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Band 22 (2014)

Herausgegeben von
Joachim Hruschka
Jan C. Joerden



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Im Jahre 1993 begründet von B. Sharon Byrd,
Joachim Hruschka und Jan C. Joerden

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Themenschwerpunkt:

Grund und Grenzen
der Solidarität in Recht und Ethik –
Foundation and Limitation of Solidarity
in Law and Ethics

Herausgegeben von
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Vorwort

Nach langer, schwerer Krankheit ist am 4. März 2014 unsere Mitherausgeberin Frau Prof. B. Sharon Byrd in Erlangen verstorben. Sharon Byrd hat das *Jahrbuch für Recht und Ethik*, das seit dem Jahre 1993 veröffentlicht wird, mitbegründet und seine Gestalt und seinen Inhalt maßgeblich mitbestimmt. Wir bringen in einem ersten Teil des diesjährigen Bandes Nachrufe der Professoren Alice Pinheiro Walla (Cork/Wien), Karl Meessen (Jena/Düsseldorf), Heather M. Roff (Denver) und Franz Streng (Erlangen) sowie ein Schriftenverzeichnis von Sharon Byrd zum Abdruck. Die Herausgeber werden sich an Sharon Byrd immer dankbar erinnern.

Der Themenschwerpunkt dieses Bandes des *Jahrbuchs* ist der Frage nach „Grund und Grenzen der Solidarität in Recht und Ethik – Foundation and Limitation of Solidarity in Law and Ethics“ gewidmet. Dieser Fragestellung wird zunächst mit einer Begriffsklärung im Bereich von Ethik und Recht nachgegangen. Danach werden Problemfelder des Solidaritätsbegriffs im Hinblick auf die Staatsverfassung und das gesellschaftliche Zusammenleben näher analysiert. Abgeschlossen wird der diesjährige Band des *Jahrbuchs* wieder mit einem für unterschiedliche Themenstellungen aus dem „Bereich Recht und Ethik“ geöffneten Diskussionsforum.

Für ihre Mitwirkung bei der Herstellung der Druckvorlagen für diesen Band ist den Mitarbeiterinnen und Mitarbeitern des Lehrstuhls für Strafrecht und Rechtsphilosophie an der Europa-Universität Viadrina Frankfurt (Oder), insbesondere Johannes Bochmann, Lydia Ludolph, Susen Pönitzsch, Luisa Wittner und Sebastian Wrobel zu danken. Johannes Bochmann danken wir zudem für die sorgfältige Erstellung der Register. Last, but not least gebührt wiederum Lars Hartmann (Berlin) Dank für die umsichtige Betreuung der Drucklegung im Verlag Duncker & Humblot.

Hingewiesen sei schließlich auf die Internet-Seiten des Jahrbuchs für Recht und Ethik:

http://www.rewi.europa-uni.de/de/lehrstuhl/sr/intstrafrecht/_projekte/jre/index.html

Dort sind auch weitere Informationen zum Jahrbuch erhältlich – insbesondere die englische bzw. deutsche Zusammenfassung der Artikel und Bestellinformationen.

Die Herausgeber

Preface

Our co-editor Prof. B. Sharon Byrd has passed away on 4th March, 2014 in Erlangen after long and serious illness. Sharon Byrd was one of the originators of the *Annual Review of Law and Ethics*, which has been issued since 1993, and has contributed substantially to its shape and content. In a first part of this volume, we present obituaries written by professors Alice Pinheiro Walla (Cork/Wien), Karl Meessen (Jena/Düsseldorf), Heather M. Roff (Denver) and Franz Streng (Erlangen), as well as a list of Sharon Byrd's publications. The editors will always remember Sharon Byrd with deep gratitude.

The thematic priority of this volume of the *Annual Review* is the question of "Grund und Grenzen der Solidarität in Recht und Ethik – Foundation and Limitation of Solidarity in Law and Ethics". Firstly, in dealing with this topic, some terms from the fields of Law and Ethics will be clarified. After that, the notion of solidarity is analyzed closer in regard to the State's constitution and social co-existence. Once again, this volume of the *Annual Review* is completed by a discussion forum open for diverse topics from the area of Law and Ethics.

Our gratitude goes to Johannes Bochmann, Lydia Ludolph, Susen Pönitzsch, Luisa Wittner and Sebastian Wrobel, members of the Chair for Criminal Law and Legal Philosophy at the European University Viadrina Frankfurt (Oder), for their support in preparing the manuscripts for publication. We also appreciate Johannes Bochmann's contribution in preparing the indices. Last, but not least, we would like to thank Lars Hartmann at Duncker & Humblot (Berlin) for his comprehensive assistance in printing the volume.

We would also like to draw the readers' attention to our website:

http://www.rewi.europa-uni.de/de/lehrstuhl/sr/intstrafrecht/_projekte/jre/index.html

where they will find further information on the *Annual Review of Law and Ethics*, including English and German summaries of the articles it contains and purchasing procedures.

The Editors

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B. Sharon Byrd

**Professor of Anglo-American Law and Jurisprudence and Kant scholar
28th April 1947 in Dayton, Ohio, U.S. – 4th March 2014 in Erlangen, Germany**

It was a bright morning during her funeral at the Erlangen central cemetery on the 11th March 2014. Law students and colleagues from her German institutions were present, as were academics from different parts of the world: a young Hungarian legal historian, an American professor. When asked how they knew Sharon they gave a similar answer: she had helped them in some way. Sharon had helped a lot of people: students, young academics at the start of their careers, foreigners attempting to settle in a foreign culture. Commenting on this with friends, one of them observed that this was a beautiful way to be remembered.

Sharon obtained her first degree at the prestigious Smith College in Northampton (Massachusetts) in 1969, majoring in Philosophy. She later studied law at the University of California in Los Angeles (UCLA). Her favorite subject, which would remain one of her research interests throughout her academic career, was criminal law. She first came to Germany in 1972 with an Alexander von Humboldt Fellowship, to work at the Max Planck Institute in Freiburg im Breisgau. Returning to the U.S., she spent some time working for the Federal Trade Commission in Washington D.C. She acquired her LL.M (*Master of Law*) and her J.S.D. (*Juris Scientiae Doctor*) from Columbia University in New York.

Sharon was known as a passionate teacher, who not only genuinely enjoyed working with her students, but did her best to foster their abilities. She began her teaching career in Germany in 1984 at the Friedrich-Alexander University of Erlangen. Later, she taught at the University of Augsburg and the Friedrich-Schiller University of Jena. In 1996, she was made honorary professor at the University of Erlangen, but continued to teach regularly in Augsburg and Jena (where she became coordinator of the Law and Languages Program of the Faculty of Law). She taught Anglo-American Law, including courses on contract law, torts and the U.S. Constitution. Despite her teaching commitments, Sharon regularly organized reading groups on Kant's works, especially on his legal philosophy. It is important to stress that these reading groups were attended mostly by law students, who are not usually interested in legal philosophy, even less in Immanuel Kant. That these reading groups were formed and continued to exist in her law departments is a credit to Sharon's initiative, her absolute analytic clarity and her infectious enthusiasm for Kant's thought.

Another example of her devotion to her students is her work with the Jena student team for the Philip C. Jessup International Law Moot Court competition, which fo-

cuses on international law cases and involves competitors from over 500 law schools worldwide. Sharon worked intensively each year with her Jena team for the national moot court competition in Germany. The two best national teams would then be allowed to compete internationally in Washington D.C. In the twelve years of her moot court preparation, Sharon's Jena team often either placed first or second and took first prize in three of the last four years. This meant that the University of Jena was very often present at the international competition, not least due to Sharon's dedication to the team.

Sharon served the broader academic community in a number of ways: she was chairperson of the selection committee of the highly competitive Cecil Rhodes Foundation scholarship in Germany for study in Oxford. She also worked as an honorary member of the Melton Foundation, which funds studies and brings together students from universities in the U.S., Chile, India, China and Germany (in this case, the University of Jena). Being an American who lived in Germany, Sharon understood the importance of building bridges between cultures, something she performed brilliantly and with great pleasure and enthusiasm. It was only with the onset of her illness in autumn 2007 that Sharon ended her work with the Melton Foundation. She retired in autumn 2013.

Sharon has left an invaluable academic legacy, especially for Kant scholarship. In her influential 1989 article "Kant's Theory of Punishment – Deterrence in its Threat, Retribution in its Execution" (*Law and Philosophy*, vol. 8), she refuted the traditionally held belief that Kant was a retributivist about punishment. She also wrote several articles with her husband, the German law professor Joachim Hruschka. In 2010, after nearly five years of work, they published together the groundbreaking *Kant's Doctrine of Right. A Commentary* (Cambridge University Press). The book is a landmark after many years of neglect of Kant's legal philosophy in English speaking Kant scholarship and is distinctive for its holistic approach to Kant's theory, scholarly rigor and its careful reconstruction of the work's philosophical-historical background. Among the book's many contributions, the commentary offers for the first time an interpretation of the three *leges* in the *Doctrine of Right* and stresses the long ignored influence of Achenwall in Kant's legal thought.

As a law scholar, Sharon argued for the right of self-defense for women who are victims of domestic violence in a number of articles such as "Till Death Do Us Part: A Comparative Law Approach to Justifying Self-Defense by Battered Women" (*Duke Journal of Comparative and International Law*, vol.1, 1991). Traditionally, men who beat their wives to death are less likely to be convicted of murder than women who kill their abusive husbands. This is because murder, as opposed to manslaughter, involves that idea the victim could not have expected the attack. Women, however, are less likely to kill their abusive partners in open confrontation. Sharon explores the possibility of invoking the right to self defense to justify a battered woman in killing the abuser in his sleep.

Sharon was also a co-editor of the journal *Jahrbuch für Recht und Ethik/Annual Review of Law and Ethics* and a member of the editorial board of *Law and Philosophy* and author of successful textbooks in jurisprudence such as *Introduction to Anglo-American Law & Language* (3rd ed. 2011) and *Law and Language of Contracts and Torts* (2nd ed. 2010).

Sharon Byrd's remarkable and lasting contribution to Kant's scholarship and to teaching in Germany would have been enough to keep her name alive for many generations to come. But she will also be remembered for her generosity, her genuine concern for others and the fact that despite her remarkable knowledge and academic achievements she was humble, jovial and a wonderful person to be with. She was fair-minded and honest in considering new arguments and different points of view. She also helped many young people at the start of their careers. She will live in every student she inspired, in every bridge she built between different cultures, in every academic she mentored and helped to flourish, in every friendship she cultivated. Those who had the privilege to know Sharon will sorely miss her. She remains for us all a living example of humanity and relentless scholarly passion.

Alice Pinheiro Walla