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# WILLS AND BENEFICIARY DECISIONS

The inheritance system of any society (and it clearly may be more or less ‘systematic’) is the way by which property is transmitted between the living and the dead, and especially between generations. It is part of the wider process whereby property relations are reproduced over time (and sometimes changed in so doing), a process that I speak of as devolution.<sup>1</sup>

### INTRODUCTION

In this introduction, the general purpose of wills is first discussed followed by a short examination of gay men’s use of wills. The rest of the chapter has two sections. The first section deals with wills and how participants wrote their own will. The second section concerns beneficiaries and participants’ beneficiary decisions.

Transfer of property was the principal purpose of a will. From the Fourteenth Century in Europe, it had an added important purpose for large landowners, which was to ensure that estates were not divided between multiple heirs and that under the practice of primogeniture the first-born male heir inherited the great bulk of the estate and titles.<sup>2</sup> Associated purposes of

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1 Goody, J. (1976) ‘Introduction’, in Goody, J., J. Thirsk and E. P. Thompson (eds.) *Family and Inheritance: Rural Society in Western Europe, 1200–1800* (Cambridge: Cambridge University Press), p. 1.

2 Boswell, J. (1989) *The Kindness of Strangers: The Abandonment of Children in Western Europe from late Antiquity to the Renaissance* (London: Allen Lane The Penguin Press), p. 271.

wills were to provide for the correct disposal of an individual's property when they died<sup>3</sup>; and to provide also for the surviving partner,<sup>4</sup> other heirs, as well as benefactions to charities, educational and religious organizations.<sup>5</sup> The last purpose, that is for 'pious bequests', was between the Twelfth Century and Eighteenth Century in Europe as important if not more important than the transfer of property and according to Ariès their chief rationale.<sup>6</sup>

During the HIV-AIDS epidemic in the West (c. 1980–2000), will-making had a special significance for gay men. Many of those diagnosed with HIV experienced a degree of social death when ostracized and their plight ignored during the worst years of the epidemic.<sup>7</sup> For them and for other gay people who were excluded by their family or whose relationship was not recognized, the writing of a will in the years before marriage equality was a vital means of firstly affirming their relationship and secondly doing their best to ensure that partners received their inheritance according to the wishes of the deceased person.<sup>8</sup>

Some survivors suffered further distress if, after their deceased partner's funeral, his family stepped in to dispose of their joint property as, in some cases, the existence of a will would not prevent the family from doing so:

Gay men suddenly forced to write wills found themselves in even greater jeopardy, since families often claimed that AIDS-related dementia had incapacitated their sons and invalidated the wills, even when couples had taken elaborate steps to certify mental health at the time of signing.<sup>9</sup>

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3 Sawyer, C. and Spero, M. (2015) *Succession, Wills and Probate* (London: Taylor and Francis Group), pp. 1–7.

4 Thompson, E. P. (1976) 'The Grid of Inheritance: A Comment', in Goody, Thirsk and Thompson (eds.) *Family and Inheritance*, pp. 342–343.

5 Baker, C. and Gilding, X. (2011) 'Inheritance in Australia: Family and Charitable Distributions From Personal Estates', in *Australian Journal of Social Issues*, 46(3): 273–289, pp. 274–275.

6 Ariès, P. (1991) *The Hour of Our Death*, trans. H. Weaver (New York: Oxford University Press), pp. 190–191.

7 Bersani, L. (1988) 'Is the Rectum a Grave?' in D. Crimp (ed.) *AIDS: Cultural Analysis, Cultural Activism* (Cambridge, MA: The MIT Press), pp. 197–222; Shilts, R. (1987) *And the Band Played On: Politics, People, and the AIDS Epidemic* (New York: St Martin's Press); Watney, S. (1988) 'The Spectacle of AIDS', in Crimp *AIDS: Cultural Analysis*, pp. 71–86.

8 Monk, D. (2016) "'Inheritance Families of Choice?' Lawyers' Reflections on Gay and Lesbian Wills', in *Journal of Law and Society*, 43(2): 167–194.

9 Chauncey, G. (2004) *Why Marriage? The History Shaping Today's Debate Over Gay Equality* (Cambridge, MA: Perseus Books Group), p. 100.

Unrelated to the role of will writing during the HIV-AIDS epidemic and to changes that gay marriage legislation has had on gay relationships, a second reason why gay men's will-writing practices were important is that, according to some US research, they were more likely to live solitary lives and so to die intestate.<sup>10</sup> While there is evidence to show that this can be the case in countries such as England, France and the USA, gay men's dying intestate is, however, less likely in Australia and New Zealand where rates of intestacy are generally lower.<sup>11</sup>

## WILLS AND WILL ADMINISTRATION

To examine how gay men understood and made use of wills, it was firstly necessary to establish whether participants for this research had a will and if they had revised it recently. In order to establish this, all were asked the same question, which was: 'Do you have a will and have you revised it often in the last ten years?' Secondly, as it is general practice in the administration of a will for the testator to nominate an executor to carry out his/her wishes, it was necessary to establish who participants chose for their executor and why. And in order to establish this, all were asked the same question, namely, 'If you have a will, who did you choose as your executor and why?' For the purpose of the discussion below, an executor was understood to be a person who could be trusted and the testator could rely on to take care of his/her affairs after death.

Slightly more than 80% of the sample had a will, almost all of whom had revised it at least once in the previous 10 years and appointed an executor.<sup>12</sup> The eight who did not have a will were at risk of intestacy. This relatively small number was in line, however, with other research on intestacy in Australia and New Zealand showing smaller rates here compared to intestacy

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10 Knauer, N. J. (2010) 'Gay and Lesbian Elders: Estate Planning and End-of-Life Decision Making', in *Florida Coastal Law Review*, XII: 163–215.

11 Reid, K., de Waal, M. and Zimmermann, R. (2015) 'Intestate Succession in Historical and Comparative Perspective', in Reid et.al. (eds.) *Comparative Succession Law: Volume II: Intestate Succession* (Oxford Scholarship Online), pp. 442–512. <https://doi.org/10.1093/acprof:oso/9780198747123.001.0001>.

12 Thirty-five participants had wills. For data used in this chapter, see Appendix 2.

rates in other similar developed economies.<sup>13</sup> Will revision and choice of executor are examined in the next two sections.

### Will Revision

Five principal reasons were given for changing wills. The first two were each cited by about one third of those who had revised their wills, and these were changed relationship status and changed material circumstances. The remaining three reasons were used by relatively small groups of between four and six participants in each case: travel or relocation; health or illness; and finally, fine tuning decisions about heirs or the distribution of assets. The importance of changed relationship status for will revision could be explained by the fact that slightly more than two thirds of the sample ( $n = 29$ ) were in couple relationships and these ranged from between 1 or 2 years to more than 40 years. Fourteen were single at the time of interview and had been single from between 1 or 2 years to all of their adult life.

### *Changed Relationship Status*

Slightly more than one third with wills revised them because of changes to their relationship – as a result of civil union, civil partnership or marriage, death, separation or divorce, or simply because they had decided to live together. Their accounts are discussed in order.

Six participants cited civil union, civil partnership or marriage as the reason for revising their will. All were in long-term relationships. For those in Australia, getting married meant that a new will had to be written, for, as Roland (aged 50) explained, a person's previous will becomes invalid at marriage:

To the best of my knowledge, when you become married it invalidates all previous wills really automatically. The lawyer told us that as soon as you get married, all your previous wills are immediately under law invalidated.

Others who revised or wrote a will when they married or civil partnered included: Wade (aged 66 from Brighton): 'it was all of a sudden and there was civil partnership and we did wills'; and Warren (aged 50 from Perth): 'We

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13 Vines, P. (2022) 'What Happens If You Die Without a Will?', in *The Conversation*. <https://theconversation.com/what-happens-if-you-die-without-a-will-186384> accessed 11 Aug 2022; Reid, de Waal and Zimmermann 'Intestate Succession'.

wrote them just before we got married. We had them written legally with a lawyer . . . I never had a will before that and I have not revised it’.

The one exception among the men in long-term relationships who had revised their wills in the last 10 years was Dorian from New York State (aged 70). While the others wrote new wills when they married or civil partnered, Dorian did not decide to revise his previous will, which predated his relationship of 25 years, until after Donald Trump was elected president of the USA in 2016. Concerned at the possibility of a conservative turn in US politics and to protect his partner after his death, he set up a trust and wrote a will, as he explained:

One of the reasons I did a trust is because it was during the Trump Administration and we had a conservative supreme court and had no idea what the future was going to be and I wanted to make sure that when I passed away—and I am 20 years older than my partner and am obviously going to be passing away before he does—that he would be protected and he would have everything that I wanted him to have without any legal issues if [in the event] our marriage was dissolved legally because of strange things that can happen in the United States. He was going to be protected.

Dorian’s decision was to protect his partner’s inheritance rights in the event of same-sex equality being struck down by a conservative supreme court. As it turned out, his fears and concerns were not ill-founded. In the legal opinion that he wrote in 2022 when the US Supreme Court revoked the right to abortion in that country, justice Clarence Johnson forecast that the court could reconsider previous decisions to allow contraception in marriage, decriminalize homosexuality, and permit same-sex marriage.<sup>14</sup>

A smaller group explained that they revised their wills because of death, separation or divorce. The oldest in the sample, Atticus (aged 88 from California) said that he re-wrote his will after the death of his partner of 29 years and because of other changed circumstance (mostly financial, discussed below). Another told of changing his will when he and his husband divorced, and a third man that he also revised his will when he separated from his previous boyfriend.

Two men revised their wills after their partners moved in with them. The first was in his 70s and from the Australian Capital Territory (ACT): ‘I have a will and it has been revised . . . probably within the last few years . . . Around about the time we moved in together, I think we both looked at our wills and

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14 Greve, J. E. (2022) ‘Contraception, Gay Marriage: Clarence Johnson Signals New Targets for Supreme Court’, in *The Guardian*. <https://www.theguardian.com/world/2022/jun/24/clarence-thomas-roe-gay-marriage-contraception-lgbtq> accessed 15 July 2022.

revised them' (Fabian, aged 74). And the second, aged 40, did something similar: 'it was probably about six months, maybe a little bit more than that after [partner] moved in with me. So, if I'm getting my timeline straight, that's probably what it was closest to' (Damon, ACT). Both revised their wills when, like so many others, their couple relationship and future together was more certain.

### *Changed Material Circumstances*

Twelve participants or just over one third with wills revised them when their material circumstances changed. In most cases, participants' changed material circumstances occurred when they acquired property or changed their property ownership arrangements such as a couple agreeing to joint ownership after marriage, civil union or civil partnership, moving in together, or relocating.

Three men noted that they first wrote a will when they acquired property. 'When I began to accumulate a humble amount of assets, I thought . . . "Be sensible and have a will"', said Donovan (aged 55) from England. And Mason (aged 60) from California explained that he and his partner wrote a will for the same reason and in similar circumstances: 'We . . . had one done probably in the early-1990s once we had enough assets to care about'. Ethan (aged 58, England) observed also that he believed that the connection between writing a first will and acquiring property was fairly common among single gays: 'Like a lot of single gay men, I did not get around to doing a will until relatively recently . . . because I did not become a property owner until I was nearly 50'.

Two men in their 50s had slightly unusual property experiences. The first was born into a wealthy family and the second had acquired property in different countries over the course of his working life. Each had a novel story to tell about writing and revising wills.

US citizen Randolph (aged 57) was living in Germany at the time of interview and provided this brief history in answer to the question on writing and revising his will:

I have had a will since the day I turned 18. It had been drafted well in advance because of the family I grew up in. I had significant assets at that time. Yes, I had my first will at 18 and have more or less maintained one since. I no longer have any assets because my father disinherited me.

For Randolph, it was the loss of what appeared to be a considerable inheritance that meant that he had to write quite a different will from those

that he had had since 18. His current will was important to him because it included details of which friends were to receive which of his belongings:

I made a new one back in March which is, I was reflecting, highly detailed because ... there is no cash but there are a lot of things which have value and I don't want those things to go to my mother or my sister so therefore I have to have a will. *Would they be paintings and carpets and things like that?* Yes, paintings, carpets, furniture, jewellery. I have a set of silver which miraculously is worth something like eighty thousand dollars. Who knew? [Laughs].

The loss of the inheritance that he had grown up expecting to receive on the death of his father was painful and life changing, not least because of his HIV-positive status:

It is terrible because by then I was in my late-40s, my life decisions had been made. I did not expect to live into my late-40s but I was relieved that, since I had, at least I would be well cared for in my later years, which, of course, is exactly what this is all about. That is no longer the case and this is an interesting ride for me.

As mentioned in the previous section, he changed his will when he divorced his husband. He did so again prior to his interview (August 2020) because of concerns about the Covid-19 global epidemic.

Will-writing complications for Damien (aged 52, England) related to assets that he held in a number of different jurisdictions:

In the last ten years, I have revised ... [my will] twice and the biggest revision was in the last 12 months. There is the added complexity of living in three countries. I have got assets in the UK, Switzerland, and Australia, so you need a will in all three countries.

He was in his own words, 'not rich': 'We are not talking about multi-millions here; this is just where the assets are'. His intention was, however, to simplify where possible the arrangements that he had to make to ensure that his affairs were well organized in the context of different jurisdictions' legal requirements:

There is a requirement in Switzerland that if you have got a living parent, automatically 50 per cent goes to a living parent. And you have to foresee that. That law is changing in a year and a half. There are these quirks in each country. In the UK, there is inheritance tax; in Australia there isn't. You have to navigate all of that.

*Travel or Relocation*

Travelling caused one participant to reflect on the effect of not having a will in the event of an accident: ‘I remember I was travelling somewhere, jumped on a plane and thought, “What if the plane goes down?” so I quickly drafted a will’ (Carter, aged 57, New Zealand). Others revised their wills when they relocated because the change of residence often meant living in a different jurisdiction with different rules concerning wills and intestacy. When Johann (aged 52) and his partner migrated to England from South Australia, for example, both wrote new wills:

We have wills, both in Australia and in the UK, and they were fairly regularly revised. They probably changed three times in that ten-year period, or at least twice, I would suggest. *Do you remember any event that caused you to revise your will?* The most recent was moving here and having to do a new UK one. I forget the details of why we needed to but that then meant that we had to make some adjustment to the Australian one to refer to that or something. I can’t remember. That was three years ago we got the UK one and updated the Australian one.

*Health or Illness*

More than 70% or the vast majority of interviews were held in 2020 and 2021, that is, during the initial phase of the Covid-19 global pandemic in the West, of which more than half were held between February and November 2020, which was arguably the worst stage of the virus’s spread.<sup>15</sup> Given these facts, it was a little surprising that only three participants referred to the threat that Covid-19 posed to life as the reason for revising their will. Aged between 57 and 70, their views are best represented here by the following explanation from Emmett (aged 70, England), who was interviewed in May 2020:

Partly because of the Covid-19 outbreak and in common with many other people we are remaking the will at the moment. We are just about to contact the lawyer to make the revisions because, obviously, given our age and the state of the disease, it is a wise thing ... to revise it.

The sample included a total of five men who were HIV positive (aged 57–68), two of whom revised their wills for health reasons. One referred to his

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<sup>15</sup> Thirty-one interviews were held in 2020 and 2021. Of the 17 that were held between February and November 2020, 10 were with participants aged 60 and older and three with men who were HIV positive. See Appendix 2.



possible vulnerability to Covid-19 infection because of his HIV status, while the other explained his decision to revise his will in light of his improved mental health:

I really went off the rails after I got HIV, was in a bad way. I didn't care about living anymore and I didn't care about anything. I did own property and I did have money and I did have a successful business and I lost everything. But over the last year, I rebuilt my life and I feel for the first time in my life quite content and happy, which is really lovely. I will make a will because I see it is important to do. (Christopher, aged 52, New South Wales)

### *Fine Tuning*

A small group regularly revised their wills. In all cases, they did so in order to alter the distribution of belongings or personal possessions among friends, relatives or charities, as shown in the following extracts:

I have revised it three times in the last eight years. I have set out distributions as per percentage to charities and friends. *Was there any particular reason you revised it three times in eight years?* I just wanted to fine-tune it and make sure it was distributed accordingly to those organisations or persons in particular. (Lewis, aged 74, ACT)

I do revise it. I do not frequently revise the main body but I have a large addendum of bequests of individual items from my considerable collection of clutter. I do revise that every now and again. (Rowan, aged 71, England)

I did my first will in 2013 and I have revised it five times since then, partly because testators had died or things have changed, generally only tweaking, not major changes. (Ethan, aged 58, England)

### Choice of Executor

All 35 participants who had a will had appointed an executor at the time of interview. In a small number of cases where trusts had been set up, a person was appointed, usually a trustee, with an equivalent responsibility to carry out the testator's wishes. Executors were drawn from four principal categories: family member(s); the partner; a professional person; or friend(s).

In some cases, participants chose executors from more than one category. For example, a small number appointed as executors a family member and their partner. In one or two cases, executors were chosen from three

categories, often the partner together with a professional person and a family member or friend(s). In some instances, the family member or friend was a useful, practical choice for the added reason that they were also a lawyer.

Reasons for choice of executor tended to focus on trust and also the practical and personal purpose of being able to rely on the person(s) to take care of the testator's affairs after death, whether these included disposal of their body, funeral arrangements, distribution of legacies, the winding up of financial affairs, with or without the assistance of anyone holding the testator's power of attorney.

### *Family Member*

More than half those who chose a family member to be their executor nominated a sibling, followed by those nominating a niece, nephew or both, and then by one participant only who chose one of his children.<sup>16</sup> Unless the sibling was a professional person also, almost no explanation was provided, or possibly thought necessary, for choosing a sibling as executor, perhaps because of the obvious blood connection.

In the case of nieces or nephews, however, a number of participants justified their decision on the grounds of what they saw as the sensible benefit of having someone from a generation 'below them':

We decided we wanted people from the next generation to be written down there as well, so it seemed obvious to pick my nephew because I am close to him and his closest niece whom I am quite close to as well. We wanted people from the next generation to make sure that they were going to be around. (Rowan, aged 71, England)

Although it was rarely admitted, some might have found it easier to appoint a niece or nephew as executor because their sibling relationship was broken or not close, as Seth, aged 68, from California intimated in this extract from this interview:

I do have an executor who is my oldest niece. I chose her because I feel like I have been able to maintain the most honest and open conversation about my life [with her] and . . . that she would show compassion to my friends or anyone she might encounter after I have gone.

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<sup>16</sup> Of the 14 who chose a family member to be their executor, eight nominated a sibling, five a niece, nephew or both, and one chose one of his children.

The majority of those who chose a family member for executor were in couple relationships,<sup>17</sup> and here most appointed them together with their partner, a professional person, a friend, or all three. For those participants who were single, slightly less than a quarter appointed family members as their executor,<sup>18</sup> their preference being for friend(s) or the professional person or both.

### *Partner*

Of the 24 in couple relationships who had a will, more than two thirds nominated their partner as an executor.<sup>19</sup> The remaining group of less than a third did not explain nor were they asked in the interview to explain why they did not appoint their partner as executor.

Explanations for the choice of partner were sometimes perfunctory, some saying, for example, that it just made sense, was a 'natural' choice, 'to keep it simple' or because of proximity such as Damon (aged 40) from the ACT explained: 'My partner is the first executor because he's here'. Other reasons included familiarity with testator's family or personal trust, as shown in the following extracts from two interviews:

I chose my partner ... because he is the person I absolutely trust and he has good relations with my family and he will be able to get support from them to fulfil his wishes and my wishes. (Nicholas, aged 72, New South Wales)

My husband is the sole executor of my will because there are very few people in my life that I trust as much as him and I thought it made good practical sense as we've had honest and open discussions about my desires for my estate and what happens to my body after I die. He understands what I need and I would sooner that he did that rather than burden my now two adult children with the hassle of dealing with wills and burials and things. (Harrison, aged 56, Victoria)

As well as trusting his partner, Nicholas's account suggested a level of care and concern for what his partner could need after his death. And Harrison's explanation touched on not only trust but also the practical and personal reasons for choosing his partner, namely being able to rely on his partner to take care of his affairs after death, which lies at the heart of the executor's role.

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17 Of the 14 who appointed a family member to be executor, 11 were in a couple relationship.

18 Of the 14 who appointed a family member to be executor, three were single.

19 Of the 24 participants in couple relationships who had wills, 17 nominated their partner as executor.

When asked about their decision *not* to nominate their partner as executor, participants who were in a couple relationship gave two reasons for the decision. The first was to avoid encumbering or burdening their partner. And the second, given by those who were roughly equal in age, was that appointing a younger friend or a professional person made more sense; the younger friend especially so as they were thought more likely to outlive both partners.

### *Professional Person*

Almost all of those who chose a professional person to be their executor nominated a lawyer.<sup>20</sup> Other choices included, for example, an accountant and a firm of trustees. Principal justifications for nominating a professional person as executor were firstly a belief in their competency and reliability and secondly to avoid burdening family or friends, as shown in the following.

#### *Competency and Reliability*

I have been an executor for three estates and the first two were so badly done. I knew the first person. He was my first relationship for 17 years. I knew him well and because of the way his . . . will was written, it did not carry out his wishes and there was nothing I could do about it. There was a brother who swooped in and made some terrible accusations of loaning him money and things that were not true. I wanted to make sure that mine was well done and that is why I went to lawyers. I went to gay lawyers who understand the situation also. (Atticus, aged 88, California)

#### *Avoid Burdening*

I did not want to put anybody into any trouble, I suppose . . . I think I just thought it was more convenient for everybody and also cheaper . . . to do the whole thing through the public trustee. I do not know if I paid anything at all. (Clive, aged 81, ACT)

My executor on the will is the solicitor who drew it up. Before that, I had one of my best friends, who was a responsible person who I thought would be good for this. I had him as the executor until we moved [to England] and then I changed it to the solicitor because it got more complex when we were in two different countries. He's a lovely friend but he does not deserve that dumped on him [*Laughs*] when I can just pay someone to make it better for us. (Johann, aged 52, England)

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20 Fourteen chose a professional person as executor, 10 of whom were lawyers.

One participant who was about to revise his will explained that he would choose a professional executor in order to avoid burdening the friends he had previously appointed: 'I need to revise that partly because I am not quite as close to those friends as I once was and it is a huge burden to put on someone'; and also, because, as he had no children of his own, it made more sense in his view to do so:

I feel I ought to appoint a professional executor because I don't know what my family situation will be at that time, what friends will still be around. It is a little easier if you have got kids: you can leave everything to the kids and they are the executors. (Anton, aged 45, England)

*Friend(s)*

A similar number chose a friend or friends for their executor as chose a family member or professional person.<sup>21</sup> Friends were chosen firstly for their practical common sense, personal knowledge of the testator, or secondly because they were younger, in much the same way as a family member, often a niece or nephew, could be chosen as executor.

The importance of having an executor with practical common sense and personal knowledge of the testator was underlined in these extracts from interviews:

Among other things, [name of friend] is 'Miss super-efficient'. No nonsense! Get it done! Problem: fix it! And the other one was this young lawyer [name of friend] who was also of that persuasion ... [And all] they'd have to do would be to hire a solicitor and get the estate through and, in a few months' time, go back to the solicitor and the beneficiary. (Edward, aged 77, ACT)

The joint executor for both wills is a friend of ours, who is younger than us, so will survive us, more likely to be *compos mentis* even when we are not. She is ten years younger and she is fiercely well organised and takes no shit from anybody. She is just the sort of person who you would have to organise anything, really. (Wade, aged 66, England)

The ... [executor] after that is my very close friend. She is the sister I never had, school captain of the girls' school across the road from me. We've been friends since we were like 14. The reason I appointed her and not anyone from my family is because, even though my parents ... are only in their 70s, I think it would be bit too much for them ... [and] I know that ... [she] would do it to within an inch of its life. (Damon, aged 40, ACT)

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21 Fourteen chose friend(s) as their executor.

Wade's justification for his choice of a friend for executor was two-fold. Not only was she a 'non-nonsense' person but also, she was younger than him and his partner. Others, like Kieran (aged 67) from England explained their choice of friend also for reasons of age and youthfulness:

The person is younger than us, very bright, very diligent, newly retired, so has time and knows us very well, knows our state secrets, as it were. I think we feel comfortable, provided he survives, of course, in guiding the process.

Among the small number of those whose current family type was the chosen family, there was no evidence of any preference for choosing friends as executor. The five who had created families of choice appointed family members or partners as their executors. By contrast, the current family type of the 14 participants who appointed friends as executors was the family of origin or the couple, which, taken together with the preference for family members in the group from chosen families, would seem counter-intuitive, that is, that those from chosen families avoided appointing friends while friends were appointed executor by those who regarded the family of origin or the couple relationship as their current family type.<sup>22</sup>

## BENEFICIARIES

This section examines participants' beneficiary decisions, in terms of who they nominated and why they nominated these persons or organizations. All were asked the same questions: 'If you have a will, who are your beneficiaries? Who did you choose and why?' The most common beneficiary choices were (in numerical order): partner; nieces and nephews; charities; siblings; friends; and children. Beneficence was a common theme in the explanations for beneficiary choice given by those who nominated a family-of-origin member, that is, nieces or nephews, siblings, or children. Many who planned to leave assets to family-of-origin members included in the deliberations – which they openly included in their interview – a strong awareness of which family members had 'done well' (almost always in a material sense) and who had not.

This awareness of material success then often formed the basis for beneficiary decisions as family members' perceived neediness was used as the guiding principle for decisions about legacies where, for example, some participants reasoned that family members who were understood to have done well did not need further assistance while those who were regarded as struggling deserved

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<sup>22</sup> See Chapter 1 for discussion of current family types.

the material assistance that their beneficence would provide. Beneficence was a feature also of participants' decisions to nominate their partner as the primary or sole beneficiary of their will.

### Partner

Slightly fewer than two thirds of those with wills nominated their partner as a beneficiary.<sup>23</sup> Most of those who did so nominated their partner as the primary or sole beneficiary and many of these raised also the sensitive matter of which partner would die first and how this would affect distributions from the deceased partner's estate. Secondly, some included provision for previous partners, including in a few cases their former wives, whether because they had been nominated in superannuation accounts or pension funds or from a sense of duty or affection: 'My wife was the beneficiary [of life insurance] and I have maintained her as the beneficiary on that . . . I owed it to her, I felt' (Joel, aged 74, California); 'My former partner is a part beneficiary of my superannuation' (Nicholas, aged 72, New South Wales); 'I do want . . . to give my "ex" a life interest in some of my estate' (Anton, aged 45, England).

In most cases, those in couple relationship planned to leave everything that they owned to their surviving partner: 'My entire estate goes to my partner' (Rowan, aged 71, England); 'In the event of one of us dying, the other gets everything' (Wade, aged 66, England); 'One hundred per cent [goes] to my partner' (Damien, aged 52, England). Only a few felt the need to justify leaving 'everything' to their partner and these included Harrison (aged 56) from Victoria (Australia) who may have felt the need to explain his decision because his children from a previous marriage were also included as beneficiaries: 'To cover off any outstanding debts that might exist with my husband and there should be sufficient superannuation and life insurance to cover that'.

Another participant explained why his partner would not get everything. Jonathon (aged 53) from England said that his husband would get that part of his estate which they together had accumulated 'as a result of our lives together', while another portion, which had been acquired through his family from what their grandfather had left, would go to his brother. This explanation nicely encapsulated the thinking of many which privileged family-of-origin members (or blood-family members) over members of the couple family or the chosen family.

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<sup>23</sup> Partners or spouses were included as beneficiaries in the wills of 21.

### Nieces, Nephews

Just under half who had wills chose to nominate their nieces or nephews as beneficiaries.<sup>24</sup> When they explained why they were leaving a legacy to their niece or nephew, participants said either that it would help them ‘get ahead’ or because they had special needs.

Those who wanted to help their nieces and nephews get ahead included some who believed in giving according to need and others who did not distinguish by need. Rowan (aged 71) from England had a pretty clear idea of how his niece and nephews were getting on and had decided to leave more to the niece because his nephews were doing well and she would benefit from his legacy:

I am fairly hard-headed about this. My oldest nephew is doing extremely well working ... [in the USA] making a lot of money and so he does not need a big bequest from me. My gay nephew is civil partnered with a gay actuary who is earning a ridiculous amount. They have a small portfolio of rental properties and they do not need my bequest. But my niece is hoping to buy a flat in the London area so she will need a bit of support.

Nieces and nephews with special needs were cited by a small number of participants and are represented here by this account:

He is on disability [pension] and he is ADHD. He is an apoplectic ... He is wonderful with people ... but he has no judgement at all about people. I think a group-home setting would be great for him or just a caretaker sort of person and I think there are such places here ... When they moved here, which was five years ago, he had a major slip and ... wound up in a hospital. He has been clinically dead twice. It has been bad stuff. Even though he is fine now, and he would not hurt a fly, he is just someone you need to look after or make sure is looked after. (Harvey aged 74, North Carolina)

### Charities

Two fifths of participants with wills left money to charities.<sup>25</sup> None nominated a charity as sole beneficiary and instead included charities with other beneficiaries, namely, their partner, family members or friends. Gay social support services were the most common charity followed by charities that had a social

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<sup>24</sup> Nieces or nephews were included as beneficiaries in the wills of 17.

<sup>25</sup> Charities were nominated as beneficiaries in the wills of 14 of the 35 participants with wills.



or cultural focus, and then those with which participants had a personal attachment or association.

Almost half who wanted to leave something to charities specified gay social support services. These included those who wanted to assist LGBT resettlement, PLWHA support services or gay rights organizations. Roland (aged 50) from Victoria included in his will instructions, 'to set up a charity . . . to assist homeless LGBTIQ young people' and Johann (aged 52) from England that, 'Forty per cent goes to the Pinnacle Foundation in Australia which is an educational foundation that helps LGBTIQ students with financial support through university and even secondary school if they need it'.

Charities with a social or cultural focus included, for example: The Orchestra of the Age of Enlightenment (Ethan, England); The Art Gallery of South Australia and Adelaide Botanic Gardens (Donovan, England); as well as an educational charity (Anton, England); and mental health organizations (Rowan, England). Those who wanted to leave in their wills funds to benefit bodies with which they had a personal attachment or association included Andrew (aged 75) from Canada who wanted to leave an endowment to the university where he studied; Preston (aged 70) from the ACT who planned to leave a bequest to his parish church; and Kieran (aged 67) from England who wanted to leave, 'a real, solid, transformational legacy' to a charity he had worked for which maintained mediaeval churches.

### Siblings

Siblings were the choice of slightly less than a third of those with wills. Beneficence was a strong factor in decisions made to include siblings as beneficiaries. Participants' reasoning often revealed a clear understanding of family dynamics and which sibling(s) had achieved and which had not. This was then used to explain why some were included and others were not, that is, which siblings were deserving and which were not or had no need of material assistance. In this extract from interview, for example, Damien (aged 52) from England explained why his family were not the 'main beneficiaries': 'Not because there is any ill-will or malice, but I know that they are going to inherit enough from their families'. While Dorian, (aged 70) from New York State explained more precisely why one brother would benefit from his will in a way that his other two brothers would not and why:

I left some tangible things to my other brother who is an attorney who is extremely well-off. He has no need for anything [that] I would leave him, nor do his children because they are going to be receiving from him and his

wife who is well-off and very Republican. Fine! But my other brother, in [a midwestern state] is struggling and he has some health issues and I want to make sure that I would be able to help him. And then also his son as well. He is in [a midwestern state] and that side of the family needs some extra help. My youngest brother, my next brother really does not need help . . . He loves books and I have a huge amount of books [to leave him].

### Friends

Slightly more than a quarter of participants with wills chose friends as their beneficiaries. When explaining their decisions to nominate their friends, they tended to rely on one of three narratives. Friends were mainly chosen as an expression of gratitude for or recognition of the bonds of friendship or an expression of love and affection; in one or two cases as an act of beneficence; and in one or two cases to pass on to them objects that the testator thought they would appreciate.

Benefactions as expressions of gratitude or recognition of friendship were evident in three extracts of interviews:

One friend that we thought we were going to be in a relationship at the time when I was making this will, I have not changed it, and he is a significant beneficiary; the other one for advice that he has provided at different times. (Preston, aged 70, ACT)

I have a very short list of friends I would like to leave a cash bequest to. They have been important part of my life and I am very grateful to them all. Not a fortune but it is [a way of saying] ‘Thanks very much, you have been lovely’. (Donovan, aged 55, England)

That list of friends is largely [from] the last ten years. When you are an expatriate . . . [and] leave a country and for 20 years, there are people who . . . have come to you to make sure that you are OK and checked in . . . and helped me in all sorts of indirect ways. . . . That’s just a reflection of that. (Damien, aged 52, England)

Beneficence or acts of kindness or charity was exemplified best in this extract from the interview with Kieran (aged 67) from England: ‘Various people who I’ve known mainly through work, who I like, but also need the money . . . The individuals are given quite useful sums but they’re not transformational sums’. Among those who had specific belongings in mind, which they wanted friends to have, were two men in their 50s. ‘Personal bequests, of which there are about a dozen, to individual friends of mine, individual items’ (Ethan, aged 58, England). ‘It is a list of friends and this is traditional in my

family actually. I gave objects and things to people who I thought would appreciate them most' (Randolph, aged 57, Germany).

### Children, Grandchildren, Godchildren

Four chose children as their beneficiaries and two chose grandchildren and two their godchildren. The two who chose grandchildren nominated the grandchildren of their deceased partners, none having grandchildren of their own. In the following extract, Quinn (aged 60) interviewed in Victoria in Australia explained how he proposed to honour the promise to his deceased partner:

My house that I own, I have left to my deceased partner's grand-children. I promised him I would [do that]. The house that we lived in was sold, so I took some of the benefit of that, and I think it's only fair that his grandchildren take that benefit.

Of the four nominating their children, three became parents in previous relationships with women. The remaining participant was, with his partner and two lesbians, one of his son's parents. And the son was the chief beneficiary of his will and his partner's will. These four beneficiary decisions were outlined without detail or any need to explain or justify, children being direct bloodline descendants.

The presence in the sample of two who choose to include godchildren as beneficiaries supported Monk's argument that, while doing so was now less common, lawyers interviewed for his research, who had experience with gay and lesbian clients, had noted an increasing tendency for the inclusion of godchildren in their wills. That parents could ask gay or lesbian friends to be godparents because they were (once) unlikely to have children of their own is a convincing, common-sense explanation.<sup>26</sup>

## CONCLUSION

Family members were the most common choice for executor. And of these, siblings were the first choice followed by nephew or niece or both. Friends were the executor choice of only a very small number of participants and were

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26 Monk "Inheritance Families of Choice?", pp. 184–185.

chosen for their common sense or practical and/or personal knowledge of the testator.

By comparison, beneficiary choice can reflect the whole web of social relationships, including, for example, partners and spouses, family members – from parents, siblings nephews and nieces to godchildren and stepchildren – and friends. Partners or spouses were the most common beneficiary choice followed by nieces and nephews then charities, siblings, friends, and children, grandchildren, and godchildren in that order. Choosing nieces and nephews and siblings before friends suggested a recognition of the primacy of kinship,<sup>27</sup> and a preference for members of family of origin over those who comprised participants' family of choice. It could be argued that the special place given to partners represented a greater acceptance and understanding of spousal rights following the success of marriage equality legislation in the West since the late 1990s,<sup>28</sup> and prior to that the relatively widespread take up of common-law (de facto) relationships among gays and lesbians. Few if any felt the need to explain or justify the primacy given to partners in their beneficiary decisions. It was simply assumed and required no explanation.

In almost all cases, the gift of inheritance was made without any expectation of reciprocation and hardly ever in return for benefits or gains that testators had received from their beneficiaries and so were in a sense distinct expressions of altruism. Underlining many of the decisions were varying expressions of care, beneficence or social solidarity. Evidence of beneficence was found in many decisions to nominate family and friends and, as shown, some participants made very careful decisions based on their knowledge of family dynamics and which relatives had succeeded and which were struggling. When friends were chosen as beneficiaries, decisions were often made to recognize or honour the bonds of friendship, underpinned by degrees of beneficence. Beneficiary decisions to leave money or assets to social or cultural organizations were without doubt material gestures of social solidarity.<sup>29</sup>

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