

A REFLECTION ON THE OFTEN UNEXPECTED CONSEQUENCES OF THE CREATION OF A PERPETUAL TRUST

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During the last ten years, many attorneys and **financial** planners, in the United States, have recommended that their clients create perpetual trusts. These trusts are frequently referred to as “Dynasty” trusts. While there are a number of individual and family reasons that might propel an individual to create such a trust, in large measure the motivating factor has been to avoid the Federal Generation Skipping Tax on the assets of trusts for later family generations. Spurred by this method of tax avoidance a cottage industry in perpetual trusts has come into being. It has now reached sufficient scale that a number of States interested in competing for this trust business have eliminated their “Rules Against Perpetuities”¹ to permit the creation of perpetual trusts within their boundaries. In doing so they joined a number of states which had never adopted this “Rule”. These new statutes are overturning some 300 plus years of statutes and common law precedents in England and America founded on the principle that trusts for individuals, as opposed to charities, should not be permitted to last indefinitely. It is my observation that this emphasis on tax saving as the motive for the creation of perpetual trusts and the resulting changes in statutory and precedential law to meet this motive have frequently obscured critical thinking by planners and trust founders on how the lives of the beneficiaries living within such trusts will be affected by their existence and of how society as a whole may view the existence of such trusts. In this Reflection I will endeavor to bring to light these issues so that planners and founders may consider them in determining how the perpetual trusts they are intending to create will be of the greatest benefit to the individuals for whom the trusts are being created.

Before moving to the specific issues of how a perpetual trust affects the life of its beneficiaries, I believe a review of the history of perpetual trusts will be helpful. The trust, as we know it, evolved in England and on the European continent, particularly in France, out of the Roman idea of “use.” This is the legal concept that provides that a person may have the use of a thing, or res, for a period of time without also having the

underlying ownership of that thing. This idea, took root in the English and French common laws, as the trust and by the time of the Crusades, was well established in land titles. At this time the law made no distinction regarding the terms of trusts thus permitting trusts to last indefinitely or, if you will, perpetually. Rather quickly the nobility of England and France saw that by placing their lands in perpetual trusts they could, theoretically, perpetuate their class position indefinitely. It, therefore, became common that much of England's and France's land found its way into perpetual trusts.^[2] Unfortunately, for the economics of the countries where this system developed there were two unintended consequences. First, the land in trust could, often, not be alienated even though the noble family had need of money or in some cases had disappeared. Second, such lands were often poorly administered as they had no owner who cared about their improvement since he or she would never own them outright. Many life tenants sought to receive the maximum annual return possible without regard to such a policy's long-term effect on the land's productivity. The result of these unintended consequences was that a portion of England's and France's wealth was seen by its rising commercial classes to be wasted. Equally, those who had money and the creativity of the entrepreneur were frustrated as they could not buy and improve this land, thus further exacerbating the perceived negative affect of the perpetual trust on the economy. In addition the suspension of vesting of property, as a result of perpetual trusts, often lead to certain members or even whole generations of noble families becoming "trust funders" and falling into the same lassitude or remittance addiction as we often see today in some of the third and fourth generation members of the great families of 19th century Industrial America. Often then, as now, the cause of this lassitude resulted from the fact that no member of that "noble" family ever owned or would own the capital locked up in the trust from which he or she received their monthly stipends nor would any family member ever be required to learn to manage these assets. In fact work in commerce of any kind was seen as beneath the dignity of such personages. The result of these perpetual trusts in England was that by the end of the 17th Century, the perpetual trust came to be seen by lawyers, merchants and economists as a substantial drag on commerce (since so much land could not be purchased or sold) and as an abuse of the original idea of trust, that, a period of suspension of ownership while another "used" something could be beneficial to

commerce. The result of these concerns was the adoption in England, in the late 1600's, of the Rule Against Perpetuities. At the time this "Rule" first by case law and then by statute was adopted, lawyers, judges, economists, and parliamentarians, therefore, saw it as a great reform^[3].

The history of the perpetual trust in France is also instructional. France had, historically, a well understood perpetual trust provision. France, however, until its revolution in 1789 made no such reform as the English made with their Rule Against Perpetuities. In France the absence of such a reform and the resulting restriction on the growth of France's economy, caused by the inability to purchase and sell land, slowed France's development as a modern economy. The perceived abuse of the economy, through the use of the perpetual trust by the nobility, was seen by Napoleon and the jurists who advised him to be so serious that in 1805 in the Code Napoleon he eliminated the trust altogether in France. Today a number of French lawyers are attempting to reintroduce the trust through a legal entity called the "fiducie," as they feel the lack of this vehicle has held back their clients ability to properly plan their estates. None of the advocates of the "fiducie" interestingly are suggesting such an entity be perpetual.

So what can we say historically about perpetual trusts? We can say that at least at one time in the evolution of the law of Trusts, the perpetual trust existed, had a history that we can study, and that that history shows that such trusts were perceived by society to have had a significant negative impact on the market place and to have perpetuated a non-productive class of people. As to the first of society's objections to the perpetual trust, there is no doubt about such trusts historically negative impact on land sales and acquisitions.^[4] As to the second, the histories of France and Russia, have not been kind to a class of people who society perceives as never needing to earn their own livings, and, particularly unkind to those who enjoy such a status just because an ancestor who they often never even know, but happen to have luckily chosen, created a perpetual trust for his or her descendants.

As I move toward a discussion of the supposedly new idea of a perpetual trust, I am reminded of the extremely wise admonition by George Santayana that, "those who cannot remember the past are condemned to repeat it." I wonder how many of the multitude of financial planners who glibly advertise "Dynasty" trusts as a product and

rush them off the shelf to solve a tax problem have studied and know the history of the “first” chapter in the life of the perpetual trust as discussed above? I wonder how many of them understand that many previous societies have found the creation of a perpetual leisure class unacceptable? It is not my purpose in this article to offer an opinion on these questions but rather to raise them so that, we as planners, can meet this wise man’s admonition about “remembering the past” and form a thoughtful view about them. If we do so I believe that we can best advise our clients on the possible outcomes of the plans they are creating. I also feel obliged to observe, that as I write this Reflection, both the House of Representatives and the Senate have passed and the President has signed a bill which will eliminate the Federal Generation Skipping Tax. I wonder whether the issues of the past history of the perpetual trust and the issues I am about to discuss of beneficiary’s lives within such trusts might not have caused many founders to pause and think before they created this perpetual legal vehicle, especially had they not been driven to solve a tax problem that may very well not exist for the trust’s lifetime.

Turning now to the issues affecting the life of a beneficiary of a perpetual trust, let’s first look at three issues that would not normally be first thoughts in the minds of tax planners but are often the first thoughts of caring professionals concerned about the long term effects of their actions on the lives of their clients; on the families of which they are a part; and on the systems within which they live and operate. Heisenberg’s law of unintended or unexpected consequences; the interest of society in the outcomes of the individual decisions, of its members and society’s ability to impact these decisions; and The Second Law of Thermodynamics, the law of entropy. Werner Heisenberg suggested that modern physics informs us that there are often unintended or unexpected consequences of acts the universe performs. Increasingly modern economists, social scientists and psychologists are seeing this same reality in their fields and applying Heisenberg’s principle to them. The ancient Greeks understood this reality long before Heisenberg and his modern disciples and expressed it when they were preparing young men and women to enter the service professions by admonishing them to “do no harm.” The ancient Greeks recognized that rushing to do good before understanding the whole system and all the issues within it that relate to the problem attempting to be solved often led to doing more harm than good. I would synthesize Heisenberg and the Greeks then

by suggesting that as there are often unintended or unexpected consequences of what we do and some of what we do may do harm, that, as we begin any planning project we begin with the rule “first be sure to do no harm before you attempt to do good.” This rule is particularly applicable to the creation of a perpetual trust. Why? Because the planner is mortal and the trust he or she is creating is theoretically immortal. Certainly, in such a case many questions regarding the natures and experiences of the descendants of the trust’s founder, and the environment in which they and the trust will exist will not only not be known or discernable by the founder they will also not be known by or discernable by the planner. The planner in assisting the founder in creating such a trust must recognize that he or she will be significantly impacting the lives of each of the trustee’s beneficiaries, as each beneficiary in turn integrates the trust’s existence into his or her own. I would suggest that it ought to be a humbling experience for trust planners and trust founders to imagine what life might be like for these beneficiaries even just two or three generations from those alive today much less the seventh, eighth, and ninth and those generations thereafter. Perhaps, the admonition of the Iroquois elders to each other as they began important tribal work that “it should be our hope that the members of the tribe seven generations from now will honor us for the care and thoughtfulness we exercise in our decision making today”, would be helpful to planners and founders of perpetual trusts as they begin their work. Rightly, the creation of a perpetual trust affecting so many generations of a family ought to be done and entered into with great humility and plenty of patience. The thought “hasten slowly” comes to mind.

Moving to planning for a perpetual trust’s creation, I strongly suggest that every planner carefully consider all the possible impacts the trust may have on the lives of its beneficiaries; particularly its unintended consequences and bring those thoughts to the attention of the trusts potential founder. By so alerting the trust’s founder the planner will be trying to eliminate to the greatest extent possible the negative impact the trust might have on these beneficiaries and meet his/her highest responsibility to the founder and the beneficiaries to “Do No Harm.” Strangely, in the rush to get the tax work done and to “get the papers out,” all too often I observe that the trust’s impact on the lives of its beneficiaries is never discussed. This failure to take the time to consider these issues may be, from the founder’s standpoint, and his or her intention to benefit the beneficiaries, by

enhancing their lives, the greatest unintended mistake. Why? Because it may lead to the creation of a trust which diminishes the lives of its beneficiaries. Should such a result occur the founder would have been deprived by the trust's planner of the advice he or she most needed in attempting to accomplish his or her enhancement goals.

We as planners owe a duty to our clients to bring all the issues that may impact a client's decisions to that client so that he or she may make the most informed decision. It is my hope that when one of our clients is thinking of creating a perpetual trust that it will be such issues:

- (1) as its possible negative impact on its beneficiaries by causing them to become "remittance addicted," and
- (2) by its depriving them of a chance to dream and the freedom to bring their dreams to life,

that will be the issues we will chose to discuss most deeply with him or her. Why? Because they are the issues where the greatest risk of unintended negative consequences lie to the lives of the beneficiaries and to the enhancement goals of the trusts' founder.

Turning to the second of my questions; society's interest in the decisions its individual members make. As I explained earlier, English, French and Russian societies at earlier periods of history found the perpetual trust and the perpetual leisure or non-working class it created unacceptable. In America that same anxiety about the existence of such a class led to the adoption, in the Colonies, first by inheritance of the English common law and then by individual State statutes, of Rules Against Perpetuities. These statutes expressed society's view that the suspension of the ownership of property perpetually was an unacceptable hindrance to the economy and to the movement of wealth within society as a whole. The "Rule" may also express a concern in the society as a whole about a perpetually landed class which did not need to work. Again, as above, I offer no opinion on the correctness of any earlier societies views on these subjects. I simply wish to point out to planners that this history exists and in the case of France and arguably Russia, helped lead to revolutions. I believe it is our duty as planners to advise our clients of these histories so that they may consider all points of view before acting to create an entity which at other times in history certain societies have seen as unacceptable. I believe, it is also important, to consider that no society known to history

has ever accepted within its midst a perpetually leisured or non-working class. I must say, as a historian and amateur sociologist, I cringe when I see those masterful statistical analyzes created by trust planners projecting the enormous buildups of wealth within these perpetual trust entities, all designed to encourage potential trust founders to get on with buying such a product from the planner. I wonder whether the planner is currying favor with the founders ego by suggesting the creation of such a monument to the founder all the while disguising this fact by suggesting how happy the beneficiaries will be?⁵¹ In any event the history of the evolution of modern human societies and their children, the cultures and civilizations formed within them, shows that society has never permitted such “monuments” to last very long; all as reflected in the history of the rise and fall of families and dynasties and in poetry, remember “Ozmandias”? I suggest that society, like biology, seeks creation and change to meet new circumstances and to allow new forms of community to arise as Heraclitus said, “Everything is in flux”. I would suggest that society dislikes the profound order found in monuments. Given this history, I would suggest that society’s concerns have to be taken into account in guiding founders on the long term likelihood that their planners projected monumental financial results will turn out to be true. Finally I caution many readers of this piece who are now just beginning to imagine life without Federal Estate Taxation and Federal Generation Skipping Taxation to consider how likely it is that American society will bring both of these taxes back if it perceives that they are needed as a way to avoid a perpetual leisure or non-working class. Coming again to the law of unintended consequences, are we, as planners, recreating the environment within American society for the re-enactment of the Federal Estate Tax and Generation Skipping Tax sometime in the future by the creation of perpetual trusts?

Finally, the third issue, the Second Law of Thermodynamics, the law of entropy. This law of physics reminds us that everything that is material will over time be frictioned away by entropy. Physics teaches that energy forms materiality and materiality through the action of entropy dematerializes back to energy. I am not a physicist and, I apologize to the readers who are, for this paraphrase of this deeply complicated concept, however, I hope they will accept it as sufficient for other non-physicists to appreciate what entropy is and how entropy works. What does the law of entropy have to do with

perpetual trusts? I suggest everything since it suggests that anything manmade that we believe is perpetual is an illusion, a mirage, or whatever other term for false vision you may prefer. This law of physics teaches us that nothing is perpetual except perhaps the never ending process of energy in flux; order to chaos to order to chaos indefinitely. While it may be heartening to trust founders to think they are perpetually endowing the enhancement of the lives of their descendants, I strongly suggest that they be disabused of such an idea by a quick dose of the anti-toxin to these dreams, the law of entropy. Planners who pander to the hubris of their clients by suggesting the creation of a perpetual trust as a monument that will endure forever are pandering to their clients worst instincts. Rather bringing the law of entropy into the conversation brings both planner and founder back to humility and the awareness that in their work together toward the creation of a legal entity that will impact others lives and, particularly a perpetual trust with its intended extended period of life, they must be sure *They will do no harm before they try to do Good.*

I cannot urge more strongly that planners bring before and discuss with potential founders of perpetual trusts these three important realities:--

(3) There will be unintended consequences of this perpetual trust so: Have we considered as many possible outcomes of the creation of this trust as we can imagine with our greatest focus being on those that may decrease rather than those that increase the pursuits of individual happiness of the beneficiaries of the trust? Have we used the Seventh Generation wisdom of the Iroquois? Have we hastened slowly? Have we asked: "what harm will we do before we try to do good"?

(4) Society will have a view about and an impact on this perpetual trust, so: Have we considered what society's view and impact might be and have we considered it not just from the viewpoint that society is adverse to what we may first perceive as our goal of having a trust last perpetually but that perhaps society may have a valid point of view that might cause us to modify how we go forward? Have we at least considered that society as a system will in some way impact and even constrain our goals of having a trust last perpetually?"

(5) The law of entropy is alive and well and informs us that nothing material is forever so: “Have we brought this law of physics into our consciousness as we plan and have we imagined how it will impact the life and operation of the perpetual trust?”

Arguably most of the impacts of the three core questions set out above appear to be external forces bearing on the founder’s decisions regarding the perpetual trust. I would argue, however, that the most significant risk to the success of a perpetual trust (which I define as a trust that over a long period of time, actually enhances the lives of its beneficiaries) is internal. It is the risk, that because of a lack of internal governance of the relationship between the beneficiaries and the trustees the trust will not enhance the lives of its beneficiaries but rather will diminish them. I suggest the problem lies in Walt Kelly’s Pogo’s astute observation about much of the dysfunction in human behavior, which is that, “He went searching for the enemy and found it was us” in other words the trusts’ planners the trusts’ founders and its beneficiaries themselves are the cause of the trusts failure to prove enhancing to its beneficiaries. In my practice it is common to meet beneficiaries of trusts, who tell me that the trust has been a net negative in their lives. In an earlier book, *Family Wealth, Keeping it in the Family*; and in two papers, *The Trustee as Mentor*, published in the Chase Journal and *The Trustee as Regent Within A Family Governance System*, co-authored with Patricia Angus, I discussed at length the issues faced by beneficiaries of trusts. In those works I pointed out that the relationship between a trustee and beneficiary is like an arranged marriage since neither chooses the other when the relationship is formed. Necessarily, for Western Hemisphere readers, the audience for this paper, such relationships are likely to be volatile and not ones we would choose if given a chance. Certainly they would fail my test for any partnership, Can I be your partner? I also pointed out that in these relationships it is a rare beneficiary who has any training on how to be an excellent beneficiary. It is not, therefore, surprising that most beneficiaries do not govern this relationship well. Often in fact, the beneficiary has no real understanding of the roles and responsibilities he or she is to assume as a beneficiary and will be expected to perform in the beneficiary/trustee relationship. Almost never, in my experience can the beneficiary understand that he or she is expected

to comprehend that at the heart of this relationship is the concept that he or she should control this relationship without owning the underlying assets. Separate from the relationship difficulties and often, in my experience much more serious, is the very real possibility that the beneficiary will fall victim to becoming “remittance addicted”. This is a state of life in which a human beings whose human and intellectual capitals are in entropy. It is the life of a beneficiary of a trust where the individual is unable to imagine, metaphorically, a life without the check from the trustee at the beginning of the month. Such persons are seen by the psychological profession as exhibiting the same dysfunctional characteristics as persons addicted to alcohol, drugs, gambling, etc. Anyone who is addicted is by definition not free. It is hard to imagine that any founder of a perpetual trust, making a gift of love by transferring his or her ownership of financial capital into the care of a trustee for the purpose of enhancing the lives of the trust’s beneficiaries would choose to create an entity that might, and sadly often does, create exactly the opposite effect and outcome. Every trust perpetual or with a fixed term, carries with it the risk of this outcome for its beneficiaries. Planners who are seeking to truly guide their clients will always offer this enlightened and educated view of the possible outcome of trusts to their clients. The sharing of such views is particularly important in the case of perpetual trusts. Why ? Because the laws of demographic probability suggest that there will be a geometric increase in the possible beneficiaries of such trusts in each later family generation. Thus, through the normal birth rates expected within families such trusts are more likely to spawn such remittance addicted persons than fixed term trusts since more people over time will be exposed to the possibility of becoming so addicted. The potential founders of perpetual trusts are entitled to be made aware of this potentiality.

Another reality of trusts of all kinds is that many beneficiaries do not: (a) feel worthy of the gift of being a beneficiary and (b) find the trust a hindrance to their development, to their sense of how free they are to make their own life choices; and (c) to their sense of self-worth. While to the average person without a trust this may seem a strange thought, it is in fact one of the realities of trust life. Many beneficiaries feel that the trust saps them of creativity and of the excitement of creating something of their own. They sincerely wonder who they might be if the trust did not exist, would they be

happier, and would they be more esteeming of their own unique abilities and gifts. In addition they feel beholden to someone they, often, will never meet whose history they are expected to admire, appreciate and emulate. Why they say? “When it is only through a “DNA” shuffle that they bear any relation to him or her”. In fact they may be embarrassed by his or her history while being locked by the trust into it. Again, as in other parts of this paper, I take no view on the rightness or wrongness of beneficiaries views on this subject. It is rather my goal that these often expressed concerns of beneficiaries be brought to the attention of potential trust founders so they can include them in their thinking.

Yet another reality of trust life is non-mentoring as opposed to mentoring trustees. In my experience many trusts fail their founders hopes that they will enhance the lives of their beneficiaries because the trustees of such trusts themselves go into entropy. Often trustees fail to change with the times and bring outdated thinking to new problems. Worse some trustees begin to see themselves as the real owners of the trust’s property acting as if they are the founders alter egos rather than the beneficiary’s representatives, and begin to believe they know better than the beneficiaries how the beneficiaries should live their lives. They become unchosen parents and worse autocrats when in reality their role is to serve the growth and development of the beneficiaries as human beings and as intellectual creatures. Too often and especially in the later years of a long-lived trust when the founder is long dead and the trustees never knew him or her, the trustees begin to identify themselves and their stations in life by the trust’s assets and start doing and acting accordingly forgetting that they are the servants of the beneficiaries and of future generations of beneficiaries to come.

Turning now to special issues of trust governance posed by perpetual trusts. Thoughtful planners who suggest the formation of perpetual trusts and the founders who create them will realize that there is a heightened possibility of failed trust governance when the relationship between the beneficiaries and the trustee will last for a very extended period of time. All trust governance is at risk of failure on the beneficiary side by the beneficiary becoming remittance addicted and on the trustee side by the trustees falling into entropy and self-dealing. Unfortunately when a perpetual period is chosen for a trust these risks are heightened, since there is simply more time for the law of entropy

to work it's will in the beneficiaries' and trustees' negative experiences of the trust and of their relationship with each other. Happily today enlightened planners have an armentarium of planning antidotes to protect beneficiaries and trustees against failed trust governance. As many of these remedies are the subject of earlier pieces in the "Chase Journal" they are rightly not digested here. However, I believe one in particular is relevant here. I believe the most important antidote to failed trusts governance is selecting mentoring trustees who will actively work with the beneficiaries to achieve the founders' goals of enhancing the beneficiaries lives through the growth of their individual human and intellectual capitals. Unfortunately, nothing will protect beneficiaries from themselves if the law of entropy acting through the trusts negative forces have made them dependant persons, a process that non-mentoring trustees will always accelerate. Mentoring trustees working to create excellent relationships with their beneficiaries and beneficiaries working to become excellent beneficiaries in managing their relationships with their trustees have real possibilities of success. It is in the good management of these relationships that the trusts' purpose to enhance the lives of its beneficiaries' has a reasonable prospect of success. As the trustees and beneficiaries begin this process of self-government what are some of the outcomes for the beneficiaries they might consider so that the trust, whether perpetual or fixed term will provide the greatest enhancement for its beneficiaries' lives. I would suggest that beneficiaries and trustees begin by recognizing that philosophy teaches that for each beneficiary the goals:

- (1) of becoming fully self-aware and achieving personal freedom so as to be able to live an independent life
- (2) of achieving the fulfillment of his or her life's dreams through knowing and fulfilling his or her life's calling and
- (3) of being able to take full responsibility for his or her actions

are goals of high value and purpose. I would suggest that every effort by the trustees and the beneficiaries should be toward the end of achieving these results for the beneficiaries if the trust is to meet the founder's original goal that the trust enhance the life of each of its beneficiaries. I worry that in a perpetual trust the beneficiaries may say why should I worry about becoming an excellent beneficiary and about trust governance, and do all the hard work of making this relationship work, if neither I, nor my children nor my

descendants, in any generation, will ever own the assets? Why should I try to learn to be a good steward? Why should I work? Be an apprentice? Find my calling? When I can do nothing! Who will ask the beneficiary the questions that will help him or her understand that these questions must be answered if he or she is to achieve a full share of independence and self-worth? Let's hope that founders will be alerted to these questions and realities by their planners and both provide language for their beneficiaries within their trusts that raise these questions and select trustees prepared to engage with the beneficiaries to help them find individual answers to them that will lead to their trusts enhancing the beneficiaries lives as they intended.

Perpetual trusts, as do all trusts, have the capacity to be enhancing to their beneficiaries abilities to become self-aware and independent; to seek a calling; and to be able to take full responsibility for their actions or; to do nothing and become dependent with all the sadness such entropic lives engender. I am particularly concerned, however, about perpetual trusts because their earlier history suggests they may have a greater risk of leading to dependence than fixed term trusts. Whether my concerns will become reality will only be known many years from now when the second and third generations of beneficiaries of such trusts take their places. It is my hope that this article and the questions it poses will offer today's trust planners and trust founders food for thought about the impact on the lives of such trust's beneficiaries of the trusts they work together to create. Perhaps for some of these future beneficiaries the thought and time it takes to consider these questions will lead to their trusts enhancing rather than diminishing their lives. Should such a result be achieved by some perpetual trusts it is likely that these trusts' founders will have taken Santayana's admonition about the past to heart. In addition, I will feel that my work in writing this paper will in some small way have helped achieve these trusts founder's goal. The goal that through setting up such a perpetual trust they will make a gift of love to its beneficiaries, the multiple generations to come of their families. A gift that the trusts beneficiaries will perceive as the trust works to enhance their lives. Such a gift will give the beneficiaries real reason to honor and appreciate the depth of the founders vision.

Thoughtful giving begins with carefully considering whether a gift will do harm and then after considering all its possibly harmful affects whether it will do Good.

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^[1]The normal “Rule Against Perpetuities” as cited in Scott, '62.10: “No interest is good unless it must vest, if at all, not later than twenty-one years after some life in being at the creation of the interest...”

^[2]While not the subject of this article the perpetual trust was widely used by the Church to hold its land until in certain parts of England and France the Church became the largest land owner. As Europe's business environment modernized in the 15th and 16th centuries this fact caused much dissatisfaction with the Church secular rather than spiritual role. The resulting stultification of commerce, land being its principal medium, was seen by the Tudors in England, as highly prejudicial to England's development. As a result many people in the economic classes warmly welcomed Henry VIII's decision as part of his "Reformation" to sequester and redistribute church property as a necessary reform needed to accelerate the development of England's economy.

^[3]This article, *Wills, Trusts and Estates*, offers an excellent synopsis of the English legal history on this subject.

^[4]I am aware that some readers may feel that this history is not applicable to the modern economic environment where wealth is represented far more in movable than immovable property. This article is not the place for an economic debate. I will observe only that the trustees of nearly every trust are required by the State laws which govern trusts to be "prudent in the investments they make of the trust's assets". Equally they may make no investment that is not prudent. Creativity is defined, in the commercial area, as entrepreneuring and is all about taking risks. It is my view that creativity and the risks it entails is not included within these State law definitions of prudence and rightly so since it is someone else's assets which the trustee is administering. This reality proves unfortunate over time for trust beneficiaries. Why? because it is a simple fact of the law of competitive risk and reward that, overtime, the trustee carrying out his responsibilities to be prudent cannot take the risks that an entrepreneur using his or her own resources can take, and so, overtime, the return achieved by the trustee in competition within the marketplace with all other investors should and will be less. This logic carried out over the multiple generations assumed by a perpetual trust suggests strongly that, assuming the market is neutral, a trust's assets will fail to grow at the same rate as the market as a whole. Should this logic be true then such trusts will eventually find themselves in the same negative position commercially as those which owned but could not trade in land. At a later part of the main article, I will discuss entropy. Please apply the logic I express then to this problem of the risk and reward in the management of assets perpetually in the hands of non-entrepreneurial persons. My father always advised his business owner clients that while putting the shares of their companies into trust might appear to be the best solution to their desire for their company's perpetuation it was his experience that trustees, who had not elected to invest in the company, but, rather had received these shares on the creation of the trust, made poor shareholders since they hadn't made the same risk taking investment decisions that the best shareholders make. He would also add that since trustees are obliged by law to adopt a policy of diversification of risk, how well could they be expected to achieve the Grantor's objectives in the face of the law's demands? Of course "drafting" may help but in the end judges measuring trustee performance will have the benchmarks of prudence and diversity as their measuring

sticks. I suggest that these are very relevant points to consider in assessing the likely success today of perpetual trusts achieving long-term market success in the light of history's measure of them and our current knowledge of how the market works.

^[5]I also wonder whether these planners have studied Aristotle's view of how difficult the journey is for Western man to be happy and how much of that journey is about knowing one's self, finding useful work in calling and living out one's own dream, and how little is about inheritance of other dreams as reflected by such monuments? I suggest Confucius, Socrates, The Buddha, Gandhi, and many 20th century figures like Jung, Maslow and Erickson have much also to say about this journey, each of whom in his own way comes to much the same conclusion about what processes enhance people's lives and which diminish them.