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Authentic Happiness, Self-Knowledge and Legal Policy

Peter H. Huang*

I. AUTHENTIC HAPPINESS

This Article analyzes three questions: can, how, and should legal policy help people in their individual quests for authentic happiness.¹ These questions immediately raise another, namely what is authentic happiness? Psychologist Martin Seligman introduced the phrase "authentic happiness" in the preface to his book of the same title: "[a]uthentic happiness comes from identifying your most fundamental strengths and using them every day in work, love play, and parenting."² What is authentic about authentic happiness is that "[w]hen well-being comes from engaging our strengths and virtues, our lives are imbued with authenticity."³ Authentic happiness is thus about more than just experiencing a string of moments that feel good. An example of authentic happiness is being engaged in some activity that is valued, regardless of the presence or absence of positive subjective feelings.⁴ "Feelings are states, momentary occurrences that need not be recurring features of personality [S]trengths and virtues are the positive

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¹ . See, e.g., Eduardo Porter, Editorial, *All They Are Saying Is Give Happiness a Chance*, N.Y. TIMES, Nov. 12, 2007, at A20 (advocating public policy based upon proposed measures of happiness and unhappiness).

² . MARTIN E. P. SELIGMAN, AUTHENTIC HAPPINESS: USING THE NEW POSITIVE PSYCHOLOGY TO REALIZE YOUR POTENTIAL FOR LASTING FULFILLMENT, at xiii (2002).

³ . *Id.* at 9.

⁴ . Christopher Peterson et al., *Orientations to Happiness and Life Satisfaction: The Full Life Versus the Empty Life*, 6 J. HAPPINESS STUD. 25, 27 (2005).

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shareholder setting because there is no empirical data that supports this application, shareholders have disparate notions of happiness, and this application does not consider the costs of shareholder participation.²⁵

There are now several undergraduate textbooks about positive psychology.²⁶ There is also a rapidly increasing number of trade books about happiness authored by economists, epidemiologists, historians, psychologists, philosophers, and sociologists.²⁷ Most of these popular books and the happiness research upon which they are based view happiness in terms of self-reported subjective well-being (SWB). SWB entails a hedonic view of happiness.²⁸ Two

²⁵ . Harry G. Hutchison & R. Sean Alley, *The High Costs of Shareholder Empowerment as an End in Itself* (forthcoming 2008); Harry G. Hutchison & R. Sean Alley, *Shareholder Empowerment as an End in Itself in the Mirror of Authority* (forthcoming 2008); Harry G. Hutchison & R. Sean Alley, *Against Shareholder Participation: A Treatment for McConvill's Psychonomicosis 2* BROOK. J. CORP. FIN. & COM. L. 41 (2007) (critiquing McConvill's argument); Professor Bainbridge on Law, Politics, Religion, Culture & Food, <http://www.ProfessorBainbridge.com> (last visited Mar. 31, 2006); Posting of Gordon Smith to Conglomerate, http://www.theconglomerate.org/2006/03/the_happiness_o.html (Mar. 31, 2006) (raising three critical questions about McConvill's argument); Posting of Brett McDonnell to Conglomerate, http://www.theconglomerate.org/2006/03/the_happiness_o.html#c15744737 (Apr. 3, 2006 09:48) (raising three other important questions about McConvill's argument).

²⁶ . See generally MARTIN BOLT, PURSUING HUMAN STRENGTHS: A POSITIVE PSYCHOLOGY GUIDE (2004); ILONA BONIWELL, POSITIVE PSYCHOLOGY IN A NUTSHELL (2006); ALAN CARR, POSITIVE PSYCHOLOGY: THE SCIENCE OF HAPPINESS AND HUMAN STRENGTHS (2004); WILLIAM C. COMPTON, INTRODUCTION TO POSITIVE PSYCHOLOGY (2004); CHRISTOPHER PETERSON, A PRIMER IN POSITIVE PSYCHOLOGY (2006); C. R. SYNDER & SHANE J. LOPEZ, POSITIVE PSYCHOLOGY: THE SCIENTIFIC AND PRACTICAL EXPLORATIONS OF HUMAN STRENGTHS (2006).

²⁷ . DAN BAKER ET AL., WHAT HAPPY WOMEN KNOW: HOW NEW FINDINGS IN POSITIVE PSYCHOLOGY CAN CHANGE WOMEN'S LIVES FOR THE BETTER (2007); GREGG EASTERBROOK, THE PROGRESS PARADOX: HOW LIFE GETS BETTER WHILE PEOPLE FEEL WORSE (2003); CAROL GRAHAM & STEFANO PETTINATO, HARDSHIP AND HAPPINESS: OPPORTUNITY AND INSECURITY IN NEW MARKET ECONOMIES (2001); JONATHAN HAIDT, THE HAPPINESS HYPOTHESIS: FINDING MODERN TRUTH IN ANCIENT WISDOM (2005); RICHARD LAYARD, HAPPINESS: LESSONS FROM A NEW SCIENCE (2005); DAVID LYKKEN, HAPPINESS: THE NATURE AND NURTURE OF JOY AND CONTENTMENT (2000); DAVID G. MYERS, THE AMERICAN PARADOX: SPIRITUAL HUNGER IN AN AGE OF PLENTY (2001); DAVID G. MYERS, THE PURSUIT OF HAPPINESS: DISCOVERING THE PATHWAY TO FULFILLMENT, WELL-BEING, AND ENDURING PERSONAL JOY (1993); DANIEL NETTLE, HAPPINESS: THE SCIENCE BEHIND YOUR SMILE (2005); ALOIS STUTZER & BRUNO FREY, HAPPINESS AND ECONOMICS: HOW THE ECONOMY AND INSTITUTIONS AFFECT HUMAN WELL-BEING (2002); BERNARD VAN PRAAG & ADA FERRER-I-CARBONELL, HAPPINESS QUANTIFIED: A SATISFACTION CALCULUS APPROACH (2d rev'd ed. 2007).

²⁸ . See, e.g., WELL-BEING: FOUNDATIONS OF HEDONIC PSYCHOLOGY (Daniel Kahneman et al. eds., 1999); Daniel Kahneman & Alan B. Krueger, *Developments in the Measurement of Subjective Well-Being*, J. ECON. PERSP.,

economists provide a sample of recent examples of utilizing empirical data from happiness research.²⁹ An economist and a psychologist analyzed how to utilize SWB measures in policy contexts.³⁰ Two economists recently provided empirical evidence that in the United States and member countries of the European Union over the last thirty five years, women's SWB has declined both absolutely and relatively to men's SWB.³¹ Another economist proposed applying happiness research to immigration policy.³² But, a policy analyst recently questioned the reliability of current happiness research and the clarity of its policy implications even were that research deemed to be reliable.³³ Philosophers have also examined recent psychological research about SWB.³⁴ Several psychologists have proposed societal measures of SWB and subjective ill-being.³⁵ Two

Winter 2006, at 3.

²⁹ . Rafael Di Tella & Robert MacCulloch, *Some Uses of Happiness Data in Economics*, J. ECON. PERSP., Winter 2006, at 26.

³⁰ . See Paul Dolan & Mathew P. White, *How Can Measures of Subjective Well-Being Be Used to Inform Public Policy?*, 2 PERSP. PSYCHOL. SCI. 71, 76-78 (2007).

³¹ . Betsey Stevenson & Justin Wolfers, *The Paradox of Declining Female Happiness*, Sept. 17, 2007 (unpublished manuscript, available at <http://bpp.wharton.upenn.edu/betseys/papers/Paradox%20of%20declining%20female%20happiness.pdf>); see also Alan B. Krueger, *Are We Having More Fun Yet? Categorizing and Evaluating Changes in Time Allocation*, BROOKINGS PAPERS ON ECON. ACTIVITY (forthcoming, on file with author) (finding no major shift in time allocation toward more or less unpleasant activities for men or for women, but a gradual downward trend in how much time men spent in unpleasant activities); David Leonhart, *A Reversal in the Index of Happy*, N.Y. TIMES, Sept. 26, 2007, at C1 (reporting on gender happiness gap).

³² . See Isabel Sawhill, *Do Open Borders Produce Greater Happiness? An Underanalyzed Question*, 2006 BROOKINGS TRADE FORUM 245, 249 (2006).

³³ . Will Wilkinson, *In Pursuit of Happiness Research: Is It Reliable? What Does It Imply for Policy?*, POL'Y ANALYSIS, Apr. 11, 2007, at 1, 12. But see Jacolyn M. Norrish & Dianne A. Vella-Brodick, *Is the Study of Happiness a Worthy Scientific Pursuit?*, SOC. INDIC. RES. (forthcoming 2008) (defending scientifically studying happiness).

³⁴ . See, e.g., Valerie Tiberius, *Well-Being: Psychological Research for Philosophers*, 1 PHIL. COMPASS 493, 494 (2006); Erik Angner, *Subjective Measures of Well-Being: A Philosophical Examination* (June 8, 2005) (unpublished Ph.D. dissertation, University of Pittsburgh) (on file with author, available at <http://etd.library.pitt.edu/ETD/available/etd-08192005-130324/>).

³⁵ . See generally Ed Diener, *Guidelines for National Indicators of Subjective Well-Being and Ill-Being*, 7 J. HAPPINESS STUD. 397 (2006); Ed Diener & Martin E. P. Seligman, *Beyond Money: Toward an Economy of Well-Being*, 5 PSYCHOL. SCI. PUB. INTEREST 1 (2004); Ed Diener, *Subjective Well-Being: The*

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economists cautioned against designing policy to maximize aggregate measures of SWB.³⁶

Alan Greenspan, former Chairman of the Board of Governors of the Federal Reserve, claimed that measuring fear and euphoria could revolutionize economic forecasting.³⁷ Psychologist Daniel Kahneman, 2002 economics Nobel Laureate and his economist colleague, Alan Krueger, advocated supplementing traditional economic objective measures of well-being, such as economic variables,³⁸ with various measures of happiness and SWB.³⁹ They proposed a particular measure called a U-index, defined as the proportion of time that an individual self-reports spending in an unpleasant emotional state, which they defined as one where the most intense self-reported feeling is negative.⁴⁰ More generally they and three psychologists have advocated National Time Accounting (NTA) to measure social well-being based upon self-reported evaluations of time usage.⁴¹ Several economists have offered a number of criticisms of NTA.⁴²

There are two perspectives from which to measure SWB, namely that of an experiencing self or a remembering self.⁴³ Measurements of experiencing SWB can be conducted in real-time as they are experienced, as with the so-called "gold standard" of the Experience Sampling Method (ESM).⁴⁴ Measurements of experienced SWB can also be performed after they are experienced, as with the Day Reconstruction Method (DRM).⁴⁵ Measures of experienced SWB include psychologist Michael W. Fordyce's emotions questionnaire,⁴⁶ and the Positive and Negative Affect Schedule (PANAS) that consists of ten positive affects and ten negative affects.⁴⁷

Different from either of these measures of experienced SWB are measures of evaluative SWB, such as the Authentic Happiness Inventory Questionnaire,⁴⁸ psychologist Ed

Science of Happiness and A Proposal for A National Index, 55 AM. PSYCHOL. 34 (2000); Daniel Kahneman et al., *Toward National Well-Being Accounts*, 94 AM. ECON. REV. 429 (2004).

³⁶ . See Bruno S. Frey & Alois Stutzer, *Should National Happiness be Maximized?* 3 (Inst. for Empirical Research in Econ., Univ. of Zurich, Working Paper No. 306, 2007), available at <http://www.iew.unizh.ch/wp/iewwp306.pdf>; Bruno S. Frey & Alois Stutzer, *Maximizing Happiness?*, 1 GERMAN ECON. REV. 145 (2000).

³⁷ . Alan Greenspan, Former Chairman, Federal Reserve Board, Sept. 18, 2007, Interview on The Daily Show, <http://www.youtube.com/watch?v=Otl-FDlrWf8> (last visited Feb. 16, 2008).

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Diener's Satisfaction with Life Scale,⁴⁹ and measures of
global subjective happiness.⁵⁰ A recent evaluative measure
of SWB is the Gallup World Poll's ladder of life satisfaction,
which asks respondents:

[T]o imagine a ladder with steps numbered from 0 at the bottom to 10 at the top. Suppose we say that the top of the ladder represents the best possible life for you and the bottom of the ladder represents the worst possible life for you. If the top step is 10 and the bottom step is 0, on which step of the ladder do you feel you personally stand at the present time?⁵¹

Measurements of evaluative SWB entail a cognitive as well as an affective component, while measurements of experienced SWB entail only an affective component.

Authentic happiness is a form of happiness as self-

³⁸ . Alan Krueger & Daniel Kahneman, Interview by Gallup World Poll, <http://www.youtube.com/watch?v=ZgvheHMaPtI> (last visited Feb. 16, 2008).

³⁹ . Gallup World Poll, Well-Being Defined, <http://www.youtube.com/watch?v=oGCKHX4Lr9o> (last visited Feb. 16, 2008).

⁴⁰ . Daniel Kahneman & Alan B. Krueger, *Developments in the Measurement of Subjective Well-Being*, J. ECON. PERSP., Winter 2006, at 3.

⁴¹ . Alan B. Krueger et al., *National Time Accounting: The Currency of Life*, in NATIONAL TIME ACCOUNTING AND SUBJECTIVE WELL-BEING (Alan B. Krueger ed., forthcoming).

⁴² . See generally NATIONAL TIME ACCOUNTING AND SUBJECTIVE WELL-BEING (Alan B. Krueger ed., forthcoming).

⁴³ . Daniel Kahneman & Jason Riis, *Living and Thinking About It: Two Perspectives on Life*, in THE SCIENCE OF WELL-BEING 285, 285-86 (Felicia Huppert et al. eds., 2006).

⁴⁴ . JOEL M. HEKTER ET AL., EXPERIENCE SAMPLING METHOD: MEASURING THE QUALITY OF EVERYDAY LIFE 277 (2006).

⁴⁵ . See, e.g., Daniel Kahneman et al., *A Survey Method for Characterizing Daily Life Experience: The Day Reconstruction Method*, 306 SCIENCE 1776 (2004).

⁴⁶ . SELIGMAN, *supra* note 2, at 15; Michael W. Fordyce, *A Review of Research on The Happiness Measures; A Sixty Second Index of Happiness and Mental Health*, 20 SOC. INDICATORS RES. 355 (1988).

⁴⁷ . See generally SELIGMAN, *supra* note 2, at 33; David Watson et al., *Development and Validation of Brief Measures of Positive and Negative Affect: The PANAS Scales*, 54 J. PERSONALITY & SOC. PSYCHOL. 1063 (1988).

⁴⁸ . Authentic Happiness Inventory, <http://www.authentic happiness.sas.upenn.edu/> (last visited Feb. 16, 2008).

⁴⁹ . SELIGMAN, *supra* note 2, at 63; Ed Diener et al., *The Satisfaction with Life Scale*, 49 J. PERSONALITY ASSESSMENT 71 (1985).

⁵⁰ . SELIGMAN, *supra* note 2, at 46; Sonja Lyubomirsky & Heidi S. Lepper, *A Measure of Subjective Happiness: Preliminary Reliability and Construct Validation*, 46 SOC. INDICATORS RES. 137 (1999).

⁵¹ . GALLUP WORLD POLL, THE STATE OF GLOBAL WELL-BEING 5 (2007).

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validation,⁵² with its roots in Aristotle's notion of eudaimonia.⁵³ Buddhism entails a similar conception of genuine, mature, or true happiness that involves inner peace and personal meaning.⁵⁴ Authentic happiness is also related to economic interpretations of meaning,⁵⁵ measures of life engagement,⁵⁶ measures of meaningfulness,⁵⁷ measures of purpose,⁵⁸ measures of personal expressiveness,⁵⁹ measures of psychological well-being,⁶⁰ measures of self-concordance,⁶¹ measures of self-determination,⁶² measures of subjective vitality,⁶³ personal growth scales,⁶⁴ regeneration through autonomously regulated tasks,⁶⁵ and

⁵² . PETER WARR, *WORK, HAPPINESS, AND UNHAPPINESS* 10-11 (2007).

⁵³ . *Id.*; SELIGMAN, *supra* note 2, at 112; see also Richard M. Ryan & Edward L. Deci, *On Happiness and Human Potentials: A Review of Research on Hedonic and Eudaimonic Well-Being*, 52 ANN. REV. PSYCHOL. 141, 145 (2001).

⁵⁴ . See, e.g., Dalai Lama & Howard C. Cutler, *THE ART OF HAPPINESS: A HANDBOOK FOR LIVING* (1998); MARVIN LEVINE, *THE POSITIVE PSYCHOLOGY OF BUDDHISM AND YOGA: PATHS TO A MATURE HAPPINESS* (2000).

⁵⁵ . Niklas Karlsson et al., *The Economics of Meaning*, 30 NORDIC J. POL. ECON. 61 (2004).

⁵⁶ . Michael F. Scheier et al., *The Life Engagement Test: Assessing Purpose in Life*, 29 J. BEHAV. MED. 291 (2006).

⁵⁷ . SELIGMAN, *supra* note 2, at 260. See generally *Authentic Happiness*, <http://www.authentichappiness.sas.upenn.edu/> (last visited Feb. 12, 2008) (website containing studies, newsletters and questionnaires relating to and explaining authentic happiness).

⁵⁸ . Laura A. King et al., *Positive Affect and the Experience of Meaning in Life*, 90 J. PERSONALITY & SOC. PSYCHOL. 179, 179-80 (2006).

⁵⁹ . Alan S. Waterman, *Two Conceptions of Happiness: Contrasts of Personal Expressiveness (Eudaimonia) and Hedonic Enjoyment*, 64 J. PERSONALITY & SOC. PSYCHOL. 678 (1993).

⁶⁰ . Carol D. Ryff & Corey L. M. Keyes, *The Structure of Psychological Well-Being Revisited*, 69 J. PERSONALITY & SOC. PSYCHOL. 719 (1995).

⁶¹ . Kennon M. Sheldon & Tim Kasser, *Coherence and Congruence: Two Aspects of Personality Integration*, 68 J. PERSONALITY & SOC. PSYCHOL. 531 (1995).

⁶² . Ian McGregor & Brian R. Little, *Personal Projects, Happiness and Meaning: On Doing Well and Being Yourself*, 74 J. PERSONALITY & SOC. PSYCHOL. 494, 505-506 (1998).

⁶³ . Richard M. Ryan & Christina M. Frederick, *On Energy, Personality, and Health: Subjective Vitality as a Dynamic Reflection of Well-Being*, 65 J. PERSONALITY 529 (1997).

⁶⁴ . Carol D. Ryff, *Happiness is Everything, Or is It? Explorations on the Meaning of Psychological Well-Being*, 57 J. PERSONALITY & SOC. PSYCHOL. 1069 (1989).

⁶⁵ . Glen A. Nix et al., *Revitalization through Self-Regulation: The Effects of Autonomous and Controlled Motivation on Happiness and Vitality*, 35 J. EXPERIMENTAL SOC. PSYCHOL. 266 (1999).

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these strengths have roots in social science. These strengths nest within six general categories: Wisdom, Courage, Temperance, Humanity, Justice, and Transcendence.⁷¹ Each of these strengths is linked to an individual's sense of self, valued for its own sake, and valued by almost every culture.⁷² Wisdom and knowledge consists of the cognitive strengths of creativity, curiosity, open-mindedness, love of learning, and perspective.⁷³ Courage is divided into the emotional strengths of bravery, persistence, integrity, and vitality.⁷⁴ Humanity is comprised of the interpersonal strengths of love, kindness, and social intelligence.⁷⁵ Justice is made of the civic strengths of citizenship, fairness, and leadership.⁷⁶ Temperance involves the strengths of forgiveness and mercy, humility/modesty, prudence, and self-regulation.⁷⁷ Finally, transcendence contains the strengths of awe, appreciation of beauty and excellence, gratitude, hope, humor, and spirituality.⁷⁸

This classification system "is intended to be the opposite of the DSM (the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association, which serves as a classification scheme of mental illness)."⁷⁹ The Values in Action Institute (VIA) Inventory of Strengths is a self-report questionnaire of two hundred forty items that measures to what extent adult respondents possess each of the twenty-four strengths of character.⁸⁰ This on-line survey requires approximately thirty minutes to complete, generates a report of one's top five strengths, and compares one's scores to the hundreds of thousands of people who have also taken the survey.⁸¹ There is a separate VIA

⁷¹ . VIA Institute on Character, The VIA Classification of Character Strengths, <http://www.viastrengths.org/VIAClassification/tabid/56/Default.aspx> (last visited June 3, 2008); see also CHARACTER STRENGTHS AND VIRTUES: A HANDBOOK AND CLASSIFICATION 16-31 (Christopher Peterson & Martin E. P. Seligman eds., 2004).

⁷² . CHARACTER STRENGTHS AND VIRTUES, *supra* note 71, at 18-20, 23.

⁷³ . *Id.* at 29.

⁷⁴ . *Id.*

⁷⁵ . *Id.*

⁷⁶ . *Id.* at 30.

⁷⁷ . *Id.*

⁷⁸ . *Id.*

⁷⁹ . SELIGMAN, *supra* note 2, at 11 (emphasis omitted).

⁸⁰ . VIA Strength Survey, <http://www.viasurvey.org/>. (last visited Feb. 20, 2008).

⁸¹ . *Id.*; Authentic Happiness, <http://www.authentic happiness.sas.upenn>.

Strength Survey for children.⁸²

So, what is the point of learning one's signature strengths? Martin Seligman eloquently states a reason for knowing one's signature strengths: "I do not believe that you should devote overly much effort to correcting your weaknesses. Rather, I believe that the highest success in living and the deepest emotional satisfaction comes from building and using your signature strengths."⁸³ Seligman's belief is related to a similar human resources and personnel management philosophy of developing people's strengths as opposed to working on their weaknesses.⁸⁴ A specific example of such empirical self-knowledge of strengths is law professor Susan Daicoff's analysis of research about lawyer psychology to conclude that there is a distinctive lawyer personality type.⁸⁵

Identifying your strengths can help you find new work that is personally fulfilling and meaningful or alter your current work to become more personally fulfilling and meaningful.⁸⁶ Management and organizational behavior researcher, Amy Wrzesniewski, considered a trichotomy of how people can experience their work: as a job, career, or calling.⁸⁷ If you experience your work to be a job, then you are motivated by a paycheck, see that job to be a chore or necessity, expect very little from your job, and look forward to a vacation and the weekend.⁸⁸ If you experience your work to be a career, then you are motivated by advancement, see that career to be a contest, expect power and prestige from your career, and look forward to upward mobility.⁸⁹ If you experience your work to be a calling, then

edu/ (last visited Feb. 20, 2008).

⁸² . See SELIGMAN, *supra* note 2, at 232-44; see also Authentic Happiness, <http://www.authentichappiness.sas.upenn.edu/> (last visited Feb. 20, 2008).

⁸³ . SELIGMAN, *supra* note 2, at 13.

⁸⁴ . MARCUS BUCKINGHAM, *GO PUT YOUR STRENGTHS TO WORK: 6 POWERFUL STEPS TO ACHIEVE OUTSTANDING PERFORMANCE* (2007); MARCUS BUCKINGHAM & DONALD O. CLIFTON, *NOW, DISCOVER YOUR STRENGTHS* (2001).

⁸⁵ . SUSAN DAICOFF, *LAWYER, KNOW THYSELF: A PSYCHOLOGICAL ANALYSIS OF PERSONALITY STRENGTHS AND WEAKNESSES* (2004); Susan Daicoff, *Lawyer, Know Thyself: A Review of Empirical Research on Attorney Attributes Bearing on Professionalism*, 46 AM. U. L. REV. 1337 (1997) .

⁸⁶ . SELIGMAN, *supra* note 2, at 166.

⁸⁷ . Amy Wrzesniewski et al., *Jobs, Careers, and Callings: People's Relations to Their Work*, 31 J. RES. PERSONALITY 21 (1997).

⁸⁸ . *Id.* at 22, 24.

⁸⁹ . *Id.*

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you are motivated by that calling itself, see that calling to be a passion, expect a better world and fulfillment from your calling, and look forward to more work.⁹⁰

There is another sense in which self-knowledge can help improve your happiness, namely by determining which of a number of strategies that researchers have found empirically lead to sustainable increases of happiness⁹¹ best fit you. Empirical and experimental research has provided evidence that intentional activities creating sustainable increases of self-reported happiness include: avoiding overthinking and making social comparisons,⁹² committing to goals,⁹³ cultivating optimism,⁹⁴ developing coping strategies,⁹⁵ expressing gratitude,⁹⁶ having more flow

⁹⁰ . *Id.*

⁹¹ . See, e.g., Martin E. P. Seligman et al., *Positive Psychology Progress: Empirical Validation of Interventions*, 60 AM. PSYCHOL. 410 (2005); Kennon M. Sheldon & Sonja Lyubomirsky, *Achieving Sustainable Gains in Happiness: Change Your Actions, Not Your Circumstances*, 7 J. HAPPINESS STUD. 55 (2006).

⁹² . See, e.g., Sonja Lyubomirsky & Lee Ross, *Hedonic Consequences of Social Comparison: A Contrast of Happy and Unhappy People*, 73 J. PERSONALITY & SOC. PSYCHOL. 1141 (1997).

⁹³ . See, e.g., Richard M. Ryan & Edward L. Deci, *Self-Determination Theory and the Facilitation of Intrinsic Motivation, Social Development, and Well-Being*, 55 AM. PSYCHOL. 68, 75 (2000).

⁹⁴ . See, e.g., MARTIN E. P. SELIGMAN, *LEARNED OPTIMISM: HOW TO CHANGE YOUR MIND AND YOUR LIFE* (1991). *But see*, Manju Puri & David T. Robinson, *Optimism and Economic Choice*, 86 J. FIN. ECON. 71, 91-95 (2007) (proposing a novel measure of optimism and finding that although moderate optimists exhibit reasonable financial behavior, extreme optimists display imprudent financial behavior and habits); Jason M. Satterfield et al., *Law School Performance Predicted by Explanatory Style*, 15 BEHAVIORAL SCI. & L. 95, 98 (1997) (finding empirically that pessimistic law students had higher grade point averages and greater executive board membership on law reviews than optimists); Tali Sharot et al., *Neural Mechanisms Mediating Optimism Bias*, NATURE, Nov. 1, 2007, at 102 (providing evidence of neurobiological basis of optimism, which may lead to poor planning in the case of extreme optimism); Robert Lee Hotz, *Except in One Career, Our Brains Seem Built for Optimism*, WALL ST. J., Nov. 9, 2007, at B1 (reporting on recent neuroscientific research that, except for lawyers, a positive outlook improves one's well-being only in moderation).

⁹⁵ . See, e.g., COPING: THE PSYCHOLOGY OF WHAT WORKS (C. R. Snyder ed., 1999).

⁹⁶ . See, e.g., ROBERT A. EMMONS, *THANKS!: HOW THE NEW SCIENCE OF GRATITUDE CAN MAKE YOU HAPPIER* 11 (2007); Robert A. Emmons & Michael E. McCullough, *Counting Blessings Versus Burdens: An Experimental Investigation of Gratitude and Subjective Well-Being in Daily Life*, 84 J. PERSONALITY & SOC. PSYCHOL. 377 (2003); Kennon M. Sheldon & Sonja Lyubomirsky, *How to Increase and Sustain Positive Emotion: The Effects of Expressing Gratitude and Visualizing Best Possible Selves*, 1 J. POS. PSYCHOL. 73 (2006).

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experiences,⁹⁷ learning to forgive,⁹⁸ meditating,⁹⁹ nurturing
social relationships,¹⁰⁰ physically exercising,¹⁰¹ practicing acts
of kindness,¹⁰² practicing spirituality,¹⁰³ and savoring life's
joys.¹⁰⁴ It should be clear from introspection and intuition
that people will not find all of these alternative programs for
constructing happiness equally conducive and effective for
their personalities, strengths, and situations.

For example, some categories of people will find that
counting their blessings helps increase their happiness, but
other types of people will find that counting their blessings
does not help to increase their happiness, or actually
reduces their happiness. Therefore, self-knowledge in
general and knowledge of your strengths in particular
enables you to choose happiness-increasing activities that fit
you personally. This idea of tailoring happiness interventions
to fit you is related to the idea that not one-size-fits-all
students in (legal) education.¹⁰⁵ Professor Sonja Lyubomirsky
has developed a person-activity self-diagnostic tool that an
individual can complete in fifteen to thirty minutes to
generate a shortlist of four happiness-increasing activities
that best fit a person.¹⁰⁶ Her questions are based on

⁹⁷ . See, e.g., Mihaly Csikszentmihalyi & Maria Mei-Ha Wong, *The Situational and Personal Correlates of Happiness: A Cross-National Comparison*, in SUBJECTIVE WELL-BEING: AN INTERDISCIPLINARY PERSPECTIVE 193 (Fritz Strack et al. eds., 1991).

⁹⁸ . See, e.g., Alex H. S. Harris & Carl E. Thoresen, *Extending the Influence of Positive Psychology Interventions into Health Care Settings: Lessons from Self-Efficacy and Forgiveness*, 1 J. POS. PSYCHOL. 27 (2006).

⁹⁹ . See, e.g., W. Paul Smith et al., *Meditation as an Adjunct to a Happiness Enhancement Program*, 51 J. CLINICAL PSYCHOL. 269 (1995).

¹⁰⁰ . See, e.g., Shelly L. Gable et al., *What Do You Do When Things Go Right? The Intrapersonal and Interpersonal Benefits of Sharing Positive Events*, 87 J. PERSONALITY & SOC. PSYCHOL. 228 (2004).

¹⁰¹ . See, e.g., Stuart J H Biddle & Panteleimon Ekkekakis, *Physically Active Lifestyles and Well-Being*, in THE SCIENCE OF WELL-BEING 141 (Felicia A. Huppert et al. eds., 2006).

¹⁰² . See, e.g., Jane Allyn Piliavin, *Doing Well By Doing Good: Benefits for the Benefactor*, in FLOURISHING: POSITIVE PSYCHOLOGY AND THE LIFE WELL-LIVED 227 (Corey L. M. Keyes et al. eds., 2003).

¹⁰³ . See, e.g., ROBERT A. EMMONS, THE PSYCHOLOGY OF ULTIMATE CONCERNS: MOTIVATION AND SPIRITUALITY IN PERSONALITY (2003).

¹⁰⁴ . See, e.g., FRED B. BRYANT & JOSEPH VEROFF, SAVORING: A NEW MODEL OF POSITIVE EXPERIENCE (2006).

¹⁰⁵ . See generally LANI GUINIER, BECOMING GENTLEMEN: WOMEN, LAW SCHOOL, AND INSTITUTIONAL CHANGE (1997).

¹⁰⁶ . SONJA LYUBOMIRSKY, THE HOW OF HAPPINESS: A SCIENTIFIC APPROACH TO GETTING THE LIFE YOU WANT 69-79 (2007).

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systematic empirical research about four different kinds of motivation, namely intrinsic motivation from inherent enjoyment and interest, identified motivation to express important values and beliefs, introjected motivation to avoid guilt or anxiousness, and external motivation to please others or for a reward.¹⁰⁷

The reason for emphasizing intentional activities and outlook as opposed to circumstances in generating happiness, is that psychological research reveals that of the variance in people's happiness, 50% can be attributed to genetics, only 10% to circumstances, and the remaining 40% to intentional activities and outlook.¹⁰⁸ However, economists and legal policymakers have tended to focus on changing such objective circumstances as one's income to improve one's well-being. This difference between economists and psychologists is aptly summarized by economist Robert Frank, who has incorporated psychological findings into his economic research:

Psychologists may misapprehend the income-happiness link because they tend to work with analysis-of-variance models, which emphasize the proportion of variance attributable to various casual factors. In contrast, economists tend to work with statistical regression models, which emphasize the change in outcome that results from a given change in a casual factor. The regression approach calls our attention to the fact that even though income doesn't explain a high proportion of the variance in happiness, a given change in income is nonetheless associated with a fairly large change in happiness. And for our purposes, that's the important practical point: Significant increases in relative income give rise to significant increases in subjective well-being.¹⁰⁹

In fact, arguably the most often cited finding about happiness is the so-called "Easterlin paradox" which is named after economist Richard Easterlin who first alleged

¹⁰⁷ . See *Id.* at 77 & 323 n.2; see, e.g., Edward L. Deci & Richard M. Ryan, *The "What" and "Why" of Goal Pursuits: Human Needs and the Self-Determination of Behavior*, 11 *PSYCHOL. INQUIRY* 227, 236 (2000); Kennon M. Sheldon & Andrew J. Elliot, *Goal Striving, Need Satisfaction, and Longitudinal Well-Being: The Self-Concordance Model*, 76 *J. PERSONALITY & SOC. PSYCHOL.* 482, 490 (1999); Kennon M. Sheldon & Linda Houser-Marko, *Self-Concordance, Goal Attainment, and the Pursuit of Happiness: Can There Be an Upward Spiral?*, 80 *J. PERSONALITY & SOC. PSYCHOL.* 152 (2001); Sheldon & Kasser, *supra* note 61, at 534; Chris Tkach & Sonja Lyubomirsky, *How Do People Pursue Happiness?: Relating Personality, Happiness-Increasing Strategies, and Well-Being*, 7 *J. HAPPINESS STUD.* 183 (2006).

¹⁰⁸ . Sonja Lyubomirsky et al., *Pursuing Happiness: The Architecture of Sustainable Change*, 9 *REV. GEN. PSYCHOL.* 111, 116 (2005).

¹⁰⁹ . FRANK, *FALLING BEHIND*, *supra* note 21, at 24.

that empirically there is no link between the level of economic development of countries and their average levels of happiness.¹¹⁰ Easterlin also claimed that there exists a satiation level of wealth after which countries did not experience increased SWB. Finally, Easterlin declared that there is no evidence that at any point in time, across nations, higher levels of gross domestic product are correlated with higher level of average happiness. These assertions are all the more surprising because it is the case that for any given moment in time, richer people are happier than poor ones in any given country. A large cottage industry of literature purports to explain this so-called paradox.¹¹¹ Two leading explanations to reconcile these findings appeal to: (a) the phenomenon of hedonic adaptation whereby people behave as if they are on a hedonic treadmill,¹¹² or (b) people's happiness depend on their relative as opposed to absolute levels of income.¹¹³ Acceptance of Easterlin's empirical conclusions has led many people to question policies of economic growth.¹¹⁴ But,

¹¹⁰ . See, e.g., Richard A. Easterlin, *Does Economic Growth Improve the Human Lot? Some Empirical Evidence*, in *NATIONS AND HOUSEHOLDS IN ECONOMIC GROWTH: ESSAYS IN HONOR OF MOSES ABRAMOVITZ* 89 (Paul A. David & Melvin W. Reder eds., 1974); Richard A. Easterlin, *Diminishing Marginal Utility of Income? Caveat Emptor*, 70 *SOC. INDICATORS RES.* 243 (2005); Richard A. Easterlin, *Income and Happiness: Towards a Unified Theory*, 111 *ECON. J.* 465 (2001); Richard A. Easterlin, *Feeding the Illusion of Growth and Happiness: A Reply to Hagerty and Veenhoven*, 74 *SOC. INDICATORS RES.* 429 (2005).

¹¹¹ . See, e.g., Andrew E. Clark et al., *Relative Income, Happiness, and Utility: An Explanation for the Easterlin Paradox and Other Puzzles*, 46 *J. ECON. LIT.* 95 (2008); Rafael Di Tella et al., *Happiness Adaptation to Income and Status in an Individual Panel* (Nat'l Bureau of Econ. Research, Working Paper No. 13159, 2007); Daniel Kahneman et al., *Would You Be Happier If You Were Richer? A Focusing Illusion*, 312 *SCIENCE* 1908 (2006).

¹¹² . See, e.g., Samuel R. Bagenstos & Margo Schlanger, *Hedonic Damages, Hedonic Adaptation, and Disability*, 60 *VAND. L. REV.* 745 (2007); John Broomstein et al., *Hedonic Adaptation and the Settlement of Civil Lawsuits*, *COLUM. L. REV.* (forthcoming); Ed Diener et al., *Beyond the Hedonic Treadmill: Revising the Adaptation Theory of Well-Being*, 61 *AM. PSYCHOL.* 305 (2006); Stephen Wu, *Adapting to Heart Conditions: A Test of the Hedonic Treadmill*, 20 *J. HEALTH ECON.* 495 (2001).

¹¹³ . See, e.g., Robert H. Frank, *Does Absolute Income Matter?*, in *ECONOMICS AND HAPPINESS* 65 (Luigino Bruni & Pier Luigi Porta eds., 2005); Ruut Veenhoven, *Is Happiness Relative?*, 24 *SOC. INDICATORS RES.* 1 (1991).

¹¹⁴ . See, e.g., Carol Graham, *Insights on Development from the Economics of Happiness*, 20 *WORLD BANK RES. OBSERVER* 201 (2005); Christopher K. Hsee et al., *Hedonomics: Bridging Decision Research with Happiness Research*, 3 *PERSP. PSYCHOL. SCI.* 224 (2008).

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recently some researchers question whether there is even really a paradox.¹¹⁵ In particular, two economists, Betsey Stevenson and Justin Wolfers, analyzed a number of rich datasets that spanned a number of recent decades and for a greater number of countries than Easterlin originally did.¹¹⁶ They found that a clear and positive link exists between national income and average levels of subjective well-being across countries. They also found no evidence of a satiation wealth level beyond which countries failed to have improved SWB. Finally, they found that greater economic development is associated with more people reporting enjoyment, smiles, and laughter.¹¹⁷

III. LEGAL POLICY

Because happiness research, like information, generally is a public good, there is reason for policymakers to subsidize research about happiness and facilitate its dissemination. In particular, legal policymakers can help people develop self-knowledge through a variety of techniques. These range from educational campaigns, government sponsored websites, and monetary incentives, such as subsidies and tax breaks for self-assessment tools. Policymakers can also encourage, subsidize, or even force experimentation with different employment possibilities in order for people to learn whether they can utilize their signature strengths in various employment possibilities. Examples of such experimentation include the Amish tradition of rumspringa,¹¹⁸ hospital rotations for interns and residents, junior year abroad program for college students,

¹¹⁵ . See, e.g., Claude S. Fischer, *What Wealth-Happiness Paradox? A Short Note on the American Case*, 9 J. HAPPINESS STUD. 219 (2008).

¹¹⁶ . Betsey Stevenson & Justin Wolfers, *Economic Growth and Subjective Well-being: Reassessing the Easterlin Paradox*, BROOKINGS PAPERS ON ECONOMIC ACTIVITY (forthcoming Apr. 2008), available at <http://bpp.wharton.upenn.edu/jwolfers/Papers/EasterlinParadox.pdf>; see also Angus Deaton, *Income, Health, and Well-Being around the World: Evidence from the Gallup World Poll*, J. ECON. PERSP., Spring 2008, at 53.

¹¹⁷ . Stevenson & Wolfers, *supra* note 116; see also Justin Wolfers, *The Economics of Happiness, Part 6: Delving into Subjective Well-Being*, FREAKONOMICS, Apr. 25, 2008, <http://freakonomics.blogs.nytimes.com/2008/04/25/the-economics-of-happiness-part-6-delving-into-subjective-well-being/#more-2549>.

¹¹⁸ . Rumspringa is a period for Amish teens to experiment with non-Amish traditions. See, e.g., *DEVIL'S PLAYGROUND* (Cinemax Reel Life 2002) (documenting teenagers during rumspringa).

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immune function,¹²⁵ longevity,¹²⁶ neural correlates,¹²⁷ and sleep efficiency.¹²⁸ Cross-sectional, experimental, and longitudinal studies offer evidence that happiness is not only correlated with career success, but often precedes measures of career success,¹²⁹ job satisfaction, and income.¹³⁰ Similarly, there is evidence from cross-sectional, experimental, and longitudinal studies that happiness is not only linked with, but also engenders success in such other domains besides work as friendship, health, and marriage.¹³¹

Most people, when asked, will say that happiness is an important objective for themselves and their children. But what do people mean by happiness? Of course, people often also state that by happiness they do not just mean hedonic pleasure, but also personal meaning. It is correspondingly also important for policymakers to differentiate between merely hedonic notions of happiness and eudaimonic notions of happiness. The word happiness can mean not only hedonistic pleasure, but also more complex and nuanced concepts such as fulfillment, meaning, and purpose. Surely, only hedonists want an exclusively hedonic type of happiness. Similarly, parents want more for their children than that their children excel at only hedonism. Instead, most parents would like to raise their children to grow up to become adults leading full, meaningful, and purposeful lives. Analogously, the goal of legal policy should be to help

¹²⁵ . See generally Sheldon Cohen et al., *Emotional Style and Susceptibility to the Common Cold*, 65 *PSYCHOSOMATIC MED.* 652 (2003); Sheldon Cohen et al., *Positive Emotional Style Predicts Resistance to Illness After Experimental Exposure to Rhinovirus or Influenza A Virus*, 68 *PSYCHOSOMATIC MED.* 809 (2006).

¹²⁶ . Sheldon Cohen & Sarah D. Pressman, *Positive Affect and Health*, 15 *CURRENT DIRECTIONS PSYCHOL. SCI.* 122, 122-23 (2006); Sarah D. Pressman & Sheldon Cohen, *Does Positive Affect Influence Health?*, 131 *PSYCHOL. BULL.* 925, 928-31 (2005). See generally Laura Smart Richman et al., *Positive Emotion and Health: Going Beyond the Negative*, 24 *HEALTH PSYCHOL.* 422 (2005).

¹²⁷ . See generally Heather L. Urry et al., *Making a Life Worth Living: Neural Correlates of Well-Being*, 15 *PSYCHOL. SCI.* 367 (2004).

¹²⁸ . See generally N. A. Hamilton et al., *Sleep and Psychological Well-Being*, 82 *SOC. INDICATORS RES.* 147 (2006).

¹²⁹ . See generally Julia K. Boehm & Sonja Lyubomirsky, *Does Happiness Promote Career Success?*, 16 *J. CAREER ASSESSMENT* 101 (2008).

¹³⁰ . See generally Ed Diener et al., *Dispositional Affect and Job Outcomes*, 59 *SOC. INDICATORS RES.* 229 (2002).

¹³¹ . Sonja Lyubomirsky et al., *The Benefits of Frequent Positive Affect: Does Happiness Lead to Success?*, 131 *PSYCHOL. BULL.* 803, 823-825 (2005).

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always know what they like and choose to desire what they like. But, much of people's eating activity is mindless, subject to context, cues, environmental factors, mood, and situational influences, instead of being the consequence of deliberative consideration, mindfulness, and rational analysis.¹³⁶ Marketing professor Brian Wansink has proposed a number of strategies for government and industry to jointly combat obesity,¹³⁷ including marketing nutrition,¹³⁸ and de-marketing obesity.¹³⁹ An economist has argued that economic prosperity weakens people's self-control and reduces their well-being in many contexts, including food consumption.¹⁴⁰ A pair of economists critically reviewed this argument, provided and reviewed evidence of a negative correlation between happiness and body mass index, and stressed instead of self-control, the importance of relative concerns in body weight.¹⁴¹ Of particular concern is childhood obesity, not only because much of people's eating habits are formed in their youth, but also because the social stigma attached to being an obese child can have serious adverse emotional and health consequences.¹⁴²

A final and more speculative illustration of how legal policymakers can foster authentic happiness is to consider whether and how to utilize research about meditation and happiness.¹⁴³ A recent study involving a seven-week loving-

Symptoms of Trouble or Signs of Bliss? A Theory of Choice in the Presence of Behavioral Adjustment Costs, CONTRIBUTIONS TO ECON. ANALYSIS & POL'Y, Feb. 15, 2006, at 6.

¹³⁶ . BRIAN WANSINK, MINDLESS EATING: WHY WE EAT MORE THAN WE THINK (2006); Mindless Eating Home Page, <http://mindlesseating.org/>.

¹³⁷ . Cornell, Nutrition Works, <http://www.nutritionworks.cornell.edu/features/index.cfm?Action=Course&CourseID=96#> (last visited June 3, 2008).

¹³⁸ . See generally BRIAN WANSINK, MARKETING NUTRITION: SOY, FUNCTIONAL FOODS, BIOTECHNOLOGY, AND OBESITY (2005).

¹³⁹ . See generally Brian Wansink & Mike Huckabee, *De-Marketing Obesity*, 47 CA. MGMT. REV. 6 (2005).

¹⁴⁰ . Avner Offer, *Body Weight and Self-Control in the United States and Britain Since the 1950s*, 14 SOC. HIST. MED. 79 (2001); see also AVNER OFFER, THE CHALLENGE OF AFFLUENCE: SELF-CONTROL AND WELL-BEING IN THE UNITED STATES AND BRITAIN SINCE 1950 (2006).

¹⁴¹ . Andrew J. Oswald & Nattavudh Powdthavee, *Obesity, Unhappiness, and the Challenge of Affluence: Theory and Evidence*, 117 ECON. J. 441, 452 (2007).

¹⁴² . Rebecca M. Puhl & Janet D. Latner, *Stigma, Obesity, and the Health of the Nation's Children*, 133 W. PSYCHOL. BULL. 557, 577-78 (2007).

¹⁴³ . See generally VISIONS OF COMPASSION: WESTERN SCIENTISTS AND TIBETAN

kindness meditation intervention for professional adults found significant and sustained increases in a number of well-being measures over their baseline and over a control waitlist group.¹⁴⁴ A brain imaging study suggested that long-time practitioners of concentration meditation developed abilities to effortlessly concentrate.¹⁴⁵ One study found that experimental subjects who received training in a meditation exercise in addition to a personal happiness enhancement program, significantly improved on several SWB measures compared to subjects who only received instruction on the personal happiness enhancement program and control subjects who received no instruction.¹⁴⁶ A randomized, placebo-controlled clinical trial study found that a sixteen-week training program in transcendental meditation improved blood pressure and insulin resistance as well as reduced several risk factors for coronary heart disease.¹⁴⁷ A randomized, controlled study of a well-known and widely used eight-week clinical training program in mindfulness meditation in a work environment with healthy employees found positive demonstrable effects on brain and immune function.¹⁴⁸ Another clinical intervention study with cancer patients found that increased mindfulness over time was related to decreased mood disturbance and reduced stress.¹⁴⁹

Professor of law Leonard Riskin has considered benefits

BUDDHISTS EXAMINE HUMAN NATURE (Richard J. Davidson & Anne Harrington eds. 2001); Shauna L. Shapiro et al., *Meditation and Positive Psychology*, in HANDBOOK OF POSITIVE PSYCHOLOGY 632 (C. R. Snyder & Shane J. Lopez eds. 2005).

¹⁴⁴ . Michael A. Cohn, Positive Emotions Induced by Meditation Build Personal Resources and Contribute to Better Lives, Presentation to the Global Well-Being Forum (Oct. 6, 2007).

¹⁴⁵ . Julie A. Brefczynski-Lewis et al., *Neural Correlates of Attentional Expertise in Long-Term Meditation Practitioners*, 104 PROC. NAT'L ACAD. SCI. 11483, 11487 (2007).

¹⁴⁶ . W. Paul Smith et al., *Meditation as an Adjunct to a Happiness Enhancement Program*, 51 J. CLINICAL PSYCHOL. 269, 269 (2006).

¹⁴⁷ . Maura Paul-Labrador et al., *Effects of a Randomized Controlled Trial of Transcendental Meditation on Components of the Metabolic Syndrome in Subjects with Coronary Heart Disease*, 166 ARCHIVES INTERNAL MED. 1218, 1218 (2006).

¹⁴⁸ . Richard J. Davidson et al., *Alternations in Brain and Immune Function Produced by Mindfulness Meditation*, 65 PSYCHOSOMATIC MED. 564, 564 (2003).

¹⁴⁹ . Kirk Warren Brown & Richard M. Ryan, *The Benefits of Being Present: Mindfulness and Its Role in Psychological Well-Being*, 84 J. PERSONALITY & SOC. PSYCHOL. 822, 822 (2003).

legal scholars about when and whether some form of paternalism is desirable or justifiable.¹⁵⁴ Much of this debate focuses on people being subject to cognitive biases and utilizing heuristics as rationales for some type of paternalism. A noteworthy exception to such cognitively-based paternalism is a recent consideration of emotional paternalism.¹⁵⁵

A behavioral economist and his co-author who is a legal scholar have recently written a trade book about so-called libertarian paternalism which seeks to help individuals improve their decision-making by influencing their choices via judicious choice architecture.¹⁵⁶ The originators of the phrase "libertarian paternalism" define it as "an approach that preserves freedom of choice but that authorizes both private and public institutions to steer people in directions that will promote their welfare."¹⁵⁷ By "choice architecture" they mean how choices are described, framed or presented, what happens if people make no active choice, which choices are offered, and similar contextual aspects of decision environments. A related concept is that of asymmetric paternalism,¹⁵⁸ which seeks to help those individuals with problems making choices, without unduly burdening those people who have no problems with making choices. The originators of the phrase "asymmetric paternalism" explain that it is asymmetric because it "creates large benefits for those who make errors, while imposing little or no harm on those who are fully rational."¹⁵⁹

¹⁵⁴ . See, e.g., Richard A. Epstein, *Behavioral Economics: Human Errors and Market Corrections*, 73 U. CHI. L. REV. 111 (2006); Edward L. Glaeser, *Paternalism and Psychology*, 73 U. CHI. L. REV. 133 (2006); Christine Jolls et al., *A Behavioral Approach to Law and Economics*, 50 STAN. L. REV. 1471 (1998); Jeffrey J. Rachlinski, *Cognitive Errors, Individual Differences, and Paternalism*, 73 U. CHI. L. REV. 207 (2006); Cass R. Sunstein & Richard H. Thaler, *Libertarian Paternalism Is Not an Oxymoron*, 70 U. CHI. L. REV. 1159 (2003); and Richard H. Thaler & Cass R. Sunstein, *Libertarian Paternalism*, 93 AM. ECON. REV. 175 (2003).

¹⁵⁵ . Jeremy A. Blumenthal, *Emotional Paternalism*, 35 FL. ST. UNIV. L. REV. 1 (2007).

¹⁵⁶ . See generally RICHARD H. THALER & CASS R. SUNSTEIN, *NUDGE: DECISIONS ABOUT HEALTH, WEALTH, AND HAPPINESS* (2008).

¹⁵⁷ . Thaler & Sunstein, *supra* note 154, at 179.

¹⁵⁸ . Colin F. Camerer, et al., *Regulation for Conservatives: Behavioral Economics and the Case for "Asymmetric Paternalism,"* 151 U. PA. L. REV. 1211 (2003).

¹⁵⁹ . *Id.* at 1212.

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As expected, many scholars have put forth anti-paternalism arguments.¹⁶⁰ A detailed evaluation of this important debate is the subject for another time.¹⁶¹ But, three quick points are worthy noting here. First, I was once asked upon the start of a talk with discussion of some ideas related to paternalism,¹⁶² why the word "maternal" typically evokes positive connotations and emotions, but the word "paternal" usually evokes negative connotations and emotions. A member of that audience suggested that one reason is that mothers frame their interventions (e.g., "let me help you do that") differently than fathers do (e.g., "do this and don't do that"). Another member of the audience volunteered that dads and moms generally engage in different substantive types of parental interventions, perhaps due to a traditional sexual division of labor or outdated gender stereotypes.¹⁶³ Surely, differing perceptions about what being maternalistic versus being paternalistic mean reflect cultural and social conventions about gender roles. Interestingly, an on-line dictionary and thesaurus defines maternalism as "1. the quality of having or showing the tenderness and warmth and affection of or befitting a mother" and "2. motherly care; behaviour characteristic of a

¹⁶⁰ . See e.g., Claire A. Hill, *Anti-Anti-Anti-Paternalism*, 2 N.Y.U. J.L. & Liberty 444 (2007) (considering and rejecting arguments for libertarian paternalism based upon findings that people sometimes lack self-control and make mistakes); Gregory Mitchell, *Libertarian Paternalism Is An Oxymoron*, 99 Nw. U. L. REV. 1245 (2005) (arguing that upon close inspection the attempt by libertarian paternalism to reconcile the traditionally opposed concepts of libertarianism and paternalism fails to succeed); Douglas Glen Whitman & Mario J. Rizzo, *Paternalist Slopes*, 2 N.Y.U. J.L. & Liberty 411 (2007) (arguing that recent versions of paternalism exhibit considerable theoretical and empirical vagueness, therefore making them vulnerable to slippery slope concerns due to altered economic incentives, biases toward simple principles, deference to perceived authorities, enforcement needs, and reframing of the status quo); Glen Whitman, *Against the New Paternalism: Internalities and the Economics of Self-Control*, POL'Y ANALYSIS, Feb. 22, 2006, at 1 (critiquing paternalism that is based upon the notion that a person consists of multiple selves).

¹⁶¹ . Peter H. Huang, *Law and Human Flourishing: Happiness, Affective Neuroscience, and Paternalism*, Presentation to the Law and the Emotions Conference, University of California, Berkeley, School of Law (Feb. 9, 2007).

¹⁶² . Peter H. Huang, *Incorporating Emotional Rational Actors into Behavioral Law and Economics: Implications for Securities Regulation and Family Law*, Remarks at the Olin Law and Economics Workshop, Georgetown University Law Center (Feb. 12, 2001).

¹⁶³ . See, e.g., RHONA MAHONY, *KIDDING OURSELVES: BREADWINNING, BABIES, AND BARGAINING POWER* (1996).

mother; the practice of acting as a mother does toward her children."¹⁶⁴ In contrast, another on-line encyclopedia defines paternalism, as "the interference of a state or an individual with another person, against their will, and justified by a claim that the person interfered with will be better off or protected from harm."¹⁶⁵ Therefore, in what follows, the word paternalism is utilized following convention, but a better gender-neutral term is that of parentalism, which should evoke more neutral connotations and emotions than either maternalism or paternalism does.¹⁶⁶

Second, a recent and robust defense of so-called light paternalism embraces the metaphor of therapy for policies attempting to steer people towards better decisions without actually imposing those decisions, thus preserving individual autonomy by not being heavy-handed.¹⁶⁷ If we are to seriously think of (behavioral) economists as therapists who have a professional code of ethics, then it is disturbing that part of the paper vigorously defending light paternalism is a section entitled "Harnessing Decision Biases to Improve Decision Making"¹⁶⁸ in which there is a discussion of "a variety of behavioral regularities that can be exploited by the economist/therapist."¹⁶⁹ The notion is aptly summarized by the first sentence of that section: "[r]edirecting patterns of behavior that usually hurt people to help them instead is a common pattern among light paternalistic interventions."¹⁷⁰ But, there is a clear danger in advocating that therapists exploit their clients, even if that exploitation is for the good of their clients. An alternative view of policy as therapy that resonates with positive psychology is to design policy that

¹⁶⁴ . WorldWeb Online, <http://wordwebonline.com/en/MATERNALISM> (last visited June 3, 2008).

¹⁶⁵ . Stanford Encyclopedia of Philosophy, <http://plato.stanford.edu/entries/paternalism>; see also Peter Suber, *Paternalism*, in *PHILOSOPHY OF LAW: AN ENCYCLOPEDIA* 635 (Christopher B. Gray ed., 1999) (stating that paternalism "comes from the Latin *pater*, meaning to act like a father, or to treat another person like a child.").

¹⁶⁶ . Suber, *supra* note 165, at 632 (observing that parentalism "is a gender-neutral anagram of 'paternalism'").

¹⁶⁷ . George Loewenstein & Emily Haisley, *The Economist as Therapist: Methodological Ramifications of "Light" Paternalism*, in *THE FOUNDATIONS OF POSITIVE AND NORMATIVE ECONOMICS: A HANDBOOK* 210, 215 (Andrew Caplin & Andrew Schotter eds., 2008).

¹⁶⁸ . *Id.* at 225-29.

¹⁶⁹ . *Id.* at 225.

¹⁷⁰ . *Id.* at 225.

draws upon the new field of positive therapy.¹⁷¹

Third, a standard if not the prototypical example of so-called asymmetric, libertarian, light, or soft paternalism is that of defaults. The story told is that because anyone can and is free to opt out of a default, there is no restriction of anyone's freedom of choice and not much cost in moving to a non-default choice, especially if people can opt out of a default by one click of a computer mouse or check of a box. But, there is a lot of empirical behavioral economics and psychological evidence across many decision-making domains that defaults matter because they are sticky. We stick to defaults because we are lazy, mindless, or perhaps believe defaults possess a particular legitimacy. Hence the claim that defaults do not restrict anybody's choices is at best just plain factually incorrect and is at worst simply disingenuous whether intentional or not. As a robust empirical matter, defaults only do not restrict how a small number of people choose, namely those few people who actually opt out of those defaults. Now it might be hard to avoid having defaults, that is force people always to actively choose, but all that means is that the choice of which defaults to have in place is often quite contentious and therefore will be hotly contested.

CONCLUSIONS

Legal policy obviously can help people in their individual quests for authentic happiness.¹⁷² There is also an already large and growing body of evidence that people make systematic mistakes in predicting what makes them happy.¹⁷³ Recent affective neuroscience research provides evidence of a disjunction between two brain systems, those

¹⁷¹ . STEPHEN JOSEPH & P. ALEX LINLEY, *POSITIVE THERAPY: A META-THEORY FOR POSITIVE PSYCHOLOGICAL PRACTICE* (2006).

¹⁷² . See Margit Tavits, *Representation, Corruption, and Subjective Well-Being*, 41 *COMP. POL. STUD.* 48, 48 (2008) (finding that high levels of corruption lead to significantly lower levels of reported SWB based upon cross-national data from sixty eight countries and survey data from sixteen European democracies).

¹⁷³ . See generally Samuel R. Bagenstos & Margo Schlanger, *Hedonic Damages, Hedonic Adaptation, and Disability*, 60 *VAND. L. REV.* 745 (2007); DANIEL GILBERT, *STUMBLING ON HAPPINESS* (2006); Jeremy A. Blumenthal, *Law and the Emotions: The Problems of Affective Forecasting*, 80 *IND. L.J.* 155 (2005); Bruno S. Frey & Alois Stutzer, *Mispredicting Utility and the Political Process*, in *BEHAVIORAL PUBLIC FINANCE* 113 (Edward J. McCafferey & Joel Slemrod eds., 2006).

