

THE LIFE AND LEGACY OF PETER SCHLECHTRIEM

Ingeborg Schwenzer*

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Ms. Schlechtriem, Ladies and Gentlemen,

We are here today to pay tribute to the memory of Peter Schlechtriem. We remember him as a remarkable person, an exceptional academic, a mentor and a colleague.

1 BIOGRAPHIC BACKGROUND

In order to discuss the person Peter Schlechtriem, I will begin with a short biography.

Peter Schlechtriem was born on 2 March 1933 in Jena. Shortly after finishing his secondary education, he turned his back on the former German Democratic Republic, in which he was not allowed to study due to his father's distinguished profession, and went to Hamburg, where he first began an apprenticeship as a shipbuilder.

In his subsequent studies, he first turned toward political science and sociology. Thanks to the straightforward and unpretentious academic nature of Gotthard Paulus, a professor of civil procedure, Peter Schlechtriem finally decided to study law. In 1956, he moved to Freiburg, where he successfully completed the first and second state exam in 1959 and 1963, respectively. In 1964, after finishing his doctoral thesis entitled 'Ausländisches Erbrecht im deutschen Verfahren' ('Foreign law of succession in German procedure') which was supervised by Horst Müller, Peter Schlechtriem was awarded a *doctor iuris utriusque*.

At that time, he also took a position as an assistant to Ernst von Caemmerer; an experience that would have a lasting influence on his career, his entire way of thinking and his legacy. Ernst von Caemmerer, who himself was always committed to the heritage of Ernst Rabel, the founder and father of modern comparative law, became Peter Schlechtriem's mentor, as well as his role model and fatherly friend. It was

* Dr. iur. (Freiburg, Germany), LL.M. (Berkeley, USA), Professor of Private Law, University of Basel, Switzerland. The author thanks Philippe Monnier for his translation of this article.

under Ernst von Caemmerer's rigorous but benevolent eyes that Peter Schlechtriem laid the foundations for the development of his important work. The degree to which Peter Schlechtriem always cherished Ernst von Caemmerer's legacy is illustrated not least by the formation of the 'Ernst von Caemmerer Foundation' which he created and enduringly promoted.

Thereafter, Peter Schlechtriem's academic career was without doubt considerably influenced by his one-year stay at the University of Chicago Law School in 1964/65, where he earned the degree of a Master of Comparative Law. There, he met another pupil of Rabel, Max Rheinstein, who also exerted formative influence on him. Comparative law and also the intensive study of Anglo-American law would for evermore accompany Peter Schlechtriem and provide a basis for his approach to the law.

As early as 1968/1969, he returned to Chicago as an assistant professor. This stay in Chicago was primarily devoted to the preparations in regard to his first important work on 'Vertragsordnung und ausservertragliche Haftung' ('The contractual system and liability in tort'). This was the thesis with which Peter Schlechtriem earned his habilitation as a professor at the Faculty of Law of the University of Freiburg. This book is still recognised today, decades after its publication, as a benchmark on the relationship between liability in contract and in tort.

In 1971, Peter Schlechtriem was already being offered professorships in Erlangen and Heidelberg. He accepted the professorship in Heidelberg and headed the Institute for Foreign and International Private Law there until 1977. In that year, Peter Schlechtriem was called back to Freiburg as the successor of his esteemed mentor Ernst von Caemmerer. There, in his position as co-director, he was able to further promote and expand the already distinguished international reputation of the Institute for Foreign and International Private Law. He remained loyal to the Faculty of Freiburg until he received emeritus status upon his retirement in 2000. He had previously turned down a professorship at the University of Vienna in 1984.

Aside from research and teaching, two aspects which shaped his academic life, Peter Schlechtriem did not avoid the burdens of academic self-administration. He was twice appointed Dean and was the managing director of the Faculty of Law. As a long-time member of the board of administration of the University of Freiburg, he was also always concerned with the well-being of the Faculty of Law.

In numerous panels and organisations Peter Schlechtriem championed the advancement of national and especially international law based upon comparative study and the discussion of material questions. Allow me to emphasise his contributions to the 'Gesellschaft für Rechtsvergleichung' ('Society for Comparative Law'). From 1990 to 1997, he successfully headed this society as its chairman. His time as chairman saw a splendid conference in Berlin to celebrate the society's 100th anniversary in 1994. Additionally, in 1996 the first bi-annual Conference in the new

German states was held in Jena, the town of his childhood, at the occasion of which he delivered a commanding speech on the law of damages.

I will address the other numerous contributions of Peter Schlechtriem in the context of the main areas of his work.

Peter Schlechtriem's international reputation was recognised by numerous awards and tributes. Numerous positions as a visiting professor led him to teach outside of Europe, in particular in the United States, Australia and New Zealand. In 1995 he received an honorary doctor from the University of Basel; in 2001 he became a Fellow of the St. Catherine's College in Oxford. In 2002 he received another honorary doctor from the University of Tartu, Estonia.

In 2003, on the occasion of his 70th birthday, his friends and colleagues from over ten different countries paid tribute to him by presenting him with a 'large' *Festschrift* which extended to almost one thousand pages. It had already been preceded on the occasion of his 65th birthday by a 'small' *Festschrift* which had evolved out of an international symposium. Sadly, he could not attend the symposium with friends and admirers from all over the world which had been planned by his pupils for his 75th birthday; he passed away on 23 April 2008 at the age of 74.

2 PETER SCHLECHTRIEM'S LEGACY

Peter Schlechtriem's legacy is probably best described by the title which had already been given to the symposium held on the occasion of his 65th birthday: 'Schuldrecht, Rechtsvergleichung und Rechtsvereinheitlichung an der Schwelle zum 21. Jahrhundert' ('Law of obligations, comparative law and unification of law on the verge of the 21st century'). The law of obligations was always the centrepiece of his academic work, even though he occasionally took the liberty of making smaller and even some major excursions into family law and the law of succession.

His approach was comparative. It was in a sense the brace which held his work together, vertically and horizontally. Subtle trifles, fruitless dogmatic fixation on national peculiarities which resulted from historic coincidences were not his cup of tea. It was his sharp comparative view which always led him to the essential material questions. He strived for the unification of the law; a goal which he pursued in multiple manners. His foresight was characteristic. He was not suspicious of new ideas but saw them as a challenge and an endeavour which he always accepted with curiosity, pleasure and enthusiasm. When, for example, others had not yet taken notice of a new court decision, Peter Schlechtriem had already evaluated all of its consequences and often already discussed it in an article or annotation.

Allow me to address the issues which are the central aspects of his legacy.

German lawyers will remember Peter Schlechtriem primarily for his essential contributions to the German law of obligations. In both of his fundamental textbooks on the general and special provisions of the German law of obligations, which were published in five and six editions respectively, he succeeded in leading his students to the essential questions which characterise every law of obligations, irrespective of dogmatic peculiarities. The clarity and conciseness of his comments on the law of unjust enrichment in Jauernig's commentary are unmatched.

Peter Schlechtriem also attained ground breaking accomplishments in the field of conflict of laws. In the Commission on the law of obligations of the German Council for Private International Law, of which he was a long standing member, he laid the foundations for the conflict of law provision which deals with unjust enrichment which we can find today in Art. 38 Einführungsgesetz zum Bürgerlichen Gesetzbuch ('Introduction to the [German] Civil Code Act').

Peter Schlechtriem played a decisive role in the revision of the German law of obligations. As early as 1981, he was one of the commentators who, through advisory legal opinions, laid the foundations for a modernisation of the German law of obligations. Above all, as a member of the commission which was entrusted with the reform of the law of obligations, he was able to exert essential influence on the final report of that commission which was published in 1992.

Anyone who knew the academic thinking and work of Peter Schlechtriem could easily recognise his contributions on some of the pivotal issues in this report. However, he was concerned about the fact that some of the important decisions made in the course of the drafting process were, in particular in the field of breach of contract, weakened and replaced by ideas which could be traced back to the nationally oriented body of thought of the 19th century. But even here, he looked ahead and tried to find solutions to the problems which were created by this somewhat deficient reform.

Peter Schlechtriem also exerted an important influence on the reform of the law of obligations in Eastern European states. After 1989, he was among the first to assist the emerging states in their quest to create new, modern codifications. The Estonian law of obligations in particular, which now is regarded as one of the most modern in Europe, can be broadly traced back to the ideas of Peter Schlechtriem. Finally, in the context of UNIDROIT, he played an important role in the preparation of the UNIDROIT Principles 2004; he was a Rapporteur for the provisions on limitation of actions.

In recent years, Peter Schlechtriem was involved in the efforts to harmonise European private law. Not only was he an advisor to the working groups on the laws of sales and services of the Study Group on a European Civil Code, but was one of the protagonists in the coordination group and in the editorial team which published the Draft Common Frame of Reference in 2008. Unfortunately, he was not able to see this project through the final stages of its development.

Aside from all these merits which reach far beyond Germany, Peter Schlechtriem's name is mentioned in the same breath as international sales law, the Convention on the International Sale of Goods or CISG. After Ernst Rabel had laid the foundations for the worldwide unification of sales law and Ernst von Caemmerer had influenced the early sales laws of the Hague, it was Peter Schlechtriem who became the undisputed master of the most successful international codification in the field of private law which now counts 73 member countries. The conference which prepared the CISG was held in Vienna in 1980, and Peter Schlechtriem represented Germany's academic scholarship within the German delegation; the records show that he had an authoritative influence on the opinion formed there.

I remember that, when Peter Schlechtriem returned from Vienna, he brought with him an almost complete first monographic illustration of the CISG. He had dictated it in the evenings at his hotel, after returning from the daily debates in the Hofburg which lasted for hours. The translation of this fundamental book on the CISG into English was published shortly thereafter. This is what established his legendary international reputation in the field of the CISG.

From this first monograph followed his book 'Internationales UN-Kaufrecht', which he was able to finish himself and which was published in its 4th edition shortly before his death. This book was translated, among others, into Japanese, Korean, Chinese and Estonian and is therefore a basis for the education of young lawyers from around the world. He still was able to oversee the draft translations into English and French that have been published in the meantime.

When the CISG came into force in Germany, Peter Schlechtriem was the first to publish a comprehensive commentary in 1990; this commentary was also translated into English shortly after its publication and is today the leading commentary on the CISG. Peter Schlechtriem unfortunately did not live to see that this commentary would be translated into three further UN-languages in the near future. It certainly would have given him great pleasure and perhaps a little pride. Long before many people even were familiar with the internet, Peter Schlechtriem initiated the first electronic database on the CISG which made it possible to access and consider foreign decisions when interpreting the law. It was only a matter of course that, when an international body was created in order to supervise the uniform interpretation of the CISG – the CISG Advisory Council – he was appointed the first chairperson thereof. He thus not only promoted uniformity in sales law in the first place but also preserved this uniformity by upholding uniform interpretation.

Not only did Peter Schlechtriem exert international influence on the development of sales law, but did so in other fields as well. His comparative study in the field of unjust enrichment – first as the editor of the Volume 'Restitution, Unjust Enrichment and Negotiorum Gestio' of the International Encyclopedia of Comparative Law, later in the form of his 1500-page-book 'Restitution und Bereicherungsausgleich in Europa' ('Restitution and unjust enrichment in Europe') which was published in two

volumes – sustainably inspired the European as well as the newly developing Anglo-American debate in this field. The American Law Institute consulted him as the only foreign advisor for the revision of the Restatement of Law, Third, Restitution and Unjust Enrichment.

3 *PETER SCHLECHTRIEM – THE MENTOR*

Throughout his life, Peter Schlechtriem always was exceptionally committed to the education and development of his students. He attached particular importance to two endeavours: First, his primary goal was to convey the basic structures and to concentrate on fundamental questions of the law of obligations, regardless of national peculiarities. Second, he attempted to establish a relationship to practical needs and considerations. In his courses, he refrained from discussing hypothetical textbook cases but examined the most recent decisions of the German Federal Supreme Court or those of foreign courts such as, for example, the House of Lords. He also dealt with everyday cases which everyone could relate to without difficulty. Peter Schlechtriem's classes were challenging – not only due to the fact that he was accustomed to holding them at 8 o'clock in the morning. This is why his classes often attracted the best students who were eager to learn more than the required minimum.

His lectures on the new law of obligations which he held at the University of Freiburg after having received emeritus status were almost legendary. Not only were they attended by students and the majority of the academic assistants in private law, but they also attracted many practitioners. Even some of his colleagues are said to have occasionally attended.

At his Chair, Peter Schlechtriem succeeded in bringing together the most talented and interesting young people from all around the world. Many of them still are in touch today. He brought forth many pupils who can be found today in diverse legal professions. Two of them, Martin Schmidt-Kessel and I, are now professors; others ascended to the top of worldwide companies or are among the global players as attorneys. But even those who decided to pursue their careers in the German justice system carry a comparative approach to the law as well as Peter Schlechtriem's ideas into these institutions which are traditionally influenced by national law.

4 *PETER SCHLECHTRIEM – THE PERSON*

Allow me to make some subjective comments on several personal aspects of Peter Schlechtriem's life.

The most preeminent characteristics of Peter Schlechtriem were his exceptional analytic character, his clear understanding of problems and his ability to bring discussions to the point. When material questions were at issue – and such questions always were most important to him – he had the ability to take a clear stance and find concise arguments without being disrespectful towards his counterpart.

In this regard, his contribution to the Festschrift for the 50th anniversary of the German Federal Supreme Court (Bundesgerichtshof) in 2000 can be seen as paradigmatic.

After having voiced his harsh criticism of the jurisprudence of the German Federal Supreme Court (Bundesgerichtshof) for 30 pages, he ended with the following words: 'The debate which courts of law and academics must lead sometimes requires disagreements. Therefore, even a dissenting opinion can be an expression of admiring respect.' ('Es gehört zum Gespräch, das Rechtsprechung und Wissenschaft zu führen haben, dass auch Widerworte geäußert werden, denn eine abweichende Ansicht kann ebenfalls Ausdruck bewundernden Respekts sein. ') He always treated his counterparts with respect. He himself was always treated with the same respect.

Peter Schlechtriem was visionary. He therefore was able to anticipate future difficulties and to remedy them in time. He tried to anticipate and rebut possible criticism, particularly where such criticism could endanger a justified material issue of concern.

Peter Schlechtriem was modest. He tried to be more than appearances indicated and not the other way around. He let others hold the pompous public appearances which are seen more and more in today's academic world. When someone would praise his accomplishments, he tried, as quickly as possible, to return to the factual questions at hand. This is illustrated by the fact that, even though he was a long-time coach of the Moot Court teams of the University of Freiburg, he never took part as an arbitrator in the Vienna Moot Court; there, he certainly would have been celebrated and admired as a champion of the CISG by over 1000 students from all around the world who had prepared for the competition with his textbooks.

He was always willing to discuss the questions and concerns of his students, and also those of his colleagues, particularly the ones from abroad. This internationality and openness is documented last but not least by the hospitable atmosphere which was always present in the house where he and his wife Verena lived.

Allow me to conclude with some personal remarks. Peter Schlechtriem was not only an outstanding academic, he was not only my academic mentor, but he was also a very good athlete. Even at the age of seventy, he out skied his grandson, whom he had taught skiing together with his wife. Also, during the evening news, he kept himself fit on his home trainer. The games of chess with his grandson always were a source of enjoyment and relaxation to him. And last but not least, Peter Schlechtriem loved cats.

With the loss of Peter Schlechtriem, the German and international legal communities have lost one of their most influential members. As his pupils, we also miss a fatherly friend.

We can however count ourselves lucky that we could accompany Peter Schlechtriem on a part of his path. We hold his memory dear and will strive to keep his legacy alive.