day will not make much difference. Indeed, the effect of this increment of food upon a person's hunger and health is likely to be imperceptible. (Even for those people whose bodies have a fairly definite threshold with regard to malnutrition--so that at a certain level of food intake, reducing it only slightly will put them suddenly in a precarious state--it is unlikely to be my non-contribution which makes this difference, rather than, for instance, the method of food allocation at the camp.) This is not to deny that contributors to aid agencies collectively make a significant difference to the destitute. But I do not make such a difference. Any hungry person should be quite indifferent to whether I donate or not. Indeed, notwithstanding my far greater wealth, I probably lose more by making such donations than anyone gains from them. Let us call this the imperceptibility objection@ (Cullity, 1996, p. 54).

¹²Cullity has in mind Singer's principle: in the weaker form, Aif it is in our power to prevent something bad from happening, without thereby sacrificing anything of comparable moral importance, we ought, morally, to do it,@ and in the stronger form: Aif it is in our power to prevent something very bad from happening, without thereby sacrificing anything morally significant, we ought, morally, to do it@ (Singer, 1972, p. 231).

¹³Cullity defends the Aggregative Conclusion: ACeasing to contribute to aid agencies will only be permissible when I have become so poor that any further contribution would make my total sacrifice greater than can be demanded of me to save other people's lives@ (Cullity, 1996, p. 62).

Second, I am agreeing that the duty is a collective duty, not necessarily that it is a >relatively demanding= duty. My argument is only that, given whatever sacrifice I am willing to make (in philanthropy cases), I am not obligated to try to maximize the good that that sacrifice (contribution) brings about.

¹⁴Article 26 of the Universal Declaration of Human Rights: AEveryone has the right to education. Education shall be free, at least in the elementary and

fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.@

¹⁵Notice that, since I cannot tutor all of them, only some of them could have that right. That would be a very peculiar right.

¹⁶Barbara Herman writes: ANot every moral failure that calls for remedy warrants a response of the same kind. Failures of the educational system in our own community don=t burden us to teach, or repair classrooms, though they do burden us with some responsibility for the unmet need@ (Herman, 2001, p. 249).

¹⁷Onora O=Neill warns against the failing to assign duty-holders to rights-holders: AAny right must be matched by some corresponding obligation, which is so assigned to others that right-holders can in principle claim or waive the right. . . . Unless obligation-bearers are identifiable by right-holders, claims to have rights amount only to rhetoric@ (O=Neill, 1996, p.129).

¹⁸For the most part, Americans do not rely upon volunteers: we pay people to fulfill our collective duties for usBwe pay our teachers, police officers, doctors, and soldiers. That we have an imperfect duty to (try to) ensure that each child has access to an adequate education does not entail that anyone has an imperfect duty to become a teacher, whether volunteer or paid. The sacrifice would be too great. If we need teachers in order to fulfill our collective duty, we must pay them. Our collective duty is to be willing to pay whatever is required to attract sufficient teachers.

While paying taxes is (setting aside all the necessary qualifications) a perfect duty, the imperfect duty to fight injustice can be fulfilled in many ways, none of which need involve any given individual focusing on any given injustice.

¹⁹Article 3 of the Universal Declaration of Human Rights: AEveryone has the right to life, liberty and security of person.@

²⁰Henry Shue recognizes the problem: Athe burdens connected with subsistence rights do not fall primarily upon isolated individuals who would be expected quietly to forgo advantages to themselves for the sake of not threatening others, but primarily upon human communities that can work cooperatively to design institutions that avoid situations in which people are confronted by subsistence-threatening forces they cannot themselves handle@ (Shue,1996, pp. 63-64).

²¹Shue writes: ASubsistence rights are universal@ but Ait does not follow that toward every person with a right to subsistence, every other person bears all three kinds of duties. It does seem necessary that every person should fulfill toward everyone the duty to avoid depriving, or that duties of avoidance are universal. But none of the other duties appears to be universal, and for each of them we would indeed need a principle for assigning responsibility@ (Shue,1996, p.120). Shue=s argument is that to every (basic) right, there are three correlative duties: to avoid depriving others of their rights, to protect them from deprivation, and to aid the deprived (Shue, 1996, p. 60).

²²The worry is that if 100,000 each pay \$5000, a particular good can be realized, but no good (or no perceptible good) will result from Robin paying \$5000 if no one (or hardly anyone) else pays anything.

²³It is likely that if everyone paid \$4000, that would generate enough money for a functioning school system, even if it was underfunded. If Robin paid an extra \$1000, it might make a minimal (and imperceptible) difference, but it would not be

wasted as it would be if no one else paid anything. But it would be unfair to require (morally, not legally) him to pay more than others are required to pay.

²⁴GiveDirectly, 2007.

²⁵Mill, 2001, pp. 47-48; Kant, 1981, Ak. 424; Kant, 1991, Ak. 387-388.

²⁶Perfect duties include the familiar duties not to kill, torture, steal, kidnap, etc. They are >perfect= in the sense that they can be completely (or perfectly) fulfilled. As long as I do not kill, I have completely fulfilled that duty. Beneficence is an imperfect duty in the sense that it cannot be completely fulfilled. No matter how much I promote the happiness of others, there is more that it is possible for me to do. I would argue that the duty of (easy) rescue is a perfect duty. Once I have rescued the drowning toddler (and turned him over to the EMT or the police), I have fulfilled my duty.

²⁷For my purposes, it does not matter whether global poverty is unjust (calling for rectification) or falls under the duty of beneficence. It falls under an imperfect duty in either case.

²⁸If one duty had lexical priority over the other, then it would be wrong to (try to) fulfill the latter until the former had been fulfilled. If the duty to fight injustice had lexical priority over the duty of beneficence, then it would be wrong to spend money on cancer research until all injustices had been rectified. That would be a prescription for never fighting cancer.

²⁹I concur with what Fred Feldman writes: A[Peter] Unger repeatedly asserts that well-to-do folks like us have a duty to help decrease a certain kind of evil (death among Third World tykes), but he apparently does not think that we have any duty to help decrease other sorts of evil (e.g., racial injustice, genital mutilation, ethnic cleansing, slavery, terrorist bombings, destruction of the environment, drug addiction, homelessness, etc.). What justifies the exclusive focus on one sort of evil at the expense of all others@ (Feldman, 1999, p. 199).

³⁰Early in Living High and Letting Die, Unger states (omitting important qualifications): @she must do a lot for other innocent folks in need, so that they may have a decent chance for decent lives@ (Unger, 1996, p. 12). But for most of us, our contributions to aid agencies will not give anyone a decent chance for a decent life. It is false that if I donate my \$2000 to the Innocence Project instead of CARE, someone has been deprived of >a decent chance for a decent life.= (Nor have I appreciably increased anyone=s chances of being exonerated after an unjust conviction.) Of course, if I rescue the drowning toddler, that does not necessarily give the child a >decent chance for a decent life.=

³¹If Melinda chose to give \$10,000,000 to the Humane Society instead of the Innocence Project, she need not argue that saving the lives of thousands of cats and dogs is more valuable than saving the lives of a handful of innocent human beings who have been wrongly convicted.

³²I agree with Jeff McMahan that if, having entered a burning building, we have a choice between saving a bird (the lesser good) and a person (the greater good), we ought to save the person. But that is because this is a rescue case. It does not follow that it is wrong for me to send my \$2000 to the Humane Society instead of, say, the Mercy Corps. (See McMahan, forthcoming)

³³No one denies that we should be legally free to donate to the charities of our choice.

³⁴I realize that I am in danger of begging the question. Suppose that, as skilled and conscientious public defenders, Peter and Barry would prevent 100 people from being unjustly convicted and imprisoned (for less than ten years each). Would they thereby do more good than if they prevent one innocent person from being executed? Fortunately, I need not decide this question since I am arguing that they have no obligation to try to maximize the good they do. If pressed, I would argue that the goods (and harms) are incommensurable. The good of exonerating one innocent person on death row is neither a greater nor a lesser good than the good of preventing (by diligent legal work) 100 innocent people from ten-year prison sentences. And the good of exonerating (only) several hundred unjustly-convicted prisoners (over a thirty-year period, as the Innocence Project has done) is neither a greater good nor a lesser good than the good of saving the same (or a much greater) number of people from dying from malnutrition or disease. They belong on different scales (like colors and sounds).

But suppose Peter and Barry could either work as public defenders (and prevent 100 innocent people from being wrongly sentenced to prison (for, say, ten years each) or they could work to overturn the unjust convictions of people sentenced to life imprisonment. The latter is probably the less efficient use of resources (so it is the lesser good), but both are (or would be) injustices, and I am arguing that they are not obligated to try to rectify the worst injustices.

³⁵Singer also emphasizes the importance of population control (apparently agreeing with those who regard assisting population control as a more effective way of preventing starvation in the long run@).

³⁶World Health Organization (2017)

³⁷I am not denying that these rights do generate (or correlate with) some individual duties. The right to security does have direct correlative individual duties (e.g., not to kill or kidnap other people). My focus at this point is on what duties are generated when these rights have been violated or left unfulfilled.

³⁸The Ahappiness of others@ needs to be more specific. Perhaps the duty of beneficence should be limited to Atrue needs.@ (See Herman, 1993)

THE IMPORTANCE OF ROLE MODELS IN MEDICINE

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Keywords: Role models, Osler, mentors, medical humanities, humanism, medical ethics, bioethics

Introduction

This issue of the Texas Tech University Ethics Journal introduces ethical issues encountered in the practice of medicine as a regular feature. We introduce the role of medical ethics with a focus on Sir William Osler and the continuing need for role models in medicine. Once described by a student as having “a vivid personality as well as the finest mind and character” (Bliss 1999, 234), Osler could be described as the role model for all physicians (Berk 1987). Medical students seek role models during their training first as medical students, later as residents and practitioners. The Center for Ethics, Humanities & Spirituality at the School of Medicine was formed, in part, to encourage an appreciation of ethical conduct and the preservation of values that are the necessary foundation to earn the respect and admiration reserved for those we call role models. In a companion piece in this issue, Dr. Biva Narsing explores her role models during her time in medical school in Lubbock and Amarillo. She articulates for all of us the need to hold in high esteem those among us who exhibit the best in ethical behavior.

This paper will further explore the reasons why role models are important in this time when our nation’s healthcare system is both fragile and more necessary than ever. Healthcare has been at the epicenter of the changes in society as we have seen social relationships change, economic conditions become more bifurcated, and opportunities expand for some, but not all of our population. It may seem that role models are a vestige of an idealized past, but to the those who look, it is clear that role models still inspire us from within our own communities. As ethical leaders of medicine emerge to meet today’s challenging conditions, this journal will provide a home for exploration of how best to meet our common interests thoughtfully and with compassion for those who depend on medicine at their most vulnerable point.

Role models are particularly important in the lives of physicians in training, and remain so throughout the early years of the physician’s

career. The ethical aspirations of medicine are not tied to the political winds of change. Although medicine is influenced by larger social and political values, it has its own norms and traditions (Gawande 2016). For physicians, therefore, it is important to be aware of the unique place of medical ethics within our profession as well as our nation. We are stronger when we understand one another, listen, and learn from one another. Role models are powerful teachers precisely because they teach us who we are, and show us who we could become.

Role models differ from mentors because while a mentor has in mind the mentee's growth and development (Souba 2000), a role model is not necessarily involved in an affected person's daily life. Role models may have a profound effect on the individual through example or influence (Wright et al. 1997). Medical students perceive individuals as role models because of their personal and professional behaviors and attributes (Benbassat 2014). Students who witness unethical behavior readily recognize this. Because we teach the importance of ethical conduct, students who witness bad behavior may become confused (Feudtner, Christakis and Christakis 1994). This suggests the importance of affirming institutional commitment to ethical norms as equally important as teaching ethics. There is clearly a need for open conversation about the values of compassion, dignity, and reason in the practice of patient care.

Early role models in medicine demonstrate the room for growth within the profession, and within the student. The ancient anatomist Galen (c. 130 – 200) was seen as nearly sacred and students were told only to memorize his physiology, including the three chambered heart. Human knowledge was largely unchanged until Vessalius (1514 – 1564) and da Vinci (1452-1519) provided illustrations of the correct anatomy which resulted in a shift in thinking about both physiology and the place of students in forming their own impressions (Debus 1978). The new way of looking at the human body brought with it a new respect for the power of reason and observation demonstrated by the new role models. Although the older ideas of human anatomy were replaced, the tradition that provided a foundation for further advance of knowledge was newly esteemed (Kearney 1971). The legacy of seeing for oneself did not diminish the need for role models, rather it inculcated a newfound appreciation for the value of reason. From the Renaissance onward, the meaning of a role model was not to constrain the student, but to liberate them to use their own talents to serve others.

Why do we need role models?

Medical students need role models as a living example for what it means to be a healer. Recent studies demonstrate that medical students continue to look for specific, "ideal" qualities in physician role models (Koh et al. 2015). Skeptics in the world of business have noted that role models are increasingly difficult to identify (Sonnenberg 2017), and point out that we all need someone to lead by example. In every practical walk of life we have a longing for guides to point the way past the pot-holes that threaten to stall a career and the dreams we had when we first embarked on this journey through educational training. For that reason alone we need to be on the lookout for role models in our own lives who we can look to for guidance. Even if the role models we find around us are imperfect, they point the way to the person we hope to be, and can become, over years of commitment to integrity in our own walk.

David Brooks has written about how we develop character through the emulation of those we admire. He states that he was at first "not sure I could follow the road to character, but I wanted at least to know what the road looked like and how other people have trodden it" (Brooks 2015). Looking to role models is a future oriented process that asks us to imagine what kinds of persons we want to become. So when we look for a role model, we are looking for someone who can point out the signposts on the road to my anticipated future. Role models keep pushing us to do better in the future, even if we have failed to live up to our current aspirations. Role models do not have to be perfect, and they are sometimes more compelling when we perceive the struggles they faced and dealt with in their own lives. We learn about role models not from emails or blogs or teaching in a classroom, but by lived experience and watching them just go on about setting an example of caring and diligence in the midst of frustration or thwarted goals.

We learn from role models through stories. The men and women who teach us the ways of being in the world and what it means to be wise use lived experiences to teach us what is important on the road to our destination. One could quote the Serenity Prayer – "God grant me the serenity to accept what I cannot change, the courage to change what I can, and the wisdom to know the difference." But it is not until you know how Betty Ford struggled with alcoholism and finally entered rehab in order to overcome the effects of addiction in her own life, that you realize what this prayer means to the patients who live at the Betty Ford Center and recite this prayer as a group every morning. Role models are not memorized words or slogans, they are

ordinary people who teach us the real truths about who we are today, who we have been in the past, and who we might aspire to be in the future. They teach through stories, because wisdom cannot be memorized, it can only be learned through experience.

For physicians in training, role models serve as a counter-balance to the many pressures and challenges of practicing medicine in the twenty-first century. Students enter the profession of medicine with a desire to help their fellow humans to recover health and promote human flourishing. Yet the practice of medicine takes place in a complex organizational structure with hierarchical relationships that must be navigated for the good of the patient, and the protection of one's career options. The scientific and clinical information requires good judgment, and even the most celebrated role model in medicine, Sir William Osler, recalled in his own role model in Sir Thomas Brown, one whose "subtle influences give stability to character and help give a sane outlook on the complex problems of life... whose thoughts become his thoughts and whose ways become his ways" (Osler 2001b). Although the pressures of today's medicine are different than in Osler's time, the need for role models is just as urgent, so that we may keep ever in front of us the struggles and triumphs, the pain of human failing and the spirit of keeping calm in the midst of tribulations.

Role models in medicine provide a vision of possible future selves and ways to practice medicine that are true to the values we hold important. Sometimes it takes a senior colleague or professor to see the vision of what one could become in their professional career. One of the most endearing traits of Osler was his ability to see the potential in his colleagues and students. He took the time from his busy schedule to write personal letters of recommendation for younger physicians, like John Finney, who would later prove out Osler's vision of success built on good judgment (Stone 2016). Students today need the same type of vision to imagine the sort of positive role they may play in their chosen work. Role models provide the vision both by example and, sometimes, by their willingness to support others in word and deed.

Role models affirm the commitment of the profession of medicine to ethical behavior and humanistic practice in a challenging world. An ethical and socially responsible commitment to humanistic practice in the model of the men and women who have inspired us, is more important than it has ever been. The technology that we now have, including gene editing, artificial intelligence harbor the potential for both great advances and great inequalities in the future of human life.

We cannot afford to repeat the mistakes of hubris and the unreflective adulation of technology without remembering that the humanities and the sciences, “twin berries on one stem” (Osler 2001a), are both needed in the practice of medicine. The humanities are a guide to how to be in the world. As Dr. John P. McGovern said “[i]t is important not to forget that the messages of Osler are truly messages of life with practical insight about daily living and human potential that reach beyond the healthcare professional to all whom venture to turn these pages” (McGovern 2001). Role models are important because they give practical insight into how to be fully human and truly authentic.

Who are the role models for medicine?

We have not lost our admiration for the traditions and traditional role models in medicine, yet some remarkable men and women stand out as enduring the test of time. I will look at three such historical figures in Hippocrates, Paracelsus, Elizabeth Blackwell, and then turn our focus to the way in which a fourth, Sir William Osler, helped to define what practice should be, and how practitioners can seek a balance in a life in medicine. Finally I will bring the art of being a role model up to date with two contemporary role models in medicine: Dr. John P. McGovern, and Dr. Steven Berk.

Reaching back in time, it is difficult to comprehend the ways that Hippocrates or Paracelsus have shaped medicine as we know it today. Hippocrates (460 – 377 B.C.) secularized the human body in a way that allowed us to study the nature of man as a corporeal body, comprised of matter, and susceptible to human understanding. The doctrine of the four humors expressed a comprehensive theory of medicine and disease that incorporated ethics, physics, and observation. Paracelsus (1493-1541), influenced by Renaissance humanism, re-enchanted the human body as imbued with divine nature. Influenced by Renaissance humanism, Paracelsus challenged the theory of four humors and the medical authorities who blindly followed it (Paracelsus 1949). His influence is felt in the stirrings of investigation of evidence to support or refute a theory handed down for a thousand years. Later physicians, most notably Vesalius and Harvey, would take the critical reasoning of humanism and begin to measure physical properties. Yet it was the master teacher Leonardo DaVinci who most fully embodied the spirit of science and the humanities through a willingness to see for himself, and to challenge the orthodox wisdom of the powerful rulers of his time. DaVinci is truly the role model for the next 450 years. The beginnings of scientific medicine, married to humanistic appreciation of the whole

person was thus born and later re-born in the birth of bioethics (Jonsen 1998). Although humanism lay dormant in medicine, it was not forgotten as we shall see in the stories of later role models.

Elizabeth Blackwell is a role model for generations of women in medicine as much for her writing and encouragement of others as for her place in history as the first woman to graduate from a medical school in the United States. Blackwell was refused a recommendation for medical education by the male physicians she asked for letters. She eventually paid for private instruction in anatomy and applied to several medical schools. She gained admission to the Geneva Medical School in New York state, where she obtained a medical degree in 1849. Upon graduation she was unable to find a job in any institution, so she started a dispensary of her own. In 1857 she opened the New York Infirmary for Women and Children, then moved to England in 1869 to further the cause of women physicians in London (Blackwell 1890). Blackwell not only fought to have her own career, she helped her younger sister obtain a place in medicine and opened the door to innumerable women who followed. Like Osler, Blackwell has earned a place in the Medical Role Model Hall of Fame, if such a thing exists. Blackwell could have been content to engross herself in her hard-won career. Yet she reached out to other women in order to encourage them and to break down barriers of culture and prejudice. It is a very modern trait to want to reach one's own potential, but it was extraordinary for her to not only overcome her own barriers, but help other women to do the same. In many ways Elizabeth Blackwell set up a possible future where women as well as men could participate in the practice of medicine as full partners.

Sir William Osler's treatment of the women attending Johns Hopkins Medical School in the years from 1893 to 1905 could be both infuriating and appreciated, by turns. Osler had spoken out about the right of women to enter medicine in 1891 but said he would not encourage a daughter to go into medicine. Osler could be funny, friendly, paternal, beguiling, and incomprehensible especially to the women in his classes. Gertrude Stein, who eventually chose to leave medical school for other callings, was given a low passing grade by Osler. She was failed by the faculty in the subjects of obstetrics, laryngology and rhinology, ophthalmology and otology, and dermatology. In truth, Osler could have failed her but chose the kindness of letting her make her own decision to leave. Osler was at once an excellent physician and a humanistic example of caring for his students. "It was Osler, you know, and his behavior cannot be

predicted" said a colleague (Bliss 1999, 235). Osler left a legacy of caring and honest appraisal of any situation. He lived his advice to students: "Be careful when you get into practice to cultivate equally well your hearts and your heads" (Osler 1899). As for women in the profession, Osler had changed his mind by 1907, and talked about the future of women in medicine at London's Royal Free Hospital (Bliss 1999, 354). He recognized the future of medicine would have to adapt to women, as they would themselves need to adapt to the realities of medical practice.

Osler is quoted throughout the halls of medicine, sometimes juxtaposed against corporate slogans for "better medicine through technology." Osler counseled the physician to look more deeply than the latest fads. Abraham Nussbaum has written about this incongruity, noting how "speakers come around to hospitals and medical schools when the preliminary results are promising, but we never hear from them after their hopes are dashed in follow-up trials." At talks about the newest technology it is not uncommon to find a poster extolling humanism in the background. Nussbaum writes, "One of them caught my eye. Attributed to Sir William Osler, it read, 'The value of experience is not in seeing much, but in seeing wisely'" (Nussbaum 2016, 14). Today Osler could be, by comparison to the newest drugs, a boring subject of conversation. It is possible to brush off Osler's teachings by noting that contemporary ethical issues in medicine escape Osler's direct teachings. Yet the lessons he taught about cultivating inner wisdom as well as technical skills remains an inspiration to medical students one hundred years after his death. Few role models in history can say the same. To understand Osler's enduring relevance one needs only to listen to his words quoting Goethe, "a talent forms itself in silence" (Osler 2001c, 14), or Horace, "Happy the man – and happy he alone, he who can call today his own" (Osler 2001c, 15), and the Lord's Prayer – "you need no other" (Osler 2001c, 16). Osler was widely read in the humanities and disciplined in his approach to work. He modeled his advice to apply your head as well as you heart to wisdom.

Contemporary role models can seem elusive, yet they are all around us. It is often difficult to identify them. This difficulty stems from two sources. First, the most admirable are often the most humble and least self-promoting in a world that rewards self-promotion. And second, in a media rich world of ad campaigns and a 24-hour news cycle, our attention is constantly being diverted to the splashy ad or the hottest scandal. The important thing may be as Osler counseled, to see wisely past the noise and to focus on the importance and deep

meaning of a life well lived. I want to introduce the reader to two such contemporary role models in medicine.

Dr. Steven Berk, the Dean of the Texas Tech University School of Medicine has been a role model to countless of our medical students. Each year Dr. Berk invites every member of the incoming class of medical students to engage in a conversation about humanism in medicine during the first week of medical school. Dr. Berk has written extensively about Osler, citing his influence on medical education and training of young physicians. Through Dr. Berk we can see the influence of role models and how Osler has inspired physicians who themselves became role models to a new generation. Such was the hope of his first biography, Harvey Cushing who hoped “something of Osler’s spirit may be conveyed to those of a generation that has not known him” (Cushing 1982). Dr. Berk has written extensively about the remarks and advice Osler provided his students (Berk 1987, Berk 1989). A new generation of students has written about Dr. Berk (Foreman 2015) and his beneficent influence upon his development as a compassionate physician. That the legacy of humanistic medicine passes from Osler, to Berk, and on to Dr. Foreman is a testament to the staying power of role models in medicine.

Dr. John P. McGovern, who Dr. Narsing writes about in her paper, is one of the most influential medical role models in the twentieth century. Dr. John P. McGovern founded the American Osler Society and provided a great deal of funding to assure the vision of humanistic medicine would live on to a new generation. Dr. McGovern attended medical school at Duke University School of Medicine under then Dean Wilburt Davison. Dr. Davison trained with Osler at Oxford. “To understand John P. McGovern is to know Davison and Osler” (Boutwell 2014, 42). So strong was the bond in the Osler/Davison/McGovern friendship that the names are forever linked through a common vision of medicine as a fully humanistic and patient-centered venture. Dr. McGovern was an excellent physician who balanced his devotion to medicine with an appreciation of the pressures faced by physicians to bend away from Paracelsus’ admonition that “Where there is no love there is no art” (McGovern 1988, 7). McGovern followed Osler in his practice of incorporating the humanities into the art of medicine as a way to nurture that love of fellow human beings, pointing out that Osler genuinely cared for his patients. The same has been said of Dr. McGovern many times over (Leake et al. 1981). But McGovern also had extraordinary business acumen, eventually building a foundation

that has benefited thousands of medical students, and many times more patients who have received care from compassionate physicians trained in the lessons of medical humanities and ethics. In many ways Dr. McGovern, more than any single person, save his wife Katherine G. McGovern, kept alive the Oslerian traditions through his generosity and deep understanding of the ways in which medicine is a human endeavor, and not merely technical. The McGovern Foundation today funds the Medical Humanities Certificate Program at Texas Tech University Health Sciences Center School of Medicine. The values of humanistic medicine live on in our medical graduates.

Medical schools around the country incorporate the Medical Humanities into the curriculum as recognition of the need to develop the doctor's heart as well as mind. Students learn to read literature alongside biochemistry, and practice listening with their hearts as well as their minds (Erwin 2013). During their first summer of medical school, our students encounter physician role models like Paul Kalanithi who wrote about the meaning of career achievement and simultaneously searching for ultimate meaning in life and death at the age of 38. Kalanithi wrote *When Breathe Becomes Air* as he was dying from inoperable lung cancer. His lessons are those of a contemporary role model: after winning the highest awards in medicine, his last words were to his daughter and his wife. "Money, status, all the vanities the preacher of Ecclesiastes described hold so little interest: a chasing after wind, indeed" (Kalanithi 2016, 198). Achievement in the world of career means nothing without the human connection to our fellow travelers on this journey of life.

Role models are a connection to others

We celebrate empathy as a value in our physicians because when we are ill we want to be understood in our most vulnerable time as still fully human – a patient, not a customer (Mol 2008). Empathy is positively correlated to pro-social behavior relating to the struggles of others, volunteer work, and donation to charity (Wilhelm and Bekkers 2010). It may not come as a surprise that empathy in the larger society has been in decline since 1970, perhaps as a response to the larger social changes that have occurred (Brooks 2015, 240-260). Sara Konrath has documented that from 1970 to 2009 college students are 40 percent less likely to understand what another person is feeling (Konrath, O'Brien and Hsing 2011). Unsurprisingly, social isolation has been identified as a major risk factor for illness and even death (Cacioppo, Capitanio and Cacioppo 2014). Role models remind us that connection to others is the foundation of a life well lived, both in

our professional achievements and in our personal lives. More importantly, role models connect us to the past and to the future through the lived experience of friendship.

When Dr. Berk speaks with the incoming medical students he does more than preach about the virtues of caring for patients. He opens his life experiences to sharing and conversation. Students question him, and his answers are both humorous and honest when he discusses what it is like to be held a gunpoint by an ex-convict for eight hours. He relates his lived experience as a doctor caring for others as he describes how he was able to make a human connection with his assailant. And he relates these experiences to his knowledge of Osler and the value of Oslerian equanimity on the most challenging day in his life. Students are invited to share a part of Dr. Berk's life and connects with them on a human level as well as a professional one.

Role models are a connection to ourselves

The role models who inspire us teach us something important about ourselves and our role in the world. David Brooks calls this the duality of the world of achievement and the world of internal self knowledge. Leo Tolstoy captured this idea in his novel *The Death of Ivan Illych*. The main character is a lawyer and judge who is suddenly facing his death at age 45 when he realizes that his loveless marriage and desolate inner life are in stark contrast to his successful career in which he performed his duty admirably. That duty was to do what those with the power to grant him career advancement and financial reward deemed it proper for him to do. Yet as he lay dying he felt as though he were falling downward with no family, not even his wife, to care about his demise. Illych takes the compassion of a servant boy as the last morsel of kindness available to him and realizes the rich inner life that he failed to develop during the rapid ascent in his career (Tolstoy 2004).

Dr. John P. McGovern knew better than anyone that taking care of ourselves is critical to taking care of patients. Dr. McGovern understood that a rich inner life nourishes the meaning of the day's work in caring for others. Although he was a successful businessman, he was first a doctor, and a husband, and someone who understood that giving to others enriched his own life. Today it is impossible to drive through the Houston Medical Center without noticing his name on multiple buildings. His gifts to the Texas Tech University Health Sciences Center might be unnamed, but they are not forgotten by our students who know by his example the value of

knowing yourself, and understanding what is truly important in the practice of medicine.

Conclusion

Our language has become demoralized as talk of common good has become replaced with a focus on individualism and achievement focused on instrumental value. In suffering we talk about a desire for “closure” and moving on in the world of achievement, while the past teaches us to find meaning in our shared experiences and connection to others. From Hippocrates to Paracelsus we learned that secular medicine must be balanced with spiritual purpose. From Elizabeth Blackwell we learn the balancing influence of women in medicine. Role models like Osler teach us that service to the world of science and medicine must be balanced with the humanities, like twin berries on a single stem. Role models connect our inner and outer lives and remind us that we stop serving other people at the peril of losing our own personal balance and connections that sustain our spirit.

The medical humanities offer insights into the ways that role models can provide a way for doctors in training to define who they want to be as professional healers. A full examination of medical ethics includes reflection on those who came before us, and the lessons they pass along on the journey. As Dr. John P. McGovern noted, the lessons are really about more than our professional life, they are about our whole life and how to flourish in our careers as well as in our personal lives. Without these lessons from history and the moral imagination we become unable to distinguish the better path towards those things that give meaning to the events in our life.

In this paper I have argued that Sir William Osler and other role models are still relevant to today’s world because of its timeless grounding in the classic humanities and openness to change. In this year’s incoming class of medical students at Texas Tech women were equally represented with men in roughly equal numbers. The inclusion of women as role models is thus a necessary complement to inspire our students. Osler was open to the inclusion of women and how the women who came before us also speak to the need to take a holistic view of life and our place in it. Elizabeth Blackwell was our first female medical school graduate, but many women have followed and made their own mark on medicine. Dean Berk has been a supporter of women in medicine, and has elevated women to positions of leadership within the school. These role models inspire and lead by example, incorporating ethical leadership with excellence

in scientific knowledge to serve our patients. Our students and our patients deserve no less.

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INFLUENTIAL PEDIATRICIANS IN TEXAS: A SOCIAL HISTORY

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Introduction and History of Pediatrics

Medicine is one of the oldest professions that exist in this world. Medical practice developed in Greece with the teachings and philosophies of Hippocrates who brought concepts such as diagnoses and medical ethics into fruition. The Hippocratic Oath was written in the 5th century BCE. Thousands of years later, physicians are still entrusted with caring for people at their most vulnerable times. Throughout this paper, I aim to provide a history of pediatrics as it has emerged as a separate field of medicine, as well as outline a set of unique traits needed for future and current pediatricians in order for them to become influential leaders. Focusing on Texas as a broad region of the United States, a handful of key pediatricians in Texas history will be highlighted to further illustrate how certain traits have been exemplified in real life.

Pediatrics is derived from two Greek words: *pais* meaning child and *iatros* meaning doctor or healer ^[1]. Medical education distinguishes the differences between the child and the adult patient. However, when medicine was making its way across the world, physicians were healers of people, and children were treated no differently than adults. As modern medicine began to develop, there was a shift into dividing physician practices into distinct disciplines. In this regard, a surgeon could hone his or her skills in one specific area, leading to better outcomes for patients. This thinking gave rise to pediatrics becoming its own field distinct from general adult medicine.

The first pediatric hospital in the western world is believed to have been the Hospital des Enfants Malades, (Hospital for Sick Children) in Paris, France which opened in 1802. If this is regarded as the first time in which pediatrics is described and treated as a distinct field, then pediatrics as a specialty is itself barely over 200 years old. And even though physicians were mentioned during the time of the Hippocratic Oath, pediatrics as its own specialty is still a very new concept. Sir George Frederic Still was an instrumental physician from England who specialized in pediatrics^[2]. His life's work is published in his book *Common Disorders and Disease of Children*. Born in 1868, Dr. Still lived to age 73. Dying in 1941, Dr. Still was able to witness many of the changes and advancements in the field of pediatrics. Based on

documentation of Dr. Still's life, it is apparent that he pursued the care of children because he was truly passionate about this population. He grew up without much financial security after the death of his father when Still was 17 years of age. He witnessed the death of four siblings: three died before their first birthdays and an additional sibling passed away as a young child due to scarlet fever. These childhood hardships are most likely what catapulted him into advocating for the well being of children. Apart from treating children in his own practice, he became a professor and chair of the pediatrics department in London. He gave many radical lectures explaining new pediatric conditions to future physicians, thus creating a pathway for future pediatricians in the region. A rarity at that time, Dr. Still not only emphasized what childhood conditions exist, but also that more work must be done to develop an understanding of these conditions. His approach to treating children was a more humanistic model in that he cared about causes of illnesses and how treatment would affect these patients in their daily lives [3].

Much like Sir George Frederic Still provided for London, America has its own "father of pediatrics". German-born, Dr. Abraham Jacobi who set up practice in New York in 1853, is affectionately labeled as the father of pediatrics in America [4]. Dr. Jacobi developed several pediatric societies, began the publication of several pediatric journals, and helped construct multiple children's departments in hospital systems within New York. He was dedicated to promoting the healthcare of children and passed along his legacy by helping with the creation of the American Pediatric Society along with Job Lewis Smith in 1888. The major pediatric society of the modern area is the American Academy of Pediatrics, which was formed in June 1930 by a group of 35 pediatricians.

Since this paper is focusing on Texas rather than the rest of the United States (or the western world for that matter), a brief introduction to the specifics of pediatric practice historically in Texas is warranted. When discussing this matter, it is appropriate to use the cities of Dallas and Houston, TX as the foreground. The first pediatrician in the state of Texas was Dr. Hugh Leslie Moore who arrived in Dallas in 1908 [5]. Born in Texas, he traveled to England and Germany to study this "new specialty" of pediatrics, and then brought his knowledge and experiences back to his Texas community. He became the chief of pediatrics at Baylor University College of Medicine in Dallas (before its relocation to Houston in 1943). His altruistic spirit taught many classes of future pediatricians and helped thousands of

children in the Dallas community. He even provided free office space to new pediatricians until their practices were established. Through his leadership in the early decades of the 1900s various childcare activities and facilities evolved. From rudimentary “baby camps” in which tents were set up on the lawn of the city-owned Parkland Hospital to treat infants with summer diarrhea, to the establishment of a free-standing children’s hospital called Children’s Medical Center, the landscape of pediatrics in Texas improved dramatically [6].

Throughout the rest of the 1900’s, new technology helped advance research opportunities in the field of pediatrics. By the mid 1980’s there was a concept that pediatrics should develop subspecialties within the pediatric department. The most successful subspecialties originally were those of orthopedics and surgery. While Dallas was expanding with Children’s Medical Center in the 1940’s, Baylor University Medical Center moved to Houston and established its own free-standing children’s hospital, Texas Children’s. As these two major regions in Texas expanded with new technology, research, funding, and support from governmental organizations, other regions of Texas benefitted as well. Slowly other regions of Texas began recruiting pediatricians to work in their areas by establishing pediatric wards and children’s hospitals.

Currently, the process to become a licensed pediatrician is heavily regulated. Once completing medical school and passing various United States Medical Licensing Exams, a doctor who decides to pursue pediatrics as a specialty enrolls in a 3-year pediatric residency in association with an institution and/or children’s hospital that is accredited by the United States. Once this residency is complete, the Texas State Licensing board approves a physician to practice on his or her own without supervision, granted they meet certain requirements. Completing a pediatric residency qualifies a physician to be a general pediatrician. In order to become a specialist within the field of pediatrics, a physician must complete a fellowship, which is generally another 3-year long training period. As of 2017, these were the pediatric subspecialties that offer fellowships (list may not be exhaustive): adolescent medicine, allergy and immunology, cardiology, child abuse, child/adolescent psychiatry, critical care, dermatology, developmental and behavioral, emergency medicine, endocrinology, gastroenterology, hematology-oncology, hospitalist, infectious diseases, neonatology, nephrology, neurology, pulmonary medicine, and rheumatology.

Thesis Statement

In order to become a pediatrician who successfully manages to create a lasting positive influence in the lives of their patients as well as peers, one must strive to be altruistic, continue to be in pursuit of new knowledge, and practice humanism. There are numerous examples of these crucial traits throughout the history of pediatrics. The following three sections of this paper will delve into each quality individually and provide an example of how that quality was responsible for a famous Texas pediatrician's positive influence in the field of pediatrics. I will also develop arguments that will serve to dispel the belief that an influential physician is one who has been trained at a prestigious institution, someone who accumulates wealth, or a person who appears to have the largest knowledge base.

Altruism in Pediatrics

In its truest sense, altruism is defined as the practice of selfless concern for the well being of others. As pediatricians, this is a trait that is vitally important. Children are considered a vulnerable population. This stems from their being unable to care for themselves the way that an adult is capable. In order for a pediatric physician to influence their own communities, they need to perform their duties solely for the patients they're serving. If physicians are performing their jobs mainly for monetary compensation, they will make a living but they won't necessarily be changing lives. The history of pediatrics is filled with doctors who have inconvenienced themselves for the betterment of the children they work to keep healthy. A prime example of this are free clinics staffed by pediatricians, nurses, pharmacists, phlebotomists, office staff, and/or students who volunteer their time to provide high quality medical care to children whose families do not possess health insurance.

There are a handful of hospital systems that have missions to serve children, regardless of their ability to pay. Two of these children's hospitals are St. Jude Children's Research Hospital and Shriners Hospitals for Children. Shriners Hospital operates a few branches in Texas. One such location is in Galveston, TX, a verified pediatric burn care center which first started treating pediatric burns in 1966. The catchment area for severe burns encompasses the entire state of Texas as well as certain areas of neighboring states. Based on data obtained from the US Census Bureau, out of a total Texas population of approximately 24.5 million people, about 4 million people fall in the category of 21 years of age and younger^[7]. There are many instances in which a child may be severely burned, either accidentally or intentionally. Science has since improved and once a near death-

sentence, now children with burns over 90% of their total body surface area are surviving due to the remarkable work being done at Shriners Hospital in Galveston, TX.

A physician worthy of highlighting for his sense of altruism at Shriners Hospital is Dr. David N. Herndon, the current chief of staff and director of research at the Galveston location. Dr. Herndon specialized in burns before turning his attention to pediatric burn cases specifically, and has a long history of being recognized for his selfless work on behalf of children and the nation. He served in the U.S. Army and received the Distinguished Service Medal in 1977. Since that time he has received numerous awards from burn associations as well as surgical associations for the work that he has done for pediatric burn patients. His dedication to improving chances of survival from severe burns is what drove him to conduct research on this matter. His research has significantly contributed to advancements in controlling infections, decreasing hypermetabolism following burn injuries, early wound closure, decreased scarring, improved rehabilitation post-injury, and treatment of inhalational injury. The truest measure of his work has been evidence of decreased mortality rates among burned children at his institution [8].

Another facet of altruism in the pediatric world involves sharing one's wisdom with the younger generation of future pediatricians. In this model, as future generations continue to incorporate the best qualities of pediatricians before them, each wave of physicians that hits their communities will have many techniques to draw from. Dr. Herndon has channeled his inner wisdom about the care of children into writing and publishing multiple books. He is now considered one of the pioneers of burn care around the world. His textbook, *Total Burn Care*, emphasizes not only addressing a patient's clinical needs, but their physical and social needs as well. This is also a physician who values humanism. A "team approach" to treatment is a key phrase throughout his writing. An influential physician is not one who knows the most on their own, but one who values other team members in decision making processes for patients. It is this teamwork that leads to success in patient recovery as well as patient satisfaction.

Dr. Herndon is just one example of a Texas pediatrician, who demonstrates that altruism is a crucial trait for influential pediatricians. Altruism is a trait that is ultimately inherent in every person who decides to pursue the noble profession of medicine. However, like many things in life, it is also something that needs to be cultivated in order to affect change. In Texas, as well as across the

nation, medical schools and residency programs are doing their best to nurture this trait amongst future and current pediatricians. With required US pediatric residency programs including child advocacy in their curriculum, many young pediatricians are learning the tools necessary to act selflessly and on behalf of their specific patient population.

Pursuit of New Knowledge in Pediatrics

It is vitally important for a great pediatrician to have the self-drive and motivation to pursue new knowledge in this field on their own. Medicine is such an interesting profession mainly because knowledge is always evolving. Thousands of research labs around the world are working to prove new theories, develop new pharmaceuticals, and find better ways to diagnose illnesses. Medicine is very much a collaborative field and with a multitude of conferences and journal publications available, information discovered in one small city can then be disseminated across the world and affect patients millions of miles away.

A successful pediatrician does not stop his or her pursuit for knowledge once the residency and training period is over. In order to stay at the forefront of the profession, one must stay up to date on major advancements in pediatrics. But, with the studying of new ideas and concepts, a truly great pediatrician maintains also a sense of critical thinking. It is important to challenge assertions made in publications and come to an individual conclusion about what the data is reporting. In many instances, misinformation may become widespread, leading confusion among our patient populations.

However, for every one physician or special interest group that tries to misinform the public, there are hundreds more who strive for the pursuit of knowledge in their field to help their patients. One such woman was Dr. Martha Dukes Yow (1922-2005). Dr. Yow was an influential pediatrician in many ways. She entered medical school in the 1940's in an academic environment that was deeply patriarchal. Being one of a handful of female students pursuing a career in medicine and research left her susceptible to a large audience who did not want her to succeed ^[10]. Instead of shying away from the adversity she faced in the beginning of her career, she decided to succeed anyway. Her passion for children and treating as well as preventing their illnesses, drove her to continue her quest for further knowledge in pediatric infectious diseases. In fact, she is credited as being one of the pioneers in the specialty of pediatric infectious disease.

Dr. Yow spent time performing research on topics such as epidemic staphylococcal infections, congenital rubella syndrome, neonatal group B streptococcal disease, and cytomegalovirus infections. By the end of her career she had amassed over 100 publications. This number of publications for a single physician is staggering, but what makes it even more impressive is that she only began her career as a pediatric researcher after taking a break to raise her three children. Faced with the pressures of society in the early 1900's, after pediatric residency training she became a full-time wife and the mother of her three young children. She expressed that she felt isolated from her profession as well as feeling guilt for not being the perfect wife and mother. She referred to her family life and professional life as a "balancing act". She moved to Texas and shortly afterwards her husband passed away from Hodgkin's disease. It was at this time that truly began her research career.

As a pediatrician and mother, Dr. Yow cared for many children. Her research in pediatric infectious disease shed light on a subject that is still relevant in today's treatment of children. As a young girl Dr. Yow had dreamed of having a career as a physician and despite the many obstacles she faced, she managed to do it. She is a very inspirational Texas pediatrician not only because she was one of the first female pediatricians but also because her pursuit of knowledge drove her to challenge societal norms in order to save the lives of children. Her reference to having a career was well as raising a family as a "balancing act" is extremely relevant in today's world. Women and men alike, both physicians and non-physicians, voice frustrations about the necessity of dividing their time and energy between their work and home lives.

A pediatrician in the modern era can certainly be inspired by Dr. Yow's lifelong appreciation for the pursuit of knowledge. Emphasizing that a successful pediatrician is one who pursues knowledge indefinitely does not mean that a person with the highest level of knowledge has less to learn. The process of pursuing knowledge and using critical thinking to come to conclusions is the key, not only the factual knowledge gained from the pursuit. It also does not matter which medical school or residency a pediatrician hails from, but rather his or her passion for protecting the well being of children. A physician who trains at the most prestigious institute is no better versed in the pursuit of knowledge than a physician who trains at a community center for example, because this passion for knowledge is an inherent quality that must be nurtured on one's own.

Humanism in Pediatrics

The third and final trait a pediatrician must embody to become an influential doctor and healer is humanism in medicine. The very core of this concept has been inexistence for approximately 200 years, since the Renaissance era. In a modern spin on this philosophy, a humanistic physician is one who treats a patient as a whole and not simply as a constellation of medical symptoms. For example, humanism in medicine may assume care for the mind, body, and soul by healing an infection with a medication, ensuring that social issues such as cost or transportation do not become factors in non-compliance, and being able to have open conversations with the patient about their fears and goals for treatment. A humanistic aspect of care is not something that should only extend to adults. In fact, even neonates will benefit from a pediatrician who practices humanism in medicine. An influential Texas neonatologist, Dr. Mubariz Naqvi, is one example of somebody who truly embodies the role of a humanistic physician.

Born in Pakistan and eventually settling in West Texas, Dr. Mubariz Naqvi treats every baby as an individual person. Dr. Naqvi found his way to Amarillo, TX in 1976 through a community effort to focus on the problem of high infant mortality ^[1]. His tireless efforts have helped save the lives of thousands of children throughout his over 40 years of work in Texas. His calm demeanor, soft-spoken voice, and charm with neonates have elevated him to become one of the most beloved pediatricians in the West Texas community. Hardly a day goes by in which Dr. Naqvi is able to walk through the halls in the hospital without a family member or member of staff striking up a friendly conversation with him.

Apart from his work with patients, Dr. Naqvi believes that his real inspiration for coming to work each day is to teach future doctors how to be compassionate physicians. An important lesson that he teaches to medical students is how best to deliver bad news to families. It is emphasized that this delicate process needs to take place in a private, calm environment. All members in the room must have a place to sit down and feel heard. Then he describes the honesty that a physician must have to convey a difficult situation to a family. The mere mention of this technique proves that Dr. Naqvi practices humanistic medicine each and every day of his career. His willingness to allow students to participate in the process also ensures that these young doctors will take his humanistic skills and apply them to their own sets of patients in the future.

Dr. Naqvi's teachings have not gone unnoticed in the West Texas community. This influential Texas pediatrician has received countless awards from students and the local medical school highlighting his nurturing qualities. At a ceremony to honor his newly designated title as a Distinguished Professor, speeches were given by individuals in his professional life who know him well. In one instance a fellow neonatologist spoke about how she was inspired by Dr. Naqvi's passion to continue to read and review the most current data published in his field. His insistence of starting a monthly journal club amongst the neonatologists teaches the younger generations of doctors that new knowledge needs to always be pursued for the betterment of their patients. A pediatric resident spoke to Dr. Naqvi's ability to form strong connections with patients and families. When it was finally his turn to give a speech, he started it by humbly thanking almost each and every person that he has worked with over the past few years. He firmly believes that the care of children is a team effort.

Spirituality falls under the scope of practicing humanistic medicine. What future and current pediatricians must remember is that patients and families all have some level of fear when in the hospital. They are thrust into a system in which they do not always understand the jargon, where there are multiple different people involved in their care, and where many are ultimately worried about death. In these circumstances, many people turn to their spiritual beliefs. A humanistic physician is one who recognizes that spirituality can be a component in a family's healing process. As Dr. Naqvi artfully employs this technique, he will non-judgmentally approach the subject of spirituality with parents of very sick babies. By offering the services of hospital religious figures or even participating in being present if a family wants to involve their pediatrician in spiritual proceedings, the doctor continues to play a role in the overall healing process. It is worth mentioning that there are thousands of different cultures and customs providing the background for the millions of patients seen in hospitals across the world. Since there are so many unique viewpoints a pediatrician must approach this subject with a neutral and open mind for the sake of their young patients.

In 1998 the Neonatal Intensive Care Unit (NICU) at Northwest Texas Hospital in Amarillo, TX was named in honor of Dr. Naqvi. In an interview with a local news station 19 years ago, he mentioned some advice that he gives to future physicians ^[12]. Even though this interview was almost two decade ago, Dr. Naqvi still gives this advice to students and pediatric residents on a daily basis:

Try to do your best where ever you are and work well with people, give them your love and support and honor, particularly those patients who are sick and their parents who are so worried.” [12]

A history of influential pediatricians in Texas would be incomplete without the mention of Dr. John P. McGovern. A name now so ubiquitous amongst the Texas Medical Center in Houston, TX, Dr. McGovern started his career with the simple goal of caring for children. A true testament to the adage that your childhood invariably affects your adulthood, a young John P. McGovern grew up during the Great Depression in Washington, D.C. Upon seeing his grandmother feed the hungry in his childhood home, he internalized that doing good for the world would be his calling.

I learned from watching my grandmother that giving and receiving is the same thing. [...] I could see in her eyes that it made her feel good. ... I think everybody's got an empty spot inside, and I call it the God-sized hole that we have to fill. And you can't do that with Caesar's world stuff — money, property, prestige. That doesn't fill that hole. Love does. ... love in the sense of deep caring. [13]

It is deeply inspiring that humanism became a part of Dr. John P. McGovern's core beliefs from such a young age. Throughout his career in medicine, he continued to stay true to this overarching ideal of how an ideal physician should treat their patients. As a medical student, he would make children laugh by pretending to pull coins out of their ears in order to get them to be more cooperative with his medical exams. As a resident he championed the start of a wheelchair basketball league for young veterans who had come back with their lives shattered after World War II.^[14] His attention to the mental, physical, and social side of the patient experience led him to treat even the tiniest of patients with compassionate care.

In a book he helped co-author entitled, *The Doctor As A Person*, Dr. McGovern describes medicine as not purely a science or an art form, but rather as an art based on science.^[15] His reflections on medical

practice expressed the views of a physician who had studied, at that point, throughout the 1940's up until the 1980's, with this particular book being published in 1988. Although *The Doctor as a Person* is almost 30 years old, McGovern's astuteness in recognizing the merits and flaws of the medical system are still incredibly relevant today. He notes that as technology and advances in medication continue to increase, the humanities are slowly taken for granted and forgotten about in medical education. In his opinion, technology alone does not heal a patient. Physicians must also cultivate the art of listening, paying attention to physical exam findings, and connecting with patients as human beings. Dr. McGovern devoted his life to the children he cared for in his allergy and immunology clinics throughout Houston, the greater Houston community, and the many medical students in whom he instilled the core values of humanistic patient care.

John P. McGovern was an Oslerian scholar. He was trained under a physician who had the privilege of being trained by Sir William Osler himself. Through this school of thought John P. McGovern was able to influence the lives of thousands of Texans – both while he was alive and today through the McGovern Foundation which continues to honor his legacy.

Humanism is a crucial concept in the world of pediatrics. In a field in which the patients are not self-sufficient, there are many factors that affect their health that they are not able to control. Pediatricians have the tough task of speaking to parents or guardians to gather information, asking age-appropriate questions to the actual patient, and then educating both the patient and family about the child's health. Perhaps the most unique aspect of pediatrics as compared to other specialties in the adult sphere is that pediatricians form a bond with patients from the day they are born until they are full adults. In this incredibly influential time in a person's life, their one constant may be their childhood doctor. As a child grows and develops from visit to visit, the relationship a pediatrician has with their patient constantly evolves as well. An influential pediatrician will treat their patients with humanism in order to help them reach their full potential as adults. Children have dreams and goals for their future lives and pediatricians become tasked with preventing a medical illness from being a reason for holding them back.

Apart from being an excellent pediatrician to admire for his humanism, Dr. McGovern also demonstrates the previous two traits discussed in this paper as well: altruism and the continued pursuit for knowledge. He has an altruistic spirit as well as a desire to stay

involved in research. Upon graduation from medical school at Duke University, a young John McGovern, MD was a recipient of the coveted Borden Prize for student research. Being recommended by his mentor, along with his interest in research, he was accepted as an intern at Yale Pediatrics for the first year of his residency training. At that time Yale was one of the few medical schools in the United States that required a research thesis for graduation. It is unsurprising that a newly graduated physician with an interest in research was offered one of only two positions in their internship program. In 1946 John McGovern was drafted into the army and assigned in Richmond, VA. During this time he participated in a number of research assignments and even published an article in the *Journal of Allergy*.^[14] It is interesting to note that Dr. McGovern flourished as a pediatric allergy and immunologist in Houston many years later and that this particular research project was his first encounter with the field.

For those familiar with the Texas Medical Center in Houston, Dr. John P. McGovern's sense of altruism needs no explanation. He had a strong sense of wanting to give back to the community. While running a successful private allergy and immunology clinic in Houston, Dr. McGovern began investing his money in real estate surrounding the Texas Medical Center and greater Houston community. He began his foundation with an initial donation of \$10,000, which has now grown to hold millions.^[16] Apart from his private clinic, he also helped start a clinic at the UT Health system in Houston, which as of a few years ago, now bears his name. Since the humanities and ethics played such a huge role in his life as a pediatrician, he wanted the same to be true for aspiring physicians. His foundation currently funds a 4-year integrated curriculum in medical ethics and humanities designed for medical students who are interested in cultivating the skills not necessarily taught in medical schools at this time. Initially launched in Houston, TX in association with UT Houston's Medical School (now renamed as the McGovern Medical School), this certificate program is also offered at Texas Tech University Health Sciences Center in Lubbock, TX. Graduates of this program join the ranks of prior John P. McGovern scholars and are pursuing their careers with the noble ambition of bettering the lives of their patients and themselves.

Conclusion

As illustrated in the preceding sections of this paper, there are three major traits that work together synergistically to create a pediatrician who will positively impact the lives of children. First, altruism is a must. A selfless pediatrician has the mindset that all children deserve

medical treatment, regardless of insurance or socioeconomic status. Altruistic pediatricians volunteer their time to help children in the community either at free clinics, raising money for organizations that promote children's health, or participating in events that have the well being of children as their main mission. An inner drive to continue to seek out new knowledge in pediatrics is also essential in a heartwarming pediatrician. Pediatrics, similar to other branches of medicine, has the ability to be revolutionized by new innovations in the medical sciences. Future pediatricians with the passion for staying up to date with new knowledge serve their patients better than those who are content with just maintaining the status quo. Lastly, humanism is a key trait for any pediatrician striving to make a difference in the lives of children. Treating a patient not just as a medical diagnosis, but as a full assembly of their mind, body, and soul has the ability to transform experiences. The many pediatricians who, in years past, have implemented this technique in medicine have shown through their immense successes that even in the modern era of billing codes, insurance issues, and politics, humanism is both possible and needed.

There has been no mention of where medical training should be accomplished in order to become an influential pediatrician. This is because the skills and traits needed to do this all come from within. Whether a future pediatrician trains at the most prestigious institution or not, every future doctor has the capability to become a great healer if they cultivate the three traits discussed in this paper.

In striving to achieve the essential traits of altruism, the continued pursuit of new knowledge in pediatrics, and humanism, monetary earnings do not play a role. In the example of Dr. Herndon who works for a non-profit organization in which burn care is provided for every family regardless of their ability to pay, wealth isn't a factor in his choice of full time occupation. Dr. Naqvi works tireless hours in the newborn nursery, NICU, and medical school teaching students in order to advance the field of pediatrics. His monetary compensation most likely does not reflect the amount of work he actually does on a daily basis, but he is a prime example of somebody who does his job because he loves it, not just for the compensation. In the case of Dr. McGovern, the wealth that he has garnered through his foundation is used purely to advance the Houston community and the knowledge of medical students. He did not create wealth for himself, but rather for it to be implemented in advocating for sick children in his community.

Lastly, as Dr. Martha Dukes Yow so poignantly exemplified, the greatest pediatrician is not the one with the largest knowledge base, but the person who is willing to seek out the answers for things that they do not know. She devoted her life to discovering all she could about infectious diseases that were killing so many babies during her era. She saw a gap in the knowledge base and instead of accepting this as fact, she strove to figure out why the scientific community did not know more. These are the actions of an inspirational health leader.

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