

## **Post-1945 German Conservatism, Intellectual and Political**

*International Conference*

*12th April 2019*

*Budapest, Hungary*

### **Organizers**

- Research Institute of Politics and Government, József Eötvös Research Centre, National University of Public Service
- Institute of Philosophy of the Research Centre of the Humanities of the Hungarian Academy of Sciences

### **Conference director**

- Ferenc Hörcher,
  - director, Research Institute of Politics and Government, József Eötvös Research Centre, National University of Public Service,
  - senior researcher, Institute of Philosophy of the Research Centre of the Humanities of the Hungarian Academy of Sciences

### **Conference assistants**

- Kálmán Tóth, junior researcher, Research Institute of Politics and Government, József Eötvös Research Centre, National University of Public Service
- Ádám Smrcz, postgraduate researcher, Research Institute of Politics and Government, József Eötvös Research Centre, National University of Public Service

### **Venue**

- Institute of Philosophy, Research Centre of the Humanities, Hungarian Academy of Sciences, 4. Tóth Kálmán Street, 1097 Budapest, 7<sup>th</sup> Floor, Trapéz Room

### **Conference Topic**

German conservatism has not been „comme il faut” for some time in the 20th century. In particular, after World War II, it became unacceptable in public discourse in Germany. This was partly due to the debate on the political and moral responsibility for the war and the Holocaust, and partly it was a consequence of a general shift in Europe towards the left in the post-war situation.

This statement is true both about the political credit and the intellectual prestige of conservatism: both of them were regarded as discredited in the Nazi period. In this situation Christian democracy was the ideological wing which could take over the role of traditionalism and conservatism in the German speaking world, and arguably German intellectual conservatism also declined in the second half of the century.

After the fall of the iron curtain and the „unification” of Germany and Europe, and the rise of a world of new challenges in the 21. century, conservatism itself might be envisaged to be in need of an intellectual rejuvenation. After all, it might have its benevolent role and function to balance the ideological scene both in Germany and Europe, in a world of harsh populist and nationalist criticisms of globalisation. In order to make that possible, there is a need to reconstruct the post-war fate of German conservatism, political and intellectual.

This workshop, organised by the Institute of Philosophy of the Hungarian Academy of Sciences and the Research Institute for Politics and Government of the National University of Public Service, aims to uncover the underground and grass root currents of the non-Nazi German conservatism in the post-war political and intellectual milieu. Its aim is to bridge the gap between classical early 20<sup>th</sup> century German conservatism, and late-20<sup>th</sup> century, early 21. century conservative ideas and political visions. Participants of the conference will include

historians of political thought, legal scholars, historians and philosophers, all of them joining a lively discussion which aims to uncover a mostly hidden intellectual trajectory within German political and intellectual life. It hopes to raise interesting and contestable questions about key players in post-war German conservatism in politics and in the intellectual field.

### **List of Participants**

#### **Günter Figal**

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University of Freiburg

*Tradition as an Event and as a Kind of Freedom. On Gadamer and Beyond*

#### **Wolfgang Fenske**

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The Library of Conservatism, Berlin

*The Ideas of Post-1945 German Conservatism*

#### **Samuel Garrett Zeitlin**

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University of Chicago, UC Berkeley

*Indirection and the Rhetoric of Tyranny: Carl Schmitt's The Tyranny of Values 1960-1967*

#### **Clara Maier**

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Hamburg Institute for Social Research

*Conservative German legal thought and the foundation of the Bonn Republic*

#### **Kai Graef**

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University of Heidelberg

*Reinhart Koselleck and the Post-War Conservative Critique of the Philosophy of History*

#### **Lucia Rubinelli**

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University of Cambridge, Robinson College

*Costantino Mortati and the idea of material constitution*

#### **Joshua Schmeltzer**

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Trinity Hall, University of Cambridge

*The Future of Historicity? Carl Schmitt contra Natural Law*

#### **Ferenc Hörcher**

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Research Institute of Politics and Government, Eötvös József Research Centre, NUPS

Institute of Philosophy Research Centre for the Humanities Hungarian Academy of Sciences

*The Böckenförde Dilemma and the Recent European Negation of the Christian Past*

#### **Péter Varga**

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Institute of Philosophy Research Centre for the Humanities Hungarian Academy of Sciences  
*Robert Spaemann (1927-2018): Renewal of Catholic Thinking through the Ritter School?*

**Csaba Olay**

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Department of Modern and Contemporary Philosophy, Institute of Philosophy, ELTE BTK  
*Conservatism of the Customary: Ritter and Marquard on the inevitability of the customary*

**Attila Gyulai**

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Institute for Political Science – HAS Centre for Social Sciences / NUPS Research Institute of  
Politics and Government

*Anti-liberalism, conservatism, and realism in Carl Schmitt's post-war thought*

### **Abstracts**

*Tradition as an Event and as a Kind of Freedom. On Gadamer and Beyond.*

**Günther Figal (University of Freiburg)**

Gadamer's philosophical hermeneutics has often, and very likely first by Habermas, been criticized as 'traditionalistic' and thus as 'conservative'. In my paper I will discuss Gadamer's conception of tradition as developed in 'Truth and Method' and point to the ambivalence of this conception. On the one hand Gadamer understands tradition as a kind of autonomous process that determines understanding, while on the other hand he stresses that tradition has to be 'applied' to the present. According to the latter version tradition not only effects on the present, but present understanding determines how tradition shall be. I will take up this aspect and sketch a conception of tradition beyond Gadamer according to which tradition can be regarded as a free space for understanding.

*"The Ideas of Post-WW2 German Conservatism"*

**Wolfgang Fenske (BDK Berlin)**

West Germany's conservatism after World War II might be differentiated in four periods: The first, in which a conservative elite tried to re-activate conservative ideals which were common until 1933/34. In the centre of the second period stood the conflict with the ideology of the '68 movement and its protagonists. Since the 80s we can speak about a third period with the attempt, to fulfill the missed "spiritual-moral turn" ("geistig-moralische Wende"), that chancellor Helmut Kohl had promised his voters in 1980. Finally, after Germany's reunification in 1990 we remark the attempt to formulate a conservative position that stands on a national ground and, nevertheless, keeps in mind its European dimension. The lecture will present and reflect the history of conservative ideas along this timeline.

*Indirection and the Rhetoric of Tyranny: Carl Schmitt's The Tyranny of Values 1960-1967*

**Samuel Garrett Zeitlin (University of Chicago, UC Berkeley)**

Abstract: This article situates Carl Schmitt's *The Tyranny of Values* (1960/1967/1979) within the context Schmitt's 1940s and 1950s op-ed campaign for full amnesty for Nazi war criminals as well as the context of the Veit Harlan trials and the 1958 Lüth Judgment of the German Constitutional Court. The article further examines the revisions to Schmitt's 1967 version of

the text in the light of Karl Löwith's criticisms of Schmitt in an article in the *Frankfurter Allgemeine Zeitung* from 1964. The article argues that *The Tyranny of Values* is a work of post-WWII Nazi apologetics, in which Nazi racial theory can be seen being put to polemical ends in the 1960s and 1970s. The article concludes with broader reflections on the relation of Schmitt's *The Tyranny of Values* to Nazi discourse in the aftermath of the Second World War and the history of Nazism post 1945.

*Conservative German legal thought and the foundation of the Bonn Republic*  
**Clara Maier (Hamburg Institute for Social Research)**

Conservative German legal thought and the foundation of the Bonn Republic The paper explores the key components of the political project of post-war West Germany and the role of the Rechtsstaat within it. It argues that the post-war German lawyers and politicians developed a specific reading of the rule of law as an order based on supra-legal values, which had to be defended even against democratic government. Contrary to common conception and the self-understanding of post-war legal theorists like Gustav Radbruch this did not signify a departure from the constitutional theory of the Weimar period. Rather, this paper argues, the decisive innovations in constitutional thought stemmed from the legal and theoretical challenges the Weimar state had faced in its own time from Conservative constitutional thinkers such as Carl Schmitt and Rudolf Smend. As such the German Rechtsstaat, which is so strongly associated with the renewal of German democracy, carries with it a tradition of Conservative legal thought, which systematically and successfully expanded the reach of the judiciary within the political system to the detriment of the legislative and democratic action.

*Reinhart Koselleck and the Post-War Conservative Critique of the Philosophy of History*  
**Kai Gräf (University of Heidelberg)**

Reinhart Koselleck's book *Critique and Crisis* is arguably among the most famous works representing a conservative trend within German intellectual history after 1945. Submitted as a doctoral dissertation at the University of Heidelberg in 1954, it has long since become a classic and can serve as a prominent example of 20<sup>th</sup>-century discourse on revolution, crisis, and the distortions of modernity. As I will try to show in my paper, however, the book is not only interesting for its broad discursive context but should first of all be considered as a characteristic outcome of a certain intellectual constellation within which it was created in Heidelberg in the early 1950s. An examination of this constellation, which includes Koselleck's supervisor Johannes Kühn (1887–1973) as well as his fellow students Nicolaus Sombart (1923–2008) and Hanno Kesting (1925–1975), can provide remarkable insights into the political thinking of German post-war conservatism. As I will try to show in my presentation, Koselleck and his Heidelberg circle not only share the analysis of their present as a moment of crisis, but would also agree upon its origins in European history: To Koselleck, as well as to Kühn, Sombart, and Kesting, the global prevalence of different but structurally analogous ideological systems representative of mid-20<sup>th</sup>-century political and historical crises in fact began in 1789, when utopian Enlightenment thinking challenged the absolutist state. Thus, the origin of the post-1945 crisis therefore ultimately lies in the political thought of the Enlightenment and particularly in its philosophy of history. In contextualising Koselleck's *Critique and Crisis*, the paper wants to show that this critique of the philosophy of history is a characteristic idea of German post-war conservatism.

*Costantino Mortati and the idea of material constitution*  
**Lucia Rubinelli (University of Cambridge, Robinson College)**

Early twentieth century German reflections on the intersection between law and politics have been the object of extensive historical analysis. Especially, Schmitt's realism and Kelsen's positivism have often been taken to instantiate two irreconcilable epistemological poles. Yet little attention has been paid to thinkers who, being at the crossroad of different intellectual traditions, operated within this dichotomy while trying to avoid its most caricatural features. One of these figures is the Italian constitutional theorist Costantino Mortati. While introducing his life and oeuvre to the Anglophone public, this paper argues that his work should be read as an attempt to make sense of law's relationship to politics that, although similar to Schmitt's realism, avoids its more pernicious outcomes.

I wish to thank Tom Poole for feedback on an earlier version of this paper, the audience at the London IHR History of Political Ideas seminar and the two anonymous reviewers for helpful advice. I would also like to thank Serena Rubinelli and Guido Segattini for helping me find relevant material in Italian libraries.

*The Future of Historicity? Carl Schmitt contra Natural Law*  
**Joshua Smeltzer (Trinity Hall, University of Cambridge)**

While much scholarly attention has been paid to Carl Schmitt's critique of legal positivism in the jurisprudential debates of the Weimar Republic, his critique of natural law doctrines in the post-war era remains largely overlooked. Using contextual sources – correspondences with jurists such as Ernst Rudolf Huber and Ernst Forsthoff, unpublished manuscripts and speech outlines, as well as notebook entries from the period – this paper argues that Schmitt increasingly saw the resurgence of natural law as an existential threat to the future of European jurisprudence, one that could only be vanquished through a renewed engagement with legal 'historicity' [Geschichtlichkeit]. The first part of this paper reconstructs Schmitt's methodological criticism of natural law doctrines as anachronistic and lacking validity outside of the *respublica christiana*. The second part will turn to consider a specific application of natural law doctrines in the post-war period: the so-called right of resistance, or 'Widerstandsrecht,' and its implications in the Nuremberg Trials. In so doing, this paper will shed light on a forgotten yet central aspect of Schmitt's writing on jurisprudence after 1945, while also underscoring his engagement with broader international events.

*The Böckenförde Dilemma and the Recent European Negation of the Christian Past*  
**Ferenc Hörcher (Research Institute of Politics and Government NUPS, Institute of Philosophy, HAS)**

It is widely agreed that Böckenförde's Dilemma explains one of the key issues about the medium term survival of European constitutional democracies. The depth of the problem how to recreate the political culture which can sustain these regimes' basic convictions (including the rule of law as well as social solidarity) is revealed in the recent phenomenon of the European negation of the Christian past. While tolerance and the separation of Church and State are, no doubt, crucial European values, the denial of the past we witness as a result of the recent application of these values causes serious problems in European self-awareness. The paper tries to explain how Böckenförde, one of the key players in postwar German intellectual life, negotiated the basic values of the Grundgesetz with the traditional Christian values, presenting his work as a „good practice” for the present generations.

*Robert Spaemann (1927-2018): Renewal of Catholic Thinking through the Ritter School?*

**Péter Varga (Institute of Philosophy Research Centre for the Humanities Hungarian Academy of Sciences)**

The death of the nonagenarian philosopher in December 2018 might occasion us to assess Spaemann's oeuvre in its entirety, but the most intriguing question is, probably, whether, and to which extent, Spaemann's position in the philosophical school centered around Joachim Ritter in Münster (Germany) resulted in a cross-fertilization between cutting edge-contemporary philosophy and the perennial tradition of Catholic thinking in which Spaemann was embedded. It is not without reason that the so-called Ritter School is, in the hindsight, emerging as one of the most distinctive formations of the post-war German philosophical landscape. When Ritter arrived in Münster in 1946, Spaemann was amongst his first students. Within the school, Spaemann became a personal friend of Hermann Lübke, and he reportedly played an instructive role in securing Ritter the editorship of the *Historisches Wörterbuch der Philosophie* in the late 1950s, which, in turn, became the flagship project of the school. In contrast with Ritter's reclusive nature, his disciples were far from being inhabitants of the ivory tower: their participation in the theoretical legitimation of the Bonn Republic recently earned them the label 'philosophers of the *Bürgerlichkeit*' (not to mention Ernst-Wolfgang Böckenförde's famous paradox that reverberates beyond the strict confines of the Ritter School and was recently invoked in Hungarian context as well). Spaemann, too, could be considered as a modern-day Catholic public intellectual. His public engagement during his active career – he became an *emeritus* in 1992 – included vocal interventions in biopolitical debates (most notably against Peter Singer, which contributed to the attempted entry ban on Singer in 1996), and he is frequently described as a 'friend' or even 'advisor' of Pope John Paul II or Benedict XVI (though he underplayed the significance of these relationships in his 2012 autobiography). From a theoretical point of view, assessing Spaemann's appropriation of Ritter's thinking hinges on the relationship between Ritter's signature theory, the theory of compensation, and Spaemann's opposition to functionalism, his interpretation of faith as a basal belief, and his anti-dialogical variant of hermeneutics (including his corresponding theory of the history of philosophy). In his last years, Spaemann, as evidenced by his conversation with Hans Joas (published in 2018), grew increasingly skeptical concerning the possibility of Ritter's fundamental aim, the reconciliation of modernity and tradition (in Spaemann's case, faith). In his 2012 autobiography, Spaemann reversed Wittgenstein's infamous Proposition 6.54: "If I throw away the ladder on which I have climbed up, rather than keeping it in mind, then I remain at the same place where I was beforehand;" and it is compelling to understand his growing alienation from Ritter's core theory as its *Aufhebung*. At the same time, as precisely his aforementioned conversation demonstrates, there are certain blind spots of Spaemann's synthesis, most notably regarding the ontological status of values, in which regard other streams of contemporary philosophy, first and foremost phenomenological personalism (as represented, e.g., within Catholic context by Spaemann's compatriot Dietrich von Hildebrand), might be able to lend a helping hand.

*Conservatism of the Customary: Ritter and Marquard on the inevitability of the customary*

**Csaba Olay (Department of Modern and Contemporary Philosophy, Institute of Philosophy, ELTE BTK)**

Why should we conserve in human cohabitation anything at all and what should we conserve, if doing so? – this is a possible way to formulate the core problem of conservatism which was addressed forcefully in Germany in the middle of the 20<sup>th</sup> century by Joachim Ritter and members of his School. The paper discusses on a theoretical level Ritter's considerations in favor of a conservative-liberal position, with special attention to his student, Odo Marquard

who elaborated an anthropology and political philosophy of finitude. In my talk I analyze first Ritter's position on modernity and his ensuing considerations on compensational aspects of the modern world such as aesthetic experience and the human studies. In the second part of my paper I follow how Marquard embraces Ritter's analysis of modernity, but radicalizes certain points of it. First of all, the idea of compensation and, as a consequence, the philosophy of finitude get more weight in Marquard's position.

*Anti-liberalism, conservatism, and realism in Carl Schmitt's post-war thought*  
**Attila Gyulai (Institute for Political Science – HAS Centre for Social Sciences / Research Institute for Politics and Government, National University of Public Service)**

It is well-known that Carl Schmitt formulated his most important ideas during the 1920s and 1930s against liberalism. However, partly due to Schmitt's identification with the Nazi regime but also because his post-war works are much less studied in general, his later writings are considered less significant in this regard. The paper focuses on the permanent, changing, and new anti-liberal elements in Schmitt's writings after 1945. In particular, the paper discusses Schmitt's maintained criticism of legal positivism (1950), his pamphlet against the philosophy and the tyranny of values (1960), as well as his understanding of the nature of power (1954). As it will be argued, anti-liberalism, as it was characteristic of Schmitt earlier as well, contributes not so much to a substantial conservative position but to a realist understanding of politics.

#### Program

9:00 Opening remarks (Ferenc Hörcher)

9:15 Keynote lecture (Günther Figal)

10:00 Discussion

10:15 Coffee break

10:30 Introductory lecture (Wolfgang Fenske)

11:00 Discussion

11:15 First panel: Carl Schmitt (Samuel Garrett Zeitlin, Attila Gyulai, Joshua Smeltzer)

12:45 Discussion

13:00 Lunch break

14:00 Second panel: Legal Thought (Clara Maier, Ferenc Hörcher, Lucia Rubinelli)

15:30 Discussion

15:45 Coffee Break

16:00 Third panel: Philosophy (Csaba Olay, Péter Varga, Kai Graef)

17:30 Discussion

17:45 Final discussion

18:15 Closing the conference