

談殯葬自主權與遺體處分權

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關鍵詞：殯葬自主權、遺體處分權、遺體、屍體、遺願

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摘 要

本文所探討之主題為「殯葬自主權與遺體處分權」，目前我國實務與學說通說，多將「遺體」與「遺產」、「繼承」綁定掛勾，認為遺體之所有權因繼承而歸屬於繼承人所公同共有，如此將使死者對於遺體無處分空間，即使死者使用遺囑或「自用型生前殯葬服務契約」預先安排殯葬事務，在死者遺願與繼承人（生者）之意願發生衝突時，由於繼承人享有遺體之所有權（處分權），故繼承人意願恆為優先，相較美國與日本兩國，我國現行法制對死者遺願之保障相當薄弱。本文認為，「殯葬自主權」涉及人格權與內在信仰自由保護，應受到高度之保障，死者對於殯葬事務之安排，若不違背公序良俗或其他強制或禁止規定，且於現實上亦具可行性時，即不應僅係道德上之誡命，對於生者應具有法律上的拘束力。因此，在比較分析了美國與日本立法例之後，本文建議，首先須使遺體之歸屬、處理與遺產繼承脫鉤，建立「遺體處分權」之概念，釐清現行法上遺體處分權人為何；其次應賦與死者本人最優先的遺體處分權，據此死者得指定特定人還享有遺體處分權（意定遺體處分權人），並使死者對殯葬事務之指示有明確的法律依據；若死者不行使此權利時，法律便應明確規範後順位的遺體處分權人之範圍及順序。

A Discussion About One's Funeral Autonomy Right and the Disposition Right of Posthumous body

Mei-Mei Chang

Abstract

The topic of this article is "the right of people's funeral self-determination and the right to control disposition of human remains". Our law practice and theory consider human remains as inheritance and associate them with succession, so the human remains are owned common by their heirs. By this thread, decedents have no right to decide their posthumous bodies. Even the decedent has prearranged their funeral affair by will or self-use preneed contract, whose wish is in conflict with his heir's, the latter will win the priority right to dispose the decedent's body according to the laws. In sum, our current legal system provides less protection to the decedent's final wishes than those of United States and Japan. This article considered "the right of people's funeral self-determination" should be highly protected, because it involves the people's personal rights and their freedom of religious belief. Therefore, if the decedent's prearrangement of funeral affairs is neither against public policies, nor imperative or prohibitive provisions of the acts, it should be legally bound. After the comparative law study of United States and Japan, the following are the suggestions of this article:

Firstly, we should differentiate the disposition right of the decedent's body from the succession to the inheritance, and establish the concept of "the right to control disposition of bodily remains", and clarify who own the right to deal with the decedent's wish under our current legal system. Secondly, we should grant the decedent an overriding right to control disposition of his own posthumous body; accordingly, the decedent can designate an agent to handle his funeral and follow the directions made by the decedent which shall be legally bound. If the decedent gives up enforcing such right, his bodily remains should be disposed by the rightful heirs regulated in the enacted laws.