



PARADISE REGAINED  
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The natural inclination of those of us Fellows “forced out” of paradise mid-July every year is to look back on our “paradise lost” in Grunewald. Writing now from my new professional abode in Fiesole, in the hills outside Florence, surrounded by a splendid, fiery Indian summer in all its autumnal beauty and new professional excitement, the initial sense of loss is softened. What remains is the utterly positive emotion of gratitude and an appreciation of the uniqueness of what the Wiko offers during the ten-month duration

of the Fellowship. The total refuge that Wiko gives its Fellows cannot be and is not matched anywhere else. The refuge is welcoming to the extreme, structured, full of ritual moments of mental and physical well-being without ever giving a feeling of lonely seclusion or withdrawal from the world.

Looking back at those ten months spent in the Villa Jaffé and in Wiko, my overwhelming sense is of a wondrous and unique gift. A gift of space, a gift of time, a gift of light, a gift of well-being, a gift of understanding, a gift of creativity, a gift of freedom, a gift of friendship, and above all a gift of not having to do anything practical or engage with bureaucracy! The space to freely explore, with and without focus, and to an almost incredible extent to have all practical and logistical problems removed from one's daily life, is an incalculable luxury that one can draw from, on different levels, for many years to come.

For me personally it was time out from a busy professional life and a busy family life – managed in tandem for a long time. My “time out” was less absolute than ideally it could have been because, of course, life continues and intervenes. Unforeseen family health issues meant that I commuted much more than I ever expected back and forth to Amsterdam where my almost grown-up family remained. I sometimes felt almost lost in transit. Yet I was always happy to be back and to be at work. I was always made to feel welcome and the staff was particularly kind and supportive. A big thank you to Thorsten Wilhelmy for his understanding and continuous support and to Vera for her smiles and chats, especially in the early mornings before breakfast.

The four walls of my magnificent apartment in the Villa Jaffé – and its lovely balcony – and the daily and weekly rituals of Wiko nurturing and scientific life took on a special meaning and resonance. Wiko was home away from home and the only place I could work during the course of the year. It was a space of one's own, but one never felt alone. The social rituals and daily markers were the food of productivity and of quiet contentment and ease. The constant friendliness, generosity, and good humor and concern of all the staff are the rock-solid foundations that make the institution of the Wiko what it is and carry that solid degree of sameness from year to year, despite the changing cohorts of scholars that take up temporary residence.

Aside from the institution that is the Wiko and its tantalizing and seducing rituals and moments of pure pleasure, culinary, social, scientific and aesthetic, my memories of this special sojourn reach out, in outward rings to Grunewald, to Berlin, and to Germany. For me Grunewald was primarily oxygen – mentally and, not unimportantly, physically. The

often almost daily trips on my bike to the forest farther on the Koenigsallee, surviving the hazards of too-narrow, bumpy, and tree-infested bike lanes, were a source of calm and joy and renewal. Avoiding the dog owners and the dogs as dusk approached, sitting on my favorite log at the dog swimming lake while enjoying the last rays of sunshine in the forest are among my fondest recollections of this daily source of oxygen. Later on in the year, the courtyard of the *Jagdschloss* was a favorite haunt and source of caffeine on a Saturday morning when I was denied my almost daily pleasure of breakfast at the Wiko.

Offering the best of traditional German cooking in all its seasonal variation, *Reinhardt's Landhaus* was an easy place to bring guests after the obligatory long walk in the forest. The clientele was very untypical of Berlin, the only place other than dog walking where I got some sense of who actually lived in all these large houses in this leafy somewhat remote suburb of Berlin.

The art collections and special exhibitions in wider Berlin lured one easily beyond these secluded confines to discover the wondrous and scattered city that is Berlin. Last-minute tickets to splendid concerts in my pocket, Bus Number M19 was my favored way to travel downtown and to the Kulturforum area. My (too many) trips to the airport were made easy, thanks to Tegel airport thankfully still being in function.

I took pride in the special history of Grunewald to my family and other guests over the months, and in explaining the *Stolpersteine* and re-walking the privileged streets with so many architectural jewels. The contrast of nature and social privilege with the cruel reality of *Gleis 17* makes sharp the enormity of the tragic human arrivals and departures that these leafy streets and lush forests contained. The darkest time in Berlin's history is right there where it might be least expected and in a very visible fashion for occupants and visitors alike in a city and a country that does not forget.

Reading in the summer just after I left *Germany: Memories of a Nation* by Neil MacGregor (thank you Philip for speaking to me about this wonderful book!) puts 800 years of history in context through objects. My own objects – *Memories of Wiko* – in terms of output both relate in different ways to Germany – the first architecturally and even supranationally (the European Central Bank – ECB); the second more profoundly in terms of what it means to be human and indicative of changing social norms over time (the value of privacy) and the role of the judge-architect in the global context.

During the first five months, I focused on exploring the accountability of the European Central Bank. I made several trips to Frankfurt (as well as presenting early results in Berlin and Freiburg and outside Germany) to interview and get more of a handle on

empirical and institutional realities. The ECB has struggled since its creation with the perceived tension between the need for greater openness or transparency on the one hand and the need to preserve its secrets on the other. Control over secrecy and openness gives power: it influences what others know and thus what they choose to do. More generally, secret-keeping endows secrets with value, as it gives the person or institution enshrouded by the secret “an exceptional position”. One major reason to preserve secrecy in the ECB context has been the desire to ensure that the independence of the members of the Governing Council is safeguarded from direct national pressure.

The rhetoric of the ECB itself is pronounced when it comes to how its own transparency policy is a constituent element of its accountability. In recent decades, communicative imperatives have increasingly dictated the way that central banks themselves think about how they should and do go about conveying information in a way that is best *understood* by the public. An important part of the ECB’s overall transparency policy is the communication of information, which is also often the rationale for its decisions. This type of *ex post* transparency through reason-giving (output) predominates quite clearly over transparency of the actual raw ingredients *ex ante* and the process of decision-making (input and throughput). If the zone of discretion is large and interpreted expansively in internal rules, then the facilitation of genuine public and political accountability is not obvious.

The ECB’s own self-understanding is strong but largely acclamatory. It finds a visual counterpart in the language of the architecture of its new building in Frankfurt. The language and broader message is that of visual transparency and communication: “... the glazing of the atrium is neutral in color and transparent. This enables people to see straight through the atrium and view the high-rise as two separate towers ...” (European Central Bank, “New ECB Premises”, 2014). The architectural construction of a glass atrium connecting twin towers can be considered a metaphor for the new ECB, at least in terms of ambition and self-presentation. Yet the glass shards of transparency cast little light over the full complexity of the ECB institutionally.

This “European-level” research was perfectly positioned within a Wiko informal “Europe” working group of a variety of Permanent Fellows and Fellows across political science and law in particular, inspiringly brought – and kept – together by Susan Rose-Ackerman. It was very illuminating to be able to discuss across subjects and also with external (visiting) scholars the big themes of the year as they emerged and evolved. Thanks Susan for keeping us together with such energy and enthusiasm!

But the lasting gift Wiko made happen was in giving me space to enable me to discover my second “object”: a newly found interest in “privacy” and, in particular, in exploring its limits and balances in the contemporary digital world. Berlin and Germany with its history of the Stasi and of surveillance was a more than fitting backdrop to start the process of working out my own voice and a new research agenda. Perhaps the heightened sensitivity to these issues filtered through my struggles to read the daily newspapers (thank you Eva for all those early morning grammar lessons and much more besides, especially the movies in Villa Jaffé!) and emerged at the end of my stay as my research agenda for the coming years. Now that I have no (more) time to devote myself to a new book, I have the tantalizing prospect of its outline and salience ...

Does a notion of privacy make any sense at all in our digital and highly connected world, or do we just need to “get over it”? Is privacy in fact dead as a meaningful social norm? Can there in fact be a reasonable expectation of privacy in things individuals themselves expose to the public, even if they assume that they will not be seen more generally? If individuals do not keep their own secrets, why should anyone else need to protect them in a positive manner? For a long time, privacy and secrecy were in fact considered more or less the same thing. The idea here is that once a fact is publicly divulged – no matter how limited or narrow the disclosure – it can no longer remain private. The dilemma nowadays is that if individuals put vast amounts of personal information about themselves online, how can they claim personal privacy? If they consent to cookies being placed on their browsers, can they then later really claim that their privacy has been invaded in a manner deserving of legal protection?

A conception of privacy as the same thing as secrecy does not work at all in the digital age. It fails to recognize that individuals may want to keep things private from some people but not from others. It does not see that the individual does not necessarily intend an act of disclosure to be limitless. The fact remains that online tracking and monitoring is made possible by the behavior of individuals themselves. Unlike in the past, most of us actively contribute to our own lack of privacy by pro-actively sharing online a vast array of intimate details about our own personal lives. The trade-offs are such that it seems we very largely accept that we are tracked and monitored. In today’s society, surveillance is not the “normalized soul training” of the Orwellian nightmare. Surveillance is not heavy-handed; it is profoundly ordinary. This ordinariness lends it extraordinary power. Surveillance beckons with seductive appeal and we citizens willingly and actively participate in it.

The emerging European expression of data privacy is more than a manifestation of ideas of freedom and autonomy. A program of data retention by private operators is motivated in a fundamental way by a concern about the arbitrary exercise of power. In this view, the boundaries of the right to privacy are drawn where loss of privacy would result in others acquiring dominating power vis-a-vis the individual who has suffered the loss. Judges – from the Irish High Court to the UK High Court to the German Federal Constitutional Court to the Court of Justice of the European Union and also the US Courts – are, it seems, the architects of the limits of privacy in the contemporary digital world. What judges as architects do is quite post-modern in a sense. It involves the elaboration of some sketchy public constructions in the world, constructions that must be understood and lived in by multiple audiences. It does not involve the designing of every element down to the last detail, as the modernist aspired to do. Instead an opening bid for a solution is made to a problem and that solution is then gradually adapted to practical use by those various audiences for whom it is designed. This may be through future litigation, new legislation, and/or responses in the real world by the practices of affected stakeholders and authorities.

The function of the value of a (European) right to privacy is to prevent others acquiring dominating power. In a world of predictive profiling and other technological imperatives, this is at least the beginning of a conversation on balance that respects the essence of what privacy is about. For me, this conversation began uniquely and fittingly in Berlin, in the refuge that is both of the world and out of the world – Wiko.

The sequel to John Milton's famous epic poem, *Paradise Lost*, is fittingly – and positively – entitled *Paradise Regained*. In loss and ending there is also renewal and energy that one takes further back in the real world beyond Wiko – an enduring redemption.

“All changed, changed utterly – a terrible beauty is born.” (W. B. Yeats, *Easter 1916*.)