## What are the rights of dead people?

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A **[French court](http://news.bbc.co.uk/hi/english/world/europe/newsid_1870000/1870301.stm%22%20%5Ct%20%22_blank)** ruled this week that the refrigerated bodies of a married couple must be removed from basement storage in their château and buried properly. Against the couple's final wishes, and over the strenuous legal objections of their son, the court held that Raymond Martinot—who died last month at age 80—and his wife, Monique—preserved in a refrigerated container since 1984—must be cremated or buried. On this side of the Atlantic, **[more arrests were made](http://www.msnbc.com/local/ctfp/ctfp1987522.asp%22%20%5Ct%20%22_blank)**this week in the Tri-State Crematory scandal. Crematory operator Ray Brent Marsh faces 174 state counts of theft by deception for accepting money for cremations he never performed and handing out fake remains to the families. Authorities have found **[339 bodies](http://safetynet.gema.state.ga.us/GEMAWEB/piocommon.nsf/pages/Walker%22%20%5Ct%20%22_blank)** scattered and hidden on the Marsh family property. Federal legislators have begun to call for federal oversight of the funeral industry.

Why do we care what happens to dead bodies? Does it really matter whether corpses are cremated, buried, or tucked away in freezer chests? Nobody "owns" a dead body in any legal sense, and there isn't enough space on the planet to ensure that a single corpse can rest undisturbed for all eternity. By any utilitarian or rational calculus, the dead aren't using their bodies anyhow.

Two mains areas of the law apply to dead people: 1) disposal of bodies; and 2) crimes committed against dead bodies. In both cases, the laws are a tangle of competing rights, often pitting the wishes of the deceased against the wishes of their survivors against the police powers of the state. The disputes range from battles over the harvesting of sperm from a corpse to whether sex with a dead body is rape. (In most states it isn't, unless you thought the body was alive while you did it.) (The law's like that.)

**1. The Rights of the Living Dead**The dead themselves have limited legal rights. Chief among them is the right to remain silent. From the time of the ancient Egyptians, the conviction has been that corpses have the right to rest undisturbed and unmolested. William Henry Francis Basevi, in his 1920 book The Burial of the Dead, wrote that across history, cultures with almost no other rituals in common treat their dead with reverence. "In or near the grave are placed food, clothes, and weapons; while the body is protected from molestation often most elaborately. All this provision conveys the idea that there is something more in burial than the disposal of a dead man's bones."

The respect for corpses is so rooted that we even agree to deal gently with the bodies of our enemies. International rules about the treatment of the battlefield dead date back centuries. Witness Shakespeare's Henry V, in which a French herald pleads with King Henry: "I come to thee for charitable license/ That we may wander o'er this bloody field/ To book our dead, and then to bury them." The 1949 Geneva Conventions explicitly provide that prevailing forces must "search for the [enemy's] dead and prevent their being despoiled." The conventions further require that enemy "dead are honorably interred, if possible according to the rites of the religion to which they belonged, that their graves are respected, grouped if possible according to the nationality of the deceased, properly maintained and marked so that they may always be found." Violators have been convicted and imprisoned.

The right of the dead to rest quietly is not merely spiritual or historical. It was given voice, only last week, by the French government's advocate in the Martinot case. Christian Prioux rhetorically asked of the court: "What kind of peaceful resting place can a fridge be, when you can just go downstairs and take a peek any time you want?" Although the deceased in this case evidently wantedto be peeked at, Prioux maintained that the dead sometimes deserve more respect than they ask for themselves.

**2. Habeas Corpses: The Rights of Survivors**The deceased have fewer rights controlling the how and where of their burial. Often a will's burial specifications are not probated until long after the funeral. Survivors' wishes can trump those of the dead, regarding not only the burial but also preparation of the body. Even though the Uniform Anatomical Gift Act—which regulates organ donation—theoretically follows the wishes of the deceased, the family gets the last word in practice. Even if the deceased filled out a valid organ donor card, hospitals won't fight families who object to the harvesting of organs. The fear of litigation, when only one party is alive to confer with their attorney, tends to override the need for that kidney.

In general, the legal rights of the next of kin include: the right to immediately posses the remains for burial, the right to oppose disinterment, the right to oppose autopsy or organ donation, and the right to seek damages for mutilation of the body. Who counts as next of kin? As a general matter, both common law and state statutes give first preference to spouses in determining what will happen to the deceased. If there is no spouse, decision-making authority goes by the same consanguinity rules that apply to inheritance. Legal disputes have arisen where same-sex partners or unmarried lovers are excluded from these decisions.

**3. The Remains of the Dead: The Rights of the State**The state limits what survivors can do with the remains of the deceased or what the deceased can demand. Recording deaths, regulating the death business, and protecting corpses from abuse are all government functions, for reasons ranging from health and hygiene to crime control to fraud prevention.

Why can't you cryogenically freeze your grandma? Well, in some states you can. But you don't get to do as you please with your dead because a very long legal tradition rejects the notion that family members own the remains of their loved ones. This rule stems from the 17th-century British belief that human souls have the right to reclaim their bodies on Resurrection Day, therefore they can't transfer those rights to their descendants. American courts still refuse to find a property right in the body of the deceased, and so crimes against dead bodies are treated leniently for the most part. The Model Penal Code provision concerning abuse of a corpse only makes it a misdemeanor, explaining, "[G]reater penalties seem plainly excessive in light of the fact that the harm involved is only outrage to sensibility." In other words, the law permits survivors to recover for emotional damage and trauma but not for damage to the dead as their property.