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Families first: Fairness goes beyond sharing the wealth

Charles Lowenhaupt - 4 February 2008

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I've never met parents who say they want, as a matter of policy, to be unfair to their children. But time and again I meet people who tell me their parents have in fact been unfair to them -- frequently with regard to the disposition of family wealth.

So what is *fairness*?

Well, first and foremost, it's a difficult and highly nuanced concept whose determination requires consideration and discussion on a strict case-by-case basis.

The simple statement "I treat my children fairly by dividing every dollar equally between them" rarely reflects deliberation. Further, the statement is never accurate except as it applies to a will or gift. No parent I know would assert that if one child orders a $20 meal in a restaurant she should receive $5 to even the score with a sibling you orders a $25 meal. Rarely would a parent of a child who attends medical school give the dollar equivalent of medical-school tuition to the child who *doesn't* go to medical school, at least not while the parent is alive.

The British system of inheritance used to be based on primogeniture. The eldest son got the family estate -- all of it -- and his younger siblings were expected to make their own ways in life, typically by becoming soldiers, sailors, clergymen or by marrying "well." This system channeled an incredible amount of energy into the development of Britain's colonies.

While visiting Australia recently I met a gentleman whose family had left India several generations ago for Kenya. He told me that he had "of course" received the family wealth while his sister got nothing.

"Does she think that is fair?" I asked him.

"Of course," he replied. "She knows that is the way it always works."

Yet an Indian patriarch I know has decided his entire estate should pass "equally" to his daughters and sons. But by "equal" he means that each will have a business unbundled from the family conglomerate with businesses allocated on the basis of which one the child is working in with no valuation prerequisite to the division.

My father taught me that there are two forms of equality to consider when I talk about wills and trusts and estate planning. On one hand there's dollar-for-dollar equity -- effectively saying that once the testator dies, everything is divided "down the middle."

Then there's equality based on need. This, obviously, is a more complex approach, so it often requires explanation and probing before the logic behind it becomes crystal clear.

A trust will allow the trustee to continue in the shoes of the trust creator after the trust creator's death. So the trust might pay the aspiring physician's medical-school tuition without granting a compensatory "stipend" to the child whose schooling is less expensive. It might foot bills associated with caring for an infirm child without depleting funds by making equal distributions to a fully functioning child.

Stirpital v. per capita

Take the example of a mother with three children. One of her children has *no children*, another has *one child* and another, like his mother, *has three*. The matriarch decides to make gifts to her grandchildren. Should she divide the gift into three equal shares and give one share to her childless child, another share to the grandchild whose parent has only one child, and one divided equally among the three children of the last child? Or should she instead make four equal gifts, one to each grandchild?

What's *equal* in this case? What's "equitable" for everyone involved? What's the "fair" thing to do?

The answer depends on whether the mother is really thinking in terms of gifts to *children* -- "stirpital" by child makes sense -- or gifts to *grandchildren* -- where "per capita" among the grandchildren makes sense. Surely if *need* is the issue and grandchild need is the focus, why waste anything on a childless child (in this sense one that is without need) and why penalize a grandchild with siblings?

Incidentally, this analysis becomes emotionally much easier when the donor knows her grandchildren and thinks of them as individuals rather than as mere extensions of their parents.

Meeting needs

One parent, a mother, decided to set up generation-skipping trusts to avoid taxes on the estates of her children. Lengthy discussions took place around the issue of being fair to her childless son against her focus on grandchildren and assets available to them after a second tax. The mother concluded that the trusts would not be designed to benefit her son without children. For him, she established as special (and "equal") charitable trust to allow him to pursue his philanthropic passions without the engagement of other family members. That, to her mind, was fair.

I know of a man who built substantial wealth for himself and his children. He believes that each of his children now has wealth far beyond his or her needs, forever. But his sister has children who are hard working, loyal to the family, but who aren't wealthy.

This man has decided that he will plan his estate as if his nephews and niece are his own children, and his only children. His gifts will be to his nephews and niece, and his estate will pass *entirely* to them and their children.

"I love my children very much," this man says. "But money is not about love and love is not about money. My wealth is to meet needs and my sister's children have financial needs my children will never have."

What this man is saying is a good lesson to us all. Each of us wants our children to receive a "fair" share of our wealth. That share shouldn't be equated to a "fair" share of our love for them. -FWR

The illustration for this column is a detail from a Japanese woodblock print in the Charles A. Lowenhaupt Collection.

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