Population Registration, Social Planning, and the Discourse on Privacy Protection in West Germany*

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At the beginning of *Seeing Like a State*, James Scott writes that "the premodern state was, in many crucial respects, partially blind; it knew precious little about its subjects, their wealth, their landholdings and yields, their location, their very identity." It was, Scott argues, population registries, which, in conjunction with the introduction of surnames and the development of means for pinpointing the location of these persons, first made it possible for state officials to dream of a perfectly legible population.[1]

The collection of personal information—that is, information relating to identifiable individuals and their vital activities—is the sine qua non of diverse political rationalities: sovereign control of territory, the disciplinary fixing of individuals in social and geographical space, and the biopolitical cultivation of populations. However, the extent to which and the intensity with which such information can be used for any of these purposes depends on the ability to collect this information; channel it to the center of the organization, where it can be integrated with other information and analyzed; and then return it to the bureaucratic periphery, which is the site of encounters between the state administration and the individual citizen. In their original form, however, population registries simply represented

[1] James Scott, *Seeing Like a State: How Certain Schemes to Improve the Human Condition Have Failed* (New Haven, CT, 1998), 2, 82, and James Scott, John Tehranian, and Jeremy Mathias, "The Production of Legal Identities Proper to States: The Case of the Permanent Family Surname," *Comparative Studies in Society and History* 44, no. 1 (January 2002): 4–44.

snapshots produced by one-time or periodic censuses conducted for circumscribed purposes, and they were incapable of producing the continuous, individualized knowledge required by the modern state in order to make good on its claims to sovereignty and fulfill its obligation to promote the welfare and security of its people. What good, for example, does it do to have a registry listing the individual members of a population if the list cannot be kept up to date? If the state cannot continuously keep track of the mobile individual and make him or her into the object of administrative solicitude and control? If it cannot be assured that every individual is included in the registry, that every individual is counted only once, and that the proper distinctions are made both among citizens and between citizens and others? If it cannot be assured that all of the information needed by the state for its diverse administrative purposes is collected and made available to the relevant agencies in a complete and timely manner and in actionable form? And if it cannot be assured that every individual is uniquely identified and that personal information is attached to the proper biological individual? Solving these problems—problems where surveillance and information processing were two sides of the same coin—was crucial to the development of the modern state.

In the following pages I will argue that across the mid-twentieth century the German state was engaged in a vast legibility project to map its interior terrain and the lives of its population. The core administrative mechanism on which this project depended was a comprehensive, increasingly integrated, and ultimately computerized population information, identification, and control system. This system was comprised of a number of distinct technologies, including population registries and enumeration systems, securitized and eventually machine-readable ID cards and passports, and censuses and other population surveys. Its functioning depended on both the bureaucratic procedures that controlled the flow of personal information within the public sector and the new information and communication technologies through which these different sources of information were linked with one another. However, these developments were not uncontested, and I will argue that the consolidation of this system gave rise to a new form or domain of social politics, the politics of personal information; to new discourses on privacy, which became the primary means of theorizing the expansion of state population surveillance; and to a corresponding social movement, which sought to contest the expansion and intensification of population surveillance in the name of both individual autonomy and the collective needs of a democratic society.

In his work, Scott argues that the utopian aspirations associated with the functionalist aesthetic of high modernist social engineering were confounded by that peculiar form of local knowledge known as *mētis*, which was essential to the functioning of complex ecological and social systems, but which could never be adequately captured through the abstract schemata deployed by the state. Scott concludes that all attempts by the modern(izing) state—which was partially blinded by this ignorance, though in a different sense than that of its early modern pre-

decessor—to remake man, society, and the environment invariably proved to be dysfunctional and destructive. But when we turn to the actual development of population registration—something to which Scott pays only passing attention—Anthony Giddens proves to be a more useful guide. Giddens argues that modernity is characterized by four "institutional clusterings": industrialism, capitalist enterprise, heightened surveillance, and the consolidation of centralized control of the means of violence, each of which exists in dialectical relation to the others without being wholly reducible to any of them.[2] Not only does this formulation highlight the role of surveillance, information, and the power they generate in the development of the modern state and the modern enterprise. It also permits Giddens to argue that all societies in which surveillance—which he defines as the collection, storage, and dissemination of coded information about the individual members of the population and the subsequent use of this information to superintend and control their activities—is used in a reflexive manner to control the evolution of organizations and social systems are also, perforce, information societies whose modernity is directly proportional to the degree to which such information can be collected, analyzed, and applied.[3] However, these abstract, secular processes of social change always take place in specific historical contexts, which determine the specific political valences of the administrative power generated through the control over population information, and in this essay I will also explore what the development of this system can tell us about the political culture of Germany in the twentieth century.

The scholarly literature has addressed population registration in twentieth-century Germany primarily in relation to National Socialism and the Holocaust—a question to which we shall return below. However, in the postwar years the fortunes of the country's population registration system were linked to the reform plans of the Social Democratic–Liberal (SPD/FDP) coalition, which came to power in the fall of 1969. In addition to the normalization of relations with East Germany and the other countries of the Soviet bloc, the coalition was committed to a domestic reform program designed to extend individual freedoms, social justice, and democratic decision making to all spheres of social and economic life, including education, social welfare, marriage and family law, sexuality (abortion and homosexuality), criminal law, and industrial relations. All of these goals were bundled in SPD Chancellor Willy Brandt's challenge to "dare more democracy."

In the early years of the Cold War, economic planning had been reviled in West Germany as the symbol of unfreedom under both Nazism and contemporary state socialism and as the antithesis of consumer democracy, which Economics Minister (and later Chancellor) Ludwig Erhard (CDU) championed as the official ideology of the country's postwar economic miracle. However, West German attitudes toward planning began to change as the future increasingly came to be seen

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[2] Anthony Giddens, *The Nation-State and Violence* (Berkeley, 1987).

[3] Ibid., 178.

as something that could be made the object of conscious anticipation and rational control. The first signs of the new attitude toward social planning were already visible under the CDU/SPD Grand Coalition (1966–69), where they led to the establishment of a small planning staff in the chancellor's office in early 1967 and to the passage in June of that year of the Economic Stabilization and Growth Law, which marked the breakthrough in West Germany of Keynesian macroeconomic planning.[4] This law, which embodied the simultaneous commitment to economic growth, full employment, price stability, and a positive balance of international trade, provided both the economic foundation and the theoretical model for the broader social-liberal reform program.

As Gabriele Metzler has argued, the entry of the Social Democrats into government and the progressive articulation of the idea of anticipatory global planning brought about a fundamental transformation in the nature of political thinking. "Modern politics," she argues, "was politics that was rational, that used coordinated measures, that was oriented toward the future, and that rested on the broadest possible foundation of information, analysis, and prognosis."[5] This conception of politics as government rather than the exercise of sovereignty was predicated, as Metzler notes, on the creation of a store of social statistics that was larger, more expressive, and of higher quality than that currently available, on the expanded role of social scientific expertise in framing and interpreting such knowledge, and on the use of new technologies to collect this information and to model dynamic processes of social change so that politicians would be able to foresee more accurately the consequences of policy decisions. As we shall see in greater detail below, the most important federal initiative in the informational domain was the proposed Federal Population Registration Law (*Bundesmeldegesetz*), whose purpose was to establish the legal infrastructure for the automation of the local population registries and their linkage to create a national population information system. This, together with comparable initiatives by the federal states (*Länder*), was the direct catalyst for the politicization of privacy at the turn of the 1970s and for the passage of the first privacy protection laws.[6]

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[4] Winfried Süß, "'Wer aber denkt für das Ganze?' Aufstieg und Fall der ressortübergreifenden Planung im Bundeskanzleramt," in *Demokratisierung und gesellschaftlicher Aufbruch: Die sechziger Jahre als Wendezeit der Bundesrepublik*, ed. Matthias Frese, Julia Paulus, and Karl Teppe (Paderborn, 2003), 349–78, and Alexander Nützenadel, *Stunde der Ökonomen: Wissenschaft, Politik und Expertenkultur in der Bundesrepublik 1949–1974* (Göttingen, 2005).

[5] Gabriele Metzler, *Konzeptionen politischen Handelns von Adenauer bis Brandt: Politische Planung in der pluralistischen Gesellschaft* (Paderborn, 2005), 297.

[6] In Britain, the 1972 Younger Report declined—in contrast to developments in West Germany—to propose the codification of a general right of privacy, in part because of the difficulties involved in defining the concept, but also in part because threats to privacy emanating from the public sector were excluded from the committee's remit, even though many people regarded the potential infringement on civil liberties by the government as a

The greatest political challenge facing West Germany in the 1970s was domestic terrorism, and there is no small irony in the fact that the coalition parties, which cast themselves as agents of democratization and liberalization, were instead forced to steer the country through a period of economic crisis and preside over an unprecedented expansion of the security apparatus. Although their reform program sought to make resocialization, rather than expiation of guilt, into the basic principle of the criminal code, the rise of domestic terrorism forced the administration to pay greater attention to the repression of those who refused this offer of social reintegration. Less than a year after assuming power, the coalition put forth an Action Program for the Modernization and Intensification of the War on Crime, a document that provided the blueprint for its security policy for the remainder of the decade. The two parties, which were always struggling with the lessons of Weimar, relied on the concept of militant democracy to reconcile intensified repression with the rule of law and the principles of parliamentary democracy[7]—a precarious undertaking that led many on the left to question the coalition's priorities. The immediate co-optation of the proposed national population registration system by the police and the intelligence agencies, whose own surveillance capacities were also being expanded and modernized during these years, led many to believe that this system, which had originally been touted as a means of social emancipation, was in reality intended to serve repressive ends.

The cornerstone of the government's internal security program was the modernization, expansion, and professionalization of the police. Although the states jealously guarded their autonomy in the area of policing, this modernization program led to a massive expansion of the Federal Criminal Police (*Bundeskriminalamt*) and to an uneven and contested expansion of its powers. The creation of a national police information system (INPOL), which was rolled out in November 1972, represented the most significant expansion of police surveillance capacity during the 1970s. The police and intelligence agencies wanted to be able to use INPOL for electronic access to the information contained in the population registries, and beginning in the early 1970s officials began to allude to what they called the "security aspects" of the population registration law.[8] One of the rea-

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greater threat than interference in these rights by other individuals. *Report on the Committee on Privacy* (London, 1972), 1–2, 5.

[7] Sofortprogramm zur Modernisierung und Intensivierung der Verbrechensbekämpfung (October 29, 1970), Drs. VI/1334. On the relationship between security and democracy in the 1970s, see Karrin Hanshew, *Terror and Democracy in West Germany* (Cambridge, 2012); Stephan Scheiper, *Innere Sicherheit: Politische Anti-Terror-Konzepte in der Bundesrepublik Deutschland während der 1970er Jahre* (Paderborn, 2010); Hanno Balz, *Von Terroristen, Sympathisanten und dem starken Staat: Die öffentliche Debatte über die RAF in den 70er Jahren* (Frankfurt, 2008); and Heiner Busch et al., *Die Polizei in der Bundesrepublik* (Frankfurt, 1985).

[8] Hertel, Vermerk Betr.: Sicherheitsaspekte des Bundesmeldegesetzes (June 5, 1972), and Hertel, Innenministerkonferenz am 17. Juni 1972—Sicherheitsaspekte des Bundesmeldegesetzes, both in BAK B106, Nr. 45446.

sons why the members of the Red Army Faction (RAF) were initially able to elude capture for so long was that they had broken into a number of city halls and population registry offices and stolen blank ID cards and passports, along with the seals used to authenticate these documents, and they were so successful in this that Andreas Baader later bragged that "the RAF has its own population registry office."[9] The antiterror strategy developed in the 1970s focused on disrupting the logistics of the terrorist groups and, as the police called it, "drying out the swamp" of sympathizers, whose support—which included "lending" identification documents to the active members of terrorist groups and helping them satisfy their logistical needs—made it possible for these persons to maintain their underground existence. The police regarded a more robust population registration and identification system as the key to achieving this goal, and one of their top priorities was to supplement the nascent electronic registry system with a tamper-resistant, machine-readable ID card.

These attempts by the West German state to render its population more visible and accessible exemplify larger developments whose significance extends beyond the immediate confrontation with the RAF. On the one hand, identity and locality are mutually implicating concepts, and both are essential to the concept of territoriality and the exercise of state power.[10] What this means is that the population registration system, which documented both the precise location where the person was to be found within the country at any given moment and the administrative information relevant to that person, could not be separated from either the securitized ID card, which was intended to insure that this information was attached to the proper body, or those bureaucratic mechanisms that controlled both the passage of persons across the borders of the state space within which persons became subject to these registration regulations and their subsequent movement within that space.

On the other hand, in the contemporary world, secure and electronically readable identification documents have come to serve as the primary interface between the physical individual and the network of interlocking, mutually authenticating databases that collectively define his or her administrative identity. Ultimately, ID cards perform the same integrative, identificatory, and control purposes on the bureaucratic periphery that ID numbers facilitate at the core of such institutions, and together this assemblage of population and telecommunications technologies has made possible what sociologist David Lyon has called "governance

[9] Cited in Dorothea Hauser, *Baader und Herold* (Hamburg, 1997), 172. See also "Dolde oder Bolde," *Der Spiegel*, no. 36 (1979), 84–92.

[10] Charles Maier, "Consigning the Twentieth Century to History: Alternative Narratives for the Modern Era," *American Historical Review* 105, no. 3 (June 2000): 807–31; Matthew Hannah, "Spaces of Exception and Unexceptionability," in *War, Citizenship, Territory*, ed. Deborah Cowen and Emily Gilbert (London, 2008), 57–73, and Hannah, "Calculable Territory and the West German Census Boycott Movements of the 1980s," *Political Geography* 28 (2009): 66–75.

by identification."[11] If it had not been possible to verify individual identity at a distance and insure the instantaneous flow of information from the bureaucratic periphery to the center and back again, the administrative power generated by the population registries would have been much more limited.

Moreover, in the 1970s police surveillance was not limited to terrorists and their suspected sympathizers. All of the major parties worried that the country might be subverted from within by the long march of the New Left through its political institutions. In response, in 1972 the coalition adopted a policy (known alternately as the radicals decree or the *Berufsverbot*) requiring that the private lives and political attitudes of all applicants for civil service positions be routinely screened to insure that they were willing to actively support the "free democratic constitutional order." Between 1972 and 1975 the domestic intelligence agencies investigated approximately 430,000 persons.[12] Although only a fraction of a percent of these persons were dismissed or had their employment blocked, the real importance of this policy lay in its deterrent effect.

By the end of the 1970s, the continued development of the population registration system, the initial controversies over the new ID card, the modernization of the police and intelligence agencies, the development of new surveillance practices that operated at the margins of the law and often made use of the new information and communication technologies, and the radicals decree had all combined to give rise to a pervasive fear that the Federal Republic was being transformed into an authoritarian surveillance state.[13] These concerns were driven to new heights by the events of the German Autumn: the kidnapping of the industrialist Hanns Martin Schleyer on September 5, 1977, the extraordinary measures taken over the following weeks to locate him, the October 13 hijacking of a Lufthansa flight by Palestinian terrorists collaborating with the RAF, the rescue of the passengers in Mogadishu by the elite counterterrorism group GSG 9 (which

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[11] David Lyon, *Identifying Citizens: ID Cards as Surveillance* (Cambridge, 2009), 90–92.

[12] Bericht über das Ergebnis der Umfrage zur Praxis der Überprüfung der Gewähr der Verfassungstreue bei Einstellungsbewerbern (fall 1975), BAK B106, Nr. 95951. Derogatory information was reported in 5,678 cases, and 235 applicants were denied positions based on doubts about their political loyalty. Gerard Braunthal, *Political Loyalty and Public Service in West Germany: The 1972 Decree against Radicals and Its Consequences* (Amherst, MA, 1990), 93, claims that somewhere between 2 and 2.4 million persons were reviewed in 1972/79 and that by 1985 the total had reached 3.5 million. See also Dominik Rigoll, *Staatsschutz in Westdeutschland: Von der Entnazifizierung zur Extremistenabwehr* (Göttingen, 2013).

[13] This anxiety was echoed in a number of publications, including Jochen Bölsche, ed., *Der Weg in den Überwachungsstaat* (Reinbek, 1979); *SOS: Sicherheit—Ordnung—Staatsgewalt; Freiheit in Deutschland* (Hamburg, 1978); Wolf-Dieter Narr, ed., *Wir Bürger als Sicherheitsrisiko* (Hamburg, 1977); Joachim Hirsch, *Der Sicherheitsstaat: Das "Modell Deutschland," seine Krise und die neuen Sozialen Bewegungen* (Hamburg, 1980); and the special issue of *Kursbuch* (no. 66, December 1981) on "die erfaßte Gesellschaft."

had been formed after the Palestinian attack on Israeli athletes at the 1972 Olympic games) on October 18, the death that night in the high-security Stammheim prison of three of the founding members of the RAF, and the subsequent killing of Schleyer himself. These fears about the surveillance state, which would eventually coalesce around the 1983 census,[14] steadily undermined the democratic credentials of the Social Democrats. Erosion of public support for the party, together with the structural crisis of the economy and growing differences between Social Democrats and Liberals over economic policy, helped pave the way for the political realignment of 1982/83 that brought the Christian Democrats back to power in coalition with the Liberals.

These developments also provided the context for the debate over population registration and for the politicization of computer privacy. Although my story will reach back to the early years of the twentieth century, I will focus on the continuities between these earlier state formations and the Federal Republic, leaving aside developments on the other side of the intra-German border. The political parameters of surveillance and privacy in East Germany were so different from those prevailing in the West as to render pointless any direct comparison. Moreover, it was the Third Reich, rather than East Germany, that provided the most important point of reference, both positive and negative, for West German debates over population registration, though within the totalitarianism paradigm the Third Reich could easily function as a rhetorical surrogate for the Stalinist societies to the east.[15]

POPULATION REGISTRATION IN THE THIRD REICH AND THE EARLY FEDERAL REPUBLIC

With a small number of exceptions, population registration has figured only peripherally in histories of state formation in twentieth-century Europe.[16] The most important study of population registration as a global phenomenon is the recently published volume *Registration and Recognition*, edited by Keith Breckenridge

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[14] Larry Frohman, "'Only Sheep Let Themselves Be Counted': Privacy, Political Culture, and the 1983/87 West German Census Boycotts," *Archiv für Sozialgeschichte* 52 (2012): 335–78.

[15] On the question of privacy in Stalinist societies, see Paul Betts, *Within Walls: Private Life in the German Democratic Republic* (Oxford, 2010); Carola Sachse, *Der Hausarbeitstag: Gerechtigkeit und Gleichberechtigung in Ost und West 1939–1994* (Göttingen, 2002); Andreas Glaeser, *Political Epistemics: The Secret Police, the Opposition, and the End of East German Socialism* (Chicago, 2011); and Oleg Kharkhordian, *The Individual and the Collective in Russia: A Study of Practices* (Berkeley, 1999).

[16] This contrasts with the much greater degree of attention paid to identification documents and censuses. See Colin Bennett and David Lyon, eds., *Playing the Identity Card: Surveillance, Security and Identification in Global Perspective* (London, 2008); and Jane Caplan and John Torpey, eds., *Documenting Individual Identity: The Development of State Practices in the Modern World* (Princeton, NJ, 2001).

and Simon Szreter. The contributions to this volume collectively challenge the widely accepted view that links writing, knowledge, and population registration to the growth of state power in the transition to European modernity. Instead, the editors argue that population registration derives from the universal need for recognition among the members of all social groups, that it "lies at the centre of the process of 'textually mediated organisation'," which Giddens regards as characteristic of the modern state, and that registration "has been the crucial primary instrument for realizing entitlements and secondary rights, wherever they exist, by providing this fundamental condition of recognition." However, the editors also distinguish between population registration, which has historically fallen within the purview of a wide variety of non- and substate actors, and population enumeration, which they argue has had more explicitly disciplinary effects.[17]

The difference between registration and enumeration has undoubtedly eroded over the twentieth century as centralized states have become the primary agents of population registration, and the most influential study of population registration and other population technologies in modern Germany portrays them as instruments of racial discrimination, disciplining, and exclusion. In *The Nazi Census*, which was researched and written during the 1983 census boycott, Götz Aly and Karl Heinz Roth broke new ground in describing the population technologies employed by the Nazis to identify discrete elements of the population, locate them in space, mobilize some for war, and ship others—those who were deemed racially inferior, unproductive, or otherwise incapable of being integrated into the community—off to concentration and death camps. Aly and Roth argued that these technologies were, if not distinctly Nazi, then at least intrinsically repressive, and they uncovered important continuities in personnel between Nazi-era population experts and the men who shaped the statistical policy and institutions of the early Federal Republic.[18]

Although this book exerted a pervasive influence on debates over population surveillance in the 1980s, the direct connections that Aly and Roth drew between the census and the death camps have been challenged by subsequent scholarship.[19] In addition, Adam Tooze has argued that the authors' technocratic reductionism prevented them from recognizing the gap between fantasies of total control (closely akin to those described by Scott) on the part of some Nazi bureaucrats

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[17] Keith Breckenridge and Simon Szreter, eds., *Registration and Recognition: Documenting the Person in World History* (Oxford, 2012), 1, 12, 18ff.

[18] Götz Aly and Karl Heinz Roth, *Die restlose Erfassung: Volkszählung, Identifizieren, Aussondern im Nationalsozialismus* (Berlin, 1984), translated as *The Nazi Census: Identification and Control in the Third Reich* (Philadelphia, 2004).

[19] This literature has argued that the data were outdated even before the census could be completed and the results collated, that the deportations from the original territories of the German Empire were well underway before the results of the racial census could have been used to plan them, and that—in one of the many sad ironies of the Holocaust—the most important source of personal information for security officials were the lists that the

and the messier realities of wartime economic planning, which, he maintains, was ultimately inspired by a very different intellectual tradition.[20] My intention here is less to intervene in this debate than to argue that, although many of the key innovations in the history of population registration and identification in Germany may have been made by the Nazis, these were not necessarily peculiarly Nazi measures. Instead, I suggest that the Nazis sought to make extensive use of the new national population registration system not only as the basis for policing and social control, which was facilitated by the absence of both the rule of law and effective controls on the exercise of power by a totalitarian state, but also as a multifunctional database for social (and military) administration. As a result of their efforts to mobilize society for war, they had to wrestle with the information-processing problems raised by such a system. Their efforts represent an important line of continuity between the earlier history of population registration and the population registration law proposed at the end of the 1960s, which attempted to solve these problems within the framework of postwar constitutional democracy while making use of information-processing technologies that were not available before the war.

The first thing to bear in mind, especially for American readers, is that population registration is a common continental phenomenon, not something peculiarly German, and that the introduction of conscription, compulsory labor mobilization, and food rationing during the first half of the twentieth century required the comprehensive registration of the population by all belligerent nations as they struggled to meet the political and administrative challenges of mobilizing their populations for total war. In Great Britain, for example, which lacked a population registration system on which to build, national registration was introduced during World War I, only to be abandoned at the end of hostilities and then reintroduced at the beginning of World War II. The policy then remained in force until 1952, when it collapsed for lack of a continuing military rationale.[21] In the United States, the Selective Service system was introduced in 1917 in conjunction with the draft,

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Jewish communities maintained of their members, who had become more visible as their mobility was limited by ghettoization. See Gudrun Exner and Peter Schimany, "Amtliche Statistik und Judenverfolgung: Die Volkszählung von 1939 in Österreich und die Erfassung der österreichischen Juden," *Geschichte und Gesellschaft* 32 (2006): 93–118; Jutta Wietog, *Volkszählungen unter dem Nationalsozialismus: Eine Dokumentation zur Bevölkerungsstatistik im Dritten Reich* (Stuttgart, 2001); and David Luebke and Sybil Milton, "Locating the Victim: An Overview of Census-Taking, Tabulation Technology, and Persecution in Nazi Germany," *IEEE Annals of the History of Computing* 16, no. 3 (1994): 25–39.

[20] Adam Tooze, *Statistics and the German State, 1900–1945: The Making of Modern Economic Knowledge* (Cambridge, 2001), 36–39, 285ff.

[21] Jon Agar, *The Government Machine: A Revolutionary History of the Computer* (Cambridge, MA, 2005); and Rosemary Elliot, "An Early Experiment in National Identity Cards: The Battle over Registration in the First World War," *Twentieth Century British History* 17, no. 2 (2006): 145–76.

and during World War II a general population registration system was considered, but rejected.[22] In contrast, population registration was central to the governance of the Soviet Union from the very beginning.[23]

In addition, Nazi-era reforms of population registration and identification look very different when they are embedded in a longer history of state making than they do when we follow Aly and Roth in viewing them primarily as instruments of the Holocaust. The history of population registration in Germany reaches back to the dawn of the modern era. On the one hand, the parochial registration of births, deaths, and marriages represented the most primordial means of documenting membership in the local community and establishing eligibility for the rights and privileges associated therewith, most notably the right to charity and poor relief, which from the sixteenth century onward was increasingly understood as a responsibility that the community owed to the local poor—and to them alone. On the other hand, the counterpart to these communal privileges was the fear of outsiders, who were regarded both as potential burdens on the community and as sources of crime and disorder. The origins of the German population registration system can be traced back most directly to the practice, deployed by the absolutist state in its never-ending efforts to control these threats, of requiring that all "outsiders" be registered with the local police.

It is impossible to write a general history of population registration across the nineteenth century.[24] It was the responsibility of the individual states to register the population. In addition, the states themselves were committed to a decentralized approach, which left local officials the freedom to adapt registration requirements to the specific conditions prevailing in countryside, town, and city. Nor was there any mechanism for tracking individuals as they moved within and between states. Although the initial efforts to harmonize state regulations broke down in 1904/06, in 1928 representatives of the federal and state interior ministries agreed upon a set of guidelines to be employed in revising the population registration regulations of the individual states. These guidelines then formed the basis of both the regu-

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[22] William Seltzer and Margo Anderson, "After Pearl Harbor: The Proper Role of Population Data Systems in Time of War" (https://pantherfile.uwm.edu/margo/www/govstat/newpaa.pdf).

[23] David Shearer, "Elements Near and Alien: Passportization, Policing, and Identity in the Stalinist State, 1932–1952," *Journal of Modern History* 76 (December 2004): 835–81.

[24] The two accounts of population registration in Germany with the longest historical perspective begin with early modern Prussia but quickly narrow their focus to developments in Berlin: Holger Mühlbauer, *Kontinuitäten und Brüche in der Entwicklung des deutschen Einwohnermeldewesens: Historisch-juristische Untersuchung am Beispiel Berlins* (Frankfurt, 1995); and Ulrich Marenbach, *Die informationellen Beziehungen zwischen Meldebehörde und Polizei in Berlin* (Stuttgart, 1995). See also Lothar Beyer, "Wandel der Strategien und Kontinuität der Folgeprobleme: Automation im Einwohnerwesen," in *Informationstechnik in öffentlichen Verwaltungen*, ed. Klaus Grimmer (Berlin, 1986), 122–232; and Aly and Roth, *Die restlose Erfassung*.

lations issued in 1930 by the Prussian government and the January 1938 Reich Population Registration Ordinance, which was the first national population registration law.[25]

How did this system operate? The Reich Population Registration Ordinance, which linked registration to the occupation of a residence, rather than to legal residence, required all individuals to notify local authorities that they were moving and obtain a certificate of leaving that noted their intended future residence. Individuals were then required to register with the authorities in their new residence within one week, and to do so they had to show identification and present the certificate of leaving. In both instances they had to obtain a countersignature from the landlord verifying that they had, in fact, moved out of their old residence (or into a new one). Since the turn of the century, business groups had been calling for the institution of a general system of backward reporting (*Rückmeldung*), which would have required the population registry offices to determine the previous residence of every new resident and inform officials there of where the individual had eventually settled. This would have enabled the state to monitor the individual's movement through time and space and would have made it much more difficult for suspect populations, including criminals, political radicals, and, in particular, bad debtors, to escape their pasts. As part of a 1904 reform, the Prussian government had required registry officials to notify their counterparts in the person's previous place of residence if they had reason to believe that these officials did not know where the person had actually settled. However, in 1904 and again in 1930 the Prussian government rejected a universal backward reporting requirement as burdensome and unnecessary.

The Nazis, however, had different priorities, and they regarded a rigorously enforced universal system of backward reporting as an essential tool for systematically registering the population, mobilizing it for total war, and implementing their racial policies. Such a mechanism, which was described as the "backbone" of the entire system, could not have been implemented before 1936, when the establishment of a unified national police service created the bureaucratic infrastructure needed to transform the registries into a seamless, nationwide population surveillance and control system. The Nazis did not mince any words about the importance of the registration system in facilitating the work of the police. The stated goal of the new population registration system was the "more complete registration [*Erfassung*]" of the population and their location,[26] and the postcards that were to be used by registry officials to let their counterparts know where the newcomer had actually settled also asked the police in the person's previous place

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[25] This ordinance was issued on the basis of the Gesetz über das Paß-, das Ausländerpolizei- und das Meldewesen (May 11, 1937), *Reichsgesetzblatt*, 1937, 589–90. The official commentary is Erich Liebermann von Sonnenberg and Artur Kääb, *Die Reichsmeldeordnung* (Munich, 1942).

[26] Liebermann von Sonnenberg and Kääb, *Die Reichsmeldeordnung*, iii, 6.

of residence to let them know if the individual was wanted for a crime or questioning or whether the person had a criminal or political past that would merit closer surveillance. However, at the same time that they were enhancing the repressive potential of the registries, the Nazis were also expanding their role in collecting the information needed by the civilian administration. Registry offices were, accordingly, expected to provide information regularly to a number of other public offices, including tax offices, the Reich Statistical Office, local government (concerning compulsory immunizations, schooling, etc.), alien registration offices, vehicle registration offices, and Nazi party offices.[27]

The Nazis also developed a number of other population technologies and bent existing ones to serve new ends. A national ID card (*Kennkarte*) and a population enumeration system (albeit one that enumerated ID cards rather than individuals) were both introduced in 1938. Even though a census had been conducted in 1933, a second one was conducted in 1939. The 1939 census included two supplemental questionnaires: one to identify persons of Jewish ancestry, and another to collect information on occupational training.

In addition, as part of the plan for mobilizing the population for total war, a new registry, known as the *Volkskartei* or National Registry, was established in 1939.[28] The *Volkskartei* supplemented the population registries with a parallel registry of the local population by age cohort and sex. It also included such militarily and industrially relevant information as occupation, whether or not the person was registered with the local labor office, educational history, experience abroad and knowledge of foreign languages, the possession of special industrial, technical, or scientific knowledge and skills, the ability to operate a motorcycle, motor vehicle, or airplane, and dates of service in the military or the Reich Labor Service. Color-coded tabs—corresponding to specific pieces of information—were to be attached to the cards to facilitate their manual sorting according to selected criteria.

The military, the Reich Labor Service, and the party youth organizations all depended on the registration of the population by age cohorts. Before the establishment of the *Volkskartei*, they relied on the population and civil registries to identify their target populations. However, not only was it laborious to search through all of the registry cards in order to identify the individual members of the target age cohort; the task was complicated even further by the fact that the population and civil registries both listed women and children under the head of the household, rather than as individuals in their own right. Much of the value of the *Volkskartei* lay in the fact that it enabled officials to disaggregate the household into its individual members and then reconstitute the local population on the basis of age cohort, sex, and other criteria that could be used to mobilize these people for the specific tasks for which they were deemed best

[27] Ibid., 97ff.
[28] The official commentary is Erich Liebermann von Sonnenberg and Artur Kääb, *Die Volkskartei* (Munich, 1939). The *Volkskartei* is also treated in Aly and Roth, *Die restlose Erfassung*, 44–52, and Mühlbauer, *Kontinuitäten und Brüche*, 77–89.

suited. The value of the *Volkskartei* was further enhanced by the fact that it provided a means for validating the comprehensiveness and accuracy of both the population registries and the registries maintained by other government offices, especially the Labor Ministry.

This proliferation of registries, censuses, new filing techniques, and counterchecks among the many registries of population information represented an attempt to solve the problems of large-scale information management in the precomputer age. The main problem was that the information needed by the security agencies, the military, and economic planners—as well as the architects of the final solution—was not contained in the population registries. But even if it had been, the registries were organized alphabetically, and these paper files could not easily have been sorted according to criteria other than name or linked together in the manner of later integrated information systems. Given the state of technology at the time, separate censuses dedicated to collecting the information needed for specific purposes seemed to be the best way to meet the informational needs of the state.[29]

Since the 1930s, the military had been using punched cards to monitor raw materials and factory production, and, as manpower problems became more acute in the course of 1943, officials in the central automated data processing and reporting department of Albert Speer's omnicompetent Armaments Ministry sought to extend this system to production workers themselves. The problem, these officials noted, was not so much taking a one-time census of the workforce as processing the steady stream of changes needed to keep the information up to date,[30] and they proposed assigning every resident of the Reich a national ID number (*Reichspersonal-Nummer*) in order to facilitate the automated processing of such information using punched cards. Since these numbers could not—in the precomputer era—be used to access electronic databases containing the personal information of the individual, the card itself was designed to contain the most essential data pertaining to the productive and military function and status of the individual. In this way, the unique identifier and the relevant information on the person would be physically connected via the medium of the card itself (fig. 1), and elaborate procedures were proposed to insure that this information was kept up to date.[31]

[29] For example, in Paris the police compiled extensive master cards on the Jewish population but then copied the information onto four separate subregistries organized on the basis of family name, profession, residence, and nationality to make this information more easily accessible. See Annette Kahn, *Le Fichier* (Paris, 1993).

[30] Personal-Einzelerfassung Ansbach (undated), and Friedrich Herbst, Die Personaleinzelerfassung (September 29, 1944), both BAB R3, Nr. 1293.

[31] Tooze, *Statistics and the German State*, 257, questions whether such individual registration, which would have involved coordinating information held by four different agencies, could have played as central a role in the management of the war economy as maintained by Aly and Roth.

Fig. 1.—Draft of Hollerith punched card for use in population surveillance. Bundesarchiv Berlin R3, Nr. 1293; also reprinted in Aly and Roth, *Die restlose Erfassung*, 136. Courtesy of Bundesarchiv Berlin. The first columns from the left are reserved for the ID number (composed of gender, date of birth, state, and a running number), name, occupation, and occupation code. The right side of the card was to be used to code the four groups of identifying information denoted by the labels along the left margin: (1) the military unit in which the individual was serving or the firm where the person was employed, (2) the hospital in which the individual was convalescing (if applicable), (3) the person's home address, and (4) information on the registry office that had issued the ID number. The last columns were reserved for military rank (or, for women, marital status and number of children), fitness for service, the date on which this information had been updated, and other information.

The defeat of the Nazis brought an end to this brief phase of intensive innovation, and the breakup of the centralized national police resulted in the devolution of the population registries to the local civilian administrations. However, the idea of abolishing the population registration system and ID card requirements instituted since 1938 does not seem to have occurred to either the Allies or the Germans themselves. As Aly and Roth note, popular perceptions regarding the legitimate role of the German state in monitoring and collecting information on its citizens were permanently altered during these years,[32] and Mara Loveman has felicitously characterized the process whereby these registration, identification, and control practices came to be seen as natural attributes of the state as "the primitive accumulation of symbolic power."[33]

However, there was a lively debate over both the relative importance of the welfare administration and security functions of the registries and the role of population surveillance in a democratic society. Civilian officials claimed that the original security function of the registries had been definitively eclipsed by their growing importance for local government. As one provincial governor explained, "the city hall, not the police station, is the administrative center of the community. . . . Today local administration cannot be imagined without the population registries because of their value for many branches of municipal government."[34] Yet the Social Democratic chief of police in Dortmund insisted that the registries remained "the most fundamental element" (*Urzelle*) of public security, which could not be left in the hands of the civilian administration without endangering public safety.[35] Although differences over hospital and hotel reporting requirements blocked the passage of a national population registration law in the 1950s, state laws insured the continued functioning of the local registries, and in 1950 the Bundestag did approve a national law that required all persons subject to state-level population registration requirements to possess an ID card. However, the legislature took account of what it called "psychological" considerations and declined to require that the card include the holder's fingerprints. This was where

[32] Aly and Roth, *Die restlose Erfassung*, 141; *Nazi Census*, 146.

[33] "Civil registration lies at the heart of the modern state's extractive-coercive power, facilitating rationalized systems of conscription and taxation. It is also central to the modern state's symbolic power, conferring control over the legitimate means of individual identification," Mara Loveman, "The Modern State and the Primitive Accumulation of Symbolic Power," *American Journal of Sociology* 110 (May 2005): 1651–83, citation 1665.

[34] Regierungspräsident Düsseldorf to Innenministerium NRW, Betr.: Meldewesen (November 13, 1948), NRW NW 59, Nr. 25. See also Städtetag NRW to Interior Ministry, Betr.: Organisation des Meldewesens (December 8, 1951), NRW NW 224, Nr. 55.

[35] Hans Kanig, "Die Meldestelle als Urzelle der öffentlichen Sicherheit," *Die Polizei* 6, nos. 3–4 (1953): 24ff. See also Auszug aus Kurzprotokoll der Besprechung der Leiter der Landeskriminalämter mit dem Bundeskriminalamt am 12./13.11.1952, zu: Das polizeiliche Meldewesen im Dienste der Kriminalpolizei, LAB B. Rep. 004, Nr. 15. The police

things stood when public discussion of population registration and identification resumed in earnest in the late 1960s.

DATABASE NATION: PLANNING AND THE HESSIAN PRIVACY PROTECTION LAW

West Germany was an early mover in the field of privacy protection. Although reactions there to the expanded use of the new information and communication technologies for the collection of personal information were undoubtedly colored by memories of how population registries had been used by the Nazis (a connection that was later made explicit by the census protesters) and by their sensitivity to the existence of a totalitarian state on German soil, the main reason why West Germany moved so quickly is that it was the first country to make widespread use of computers for such purposes. However, there was no West German *Sonderweg* in the field of privacy protection, which was a trans-Atlantic movement. The real dividing line was the one separating the countries of continental Europe from the United States, where sexuality and reproduction were the foundation of privacy rights, but where personal information has enjoyed far less protection.

The Federal Privacy Protection Law (*Bundesdatenschutzgesetz*, or BDSG) was being debated at the same time as the Federal Population Registration Law, and these laws represent two halves of the same walnut. However, parallel to these developments at the national level, state and local governments were also moving ahead with the automation of their information- and labor-intensive administrative tasks and creating information systems, which could use the information generated by these administrative processes as the basis for social planning. Although the federal population registration and privacy protection laws should in theory be discussed in conjunction with one another, the connections between planning, information, data linkages, and privacy were much less visible in the debates over the federal law, which presumed an awareness of these issues but pivoted around a different set of questions, than they were in debates at the state level.[36] These connections can be clearly seen in the developments leading to the passage of the 1970 Hessian Privacy Protection Act. Not only was this the world's first computer privacy law; Hessen was also the only state to pass such a law before the Brandt administration had made clear its intention to in-

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were keenly interested in restoring the universal system of backward reporting because this gave them immediate access to the criminal history of suspect individuals, and they even wanted to expand registry notations to include additional information they believed was potentially relevant for criminal investigations.

[36] These issues included the relation between the concept of the private sphere and that of informational self-determination, the problems involved in balancing between the right to information and the legitimate privacy rights of the individual, and the question of whether there was a need for government regulation of the collection and use of personal information in the private sector.

troduce a national law. That decision sidelined other states, which were reluctant to pass their own privacy laws before the parameters of the proposed federal legislation had become clear.

The event that precipitated the passage of the Hessian law was the 1969 decision to establish both a state Central Data Processing Office (the Hessische Zentrale für Datenverarbeitung), which would absorb a state data processing center created in 1965, and a set of regional centers to handle the data processing needs of local governments.[37] Although all of the parties represented in the state legislature (the Landtag) supported the proposal, it did raise several important issues. First, what was envisioned here was an integrated system in which the state government would be able to access directly information collected by local government and held in the regional data processing centers. While this was essential to rationalizing administration and eliminating the costly process of collecting the same information for different purposes, legislators were concerned that the subordination of the regional centers to the state and the resulting loss of control over their own information would hollow out the constitutionally guaranteed autonomy of local government. Second, there was an equally visceral fear that the proposed system would further aggravate the imbalance between the information available to the executive and that available to the legislature. Ultimately, provisions were inserted guaranteeing that the autonomy of local government would not be infringed upon by the system and that the data stored in the regional centers could only be accessed by its owners; however, the Landtag did not succeed in securing direct access to the information contained in the system.

But the debate over the centers also raised two additional questions. First, the director of the central data processing center feared that the citizen would see "himself faced with an anonymous robot bureaucracy, whose inner mechanism he cannot comprehend" and that this lack of understanding would transform the latent tension between the citizen and the administration into a general crisis of trust.[38] The second issue was privacy. The debate over both the data processing centers and the proposed privacy protection law was littered with references to Orwell. As one politician wryly noted, not only had the data center law created a Big Brother in the form of the central data processing center; it had also created—in the form of the regional centers—a series of Little Brothers.[39]

One of the best early analyses of the underlying privacy problem and its relation to social planning came from Hessian Minister President Albert Osswald

[37] Hessischer Landtag Drs. VI/2072, VI/2441, *Sten. Ber.*, 6. Wahlperiode, 51. Sitzung (May 21, 1969), 2759–71, and 65. Sitzung (December 11, 1969), 3402–9, and the materials in HHStA Abt. 502, Nr. 12130–31.

[38] Klaus Bresse to Ministerpräsident, Betr.: Entwurf eines Datenschutzgesetzes (November 10, 1969), Staatskanzleiaktenzeichen 3v24/051. These files were still held in the Hessian Interior Ministry as of summer 2009.

[39] Hessischer Landtag, *Sten. Ber.*, 6. Wahlperiode, 65. Sitzung (December 11, 1969), 3404. While one Social Democratic Landtag delegate suggested that these concerns were

(SPD). In a speech that he delivered at the dedication of the Hessian Central Data Processing Office, Osswald explained that, in a highly differentiated society, developments in one domain invariably affected other domains and social subsystems and that, therefore, an overall vision or plan was necessary in order to connect, coordinate, and orient the conflicting elements of this complex whole. "In this sense modern social policy," he explained, "is a policy of conscious change and planned social transformation" for which comprehensive information was the sine qua non. To anticipate social problems and guide social development, the planned Hessian Planning Information and Analysis System would have to be able to model real social processes, and the goal was to collect the necessary information on population, infrastructure, the economy, land use patterns, and local government activity so that the administration could understand the long-term effects of policy decisions that, in view of the complexity of industrial society, could not always be anticipated without the aid of these technologies.[40]

The catch was that modeling these interdependencies required linking personal information across these functional domains. In the past, Osswald noted, the public agencies to which the individual had revealed his personal information as the condition for enjoying public services had possessed only a limited functional and geographic competence; the information that they collected was held only in paper form; and each agency had a more or less proprietary attitude toward its own files. These features insured a modicum of privacy and served as a bar to the "omniscience" of the state. However, all of this changed with the development of integrated information systems. Now, the individual citizen could no longer tell who was accessing his personal information or for what purpose it was being used, and these problems were being amplified by the new telecommunication technologies, which were also eroding the privacy protections inherent in the older way of doing things. As a result, Osswald concluded, "it has become possible in principle to peer into the private sphere and manipulate the information gained thereby."[41]

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unfounded, purely emotional fears that needed to be dispelled through greater information, a Christian Democratic colleague chided him for not taking them seriously, 77. Sitzung (July 8, 1970), 4059, 4062.

[40] Albert Osswald, "Computer im Dienste moderner Gesellschafts- und Sozialpolitik," in Osswald, *Der soziale Rechtsstaat als Herausforderung* (Stuttgart, 1974), 35–45, citation 37, and "Umfassende Information—ein Mittel zur Stärkung der Demokratie," 46–63. On the history of social planning in Hessen, see Dirk van Laak, "Mythos 'Hessenplan': Aufstieg und Wandel einer Landesplanung nach dem Zweiten Weltkrieg," in *Raumplanung nach 1945: Kontinuitäten und Neuanfänge in der Bundesrepublik Deutschland*, ed. Wendelin Strubelt and Detlef Briesen (Frankfurt, 2015).

[41] Osswald, "Computer im Dienste moderner Gesellschafts- und Sozialpolitik," 43. As Ulrich Dammann noted, the same integration effect that made such systems so attractive entailed the systematic violation of one of the fundamental principles of privacy protection:

If, as Lyon has argued, "all societies that are dependent on communication and information technologies for administrative and control processes are surveillance societies," then it was precisely at this moment that West Germany was becoming such a society.[42] The question was how to meet the dangers associated therewith. The Hessian administration initially considered proposing the creation of a "trust commissioner" (Beauftragter für Vertrauensschutz) to watch over the operation of the system and insure that personal information, as well as that of local government, was not being used in improper ways. However, Hessian officials soon decided that it would be better to address the problem in a separate law, which would enable them to formulate the idea of privacy protection in the computer age in an abstract, general manner rather than linking it to the specific issues involved in regulating the data processing centers.

The privacy protection law that was approved by the Landtag in July 1970 contained provisions prohibiting unauthorized access to personal information, reaffirming the confidentiality of such information, guaranteeing citizens the right to have incorrect information corrected, and providing for legal recourse in case the individual was injured by unauthorized access. These protections extended to all documents that were compiled for the purpose of automated data processing (both mechanical, i.e., punched cards, and electronic), to all of the information stored in such systems, and to the results of the processing of this information. The most innovative aspect of the law—one that would later be emulated by the federal government and the other states—was the decision to create a privacy commissioner (Datenschutzbeauftragter) to monitor the compliance of the public administration with the law and provide expert opinion in the area of privacy protection.[43]

Like the other early data protection laws, the Hessian law was primarily intended to insure that personal information that was processed was accurate and that the confidentiality of this information was protected against unauthorized access, disclosure, and use.[44] As we can see from Osswald's arguments, Hessian lawmakers still defined the privacy problem in terms of its relation to the repres-

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the principle of finality, which stipulates that personal information should only be used for the purpose for which it was originally collected. See Dammann, "Zur politischen Kontrolle von Planungsinformationssystemen," in *Erfassungschutz: Der Bürger in der Datenbank zwischen Planung und Manipulation*, ed. Helmut Krauch (Stuttgart, 1975), 105–17.

[42] David Lyon, *Surveillance Society: Monitoring Everyday Life* (Milton Keynes, 2001), 1.

[43] Hessischer Landtag Drs. VI/3065, 3151, 3376, *Sten. Ber.*, 6. Wahlperiode, 77. Sitzung (July 8, 1970), 80. Sitzung (September 30, 1970).

[44] These concerns were also reflected in the Code of Fair Information practices proposed in 1973 by an advisory committee to the American Department of Health, Education and Welfare.

sive power of Big Brother and his ability to peer into and invade the private sphere, and they did not consider the *normal* use of personal information within integrated information systems and the kinds of power that they generated as problems requiring legislative action. As a result, the law did not specify in detail either the conditions under which information could be collected, stored, and processed or the circumstances under which government agencies were authorized to make use of the personal information contained in the system. Such questions were inherent in the operation of integrated information systems; they were essential to the circumscription of informational privacy; they were major points of contention in the drafting of the Federal Privacy Protection Law; and they surfaced immediately in conjunction with the Federal Population Registration Law.

The Federal Population Registration Law: Planning, Information, and Public Discourse on Computer Privacy

Planning was the master concept in the political discourse of the Federal Republic from the mid-1960s to the mid-1970s. However, there was a second concept closely related to planning that has received much less scholarly attention: information. Information was the "stuff," the raw material, with which planners worked. The population registries, along with the census and the microcensus, were the most important source of such information in West Germany, and the proposed Federal Population Registration Law was the most important attempt to modernize and expand the collection of population information by the state.

Although government agencies at every level held vast quantities of information on individual citizens, these card files and individual dossiers were organized to meet the administrative, regulatory, and revenue-generating needs of the agency that produced them; information pertaining to a specific individual could not easily be linked across agencies, aggregated and analyzed for planning purposes, or acted upon; and, as a result, each agency created more work for itself and the public by collecting and maintaining all of the information needed to carry out its own duties. Integrated information systems promised to bring about a revolution in administrative practice: by linking across functional domains the discrete pieces of information pertaining to specific individuals, such systems promised to increase efficiency, generate new insights and new information, and thereby transform information processing from a bureaucratic burden into a political resource. In the words of a Siemens report describing the integrated information system planned for the state of Bavaria,

the great advantages of electronic data processing can only be fully realized when the data and information that are accumulated in the different branches of the public administration are no longer separately registered and processed. Integrated data processing, in which data is stored only once and then made available to all other users, is the decisive factor for the

efficient and functional use of such technology. . . . In such an integrated information system, administrative activity will be carried out, thanks to the practically unlimited capacity to record, process, and disseminate information, in such a manner that the results of traditional administration will be generated more rapidly and economically and a qualitatively new dimension will be brought to the process of decision making at every level of administration.[45]

The key to this change was the introduction in the second half of the 1960s of third-generation computers, which employed integrated circuits and randomly accessible memory, and advances in communications technology, which permitted the networking of computer databases and decentralized, real-time access through the use of cathode ray terminals. What glimmered in the eyes of the proponents of such systems was, according to one commentator, "an unimaginably perfect information exchange . . . in which every possible notation regarding every citizen inconspicuously comes together, fills up electronic file drawers, and can be called up at any time. . . . Today, the goal of every bureaucracy can only be—and, in fact, is already—to deposit in a central location all of the information that it has at its disposal and then to have it served back up for every imaginable purpose according to its needs."[46] This was the informational program of West German high modernism—one not without plausibility or appeal. Even as the conservative *Frankfurter Allgemeine Zeitung* warned against the dangers of Big Brother, the newspaper felt no need to distance itself from the expectation that the introduction of a national ID number would make it possible to envision a "broad panorama of rationally conceivable developmental possibilities for the needs of man."[47]

The proponents of social planning often spoke of the pivotal role of information in modern society. In the words of a memorandum commissioned by the Interior Ministry to explore the legal issues relating to privacy protection legislation, "information rules our entire life and cannot be thought away without destroying the foundation for progress, the economy, the state, and individual citizens. Society is itself virtually made possible by information [*Gesellschaft wird durch Information geradezu erst konstituiert*]."[48] Similarly, the Cologne Working Group

[45] Siemens, *Bayerisches Informationssystem*, 1–2, 47.

[46] Gerhard Fauth, "Macht durch Computer," *Kölner Stadt-Anzeiger* (August 17, 1968).

[47] "Der große Bruder," *FAZ* (December 11, 1974).

[48] Wilhelm Steinmüller, Bernd Lutterbeck, et al., *Grundfragen des Datenschutzes: Gutachten im Auftrag des Bundesministeriums des Innern* (July 1971), Drs. VI/3826, 35. On cybernetics and systems theory, see Andrea Brinckmann, *Wissenschaftliche Politikberatung in den 60er Jahren: Die Studiengruppe für Systemforschung, 1958 bis 1975* (Berlin, 2006); Philipp Aumann, *Mode und Methode: Die Kybernetik in der Bundesrepublik Deutschland* (Göttingen, 2009); Michael Hagner and Erich Hörl, eds., *Die Transformation des Humanen: Beiträge zur Kulturgeschichte der Kybernetik* (Frankfurt, 2008); and Eden Medina, *Cybernetic Revolutionaries: Technology and Politics in Allende's Chile* (Cambridge, MA, 2011).

for Scientific Political Advising argued in a 1969 memorandum to the planning department of the chancellor's office that the modern polity had to be understood as "a multidimensional formation, which is responsible for a nearly infinite spectrum of specific tasks and possible ways of fulfilling them. This polity can only fulfill its responsibilities if the state, as [Karl] Deutsch has shown, is held together through communication and if it is organized in such a manner that it continuously channels data from its domain of responsibility so that this data is used both to fulfill its responsibilities and to monitor and adapt its performance." For the modern state, "how it continuously secures, renews, and rationalizes its informational basis, how it masters and guides the informational avalanche flowing from its domain of responsibility, how it establishes and maintains communication and forestalls disruptions of both the overall system and individual subsystems, especially those resulting from disruptions of communication and gaps in information," was a matter of life and death.[49] These ideas were echoed by members of the planning staff, who argued in 1969 that in such a social system "the intensity of the exchange of knowledge is decisive for the progress of society."[50] This conception of politics as planning was often described as a system of information, feedback, and control, though the precise nature of this feedback mechanism was seldom made explicit. In this cybernetic worldview, the state ceased to be an entity standing over and against society and, instead, became a controlling or regulative force—that is, a *govern*ment—immanent in the movement of society itself. From here it was only a small step to the characterization of government agencies as "information processing centers" (*Informationsverarbeitungsstätten*)—a characterization that was meant to be taken quite literally.[51] The problem

[49] Kölner Arbeitskreis für Wissenschaftliche Beratung der Politik, Deutsches Datenbanksystem, Arbeitspaper Nr. 2: Stellungnahme zu dem Entwurf einer Konzeption (Beitrag zum Deutschen Datenbanksystem), vom November 1968 . . . (January 3, 1969), BAK B136, Nr. 26216. The internal reference here is to Karl W. Deutsch, *The Nerves of Government: Models of Political Communication and Control* (Glencoe, IL, 1963). This work, which was published in translation as *Politische Kybernetik* (Freiburg, 1969), was one of the central points of reference in German discussions on the information society. On Deutsch, see Benjamin Seibel, "Berechnendes Regieren: Karl W. Deutschs Entwurf einer politischen Kybernetik," *Zeithistorische Forschungen/Studies in Contemporary History* 9, no. 2 (2012): 334–39. This academic discourse was echoed by influential politicians. See Hans-Dietrich Genscher, "Elektronische Datenverarbeitung in Verwaltung und Wirtschaft," *Bulletin: Presse- und Informationsamt der Bundesregierung* (October 16, 1971), 1597–1600, esp. 1597.
[50] Bundeskanzleramt—Planungsstab, Überlegungen für ein umfassendes, arbeitsteiliges Datenbanksystem in der Bundesrepublik Deutschland (February 14, 1969), BAK B136, Nr. 26216.
[51] Ernst Lutterbeck, Möglichkeiten und Grenzen eines Informationssystems für Parlament, Bundesregierung und Bundesverwaltung (sog. Bundesdatenbanksystem) (1973), BAK B106, Nr. 54315.

was that the linkage between planning, information, emancipation, and modernity was so compelling that, at least initially, privacy was hardly conceived as a problem.

In the 1940s, innovations in the use of information processing technology had been driven by the desire to control the population more closely. However, causality was reversed in the 1960s, when the introduction of a national ID number became necessary in order to take advantage of advances in information technology and fully capture the efficiencies they promised. Nevertheless, administrative efficiency and population legibility were simply two different languages for describing the same phenomenon, and officials promoted the former so energetically in no small part because it also furthered their long-standing desire to enhance the latter.

The idea of a national ID number had been in the air since at least the beginning of the 1960s. The introduction of service numbers by the Defense Ministry in 1960 and social insurance numbers in 1964 to facilitate the automation of large-scale, repetitive administrative tasks made a national ID number seem like a logical, though not uncontested, next step, and the idea insured a steady flow of public comments across the decade. Although Interior Ministry officials were aware of Nazi experiments with national ID numbers,[52] their initiatives in this area owed more to contemporary needs than to institutional continuities, and in 1967/68 a number of factors came together to force the issue. In addition to the armed forces and the social insurance funds, many other large public bureaucracies, such as the postal service and the national railroad, had also begun assigning numerical identifiers to their employees and beneficiaries, and large retail firms had begun doing the same for their customers. Moreover, by that point approximately 120 cities had begun to assign unique numerical identifiers to their residents in conjunction with the automation of their population registries.[53] When representatives of federal, state, and local fiscal authorities agreed in the summer of 1967 to introduce a preliminary ID number for use in the automation of the tax system, the Interior Ministry was forced to act.[54]

The population identification system that was proposed in April 1968 was far more ambitious than a mere tax identification number. The ministry hoped that the proposed national ID number, whose introduction was one of the central goals of the law, would serve as the cornerstone for an integrated population informa-

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[52] One member of one of the many groups where these ideas were discussed was Kurt Passow, who had been involved in the original experiments with national ID numbers during World War II. See Ausschuss für Wirtschaftliche Verwaltung, Betr.: Verlegung der Sitzung des Fachaussschusses "Einheitliches Personenkennzeichen" (February 26, 1965), StAH 136-1, Nr. 447, and Aly and Roth, *Die restlose Erfassung*, 137.

[53] Drs. VI/2654: Bundesmeldegesetz (October 1971).

[54] Kommunale Gemeinschaftsstelle für Verwaltungsvereinfachung, Betr.: Zentrale elektronische Datenverarbeitung (November 27, 1968), BAK B136, Nr. 5056.

tion system that would shed the repressive stigma associated with the registry system in the past and transform the registries into the informational foundation for civilian administration and social planning.[55] The basic principle of this integrated information system was that all of the administratively relevant information pertaining to a specific individual should be collected once and only once and then stored in a single location, where it could then be made available in up-to-date form on an as-needed basis to all other users, who would thus be in a position to make use of and update this information. The local population registries were chosen as the central node of this information system because they held 90 percent of the personal information needed by the administration, and the goal of the proposed Federal Population Registration Law was to create the conditions for the efficient use of electronic data processing for such purposes.

The Federal Population Registration Law was explicitly conceived as an information law. Although the original purpose of the population registration system was, as we have seen, to facilitate the policing of the population, the architects of the draft saw themselves as continuing the transformation, begun with the 1938 Reich Population Registration Ordinance, of the registries into a multifunctional source of information for the civilian administration, and they argued that these administrative and social functions had, as a result of ongoing efforts to rationalize public administration, assumed such a prominent role that it was necessary to provide explicit legal authorization for this function.[56] Consequently, §1 of the draft stated that the task of registry officials was "to collect, administer and make available to other offices—unless otherwise specified by law—the personal information on every resident needed for the lawful fulfillment of public obligations. The exchange of personal information is to be encouraged and facilitated [*ist zu fördern*]."

In the past, the absence of a common identifier and the limitations of paper technology had multiplied exponentially the labor and cost involved in collecting the same data in multiple places and keeping it up to date, and the introduction of a national ID number was intended to solve these problems. The number was to be assigned at birth and accompany the individual from cradle to grave and beyond. However, the ID number could not perform its functions unless it were properly assigned, and procedures were established to insure that every resident was issued a number, that they were only issued one number, and that no number was issued to two different persons. The proposed ID number served three different functions in this system: it connected information to a specific person; it provided a criterion for sorting through information; and it was the basis for rec-

[55] BMI, Unterrichtung über den Stand der Vorbereitungen zur Einführung eines Personenkennzeichens (July 1, 1969), BAK B136, Nr. 5056.

[56] BMI, ed., *Personenkennzeichen: Meldewesen, Datenverarbeitung, Datenschutz* (=*betrifft*, Bd. 7, 1971), 13, and Drs. 6/2654, 7.

ord linkage or the integration of information from diverse sources.[57] Although the use of the ID number promised huge efficiency gains, these efficiencies would not materialize unless these ID numbers were widely used. It was understood that government offices would be entitled to require that individuals provide their ID numbers in order to receive public services,[58] and officials felt that the promised efficiency gains would exert an irresistible pressure (*Sachzwang*) that would force any other government agency (and private firms as well) that exchanged large amounts of information with the registries to make use of the number.[59]

This system enhanced the surveillance capacity of the state in at least three respects. First, the issuance of the ID number and its connection to identification cards and passports further intensified the state monopoly over the legitimate means of identification established by the creation of a national ID card in 1950 and enhanced the ability to identify and locate specific individuals. Second, the law called for the establishment of state-level registries, which were expected to transcend their role in monitoring the issuance of the numbers to become full-fledged population identification and information databases.[60] This was something that had never been attempted before, at least in Germany. Moreover, there were plans afoot to link these state registries to create a national population registration system, a prospect that the police were eagerly eyeing. Third, the law reinstituted—in electronic form—the universal backward reporting system that had been established by the Nazis but that had collapsed at the end of World War II, and thus reestablished a mechanism for tracking the movement of individuals within the space of the state.[61]

The draft did not systematically address the privacy question. It stated that the collection, administration, and exchange of personal information by the registries was not to infringe upon the legitimate privacy concerns (*schutzwürdige Belange*) of the individual, but it did not define what these interests were or what would constitute an infringement. However, whatever concrete constraints might have been read out of this statement were undercut by the provision that information pertaining to an individual could be exchanged with other offices if this informa-

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[57] Drs. 6/2654, 7, 6/598, 4, and Bundesminister des Innern an die obersten Bundesbehörden, Betr.: Einführung eines allgemeinen Personenkennzeichens (April 2, 1968), BAK B136, Nr. 5056, and Vermerk zum Personenkennzeichen (April 3, 1970), BAK B106, Nr. 45484.

[58] Kurzprotokoll über die Besprechung am 5. Juni 1968 über die Einführung eines allgemeinen Personenkennzeichens, BAK B136, Nr. 5056.

[59] BMI, ed., *Personenkennzeichen: Meldewesen, Datenverarbeitung, Datenschutz*, 16–18.

[60] Ibid., 12.

[61] The kind of integrated population information system envisioned by the administration was realized to a large degree by the state-level system rolled out by Rhineland-Pfalz in 1971. See Joachim Stöckle, "Die Automation des Einwohnermeldwesens im Rahmen eines Datenfernarbeitungssystems," *IBM-Nachrichten* 21 (October 1971): 897–904.

tion was needed to carry out their duties.[62] Although ministries and state agencies were constitutionally required to provide each other with information needed for the performance of their responsibilities, this doctrine of *Amtshilfe* had always been interpreted to mean that such information would be provided on a case-by-case basis based on a review of the particulars by the office providing this information. However, the new technical possibility of automated access without human intervention reinforced the programmatic commitment to the exchange of information, and the law appeared to abandon the principle of case-by-case review in favor of generalized access to registry information across the public sector.

Initially, the public was positively disposed toward the ID number. According to a 1972 survey, 70 percent of the population approved of the number, 16 percent opposed it, and 14 percent were undecided.[63] To sell the idea to the public, the administration pointed out that a number of other countries—ranging from the Benelux and Scandinavian countries to Israel and South Korea—already used such numbers. They even approached East German officials to inquire about the possibility of establishing a common enumeration system in case of future reunification, though nothing ever came of this proposal.[64]

In the 1950s and early 1960s, mainframe computers were primarily regarded in West Germany from the perspective of their potential impact on employment. Beyond this, relatively little is known about West German attitudes toward such machines and their discursive positioning in Cold War Europe.[65] However, it is important to avoid painting these attitudes in excessively dark tones in order to establish the prescience of later critics. In the 1960s, many people were fascinated by the capacity of these machines, an attitude that is playfully mocked in figure 2, where the man in the right foreground facing the reader says to the other man—with regard to their colleague, who is on his knees praying to the machine before a makeshift altar—"it really is an astonishing computer, but Müller's veneration goes a bit too far for my taste."[66]

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[62] Drs. VI/2654, 5, 16.

[63] Hertel, Betr.: Entwurf eines Gesetzes über das Meldewesen (May 9, 1973), BAK B106, Nr. 96316.

[64] BAK B106, Nr. 45493 (Personenkennzeichen im Ausland) and 45500 (Personenkennzeichen in Grossbritannien, Niederlände, Schweden, DDR), esp. Bundesminister des Innern to Bundesminister für Gesamtdeutsche Fragen (September 1968).

[65] One of the few studies of early computing in West Germany is Corinna Schlombs, "Productivity Machines: Transatlantic Transfers of Computing Technology and Culture in the Cold War" (PhD diss., University of Pennsylvania, 2010).

[66] This drawing, which had previously been published in *Die Zeit*, was reprinted in *Der Spiegel* accompanying an article dealing with the use of electronic data processing in the Hessian administration. See "Futter mit System," *Der Spiegel*, no. 40 (1969), 74–75. Metzler, *Konzeptionen politischen Handelns*, 339, notes that in the 1960s there was much fascination with computers, but little trace of later anxieties.

FIG. 2.—Cartoon by Peter Neugebauer. The caption reads: "Es ist wirklich ein erstaunlicher Computer, aber Müllers Verehrung geht mir ein bißchen zu weit" (It really is an astonishing computer, but Müller's veneration goes a bit too far for my taste). Courtesy of Staatliche Bücher- und Kupferstichsammlung Greiz.

The potential dangers posed by computers and the proposed computerized population information system were conceptualized in four distinct ways, though these different tropes often circulated in conjunction with one another. The first focused on how the concentration of so much personal information in the hands of the state, together with the greater speed with which this information could be electronically accessed and disseminated, was increasing the potential repressive power of Big Brother. The second formulation—one that was closely related to the Orwellian problematic of the first—emphasized how the integration of so many distinct pieces of personal information was making it possible to "invade" the individual private sphere and degrade the individual by rendering him transparent to those who controlled this information. The third combined a humanistic emphasis on individuality and autonomy with apprehensions, inspired in equal parts by a diffuse Cold War anxiety about totalitarianism and an amorphous antipathy to technological determinism, toward the cold, impersonal logic of computer algorithms; these attitudes, which might be characterized as a variety of the "agency

panic" described by Timothy Melley, focused on the alienation of the individual by the new technologies and his degradation to a mere object of manipulation by planners, technocrats, and their expensive electronic toys.[67] The fourth honed in on the contradiction between the limitless informational demands implicit in the logic of efficiency and the procedural protections against such arbitrary state action mandated by the rule of law—and on the ways in which the unthinking primacy accorded to the former in these debates was threatening the privacy and liberty of the individual.

If the cartoon in figure 2 reflected the fascination with computers, this fascination also had a darker side. Since the 1950s, public discourse had been shaped in part by the Cold War fear that computers could come to exercise a dictatorship over the individual that was no less pervasive and unfeeling than the totalitarian system on the other side of the Iron Curtain. A softer version of this argument reflected the fear that people might come to be ruled not by the very machines created to serve them, but indirectly by the numbers they generated.[68] Even the *Frankfurter Allgemeine Zeitung* warned that the use of mainframe computers by the state harbored "indirect tendencies toward the totalization of the state, schematization, and the degradation of the human person," though the newspaper noted that these dangers should lead to appropriate precautions rather than to the prohibition of these new technologies.[69]

But, increasingly, the debate was shaped by a growing understanding of the specific issues raised by the use of integrated information systems for population registration. In the spring of 1969, just as the first draft of the law was being circulated, the Bundestag passed a resolution asking that the administration insure that the use of new information technologies for the collection of personal information by state and local government did not encroach upon the private sphere.[70] The administration responded to these concerns in a number of ways. Officials felt compelled to refute the idea that the ID number represented a dehumanizing substitute for a personal name,[71] and Interior Minister Hans-Dietrich Genscher

[67] Timothy Melley, *Empire of Conspiracy: The Culture of Paranoia in Postwar America* (Ithaca, NY, 2000).

[68] Hans Werner Kettenbach, "Weissagende Knechte," *Kölner Stadt-Anzeiger* (May 27, 1969).

[69] Hanno Kühnert, "Tücken der Computer," *FAZ* (June 10, 1969). A few years later the *FAZ* also sarcastically equated the ID number with a dog license for citizens. "'Hundemarke' für jeden Bürger: Bedenken des Städtetags zum Personenkennzeichen," *FAZ* (December 11, 1974).

[70] *Sten. Ber.*, 5. Wahlperiode, 226. Sitzung (March 28, 1969), 12484.

[71] This complaint, which was by no means unique to West Germany, had been continuously voiced across the 1960s. One important negative point of reference in this regard was the 1921 dystopian novel by Yevgeny Zamyatin, *We*, whose protagonist was known only by his designation D-503.

(FDP) initially tried to deflect concerns about its privacy implications. The introduction of the ID number, he argued, did not represent "a conceivable encroachment upon the private sphere of the individual" because the linkage of personal information from diverse sources had already been possible using manual methods; it had simply not been economical in the past. It was computerization, he insisted, not the ID number, that had altered the economics of such linkages. The only real danger to individual privacy, Genscher argued, was the misuse of the computer, and this was something that could be prevented through proper safeguards.[72] Despite these disclaimers, pressure from all parties forced Genscher to concede that a broader privacy protection law was needed and to agree that the new population registry law would not be passed before such protections were in place. This was the origin of what would become the Federal Privacy Protection Law, and from this point onward population registration and privacy protection were joined at the hip.[73]

Public concerns about the privacy implications of the proposed population registry network were also heightened by the expansion of police surveillance described above and by uncertainty about the kinds of information that might be contained in such integrated systems. In a 1973 article entitled "100445301111," *Der Spiegel* speculated that the ID number might enable the state to bring together information on income, educational history (including such things as grades, IQ test results, and teacher evaluations, i.e., all of the information that in the United States was protected under the 1974 Family Educational Rights and Privacy Act), ethnicity and race, criminal history, participation in demonstrations and other political activities, unconfirmed (and unverifiable) accusations, speculation, and subjective judgments by the police and intelligence agencies, psychological dispositions and job skills, reading habits, and vacations, as well as medical and reproductive information and information from labor offices, municipal utilities, motor vehicle registration bureaus, hospitals, schools and universities, and the social insurance funds. The prospect that the ID number might be used in the private sector opened up the possibility that such a system would be able to draw on information from credit reporting agencies, travel agencies, mail order companies, dating and marriage counseling services, and banks. Young women often went abroad for abortions for fear that their actions would somehow find their way into police computers and later come back to haunt them. As the jurist Ruprecht Kamlah, author of an important early study of American privacy law, explained, "the only reason the state is not omniscient is because many of its agencies are unaware of the information possessed by other agencies." What people feared was that the proposed ID number would make it possible

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[72] Drs. 6/598, 5–6.

[73] Drs. 6/1223, Vermerk: Fragen des Datenschutzes (January 25, 1971), BAK B141, Nr. 60007, and the 1974 correspondence reaffirming the linkage in BAK B106, Nr. 96320.

to link together "at the push of a button" the discrete pieces of personal information that had been gathered from diverse sources for utterly disparate purposes to form an extremely problematic "profile" of or "dossier" on the individual and then instantaneously disseminate this information to other persons, who could then use it for all kinds of illegitimate and nefarious ends.[74]

Identical concerns had already been voiced by the *Frankfurter Allgemeine Zeitung*, which in 1969 had written that one city of 500,000 already maintained 126 manual registers, and "now [the citizen] will have to reckon with the possibility that, by means of a 'central computer' [and the proposed ID number], all of the 126 agencies that maintain these registries will be able to acquire a full mosaic picture of his person." The newspaper warned that such computer networks "could make the person transparent to an unbearable degree."[75]

One of the most penetrating—and hilarious—critiques of such state-sponsored population surveillance came from Diethart Kerbs, at the time a lecturer at the Pädagogische Hochschule in Berlin-Lankwitz. At Christmas 1973, Kerbs distributed a mock questionnaire from an imaginary agency with an ominous-sounding name: the Federal Bureau for the Electronic Registration of Personal Information (Bundesanstalt für datenmäßige Personenerfassung).[76] The directions explained that, according to a recent decision by the Bundestag, every citizen would soon receive an individual control number that would guarantee the total registration—in computer-compatible format—of information pertaining to his or her personal circumstances for the purpose of establishing a Federal Resident Dossier, which would be available to the police and security agencies "at all hours and without delay." The defense of the free, democratic constitutional order, the questionnaire continued in language that was redolent of the categorical assertiveness of the Nazis in security matters, required the "total informational transparency" (*totale datenmäßige Durchsichtigmachung*) of each and every citizen. While the

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[74] "100445301111—Das Schlimmste von King Kong," *Der Spiegel*, no. 48 (November 26, 1973), 66–87. This concern about how ID numbers and integrated information systems could facilitate the construction of dossiers and thus denude the individual before those who controlled such databases had aroused sharp opposition since the late 1960s. See Gerd Brüggemann, "Werden die Bürger durch Knopfdruck 'durchsichtig'?" *Die Welt* (June 25, 1969), and "Der große Bruder," *FAZ* (December 11, 1974). Others, however, emphasized the increased efficiency, transparency, accuracy, and accessibility that computers brought to public administration. See Burckhard Lutz and Klaus Dill, "Die Verwaltung, der Computer und der Bürger," in *Der Mensch und die Technik*, Beilage to *Süddeutsche Zeitung* (September 18, 1969).

[75] Kühnert, "Tücken der Computer." The Germans were also receptive to criticisms of ID numbers coming from abroad. One frequently cited work was John Brunner, *The Shockwave Rider* (New York, 1975; German ed., 1979).

[76] The questionnaire is found in BAK B106, Nr. 45484. This was the only public protest against the ID number that had so far come to the attention of the relevant state and federal officials.

optimal control of the individual would be insured through the complete collaboration of all public and private entities that collected personal information, the flier explained, the corresponding transparency of the state for its citizens would have to take a back seat for the foreseeable future. Persons who opposed the undertaking would, like Jews in the Third Reich, have to wear a cloth "A" (for anarchist) on their clothing, and those who refused would be sent to a work camp.

The questions ranged from the basic (name, address, family members) to the expected (Do you take drugs? Do you own books by Marx, Engels, Lenin, Mao, Brecht or other authors hostile to the democratic state?) to the playfully subversive (Are you homosexual/heterosexual? If yes, why? If not, why not?). But it also contained a number of questions that had in fact been used by authorities to assess the political reliability of applicants for civil service jobs: Do you live in a communal residence (*Wohngemeinschaft*)? Have you ever actively participated in strikes? Did you ever run for student office in college? Are you a member of a political organization? If so, which? Have you ever been the subject of a police investigation? Have you ever hit a police officer? Do you frequently sign resolutions? Have you ever associated with anticapitalist persons or organizations? If so, which? Many of these questions were intrusive and their answers intrinsically prejudicial (as they were intended to be), and there was ample reason to be concerned about the collection of such information by a state that was fundamentally suspicious of so many of its citizens.

However, the main participants in the debate over computer privacy were politicians, officials, representatives of the police and intelligence agencies, legal scholars interested in the new issues raised by computers, computer and information scientists, and representatives of the entire gamut of organized interest groups who participated in the country's system of corporatist consultation. There was strong support for privacy legislation in all of the major parties, though there were also persistent lines of cleavage within them. Both the Liberals and the Christian Democrats had to balance between business wings that were concerned about both the costs of complying with privacy legislation and its implications for the way they did business, on the one hand, and those wings of their parties concerned primarily with privacy and civil liberties, on the other. However, the general public did not become broadly interested in the question until the end of the decade.

In light of continuing criticism, in May 1974 the Bundestag domestic affairs committee held a public hearing on the draft Federal Privacy Protection Law and the privacy aspects of the Population Registration Law. The testimony at this hearing pitted two important values against each other: efficiency and privacy. The representative of the Central Bureau for Efficiency in Local Government Administration linked the growing need for personal information to the changing nature of the state and the expanding scope of its activity. "The more that the center of gravity of the tasks for which the administration is responsible is displaced from acts of sovereign control and the protection of individual rights

against infringements by others [*Hoheits- und Eingriffsverwaltung*] to the promotion of individual welfare [*Daseinsvorsorge*]," he argued, "the more that increasingly detailed information is required—information that may also reach into the intimate sphere of the citizen." For the cities to fulfill their planning and social service responsibilities, he insisted, "the unrestricted provision of the personal information required by local government is—to the extent that this information is necessary for the lawful discharge of public functions—indispensible."[77]

Other persons, however, were critical of key elements of both laws. Kamlah, for example, argued that the flow of data within the integrated population information system envisioned by the law was to be determined by the needs—unspecified and potentially unlimited—of the administration and that such a general authorization to collect personal information meant that citizens could theoretically be required to provide practically any information that might conceivably be needed by any office for one purpose or another. Part of what Kamlah was trying to do with his testimony was to gain acceptance for the then-novel notion that the mere collection of personal information itself had to be explicitly authorized by law because it represented an infringement upon the liberty and privacy of the individual, and he warned the committee that problems of public administration "cannot be solved by turning the principles of the rule of law on their heads."[78]

Public support for the ID number and the information effect that it made possible began to erode across the first half of the 1970s. According to a 1976 survey, 39 percent of the persons surveyed thought that the national ID card would have only positive effects, 11 percent only negative effects, and 27 percent both positive and negative. The same survey showed that 60 percent of the population had never heard of "privacy protection" (*Datenschutz*), that only 4 percent claimed to be well informed regarding legislative initiatives in this area, and that people were much more concerned about the misuse of personal information by the private sector than by the government.[79]

The cumulative effect of ongoing discussions of how computers worked and of the potential privacy implications of the proposed population information system ultimately moved the Bundestag to make substantial modifications to the draft Population Registration Law.[80] The domestic affairs committee declined to revisit the provision of the law that made the agency requesting personal information responsible for determining the legality of this request. However, in June 1972

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[77] *Datenschutz/Meldegesetz: Sachverständigenanhörung, Gesetzestexte; Aus der öffentlichen Anhörung des Innenausschusses des Deutschen Bundestages vom 6. Mai 1974* (Presse- und Informationszentrum des Deutschen Bundestages, 1974), 204–6.

[78] Ibid., 201ff.

[79] Datenschutz—Unbehagen an Computer und Personenkennzeichen (May 14, 1976), BAK B136, Nr. 14280.

[80] See the materials in BAK B136, Nr. 14280: Melderecht, Ausweis- und Passrecht.

the Interior Ministry decided against including hotel registration and identity verification requirements in the law.[81] In October 1974 ministry officials decided to remove the ID number from the personal information that could be made available on request to private individuals. And in November 1974 the domestic affairs committee decided to strike the programmatic passage encouraging the exchange of personal information.[82] Since the purpose of the integrated population information system was to have the registry offices gather the information needed by other agencies and make it available to them, the first step was for the agencies using this information to determine exactly what they actually needed, and the codification at the end of 1974 of a standard data record containing some 200 pieces of information went some way toward meeting privacy concerns because this exhaustive enumeration—large as it was—served as a bar to the discretionary collection of even more information.[83] Finally, in early 1976 the domestic affairs committee voted to prohibit the use of the ID number as a unique identifier by private sector information systems.

The administration expected that these were the last changes that would have to be made in order to secure parliamentary approval and that from this point on it was just a matter of waiting until the Privacy Protection Law had been finalized so that both pieces of legislation could be approved by the Bundestag at the same time. However, the most important development did not come until May 1976, when the Bundestag legal affairs committee unexpectedly came out against the law, arguing that the data linkages made possible by the ID number contradicted the 1969 microcensus decision of the Constitutional Court, which had ruled that the use of state power "to register and catalog the individual personality in its totality" would violate the country's constitutional commitment to human dignity. What sense did it make, the committee asked, to approve a privacy protection law if its stated goals were going to be undermined by the introduction of a national ID number? Although the motion itself came from the Christian Democrats, it was supported by both the Liberals and the Social Democrats.[84]

[81] Problem der "Identitätsprüfung" im Melderecht (May 26, 1972) and the memorandum by the Interior Minister (June 30, 1972), both in BAK B106, Nr. 45446.

[82] Niederschrift über die Sitzung der Berichterstattergruppe "Datenschutz-/Meldegesetz" (November 12, 1974), BAK B106, Nr. 96320.

[83] On the content of this 200-item standard record, see Niederschrift über die Sitzung der Berichterstattergruppe "Datenschutz-/Meldegesetz" (December 18, 1974), Anlage 1, and Niederschrift (November 12, 1974), which details the flow of specific pieces of information between the registry office and twenty other agencies and offices, both in BAK B106, Nr. 96320.

[84] Protokoll: 97. Sitzung des Rechtsausschusses (May 5, 1976), BAK B141, Nr. 60025, Auernhammer, Vermerk, Betr.: Sitzung des Rechtsausschusses (May 5, 1976), BAK B106, Nr. 96326, Kurzprotokoll. 111. Sitzung des Innenausschusses (May 19, 1976), BAK B106, Nr. 96325, BVerfGE 6, 1, and "Die große Nummer wird nicht gemacht,"

This decision implicitly bundled together concerns about humanism, invasion of privacy (i.e., the registration and cataloging of private life), and efficiency, and the proposed Population Registration Law ultimately faltered because the legislature had grown concerned about the privacy implications of the very data linkage mechanisms on which the promise of the information revolution in government rested.[85] As one official explained in a postmortem, the law had been rejected because "we have of late become increasingly cognizant of the dangerousness of the ID number, whereas in past years the claims of the Federal Interior Ministry and the states regarding the rationalizing effect [of the number] and the needs of social planners were, unfortunately, accepted uncritically." He suggested that it was time to shift the balance of political discourse away from the defense of the constitutional order by the state and, instead, to pay more attention to the defense of individual freedoms against the state.[86] Although the administration contested the committee's reasoning, the decision was a political disaster, and Interior Ministry officials seemed to be at a loss with regard to how to proceed. However, the administration had too much invested in the undertaking to let it simply drop, and the wave of terrorist acts that rolled across the country in 1977 brought security issues to the forefront of public attention—and, in so doing, gave new life to the population registry law.

In the winter of 1977/78 the Interior Ministry circulated a new draft Population Registration Law. Although the law did not include the national ID number, it still envisioned the population registries as the core of a national population information system. However, it also sought in more explicit ways to enhance the value of the registries for the police and intelligence agencies. Among other

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Vorwärts (May 27, 1976). This move was a reaction to the decision by the Bundestag domestic affairs committee to retreat from its previous decision to make the protections contained in the draft Federal Privacy Protection Law substantially more rigorous than those contained in the original administration draft.

[85] These events trailed similar developments in the United States, where the computerization of Internal Revenue Service operations in the early 1960s led to the new requirement that tax filers provide their social security numbers on their tax returns. However, in 1973 a committee appointed by the Secretary of Health, Education and Welfare recommended against the adoption of a national ID number "that would enhance the likelihood of arbitrary or uncontrolled linkage of records about people" and the expanded use of the SSN for such purposes. United States Department of Health, Education and Welfare, *Records, Computers and the Rights of Citizens: Report of the Secretary's Advisory Committee on Automated Personal Data Systems* (1973), 108–22, citation 122. The reasoning here was similar to that of the Germans: "There is nothing peculiarly American about the feeling that the struggle of individual versus computer is a fixed feature of modern life. The discussions that have taken place in most of the industrial nations revolve around themes that are familiar to American students of the problem: loss of individuality, loss of control over information, the possibility of linking data banks to create dossiers, rigid decision making by powerful, centralized bureaucracies" (167).

[86] Großkopf, Grobe Zusammenfassung der Problematik Datenschutz/Personenkennzeichen (May 17, 1976), BAK B136, Nr. 14280.

provisions, the law would have required the states to establish automated central address registries that were to contain, in addition to basic identifying data, information on the identification documents held by the individual, including the serial numbers of ID cards and passports. This latter provision would have enabled the police and the intelligence agencies to use these serial numbers as ersatz ID numbers to access the state registries.[87]

This draft aroused widespread opposition, and Gerhart Baum (FDP) withdrew it shortly after he became Interior Minister in June 1978. The BDSG had gone into effect at the beginning of that year, and Baum was both more sensitive to privacy concerns than his predecessor and, after the events of the German Autumn, in a better position to heed these concerns. As a result, the revised Population Registration Framework Law (*Melderechtsrahmengesetz*) that was submitted to the Bundestag in March 1980 differed in fundamental ways from previous versions.[88]

In drafting this law, the primacy of administrative efficiency was replaced, in the words of State Secretary Andreas von Schoeler (FDP), by the primacy of privacy protection (*Datenschutz*).[89] The most important difference was that the new law no longer sought to make the population registries into the foundation for a population information system and, instead, only charged the population registries with the more limited responsibility of collecting the information needed to determine the identity and locality of the nation's residents. In accordance with this formulation, the information that the registries could collect on their own authority was much more limited than the 200-item standard record approved earlier in the decade, and the specific pieces of information they could collect were exhaustively enumerated by the law. While the law permitted the registries to collect the information specifically required to implement certain federal laws, it also followed the informational economy of the BDSG in specifying that any additional information collected to facilitate the administration of other laws could only be used for these specific purposes, rather than for general administrative or planning purposes. Such compartmentalization was the antithesis of the integrated information processing and social planning system that had inspired the original version of the Population Registration Law. This compartmentalization was reinforced by other provisions that authorized the backward reporting of limited identifying information and spelled out the conditions under which the information contained in the registries could be made available to other agencies, including the intelligence agencies. These provisions made this law, which was approved by the Bundestag without major changes in June 1980, and the new tenth book of the Social Insurance Code, which was adopted two months later,

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[87] Maihofer to Chef des Bundeskanzleramtes (January 25, 1978) and the attached November draft, BAK B136, Nr. 14280.

[88] Drs. 8/3825: Entwurf eines Melderechtsrahmengesetzes.

[89] *Sten. Ber.*, 8. Wahlperiode, 213. Sitzung (April 23, 1980), 17136, and Drs. 8/3825, 12.

into the first domain-specific privacy laws that applied the general principles of the BDSG to concrete problems raised by the use of personal information in specific areas of the public administration.[90]

Legislative intentions notwithstanding, the privacy implications of the Population Registration Framework Law were anything but clear. On the one hand, the law contained a principle of parsimony stating that the registries should only be assigned auxiliary tasks if these were intrinsically related to their basic mission of identifying and locating the population. However, it also allowed the states to require the registries to collect additional information needed to carry out state laws, and there was nothing in this clause to prevent the states from using this discretionary authority to effectively recreate at the state level a population information system similar to the one that had been rejected at the federal level. On the other hand, many of the states wanted to use this authority to require the storage of the serial numbers of identification documents. While privacy advocates argued that such a provision subverted the intent of the federal law, which had specifically excluded these numbers from the basic information to be collected, such arguments could not easily be reconciled with the National Identification Card Law. This law, which had been approved by the Bundestag in January 1980, prohibited the use of these serial numbers to access information held in computer databases, but it allowed the police, prosecutors, and the Border Police to use them for precisely such purposes.[91]

"Sagt die Wahrheit ungeniert, ist am Arsche tätowiert"

The transparency project described in the preceding pages succeeded to a large degree. The German population was much more legible to the state at the end of the period under study here than it had been at the beginning. This claim would be even more evident if there were space here to discuss the tamper-resistant, machine-readable ID card and passport that were introduced at the beginning of the 1980s and the controversies that surrounded them.

By the middle of the 1980s the developments described above were beginning to leave their mark on German popular culture. One can get a sense of apprehension regarding the looming surveillance state from the rock singer Udo Lindenberg, who in 1985 released a cheeky song in which he parodied the ostensible virtues of the national ID number. Lindenberg described the ID number as a convenient reminder "in case I forget my name"; it was "both practical and

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[90] *Sten. Ber.*, 8. Wahlperiode, 225. Sitzung (June 25, 1980), 18257–63, *BGBl.* (1980), 1429–36, and, on the amendment to the Social Insurance Code, *BGBl.* (1980), 1469–1502, esp. 1484ff.

[91] *BGBl.*, 1980, 270. On these issues, see the correspondence in the archives of the Berlin Privacy Commissioner pertaining to the amendment of the state population registration law (No Aktenzeichen, Landesmeldegesetz).

individual"; and it was a perfect way to preserve one's unique identity in a sea of people called Schmidt, Müller, "Udo, Dave or Karl-Heinz." That's why, the stanza concluded, "I'd rather be called D-4718161." But for all of the playful sarcasm that he poured—to a technomusical rhythm—on the ID number and the claims of greater convenience and citizen-friendliness, in the final line Lindenberg insisted in a darker, more abrupt tone that it was no longer possible to dissemble, camouflage, or evade the eye of the state. Everyone might as well go ahead and tell the truth about his or her administrative identity because—via the ID number and the databases to which it is linked—this information was virtually tattooed on the body: "[S]*agt die Wahrheit ungeniert, ist am Arsche tätowiert.*"[92]

However, this was not a one-way process. In *The Nation-State and Violence*, Giddens postulated that the rationalization and intensification of each of the four institutional clusterings of modernity gave rise to social movements directed against the consequences of these processes: a labor movement against the principle of private property, an ecological movement against the disenchantment and exploitation of nature, a peace movement against violence as a mechanism of social organization, and movements seeking to expand democratic participation in order to redress the imbalances of power resulting from the intensification of surveillance.[93] I would argue that the politicization of privacy at the turn of the 1970s represented just such a response to the expanded use of the new information and communication technologies for population surveillance. This new privacy consciousness was first institutionalized in the Hessian Privacy Protection Law, the Federal Privacy Protection Law, and the privacy provisions of the population registration and ID card laws.[94] After the trauma of the German Autumn, concerns about the intensification of police surveillance steadily moved into the political foreground, and in spring 1983 the census inspired a loose coalition of liberals and the Alternative Left, which had developed out of the remnants of the post-1968 New Left, to challenge the prerogatives of the state in the courts and on the streets. These concerns were validated by the December 1983 census decision of the Constitutional Court, which provided a constitutional anchor for the privacy rights set out in the Federal Privacy Protection Law; they were one of the main issues through which the Green Party forged its own political identity during the 1980s; and they have reemerged in modified form—in response to social media and the world wide web—in the Pirate Party, which has been seeking to

[92] See Lindenberg's two-part "Datenbank/D-471 81 61," http://www.udo-lindenberg .de/datenbank.57851.htm/, http://www.udo-lindenberg.de/d_471_81_61.57826.htm. The line can be translated "[You may as well] Tell the truth without reserve, it is tattooed on your ass."

[93] Giddens, *The Nation-State and Violence*, 310ff.

[94] For a contemporary account of West German debates on surveillance and privacy, see Hans Peter Bull, *Datenschutz oder Die Angst vor dem Computer* (Munich, 1984). Bull was the first federal privacy commissioner.

contest state surveillance while promoting greater transparency on the part of the government itself. Although these concerns have also provided the background for public reaction to the revelations by Edward Snowden concerning the previously unimagined scope of America's global surveillance of the digital domain, the reaction by the German public has been characterized more by a sense of indignation than by a clear analysis of the dangers of such surveillance, and this, together with the still-unclarified role of previous administrations and the German intelligence agencies in the collection of this information, as well as the absence of a clear strategy for rolling back American surveillance, kept the topic from becoming a central issue in the recent election.[95]

The tension between the intensification and the contestation of state population surveillance continues to shape politics in reunified Germany down to the present day. In conjunction with a 2006 reform of the provisions of the Basic Law relating to the federal structure of the state, authority for the regulation of the population registry system was transferred from the states to the federal government. While the legislation of the 1960s and 1970s had envisioned a network of local population registries, the draft of a new Federal Population Registration Law circulated in 2007 provided for the creation of a single, nationwide population registry; it would also have permitted the exchange of information between the registry and a large number of public agencies, including tax authorities, the police, and the intelligence agencies.[96] The effect would have been to create a population information system that was substantially more centralized and integrated than the one envisioned in the 1960s. However, this Christian Democratic proposal provoked strong opposition from both the Social Democrats and the Liberals, and the centralist features, which were often compared with those that had existed in East Germany, were dropped.[97] Similarly, in 2009 the Bundestag approved the creation of a database (ELENA) to collect information on earnings, work history (including illness and work actions), and related social information on the entire economically active population. However, the last thing that I saw at the end of a 2010 research trip to Germany was a television interview in which longtime Hessian privacy commissioner Spiros Simitis warned against the dangers of this system, and widespread public opposition led the Merkel administration to abandon the program only eighteen months after it had begun operation.

One form in which this permanent dialectic of surveillance and privacy has repeatedly surfaced in the preceding pages has been the conflict between the welfare function of the population registration and information system first codified

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[95] The scope of government surveillance of postal and telephone communication in West Germany has recently been documented in Josef Foschepoth, *Überwachtes Deutschland: Post- und Telefonüberwachung in der alten Bundesrepublik* (Göttingen, 2012).

[96] See http://philipbanse.de/docs/Referenenentwurf_Meldegesetz.pdf.

[97] "Schäubles Einwohneramt," *taz* (June 28, 2008), "Schäubles Entwurf fürs zentrale Melderegister entzweit Koalition," *Der Spiegel* (June 27, 2008), and Drs. XVII/7746.

by the Nazis and the use of this system for discipline and control. If the devolution of the population registries onto local government after 1945 and the subsequent struggle by the police to regain control over them had originally been more of an administrative turf war, the census decision gave this dispute a constitutional importance, and the issue was brought to a head at the beginning of the 1980s by the drafting of a new state population registration law in Berlin in order to implement the changes required by the Population Registration Framework Law. After the census decision, the Berlin House of Delegates asked Ernst Benda, a former federal Interior Minister (CDU), the recently retired president of the Constitutional Court, and the intellectual force behind the census decision, to assess the constitutionality of the proposal to reorganize the city's population registry, but to leave it under the overall authority of the police president. In his memorandum, Benda argued that population registration and policing were functionally distinct responsibilities and that, as long as the primary purpose of the police was the prevention and investigation of crime, any balancing between privacy and security by the head of the police would invariably be prejudiced in favor of the latter. Benda also insisted that the decision on how best to balance between these conflicting goals was the proper responsibility of those persons elected to represent the community, not such appointed bureaucrats as the police president, and the city administration followed his recommendation in creating a freestanding population registration office. This set in motion a nationwide trend to set up independent population registration offices, which were often rebranded in consumerist, neoliberal terms such as citizens' service bureaus (*Bürgerämter*).[98]

The passage of the Federal Privacy Protection Law quickly set in motion the progressive juridification of information processing in the public and private sectors. As one jurist pithily summarized the underlying principle: "Nullum datum sine lege" (no information without a law).[99] This trend was intensified by the census decision, which required the revision of a number of major laws, including the packet of security laws that was the top domestic priority of the Kohl administration, the country's statistical, census, and archive laws, and the laws regulating the country's population information and identification system, as well as the police laws and the Code of Criminal Procedure, in order to bring them into accordance with the principles laid out by the court.

However, despite the inflationary juridification of the collection and use of personal information, one should be wary of overestimating the limitations placed on

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[98] Benda, Gutachtliche Äußerung zu verfassungsrechtliche Fragen des Entwurfs eines Meldegesetzes für das Land Berlin (December 28, 1984), Berlin DSB (No Aktenzeichen, Landesmeldegesetz).

[99] Herbert Fiedler in BT Innenausschuss, Protokoll über die interne Anhörung zu den Gesetzentwürfen zur Änderung des BDSG, Drs. 8/3608 and 3703 (April 21/22, 1980), BayHStA StK 13129. Bull has recently made a similar point in "Konkreter Realismus statt abstrakter Polemik: Ist Datenschutz ein Grundrecht?" *Neue Gesellschaft/Frankfurter Hefte*, no. 12 (2009), 34–37, esp. 35.

police use of population registry information by federal privacy legislation. The privacy provisions of the 1980 Population Registration Framework Law prohibited the processing and exchange of personal information in the absence of specific legal authorization. The catch was that the registries were not prohibited from sharing their information with other public agencies as long as these agencies were authorized to obtain this information; in turn, the possibility that these other agencies might make such requests provided the rationale for the collection of far more information than was needed for the performance of the core responsibility of the registries. In reality, therefore, the privacy of the personal information contained therein depended less on the protections afforded by the registry law itself than on whether such access was authorized by other legislation. Although the Christian Democrats had originally been strong supporters of privacy protection, their attitudes shifted fundamentally between the mid-1970s and the mid-1980s, when they began to equate the defense of privacy rights with the protection of criminals ("*Datenschutz ist Tatenschutz*") and to insist that privacy rights had to be subordinated to the efficient functioning of the security agencies, which alone could guarantee the authority of the state and, through this, the freedom of the individual. Although the Liberals tried to introduce a number of limitations and qualifications, the federal information laws that were revised in the 1980s largely reflected the priorities of the senior coalition partner, and in practice they permitted the police and intelligence agencies virtually unfettered online access to all of the information contained in the local population registries.

The upshot was that, as the civil liberties activist Udo Kauß wrote with respect to the debate over a national ID card law, the explicit prohibition of a central ID card registry "did not . . . prohibit anything that was not already—in another manner, though at the cost of enormous technical effort—a reality in the population registries and the technical infrastructure through which they are connected." As a result, the efforts of the privacy commissioners to prevent the creation of a national registry of personal information amounted to little more than tilting at windmills: "Rightfully endeavoring to prevent the creation of a central population registry, they sought to continue [in the debate over the national ID card] a confrontation that had already been lost in the domain where it should have properly been fought: the field of population registration."[100] In the end, therefore, legislative initiatives that were designed to limit state population surveillance tended, instead, to authorize access to the registry information they ostensibly sought to protect and thereby sanctioned most of the novel surveillance practices developed since the 1970s.

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[100] Kauß, "Das neue Ausweissystem—eine Lücke wird geschlossen," in *Der neue Personalausweis*, ed. Jürgen Taeger (Hamburg, 1984), 41–88, citations 70, 79.