

GEORGE MASON UNIVERSITY SCALIA LAW SCHOOL



BUCERIUS LAW SCHOOL
HOCHSCHULE FÜR RECHTSWISSENSCHAFT



THE
FEDERALIST
SOCIETY

NINTH ANNUAL TRANSATLANTIC LAW FORUM

23 - 24 SEPTEMBER 2016

HAMBURG, GERMANY

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CONFERENCE SPONSORS

THE LAW & ECONOMICS CENTER Since its inception in 1974, the Law & Economics Center has played a critical role as a leader in law and economics research and education. The LEC recognizes both the importance of timely, relevant, and unassailable research on public policy issues as well as the necessity of communicating research findings to those who are directly shaping our country's public policy discussions. With research divisions devoted to large-scale empirical projects and top-quality legal policy analysis, and educational arms reaching out to judges, attorneys general, and other policymakers, the LEC is uniquely equipped to positively affect national policy outcomes.

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.

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 700 students at the Bucerius Law School are enrolled in the Bachelor of Laws (LLB) 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 Master of Law and Business Program, an International Exchange Program and several Bucerius summer programs. For more 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 both to promote an awareness of these principles and to further their application through its activities.

HELPFUL RESOURCES

IMPORTANT EVENT CONTACTS

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NINTH ANNUAL TRANSATLANTIC LAW FORUM

23 – 24 SEPTEMBER 2016, HAMBURG, GERMANY

LIBERALISM, POPULISM, AND THE POLITICIZATION OF EVERYTHING: POLITICS, MARKETS, AND THE LAW

Liberal democracy has sought to enable ordinary democratic politics—and to discipline it by putting certain domains beyond its reach. Among those domains, in the traditional understanding, are constitutions and the rule of law; markets and private orderings; civil society institutions; more controversially perhaps, independent institutions such as central banks or universities. In institutional practice, those somewhat artificial lines have always been blurry, and one can reasonably ask whether they can hold under conditions of a modern democracy. Still, the general sense has been that there must remain some meaningful distinction between public and private, between “the state” and society. Not everything can and should be politics.

Is this still true? Constitutional and rule-of-law constraints are treated rather cavalierly these days. The most ordinary private transactions, as well as civil society institutions from global investment banks to local food banks, have become subject to pervasive regulation. Paradoxically, though, enormously important decisions over public affairs have been entrusted to bureaucratic institutions and courts that are effectively and deliberately placed beyond democratic controls. Politics, it seems, is not quite everywhere. It is just in all the wrong places, and goes missing where it belongs. And both the rise and the demise of politics cut against liberty and the rule of law—no?

At the Transatlantic Law Forum's Ninth Annual Conference, leading jurists, social scientists, and opinion leaders from both sides of the Atlantic will discuss “Liberalism, Populism, and the Politicization of Everything” in its many dimensions and in a comparative perspective. The conference will feature a reception, dinner, and keynote address by former Professor Udo di Fabio, former Justice on Germany's Federal Constitutional Court (conference participants and invited guests only).

The 2016 TLF Conference is co-sponsored by Bucerius Law School and the Federalist Society. We gratefully acknowledge the support of our financial contributors:

The Earhart Foundation
Die ZEIT-Stiftung Ebelin und Gerd Bucerius
Sparkasse Bayreuth
Universitätsverein Bayreuth

WIFI NETWORK

Information will be provided at the registration desk

WEB INFORMATION

www.MasonLEC.org
www.law-school.de/
www.fed-soc.org/

NINTH ANNUAL TRANSATLANTIC LAW FORUM

Friday, 23 September

*Bucerius Law School,
All Panels*

13:00 – 13:30
REGISTRATION

13:30 – 13:45
WELCOME

DIRK HARTUNG

Bucerius Law School

MICHAEL S. GREVE

George Mason University Antonin Scalia Law School

13:45 – 15:00
**PANEL I: “CIVIC
TOTALISM” AND
“DEMOKRATIE ALS
LEBENSFORM”**

Politics has become more open, participatory, and democratic. By all appearances, though, such reforms have done little to enhance the legitimacy and efficacy of public institutions. Public trust is at record lows, and populism is on the rise. Are these tendencies connected? Might there be something wrong with the clarion call of “democratization”?

MODERATOR

MICHAEL ZÖLLER

Council on Public Policy

PANELISTS

HANS EICHOLZ

Liberty Fund, Inc.

RAN HALÉVI

National Centre for Scientific Research, Raymond-Aron Centre for Political Studies

ALBERTO MINGARDI

Istituto Bruno Leoni

MARC F. PLATTNER

International Forum for Democratic Studies

CONFERENCE: Bucerius Law School, Jungiusstraße 6, 20355 Hamburg, Germany

Friday, 23 September

*Bucerius Law School,
All Panels*

15:15 – 16:30

**PANEL II: THE
POLITICS (AND
POVERTY?) OF
“PUBLIC CHOICE”**

Public choice theorists envision
“politics without romance.”
Arguably, though, they have
no serious theory of legitimate
politics at all: all politics,
especially including democratic
politics, is rent-seeking and rent
extraction. Could it be that public
choice theorists can explain
everything—and understand
nothing?

MODERATOR

FRANK H. EASTERBROOK

US Court of Appeals for the Seventh Circuit

PANELISTS

ALEXANDER FINK

University of Leipzig, Institut für Wirtschaftspolitik

STEPHAN GUTZEIT

University of Oxford, Merton College and Saïd Business School

PHILIP A. WALLACH

Brookings Institution

TODD J. ZYWICKI

George Mason University Antonin Scalia Law School

18:30 – 21:00

RECEPTION & DINNER (INVITATION ONLY)

SPONSORED BY THE FEDERALIST SOCIETY

Hafen-Klub Hamburg e.V., Bei den St. Pauli-Landungsbrücken 3, 20359 Hamburg, Germany

KEYNOTE SPEAKER:

UDO DI FABIO

Universität Bonn; former Justice, Federal Constitutional Court

HENRY G. MANNE PROGRAM IN LAW & ECONOMICS STUDIES

NINTH ANNUAL TRANSATLANTIC LAW FORUM

Saturday, 24 September

*Bucerius Law School,
All Panels*

08:00 – 08:45

CONTINENTAL BREAKFAST

08:45 – 10:00

PANEL III: PARLIAMENTS, PRESIDENTS, AND PRIME MINISTERS

Among the most striking features of contemporary politics is the decline and diminished influence of the institution where politics is supposed to take place: the legislature. In the EU, national parliaments principally “transpose” the directives of the European Commission. In the United States, the Congress seems incapable of exercising its central functions—the power to make law, and the power of the purse. Is all politics now executive politics? What are parliaments still good for?

MODERATOR

ASHLEY C. PARRISH

King & Spalding LLP

PANELISTS

CHRISTOPHER C. DEMUTH

Hudson Institute

THOMAS KIELINGER

Die Welt

NEOMI RAO

George Mason University Antonin Scalia Law School

KRASSEN STANCHEV

Sofia University, KC 2 Ltd

Saturday, 24 September

*Bucerius Law School,
All Panels*

10:15 – 11:30

**PANEL IV: MORE
RIGHTS, LESS
LAW? THE RISE OF
JURISTOCRACY**

High courts around the globe have been very deferential to executives, and highly creative in expanding rights. Has this jurisprudence enhanced the rule of law and judicial independence—or is it just politics in drag?

MODERATOR

CHRISTIAN VON SYDOW

McDermott Will & Emery Rechtsanwälte Steuerberater LLP

PANELISTS

FLORIAN BECKER

Christian-Albrechts-Universität zu Kiel

MARCO GOLDONI

Glasgow University

KARL-HEINZ LADEUR

Universität Hamburg

R. SHEP MELNICK

Boston College

11:30 – 12:30

LUNCH

HENRY G. MANNE PROGRAM IN LAW & ECONOMICS STUDIES

NINTH ANNUAL TRANSATLANTIC LAW FORUM

Saturday, 24 September

*Bucerius Law School,
All Panels*

12:30 – 13:45

PANEL V: GOVERNING, AND CRIMINALIZING, THE CORPORATION

A central problem of liberal democracies has been to subject large corporations to the demands of equality, democracy, and the rule of law. Countries have responded to those imperatives in very different ways, and recent events involving multi-national corporations (including banks, internet providers, and car manufacturers) have thrown those differences into sharp relief. What do governments' varying responses tell us about liberalism and the rule of law?

MODERATOR

HARIOLF WENZLER

Baker & McKenzie LLP

PANELISTS

ROBERT R. GASAWAY

Kirkland & Ellis LLP

KAI HART-HÖNIG

Dr. Kai Hart-Hönig Rechtsanwaelte

ULRIKE HOTOPP

Simetrica

KARIN MATUSSEK

Bloomberg News

Saturday, 24 September

*Bucerius Law School,
All Panels*

14:00 – 15:15

**PANEL VI: TAKING IT
TO THE (CENTRAL)
BANK(S)**

Originally conceived of as lenders of last resort, central banks have assumed far greater roles as financial regulators. Moreover, they are expected to compensate, by monetary means, for the shortcomings of the fiscal, democratic process. What explains this perplexing tendency to entrust decisions with massive distributive consequences to our least democratic institutions? And what happens politically when these institutions run out of ammunition?

MODERATOR

ALASTAIR SUTTON

Brick Court Chambers

PANELISTS

BRENDAN BROWN

Mitsubishi UFJ Securities International

LOUIS W. PAULY

University of Toronto

ALEX J. POLLOCK

R Street Institute

CLAUS TIGGES

Deutsche Bundesbank

HENRY G. MANNE PROGRAM IN LAW & ECONOMICS STUDIES

NINTH ANNUAL TRANSATLANTIC LAW FORUM

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*Bucerius Law School,
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15:30 – 16:45

CONCLUDING PANEL: IS LIBERAL POLITICS STILL POSSIBLE?

Populist parties are on the rise. Liberal parties have well-nigh disappeared in multi-party countries; and in two-party systems conservative parties have largely surrendered their classical-liberal commitments. Is this because the “End of History” is not liberalism but something like social democracy? And if that model proves unstable, what follows? Does a liberal alternative still hold any allure?

MODERATOR

CHRISTINE VON LEUCKART

Freelance Journalist

PANELISTS

OTTO FRICKE

Communications & Network Consulting

MARC K. LANDY

Boston College

HENRY OLSEN

Ethics & Public Policy Center

DANIEL ZIMMER

Rheinische Friedrich-Wilhelms-Universität Bonn

16:45

ADJOURN