



*LE CLAVIER ROMAND* – FROM RESEARCH  
PROJECT TO BOOK  
SAMANTHA BESSON

---

Samantha Besson is Professor of Public International Law and European Law at the University of Fribourg, Switzerland and Co-Director of the European Law Institute of the Universities of Bern, Fribourg and Neuchâtel, Switzerland. She holds a degree in Swiss and European Law (University of Fribourg and Vienna), a Magister Juris in European and Comparative Law (University of Oxford), a Ph.D. in Law (University of Fribourg), and a Habilitation in Legal Theory and Swiss, Comparative, European, and International Constitutional Law (University of Bern). She has held visiting research and teaching positions at the Universities of Oxford, Columbia, Geneva, Zurich, Duke, Lausanne, and Lisbon. Her publications and research interests lie in the combination of European law and public international law and legal and political philosophy, and in particular in human rights theory. Besides publications in French, she is the author of the monograph *The Morality of Conflict: Reasonable Disagreement and Law* (2005). She co-edited the collections of essays *Deliberative Democracy and its Discontents* (2006), *Legal Republicanism: National and International Perspectives* (2009), both with José Luis Martí, and *The Philosophy of International Law* (2010) with John Tasioulas. – Address: Chaire de droit international public et de droit européen, Université de Fribourg, Av. Beauregard 11, 1700 Fribourg, Switzerland. E-mail: samantha.besson@unifr.ch

Spending a year at the Wissenschaftskolleg zu Berlin (Wiko) is a unique opportunity. Anyone who has been here can confirm this, and it was certainly true for me. As a matter of fact, no reporting exercise could ever do justice to the many aspects of this life-changing experience, whether in terms of musical revelations, scientific development, or personal

encounters. It is essential all the same to express one's enormous gratitude for this transformative opportunity and to account for our scholarly activity while in residence, even if publications are ultimately only a pale reflection of the deeper changes that occurred while at Wiko.

From my perspective, one of the most striking features of this year has been that all those musical, scientific and personal transformations occurred almost without notice. Appearances were saved: no abrupt change of pace or *habitus* for the serious academic. On the contrary, whatever we needed to be able to work was promised to us and provided. This included to my great surprise, and I will never be grateful enough, bringing me, within three days of my arrival, a brand new "clavier romand", i.e., a keyboard that is only used by French-speaking Swiss people, that allows them to type in French and German and, importantly, that is quintessentially neither a German nor a French keyboard. Nothing special, you may say: the Wiko is "our home away from home" and this should be the case as much for the French Swiss as it was for our South Korean Fellow. At Wiko, every detail counts, to the greatest pleasure of those with an eye for luxury: delightful flowers and refined furniture, to mention just a few. And keyboards are part and parcel of the package.

Interestingly, however, Wiko not only provided me with a French-Swiss keyboard to work as freely and unconstrainedly as I would at home, it actually allowed me to use it to pursue my work away from my Swiss institution and hence much more freely than I would have been at home. The important thing, then, is not only that the amazingly generous staff at Wiko works so hard to make us feel at home in this academic heaven – and they are amazing – but that this should occur *away from home*. After just a few weeks, the constant and daunting feeling of having forgotten a class, missed a faculty meeting, or obliterated a student appointment receded, and what was to become an extraordinary year started. All this not only thanks to a keyboard, of course, but many would agree with me that keyboards do matter.

The research project I had set myself for this year was to make decisive progress on and hopefully complete a book on human rights theory I had started working on during my first research semester in autumn 2009. I had in the meantime managed to write what seemed like a third of a book, after teaching the subject once at Duke and once in Fribourg and only committing to publish on human rights theory issues ever since. In the book, I intend to develop a legal theory of human rights. In a nutshell, the book aims to take the legal dimension of human rights more seriously than human rights theories have so far: it

starts from some of the hard questions raised in current human rights law and practice, and not from ideal moral theorizing, and it then addresses them philosophically, and not only legally. So doing, it aims at bridging a gap between current theorizing on human rights by philosophers (even the most practical ones), who either see human rights law as a mere translation or enforcement of moral human rights, or who take it as a static and conservative reality that one can then morally reconstruct, on the one hand, and dogmatic discussions of human rights law by lawyers who do not easily embark into normative theorizing or only, paradoxically, by reference to some kinds of ideal moral theorizing, on the other.

Wiko allowed me to meet my academic objectives. Thanks to conditions surpassing those of my post-doctoral years, I was able to focus almost entirely on my writing. In the course of the year, I completed six further book chapters and tested them month after month in seminars in various academic institutions and before law, philosophy, and international relations audiences in Berlin and elsewhere in Germany. The network of Berliner academic institutions, be they the Humboldt-Universität, the Hertie School of Governance, or other institutions such as the Wissenschaftszentrum Berlin or the American Academy, combined with the fact that Berlin is home to many more German academics than there could be in its institutions, made it possible to exchange with a very large and varied number of specialists in the course of the year. As a matter of fact, presenting the project and its methodological challenges to non-lawyers and non-philosophers, and hence outside of the book's audience, at the Wiko's "Dienstagskolloquium" in January was a memorably difficult task, albeit a very rewarding one. Further, attending various meetings outside my direct field of research where I was asked to comment or respond definitely broadened my horizons. My treatment of human rights in the book has greatly benefited from these incursions in discussions of issues pertaining to migration, dignity, secularization, international courts, language, or normativity in the course of the year. Wiko also allowed me to organize a work visit last May for Allen Buchanan, a friend and colleague also currently writing on the philosophy of human rights, and our discussions on that occasion were extremely productive. As a result of all this, I was able to produce a detailed book proposal that was sent to a major publisher last winter and received with great interest. And the book now stands: it has a structure, a beginning, and an end. And even though a few pieces of the puzzle are still missing, what was a mere research project when I arrived in Berlin has now grown into a book.

Of course, like many others, I could not come over entirely unencumbered. I brought in my luggage some long overdue chapters and essays, together with new deadlines that I could not postpone. Sadly, I do not leave Wiko with a clean slate (who does?), but have now paid many long overdue debts. Luckily, I had tried over the last few years to commit myself to writing only on subjects related to my book project, and as a result completing those other publication projects did not distract me too much from my main goal. This year, I had also accepted as few speaking commitments abroad as possible, and I kept to that precommitment. I had to make an exception in March after an invitation came in October to go and speak about the extraterritorial application of the European Convention of Human Rights at a historical meeting between US judges and judges from the European Court of Human Rights at the US Supreme Court in Washington.

True, for reasons that have to do with our profession, an academic year is never entirely self-standing, however well it may have been planned and prepared. It is always forward-looking, and this implied, in my case, having to write grant applications for new Swiss National Science Foundation research projects and doctoral students and, more generally, planning and organizing the next academic year in terms of teaching and administration. However, I should stress that my year at Wiko could not have been as productive had I not been supported by first-class collaborators and assistants at the University of Fribourg who knew how much this research leave meant to me: they faced all adversities in a very independent fashion, and most of the time left me to my idle distance, and should be thanked warmly for this.

Besides allowing me to meet my own academic expectations together with those to whom I owed chapters and articles, Wiko also offered me the unexpected.

Personally, first, I have had the privilege of meeting wonderful academics and people during my stay, such as my “fellow law Fellows” and friends Miloš Vec and Olivier Jouanjan, but also the other lawyers at Wiko Alexandra Kemmerer, Christoph Möllers, and Dieter Grimm, and, of course, the adorable and communicative Katharina Wiedemann. Meeting the “Others”, and in particular a jolly crowd of evolutionary biologists, Swiss and non-Swiss, was another personal highlight of my year at Wiko and the source of (hopefully mutual) growing curiosity and enlightenment – thank you Christian Braendle, Mark Viney, and Thomas Flatt for your patience and for putting up with my questions! I was also lucky enough to experience the Wiko under Joachim Nettelbeck, its “administrateur”, who is retiring in July after 31 years at the head of the institution. Long discussions with him about the artistry and difficulties of academic administration have

taught me a lot and comforted me in my beliefs about the importance of that dimension of our academic work. Travelling with him to the Institut d'Études Avancées in Nantes and meeting Alain Supiot on that occasion will remain very special memories. Musical awakening was my second changing experience this year. The series of luminous "Gesprächskonzerte" and discussions with Mauricio Sotelo and Alfred Brendel gave me an incentive to finally get a musical education. It is only the beginning, of course, but better late than never.

Scientifically, finally, this year was a true revelation. It has helped me move away from my discipline and, I hope, to go back to it with a very different and enriched take. This was made possible through various encounters and primarily through closer work with historians and a deeper reflection on the ties between legal history and legal theory. This occurred, for instance, in the preparation for the meetings of the discussion group on sources I co-organized with Alessandro Stanziani, my fellow historian here at Wiko. More generally, meeting philosophers of science like Yehuda Elkana and confronting "Rechtswissenschaft" or legal science with other ways of doing science in other disciplines led me to read more on the philosophy of science and to think more reflexively about my own work. I have also greatly benefited in that respect from the conferences and meetings organized under the umbrella of the Wiko's excellent program "Recht im Kontext". I hope to be able to keep in touch with its developments in the future. In the last few months, I have actually developed the project of writing on legal science as science in the future.

I came to Berlin with a third of what I thought was a book project in my computer and I now have a book. The Wiko's "clavier romand" allowed me to write the book, almost to completion. I am about to leave Berlin with two more chapters to write before that book can leave my desk forever, and I even have a new book project. Of course, it will have to be on another keyboard and with much less freedom and inspiration than at Wiko. However, learning to live with Wiko as a thing of the past and a lost paradise is a burden we all have to bear.

Thank you, Wiko, for the keyboard, of course, but for so much more than I can say and even begin to realize.

Publications written while in Berlin

- “Issues in the Legal Philosophy of International Adjudication.” In *Oxford Handbook on International Adjudication*, edited by K. Alter, C. Romano, and Y. Shany. Oxford: Oxford University Press, 2013 (in preparation).
- “Human Rights and Constitutional Law.” In *Oxford Handbook on Human Rights*, edited by M. Liao, R. Cruft, and M. Renzo. Oxford: Oxford University Press, 2013 (forthcoming).
- “Compromising Compromises.” Review of Amy Gutmann’s and Dennis Thompson’s *The Spirit of Compromise: Why Governing Demands It and Campaigning Undermines It*. 2013. *Political Theory* (forthcoming).
- “Human Rights Pluralism in Europe.” In *Transnational Law – Rethinking Legal Thinking*, edited by K. Tuori and M. Maduro. Cambridge: Cambridge University Press, 2012 (forthcoming).
- “The Allocation of Anti-poverty Rights Duties – Our Rights, but Whose Duties?” In *Duties to Address Poverty*, edited by K. Nadakavukaren Schefer. Cambridge: Cambridge University Press, 2012 (forthcoming).
- “International Human Rights and Political Equality – Implications for Global Democracy.” In *Equality in Transnational and Global Democracy*, edited by E. Erman and S. Näsström. London: Palgrave 2012 (forthcoming).
- “Poverty, Migration and Citizenship – A Reaction.” In *Citizenship – Mosse Lectures 2011–2012*, edited by K. Scherpe and E. Wagner. Berlin: Vorwerk, 2012 (forthcoming).
- “The Extraterritoriality of the European Convention on Human Rights: Why Human Rights Depend on Jurisdiction and What Jurisdiction Amounts to.” *Leiden Journal of International Law* 25, 04 (2012): 857–884.
- “Human Rights History and Human Rights Theory: A Tale of Two Odd Bedfellows.” *Ancilla Juris*. Special Issue: International Law and Ethics, 02. 09. 2012 (with Alain Zysset).
- “The Egalitarian Dimension of Human Rights.” *Archiv für Sozial- und Rechtsphilosophie Beiheft* (2012): 19–52.
- “The Truth about Legal Pluralism.” Review of Nico Krisch’s *Beyond Constitutionalism: The Pluralist Structure of Postnational Law*. *European Constitutional Law Review* 8, 2 (2012): 354–361.

“International Legality – A Reply to Shapiro and Hathaway.” Online symposium, *Opinio Juris*, <http://opiniojuris.org/2011/11/13/opinio-juris-yale-law-journal-symposium-hathaway-and-shapiro-on-outcasting/>

“The Democratic Legitimacy of WTO Law – On the Dangers of Fast-Food Democracy.” (2011) *World Trade Institute Research Papers*, <http://www.nccr-trade.org/publication/>

#### Talks given while in Berlin

Reply to Joseph Raz, “Normative Variations – The Law and Beyond.” Normativity Conference, University of Frankfurt, 21–23 June 2012.

Roundtable Commentator, Meeting on Law and Language, Indian-European Advanced Research Network Group, Institute of Advanced Studies, Nantes, 14–15 June 2012.

Reply to Cristina Lafont, “Against the State-Centric Approach to Human Rights.” Legitimate Authority of International Institutions Workshop, University of Pompeu Fabra, Barcelona, 1–2 June 2012.

“The Extraterritoriality of Human Rights – Why Human Rights Depend on Jurisdiction and What Jurisdiction Amounts to.” Law & Society Institute Seminar Series, Humboldt-Universität zu Berlin, 15 May 2012.

“International Human Rights and Secularization.” Secularization: History, Meaning and Scope Conference, Humboldt-Universität zu Berlin, 28 April 2012.

Commentator, *New Terrain of International Law: Courts, Politics, Rights*. Karen Alter’s Book Workshop, Freie Universität Berlin, 27 April 2012.

“Human Rights and Constitutional Law.” Berlin Colloquium on Rethinking Law in a Global Context, Humboldt-Universität zu Berlin and Wissenschaftszentrum Berlin, 24 April 2012.

“The Extraterritoriality of Human Rights – Why Human Rights Depend on Jurisdiction and What Jurisdiction Amounts to.” Max Planck Institute for Comparative Public Law and International Law, Heidelberg, 21 March 2012.

Reply to Mark Somos, “Modern Imperialism and the Secularisation of International Law.” Humboldt-Universität zu Berlin and Wissenschaftskolleg zu Berlin, 19 March 2012.

“The Extraterritoriality of Human Rights in the European System.” US Supreme Court – European Court of Human Rights Conference, George Washington University Law School, 1–2 March 2012.

- “Conflicts of Human Rights in the EU.” Seminar on Human Rights, EUI Florence, 14 February 2012.
- “Conflicts of Human Rights.” Seminar in Political Theory, Freie Universität Berlin, 31 January 2012.
- “Theorizing Human Rights: Why and How?” Tuesday Colloquium, Wissenschaftskolleg zu Berlin, 10 January 2012.
- Reply to Ayelet Schachar, “The Birthright Lottery.” Mosse Lectures, Humboldt-Universität zu Berlin, 1 December 2011.
- General Comment and Conclusions, Human Dignity Conference, Wissenschaftskolleg zu Berlin, Berlin, 16–17 November 2011.
- “The Allocation of Human Rights Duties.” Seminar, Wissenschaftszentrum Berlin, 10 November 2011.
- “Anti-Poverty Rights Duties and their Allocation.” Poverty and International Economic Law Conference, University of Basel, 21–22 October 2011.