

Humans Are Mortal?! I'm Calling My Attorney

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Excluded from this Discussion

- Legal planning to maintain prospective autonomy (control) at the *border* of life and death during the *process* of dying (e.g., advance medical directives, “do not” orders)

Maintaining *Posthumous* Control

- “Come back to haunt you” —1,340,000 results
- “Beyond the grave” —2,890,000 results
- “Worth more dead than alive” —1,080, 000 results

Using the Law to Create Our Legacies

- We all want to be remembered. We are the “future dead of America.”
- “The law plays a critical role in enabling people to live on following death. Whenever the law provides a mechanism for enforcing people’s wishes—whether it is with respect to their body, property, or reputation—it gives people a degree of immortality.”

Areas of Posthumous Control

- Property
- Body
- Reputation
- Creations with commercial value
- *Limits* to posthumous control (e.g., voting)

Property

- Right to control disposition of property at death (through wills and trusts) to others=
power to control the *behavior* of others
 - During the property owner's life
 - After the property owner's death

- Right to leave property for charitable purposes
=
 - ability to leave a legacy, achieve immortality, perpetuate one's name (e.g., Marshall's *alma maters*). "Naming opportunities"
 - ability to seek salvation, absolution for past wrongs (e.g., Nobel)
- Right to leave property for non-charitable purposes (e.g., care of a pet, build a monument)

- Law respects American value of respect for private property. *Contra* European value of social redistribution.

Bodies

- Law reflects American approach that one's body = one's *property*.
- Disposition of one's body
 - Autopsy, Burial, cremation, cryogenics
 - Organ transplantation
 - Sperm and eggs (posthumous procreation)

Reputation

- Cassio in Shakespeare's *Othello*: "Reputation, reputation, reputation! O, I have lost my reputation. I have lost the immortal part of myself, and what remains is bestial."
- American law does **not** protect the dignitary aspects of reputation after death; defamation and privacy laws no longer apply.

- After death, American law only protects the deceased's *property* (i.e., commercially valuable) interests in his or her reputation:
 - right to control the commercial use of one's name or likeness.
 - Right to copyright protection of one's creative works

Research Questions

- What are the empirical effects of enforcing “dead hand” control of property, body, use of one’s name or likeness, and commercially valuable creations?
- Does the current American law represent good public policy? Who should control such decisions? What would be the likely consequences of changing the law?

- What (if anything) should legal and other professionals do to encourage and facilitate clients/patients to exercise posthumous control? [Roughly 40% of American adults have a valid will.]

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