



DIE UNVOLLLENDETE
HOLGER SPAMANN

I am a professor at Harvard Law School, where I teach corporate law, corporate finance, and related topics. My research focuses on the law and economics of corporate governance and financial markets, judicial behavior, and comparative law. Before I became an academic, I practiced with Debevoise & Plimpton in New York and clerked for two years in Europe. I have too many degrees, among them a Ph.D. in Economics from Harvard University and a French Law degree from Paris I. I am a member of the bar of New York and qualified for the German bar. – Address: Harvard Law School, 1563 Massachusetts Avenue, Cambridge, MA 02138, USA. E-mail: hspamann@law.harvard.edu.

My title (“The Unfinished”) does not refer to my Wiko project. That would be trivial. Of course my Wiko project is not finished. Academic delays are measured in years, not days; decades are not unheard of. Any academic who finishes their project during the Wiko year is a mutant or doesn’t have a serious project. I expect to finish in a few years. Our second Wiko stay will help; I’ll get back to that.

Rather, “the unfinished” refers to our Wiko year. It was aborted by the Corona lockdown in mid-March. Many Fellows left. The others were locked into their apartments and subject to “social distancing” – the antithesis of Wiko’s basic proposition. So many conversations, reflections, and friendships that were seeded in the fall and germinated in the winter were not allowed to blossom in the spring. I felt this especially acutely because my university had conditioned my Wiko stay on my teaching there in January. I didn’t think this was so bad and didn’t rush conversations in the fall because I thought I still had the full spring ahead of me. But the Wiko spring 2020 never happened.

For “work,” the lockdown had its advantages. No events meant lots of time and lots of quiet. I made much progress on three projects. I even read a lot, and even for my Wiko project. I read in a cozy armchair in a quiet villa in Grunewald with food delivered at lunch, with no calls or obligations to interrupt my day. For a short time, my existence felt like the cliché of quiet scholarly life (which probably last existed in the Middle Ages, or perhaps in the late 1990s).

My Wiko project was “A Model of Law.” One might think such a model should have been written a long time ago. It was not. It still has not been written.

Instead, what has been written are two new papers relating to the topic of my evening talk “zur Replikationskrise” (that’s German but it means what you think it does). Besides the fact that it was my first talk in German, there was nothing new in it. I basically said what “everybody” knows: it ain’t so bad, but we should tweak some institutions, because researchers have insufficient incentives to do replications, i.e., to repeat other researchers’ designs to check if one gets the same result. Replications are essential for science. But they are a catch-22 for the replicator: if the replicator confirms the initial finding, it stands stronger and the replication is a footnote; if the replicator disconfirms the initial finding, it’s worse because both will be forgotten completely. And yet, I am a serial replicator. I just can’t help it. I get too upset about prominent bad research in my field, and I can’t stand theorizing about “empirical facts” that I know or believe not to be facts at all. At Wiko, I couldn’t help continuing work on “No, Judges are Not Influenced by Temperature (Or Other Weather)” and “On Inference When Using State Corporate Laws.” The first paper’s title speaks for itself. The second paper shows that a workhorse empirical research design in my field isn’t able to sort the wheat from the chaff, i.e., to distinguish true effects from noise, with any acceptable degree of reliability; the paper then shows how to do it better.

I also worked on three experimental papers on the behavior of judges and other lawyers. In particular, I finally wrote up the results of a series of experiments conducted over the course of five years that I consider a big methodological step forward in comparative law. The Wiko workshop on “Methoden quantitativer Textanalyse” (it again translates as you think it does) was instrumental in giving the paper its final shape.

My three aforementioned experimental papers form part of the empirical foundation of my Wiko project. The project’s goal is to distill key features of legal consciousness into a model of law in which judges play the key role. I believe the model will clarify existing debates and open new perspectives on law and the legal system. Reading in my Villa Jaffé

armchair, I could see a bright future for my model. I am confident that I can achieve a breakthrough during our upcoming second stay at Wiko.

Second stay? Well, yes. Don't get me wrong. If one had to be locked down somewhere, Wiko was one of the best places to be. And it did help with the work, as I mentioned above. However, it is also clear that lockdown Wiko wasn't the Wiko we were promised. As an American lawyer, I know what to do. I hereby file the following declaration in the name of all Wiko Fellows 2019/20:

We hold these truths to be self-evident, that all Fellows are created equal, that they are endowed by their Stipend Offer with certain unalienable Rights, that among these are Wiko Life, Liberty to explore Berlin, and the pursuit of Happiness. — That through a long train of abuses and usurpations, COVID-19 deprived the 2019/20 Fellows of these rights.

We, therefore, the Fellows of 2019/20, in General Social Distancing Disassembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do solemnly publish and declare, That we of Right ought to be Re-Admitted as Fellows as soon as practicable.