

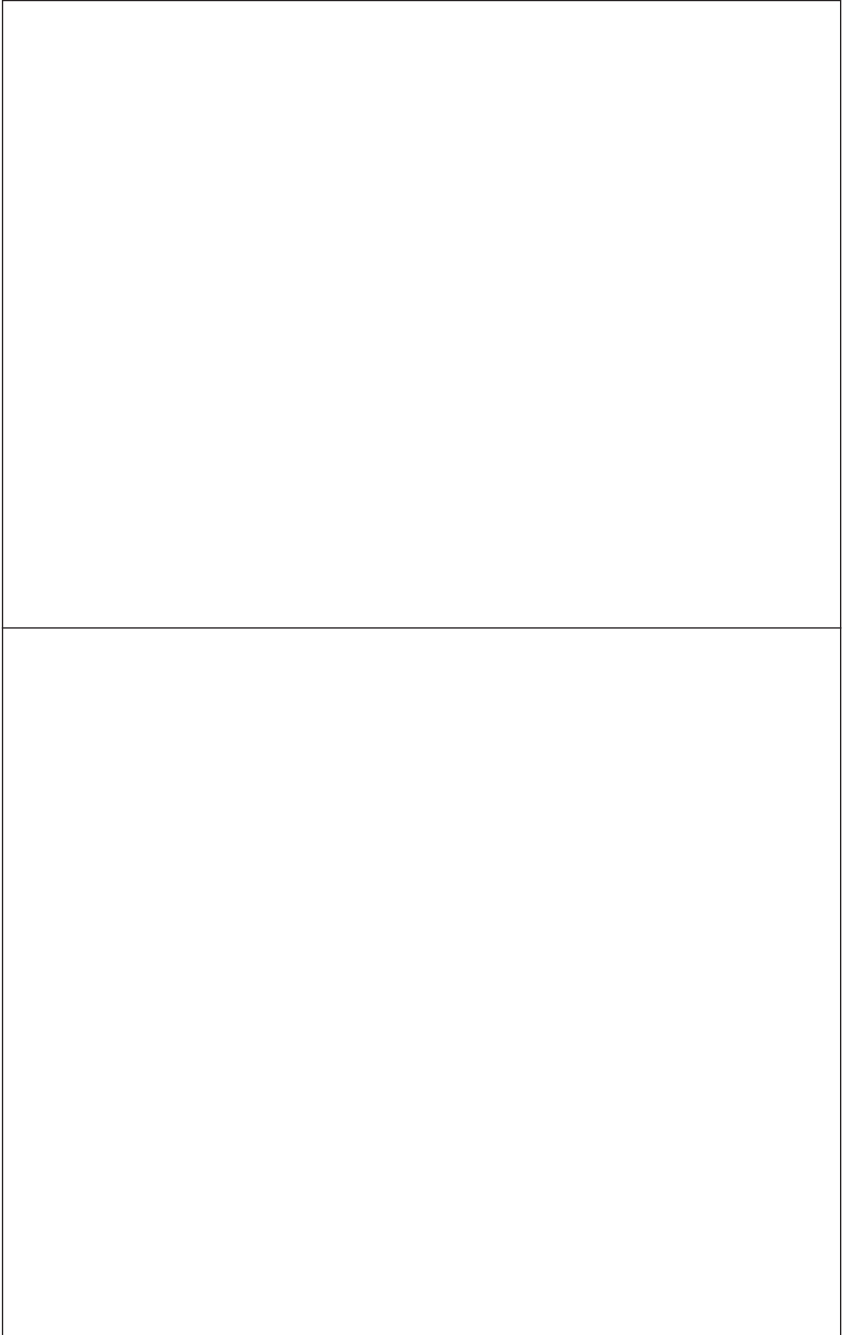
Stephanie Rohlfing-Dijoux | Uwe Hellmann (eds.)

Culture and Law

Multidisciplinary Cross-fertilization of Views
on the End of Life



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The Deutsche Nationalbibliothek lists this publication in the Deutsche Nationalbibliografie; detailed bibliographic data are available on the Internet at <http://dnb.d-nb.de>

ISBN 978-3-8487-7731-0 (Print)
978-3-7489-2127-1 (ePDF)

British Library Cataloguing-in-Publication Data

A catalogue record for this book is available from the British Library.

ISBN 978-3-8487-7731-0 (Print)
978-3-7489-2127-1 (ePDF)

Library of Congress Cataloging-in-Publication Data

Rohlfing-Dijoux, Stephanie | Hellmann, Uwe
Culture and Law
Multidisciplinary Cross-fertilization of Views on the End of Life
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206 pp.
Includes bibliographic references.

ISBN 978-3-8487-7731-0 (Print)
978-3-7489-2127-1 (ePDF)



Onlineversion
Nomos eLibrary

1st Edition 2022

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Preface

The articles collected in this book have been presented at an international symposium held on 10 and 11 March 2020 in Paris. The symposium topic was a multi-disciplinary approach of "end-of-life" by aspects of culture and law.

The subject of the symposium, " end-of-life " concerns each one of us. Every person is moving to death. Death is a truth and linked to life. It is subject to strong cultural and religious influences. Nor can the subject be dealt with in legal terms alone, but must include other disciplines, such as medicine, philosophy, history. Different religions also have different philosophies on end-of-life.

Chapter I deals with the place of death in our societies, the religious influence and the dignified death. The first article from *Jeanne Mesmin d'Estienne*, dedicated to a general approach to end-of-life, introduces the topic before focussing on philosophical and historical concepts of end-of-life. The second article from *Florence Bellivier* examines the influence of bioethics on end-of-life legislation.

Birgit Daiber gives a general overview of the dignity topic that also includes the well-being of the person. The whole environment of the person, such as psychological, religious, family situation, must be taken into account. Therefore, death should be considered holistically as a whole. All religions have the concept of dignity in death. In the Hindu religion and Buddhism, the end of life is seen more as liberation. Assumes that death is not an end but that the soul survives. Death can be celebrated as a festival. But due to the influence of the Western view, the medical approach to death is being applied more and more there today, and the philosophy is moving more to a concept of western individuality so that differences tend to diminish.

Dying with dignity is considered the central concept for end-of-life questions and is also a major issue in jurisprudence. This field of law is still subject to constant transformation because it is linked to the sociological transformation of our societies. This can be illustrated by the latest German case-law around the constitutionally guaranteed right to self-determination enclosing a right to self-ending one's life. The latest case of the German Constitutional Court, in this field, of February 2020 is explored

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in the article of *Michael Eichberger*. However, the legislature is expected to intervene in the next few years to regulate this.

An essential aspect of dying with dignity, especially in the western system, is that death should not be associated with pain but that the pain should be lifted or alleviated by medical interventions. That is why palliative care has developed to a large extent in Western countries, probably not yet enough. That is why several articles will be devoted to the issue of palliative care in different countries in Chapter II of this book. The contributions of *Tobias Lettl* and *Kerstin Peglow* for Germany, *Sophie Garcelon* and *Louis-Charles Viossat* for France are dedicated to palliative care and sedation. Even in other cultures, where suffering is more a part of the concept of dying because suffering is considered necessary in order to be freed from bad karma, such palliative care initiatives have been founded in recent years. For example, in the state of Kerala, which is considered to be the most socially progressive in India, there is now a state palliative care plan, which should lead to all citizens being able to benefit from palliative care.

The question of the right to self-determination of one's own life arises in this context, especially for minors and persons who are under care or who cannot decide for themselves because of their condition. The protection provided for these persons in the various countries is dealt with in chapter III's contributions for Germany by *Angie Schneider*, for French law by *Stephanie Rohlfing-Dijoux*, and England and Wales by *Kartina A. Choong*.

Another essential issue is the voluntary termination of life. The legal impunity of suicide is now undisputed in most countries. Even in India, where suicide is still punishable under the Penal Code, the provision is generally no longer applied by the courts. But the question is rather to what extent assisting suicide is exempt from punishment, especially medical assistance by doctors or medical staff, which goes close to the question of active euthanasia. Here are also many differences in the various European countries, from countries that go so far as to allow active euthanasia to Catholic tradition countries that also prohibit passive euthanasia. Germany, France and England, which are examined here as representatives of the European countries, take a middle position, in which passive euthanasia is permitted, but active euthanasia remains prohibited. Germany has gone the furthest in this respect since the most recent case law, the state can even be obliged to provide a lethal dose of drugs to a person who has no other issue than a self-determined death. There have been significant decisions on this very issue in Germany, which have been analysed in Chapter IV by *Uwe Hellman* and in a comparative way by *Volker Lipp*. *Geraldine Demme* dealt with the same issue for Swiss law. But

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in Germany, the question has not been finally clarified; instead, we are waiting for a legal clarification here in the next few years. Physicians need clarification and a clear legal concept regarding their options for reasons of legal certainty. And ultimately, only the legislator can create this. Palliative medicine is also extremely important because alleviating pain can help mitigate the urgent wish to die. There have already been two initial draft laws on this in Germany in recent weeks and an extensive debate in the Bundestag. It is interesting that these draft laws are cross-party or even come from academia. This shows that political boundaries are being crossed in this area. The draft legislation deals with ethical questions of euthanasia and, above all, the question of the authorisation of euthanasia associations and the specifications of procedures and behavioural requirements that are to be imposed on them in the future (such as mandatory counselling, time limits, access requirements). This also raises the question of whether euthanasia as a whole should be regulated in a uniform set of laws (as in France, for example) or whether it should continue to be regulated in various special laws. Furthermore, it will also be necessary to change the professional regulation of physicians.

The book will also explore how other legislation in European countries, but also other cultures, such as India and Japan, deal with end-of-life issues in Chapter V, where a comparative table of the laws in England, India and Japan is drawn up by *Tetsu Isobe* and *Haluna Kawashima* for Japan, *Anand Raut* for India.

Unfortunately, the Covid pandemic has brought the question of the end of life back into the spotlight, because in many countries, there were or are questions about the extent to which medically available resources, such as beds in intensive care, are distributed when there are not enough resources for all those in need. This too was already explored to some extent in the colloquium by the contribution of *Richard Law* for England and Wales. However, at the time it took place, on 10 and 11 March 2020, it was still before the actual covid pandemic and the strict lockdown in almost all countries in the world.

Our warm thanks to all authors of the book for their valuable contributions and the German-French University in Saarbrücken that sponsored this scientific event. We hope that the book may contribute and give some inputs to the ongoing discussion on end-of-life issues.

Nanterre, Potsdam, July 2021

Co-editors: Stephanie Rohlfing-Dijoux, Uwe Hellmann

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