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“Bequests as Legacies: Devising Philanthropic Strategies”

Philip Cubeta is chief of staff and (self-described) “charitable cheerleader” for a financial services group. Using “the case of the forest primeval,” which he creates here, Cubeta invites us to engage with him for a moment in his trade—to devise a philanthropic strategy that will both direct the bequests of a wealthy family and promote its legacy. The case on which we are to cut our advisory-teeth is, however typical, far from easy. Quickly evident are the extreme differences within the family, which differences leave Meg, the recently widowed mother and “key decision maker” of the family, seriously questioning what will (or could) be her legacy. Cubeta offers us guidance regarding what must be thought about, and, although the path is far from clear, he remains (as his self-description forewarns) rather cheerful: “Meg’s love for both her children promises a hopeful outcome,” he says. Is Cubeta’s cheerfulness well founded? Can you devise a strategy that will enable Meg to emerge from the thicket sanguine about her family’s legacy? Is it more important for Meg to secure family harmony, or to pursue her own interests and values? More generally, how significant are philanthropic bequests, and the process by which we make them, in determining our legacies?



In the middle of our life’s walk
I found myself in a dark wood
for the straight road was lost.

—Dante

The Case of the Forest Primeval

Sarah, age 36, and her brother, Bill, are heirs to a fortune made in the forestry industry in Northern California. Their family now has holdings of approximately \$55 million, including raw land with first growth redwood trees, but most of the family wealth is now in gas and oil stock in a family owned company, run by Bill.

Each year the family has a meeting with their family officer, Alex, to plan the family’s giving in the light of their overall goals and objectives. Sarah is an environmentalist who has been trying without success to have at least \$7 million worth of the old growth lands contributed to the Trust for Public Land. Her father had consistently refused. Sarah’s dad recently died, leaving Sarah’s mother, Meg, as the key decision-maker. Bill’s philanthropic, business, and political

interests converge. Along with donations to conservative political candidates, he contributes large sums each year to a libertarian think tank in Washington, D.C., that lobbies for tax breaks for businesses, income tax relief, estate tax repeal, tort reform, and regulatory rollbacks, particularly for the oil and gas industry.

Meg's sympathies are divided. Her heart leans to Sarah and the environment, but her head leans to Bill's strategic philanthropy. He tells her what her husband did, that the weak perish and the strong survive. The best rise to the top. The best way to help others is to maximize net profit. The family's responsibility is to grow the business that creates jobs. The best way to do that is to align all the family resources, including its political clout, its family foundation, its charitable contributions, its business entities, its PR efforts, and the various thinkers it can hire, to drive a single coherent agenda. As a compromise Bill offers a series of public service announcements from the family foundation aimed at the environmental community touting prudent forestry through selective logging. He suggests that Sarah be the family spokesperson. She angrily refuses. Meg steps in and suggests that it might be a good time to break for lunch.

Meg, after the group disperses with little progress made, wonders what will be her legacy. To whom has she given what, as a mother? What values have she and her husband passed on? How can she create some semblance of family harmony? As the majority owner of the family resources how will she allocate them between her children and the family foundation or foundations? She has a pretty good idea of what her deceased husband would do, but he and she never did agree on politics and money, and yet they loved one another and supported one another's efforts. Meg smiles, wondering, "What next? Do I see an attorney? A priest? A family therapist?"

What Should Guide the Family?

Rather than finding solutions, let me just point out the issues for consideration.

Values: We can say that the client/donor/citizen's "values" should guide the giving. Of course in diverse society, values are what may divide us into warring camps. Values are what wedge issues, civil wars, and revolutions, as well as markets, are made from. Values are soft issues with hard edges. "Family values" may be the cause of family feuds, or contention within the family itself.

Goals: We can say that giving should be strategically aimed at specific goals. Bill would agree, and so might Sarah, though they would disagree about the specific goals that the family should pursue. But secretly, Sarah has reservations. She sees that Bill is so driven by goal logic that he is no longer the brother she remembers. Ever since he went to Harvard for that MBA he has been a logical machine reducing all he touches to the dehumanizing calculus (as she sees it) of costs and benefits. In the process he has lost, in her opinion, his soul, or part of it. To Bill, Sarah's goals are wishy-washy and non-specific. She wants to save the forest, be a good person, be seen as a leader in her tight little environmental

group, but she has no long-term plan for maximizing the family's interests. She won't discuss options for managing the forest to balance conservation with productivity. To her it is a sacred commitment to "Mother Earth," and how can he argue with dogmatism?

Financial, Tax, and Legal: All the strategies (foundations, wills, trusts, investments) considered by the family will have their own internal logic. Each will have current and projected financial, tax, and legal implications. While strategies are means, not ends, the means are so complex that managing them can become a full time job. The head of the family office, Alex, is a JD, CPA and is frustrated with Sarah's "touchy-feely" idealism. She does not understand tax law or financial strategies, much less the game of political influence. She seems to operate in a vacuum, wanting to be Saint Sarah, the innocent victim sacrificed. Bill, on the other hand, as an MBA, grasps both means and ends and wields both with a clear eye on the bottom-line. Alex is far happier with Bill's focus on means, ends, and results. Bill has doubled the family's net worth in five years. Sarah ought to be grateful, she spends it fast enough.

Needs of Others and the Community: "What does the family owe to the community," Sarah asks, "and to the planet? What does the family owe to future generations? What does the family owe to God's creation in the forest primeval of which the family is the steward?" Bill and Alex (the family officer) twist in their chairs, having to listen to this granola-inspired claptrap. The gas company is under indictment for polluting the groundwater in Arkansas, and the possibility of a class action suit looms. There are more pressing matters than squirrels running around in the redwoods. Elections are in the offing; a family friend is in the running for governor. At the federal level legislation and judicial action is pending to quash the lawsuits. The think tank, founded by Meg's husband twenty years ago, has changed the terms of the debate about the public interest. They are gearing up to promote freedom and public benefits via private ownership. A grassroots group or two is being organized with family funding through discreet intermediaries, to promote increased citizen responsibility through private philanthropy rather than taxes. Unless the chips fall just right, the family may find its asset base shrinking. "The needs of the community," thunders Bill, "are best served by growth and strength of our companies. If we take our eye off the ball, thousands are going to be thrown out of work."

Closing Thoughts

Legacy planning is "the unlicensed practice of the liberal arts." The philanthropic consultant enters these personal and family dramas at his or her own risk as a bit player or minor character, but one who, like the Fool in the courts of power, may play a pivotal role. In the deep and sometimes treacherous dialogues of civic philanthropy no one can claim to be "value-neutral," "value free," or completely disinterested. In the words of Bob Dylan, we all "gotta serve somebody." We can serve ourselves, our clients, our customers, our constituents, our

company, our political group, but we can also use the conversation of giving to transcend or moderate *partis pris*, maintaining our own views, but rising above our differences, not to reach consensus, but to support the fragile open spaces of democracy in which we come together to have an open dialogue about public ends and private means. In these hazardous conversations we hash out for ourselves what it means to be a person, a parent or child, a brother or sister, a citizen, a donor and a spiritual being, or a thinker. The “should” that hides in our question about what should guide donors is the mystery of the good, or the just, that we contest within a shared commitment to the open society.

My sympathies are with Sarah, but Bill’s commitment to freedom is an open invitation to a deeper conversation about how his ideals might best be served. Meg’s love for both her children promises a hopeful outcome. Alex works for the family, and can carry out whatever solutions best fit the vision and values that emerge from family debate. The advisor who enters that conversation can come to it as a faithful servant, a representative of one family member or another, a facilitator, or as what? A fallible citizen contesting the “should” by his or her own lights, not to impose his or her own views, but to help the donor reach a thoughtful and reasoned course of action by the donor’s own lights, all things considered in this dark wood. In the end it is Meg’s money, her life, her children, and our society. As citizens, we all have a stake in the conversation.

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