

**Tel Aviv University**

---

**From the Selected Works of Daphna Hacker**

---

2010

## Soulless Wills

Daphna Hacker, *Tel Aviv University*



Available at: [https://works.bepress.com/daphna\\_hacker/6/](https://works.bepress.com/daphna_hacker/6/)

## Soulless Wills

Daphna Hacker

*By analyzing wills submitted for execution to Israeli tribunals in the years 2000–2004, this article offers insights into the process of the legalization of death and family relations. The length, aesthetics, phrasing, and contents of the wills examined are all evidence of a process in which the personal wishes of testators are transformed into a standardized legal document that tells very little about the individual testator. The rarity of cases in which testators do use their wills to disclose personal sentiments and thoughts highlights the neglected potential of wills to constitute a unique, personal, and emotional parting statement. The article demonstrates that this potential embodies the different ways in which wills were perceived in ancient times. Inspired by these past and present examples and on the basis of a bifocal relational perception of inheritance, I argue that lawyers should adopt a broader human understanding of wills and offer their clients the option of leaving behind a will with a soul.*

### INTRODUCTION

More than thirty years ago, Clifton Bryant and William Snizek (1975) argued that “the last will and testament appears to be the single most neglected document in sociological research” (219). Their call to study wills as an important mechanism of control, sanction, and communication from the grave that can tell us much about family relations has largely been disregarded. This article seeks to add to the very rare instances of sociological attention to modern wills (Browder 1969; Schoenblum 1987; Schwartz 1993;

---

Daphna Hacker is a senior lecturer at the Buchmann Faculty of Law and the NCJW Women and Gender Studies Program, Tel Aviv University. Please address all correspondence to dafna@post.tau.ac.il. I thank the Israel Foundations Trustees for the generous grant (2006–2008) that allowed me to conduct this research and the Cegla Center for Interdisciplinary Research of the Law for the fellowship during which this article was written. I thank Eynat Meytahl, Alona Miller, Adi Yucht, and Adi Birger for their research assistance; Greg Alexander, Hanoch Dagan, Hendrik Hartog, Dick Helmholz, Shelly Kreiczler-Levy, Shai Lavi, John H. Langbein, and Menny Mautner for their useful comments; and Dana Meshulam for her editorial contribution. I am also grateful for the cooperation I received from the legal state authorities and from the interviewees who participated in the study.

Finch et al. 1996; Friedman, Walker, and Hernandez-Stern 2007; Clowney 2008) and to illustrate some of the fascinating insights that can be derived from a detailed microanalysis, never conducted before, of the shape, phrasing, and contents of contemporary last wills and testaments.

One observation about last wills, made by Bryant and Snizek (1975), is that

Testators as a general rule are more frank and revealing in death than they were in life; the will affords them the opportunity to sum up fully and freely the essence of their lives in their bequests and requests after death. . . . As a result the will may stand as a new and perhaps a more insightful indicator of the personality of the person than any other manifestation exhibited in life. (225)

A similar conception of the will as a highly personal statement was conveyed in a decision recently handed down by the Israeli Supreme Court:

The will is a unique document. It is a legal document, but this document does not lack soul. It is like a final personal letter; an expression of wishes, love, feelings; and even a settling of accounts, which comes from the depths of a person's heart as he reflects on his death and what will happen after he has passed away. Here he is looking toward his final station in life—and the first station after his death. This is his last attempt to shape the lives of those surviving him or, at the very least, to influence them. This is his final hope to live on in their memories with love and gratitude. (*Estate of Nissim Elbaz v. Paz* 2004)<sup>1</sup>

In this article, I uncover the tension between this conception of the will and the actual current construction of wills as formal and soulless legal documents and argue that the unique, personal, and emotional voices of testators should be allowed to be heard in their wills.

The article begins by presenting what is known of the history of wills—the possible precursors to the image of the will as a final personal message that conveys much more than material disposition. Roman wills, medieval Anglo-Saxon wills, and Jewish ethical wills are shown to exemplify wills with personal, emotional, and spiritual contents. Part II discusses my study of contemporary wills of Israeli Jewish testators. The findings as to the aesthetics, length, formulation, and content of these wills are all evidence of a process in which people's personal wishes, thoughts, and sentiments as they reflect on the reality that will emerge after their deaths, to the extent that such wishes, thoughts, and sentiments exist, are transformed into a standardized legal document that reveals very little about the testator. This part will

---

1. The quote here is a loose translation of the original by the author, as are all the translations of quoted Hebrew texts, of interviews, and of e-mails sent to the author.

also discuss some rare examples of testators who used their wills to express feelings and thoughts regarding family relations as well as to express spiritual beliefs or declare their wishes on such matters as the fate of specific items of their estate or their final place of burial. The rarity of such cases highlights the seldom-realized potential of wills to constitute a unique personal and sentimental statement. In Part III of the article, I argue that it is important to strengthen this potential and that lawyers should take it upon themselves to broaden their clients' options by giving them the opportunity to express unique, emotional, and personal feelings, as well as desires and messages, through a material or ethical will to be left behind for when they can no longer communicate with their loved ones and others.

## I. THE PAST

One of the most ancient depictions of bequeathal practices is the story of Jacob, the third patriarch, in Genesis 47–49, on his deathbed. In this scene, Jacob first makes his son Joseph promise that he will be buried not in Egypt, where he dies, but with his ancestors. Afterward, Jacob blesses Joseph and Joseph's two sons, who are promised the same share of land that they would receive if they were Jacob's own sons. Then, with all twelve of his sons around him, in a combined declaration of prophecy, blessings, curses, and final instructions, Jacob reflects on his children's acts and characters. He disinherits Reuben from the privileged status of firstborn, appoints Judah as ruler, and gives detailed instructions regarding his place of burial. Indeed, what we know about premodern wills reveals that, like Jacob's, most were made orally (Danet and Bogoch 1994, 233), by people belonging to the political, economic, or religious elite (Finch et al. 1996, 6; Frier and McGinn 2004, 321) who were approaching death (Sheehan 1963, 33; Cox 1993, 72).

Since the days of the biblical patriarchs, every society has set its own rules to determine whether and how people can order the execution of their final wishes in a will. These rules established and shaped the sociolegal institution of bequeathing according to the needs and beliefs of each society, especially its elite. I have chosen three examples of such sociolegal institutions and their products—Roman wills, Anglo-Saxon wills, and Jewish ethical wills—to highlight the rich nonformalistic and nonmaterial contents that were allowed and integrated into wills in premodern times.

Roman law of succession was highly developed and very complicated, reflecting the importance of intergenerational wealth transfer to the Roman (mostly male) elite, who were allowed to bequeath (Frier and McGinn 2004, 321). Although a will had to conform to strict formal rules to be valid (342), the Romans allowed, and expected, the will to be written or dictated by the testator himself and to include personal and sentimental statements (Champlin 1991, 75). They understood the will to be the testator's final

words of judgment. With no fear of retaliation and no need to engage in flattery, the testator was free, for the first time in his life, to tell the truth about whom he loved and whom he resented (9–11). Indeed, the standard Roman will included explicit expressions of emotion, such as “loyal and devoted wife,” “most ungrateful daughter,” “most affectionate son,” and “best friend.” Hope, fear, anger, doubt, delight, satisfaction, and disappointment were all common sentiments expressed in Roman wills (Champlin 1991, 9; Frier and McGinn 2004, 418–20). Moreover, Romans mentioned not only family members in their wills, but also friends, slaves, and the emperor, and they detailed who was to receive exactly what items or sums of money or rights from their estates (Champlin 1991, 6–7; Frier and McGinn 2004, 418–20). A positive mention in a will, which was publicly read after the testator’s passing and, at times, even before his death, was perceived as an expression of the testator’s gratitude and an honor; a negative mention or intentional exclusion was seen as an insult (Champlin 1991, 11–14).

Romans also used their wills to ensure personal immortality, which they conceived of as living on in the memories of others. This took on two forms in wills. The first was the provision of detailed instructions on establishing a tomb for the testator, preserving it, and excluding others from it, and on how memorial ceremonies were to be performed. The second form was the establishment of a foundation for public benefit, such as providing food to the poor, erecting a building for public use, or staging games (Champlin 1991, 26–27). These contents were not driven by religious belief or altruistic motives. Along with allowing the testator to render his detailed and emotional “final judgment,” they fulfilled his own desire for control, comfort, satisfaction, and security (21–22).

The Roman secular understanding of wills and their contents was quite different from how wills were perceived in medieval England. In the latter case, society severely restricted freedom of testation and linked the limited right to bequeath to the belief in the afterlife. Anglo-Saxons’ chief motivation for bequeathing was religious in nature (Sheehan 1963, 16). Already in the fifth century, there is evidence of the influence of early Christian missionaries on Anglo-Saxons, whom they urged to bequeath a third of their property in alms to ensure their salvation (7–16). Indeed, the Anglo-Saxon will was first and foremost a type of contract in which the testator gave his property to the church so that it would look after his soul after his death. It also included, however, the bequeathal of personal property to flesh-and-blood beneficiaries (Whitelock 1986 [1930]; Sheehan 1963, chap. 3).

The will in medieval Anglo-Saxon society was made orally and was valid even if not documented. Any documentation by a scribe (Campbell 1938, 135) was perceived as simply additional evidence that the oral bequeathing had indeed taken place (Harold Dexter Hazeltine, cited in Whitelock 1986 [1930]). A documented will was on average 300 to 350 words and of a standard threefold structure: *notificatio*, in which the testator was introduced;

*donatio*, which detailed the will's provisions; and *sancio*, the closing section, which usually included a blessing for those who honored the will and cursed those who sought to tamper with it (Danet and Bogoch 1994, 234–39). Despite this standard structure, Anglo-Saxon wills exhibited a striking variety of contents, using different openings and curses (Danet and Bogoch 1994) and giving detailed descriptions of beneficiaries (including family members, friends, servants, and the testator's lord) and property (such as land, horses, gold, money, clothes, and jewelry). But above all, their spiritual motivation hovers in the background of all the wills. Indeed, they were most likely to include the expressions “for my soul” and, at times, “for the soul” of family members, and to do one or more of the following: bequeath to monks, bishops, monasteries, or the church; request burial within a specific church; request prayers and feasts on the anniversary of the testator's death; free slaves; or make bequeathals for the public good, such as food for the poor (see wills in Whitelock 1986 [1930]; Campbell 1938).

The third example of wills with personal and spiritual contents is Jewish ethical wills. Jewish law does not recognize freedom of testation and hence does not recognize wills as valid and binding documents. The estates of deceased Jews are supposed to be divided according to biblical rules, not the final wishes of the deceased. However, during ancient times, different religious mechanisms were developed to overcome this harsh restriction on freedom of testation. One of the most common mechanisms was a gift deed whereby the giver (the “testator”) declared that he granted others (the “heirs”) gifts that were due to them in the hour before he died (Rivlin 1999, chap. 7; Radford 2000, 174). However, since material disposition upon death was supposed to be governed by religious inheritance rules, the common belief was that wills should deal not with material bequeathals but, rather, only with spiritual matters (Rivlin 1999, 135). Consequently, the unique institution of ethical wills evolved over the centuries in Jewish culture and was later on employed also by people who wrote valid material wills (Frank 2003, 68).

Ethical wills were originally transmitted mainly orally, mostly by fathers to their sons, but a few written examples, most prominently the wills of great rabbis, survive. These were very long wills in which the rabbis, in great detail, instructed their family members and sometimes also their communities on how to live worthy and spiritual Jewish lives. Some of these wills also included prayers to God, reflections on the testator's life, and burial requests (Abrahams 1926; Avraham 1982).

The ethical will has been forsaken in Jewish custom, Jack Reiner and Nathaniel Stampfer (1983) argue. They have, however, succeeded at collecting and publishing some examples of modern ethical wills written in Israel and the Diaspora by rabbis, political leaders, Holocaust victims, soldiers, and other laypersons. In addition, some US legal and therapeutic practitioners (social workers, psychologists, family therapists, etc.) and scholars have recently tried to revive the custom of making ethical wills. They argue that

ethical wills allow people to establish a nonmaterial legacy (Baines 2006; Hicks 2008) and may assist lawyers in conducting more professional and accurate estate planning, since it allows them to gain detailed knowledge of their clients' family circumstances, assets, and wishes (Frank 2003, 74). The examples these writers provide in their attempts to promote the use of ethical wills illustrate the variety of nonmaterial expressions people can choose from as their human legacy, including their values and beliefs, personal and family stories, burial and familial requests, positive and negative comments about acquaintances, and guidance and hopes for present and future generations.

All three examples described here illustrate times and places in which a material last testament could have included personal and emotional expressions or been accompanied by separate spiritual and ethical instructions and guidance. It would seem reasonable to assume that the current age in human history—when more people than ever have property to pass on to future generations and when will writing is practiced neither solely by the wealthy (Finch et al. 1996, chap. 1) nor primarily by men (Hacker 2010)—would also be characterized by diverse and personalized final testaments. Paradoxically, however, it appears that the more the institution of bequeathing permeates all strata of society, the more standardized and impersonal the will becomes. In the next part, I show that not only are current Israeli wills a far cry from the spiritual Anglo-Saxon wills and the Jewish ethical wills, but they also lack the personal and sentimental expressions abounding in material Roman wills.

## II. THE PRESENT

### Methodology

My quest to learn about contemporary Israeli wills is part of an ongoing project on inheritance procedures in Israel. This project includes a qualitative and quantitative study of inheritance procedures among the Jewish population in the central region of Israel between the years 2000 and 2004.<sup>2</sup> This is a heterogeneous geographical area that includes Tel Aviv, Israel's second-largest and most cosmopolitan city. The study examined 743 inheritance files in the archives of the inheritance registrar, the rabbinical court, and the family court that operate in the region, which are the three tribunals authorized under

---

2. This article specifically focuses on the Jewish population, which constitutes 78 percent of the general population in Israel, because the study revealed that most non-Jews turn to religious tribunals rather than the civil authorities in inheritance matters. Since I do not know Arabic, which is the language spoken in these tribunals, I could not investigate their procedures.

Israeli law to issue inheritance and probate orders.<sup>3</sup> In this article, I focus on the analysis of the 323 wills that were found in the sampled files, 125 of which were disputed, and the rest were executed without objection.<sup>4</sup> The data taken from the probate files were statistically analyzed, and the wills were examined qualitatively as well. The earliest of the wills was written in 1972 and the latest in 2004, with the majority ( $n = 251$ ) drawn up after 1990. Fifty-five percent of the testators were male, and 45 percent female. The median age of will writers was seventy-three for females, and seventy-four for males.

In addition, as part of the study, in-depth interviews were conducted with fourteen people involved in inheritance disputes and eight lawyers specializing in inheritance law.<sup>5</sup> This article will draw insights from the interviews with the latter group, as they shed light on the data derived from the files regarding the process by which the personal wishes of the living relating to their death are translated into a lifeless, impersonal legal document.

## Findings

### *Aesthetics, Length, and Formulation*

Israeli law recognizes a number of modes of making a will. A will can be handwritten by the testator, or it can be written and signed by the testator in

3. By law, heirs of a deceased individual may apply to either the inheritance registrar or, if all the heirs consent, the rabbinical court for inheritance or probate orders. When a will is contested, the dispute is handled, in the vast majority of cases, by the family court (Succession Law 1965, secs. 151, 155).

4. The study encompassed the examination and analysis of 401 files of consensual applications for an inheritance order (158 filed with the Tel Aviv Inheritance Registrar and 243 with the Tel Aviv Rabbinical Court), 198 consensual applications for a probate order (138 filed with the Tel Aviv Inheritance Registrar and 60 with the Tel Aviv Rabbinical Court), and 144 files of inheritance disputes brought before the Ramat Gan Family Court. In the relevant years (2000, 2002, 2004), 100,422 Israeli Jews died. During these years, 16,441 applications for inheritance orders and 14,853 applications for probate orders were submitted to the Tel Aviv Inheritance Registrar, which handles approximately 56 percent of all applications filed with inheritance registrars in Israel (information provided by the chief inheritance registrar). During the same period, 4,212 applications for inheritance orders and 1,044 applications for probate orders were submitted to the Tel Aviv Rabbinical Court, which accounted for about one-third of all inheritance procedures conducted in the Israeli rabbinical courts in that period (Rabbinical Courts n.d.). Hence, the randomly selected sample represents only a fraction of all consensual inheritance procedures handled by the various tribunals during the relevant years for the Israeli Jewish population. With regard to inheritance disputes, the study revealed that of the approximately 1,400 files transferred yearly from the Tel Aviv Inheritance Registrar to the Ramat Gan Family Court, only a small minority involve disputed inheritance, with the majority relating to missing information in a will, difficulties in locating heirs, controversies over the appointment of an executor, and the like. The sample included about half of all the files from the year 2000 ( $n = 50$ ) and all the files from 2002 ( $n = 48$ ) and 2004 ( $n = 46$ ) that involved an inheritance dispute and were concluded by mid-2007.

5. All interviews were conducted in Hebrew by the author during 2008–2009, and all transcripts are in author's possession.

the presence of two attesting witnesses. The testator can also submit the will in writing or orally to a judge, registrar, or notary, who then approves it, or, in the case of a dying person, the will can be transmitted orally and then later summarized in writing by two witnesses to the oral testament (Succession Law 1965, secs. 18–23).

Despite the various legitimate handwritten and oral options, the vast majority of the wills examined in the framework of my study were typed. In two of these cases, the signing of the will had been documented on videotape as well. Only 19 wills were handwritten. The scarcity of holographic wills is not unique to Israel. For example, Stephen Clowney (2008, 42) similarly found only 145 handwritten wills among the 10,000 wills submitted for probate in Allegheny County, Pennsylvania, from 1990–1995. In addition, in my sample, only 2 wills were recorded as oral wills. Indeed, it seems that the practice of an orally delivered deathbed will, common in premodern times, almost never matches the reality of Israeli wills of late modernity, as documented in this study. All in all, then, the majority of the examined wills took a formal and impersonal guise.

Interestingly, a dignified form or special aesthetic style does not necessarily result from wills being typed rather than handwritten or orally delivered. Most wills in my study did not include any fancy or ornamental cover page and in fact lacked a cover page altogether; in the majority of the studied sampled wills, the pages were simply stapled together with one staple. In addition, there were neither gilded, decorated, or enlarged letters in the text of any of the wills nor any other aesthetic features that could signify that the testator, or any other involved party, sought to fashion the will as a unique document. The only exceptions were wills that were notarized, which accounted for 15 percent of the sample. In these cases, a red ribbon attached the will to a cover page bearing the notary's signature and a red seal. This gives the cover page a uniquely decorative and solemn appearance. But even in the case of these notarized wills, behind the decorative cover page, we found, just as with all the other wills, a dull and rather ordinary-looking document.

In some cases, the will seemed almost an insult to the memory of the deceased, with coffee stains, creases, and wrinkles blemishing the document; erasures and handwritten comments; and typographical errors marking up the text (for example, Will nos. 280, 294, 302, 306). In general, it seemed that no effort had been put into the production of the sampled wills to endow them with any unique or dignified aesthetic style or to preserve and protect them in a respectful manner.<sup>6</sup> The plain, almost dismal appearance of the wills marked them as trivial routine documents lacking any unique or personal aesthetic form.

---

6. In fact, the interviews with the probate lawyers revealed that, in contrast to what is common practice in the United Kingdom (Masson 1994), not all Israeli lawyers keep a copy of their clients' wills, and even among those who do, not all keep the wills locked in a special safe.

Furthermore, the wills in the sample were relatively short in length. While the longest will was 11 pages in length, the overwhelming majority (85 percent) consisted of 1 or 2 pages, at an average of 1.8 pages for the whole sample. However, even this average is misleadingly high, since wills with witnesses (84 percent of the sample) devoted at least one-quarter of a page to the witnesses' declarations and signatures; hence the most substantial part of these wills was, in many cases, no more than 1 page in length. Moreover, the typical 1- or 2-page will consisted of very few words. An example was provided to me by one of the lawyers I interviewed, who showed me a 2-page will he drafted for an elderly client. Though this client was a composer and had an interest in preserving his artistic legacy, and despite the fact that the will favored one grandson over two granddaughters, it contained only 205 words (omitting the witnesses' part). Such brevity, typical of wills, clearly demonstrates that people do not use their final testaments to put into writing their reflections on their lives or on the reality they will leave behind after they have died or to discuss at length family relations or any other personal matters, or even to set forth a detailed description of their property and how it should be distributed or used.

Alongside aesthetics and length, linguistic style and form are a third constitutive element of wills that could be indicative of personal characteristics and features of testators. One such possible indicator is the signature of the deceased. A few wills in my sample bore the fingerprint of the testator in lieu of a signature (Will nos. 2, 227, 240, 283), indicating that he or she had been illiterate. In some wills, the signature was shaky (for example, Will no. 46), suggesting either that the testator was not in perfect health when signing the will or that Hebrew was not the testator's mother tongue. Moreover, about 5 percent of the wills were written in a foreign language, offering some indication as to the deceased's cultural background.<sup>7</sup>

Also possibly indicative of a testator's personal characteristics is the presence of certain phrases in the will that are required by Jewish law in order for the document to be valid. As mentioned before, in addition to meeting the requirements of Israeli inheritance law, a religious person must formulate a will as a gift deed in order to conform to Jewish law. This is achieved with the following paraphrased statement:

I have the right to withdraw this gift made in full health for the entirety of my life up to an hour before my death, and if I do not revoke this gift over the course of my life, the gift will be valid from now and up to an hour before my death. (see, for example, Rivlin 1999, 297, 299; see also Will nos. 134, 157, 167, 169)

---

7. A few of the wills included a statement that the will had been translated from the Hebrew original for the testator before he or she signed it, which constitutes another indication that Hebrew was not the testator's mother tongue (see, for example, Will no. 66, stating that the will was translated from Hebrew into Farsi).

A will in which such phrasing appears would seemingly reveal the deceased to be a religious person. However, a few of the lawyers interviewed in my study disclosed that some lawyers include these phrases in wills as a matter of routine, even when the testator is not religious. In any event, such formulations are not personal in the sense of constituting a unique and personal choice of words, but rather are standardized declarations phrased in accordance with rabbinical guidelines.

Beyond these examples of how linguistic style or form can reveal personal information about the testator, a more significant finding from the study in this context is that more than 88 percent of the wills were written in legal language. Unlike in other countries,<sup>8</sup> in Israel, there are no published forms for wills available to the public, and even a Google search does not produce any free or cheap template for a do-it-yourself will in Hebrew.<sup>9</sup> Thus, it is most likely that the sampled wills that were written in legal language were drafted by lawyers with whom the testators consulted. Indeed, in 64 percent of the wills, there was a direct indication of a lawyer's involvement, either as the notary notarizing the will or as one of the witnesses to the will. In most of the cases, therefore, it was a lawyer's professional language, not the personal language of the testator, that governed the will. Like their colleagues elsewhere (Finch et al. 1996, 41), the Israeli lawyers interviewed for this study reported keeping templates of common types of wills on file on their computers, which they adapt to the specific needs of the client. Moreover, lawyers reported their preference for short wills and argued that a will is a legal document like any other and that the idea of granting it special aesthetic or linguistic characteristics never crossed their minds. It is hardly surprising, then, that the study revealed a proliferation of similar versions of short and plain-looking wills and that the aesthetics and phrasing of a last testament rarely reveal anything about the testator.

In sum, the standardized formulation of wills results in the production of a short, formal, standardized, and dull legal document with very few indications as to the unique personal circumstances behind it. Although a will's contents allow us to become better acquainted with the deceased, as we shall see, they do not succeed in turning the document into a personal and sentimental final letter.

---

8. In the United States, laypersons can easily get access to form wills (two on-line guides to creating a will are *Nolo's Online Will* (Nolo n.d.) and *Legalzoom Wills* (Legalzoom n.d.). Standard form wills are also common in the United Kingdom (Finch et al. 1996, 41).

9. Even a book that claims to provide a do-it-yourself will kit provides only a single form with an opening paragraph and blank lines for signatures but no instruction on formatting substantial provisions (Wozner 2000, 39). The only site providing examples of wills in Hebrew that I was able to find is intended for the use of lawyers, not the layperson, and charges between US \$65 and \$114 per template (Zoolo n.d.).

## Contents

Most wills examined in the study began with a standard opening paragraph such as the following:

Since no one knows when his time has come, and since it is my wish to duly arrange my affairs and to give directions as to what will become of my property after my death, I, the undersigned, Benjamin Cohen,<sup>10</sup> residing at 56 Ibn Gvirol Street, Tel Aviv, of good and free will, uncoerced and being of sound mind, and with full understanding of the meaning of this will, hereby direct that. . . (Will no. 270)

Aside from this routine clause, which is aimed at satisfying Israeli legal requirements related to freedom of testation, the wills in the study rarely contained statements concerning anything other than how the estate should be divided. Thoughts, feelings, a settling of accounts, and moral messages were uncommon in these wills. The vast majority of the wills diverged only in the names of the testator and heirs and the estate allocation; no other personal contents were present.

There are, however, exceptions to this apparent rule. But before addressing these exceptions, we should look at the personal dimensions of estate division. In most examined cases, the will stated the connection between the heirs and the testator. Hence, the will usually tells us who among the acquaintances the testator sought to financially provide for the most after death. For example, in one of the sampled uncontested wills, the testator, a widower, declared that his wife passed away in 1996 and that he has a son living in Israel and a daughter living in the United States. The testator bequeathed money to eighteen different institutions, including universities, hospitals, and nongovernmental organizations (NGOs), leaving each between \$500 and \$5,000; of the remainder of the estate, 20 percent was granted to the testator's son, 20 percent to one grandson, and 15 percent each to three other grandsons and one granddaughter (Will no. 222).

In this particular case, we know that the testator had two children but only one was designated an heir. In most of the sampled files, however, the will did not include a statement regarding the testator's family unit, and so it was impossible to discern from the will itself if any heir under law had been disinherited.<sup>11</sup> As in the described will, even in cases in which the will

---

10. All names are pseudonyms to ensure the privacy and confidentiality of the testators and their families. For this reason, additional details such as addresses were also changed.

11. As in the United States (Waggoner, Alexander, and Fellows 1997, 579), with the exception of Louisiana, Israeli inheritance law allows the disinheritance of a child. However, unlike most US states (580), Israeli law does not protect against unintentional disinheritance and does not require that the testator states explicitly in the will the intention to exclude a child from the estate. Moreover, the Israeli inheritance authorities collect data on the deceased's

revealed the disinheritance of a family member ( $n = 32$ ), it did not always detail why. Interestingly, when the phrasing of a will indicated the favoring—as opposed to disinheritance—of someone ( $n = 22$ ), this was usually accompanied by some explanation, for example, a statement that the favored heir had attended to the testator or that he or she was in need of a larger share of the estate. However, we learn more about the personal and familial circumstances of the deceased from those few wills that recount explicitly why a given family member was disinherited than from the brief explanations for the favoring of one heir over others.<sup>12</sup> For instance, in one of the contested sampled wills, the widowed testator declared, “I bequeath nothing to my two twin children since they were conceived as the product of sperm theft by their mother” (Will no. 47). The testator then designated a senior citizens’ home and fourteen persons who did not bear his family name as his sole heirs.<sup>13</sup> In yet another contested will, the testator, a famous Israeli artist, divided his estate among his third wife, his son and daughter, and three institutions. After detailing this allocation, he declared,

To my daughter Michal I did not grant any property in my will since in the divorce arrangement with her mother, she received from me an apartment on Hillel Street. I disinherit my daughter Dana from any object or property belonging to me. A daughter who curses her father and wishes him a swift death is not deserving of her father’s name, and so I instruct that she not be given anything from the house and request that she not bear the [family] name Yishmaelov. (Will no. 104)<sup>14</sup>

Putting the drama of these examples aside, they do serve to highlight the exceptions to the rule of a general lack of any revelation of the unique

---

family unit only in cases of intestacy. In cases of testament, the person submitting the probate petition does not have to specify the heirs by law or to notify them about the procedure (Inheritance Regulations 1998, sec. 14 and forms no. 2 and 3). Hence, there was no information in the sampled testament files about potential heirs who were disinherited.

12. Within the underdeveloped field of the sociology of inheritance, disinheritance attracts a relatively significant amount of attention (Rosenfeld 1979; Schwartz 1993; Finch et al. 1996).

13. From the objection to the will, we learn that the twins were never supported by the testator, even after a paternity test had confirmed that he was their biological father and even after their mother won a child support suit on their behalf. The case ended in a settlement, under which one-third of the approximately US \$250,000 estate was designated to a fund for the children’s support.

14. The objection to the will was submitted by the testator’s third wife, the mother of the daughter who was disinherited because she had cursed her father. The wife discovered after the testator’s death that he had changed a mutual will they had signed and had left her only half of the estate rather than all of it. The two children from the testator’s first marriage, who received one-quarter of the estate under the new will, told the court that the lawyer who had drafted the later will had pleaded with the testator not to include the harsh words against the disinherited daughter but that he had insisted, “though with great sorrow.” The objection was withdrawn after the two children agreed to sell their part in the residential apartment to the testator’s third wife.

personal relationships between the testator and any heirs or disinherited family members.

Another component of the examined wills that could have been expected to reveal personal characteristics of the deceased is the contents of the estate. Indeed, the description of the estate in several of the wills disclosed the occupation or vocation of the individual testator: an artist (Will no. 296), a lawyer (Will no. 47), a locksmith (Will no. 213), and a synagogue manager (Will no. 167). The majority of sampled wills, however, did not divulge anything about the profession or trade of the deceased in the description of the estate. But detailed specification of the estate did, in some wills, reveal other personal dimensions of the deceased, for example, the will of a married man who divided his estate among his wife; their grandson, granddaughter, and daughter-in-law; and the heir of a granddaughter resulting from a previous marriage (Will no. 91). Among other things, the testator bequeathed to his wife the contents of their apartment. A handwritten list of all the objects in the apartment was attached to the typed will and consisted of hundreds of items, including one brown wool blanket; a Persian rug; an electric mixer; an iron and ironing board; a telephone; two crystal ashtrays, one white and one Venetian; six china salad bowls; a porcelain cat; and four Pyrex baking dishes. This exceptionally long and detailed itemization tells us about both the everyday life of the deceased and his need to strictly distinguish between the objects that represented this life, which he wished to leave only to his wife, and the rest of his estate, which he divided among his other heirs.

Another example of a will including a detailed itemization of the estate's contents is that of a widow who divided her estate among her son, her daughter, her present and future grandchildren, four friends, and nine organizations. The itemization of the estate's allocation is shown in Table 1. This somewhat confused testament tells us about personal items the deceased owned, such as rings and furs; about her level of religious observance, expressed by both the sacred objects she owned and the Orthodox organizations she chose to bequeath to; and about her frugal nature, manifested in the inclusion of used undergarments in the estate and her desire that a second-hand Torah scroll be purchased for a new Chabad community. We also learn from the estate division of the bitter relationship between the testator and her son's wife, who is not permitted to enter the vacation unit she bequeathed him, and of her right-wing political leanings, based on her bequeathal to a settlement in the Occupied Territories.<sup>15</sup>

---

15. Indeed, this will was contested in court, as the deceased's daughter and grandson argued that it was not clear who should inherit the vacation unit, who would determine whether the grandson had cut himself off from the family, and how and when the 30 percent of the estate designated to future offspring would be allocated. The dispute ended in a settlement that increased the grandson's share.

**TABLE 1.**  
**Estate Division—Will No. 42**

Heir	Portion of the Estate
Daughter	Two diamond rings, furs, clothes, personal items, silver candlesticks, used undergarments, the vacation unit, 30% of the estate.
Son	Any religious ornaments or silver items he chooses; all the books; the vacation unit, under the condition that his wife does not enter it; 30% of the estate.
Grandson (son of a deceased daughter)	Two pairs of silver candlesticks; six silver napkin rings; biblical books; 10% of the estate, under the condition that he does not cut himself off from the family.
Future grandchildren	A relative proportion of 30% of the estate when they reach thirty years of age.
Charity funds	US \$250.
Yad L'Achim (an ultra-Orthodox Jewish NGO)	US \$250.
Foot and Mouth Artists	US \$250.
The Chabad community in Sefad (a religious community)	US \$250, with the interest earned on this fund to be given to a needy yeshiva student.
A female friend	\$250.
A female friend	Five books.
A female friend	Five books.
The husband of a certain person	Books in Yiddish.
Association of the Armored Corps Widows	US \$150.
Holon Library	Any remaining books.
A settlement in Judea and Samaria	A <i>paruhet</i> (an ornamental curtain that covers the front of the holy ark in the synagogue) that the testator hoped to complete.
A new Chabad community	A secondhand Torah scroll in good condition to be bought from a reliable scribe.
B'nai Brith (Jewish organization)	US \$150, with the interest from the fund to be given to a student living in Holon who demonstrates good citizenship.

Yet in many of the wills examined, there was no disclosure of the contents of the estate, and thus we are given no clue as to even the extent of the testator's relative wealth.<sup>16</sup> In almost two-thirds of the wills, the estate was allocated proportionately, with no directions regarding the bequeathal of particular items to specific heirs. In most of these cases, there was no mention of any of the estate items, and we can divine nothing about the contents of the estate. In only 9 percent of the sampled wills, in addition to a proportionate allocation to heirs, did the testator bequeath one or more specific items to a particular beneficiary; in another 26 percent of the wills, there was only a specified bequeathal of the estate's items, with no proportionate allocation to heirs. Even in those cases in which some items were explicitly named, the specification usually was nothing close to the detailed itemization presented in Table 1, and concerned only one or two types of assets, usually real estate ( $n = 80$ ). Thus, the examined wills do not reveal much about what the testators owned.

Moreover, it should be recalled that people can and do exhaust or give away all or substantial parts of their assets during their lifetimes. Only 15 percent of the sampled wills were written less than a year prior to the testator's passing, while approximately 44 percent were written between one and seven years prior to death, and the rest even earlier. In the interim between the will writing and the testator's death, the estate can be depleted for a variety of reasons, including the high expenses of old-age care. Thus, in most cases, we cannot know to what extent the contents of the estate detailed in a will truly reflected the assets in the testator's possession upon death. The passage of time between the drafting of the will and the day its directions become relevant can render the personal aspects of the estate allocation irrelevant and quite different from the testator's personal circumstances at the time of death.

In sum, we can learn from the wills in the study whom the testator sought to favor financially, but rarely about any relationships with the heirs, whether any legal heirs were excluded and why, or what precisely the estate comprised at the time the will was drafted and upon the testator's death.

I conclude the presentation of the study's findings with some final observations regarding the few cases in which the will included nonmaterial statements. These rare personal expressions in fact highlight the predominantly impersonal nature of wills, while at the same time providing examples of how testators can use their wills to convey unique personal messages. Table 2 presents those cases in which a personal expression not directly related to estate allocation was included in the will. The table reveals that personal statements and reflections not directly related to property division

---

16. Unlike the inheritance authorities in other countries, for example the United Kingdom (Finch et al. 1996, 13) and the United States (Sussman, Cates, and Smith 1970, 45), Israeli inheritance authorities do not collect information about the estate size.

**TABLE 2.**  
**Personal Expressions Not Directly Related to Estate Allocation**

Expression	Tribunal and Will Number
A request for a specific burial place	IR: 231, 281; RC: 131; FC: 90, 99, 104, 105
A request for a specific headstone inscription	IR: 281; FC: 90
A request that a certain person not participate in the funeral	IR: 281
Mention of memorial days, request for the recitation of prayers or for the erection of a plaque in the synagogue	IR: 321, 222, 261, 280, 281 322; RC: 133, 167; FC: 38, 86, 100, 109, 122
Affective expressions	IR: 255, 287, 298; RC: 160, 162; FC: 9, 17, 31, 67
Sentimental statements	IR: 249, 298; FC: 58, 68, 100
Instructions or requests for the care of a spouse or child	IR: 260, 287, 309; RC: 167; FC: 7, 68, 77, 84
Prohibition against a certain person entering the deceased's apartment	IR: 256
Expression of trust in the testator's children and thus no appointment of an executor	IR: 267
Description of the family unit	IR: 275; FC: 47, 77
A request to maintain family relations or family honor	IR: 279, 284, 304; RC: 126, 131, 133, 136, 140, 149, 166, 167, 175; FC: 43, 45, 65, 70, 93, 97, 122
Prohibition of an autopsy	RC: 177; FC: 90
A wish that the money bequeathed to the deceased's children be used for the grandchildren's benefit	RC: 183
"I am of sound mind despite being deemed legally incapacitated."	FC: 46
A request that the testator's child be a true friend to a friend of the testator	FC: 47
Elimination of certain documents	FC: 47
Blessing of an adopted child who agreed to relinquish her share of the estate	FC: 80
A request that the testator's child not bear the testator's family name	FC: 104
A request that in the event that the testator's brain ceases to function, his wife will become his legal guardian	FC: 113

IR = inheritance registrar; RC = rabbinical court; FC = family court.

appeared in 58 of the 323 wills examined. More than one type of expression could be included in a single will. For example, in addition to a detailed explanation as to why the testator was disinheriting his wife (a long divorce dispute), Will no. 90, which appears three times in the table, included a prohibition on an autopsy; a request for burial in a military cemetery close to the testator's son, who was killed in the line of duty; and instructions for the following words to be inscribed on his headstone: "A survivor of the Sobibór extermination camp who fulfilled the vow he made to those exterminated to preserve their memory by writing the book 'The Rebellion in Owls Forest.'" However, such detailed and personal expressions were a rarity in the wills listed in the table, and in the majority of the sampled wills, no personal reflections of any kind were present.

It is important to recall that there is disproportionate representation in the study sample of contested wills (which are handled by the family court) and of wills submitted to the rabbinical court. The study found a probability of 1:4.4 that some sort of personal expression unrelated to estate division would be included in contested wills, and 1:4.6 in wills submitted to the rabbinical court, as opposed to a probability of 1:8.1 for wills submitted to the inheritance registrar. The ramifications are that in the vast majority of cases (that is, noncontested wills not submitted to a religious tribunal), there are even fewer instances and manifestations of personal reflections than those present in the study sample.

Given the conception of the will as a sentimental last letter as described in the Introduction, the rarity of sentimental expressions in the studied wills is a striking finding. As can be seen in Table 2, only nine of the sampled wills contained affective expressions directed at heirs, such as "my dear wife," "beloved son," or "the one that I love." In only five other wills were sentimental statements present, such as "I thank my loyal friend, who has accompanied me for many years, for her continuous warmth toward me, her patience with me, and her great assistance" (Will no. 298). Finally, only one will in the entire sample can be described as a personal and sentimental final letter. This will was handwritten by a woman testator twenty-one months before she passed away, on both sides of a notebook page and in her own wording rather than in legal language. She directed that "nothing goes to my husband, who for many years humiliated me." She divided her property unevenly between her two sons, granting the majority of her estate to her disabled son but instructing that a trustee be appointed to manage his share, since "he will not succeed in doing this." In a postscript, she addressed her other son, begging him not to neglect his brother:

Amir, you know how lonely Yoav is and how eager he is for contact with you, for a relationship, for a sympathetic ear, for concern, advice when needed, for a little respect. So he will not be lost alone in the world. He

needs you, all of you, as a family, Dorit, yourself, your children. There is no one close to him that he can rely on as friends and loved ones but you. I love you all and wish you all the very best, interesting lives, lives of togetherness and mutual support. With love, your mother, mother-in-law, and grandmother, Sarah. (Will no. 68)

This homemade sentimental will, like the other exceptional wills in the sample containing detailed and personal expressions, stands in stark contrast to the common soulless will. Unlike the sentimental Roman will, the spiritual Anglo-Saxon will, and the Jewish ethical will, contemporary Israeli wills made by Jewish testators tell us very little about the deceased, their beliefs, their sentiments, or their relations with others. From Philippe Ariès (1975), we learn that these findings are not unique to the Israeli setting and can be seen as part of a general Western shift from personal to standardized legal wills. Ariès described the premodern will as

The means by which a person could express—often in a very personal manner—his deep thoughts; his religious faith; his attachment to his possessions, to the beings he loved, and to God; and the decisions he had made to assure the salvation of his soul and the repose of his body. [But by the middle of the eighteenth century] the will [had been] reduced to the document we find today, a legal act distributing fortune. (63–64)

Finally, the exceptional wills from the sample presented here also demonstrate the wide spectrum of personal and sentimental expressions that could be included in modern wills were testators, and their lawyers, to perceive the will as a special document intended to reflect the testator's unique circumstances and as an opportunity to convey personal and sentimental postmortem messages to those left behind.

### Possible Explanations

What explanations can be offered for the findings that emerged from the study on the lack of soul of the examined wills? One possible factor is the Israeli Succession Law (1965), which does not prescribe what constitutes a will but does state that

A person may leave, by will to one or more persons—

- (1) the whole of his estate or a proportional part thereof;
- (2) any of the assets of his estate or a benefit therefrom.

Thus, the law relates exclusively to the financial dimensions of last testaments. There is disagreement among Israeli scholars regarding the limitations that this clause sets on the contents of wills. Shmuel Shilo (1992, 358–61)

interpreted it as saying that only provisions related to the estate and its management can constitute a will. Shaul Shohat, Menachem Goldberg, and Yehezkel Flomin (2005, 72) and Michael Corinaldi (2008, 199–200), in contrast, have argued that a will can contain any personal, moral, or political wishes, not just requests related to property.

This lack of academic consensus notwithstanding, even the latter group concedes that only the financial elements of a will are legally enforceable. There are, however, some limited exceptions to this rule. Under Israeli law, a person can donate his or her body to science in a will,<sup>17</sup> and legal recognition was recently given to a testator's instructions for his sperm to be used to impregnate his spouse after his death.<sup>18</sup> Moreover, since 1996, a testator has been able to declare in a will a preference for civil burial rather than the religious burial common in Israel (Right to Alternative Civil Burial Act 1996). Other possible nonfinancial requests, for example, those regarding the testator's headstone inscription, are not provided for in law and hence are not legally binding even if made explicitly in the will. However, in many cases these nonmaterial requests can become enforceable by law if they are phrased as conditions the heirs must fulfill if they wish to receive their share (Maimon n.d.).

The wills in the study seem to indicate that, in most cases, laypersons internalize the law's logic that only financial matters are important and worthy of mention in wills since, in general, they alone are enforceable. Lawyers play a crucial role in this internalization process. Indeed, a second possible factor in the depersonalization of the production of wills is the fact that the vast majority are drafted by lawyers. As we have seen, "homemade" wills are the rare exception to the rule, and the rational, concise, impersonal language of the legal profession dominates most wills. Moreover, the lawyers interviewed for the study divulged that they in fact try to deter their clients from including personal and sentimental feelings and thoughts in their wills because they might "pollute the will," "complicate things," and "create risks." For example, if, as one lawyer explained, a testator were to declare in her will that she is disinheriting her son because he never visits her or he does not love her, the son would later have legal grounds for contesting the will as being based on error,<sup>19</sup> arguing that he visited his

---

17. According to the Israeli Anatomy and Pathology Regulations (1965), Supplement, form 1, consent to donate one's body to science must be in writing. As I understand it, this form can be integrated into a will. But unlike donation of one's body to science, which is subject only to the deceased's consent, donation of organs for transplant is subject also to the consent of the deceased's family (Anatomy and Pathology Act 1953, sec. 6A).

18. Attorney General Guidelines No. 1.2202 (May 2003), Retrieval and Use of Sperm after Death. Ministry of Justice, <http://www.justice.gov.il/NR/rdonlyres/2DCE0B40-B4D6-441F-A792-342A33982AD6/0/12202.pdf> (accessed June 20, 2010).

19. Section 30(b) of the Law of Succession (1965) states, "Where a testamentary provision is made by reason of error and it is possible to determine clearly what the testator would

mother frequently and that he always loved her. Another attorney reported that in the rare cases in which a client has insisted on expressing in writing personal thoughts, feelings, or wishes, he has advised the client to do so in a separate document—in a letter to be sealed in an envelope and attached to the will, and not constituting part of the will. Moreover, the lawyers described several instances in which they actually influenced the way in which the estate was allocated; thus, even this clearly personal dimension of wills is at times shaped by lawyers as well. The most common example given of this aspect of the lawyers' work is their attempts to deter clients from bequeathing to their children unequal shares in their estates. The lawyers justify this interference in the client's will either with the ideological belief that children should be treated equally or with practical reasoning, based on past experience, that unequal distribution among children can lead to familial and legal disputes.

Indeed, the dominance of lawyers in constructing wills was also documented by Janet Finch and her colleagues (1996, 45) in their study on inheritance in the United Kingdom. Their findings showed that the number of wills drawn up without professional involvement declined from 31 percent in 1959 to 11.5 percent in 1989. In addition, interviews with legal professionals revealed that they drafted wills for their clients in a routinized fashion, using templates and sometimes standardized questionnaires. Some solicitors have also reported steering their clients away from including cruel messages in their wills, for the reason that they are public documents, and have admitted to trying to minimize their workload by discouraging their clients from including itemized lists of bequests in their wills (Masson 1994). Hence, the findings from my study coincide with previous findings in demonstrating the different ways in which lawyers mold their clients' wills into impersonal and standardized documents (see, also, Shaffer 1982).

Notwithstanding the contribution of formal law and its practitioners to shaping the will as a document without a soul, it is important to note that most people do not insist on making their wills personal and sentimental final letters. A testator could certainly forgo a lawyer's services and write a will in her own words as well as include nonfinancial matters in it, or else pressure her attorney to incorporate personal expressions and sentimental words in the will. Yet most do not. This phenomenon was documented by Schwartz (1993) in a study of 319 wills filed with the Providence Probate Court in 1985. Although, unlike myself, he found that only 6 percent of the wills were "attorney oriented" (349), it is noted that a mere 9 percent included "testamentary material" (347), that is, nonfinancial final wishes or messages. Accordingly, a third possible explanation for the impersonal nature of wills is

---

have directed in his will but for the error, the Court shall amend the terms of the will accordingly; where this is impossible, the testamentary provision is void."

that testators simply fail to initiate, or insist upon, the integration of personal aesthetic, linguistic, or substantial elements into their wills.

What can explain testators' reluctance to perceive their wills as a holistic, spiritual, and sentimental last letter, and their adoption of the practical and financially oriented approach? One possible reason is the overall process of secularization that Western societies have undergone in modernity (Michel Vovelle, cited in Ariès 1975). In premodern times, a large portion of the nonfinancial part of wills was devoted to expressing the testator's religious beliefs and wishes. As shown in Table 2, traces of religious belief are still present in modern wills, for example, when the testator requests that memorial prayers be conducted, or a memorial plaque in perpetuity be placed in a synagogue.

Yet another possible explanation for testators' reluctance to include spiritual and sentimental expressions in their wills is the centrality of property in the modern era. Thomas Shaffer (1982) argued that for the testator, his property defines what he is, what he does, and what he uses: "will making, then, turns on a property self" (95). Shelly Kreiczer-Levy (2008) adds that we use property to extend ourselves, to communicate, and to influence; hence, it serves as a tool for transcending our limited existence. The transfer of property through the will, she maintains, creates continuity of one's identity and ideas as well as a legacy. Thus, it might be argued that property is so central a feature of testators' personalities that the majority are satisfied with referring only to their property in their wills and have no need to add any nonfinancial elements to their final testament.

The fear of death is a third possible reason for the unsentimental and property-oriented focus of testators in their wills. This fear is, of course, not a modern phenomenon. Late modernity, however, has been characterized by the suppression of contemplation of death, on both the personal and social levels, as a way of dealing with this fear (Kreiczer-Levy 2008, 60–61). Moreover, as Shaffer (1982) contended, "the 20th-century person's solution to the problem of death is to plan it; the law office will-making session is a symbol of this solution and even the epitome of it" (93). Accordingly, the emphasis on property rather than feelings and personal legacy can be understood as allowing testators to feel that they control death and, in a sense, are even beating it, as they determine what will happen to their assets once they are gone (Shaffer 1970, chap. 4), while at the same time suppressing any genuine and profound contention with the idea of their mortality on the psychological, emotional, and theological levels.

The exploration of these and other possible explanations as well as how they interrelate entails broad and in-depth investigation that stretches far beyond the scope of this article and the findings it reports. In the next part, I argue that even before this in-depth investigation is completed, lawyers should expose their clients to the option of leaving a will with a soul, be it their material will or a separate ethical will.

### III. THE FUTURE?

After the findings reported here regarding the form that wills take were presented to the Tel Aviv Inheritance Registrar, Advocate Joseph Zilbiger, who is responsible for all the civil non-contentious inheritance procedures in the region covered by my study, he sent me a long e-mail on April 23, 2009, in support of the status quo. He argued,

The will is intended to be enacted after the death of the testator, when he is no longer among us. The will shall be presented to different authorities such as the Real Estate Registrar, banks, the Licensing Bureau, the tax authorities—all of whom are not the testator's friends. They are professionals, and the will should speak in the language and terms they can understand and should not include terms familiar only to the testator, his family, or close circle. Hence, in light of the will's nature, characteristics, and purpose, it should not go beyond practical instructions as to the division of the testator's property. The testator should publish his thoughts, memories, life story, [and] loves not in a will but in books, letters, or any other way.

A completely different view was expressed by Roberta Cooper Ramo when she was the president of the American Bar Association. In contrast to Zilbiger, whose concern lies with the ability of the relevant professionals to understand the will's language, Cooper Ramo (1996) talks about the understanding of the testator and his or her family and asks,

Why is it that our clients' most intimate documents cannot be understood by the people who execute them? Why are there no jokes in our wills, why no words of love in our trusts, and why of all practices do we use forms for our own security instead of our brains and creativity to have our documents reflect the people signing them, not the people drafting them? (16)

Cooper Ramo urges probate lawyers to make their practice "the true practice of family law" (15). Good probate lawyers, she argues, are those who understand their clients' family relations, are sensitive to their religious and cultural backgrounds, listen to their hopes and fears, and make their dreams come true. She claims that law schools should offer courses that give future lawyers "a human frame of reference" (15) and teach them how to listen to their clients, and to their family members after their clients have passed away, and to communicate with them as emotional human beings.

In the debate between the formalist view supporting the current lack of soul in wills and the belief that wills should be reflective of the people who sign them, I am a proponent of the latter stance. My position rests on the normative presumption that since human beings are emotional

creatures, the law should not ignore emotions (Maroney 2006). More specifically, I adhere to the nonformalist view because I espouse the theory of inheritance as a bifocal relational institution developed by Krecizer-Levy. According to Krecizer-Levy (2008), inheritance is first and foremost an intergenerational bond. It assists us in coping with our mortality by enabling our continuity through ownership transfer to the next and future generations, thereby giving meaning to our lives. Krecizer-Levy claims that the giving in a will is a manifestation of the testator's relationships with the recipients. Hence, a bequeathal encompasses the giver's preferences, decisions, and personality, as well as possibly reflecting the recipients' gratitude, disappointment, remembrance, and, hopefully, respect for the giver's choices and wishes. I would argue that from this perspective, allowing testators to include in their wills expressions of affection or disapproval; sentimental statements; bequeathals of specific items to specific heirs; declarations about their beliefs, hopes, or fears; and requests relating, for example, to burial and memorial arrangements; as well as the testator's choice of the will's typeface and inclusion of a cover page, is completely consistent with the rationale of the institution of inheritance and would enhance its personal, familial, and social significance.

Nonetheless, although they lack any empirical support,<sup>20</sup> the concerns raised by the Tel Aviv Inheritance Registrar and by some of the lawyers to whom I presented the notion of a will with a soul<sup>21</sup> should not be dismissed or treated lightly. These lawyers were worried that personal, long, detailed, and emotional wills might be vulnerable to challenges, misinterpretations, and other unnecessary ordeals, such as testamentary libel or exposure of family secrets to outsiders. In light of these potential dangers, therefore, I argue that even when a testator writes an ethical will that is separate from her material will, her lawyer should read it and advise her in cases of a contradiction between the two or when other legal risks are created. However, in many cases, these dangers do not arise, and even when they do, they can be overcome. The advantages and rewards that testators and their families might reap from the inclusion of personal, emotional, and spiritual contents in wills certainly justify the effort to allow clients to incorporate their feelings, thoughts, and wishes into their wills, and then advise them about their legal meanings and consequences and assist them in creating a document that will be valid under law. Since, as we saw, lawyers dominate the will-production market, and most testators turn to

---

20. For example, there is no empirical support for the popular belief that handwritten wills are challenged in court more often than legalized wills (Clowney 2008).

21. These lawyers include my interviewees, lawyers who participated in a seminar on inheritance law held at Bar Ilan University on March 25, 2009, and reviewers of previous drafts of this article. I thank them all for their insightful comments.

them for advice in drafting their wills, it is their responsibility to broaden their clients' understanding and the possibilities as to what a will can encompass and constitute.

## CONCLUSION

In his seminal article on the American law of succession, Lawrence Friedman (1966, 374) argued that the formal characteristics of standardized legal wills serve their "sacred," "almost mystical" nature. It is the fact that "the will is the sole, authentic voice of a man who is dead" (374) that mandates the "standardization and uniformity of text" (374), which guarantees the will's proper internal interpretation and execution. In this article, I have sought to demonstrate how weak the deceased's voice sounds from the pages of the standardized legal will and how unsacred and unmystical a document we are left with. My study reveals the price at which the legalization of wills comes: the unique, sentimental, and holistic voice of the testator is muted after death, and only the professional, practical, and financially oriented voice of the testator's lawyer can be heard.

I would like to end this article with an example that reinforces my normative claim that lawyers should allow the authentic voices of their clients to be captured in their wills. After hearing a talk I gave based on the findings and conclusions presented in this article, a lawyer sent me the will of one of her clients with a note about the circumstances surrounding its drafting. The lawyer had known the testator and her family for many years. After the testator's health had deteriorated to the point that she required hospitalization, her family members informed the lawyer that she had drawn up a will on her computer. The lawyer explained that without a signature and notarization, the will would be invalid. The lawyer received an unsigned copy of the will written in the testator's own words that included uncommon requests, but the lawyer left the document almost untouched and brought it to her client to sign. In the two-page will, the testator appealed to God to give her more time to enjoy her children and their offspring. In addition to bequeathing equal shares of all her property to her three children, she instructed that 40,000NS (US \$10,000) be kept in an interest-bearing account to be administered by one of them as appointed by the siblings. From this account, 100NS (\$25) should be given to each grandchild and great-grandchild on their birthdays; 7,000NS (\$1,750) on the occasion of their weddings or alternatively when they reached the age of thirty (along with her blessings for a happy and wonderful future); and 500NS (\$125) upon the birth of a great-grandchild to the parents. A solitaire ring belonging to the testator was left to a certain family member because she had always admired it as a child, and the rest of the testator's jewelry was to be divided among the daughters and daughter-in-law as they saw fit. With specific regard to the

testator's late mother's ring, the will instructed that it be kept by the woman with the strongest emotional connection to it. She asked that her family not be sad when she passed away and promised to look at them from heaven and always bless them. She stated that she knew they would remember her, so they were not obligated to make visits to her grave. She asked her children's forgiveness if she ever hurt them, requested that they keep in touch with a particular friend of hers, and told them that there was a receipt for her burial plot in her safe.

The testator passed away a few weeks after she signed her will. The family asked the lawyer to come to their gathering and read the will aloud. She did and recalled it as "an emotional occasion, with a true sense of mission" (e-mail to the author, March 26, 2009).<sup>22</sup> Although some tax complications arose, which were resolved without conflict, and although the Tel Aviv Inheritance Registrar did require the three children to submit an affidavit detailing how they planned to execute the will's instructions regarding the birthday and wedding gifts, the lawyer did not regret allowing her client to make her personal voice heard in her will.

I believe that when testators and their lawyers would become more aware of the possibility of integrating personal and sentimental expressions and messages into material wills and the option of making separate ethical wills, they will be better prepared to circumvent and overcome any possible legal complications.<sup>23</sup> At that point, the legal authorities will have no choice but to respect the insistence on making valid legal wills with a soul.

It is not my contention that everybody should leave a personal, sentimental, or spiritual will, nor can I predict how many will do so once the option is introduced. However, it is perhaps noteworthy that this scholastic journey culminated in my writing my own will with a soul. Never before has a research project affected me so directly and personally.

## REFERENCES

- Abrahams, Israel. 1926. *Hebrew Ethical Wills*. Philadelphia, PA: Jewish Publication Society of America.
- Ariès, Philippe. 1975. *Western Attitudes towards Death: From the Middle Ages to the Present*. Baltimore, MD: Johns Hopkins University Press.
- Avraham, Yosef Moshé. 1982. *The Ethical Will of Rabbi Joseph Moses Abraham Levinski, the Tsaddik of Lazday*. Ed. and trans. Alexander Siskind Kohanski. Passaic, NJ: Asko Press.

---

22. On the pleasure and satisfaction that estate lawyers can derive from transforming their interactions with their clients around will drafting into more emotional and holistic ones, see Cooper Ramo (1996, 17) and Hicks (2008, 33–34).

23. For example, lawyers might use current technology that allows easy-to-handle video-taping of will-writing sessions to produce the evidence necessary to prevent potential challenges to and misinterpretations of a will.

- Baines, Barry. 2006. *Ethical Wills: Putting Your Values on Paper*, 2nd ed. Cambridge, MA: Da Capo Press.
- Browder, Olin. 1969. Recent Patterns of Testate Succession in the United States and England. *Michigan Law Review* 67 (1): 1303–60.
- Bryant, Clifton, and William Snizek. 1975. The Last Will and Testament: A Neglected Document in Sociological Research. *Sociology & Social Research* 53 (3): 219–30.
- Campbell, A. 1938. An Old English Will. *Journal of English and Germanic Philology* 38 (2): 133–52.
- Champlin, Edward. 1991. *Final Judgment Duty and Emotion in Roman Wills, 200 B.C.–A.D. 250*. Berkeley: University of California Press.
- Clowney, Stephen. 2008. In Their Own Hand: An Analysis of Holographic Wills and Homemade Willmaking. *Real Property, Probate & Trust Law Journal* 43 (1): 27–70.
- Cooper Ramo, Roberta. 1996. Musings of a Family Lawyer. *Probate Lawyer* 22:1–18.
- Corinaldi, Michael. 2008. *The Law of Succession*. Jerusalem: Bar Association.
- Cox, Jane. 1993. *Hated Pursued beyond the Grave: Tales of Our Ancestors from the London Church Courts*. London: HMSO.
- Danet, Brenda, and Bryna Bogoch. 1994. From Oral Law to Literate Law: Orality, Literacy and Formulaicity in Anglo-Saxon Wills. *Legal Semiotics and Sociology of Law, Onati Proceedings* 16:227–92.
- Finch, Janet, Lynn Hayes, Jennifer Mason, Judith Masson, and Lorraine Wallis. 1996. *Wills, Inheritance, and Families*. Oxford: Clarendon Press.
- Frank, Judith. 2003. The Human Legacy: Using Ethical Wills to Enhance Estate Planning. *T. M. Cooley Journal of Practice & Clinical Law* 6:65–81.
- Friedman, Lawrence. 1966. The Law of the Living, the Law of the Dead: Property, Succession, and Society. *Wisconsin Law Review* 1966:340–78.
- Friedman, Lawrence, Christopher Walker, and Ben Hernandez-Stern. 2007. The Inheritance Process in San Bernardino County, California, 1964: A Research Note. *Houston Law Review* 43:1445–73.
- Frier, Bruce, and Thomas McGinn. 2004. *A Casebook on Roman Family Law*. Oxford: Oxford University Press.
- Hacker, Daphna. 2010. The Gendered Dimensions of Inheritance: Empirical Food for Legal Thought. *Journal of Empirical Legal Studies* 7 (2): 322–54.
- Hicks, Zoe. 2008. Is Your (Ethical) Will in Order? *American College of Trust and Estate Counsel Journal* 33 (3): 154–68.
- Kreiczer-Levy, Shelly. 2008. The Intergenerational Bond—Rethinking Inheritance. PhD diss, Faculty of Law, Tel Aviv University.
- Legalzoom. n.d. *Legalzoom Wills*. <http://www.legalzoom.com/legal-wills/wills-overview.html> (accessed April 7, 2010).
- Maimon, Nili. n.d. Non-material Orders in a Will. Unpublished manuscript, in author's possession.
- Maroney, Terry. 2006. Law and Emotion: A Proposed Taxonomy of an Emerging Field. *Law and Human Behavior* 30 (2): 119–42.
- Masson, Judith. 1994. Making Wills, Making Clients (Part 2). *Conveyancer and Property Lawyer*, September–October:360–69.
- Nolo. n.d. *Nolo's Online Will*. <http://www.nolo.com/products/-NNWILL.html> (accessed April 7, 2010).
- Rabbinical Courts. n.d. *Statistics of the Rabbinical Courts*. <http://www.rbc.gov.il/statistics/index.asp> (accessed April 7, 2010).
- Radford, Mary. 2000. The Inheritance Rights of Women under Jewish and Islamic Law. *Boston College International & Comparative Law Review* 23 (2): 135–84.
- Reiner, Jack, and Nathaniel Stampfer. 1983. *Ethical Wills: A Modern Jewish Treasury*. New York: Schocken Books.

- Rivlin, Josef. 1999. *Hayerusha Vehachavaa Bamishpat Ha'ivri* [Inheritance and Wills in Jewish Law]. Ramat Gan: Bar-Ilan University Press.
- Rosenfeld, Jeffery. 1979. *The Legacy of Aging: Inheritance and Disinheritance in Social Perspective*. Norwood, NJ: Ablex.
- Schoenblum, Jeffery. 1987. Will Contents: An Empirical Study. *Real Property, Probate & Trust Law Journal* 22 (4): 607–60.
- Schwartz, T. P. 1993. Testamentary Behavior: Issues and Evidence about Individuality, Altruism and Social Influences. *Sociology Quarterly* 34 (2): 337–55.
- Shaffer, Thomas. 1970. *Death, Property and Lawyers*. New York: Dunellen.
- . 1982. The Lawyer as Will Maker. *Marriage & Family Review* 5 (3): 87–103.
- Sheehan, Michael. 1963. *The Will in the Medieval England*. Toronto: Pontifical Institute of Mediaeval Studies.
- Shilo, Shmuel. 1992. *Perush Le'Hoch Hayerusha (Seifim 1–55)* [Comments on the Succession Law, 1965 (Sec. 1–55)]. Jerusalem: Nevo.
- Shohat, Shaul, Menachem Goldberg, and Yehezkel Flomin. 2005. *Dinei Yerusha Ve'izavon* [The Law of Succession]. Tel Aviv: Sadan.
- Sussman, Marvin, Judith Cates, and David Smith. 1970. *The Family and Inheritance*. New York: Russell Sage Foundation.
- Waggoner, Lawrence, Gregory Alexander, and Mary Fellows. 1997. *Family Property Law Cases and Materials on Wills, Trusts, and Future Interests*, 2nd ed. Westbury, NY: Foundation Press.
- Whitelock, Dorothy, ed. 1986 [1930]. *Anglo-Saxon Wills*. Holmes Beach, FL: Wm. W. Gaunt & Sons.
- Wozner, Michael. 2000. *Ad Me'a Ve'eshrim: Erka Le'aricha Achmit Shel Chava'a Vehochaat Chav Yerusha Vechav Kium Chava'a* [Until One Hundred and Twenty: A Will and Probate Do-It-Yourself Kit]. Tel Aviv: Perlstein-Genosar.
- Zoolo. n.d. *Doogmanut Heskemin Mishpatiem* [Examples of Legal Agreements]. [http://www.zooloo.co.il/biz/contracts/zCon\\_Family\\_wills.asp](http://www.zooloo.co.il/biz/contracts/zCon_Family_wills.asp) (accessed May 26, 2010).

## CASES CITED

- CA 7735/02 *Estate of Nissim Elbaz v. Paz* [2004] IsrSC 58(3) 161–68.

## STATUTES CITED

- Anatomy and Pathology Act, 1953, SH 134, 162.
- Anatomy and Pathology Regulations, 1965, KT 417, 334.
- Inheritance Regulations, 1998, KT 5923, 1256.
- Right to Alternative Civil Burial Act, 1996, SH 1584, 249.
- Succession Law, 1965, SH 63, 249.