

RICHARD WELLMAN AND THE REFORM OF AMERICAN PROBATE LAW

*John H. Langbein**

Richard Wellman was a national treasure. He was our most knowledgeable and influential authority on probate procedure, that is, on the processes for administering decedents' estates.

By the middle decades of the twentieth century, when Wellman's career took shape, many American probate courts were a disgrace. Their rules, mostly embodied in state statutes, required court supervision of the most routine steps in the work of winding up the estate, paying the creditors, and transferring the remaining property to the heirs or devisees. Lawyers, probate judges, and court functionaries prospered doing makework at the expense of widows and orphans and charities.

Wellman devoted his life to cleaning up American probate. He worked mainly through the Uniform Law Commission, which in the mid-1960s chose him to be the Reporter and chief architect for a reformed probate system, now known as the Uniform Probate Code (UPC). Wellman led a team of able co-Reporters, including William F. Fratcher, Edward C. Halbach, Jr., and Eugene F. Scoles. The Uniform Law Commission promulgated the Code in 1969.¹

In the original UPC and in subsequent revisions and additions, Wellman enshrined two central principles of reform. One great initiative, inspired by English and Commonwealth practice, was to dispense with close court supervision in routine, uncontested probates. In UPC jurisdictions, family members or lawyers process most decedents' estates rapidly, with only minimal court involvement.² When, however, any interested party wishes to have the protection of traditional, court-supervised procedure, that party

* Sterling Professor of Law and Legal History, Yale University.

¹ For the Code as currently amended, see 8 U.L.A. pt. I, at 1 (1998). Regarding the promulgation and revision of the Code, see RESTATEMENT (THIRD) OF PROP.: WILLS AND OTHER DONATIVE TRANSFERS 3-4 (1999).

² UNIF. PROBATE CODE §§ 3-301 to -322 (amended 1998), 8 U.L.A. pt. II, at 55-75 (1998 & Supp. 2005).

can insist on having the estate so administered.³ The result is that high-safeguard procedure survives for the few troubled cases that need it, but ordinary estates are processed cheaply and rapidly under the streamlined administrative procedures that Wellman drafted.

The UPC's other major achievement was to facilitate the spread of what we now call the nonprobate system, encouraging financial intermediaries to offer wealth transfer services that would function as an alternative to probate. Today, most wealth transfer on death in the United States occurs through these nonprobate channels—that is, through beneficiary designations in bank and mutual fund accounts, pension and IRA accounts, and life insurance products. Legislation that Wellman drafted to validate and smoothen this process⁴ is now in effect in virtually every American state.

Wellman spent forty years drafting, revising, and implementing these law reform measures. Despite fierce political opposition in many states from the vested interests that feast from unreformed probate procedures, the UPC has been substantially adopted in eighteen states,⁵ and certain provisions have been influential in virtually all.⁶

Some parts of the original UPC were revised in later years, with Wellman's active participation, including a major reform of the substantive law of wills and intestacy completed in 1990.⁷ Although the UPC's system of unsupervised administration continues to be resisted in states in which political forces have not been strong

³ *Id.* §§ 3-401 to -414, at 76-104.

⁴ Specifically the UNIF. TOD SEC. REGISTRATION ACT, 8B U.L.A. 392 (2001) (codified as UNIF. PROBATE CODE §§ 6-301 to -311, 8 U.L.A. pt. II, 449-57 (1998)), which has been enacted in all but five states, 8B U.L.A. 35 (Supp. 2005); and the UNIF. MULTIPLE-PERSON ACCOUNTS ACT, 8B U.L.A. 7 (2001) (codified as UNIF. PROBATE CODE §§ 6-201 to -227, 8 U.L.A. pt. II, at 433-48 (1998)). These two acts, together with what is now UPC § 6-101, which legitimates will substitutes against objections founded on want of Wills Act formality, have also been packaged as the UNIF. NONPROBATE TRANSFERS ON DEATH ACT, 8B U.L.A. 57 (2001), for ease of enactment in states that do not have the UPC's procedure sections.

⁵ 8 U.L.A. 1 (1998).

⁶ See, e.g., LAWRENCE P. KATZENSTEIN, NEW DEVELOPMENTS IN CHARITABLE PLANNING 239, 245 (ALI-ABA Course of Study, Feb. 23-25, 2006), available at SL073 ALI-ABA 239 (Westlaw) (discussing adoption of UPC's augmented estate rule in many states).

⁷ Discussed in John H. Langbein & Lawrence W. Waggoner, *Reforming the Law of Gratuitous Transfers: The New Uniform Probate Code*, 55 ALB. L. REV. 871 (1992).

enough to overcome the self-interest of those who profit from dysfunction in probate procedure, the UPC has become the benchmark of good practice in American law. Whenever a state that does not have the UPC undertakes to improve any aspect of its probate procedures, the UPC is always the starting point.

Sadly, Wellman does not have a real successor in today's legal academy. Law professors no longer specialize in fields like probate procedure. The fashions of academic law have turned towards high theory, and away from the once-esteemed career line that Wellman exemplified, mastering and improving a complex and important body of state law.

Richard Wellman quietly transformed American law. Probate is about death, but also about caring for the living. Wellman devoted his career to seeing to it that the sorrows of death should not be magnified by clumsiness and venality in the legal system. His life in American law has touched and will continue to touch the lives of millions, who will never know what he did for them.

