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ARTICLES

BEETHOVEN AND THE LAW: THE CASE OF THE NEPHEW

ELLIOIT M. ABRAMSON*

FROM 1815 TO 1821, Ludwig Van Beethoven (1770-1827), possibly the greatest composer of all time, was involved in a bitter custody battle with his brother Carl’s widow, Johanna, for the custody of his nephew, Karl, who was nine years old when the custody battle began. Numerous proceedings in the courts of Vienna, sometimes including personal appearances and testimony by Beethoven himself, occurred before the matter was ultimately resolved.¹ In the course of the struggle, Beethoven resorted to legal counsel and to personal, out-of-court meetings with judges and other influential officials. The matter became so important to the composer that his last ten years were dominated by an obsessive devotion to his nephew and by the bitter struggle with his sister-in-law to obtain sole legal responsibility for the boy.²

The infinite gradations and levels of the human spirit which Beethoven reached and expressed in his immortal music surely merit his being deemed a great humanist—indeed, one of the quintessential humanists. Study of his involvement in this lengthy and tortuous legal process provides a glimpse of this humanist in the toils of the law and his reactions to the structures and institutions of the legal process.³

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1. The actual transcripts of the hearings before the Landrechete and the Magistrat were not examined by this author. The transcripts can be found in appendix III of volume IV of the German edition of A.W. THAYER, THE LIFE OF LUDWIG VAN BEETHOVEN (1960).
3. See generally G. MAREK, BEETHOVEN: BIOGRAPHY OF A GENIUS 488-525 (1969). Ironically, Beethoven’s struggle for his nephew inspired his artistic expression in his later years:

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From its inception, the law as a comprehensive mechanism for harmoniously regulating human behavior in groups has drawn criticism as insufficiently humanistic, and blatantly inhumane and barbarous. Beethoven's extended episode with the law, pitting the transcendent humanist against the "banalities" of technical, formal, and orderly procedures may be helpful in illuminating and evaluating the various aspects of Beethoven's struggle with the law for custody of his nephew.

Before reviewing the actual struggles in the composer's legal battle, a word about what was at stake for Beethoven may be helpful. Realizing and expressing his personal humanity more fully and sentiently than he had in his previous forty-five years seems to be what he was striving for in seeking custody of Karl. It appears that he was quite desperate for such fulfillment through gaining Karl as his "family." Although numerous flirtations, relationships, and liaisons with women are insinuated and suggested by documentary evidence relating to Beethoven's life,4 he never married and consequently never established himself in the typical domestic situation with wife and children.5 He seemed to feel a flagrant omission in his affective life as a result. As much as he poured the greatness of his genius and the fiery love in his soul into his inspirational masterpieces, there had not been another specific human being on whom he could lavish such tenderness and passion in a continuing relationship.6 Acquiring custody of Karl was to remedy this for him.7 Sullivan describes the emotional attachment to Karl thus:

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he exhibited these traits... in such naked, violent form that we are sometimes led momentarily to question his sanity, in the generally accepted sense of that word. In fact, however the primitive nakedness and immediacy of Beethoven's emotions, and his complete inability to disguise or veil them in any way, were assets to him as an artist and form an important element in the appeal of his music to unsophisticated music-lovers all over the world.

M. COOPER, supra note 2, at 29.

4. See generally G. MAREK, supra note 3, at 219-315.

5. Beethoven wrote in his journal that: "Love alone—yes only love can give you a happier life—O God—let me—let me finally find one—who will strengthen me in virtue—who will lawfully be mine." J.W.N. SULLIVAN, BEETHOVEN, HIS SPIRITUAL DEVELOPMENT 183 (1927).

6. One author describes Beethoven's emotional struggle for guardianship of Karl:

In the course of the formation and dissolution of this fantasy family... Beethoven learned something of the nature of parenthood and touched regions of experience from which he had hitherto been excluded. The appropriation of his nephew represented the distorted form through which Beethoven shattered the frozen patterns of a bachelor existence and experienced the passions and tragedies of deep human relations.


7. Solomon describes Karl as Beethoven's savior: "Beethoven became increasingly dependent upon his nephew... Beethoven received from the boy the protective warmth of family
Into this one narrow channel was poured Beethoven’s wealth of emotion; from this one being he demanded the love and sympathy that had been denied him. . . . Beethoven’s . . . love for his nephew was merely a blind, irrational, pitiful attempt to make at least one point of contact with that warm human world from which he was shut out.  

I. THE FACTS

In November of 1815, Beethoven’s brother Carl made a will two days before he died. In this will, he appointed Beethoven “guardian” of his son Karl. This was done in the hopes of obtaining financial help from Beethoven for his son as well as to protect the boy from Johanna’s financial ineptitude. But the first sentence in Carl’s will read: “Along with my wife I appoint my brother Ludwig Van Beethoven co-guardian.” The phrase “Along with my wife” and the prefix “co-” were then crossed out. Apparently, Beethoven forced his brother to make these deletions. Beethoven remarked in a note that he saw the original will but “passages had to be stricken out. This I had my brother bring about since I did not wish to be bound up in this with such a bad woman in a matter of such importance as the education of the child.”

After amending his will, Carl appears to have been troubled by the fact that Beethoven wanted to take Karl all to himself and withdraw the child from his mother. Carl had a codicil drawn up which indicated that the boy should not be taken away from his mother and that the guardianship should be exercised by Karl’s mother as well as Beethoven. In the codicil, Carl wrote: “God permit [my wife and brother] to be harmonious for the sake of my child’s welfare.”

Immediately after Carl’s death, Beethoven and Johanna were made co-guardians. Four days after his brother’s death, Beethoven submit-
ted a petition to the Imperial Royal Landrechete, the court of nobility, requesting that the guardianship be transferred to himself alone. On December 13, Beethoven declared to the court that he wanted sole guardianship because he could cite cogent reasons why Johanna should be entirely excluded from guardianship. On December 15, the court ordered Beethoven to produce such reasons, failing which the will—including the codicil—would be carried out as originally written. Knowing that Johanna had been accused of some criminal activity in 1811, Beethoven applied to the Magistrat (the court which dealt with political, civil, and criminal cases of commoners) of Vienna for a copy of legally attested charges against Johanna. The Magistrat informed the Landrechete of such charges. The criminal activity involved a house arrest of Johanna for embezzling money from her husband. Without Beethoven’s influence on the Landrechete, this charge would probably not have been enough to result in removing Karl from Johanna’s guardianship. On January 9, 1816, the Landrechete announced a decision entirely in Beethoven’s favor. On January 19, Beethoven appeared before the assembled council and took solemn vows as sole guardian of the child.

When Johanna kept visiting Karl at the school at which Beethoven had matriculated him, the school director wrote to Beethoven asking for a court order forbidding her to interfere. Beethoven consulted a lawyer, applied to the Landrechete, and was granted an injunction under which Johanna could see Karl only with Beethoven’s consent. Notwithstanding Beethoven’s moral certitude, the exclusion of the child’s mother did cause him feelings of guilt which were reflected in his diary entries:

I have done my part, O Lord! It might have been possible without offending the widow, but it was not. Only Thou, Almighty God, canst see into my heart, knowest that I have sacrificed my very best for the sake of my dear Karl: bless my work, bless the widow! Why cannot I obey all the prompting of my heart and help the widow?

18. Id. at 495.  
19. Id.  
20. Id.  
21. Id.  
22. Id.  
23. M. SOLOMON, supra note 6, at 233.  
24. M. COOPER, supra note 2, at 23.  
25. G. MAREK, supra note 3, at 496.  
26. Id.  
27. Id. at 499.  
28. Id.
Thou seest my inmost heart and knowest how it pains me to be obliged to compel another to suffer by my good labors for my precious Karl!\textsuperscript{29}

Johanna, thinking she had amassed enough evidence against Beethoven's handling of the child to at least diminish Beethoven’s authority and perhaps wrest the child from him altogether, made two petitions to the Landrechete.\textsuperscript{30} In the first petition, which was unsuccessful, Johanna claimed that Beethoven was unable to be a proper guardian because he was deaf and could not communicate with the child, was in ill health, and had poorly and planlessly handled Karl's education; she argued that the child should be reared by his mother.\textsuperscript{31} Hearings began in September of 1818 and were dismissed by the court on September 18.\textsuperscript{32} On September 21, Johanna again petitioned the court, this time for permission to place the boy in the Imperial Royal Seminary.\textsuperscript{33} She and Beethoven were summoned to appear in court on September 23.\textsuperscript{34} Beethoven prepared a full response to the charges, stating, \textit{inter alia}, that communications between him and his nephew were carried on with great ease, that his health was never better, and that Karl's school report was satisfactory.\textsuperscript{35} On October 3, Johanna's petition was rejected by the court.\textsuperscript{36}

In December of 1818, one of Beethoven’s servants reported that Karl had been abusive to the servants and that he had stolen some of their household money in order to buy sweets.\textsuperscript{37} Beethoven became enraged with his nephew, and Karl ran away to his mother's house.\textsuperscript{38} When Beethoven learned of this he became very upset and tearfully cried out: "He is ashamed of me!"\textsuperscript{39} Beethoven went to Johanna's house to ask for the boy, and Johanna informed him that she would bring Karl back that evening.\textsuperscript{40} Fearing that she planned to smuggle the boy out of the country, Beethoven enlisted the aid of the police who brought Karl back.\textsuperscript{41}

\textsuperscript{29} M. Solomon, \textit{supra} note 6, at 252.
\textsuperscript{30} G. Marek, \textit{supra} note 3, at 505.
\textsuperscript{31} Id.
\textsuperscript{32} Id.
\textsuperscript{33} Id.
\textsuperscript{34} Id.
\textsuperscript{35} Id. at 506.
\textsuperscript{36} Id.
\textsuperscript{37} E. Sterba & R. Sterba, \textit{supra} note 10, at 140.
\textsuperscript{38} Id.
\textsuperscript{39} Id. at 141.
\textsuperscript{40} Id.
\textsuperscript{41} Id.
Karl’s running away gave Johanna new reason to apply to the Landrechete, and she did so on December 7, again requesting that her son be sent to the seminary.\textsuperscript{42} Three days later, she submitted a letter from the school master purporting to show that she was limited to visiting her son once a month, “like a thief.”\textsuperscript{43} She gained the assistance of a relative, Hotschevar, who was a clerk for legal matters, and who testified as a character witness on Johanna’s behalf.\textsuperscript{44} He acknowledged in the petition he drew up and submitted to the Landrechete that Johanna had once been judged guilty of moral delinquency.\textsuperscript{45} Hotschevar asserted to the court, however, that this long ago offense should not justify an illegal refusal to allow a mother contact with her child, especially where such a refusal would expose the child to an uncle and guardian whose treatment of the boy threatened physical and moral ruin.\textsuperscript{46} Hotschevar also claimed that the codicil to the will made it clear that Carl had intended that Beethoven not become sole guardian.\textsuperscript{47} Hotschevar had personally observed (after Karl had run away from Beethoven) that the boy’s hands and feet were frost-bitten, that he was not warmly enough dressed, and that his underclothes and baths had been neglected.\textsuperscript{48} Johanna also submitted to the court a statement from a priest which stated that Beethoven had encouraged Karl to speak ill of his mother and that “Karl’s training was contrary to all moral principles and showed itself in indifference to religious instruction.”\textsuperscript{49}

The Landrechete summoned Johanna, Beethoven, and Karl to a hearing that took place on December 11.\textsuperscript{50} Karl testified that his uncle treated him well, and that he would rather live at his uncle’s instead of his mother’s if he had a companion with whom he could speak.\textsuperscript{51} Because Beethoven was deaf, Karl stated that it was difficult communicating with him.\textsuperscript{52} He said his mother had not prompted him to run away from his uncle.\textsuperscript{53} In response to a question as to whether his uncle maltreated him, Karl answered that Beethoven had punished

\begin{footnotes}
\item[42] G. Marek, supra note 3, at 507.
\item[43] Id.
\item[44] Id. at 505-07.
\item[45] Id. at 507.
\item[46] Id. at 507-08.
\item[47] Id. at 508.
\item[48] Id.
\item[49] Id.
\item[50] Id.
\item[51] Id.
\item[52] Id.
\item[53] Id.
\end{footnotes}
him often, but only when he deserved it.\textsuperscript{54} He further testified that he had been maltreated only once, when his uncle had threatened to throttle him after his return from running away.\textsuperscript{55} Karl also testified that he had indulged in disrespectful remarks about his mother in the presence of his uncle, whom he thought he would please in that way and who had often agreed with him.\textsuperscript{56}

Johanna testified that Karl had run away to her because of a fear of punishment and because he did not like living with his uncle.\textsuperscript{57} She contended that she had advised her son to return to his uncle, but that the boy had not wanted to do so because he feared maltreatment.\textsuperscript{58} Her desire to see her son had been frustrated by incidents in which she had been told he would be at a certain place, at a certain time, only to have him fail to appear.\textsuperscript{59} In response to a question as to whether her son had been well treated at his uncle’s, she stated that Beethoven could not converse with his ward (because of his deafness) and that there was nobody to satisfactorily look after the wants of her son regarding cleanliness, clothing, and washing.\textsuperscript{60}

Beethoven testified that Karl might have left him because of fear of punishment.\textsuperscript{61} In response to a question as to whose care Karl was in, Beethoven replied that Karl engaged in piano, French, and drawing lessons which completely occupied his leisure time; therefore, he needed no care.\textsuperscript{62} Moreover, he could not trust the servants with supervision of his nephew because the boy’s mother had bribed them in the past.\textsuperscript{63} To the question of whether his nephew had spoken disrespectfully of his mother in Beethoven’s presence, Beethoven answered in the negative, adding that he had admonished his nephew to speak nothing but the truth.\textsuperscript{64} Beethoven said that he had asked his nephew if he was fond of his mother, and the boy had answered that he was not.\textsuperscript{65} Then, in what would prove to be a disastrous tactical error, Beethoven stated that if Karl were “of noble birth” he would be sent to the exclusive Theresianium, a school open only to the sons of nobil-
ity.66 Since the Landrechete was also reserved exclusively for nobility, the court immediately asked Beethoven for a diploma or other documentation proving his own nobility.67 He could not produce one so the case was transferred to the Vienna Magistrat (the court which dealt with political, civil, and criminal cases of commoners).68 This was a terrible blow to Beethoven—he felt he would get a less sympathetic audience with the judges of the lower court.69 The whole matter was now in a state of uncertainty, and all testimony had to be given again.70

The Magistrat held a hearing on January 11, 1819.71 Karl went back to his mother for the next few weeks while Beethoven’s guardianship was in a state of suspense pending the decision of the Magistrat.72 But Beethoven still had the right to concern himself with Karl’s education and he placed the boy in a school conducted by Johann Kudlich, whose methods were highly regarded.73 Beethoven thought of smuggling Karl out of the country74 and enlisted the help of Archduke Rudolph to accomplish this goal.75 He also decided to resign the guardianship to forestall being removed by the court.76 Beethoven solicited a magisterial councilor, Matthias Von Tuscher, who reluctantly accepted the co-guardianship.77 The court sanctioned the arrangement and asked Von Tuscher to make recommendations respecting Karl’s future.78 Von Tuscher’s opinion was that the best thing would be to have the boy sent away—presumably from both Johanna and Beethoven.79 Von Tuscher eventually resigned the co-guardianship.80 Beethoven broke off his friendship with him and announced to the Magistrat that he was resuming sole guardianship.81 The Magistrat fi-

66. M. SOLOMON, supra note 6, at 244.
67. G. MARKEK, supra note 3, at 510.
68. Id. at 511.
69. Id.
70. Id.
71. Id. at 511-12.
72. Id. at 512.
73. M. COOPER, supra note 2, at 27.
75. G. MARKEK, supra note 3, at 512.
76. Id.
77. Id.
78. Id.
79. Id.
80. Id. at 513.
81. Id. Solomon notes that Beethoven was enraged at Matthias Von Tuscher when Von Tuscher resigned his guardianship of Karl. M. SOLOMON, supra note 6, at 246. Beethoven’s anger, however, did not prevent him from later enlisting Von Tuscher’s aid to appeal to the court. Id. at 249. (See infra note 91 and accompanying text).
finally made its decision. Stating that Karl had been "subjected to the whims of Beethoven and had been tossed back and forth like a ball from one educational institution to another," it decreed on September 17, 1819, that Von Tuscher be relieved of his guardianship but that the guardianship should not be re-entrusted to Beethoven but rather to Karl's mother and a co-guardian. In this opinion, the *Magistrat* also said that the statements offered by Beethoven were unproven gossip emblematic of Beethoven's hostility towards Johanna and that his "sole aim was to mortify the mother and tear the heart from her bosom."

Beethoven retained Johann Baptist Bach, one of Vienna's leading legal lights, who three times had been Dean of Faculty of Law of the University of Vienna. An appeal to the *Magistrat* was peremptorily dismissed; no new facts warranted the court changing its ruling. Bach suggested an appeal to a higher tribunal, the Appellate Court. The Appellate Court ordered the *Magistrat* to file full particulars of all previous proceedings for review. The *Magistrat* submitted an explanatory report which reads more like an indictment of Beethoven than an objective summation. The *Magistrat* seems to have been biased against Beethoven because he scorned them as a lower court, "fit to judge clerks and workmen but not able to comprehend the actions of a Beethoven." Beethoven wrote to a judge of the Appellate Court and visited two other members of the court for "private talks." He also enlisted his friends Bernard and Matthias Von Tuscher to influence another Appellate Court judge. The Appellate Court issued its decision on April 8, 1820. It found in Beethoven's favor and set aside the decision of the *Magistrat*. Johanna was dismissed as guardian, and Karl was placed under the joint guardianship of Beethoven and his friend, Karl Peters. Immediately after this final decision,

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85. *Id.* at 515.
86. *Id.*
87. *Id.*
90. *Id.*
93. *Id.*
94. *Id.*
Beethoven vowed never to allow his nephew to see his mother again, but was later talked out of this.\textsuperscript{95} He still, however, limited their meetings as much as possible.\textsuperscript{96} Though Johanna appealed to the Emperor, the highest authority in the land, she ultimately had to abide by the decree.\textsuperscript{97} After the final decree, Karl remained at the Blöchlinger Institute but once again ran away to his mother and had to be returned to the school forcibly.\textsuperscript{98}

II. \textsc{Beethoven's Attitude}

In many ways, Beethoven was a fierce moralist. He had a very pronounced sense that there was "right" and, often, an equally emphatic feeling that \textit{he} knew what it was. Such an attitude is not necessarily incompatible with his occasional engagement in actions which might be seen as "immoral" by many people.\textsuperscript{99} In regard to what seems to be a contradiction, Sullivan said:

\begin{quote}
[Beethoven's great music] is not in the least incompatible with artfulness and unscrupulousness in dealing with publishers. That a man should write the \textit{Missa Solemnis} and at the same time fail to fulfill certain commercial contracts may or may not be an interesting psychological fact. It only becomes a moral problem and the \textit{Missa Solemnis} a paradox if it be assumed that the creation of the \textit{Missa Solemnis} implies a reverence for contracts.\textsuperscript{100}
\end{quote}

With such a general attitude and in a particular situation in which he felt moral superiority and entitlement, it seems likely that Beethoven would regard the law as simply an instrument to advance his own interests.\textsuperscript{101} Where the law's doctrines and institutions were sympathetic to his interests, he would employ them on his behalf. Where they might be inhospitable to his desires, he could rationalize and evade or manipulate them so that he eliminated or minimized the damage they could do his causes.\textsuperscript{102} If the law and Beethoven's moral

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\textsuperscript{95} E. \textsc{Sterba} \& R. \textsc{Sterba}, \textit{supra} note 10, at 205.
\textsuperscript{96} Id. at 206.
\textsuperscript{97} G. \textsc{Marek}, \textit{supra} note 3, at 516.
\textsuperscript{98} Id.
\textsuperscript{99} Beethoven reportedly offered to sell his Mass, the \textit{Missa Solemnis}, to seven publishers. Id. at 548.
\textsuperscript{100} J.W.N. \textsc{Sullivan}, \textit{supra} note 5, at 190-91.
\textsuperscript{101} Marek comments that "Beethoven ran to the law at the slightest provocation; his life story is dotted with the names of lawyers." G. \textsc{Marek}, \textit{supra} note 3, at 464.
\textsuperscript{102} In 1814, Beethoven sued a man named Mazel over the rights to \textit{Wellington's Victory} (more commonly known as the \textit{Battle Symphony}). During the litigation, Beethoven gave a deposition to his own lawyer that was full of gross misstatements. Id. at 464-65.
perceptions diverged, Beethoven considered the law as faulty; consequently, "justice" would be advanced more by defeating the law than by submitting to and being controlled by it.

There seems little doubt that the question of custody of his nephew was one which rose to the highest levels of moral certainty for Beethoven. That this may have been the result of urgent, personal psychological needs did not mean that Beethoven was conscious of such a connection nor that to him the moral appropriateness of his acquiring custody was less than patently clear. One of the prime factors in the clear-cut moral profile of the situation seems to have been Beethoven's decided antipathy towards Carl's wife Johanna. One author wrote that Beethoven harbored a "hatred and distrust of his sister-in-law that can only be regarded as an obsession bordering on the insane."103

Other writers have theorized that Beethoven would have had considerable antipathy towards any woman who married his brother Carl because of the close, emotional relationship which existed between them. A "blind, overvaluing, indulgent, and forgiving love which he cherished for [his brothers]" has been discussed by the same psychoanalyst commentators who have asserted that "Ludwig was infatuated by his affection for his brothers."104 If this is really why Beethoven felt moral superiority, however, that does not mean that he knew that he felt that way because of such psychological factors. He perceived his moral superiority as, indeed, moral superiority and not rationalization.

Beethoven's virulent hostility towards his sister-in-law was characterized in letters he wrote while he was engaged in the struggle with her over the custody of Karl. They ranged from rather mild: "I have the sweet consolation of having rescued a poor innocent child from the hands of an unworthy mother";105 to flagrantly acidic: "my brother's death caused me great pain, and immediately afterward great exertions to rescue my dear nephew from his vicious mother";106 and "later will certainly be best to send him away... there he will hear and see no more of his bestial mother."107 Beethoven went so far as to condemn the woman's character:

105. This phrase was contained in a February 29, 1816, letter to his friend Ferdinand Ries, then in London. Id. at 55.
106. This phrase was contained in a May 13, 1816, letter to Countess Erdody. Id. at 56.
107. This phrase was contained in a January, 1816, letter to Giannatasio, the director of the school to which Beethoven was sending Karl. Id. at 59.
Last night the Queen of the Night was at the Artists' Ball until 3 o'clock, exposing not only her mentality but also her body—for 20 florins, people whispered, she was to be had! O horrible! And are we to trust our precious treasure to those hands even for an instant? No, certainly not!108

The "Queen of the Night" aspersion refers to the character in Mozart's opera, *The Magic Flute*.109 In a paper that they published prior to their book on Beethoven and his nephew, the Sterbas wrote:

[I]n *The Magic Flute*, the only opera of Mozart which Beethoven accepted (the others, such as *Don Giovanni* and *The Marriage of Figaro*, he condemned for their lascivious heterosexual content), the Queen of the Night represents the evil principle which the high priest, Sarastro, seeks to fight and destroy. Beethoven said himself that he punished Johanna as Sarastro did the Queen of the Night, but more severely. The struggle for the nephew against the 'Queen of the Night' was for him a mission on a high ethical level. Johanna . . . represented the principle of evil from which he felt it his task to save the men near and dear to him.110

Beethoven desperately wanted this hatred of Johanna to be felt by Karl as well, and when Karl continued to feel an attachment to his mother, Beethoven took it as a personal betrayal. As it became clear over the years that Karl would not break his bond with his mother, Beethoven occasionally became physically violent with him.111 When ten year old Karl asked for his mother during a hernia operation and the pain that followed it, Beethoven was deeply hurt.112 He wrote to Karl after the operation, disappointed because "so far as [Beethoven could] see, a certain poison [was] still present in [Karl]."113 The poison Beethoven referred to was Karl’s love for his mother.114 This forced hatred of his mother seems to have had negative effects on Karl, and he began to identify with her. When Beethoven represented Johanna as "bad," Karl became bad himself by lying and neglecting his schoolwork.115 Although Karl generally did very well in the private

108. Beethoven wrote this in a February 17, 1816, letter to Giannatasio. Id. at 61.
110. Id.
111. M. SOLOMON, supra note 6, at 239.
113. Id. at 70.
114. Id.
115. Id. at 199.
schools to which his uncle sent him, Karl's marks declined as the Appellate Court hearing drew closer. In any event, once Beethoven conclusively sorted out the moral posture of a situation, it is unlikely that he was concerned with formal doctrinal scruples such as those with which the law might address the situation. Maynard Solomon, perhaps the leading contemporary Beethoven scholar, has written: "[Beethoven] insisted that excellence and genius could not be measured by ordinary standards of morality. Beethoven once declaimed: 'Power is the moral principle of those who excel others, and it is also mine.'" Beethoven must have found it compatible with his fervent moral belief that his guardianship of the boy would be greatly superior to any that could be provided by the boy's mother. This belief was so strong that during the initial struggle with the boy's mother, Beethoven stated to the court that he "could produce weighty reasons for the total exclusion of the widow from the guardianship." These "weighty reasons" Beethoven referred to were embezzlement charges made against Johanna by her husband. In 1811, Johanna had been sentenced to a month of house arrest by a Viennese court after being found guilty of embezzling from her own husband. In fact, the money that Johanna had "stolen" from her husband was quite probably her own. She brought a large dowry into the marriage and inherited from her father as well.

Additionally, Beethoven would inveigh against Johanna's character in documents submitted to the courts in the course of the lengthy custody battle. For example, in a September 25, 1818, letter to the Landrechtete, he refers to "her moral incapacity," and alleges that "in view of her intellectual and moral characteristics . . . she appears less and less suited to mingle in [Karl's] education for manhood." In the same letter, Beethoven notes: "how . . . she can dare to present herself as guardian of her minor son is somewhat explicable to me from her bold behavior in all circumstances." On February 18, 1820, Beethoven made the following assertions about Johanna in a written statement to the court:

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116. Id. at 189.
118. M. Cooper, supra note 2, at 23.
119. Id.
120. M. Solomon, supra note 6, at 233.
121. Id.
122. Id.
123. E. Sterba & R. Sterba, supra note 10, at 139.
124. Id. at 310 app.
125. Id. at 311 app.
[E]ven in her early years she developed evil propensities. Even while still in her parents' house she had to appear before the police authorities because she had accused their maid of being the perpetrator of something of which she was herself the tool.

. . . .

In 1811, when, already a wife and mother, though as such highly frivolous and lax, headstrong and malicious, she had already partly sacrificed her good name, she committed a new more frightful crime, which even brought her before the Criminal Court; here too she again calmly alleged that entirely innocent persons were involved in her crime. Finally she had to admit that she was the sole perpetrator. . . .

It is obvious that in 1815 she had yet taken no step toward her moral improvement. . . . Immediately after the death of my brother, she was in secret commerce with a lover, through which alone the modesty of her innocent son was injured, she was to be found on all dance-floors and at merrymakings, while her son had not even what is needful and was left alone by her to a miserable maid.126

As one examines the literature and details relating to the custody battle, one gets the sense that because of his confidence in the righteousness of his cause, Beethoven was not above departing from the truth in prosecuting that cause. Beethoven felt justified in such a perspective because he saw the rescue of his nephew from Johanna as a heroic and divinely authorized mission. This is exemplified by a memorandum sent by Beethoven to the Landrechete that began with the assertion that his disposition and moral character guarantee the truth of his assertions.127 Beethoven then presented a distorted view of the facts.128

Beethoven, as an important figure in the cultural life of Vienna, had influence and contacts. He used these contacts to his advantage. In a letter to Giannatasio (the director at Karl's school) he wrote:

[T]he Landrechete have given me full power and authority. . . . Had they been able to regard her as a fit mother, they would certainly not have excluded her from the guardianship. Whatever nonsense she may talk, nothing was put over on her—the entire Council was unanimous in the matter.129

The Sterbas comment:

126. Id. at 321-22 app.
127. M. Solomon, supra note 6, at 248-49.
128. Id.
We can deduce from this letter that Johanna, on a visit to the Institute [directed by Giannatasio, and where Karl was matriculated], had expressed the opinion that legal procedure had not been strictly adhered to in Ludwig's appointment as sole guardian and that, through his connections, he had influenced the decision—a not unjustifiable assumption.¹³⁰

And the footnote to this passage in the Sterbas book reads:

In a letter . . . preceding the second court action, Ludwig himself admits exercising influence on the officials concerned in the guardianship proceedings: "To S. Steiner and Co. Best Lieutenant-General! Please send some vocal duets, trios, quartets from various operas . . . I beg you to have them reach me . . . at latest by this afternoon, for there is an opportunity to send them on. The Lieutenant-General must grease the General, the General others in return; . . . The guardianship obliges me to such gifts, so that the wagon wheels may be duly greased to reach house and home."¹³¹

Beethoven also tried to use his friendship with the Archduke Rudolph to influence the court.¹³² Beethoven sent a memo to an appellate judge and, not so subtly, had it delivered by one of Archduke Rudolph's messengers.¹³³ In this memo, Beethoven suggested that if he were to be denied the guardianship, "such a contingency would certainly provoke the disapproval of our civilized world."¹³⁴ He also had a testimonial given by the Archduke declaring Beethoven a competent guardian.¹³⁵

As for Beethoven's failure to scruple about the exact truth on behalf of his cause, the following extract from testimony he gave before the Landrechete may be illuminating: "Had his nephew not spoken disrespectfully of his mother in his presence? No; besides, he had admonished him to speak nothing but the truth; he had asked his nephew if he was fond of his mother and he answered in the negative."¹³⁶ Given the vitriol and vituperative nature with which Beethoven referred to Karl's mother, it is difficult to credit the accuracy of such a response. It seems like misleading disingenuousness at best and calculating, deliberate prevarication at worst. Additionally, in a September 25, 1818, letter to the Landrechete, Beethoven wrote:

¹³⁰ Id. at 74-75.
¹³¹ Id. at 339 n.38.
¹³² M. SOLOMON, supra note 6, at 249.
¹³³ Id.
¹³⁴ Id.
¹³⁵ Id.
¹³⁶ G. MAREK, supra note 3, at 510.
In order to attain her end [Johanna] has recourse to means which . . . testify to base-mindedness, for naturally she seizes upon my deafness, as she calls it, and my alleged ill-health, as a pretext to cast a disadvantageous light on the education of my nephew. As regards the first point, by all who know me at all intimately it is too well known that every verbal communication between me and my nephew, as well as between [me and] other persons is carried on in the easiest manner, for any obstacle to arise from this. In addition, my health was never better than now and from this side too there is no reason that my nephew’s education could be endangered.\(^{137}\)

The above italicized phrases, “as she calls it” and “in the easiest manner,” in their references to Beethoven’s deafness are grossly dissimulating. Beethoven had been suffering from deafness since he was twenty-eight.\(^{138}\) Since he was a day short of his forty-eighth birthday at the time he wrote the letter, and since the general mode of communicating with him was for the person “speaking” to him to write his remarks in a notebook with Beethoven then responding, orally or by also writing, the reference to his deafness “as she calls it” and communication “in the easiest manner” smack of flagrant deception. Similarly, since Beethoven often complained of various health problems, (particularly during the period in which the battle for custody raged), his allusion to his “alleged” ill-health is also manipulative and misleading.\(^{139}\)

While Beethoven’s divergence from what strict probity would seem to have required in this situation was most likely principally driven by the emotional stakes riding on his gaining custody of his nephew, his less than worshipful adherence to all the rules of the law may have been motivated by other factors. He bridled at any constraint which tended to block realization of his objectives, whatever they may have been. As previously mentioned, he had an impulse to rebel against authority. The Sterbas refer to the following passage from Thayer’s biography of Beethoven:

> [O]ften when Pfeiffer had been drinking with Beethoven’s father . . . until eleven or twelve o’clock, he went home with him, where Ludwig would be in bed asleep; his father furiously shook him

\(^{137}\) E. STERBA & R. STERBA, supra note 10, at 309 app. (emphasis added).


\(^{139}\) Id. at 439. At various points in his life, Beethoven suffered from diseases such as colitis, rheumatism, rheumatic fever, skin disorders, abscesses, endless infections, ophthalmia, inflammatory degeneration of the arteries, chronic active hepatitis, cirrhosis of the liver, and acute jaundice. Id.
awake, the boy collected his wits, weeping, and went to the piano, where Pfeiffer remained sitting with him until early in the morning, for he recognized the boy's unusual talent.\textsuperscript{140}

The Sterbas then observe:

His father's clumsy and harsh treatment of him certainly exercised a decisive influence on the development of Beethoven's character. An early inner rebellion against his father's arbitrariness and unjust strictness laid the foundation for the revolt against every sort of authority which appears in Beethoven with an intensity which can only be described as highly unusual. He could tolerate no kind of constraint. He rebelled against every political authority, against every pressure of social forms, and even against the slightest obligation.\textsuperscript{141}

III. Some Evaluations

As has been intimated above, this writer began looking into Beethoven's struggle for custody of his nephew with the sense that investigation would show a technically oriented legal system that frustrated a great humanist in his attainment of legitimate, humane, and personal objectives. However, more questions may have been raised by this study than confident conclusions crystallized. Certainly, evidence suggests that Karl's being in the custody of Beethoven may not have been best for the growing boy.\textsuperscript{142} It is difficult to make a solid judgment regarding whether Beethoven or Karl's mother, Johanna, would have been a superior custodian for Karl because of the shadowiness of the information about Johanna. While Beethoven's characteristics, both the admirable ones and those less so, are etched in rather sharp imprints in the historical record, it is difficult to obtain a clear sense of

\textsuperscript{140} E. Sterba & R. Sterba, supra note 10, at 83 (citing A.W. Thayer, supra note 1, at 63). Tobias Pfeiffer was a pianist who gave piano lessons to Beethoven when he was nine years old.\textit{Id.}

\textsuperscript{141} Id. Several pages later, the Sterbas also comment: "After Ludwig had ceased to be dependent on the court at Bonn, he openly expressed his opposition to all authority and to the governmental and social hierarchy."\textit{Id.} at 86.

\textsuperscript{142} Regarding Beethoven's capacity as guardian to his nephew, Newman writes:

His own unfitness for the duties of guardian he could never be brought to recognize; still less could he see the evil influence he was unconsciously exerting upon the boy in some respects. An ageing hypochondriac, a bachelor, completely unused to children, almost stone deaf, living alone in surroundings that were not remarkable either for their comfort or their cleanliness, was hardly the best guardian conceivable for a lively boy.

E. Newman, supra note 88, at 48-49.
Johanna's overall character and suitability for effectively mothering a child such as Karl. There certainly are intimations of disreputable aspects of her personality and character. They do not seem to be of a nature, however, which definitively establish that Karl would not have been well loved and attended to by his natural mother or that he would not have been happier and better off living with her than he was in Beethoven's household(s).\textsuperscript{143}

There is a great deal of evidence which suggests that Beethoven so disliked Johanna (perhaps for no other reason than that she had distracted his brother's attentions from himself), that the composer was willing to play fast and loose with the "facts" so as to portray her in a thoroughly unflattering light. There is also evidence of what seemed to be Beethoven's marked inclination to represent his own qualifications for child rearing and family-heading as somewhat brighter than they may have been. His tendency was to decidedly minimize his own weaknesses or deficiencies in this respect or even, when necessary, to rather flagrantly misrepresent.\textsuperscript{144} There are also traces of evidence suggesting that Beethoven's preeminence in Vienna allowed him to bring to bear on the processes of the legal system an influence which may have directly distorted certain determinations made in the custody battle. He arranged for his friends who were well disposed towards him and his cause to obtain personal access for him to judges involved in the case so that he could communicate with the latter on an \textit{ex parte} basis.\textsuperscript{145} Beethoven was an important person in Vienna during his

\textsuperscript{143.} The Sterbas comment that:

[K]arl varied in his attitude toward his mother, for when . . . things were going very badly for her and . . . she could not pay for medicine, Karl advocated helping her. But when it appeared that her illness might be connected with the birth of an illegitimate child, he expressed himself very strongly against her. . . . In his resentment, he repeated all the accusations he had heard on the subject of Johanna's "badness." He wrote [in Beethoven's Conversation Books]: "Although she is my mother, I must admit that I think you should first inquire fully into her circumstances. For it could easily be that such a contribution would enable her even more to continue her evil life; and in that way it would be more of an encouragement to her passions than a good deed. . . . Your brother says that my mother was earlier always to be seen in all public places with notorious whores."

E. \textsc{Sterba} \& R. \textsc{Sterba}, \textit{supra} note 10, at 231.

\textsuperscript{144.} Such misrepresentation was evident in his letters to the court maligning Karl's mother: Beethoven now set about composing a draft memorandum marshaling all of the facts in the case from his point of view. . . . He sanctimoniously set forth his own qualifications, although he confessed to occasional errors or weaknesses in his treatment of Karl. . . . "And if, \textit{being human}, I have erred now and then or if my poor hearing must be taken into account, yet surely a child is not taken away from his father for those two reasons. . . ." The central thrust of the memorandum is, however, Beethoven's obsessive rejection of Johanna, whom he had now come to regard as the embodiment of feminine evil and as his persecutor.

M. \textsc{Solomon}, \textit{supra} note 6, at 248 (footnote omitted).

\textsuperscript{145.} \textit{Id.} at 249.
time, and he knew similarly important and influential Viennese who were willing to help him gain custody of Karl—perhaps at any costs. 146

An initial look at this episode might suggest that a tortuous legal process made a loving and concerned uncle jump through more than five years of technical hoops before he could gain legal custody of the sensitive nephew for whom he was eager to provide a warm and supportive loving home—a home in which the boy could be afforded all the "advantages." This might be a discouraging story of a great and generous-hearted humanist who became exasperated and frustrated by the hyper-technical toils and snares of a bloated, self-important, and inefficient legal system.

A good-faith and closer inspection, however, suggests that such a characterization may be too glib and simplistic a perspective in view of the actual circumstances of this case. An alternative way of regarding what occurred in this case may be to appreciate the formal legal process struggling to resolve a searing matter of child custody. After examining all the facts, some of which may not have been accurate, and the circumstances, some of which would be considered improper influence by present standards, the dilemma remains: with whom would the child have been better off?

While Beethoven's intentions seem to have been laudable, there is certainly reason to believe that because of his personal idiosyncrasies and his sometimes highly demanding and unyielding nature, the various pressures to which he seems to have subjected Karl could well have been ones the boy would have been better off not experiencing. The Sterbas observe that "[Beethoven's] aggressiveness, particularly in the form of mental torture of his beloved nephew, increased to a degree which the boy found more and more difficult to bear." 147

In many ways, Karl seems to have appreciated what his uncle was trying to do for him and to have returned Beethoven's love and affection. 148 There is also evidence, however, of Karl resenting Beethoven fiercely and feeling subjected to arbitrary standards imposed by the composer which a boy of his disposition simply could not meet. 149 The Sterbas argue that over most of the last decade of Beethoven's life,

[he] had become so irresponsible with regard to keeping his word and fulfilling his promises that one can almost speak of a breakdown of the ethical structure of his personality. His inability to make

146. Id.
147. E. STERBA & R. STERBA, supra note 10, at 208. The Sterbas also write that: "'It is unmistakable what torture his uncle's distrust and his stubbornly repeated reproaches inflicted upon Karl. We also see ... how cautiously Karl dealt with his uncle, how he tried to divine his wishes, and how seriously concerned he was to avoid any outward troubling of their relationship.' Id. at 234.
148. Id. at 236.
149. Id. at 238.
decisions markedly increased, greatly to the despair of his friends.
This breakdown of his personality had a most unfortunate effect on
his relationship to his nephew.\textsuperscript{150}

On the other hand, while there is reason to sense at least some unsa-
vory aspects of Johanna’s character (as Beethoven never tired of
pointing out), she also seemed to have exhibited genuine love and con-
cern for her son.\textsuperscript{151} Karl, likewise, seemed to love and want to be with
her.\textsuperscript{152} Thus, instead of a hyper-technical system formalistically and
needlessly frustrating a warm-hearted humanist’s generous desires,
there may have transpired a serious good-faith effort to justly resolve
a vexing situation. It is possible that the scalding five year long proc-
cess through which Johanna and Beethoven struggled represents a
modest tribute to the admirable conscientiousness of a legal system
which sought to legitimately bring out of a difficult situation as much
justice as possible, rather than an indictment of the destructive fea-
tures of a technical, formal structure.

IV. Postlude

By 1825, Karl had become a young man of nineteen and began a
young man’s typical fight for independence—in this case, from his un-
cle.\textsuperscript{153} Even though it was fairly clear that Karl had no strong intellec-
tual interests nor artistic talents, Beethoven still wanted to form him
in such a vein, and Karl enrolled in the University of Vienna to study
languages.\textsuperscript{154} In actuality, Karl seemed to be adept at practical matters
and performed well when Beethoven entrusted him with business
transactions.\textsuperscript{155} Karl finally persuaded Beethoven to allow him to enter
a business school, and he remained in the city while Beethoven moved
to the country.\textsuperscript{156} At this time, Beethoven’s relations with others deter-
riorated, and Karl became the “sole object of the whole gruesome
power of Beethoven’s love.”\textsuperscript{157} Beethoven had his friends spy on
Karl.\textsuperscript{158} On Sundays and holidays, Karl was expected to visit his uncle

\textsuperscript{150} Id. at 211.
\textsuperscript{151} Id. at 203.
\textsuperscript{152} Id. at 201.
\textsuperscript{153} G. Marek, supra note 3, at 517.
\textsuperscript{154} Id.
\textsuperscript{155} Id. In addition to going to school, Karl was expected to run the household activities, act
as Beethoven’s secretary, and run countless errands for his uncle. E. Sterba & R. Sterba, supra
note 10, at 244-45.
\textsuperscript{156} G. Marek, supra note 3, at 517.
\textsuperscript{157} E. Sterba & R. Sterba, supra note 10, at 244.
\textsuperscript{158} G. Marek, supra note 3, at 517.
at Baden, but he often excused himself with weak reasons; he would rather go to the theater or play billiards than converse with a deaf, old man. When Beethoven stung him with reproaches, Karl would stay away, and then the proud composer would be reduced to begging:

My Beloved Son! Stop, no further—Only come to my arms, you won’t hear a single hard word . . . . You will be welcomed here as affectionately as ever . . . . [Y]ou will hear no reproaches. . . . All that you may expect from me is the most loving care and help—But do come—come to the faithful heart of your father Beethoven.

Karl was trying to break away from his fierce guardian, while the composer tried everything to hold him. Beethoven attacked Karl’s friends and resented the time his nephew spent with them. Beethoven remained jealous of Johanna and afraid that Karl was secretly meeting her. Beethoven also continued to have fights with Karl and at one point Karl actually struck his uncle and then ran from the house.

In July of 1826, Karl sold his watch and used the money to buy two pistols. He went to Baden, climbed up on an old ruin, and discharged both pistols toward his left temple. One bullet missed completely; the second merely inflicted a flesh wound as it failed to penetrate the skull. When he was found by a wagon driver, Karl mumbled that he wanted to be taken back to his mother’s house in the city. Beethoven visited him there, but after the composer left, Karl stated “if only he would not show himself again!” and “if only he would stop his reproaches!” The incident had to be reported to the police, and, to the examining police magistrate, Karl commented that his uncle had “tormented him too much” and added “I became worse because my uncle wanted me to be better.”

Though Karl recovered from the wound, Beethoven never really recovered from the incident. Beethoven saw Karl’s act as a rejection

159. Id.
161. G. Marek, supra note 3, at 519.
162. Id. at 520.
163. Turner, supra note 75, at 833.
164. M. Solomon, supra note 6, at 282.
165. G. Marek, supra note 3, at 521.
166. Id.
167. Id.
168. Id. at 522.
169. Id.
170. Id. at 523.
171. Id.
of his love. One friend of Beethoven's observed that "the pain which he received from this event was indescribable; he was cast down as a father who had lost his much-loved son." When Karl left the hospital, Beethoven immediately took him to the composer's residence—Beethoven did not want Karl to be with his mother at all. At the end of his resources in the matter, Beethoven finally gave consent for Karl to commence a military career. The month before Karl left, Beethoven was sick and Karl spent the entire month of December 1826 at his uncle's bedside. The day after Karl left for the army, Beethoven drew up a will that left his entire estate to Karl. Once Karl left, Beethoven's health quickly deteriorated, and he died on March 26, 1827.

Karl had no particular distinction in his army career but performed satisfactorily. Upon Beethoven's death in 1827, he inherited the composer's estate. He also inherited the estate of his other uncle, Beethoven's brother Johann. Five years after Karl joined the military, he resigned to manage the agricultural lands he had acquired. Karl died in 1858, at the age of fifty-two.

174. Id. at 524.
175. Id. "Through his connections in the War Department, he got in touch with a Baron Joseph von Stutterheim and got his agreement to enroll Karl in his regiment. In gratitude, Beethoven dedicated no less a work than the String Quartet in C-sharp Minor, Op. 131, to Stutterheim." Id.
177. M. Solomon, supra note 6, at 289.
179. G. Marek, supra note 3, at 524.
180. Turner, supra note 75, at 834.
181. G. Marek, supra note 3, at 524.
182. Id.
183. Id.