



TRANSATLANTIC LAW FORUM ANNUAL CONFERENCE

**BUCERIUS LAW SCHOOL, Jungiusstrasse 6, 20355 HAMBURG
JUNE 10-11, 2014**

COMPETITION

"Competition" is a fact of life and a foundational idea for much of modern science, from biology to economics to political science. In its most elementary sense, it means rivalry with respect to scarce resources—territory, sexual partners, private goods, voters, political power, football championships. We associate competition with important virtues: industry and effort, discovery and innovation, efficient resource allocation. Upon inspection, however, competition turns out to be a rather complicated affair. Competition in economics or politics presupposes a great deal of cooperative behavior, as well as a reliable legal and institutional framework. Competition must be organized in some fashion. How and by whom is the organizing to be done—and to precisely what ends? Moreover, in some areas of human endeavor, it is quite hard to demonstrate that competition will in fact be conducive to some shared objective such as truth, cultural progress, or public-regarding government. Competition may well be the best way to organize these social domains, but the case is not entirely obvious.

The Transatlantic Law Forum's 2014 Annual Conference will explore the full range of these questions. Prominent legal scholars, economists, and political scientists from the United States and Europe will examine the role of competition in economics, law, religion, and politics.

About the Transatlantic Law Forum

The Transatlantic Law Forum (TLF) is a joint project of the GMU Law & Economics Center and the Council on Public Policy. Its objective is to foster a transatlantic dialogue on salient questions of law and public policy. The TLF's annual conferences alternate between Bucerius Law School (Hamburg) and GMU School of Law (Arlington, Virginia). Past conference topics have ranged from "The Business of Law" to "Citizenship" to last year's examination of "The Financial Crisis and the Rule of Law."

The 2014 TLF Conference is co-sponsored by Bucerius Law School and the Federalist Society. We gratefully acknowledge the support of our financial contributors:

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CONFERENCE PROGRAM

Tuesday, June 10

8:00 – 8:30am

Registration; Continental Breakfast

8:30am

Welcome

Hariolf Wenzler (Bucerius Law School)

Michael S. Greve (GMU School of Law)

8:45 – 10:15am

Panel 1: Competition! Competition?

“Competition” plays a central role in many areas of scholarly inquiry. Does the concept have some meaning that unites these inquiries, and are we really talking about the same phenomenon? For example, does it make sense to reduce politics to a competition over “rents” and their distribution? For another example, is there any real meaning to the notion of a “marketplace of ideas”—which cannot be bought and sold? Must competition (in human affairs) be organized—or will it work spontaneously?

Moderator: Mark Speich (Vodafone Stiftung)

Panelists: Henry N. Butler (GMU School of Law)

Terence Kealey (Buckingham University)

Fred L. Smith (Competitive Enterprise Institute)

Stephan Gutzeit (Merton College, Oxford)

Coffee Break

10:30am – 12:00pm

Panel 2: Economic Competition

Economists agree on blackboard models of competition. They often disagree over the design, proper scope, and even the objectives of competition *policy*. Moreover, in many economic sectors (such as banking, insurance, or pharmaceuticals), major firms are “private” only in a technical, legal sense; both in the U.S. and in the EU, the firms are deeply entangled with government. What does conventional

economic theory—and law predicated on that theory—have to tell us in this context? How much traction does that theory still have—or should we all be public choice theorists now?

Moderator: Alex Pollock (American Enterprise Institute)

Panelists: Stefan Voigt (Universitaet Hamburg, Law School)

Damien Geradin (GMU School of Law/Covington & Burling)

William Bishop (College of Europe/CRA)

Enrico Colombatto (Univ. Torino, IREF, GIS)

12:15 – 1:30pm

Luncheon Address: Competition and the Administrative State

Welcome Address: H.E. Consul General Nancy Lynn Corbett (U.S. Consulate General Hamburg)

Presenter: Douglas Ginsburg (U.S. Court of Appeals, D.C. Circuit/GMU School of Law)

Commenter: Ashley Parrish (King & Spalding)

1:45 – 3:15pm

Panel 3: Law, Legal Theory, and Competition

American lawyers and legal scholars are comfortable with “law and competition”—with the adversarial process, forum selection (including arbitration), and economics as a baseline for legal orderings. Strangely perhaps, that common law orientation survives even in “an age of statutes.” Continental legal theory remains resistant to this mode of thinking. In particular, *public* law seems resistant to the notion of competition. What explains these stubborn differences in legal thinking? Do they show any signs of weakening?

Moderator: Daniel Zimmer (Monopolkommission/Universitaet Bonn)

Panelists: Florian Becker (Christian Albrechts Universitaet, Kiel)

Robert R. Gasaway (Kirkland & Ellis)

Frank Schorkopf (Universitaet Goettingen)

Todd Zywicki (GMU Law School)

Coffee Break

3:30 – 5:00pm

Panel 4: Religion

Europe and the United States differ sharply in their experience with religious competition. In Europe, after the "Westphalian principle" (*cuius regio, eius religio*) gave way to the culture of nationalism and the nationalism of culture, the relation between state and religion(s) became problematic. Different nations adjusted in different ways, but on the whole religion has fared quite poorly: the dominant trend has been pervasive secularization. In sharp contrast, the exceptional American experience suggests that competing religions become responsive to society and in turn fare much better than under state protection. What does religious competition mean for civil society today? How (far) can different religions accommodate to it—and how much of it can liberal societies tolerate?

Moderator: Michael Zoeller (Council on Public Policy)

Panelists: Francois-Henri Briard (Delaporte-Briard-Trichet)

Mary Eberstadt (Hudson Institute)

Rainer Hermann (*Frankfurter Allgemeine Zeitung*)

Karl-Heinz Ladeur (Universitaet Bremen)

6:30pm-9:30pm

Dinner

(Conference participants and invited guests only)

Keynote Address: Benevolent Competition with Cooperation:

Seduction and the Mistaken Measures of Monopoly

Deirdre McCloskey (University of Illinois, Chicago)

Wednesday, June 11

8:00am

Continental Breakfast

8:45 – 10:15am

Panel 5: Competition Among (Nation-) States

Nation-states and member-states of federal countries or unions are often said to “compete”—but for what? Economic preeminence, political power, productive citizens? Should federal unions really operate on a principle of competition, or is “solidarity” among members a more suitable foundation? What institutional mechanisms could enhance useful competition, as opposed to a destructive “race to the bottom”?

Moderator: Christian von Sydow (McDermott Will & Emery, Munich)

Panelists: Michael S. Greve (GMU School of Law)

Ulrike Hotopp (Department for Environment, Food and Rural Affairs, London)

Stephen F. Williams (U.S. Court of Appeals, D.C. Circuit)

Anne van Aaken (Universitaet St. Gallen)

Coffee Break

10:30am – 12:00pm

Panel 6: Parties, Interest Groups, and Institutions

Politics in the U.S. has become much more competitive and professionalized. The modern “party” is a big database that can be milked for money and votes, and interest group lobbying has become an industry in its own right. What does that do to the democratic process? Could it be that intense political competition is a cause of political polarization and dysfunction, and might a less competitive politics be better? Are European countries and the European Union moving in the same direction, or is this a case of “American exceptionalism”?

Moderator: Christine von Leuckart

Discussants: Michael Barone (American Enterprise Institute)

Alberto Mingardi (Istituto Bruno Leoni)

Krassen Stanchev (Sofia University)

12:15 – 1:30pm

Luncheon Discussion: Competition and the European Union

Moderator: Reinhard Mueller (*Frankfurter Allgemeine Zeitung*)

Discussants: Friedrich Merz (Atlantikbruecke)

Alastair Sutton (Brussels)

1:45 – 3:15pm

Panel 7: Madison's Nightmare? Competition in Government

The U.S. Constitution rests on the idea that competition—an extended republic, separated powers, checks and balances, federalism—will on the whole check factionalism and produce public-regarding outcomes. Some of those notions, though, seem flat-out wrong, and it is showing—no? Do the obvious dysfunctions of American politics have something to do with competitive institutions that can no longer produce the requisite degree of cooperation? Are democracies with more “cooperative” constitutions and institutions doing any better?

Moderator: Katja Gelinsky (Konrad Adenauer Stiftung)

Panelists: Christopher C. DeMuth (Hudson Institute)

Steven Teles (University of Maryland)

Michael Wohlgemuth (Open Europe)

3:30pm Adjournment

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The Law & Economics Center

The Law & Economics Center (LEC) at the George Mason University School of Law is a national center for research and education that focuses on the timely and relevant economic analysis of legal and public policy issues confronting our nation. The vision of the LEC is that if policymakers understand economics, they will be more likely to make sound decisions that support the rule of law and the free enterprise system, thus advancing innovation, job creation and economic growth. The LEC is committed to developing original, high-quality law and economics research and educational programs to further enhance this understanding and to impact policy solutions.

The Council on Public Policy

The Council on Public Policy was established in 2001 by a group of American and European editors, scholars and executives. Its mission is to strengthen individual liberty in public policy, to improve transatlantic relations by correcting mutual misperceptions and to build a network of policy experts and think tanks. For more information please visit www.council.uni-bayreuth.de

Bucerius Law School

Founded in 2000 by the ZEIT-Stiftung Ebelin und Gerd Bucerius, Bucerius Law School is Germany's first private law school. It strives to reform German legal education and aspires to represent the German legal community in the international discourse. In keeping with the views of our benefactor, Gerd Bucerius, the aim of the Law School is to educate outstanding individuals who are willing to place their expertise at society's disposal and to accept responsibility for others. Based on the tried and tested standards of the German legal education, Bucerius Law School wants to realize the best possible education.

The academic program at Bucerius Law School is characterized by the personal and academic exchange that takes place between faculty and students, as well as by the close collaboration between them. Approximately 450 students out of some 600 students at the Bucerius Law School are enrolled in the Bachelor of Laws (LL.B.) and the First German State Examination-Program. The range of the international, sophisticated and practice oriented academic program of Bucerius Law School is completed by the Bucerius/WHU Master of Law and Business Program – Joachim Herz Program, the an International Exchange Program and several Bucerius Summer Programs. For more detailed information please visit: www.law-school.de

The Federalist Society

The Federalist Society for Law and Public Policy Studies is a group of conservatives and libertarians interested in the current state of the legal order. It is founded on the principles that the state exists to preserve freedom, that the separation of governmental powers is central to our Constitution, and that it is emphatically the province and duty of the judiciary to say what the law is, not what it should be. The Society seeks to promote an awareness of these principles among lawyers, judges, law students and professors. In working to strengthen individual liberty, traditional values, and the rule of law, the Society has created an intellectual network that extends to all levels of the legal community.