



A JURISTIC ENLIGHTENMENT FRITZ W. SCHARPF

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We arrived in mid-January, on a cold and rainy evening. After long waits and detours on the Autobahn we had called to say that we would arrive long after the agreed hour – and were cheerfully assured that, no matter when, someone would be waiting for us at the front office. And that was just the beginning of a unique experience. Never before, not at the Center in Stanford, or at EUI Florence, Sciences-Po in Paris, Nuffield College in Oxford or the IHS in Vienna, have I been enveloped in such a warm, friendly and supportive service environment. And even though in the institutions for which I had been responsible, in Berlin and Cologne, we also tried to make life easy and comfortable for our visitors, we never came near the perfection and cheerful helpfulness of the Wiko staff – from the front

office to housekeeping, computer services, the library to the kitchen, and more. What a tribute to the corporate culture of the institute and to the ability of its leadership to maintain commitment, morale and good spirits among all.

For the three months of my stay, I became part of an ongoing Focus Group convened by Dieter Grimm, former Rector and now a Permanent Fellow of the Wiko. Its assigned theme was “Constitution Beyond the Nation State”, and apart from Petra Dobner, a political scientist like myself, its members – Martin Loughlin, Alexander Somek, Gunther Teubner and, arriving shortly before my departure, Rainer Wahl – were all lawyers. But of course these were very enlightened lawyers with deep interests in history, philosophy and social theory. Even though we almost never agreed in our weekly discussions of selected books and papers, there were no communications problems across disciplinary or national boundaries. We also came to agree without difficulty on what was going on empirically – the growing number of problems transcending national boundaries, the growing extension and intensity of legal or law-like rules adopted in European, transnational or global arenas, and the growing impact of both developments on the governing capacity, political legitimacy and constitutional integrity of democratic nation states. What we didn’t all agree on was the evaluation of these changes in the light of conventional or novel notions of the functions and legitimating principles associated with the concept of “constitution”.

And of course we all had our own selective focus on the complex subject matter that was determined by the particular work in progress we had brought with us. In my own case, that was an interest in the interaction effects between the EU and its member states, and in particular the impact of European judicial legislation on the legitimacy of democratic government at the national level. In this respect, I greatly benefited from the positive and critical feedback in our weekly seminar. What really made a difference, however, was the challenge arising from our discussions to read much more widely in international law, European law, constitutional law and normative political theory than I had ever done since I had left academic law for political science forty years ago. From my perspective of empirical and policy-oriented work, it was truly amazing to return to a literature that was pre-occupied with the internal logic of dogmatic systems, but which at the same time claimed to guide the effective decisions of judicial authorities. While I could again admire the sophistication and precision of deductive reasoning within these metaphysical frameworks, I must also confess being shocked by the lack of interest in the empirical correspondence of conceptual constructs or in the real-world consequences of their transformation into judicial practice. Of course this continuing adherence to the canons of *Begriffsjurisprudenz*

characterized only some of the literature, and most certainly it was not shared by my colleagues in the Focus Group. Nevertheless, for me the encounter with this type of literature was the most enlightening experience of my stay in Berlin: I am now better able than before to appreciate the role of juristic discourses in the shaping of the multilevel European polity.

Beyond the Focus Group, I probably benefited less than I should have from the life of the Wiko. In the five months before our arrival, everybody had already explained to everybody else where they came from and what they were doing, networks had formed, and conversation at the lunch or dinner tables had moved on to more specific common interests that could not be fully shared by the newcomer – whose incentive to integrate was of course also reduced by his own limited time horizon. Of course, there was the Focus Groups, and there were also a few delightful exceptions – among them Norman Birnbaum ... and Ronald Rogowski – with whom it was a plesasure to reconnect. In short, my stay at Wiko was most enjoyable and very productive. Thank you, everybody.