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THE HEILIGENSTADT TESTAMENT: BEETHOVEN'S THERAPEUTIC ESTATE PLANNING EXPERIENCE

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This contribution was written by guest author Mark Glover. Mr. Glover is a Teaching Fellow and Assistant Professor of Professional Practice at Louisiana State University's Paul M. Hebert Law Center. This post is based on his articles A Therapeutic Jurisprudential Framework of Estate Planning, 35 Seattle. U. L. Rev. 427 (2012) and The Therapeutic Function of Testamentary Formality, 61 U. Kan. L. Rev. (forthcoming).

The estate planning processes can be unsettling. Because the preparation of an estate plan and the implementation of that plan through the execution of a will and other estate planning documents necessarily requires the testator to acknowledge that at some point he will die, estate planning can be psychologically tumultuous.^[i] Indeed, few enjoy contemplating their own mortality,^[ii] and this reluctance to acknowledge the inevitability of death causes some to avoid the estate planning process altogether.^[iii] As Michele de Montaigne, the sixteenth-century essayist, explained, "You can frighten [ordinary] people by mentioning death...; and since it is mentioned in wills, never expect them to draw one up before the doctor has pronounced the death-sentence."^[iv]

Although the estate planning process can evoke unpleasant thoughts and emotions, it ultimately can have a therapeutic effect. Consider, for example, Ludwig van Beethoven's experience of executing a will. Beethoven, the great German composer and pianist, began to lose his hearing while in his mid-twenties. As a result of the fear that his worsening deafness would impede his musical career, Beethoven experienced severe despair and thoughts of suicide.^[v] With these concerns in mind, the composer traveled to the small Austrian town of Heiligenstadt in the spring of 1802 with the hopes that seclusion would prove therapeutic.^[vi] His time there not only influenced his future compositions but also inspired Beethoven to draft his will.^[vii] Known as the Heiligenstadt Testament,^[viii] Beethoven's will bequeaths his entire estate to his two brothers and extensively describes the psychological turmoil that he experienced as a result of his impaired hearing.^[ix]

Beethoven, for example, recalled instances in which others heard music and sounds that he could not, and he described the intense emotions evoked by these occurrences in his will. As he recounted, "[W]hat a humiliation for me when someone standing next to me heard a flute in the distance and I heard nothing or someone heard a shepherd singing and again I heard nothing."^[x] Beethoven's condition placed him on the brink of suicide, as the composer described: "Such experiences brought me close to despair; a little more of that and I would have been at the point of ending my life."^[xi] Similarly passionate descriptions of Beethoven's anguish fill the text of the Heiligenstadt Testament.^[xii]

Fortunately, the expression of these thoughts and feelings through the exercise of his testamentary power was therapeutic for Beethoven, as he overcame his suicidal compulsions and continued his life's work.[xiii] Indeed, one historian explains that "Beethoven's sheer act of writing the Heiligenstadt Testament...seems to have granted its author the will to go on with life, turning even the defeat of deafness into a victory of will." [xiv] As Beethoven's testamentary experience illustrates, the estate planning process provides the participant an opportunity for self-reflection and self-expression.[xv] This expressive quality of estate planning contributes to the overall therapeutic nature of the estate planning process and can help counteract the anxiety that accompanies the contemplation of mortality.[xvi]

In addition to this opportunity for self-expression, the estate planning process has a number of other therapeutic qualities. For example, the ability of the testator to direct how his property should be distributed after his death allows the testator to exercise autonomy over important and intensely personal decisions.[xvii] Additionally, the process also provides the testator an opportunity to consult an estate planning attorney, who can help prepare an estate plan that fulfills the testator's testamentary wishes and who can therefore serve as a therapeutic agent for his client.[xviii] In sum, a variety of aspects of the estate planning process can ultimately transform the unpleasant experience of preparing for one's death into a therapeutic experience.[xix]

Although the estate planning process can have both positive and negative psychological consequences, therapeutic concerns have largely been ignored in the evaluation of potential reforms of the law of succession.[xx] By contrast, the emerging field of therapeutic jurisprudence urges that these psychological qualities of the law should be weighed alongside other policy considerations when policymakers implement law reform. As Professor David Wexler, a major proponent of the field, explains, "[therapeutic jurisprudence] focuses on the law's impact on emotional life and on psychological wellbeing;" it "focuses our attention on this previously underappreciated aspect, humanizing the law and concerning itself with the human, emotional, [and] psychological side[s] of law and the legal process." [xxi] By turning policymakers' attention to these psychological concerns, the goal of therapeutic jurisprudence is not to ensure that the law is reformed in the most therapeutic manner but is instead to simply "bring[] to the table some of these areas and issues that previously have gone unnoticed." [xxii] With this goal in mind, scholars have applied the therapeutic jurisprudential framework to a variety of areas of the law, including criminal law and family law.[xxiii]

Because the estate planning process can raise a variety of psychological and emotional concerns and because they are frequently overlooked, the law of succession provides a ripe opportunity to expand the reach of therapeutic jurisprudence. Indeed, therapeutic jurisprudence can be used to analyze a number of areas of the estate planning process, including not the psychological effects of the law on the individual testator but also therapeutic issues related to those who stand to benefit from the testator's estate plan, such as his friends and family.[xxiv] In sum, therapeutic jurisprudence provides a new framework to evaluate potential reforms of the law of succession, a framework that encourages policymakers to consider the psychological and emotional aspects of the law and that ultimately seeks to maintain the overall therapeutic nature of the estate planning process.

[i] See Mark Glover, *A Therapeutic Jurisprudential Framework of Estate Planning*, 35 Seattle. U. L. Rev. 427, 434-38 (2012).

[ii] See Charles I. Nelson & Jeanne M. Starck, *Formalities and Formalism: A Critical Look at the Execution of Wills*, 6 Pepp. L. Rev. 331, 348 (1979) (“[F]acing the reality of death and its attendant consequences is one of the most difficult responsibilities in life.”); Thomas L. Shaffer, *The “Estate Planning” Counselor and Values Destroyed by Death*, 55 Iowa L. Rev. 376, 377 (1969) (“[D]eath is an unpleasant fact to modern man.”).

[iii] See Jesse Dukeminier, Robert H. Sitkoff & James Lindgren, *Wills, Trusts and Estates* 71-72 (8th ed. 2009).

[iv] Michele de Montaigne, *The Complete Essays* 93 (M.A. Screech trans., Penguin 1991).

[v] See Lewis Lockwood, *Beethoven: The Music and the Life* 118-21 (2005) (analyzing the text of the Heiligenstadt Testament).

[vi] See Alexander Wheelock Thayer et al., *Thayer’s Life of Beethoven* 303 (10th ed. 1991) (1921).

[vii] See Lockwood, *supra* note 5, at 121-22 (drawing connections between the Heiligenstadt Testament and Beethoven’s later work).

[viii] For an image of the original Heiligenstadt Testament see *id.* at 116.

[ix] See Tim Blanning, *The Triumph of Music* 99-100 (2008).

[x] Lockwood, *supra* note 5, at 119 (quoting the Heiligenstadt Testament).

[xi] *Id.* (quoting the Heiligenstadt Testament).

[xii] See *id.* at 118-21.

[xiii] See Barry Cooper, *Beethoven* 130 (2000) (“Beethoven’s decision to reject suicide and overcome his feelings of despair by writing them down [in the Heiligenstadt Testament], can be seen as a turning point in his life.”); Lockwood, *supra* note 5, at 115 (“[T]he confessional Testament becomes his central soliloquy in this personal drama, a means of rebuilding his shattered confidence and facing the bleak life of a lonely, socially alienated artist.”); Charles P. Mitchell, *The Great Composers Portrayed on Film, 1913 through 2002* 17 (2004) (“Simply expressing his deepest thoughts [in the Heiligenstadt Testament] had a therapeutic effect for the composer.”).

[xiv] Alessandra Comini, *The Changing Image of Beethoven: A Study of Mythmaking* 76 (2008).

[xv] *See* Glover, *supra* note 1, at 455-61.

[xvi] *See id.*

[xvii] *See id.* at 444-46.

[xviii] *See id.* at 446-50.

[xix] *See id.* at 443-61. The formal requirements of will-execution, such as the formalities that wills be written, signed, and witnessed, also contribute to the therapeutic nature of the estate planning process. *See* Mark Glover, *The Therapeutic Function of Testamentary Formality*, 61 U. Kan. L. Rev. (forthcoming).

[xx] *See* Glover, *supra* note 1, at 432-33.

[xxi] David Wexler, *Therapeutic Jurisprudence: An Overview*, 17 T.M. Cooley L. Rev. 125, 125 (2000).

[xxii] *Id.*

[xxiii] *See id.* at 128-29.

[xxiv] *See* Glover, *supra* note 1, at 467-70.