

## PRIVACY AND POWER

Edward Snowden's leaks exposed fundamental differences in the ways Americans and Europeans approach the issues of privacy and intelligence gathering. Featuring contributions from leading commentators, scholars, and practitioners from both sides of the Atlantic, the book documents and explains these differences, summarized in these terms: Europeans should "grow up" and Americans should "obey the law." The book starts with a collection of chapters acknowledging that Snowden's revelations require us to rethink prevailing theories concerning privacy and intelligence gathering, explaining the differences and uncertainty regarding those aspects. An impressive range of experts reflect on the law and policy of the NSA-Affair, documenting its fundamentally transnational dimension, which is the real location of the transatlantic dialogue on privacy and intelligence gathering. The conclusive chapters explain the dramatic transatlantic differences that emerged from the NSA-Affair with a collection of comparative cultural commentary.

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# PRIVACY AND POWER

A Transatlantic Dialogue in the Shadow  
of the NSA-Affair

Edited by

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The *German Law Journal*, in cooperation with the School of Law and the German and Russian Department at Washington and Lee University, extended and expanded the conversation in the framework of the "German Law in Context Seminar" that took place at Washington and Lee University in the fall of 2014. The seminar featured lectures from several of the book's contributors (Roger Crockett, Laura Heins, Bernd Holznel, Sarah Horowitz, and Summer Renault-Steele).

The discussion resumed at a two-day symposium in December 2014 that was hosted by the Max Planck Institute for Foreign and International Criminal Law in Freiburg, Germany. Carolin Hillemanns

(a Senior Research Fellow at the Max Planck Institute) and Margaret Hu (Washington and Lee University School of Law) provided visionary leadership for that program. Because many of these chapters were contributions to these particular discussions they are shaped by and respond to those distinct conversations and contexts. This gives them twofold value: they document the tenor of the discourse in the immediate aftermath of Snowden's revelations; and they lay a foundation for developments in the years since 2013.

The project also served as the basis for immensely productive conversations between me and young Germans, who are particularly passionate about these issues. The book's chapters formed part of the curriculum for the sessions of Working Group 6 at the 2015 *Studienstiftung* Summer Academy in Neubeuern, Germany. Similarly, the book's chapters served as the curriculum for a series of lectures I was invited to give at the University of Greifswald in December 2015. In those settings my faculty colleagues – Andreas Paulus and Uwe Kischel – offered invaluable insight and proved to be lively discussion partners on these questions.

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I mention these institutions and events not only because I want to acknowledge the role they played in helping realize my vision for this book. I also want to demonstrate that there is genuine – even determined – interest in a transatlantic dialogue on these and many other important issues. These programs and institutions show that the infrastructure is in place to pursue this important conversation.

This book's title deliberately draws on the title of Daniel Solove's seminal article, "Privacy and Power: Computer Databases and Metaphors for Information Privacy," 53 *Stanford Law Review* 1393 (2001). Rosa Ehrenreich also used the phrase in the title to her essay reacting to Jeffrey Rosen's excellent book *The Unwanted Gaze* (2001). That essay published as "Privacy and Power," 89 *Georgetown Law Journal* 2047 (2000–01). The book's contributors and I are indebted to these (and many other) pioneers in this field. I hope they appreciate the old axiom that "imitation is the sincerest form of flattery."

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