

LAW & ECONOMICS CENTER, GEORGE MASON UNIVERSITY SCHOOL OF LAW
Henry G. Manne Program in Law & Economics Studies
Eleventh Annual Transatlantic Law Forum
Friday, 19 October through Saturday, 20 October 2018

Friday Panels: Universität Bayreuth, Universitätsstraße 30, 95447 Bayreuth, Germany
Hotel & Saturday Panels: Hotel Rheingold, Austraße 2, 95445 Bayreuth, Germany

Agenda

Friday, 19 October

Sessions held at Universität Bayreuth, Bayreuth

9:00 – 9:15 am

09:00 – 09:15

Registration

9:15 – 9:30 am

09:15 – 09:30

Welcoming Remarks

Michael S. Greve, Professor of Law, George Mason University Antonin Scalia Law School

Stefan Leible, President, Universität Bayreuth

Michael Zöller, Professor *Emeritus*, Universität Bayreuth

9:30 – 10:45 am

09:30 – 10:45

Panel 1: A Long Way From Bristol

In a famous address, Edmund Burke explained to his Bristol voters that he owed them his *judgment*, not his obedience. Nowadays, that kind of talk might prompt demands for a recall—no?

What exactly does it mean to *re-present* the people's will—mimicry? "Consociational" power-sharing based on people's ethnic, religious, or gender identity? Or does our political practice still leave room for a more traditional and perhaps nuanced understanding?

Panelists:

Oliver Lepsius, Chair for Public Law and Constitutional Theory, Universität Münster
Faculty of Law

Henry Olson, Senior Fellow, Ethics & Public Policy Center

Susan Meld Shell, Professor and Chair, Department of Political Science, Boston College

Keith E. Whittington, William Nelson Cromwell Professor of Politics, Princeton University

Moderator:

Michael Zöller, Professor *Emeritus*, Universität Bayreuth

11:00 am – 12:15 pm

11:00 – 12:15

Panel 2: Where Have You Gone, Mr. Madison?

The point of representing the people in a numerous body, James Madison argued, is to facilitate deliberation and, in that fashion, to dampen popular passions and to "refine" public sentiments. That theory sounds hopelessly quaint and elitist. Parliaments do not deliberate; at best, they aggregate interest group demands. Surely, though, there are cheaper and more effectual ways of performing that particular function. So what exactly do parliaments do? What institutional reforms might be conducive to a more robust, credible parliamentarism?

Panelists:

Alberto Mingardi, Director General, Istituto Bruno Leoni

Stefan Napel, Chair for Microeconomics, Universität Bayreuth

Krassen Stanchev, Associate Professor, Sofia University, and CEO, KC 2 Ltd

Philip Wallach, Senior Fellow, Governance Project, R Street Institute

Moderator:

Katja Gelinsky, Coordinator for Law and Politics, Department of Politics and Consulting,
Konrad-Adenauer-Stiftung

12:15 – 2:00 pm
12:15– 14:00

Luncheon Conversation: *Tweet!* Technology: Curse or Blessing?

The impact of information technology on (representative) government is hardly a new topic. Arguably, though, the rise of *social* media—a form of direct, two-way communication that bypasses any institutional channel or intermediation—poses questions of an entirely new sort. Initial hopes that those media might facilitate a wider, more informed democratic debate have given way to fears about Russian hacking, algorithms that steer users into the darker corners of the internet, and systematic manipulation. Is there some way of harnessing social media? Would that be a good idea?

Panelists:

Mike Godwin, Distinguished Senior Fellow, R Street Institute

Louisa Greve, Director of External Affairs, Uyghur Human Rights Project and Washington Fellow, CSW

Michael Grünberger, Professor for Civil Law, Business law, and Technology Law, Universität Bayreuth Faculty of Law

Karl-Heinz Ladeur, Professor *Emeritus*, Universität Hamburg

Moderator:

Paul F. Zimmerman, Deputy Director, International Affairs, The Federalist Society for Law and Public Policy Studies

2:15 – 3:30 pm
14:15– 15:30

Panel 3: Representation Goes Private

Even as parliaments and parties confront a legitimacy crisis, representation has in fact expanded. For example, hundreds of non-profit organizations “represent” values (such as species preservation) that belong to no one in particular. For another example, corporations are under enormous pressure for increased “shareholder democracy” and representation. Are these tendencies somehow related?

Panelists:

Jean-Claude Gruffat, Managing Director, Galileo Securities LLC

W. Thomas Haynes, President and Founder, TBP Solutions, LLC

Karin Matussek, Legal Affairs Correspondent for Germany, Bloomberg LP

Hanne Søndergaard Birkmose, Professor, Aarhus Universitet Department of Law

Moderator:

Florian Möslein, Professor of Law, Philipps-Universität Marburg

3:45 – 5:00 pm
15:45– 17:00

Panel 4: Experts, Executives, Citizens, and the Law

Political power has migrated from parliaments to bureaucracies. So perhaps, we ought to make *them* more representative. And perhaps, the thought is not so far-fetched. Citizens and organizations that take the trouble to participate in administrative proceedings are bound to be more engaged and informed than the average voter. And unlike parliaments, administrative agencies must give some reasons for their decisions, in conformity with existing law and often subject to judicial review.

Is this true? Should we make administrative law and practice more “democratic”?

Panelists:

Robert R. Gasaway, Washington, DC Attorney and Lecturer in Law, The University of Chicago Law School-

Jeremy A. Rabkin, Professor of Law, George Mason University Antonin Scalia Law School

Alastair Sutton, Barrister, Brick Court Chambers, London and Brussels

Daniela Winkler, Chair of Public Law, Universität Stuttgart Department of Law

Moderator:

Ashley C. Parrish, Partner, King & Spalding LLP

7:00 – 9:30 pm
19:00 – 21:30

Reception & Dinner,
Altes Schloss Ermitage, Eremitagestraße 4, 95448 Bayreuth, Germany

Dinner Conversation: Affluence, Inequality, and Representative Government

Pronounced economic inequality raises the specter of decidedly un-representative government: a social oligarchy that mobilizes government for its own ends. But one can also argue that broad economic affluence poses a threat to representative government by facilitating the ever-more effective organization and articulation of interest group demands. No legislature is built to accommodate the constant clamor for “more,” from an infinite number of sources. The likely results are government by executive, and a rising tide of public debt.

Suppose that both theories are plausible: what follows?

Presenter:
Christopher C. DeMuth, Sr., Distinguished Fellow, Hudson Institute

Commenter:
Reinhard Müller, Journalist, *Frankfurter Allgemeine Zeitung*

Moderator:
Richard M. Reinsch II, Fellow and Founding Editor of *Law and Liberty*, Liberty Fund, Inc.

Saturday, 20 October

Sessions held at Hotel Rheingold, Bayreuth

9:00 – 10:15 am
09:00 – 10:15

Panel 5: Exit, Devolution, and Voice

The legislature of an “extended republic,” James Madison famously argued, will be populated by statesmen who look to and thus deliberate over grand common purposes; local legislatures, by piggish factions and interests. The first half of this premise seems untenable; is the second also wrong? Local representative bodies are bound to reflect a somewhat narrower range of disagreement, and they deliberate and decide over more tangible issues. Moreover, citizen who feel unrepresented in one jurisdiction can “vote with their feet” and move to another. Does “federalism” or devolution offer a plausible path toward more representative government?

Panelists:
Florian Becker, Professor for Public Law, Christian-Albrechts-Universität zu Kiel
Jason P. Sorens, Lecturer, Dartmouth College
Michael Wohlgemuth, Director, Open Europe Berlin

Moderator:
Hariolf Wenzler, Chief Strategy Officer, Baker McKenzie

10:30 – 11:45 am
10:30 – 11:45

Panel 6: Plebiscites

Fateful decisions, from Brexit to Catalan independence, have been submitted to popular referenda. Is this a predictable, perhaps unavoidable response to public distrust in political institutions? Can anything be said in favor of such exercises in direct democracy? In Switzerland and elsewhere, referenda seem to have worked tolerably well. Why is that? What has been the experience with initiatives and referenda in the various states in the U.S.?

Panelists:
James Conde, Associate, Boyden Gray & Associates PLLC
Karen Horn, Professor of History of Economic Thought and Journalism, University of Erfurt, and Editor-in-Chief, *Perspektiven der Wirtschaftspolitik*
Hartmut Kliemt, Professor *Emeritus*, Justus-Liebig-Universität Gießen
Theresa Reidy, Political Scientist, University College Cork Department of Government

Moderator:
R. Shep Melnick, Thomas P. O'Neill, Jr., Professor of American Politics, Boston College

11:45 am – 12:00 pm
11:45 – 12:00

Good of the Order; Adjournment