



Expanding who Counts as Family in US Policy

Pamela Prickett & Stefan Timmermans

When Inez “Midge” Gonzales died, she was embedded in her church community. Members had built a home for her, turning one of the congregants’ garages into an apartment. They took turns caring for the ailing woman, shuttling her to doctor’s appointments and bringing her meals. Immediately after her death, the church’s pastor indicated to the County of Los Angeles Medical Examiner staff that the congregation would be willing to organize a burial. But when staff in that office later located an estranged niece in another state, Midge’s church family was rendered irrelevant. Midge had not spoken to her niece in decades, but California health code, as interpreted by county officials, was firm: only a legal next of kin could claim Midge’s body. In the end, the niece declined to organize disposition and Midge went unclaimed.

Midge’s case is a prime example of how US laws and policies around who counts as family are increasingly out of touch with the ways that Americans live their lives (Timmermans and Prickett 2022). More Americans are living outside a standard family, with numerous scholars noting dramatic changes in household composition as evidence of the demographic undoing of traditional ties and the rising complexity of family life. While individuals may consider themselves kin in creative ways, if the state does not recognize these connections at critical life course events, the potential of living a family life will be curtailed.

In the context of body disposition, the implementation of the bureaucratic family standard turns on whether the state will recognize a diversity of family forms (i.e., finding the most appropriate person for disposition) or instead only legitimize officially designated relatives regardless of the quality of the relationship with the deceased (i.e., tasking the legally authorized person with the responsibility). The next of kin administrative standard used by county officials in Midge’s case was an abstracted family tree that hierarchically ranks the decedent’s kinship ties.

The most important decision maker, consistent with the assent of personal autonomy in decision making, is the person designated by the decedent to have durable power of attorney (DPOA) in health care, or the authorization to act on behalf of the decedent in all financial affairs, including disposition. Second in line is the spouse or registered domestic partner, followed by adult children. But then, rather than moving on to grandchildren, the hierarchy reverses up vertically to parents, then to siblings, before moving back up to grandparents, aunts-uncles, and only then to grandchildren, nieces and nephews, and horizontally to first, second, and third cousins. The hierarchy thus reinforces the ties of traditional family, privileging blood, adoption, or marriage at the expense of the quality of the relationship. The standard also reifies a chain of responsibility based on “proximity” to the deceased, with the assumption that nuclear ties result in a willingness to take care of disposition. But given the changing demographic composition of American households, this assumption is flawed.

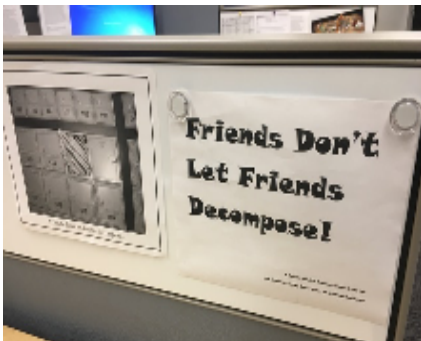


Image: Courtesy Stefan Timmermans

‘Chosen’ families play an increasingly central role in the dispersed and disparate lives and deaths of persons in the modern world. It is thus time for policy processes to redefine ‘kinship’ to include, and sometimes prioritize, social relationships that lie outside consanguineal and affinal boundaries.

As families become more complex, governments face potential policy gaps between what may be officially recognized as kinship and how individuals actually organize their social lives. Expanding notions of kinship away from the legally narrow understanding of next of kin that organizes much of American life, including disposition, will make policy more inclusive, reducing the harm caused to people whose lives fall outside the standard family. Allowing friends, neighbors, and extended family to claim a dead body is one such step to expand kinship.

We find precedents for expanding kinship in end-of-life decision making where medical staff involve the entire family in the decision to withdraw or withhold care and not just the legally designated caretaker. In the early days of the AIDS epidemic when terminally ill gay men were abandoned by their families of origin or denied decision making rights by the biological family, the LGBTQ community rallied for legal recognition of chosen family, the support system constructed by choice rather than biological ties.

Efforts to expand definitions of kin also occur in adoption-foster care reform and in veterans' benefits. Child welfare policy organizations advocate for the foster care system to recognize fictive kin, including family friends, as potential caregivers, acknowledging the importance of non-blood kinship ties especially in Black communities (Eger 2022). And in its eligibility for counseling services, the U.S. Department of Veterans Affairs recognizes not only immediate family members but also extended family and non-family who live with a veteran (Bewkes 2020). A more inclusive mental health policy is thus seen as necessary for the readjustment of veterans to civilian life.

The disposition of human remains presents one challenge when the lived family in all its variants meets a standardized legal version, but it is far from the only area. Government officials create categories of inclusion and exclusion in nearly every aspect where governance touches our lives, often with lasting impacts. This is painfully clear in migration proceedings, where the U.S. government separates and reunites kin units based on its categorization of family ties. Menjivar (2023: 5) argues that "the silent bureaucracy of the family reunification system reconfigures immigrant families so profoundly that it potentially affects more families than do the more visible separations via deportation." These state-created separations, she notes, are rooted in classist and racist ideologies. Living outside a standard family, then, can lead to exclusion, dehumanization, and structural inequity.

Recognizing alternative kinship forms is a positive first step towards making US policies more inclusive. To do so will become increasingly important as the American population ages and more people rely on care outside nuclear families.

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