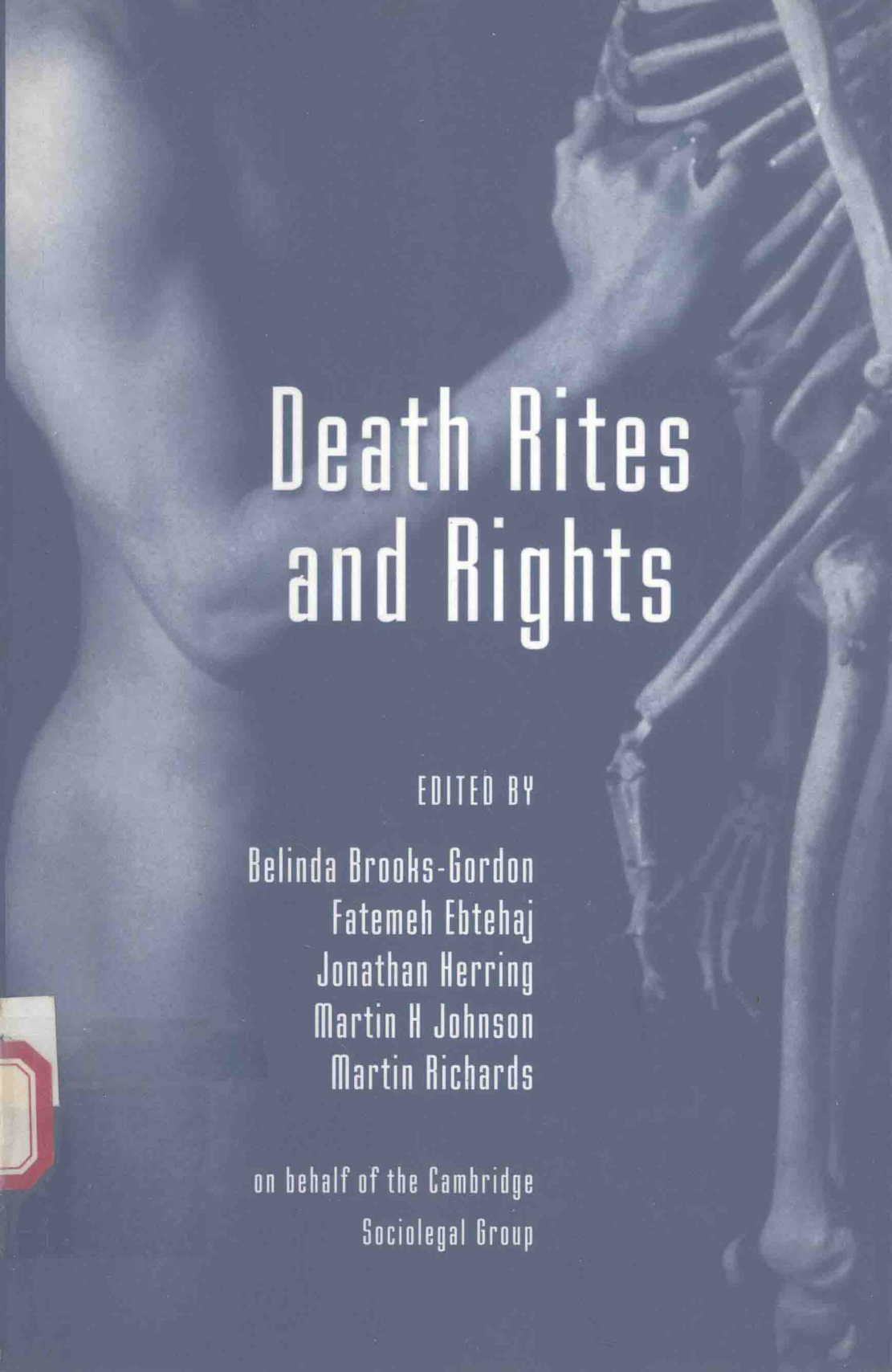

Death Rites and Rights

EDITED BY

Belinda Brooks-Gordon
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Jonathan Herring
Martin H Johnson
Martin Richards

on behalf of the Cambridge Sociolegal Group

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For the Cambridge Socio-Legal Group

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DEATH RITES AND RIGHTS

Death has diverse religious, social, legal, and medical aspects and is one of the main areas in which medicine and the law intersect. In this volume, we ask: What is the meaning of death in contemporary Britain, and in other cultures, and how has it changed over time? The essays in this collection tackle the diverse ways in which death is now experienced in modern society, in the process answering a wide variety of questions: How is death defined by law? Do the dead have legal rights? What is one allowed to have and not have done to one's body after death? What are the rights of next of kin in this respect? What compensation exists for death and how is death valued? What is happening to the law on euthanasia and suicide? Is there a human right to die? What is the principle of sanctity of life? What of criminal offences against the dead? How are the traditions of death still played out in religion? How have customs and traditions of the disposal of bodies and funerals changed? What happens to donated bodies in the biomedical setting where anatomical education is permitted? What processes are employed by police when investigating suspicious deaths? What of representations of death? These and other questions are the subject of this challenging and diverse set of essays.

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The Editors
Cambridge
April 2007

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Contents

1

Introduction: Death Writes

MARTIN RICHARDS AND MARTIN H JOHNSON

BENJAMIN FRANKLIN FAMOUSLY remarked 'in this world nothing can be said to be certain, except death and taxes'.[1] While death may come to us all,[2] its circumstances, the manner and timing of its coming vary, and these and our social institutions and how we deal with the resulting corpse are the subjects of this book. Two related tensions run through almost all of our discussions. The first is between the perception of death as a discontinuity that marks a sharp divide between two fundamentally different states, and death as simply part of a continuing process. These different perspectives affect, for example, how we treat corpses, our attitudes to suicide, euthanasia and martyrdom, and whether we 'avoid' death or face it constructively. A second, related tension is that between a personal or idiosyncratic response to a corpse and social attitudes to it. Managing these tensions lies at the core of many of the debates—how we treat the corpse legally, what we do with it medically, and how we treat it socially and ethically. Against this background, three broad questions are addressed in the three sections of the book. The first section asks: How, when and where do we, or should we, die? The second: What are the rituals and practices of death? And the third: How do we deal with the resulting corpse?

THE HOW, WHEN AND WHERE OF DYING

How do we know if someone is dead? One might think that biology provides a simple answer, but not so. Our living dynamic bodies are in a constant state of a life and death flux. Worn cells die and are replaced with new ones. We reshape and jettison tissues throughout life, starting during our earliest foetal development, when we first produce and then actively kill the cells that make up our tail, the webs between our fingers and toes,

[1] In a letter to Jean Baptiste le Roy, 13 November 1789.

[2] Some radical biologists have begun to argue that, in principle, we may become able to live forever but this would not seem to be an immediate prospect.

gills in our neck and the primitive genitalia of both sexes of which (usually) only one set survives. In this way, a process involving cellular death partly recapitulates the evolutionary process by which we arrived here, recalling our watery hermaphroditic origins. This process of recapitulation and development also reminds us that we are here by virtue of the massive and truly terminal death of the many extinct species that did not adapt successfully to their changing environments. And this may also remind us just how precarious is that survival. At birth we discard a placenta, a scaffold no longer required for our survival as liver, lungs and kidneys take over its functions. This habit of tissue littering persists throughout life as our milk teeth, nail clippings, uterine lining and virtually all the eggs, sperm and embryos we produce are doomed to an early death. In the midst of life, there is indeed much death.

However, all this dying is highly regulated and organised, and the systems of our material body retain an integrity and structure throughout life which is only lost in the process of the whole organism dying. Then breathing ceases, the heart stops and the blood no longer circulates and consciousness is lost. Irreversible changes begin to take place in all the tissues of the body as necessary metabolic processes cease. Traditionally, as Pak-Lee Chau and Jonathan Herring describe (chapter two), the indicator of death has been taken to be the loss of the more obvious vital signs—breathing and the pulse. However, modern medicine can maintain these functions mechanically so that loss of vital signs may now follow the switching off of a ventilator. This capacity of medicine to arrest death, albeit temporarily, has encouraged new uses for 'dead' bodies as sources of living transplants, as well as new medical practices. It has also led the law to defer to medicine and thereby encouraged new definitions of death. If a transplant is to be successful, the organ for transplantation must be removed before the irreversible changes of tissue-death take place. The point is well illustrated by the evidence that the living donation of a kidney is more likely to be successful because it is in better physiological shape than one from a corpse. So, for post-mortem removal of organs for transplant, death has been redefined in terms of failing brain activity. Now, a body can be 'brain dead' but breathing on a respirator awaiting the transplant surgeon's removal of the (living) organs destined for transplantation. And, when the surgeon begins that process of removal, a curious after-death practice may occur in which the (brain) dead body is anaesthetised to ease the removal of these organs.

Chau and Herring advance the view that death is more a process than an event, made up of a series of smaller death-like moments, each with its own significance (emotional, spiritual, practical, legal) for those around the dying person. The 'process view' of death sits more easily with ideas of continuity that are seen, not only in the biological continuity between successive generations, but also in developmental continuity at the beginning of life (Johnson, 2006) and the in vitro continuity that biopsied cell cultures

(Landecker, 2007) and even embryonic stem-cells promise. This idea of continuity can also be taken to a more personal level with the survival across death of aspects of identity and bodily integrity. This is already achieved with human face transplants and is conjectured by Chau and Herring for brain transplants. These authors also ponder on the likelihood of medical science providing immortality of whole organisms; a prospect that has already excited the imagination of social scientists (Turner, to be published 2007) and bio-ethicists (Harris, 1998).

The intrusion of medical practices and technology into the process of dying and its legal definition is also influenced by the fact that, as compared with a century ago, contemporary death has different causes and a significantly different place in the life span. In the 19th century, infectious diseases of childhood were major killers with almost a quarter of all deaths occurring in infancy. Now we live longer,[3] the deaths of children are rare in the West, and for most death has become a 'natural conclusion' to life in old age. Most of us will die from the 'slow' deaths of the more chronic diseases of later life: heart disease, stroke and cancer. The rarity of deaths of young children has made childhood deaths more shocking and anomalous in a way that is not true in cultures where many do not live to reach adulthood (Scheper Hughes, 1992). This changing demography of death has also encouraged the demand for transplants to replace worn parts and help individuals to conform to 'the social expectations of death age'. But it is particularly ironic that some of these living donations may be supplied by the poor from countries where life expectancy remains short.

Accompanying all these medical changes is a shift in the location of death, which, like birth, has moved to the institution of the hospital or hospice for most. So, paradoxically, the hospital becomes simultaneously the place of hope and the feared charnel house—patients enter hoping for the transplant to sustain them but fearing that MRSA will carry them off together with their transplant. Along with this change in the location of death, the hands on the body have also changed. Preparation of the corpse for the funeral and disposal is no longer carried out by the kin and the priest, but is now entrusted to a bevy of professionals that may include doctors, nurses, the police, medical students and the undertaker.

While family members may well be at the hospital bedside at the time of death, it is often suggested that we have become more distanced from death and that it has moved into a more public space and thereby a less personal sphere. The commonplace images of death in our culture have changed. Each day we can witness a mass of fictional deaths on television and in films, while the media also record the real dead on one or other of the world's battlefields, in a crashed car in a Parisian underpass or in an

[3] Global life expectancy at birth is 66 years but the range is wide; from 34 years in Sierra Leone to 82 years in Japan. See Scambler, ch 10).

exhibition of corpses in an art gallery. But there is more caution in allowing us to see more personal deaths. For example, at the execution of Saddam Hussein, the moments of his dying were excluded from clips shown on British television.

Doctors are perceived as playing different roles in this modern drama of death, with their actions determining the timing of death through such means as giving heavy sedation or withholding potentially life-prolonging treatments. Indeed, it has been suggested that the timing of a majority of deaths is now controlled by the actions of doctors (Ariès, 1983; see Jackson, chapter 3). But perhaps sometimes we also retain some influence over the timing of our own deaths. There is certainly a widespread belief that we may sometimes postpone our deaths until after some important event or social occasion. This idea has been put to an empirical test in an American study of Jewish and non-Jewish deaths before and after the Jewish holiday of Passover. It was found that death may indeed take a holiday (Phillips and King, 1988). Amongst Jewish people, but not in other comparison groups, deaths were significantly lower in the week before Passover and higher in the following week. The effect was found to be stronger when Passover coincided with a weekend and would be celebrated by more people.[4]

The more obvious case of someone taking control over ending a life is, of course, suicide. Until the 1961 Suicide Act, this was a criminal offence and those who killed themselves were stigmatised by exclusion from funeral and burial rites. But today, while suicide is legal, it is an offence in the United Kingdom to assist someone to kill themselves, though assisted suicide and medical euthanasia are legal in a few other jurisdictions. There appears a paradox here in that the law passes the buck to doctors in defining death and distress (see chapter fourteen by Hedley and chapter two by Chau and Herring) but does not trust them sufficiently to administer it (see chapter three by Jackson).

Three chapters in the book address aspects of the contentious issue of assisted death. Emily Jackson analyses the link between attitudes to the legalisation of euthanasia and trust in doctors, suggesting that rather than euthanasia reducing trust in doctors, it is only when such trust is high that voluntary euthanasia becomes generally acceptable. She argues that legalised euthanasia would result in fewer and more humane and peaceful deaths than the current situation, in which doctors are already shortening the lives of many of their patients. Hazel Briggs (chapter four) examines the legal position of carers and others in the context of suicide and where they may accompany someone abroad who is seeking voluntary euthanasia. And there is a broader principle at stake here, as Antje du Bois-Pedain (chapter five) asks, 'Is there a human right to die?'

[4] It is, of course, possible that doctors may collude with their patients and act in ways that contribute to death's holiday.

RITUALS AND PRACTICES OF DEATH

The burial of the dead is a particularly human social activity that is not seen in any of our primate relatives. While we can speculate whether goods in early human graves are an indication of a belief in an afterlife and were intended to aid the dead person on some further journey, or whether they had some other social function, the act of burial represents a social marking and recognition of the ending of a life. Societies in which Christian belief in an afterlife held a strong grip traditionally have viewed this life-ending as simply a transition, often to a better life, that could be prepared for and facilitated (see chapter six by Jupp and chapter seven by Woodman and Middleton-Stewart). Such beliefs may complicate life and funeral practices in modern societies. In contemporary Britain, some of the Pakistani Muslim community are buried in special areas in local cemeteries with their heads facing Mecca, but others, especially men, are returned to their village of origin in the Pakistani homeland to be buried alongside their biradari (clan) members. Relatives there can see the body and pay respects before burial, and blessings will accrue to the deceased person's account with God through the prayers of kin who visit the grave, which will be weighed up on the day of judgement. However, these benefits are to be set against the necessary delay in burial. Muslims should be buried as soon as possible after death because the soul remains in the body and continues to suffer at least until burial, although, again, such pain and suffering can be relieved through the prayers of others (Shaw, to be published 2008). Such beliefs and practices may cause difficulties should a post-mortem be required.

Even in our modern more secular world the metaphor of life's journey continuing beyond death remains in popular culture. And there is a tension here between the continuing resonance in popular culture of songs about the journey to an afterlife and the more retrospective character of most funeral services. An example is a Christian song from the age of steam, which remains popular on both sides of the Atlantic in several genres of popular music: *Life's Railway to Heaven.*

Life is like a mountain railroad, with an engineer that's brave,
We must make the run successful from the cradle to the grave;
Watch the curves, the fills, the tunnels, never falter, never fail,
Keep your hand upon the throttle and your eye upon the rail.
Chorus
Blessed saviour, thou will guide us till we reach the blissful shore,
Where the angels wait to join us in thy praise for ever more.

As you roll up grades of trial you will cross the bridge of strife;
See that Christ is your conductor on the lightening train of life;
Always mindful of obstructions, do your duty, never fail,
Keep your hand upon the throttle and your eye upon the rail.
Chorus