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Larry Frohman

## »Only Sheep Let Themselves Be Counted«\*

### Privacy, Political Culture, and the 1983/87 West German Census Boycotts

2010/11 was census time for the United Nations and its member countries, and in Germany preparations for the May 2011 census went off without any major disruptions.<sup>1</sup> This stands in stark contrast to the situation in the 1980s, when opposition to the planned 1983 census brought about a wave of protests, a legal challenge that led the country's Federal Constitutional Court to overturn the census law in the name of a new constitutional right to privacy, and then in 1987 a second wave of protest directed against a revised census law.

Although the law authorising the census had been approved in March 1982 without controversy<sup>2</sup>, in January and February 1983 a nationwide boycott movement seemed to appear from nowhere. Initially, at least, the Kohl administration, which assumed power in March of that year in coalition with the FDP, regarded the boycott more as a matter of concern for the police than for the political system and failed to realise that opposition to the census was not limited to a fringe of anarchists, *Autonome*, communists, and Greens. In fact, there was substantial opposition to the census among the supporters of all three of the established political parties. A study undertaken for the Federal Ministry of the Interior in fall 1983 showed that 45% of the entire population disagreed with the statement that everyone should complete the census form; the rate for supporters of the liberal FDP was 27.5% and for the conservative CDU/CSU a surprising 30.7%. Half of the people questioned opposed the census because they feared the misuse of their information; the rate was 31.4% among FDP supporters, 40% among CDU/CSU supporters, 60% among SPD supporters, and a whopping 92% among supporters of the Greens.<sup>3</sup>

Rather than taking to the streets, liberal and conservative adherents of the established political parties turned to the courts for redress, and two weeks before the scheduled start of the census the country's Federal Constitutional Court (the »Bundesverfassungsgericht«) – in a move that dumbfounded the administration – issued a temporary injunction blocking the census. In its final ruling on the matter in December 1983, the Court con-

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\* The title is taken from: Die Grünen, Nur Schafe werden gezählt, 1987, Archiv Grünes Gedächtnis (AGG), Berlin, B. II. 1, Nr. 2522. I would like to thank Maja Stadler-Euler and Gisela Wild for consenting to an interview (23. November 2009) and for granting me access to their papers relating to the census decision. Also, I found many of the newspaper stories that are cited according to their proper publication data in the Pressearchiv of the »Otto-Suhr-Institut« in Berlin. Part of the research for this essay was funded by DAAD. I would like to thank Young-sun Hong for her constant stream of constructive criticism. I would also like to thank Bob Moeller, Holger Nehring, and Carola Sachse for their comments and suggestions.

1 In July 2010 the »Arbeitskreis Vorratsdatenspeicherung« filed a complaint with the »Bundesverfassungsgericht« asking that the census be stopped. However, the court declined to accept the case for review. See URL: <[http://wiki.vorratsdatenspeicherung.de/images/VB\\_Zensus\\_anonymisiert.pdf](http://wiki.vorratsdatenspeicherung.de/images/VB_Zensus_anonymisiert.pdf)>, and URL: <[http://www.bundesverfassungsgericht.de/entscheidungen/rk20100921\\_1bvr186510.html](http://www.bundesverfassungsgericht.de/entscheidungen/rk20100921_1bvr186510.html)> [both 27.10.2010].

2 To be more precise, the census, which had originally been planned for 1981, had been delayed for two years by disagreements over how to reduce its total cost and how burdens were to be distributed between the federal states and the federal government. But no one had challenged the census in principle.

3 The survey by ipos/Institut für praxisorientierte Sozialforschung can be found in Bundesarchiv Koblenz (BAK), B 106, Nr. 115173.

cluded that parts of the planned census violated the right to privacy, or what it called the right to »informational self-determination« (*informationelle Selbstbestimmung*), implicit in the country's constitutional commitment to human dignity and the free development of the individual personality. The decision, however, did not mark the end of the matter. While the Kohl administration immediately set about drafting a new census law that would meet the conditions set by the Court, it continued to disparage the privacy concerns that had motivated the 1983 protests and to insist on conducting a traditional *Totalerhebung* – that is, a count in which census takers are charged with seeking out and documenting every person residing within an assigned geographical area. This position limited the possibilities of constructive dialogue with a mistrustful public and ultimately led to a second boycott of the census, which had been rescheduled for May 1987. This second boycott was a bitter, highly contentious affair that dragged on for a year as protesters struggled to get their message out and defend themselves against a state that regarded the boycott as a virtual terrorist challenge to its authority.

Why did the census become the object of such controversy, and how did the boycott and the census decision of the Federal Constitutional Court alter the political culture of the Federal Republic? Virtually nothing has been written on the topic since the 1980s.<sup>4</sup> The boycotts themselves are mentioned only in passing in both the growing historical literature on the 1980s and the vast literature on new social movements, despite the fact that they present abundant fodder for sociological theorising. And, in contrast to the extensive legal commentary on the census decision, a historical analysis of the Court's reasoning in that decision has yet to be written.<sup>5</sup>

Although the country's first privacy protection (*Datenschutz*) laws had been passed in the 1970s, awareness of these laws and concern about the ways in which technological change were endangering personal privacy had, by and large, remained restricted to a body of experts in government and academia. What the census protests did was to set in motion a rapid learning process that, within a matter of months, made privacy, that is, control over the collection and use of personal information, into one of the central political issues of the 1980s and beyond. Aside from the fact that only in the past few years have the 1980s become the object of historical study, one of the reasons for this neglect is that the census was both the object of protest and focal point for a set of related concerns that, until that point, had largely remained unarticulated<sup>6</sup>, and in the pages that follow I would like to make four main arguments concerning the census, personal information, the impact of the new information technologies and the census decision on civil liberties, and the historical significance of the boycott movement.

First, the boycotts are as much a part of the history of the present as an attempt by the successors of the New Left to master the country's unmastered NS past. The most important interpretation of the boycotts was formulated by Götz Aly und Karl-Heinz Roth in »Die restlose Erfassung«. In this volume, which was researched and written during the first round of the boycott and which exerted a pervasive influence on public thinking about the census, Aly und Roth argued that the various population technologies employed by

4 *Matthew Hannah*, *Dark Territory in the Information Age. Learning from the West German Census Controversies of the 1980s*, Ashgate 2010, is the only notable exception. But see also *Nicole Bergmann*, *Volkszählung und Datenschutz. Proteste zur Volkszählung 1983 und 1987 in der Bundesrepublik Deutschland*, Hamburg 2009.

5 The most recent major study is *Marion Albers*, *Informationelle Selbstbestimmung*, Baden-Baden 2005.

6 See, for example, *Freimut Duve*, *Katalysator gegen den Orwell-Staat*, in: *Jürgen Taeger* (ed.), *Die Volkszählung*, Reinbek 1983, pp. 25–30, esp. p. 26; *Zwölfter Tätigkeitsbericht des Hessischen Datenschutzbeauftragten*, 19.1.1984, p. 6, *Hessischer Landtag*, Drucksache 11/473, and *Wilhelm Steinmüller*, *Der aufhaltsame Aufstieg des Geheimbereiches. Vom Verfassungsstaat zum Sicherheitsstaat*, in: *Kursbuch* 1979, No. 56, pp. 169–198.



the Nazis played a central role in the implementation of their racial policies. They left no doubt that, in the hands of the bureaucrats who continued to shape government policy and practice, the census remained an instrument of social control and that the boycott remained the only line of defence against the creeping authoritarianism of a state that had learned little from the Nazi past.<sup>7</sup> On the other hand, Andreas Wirsching has argued in his recent »Abschied vom Provisorium« that the parallels drawn by the census opponents between the Nazi regime, the spectre of an Orwellian Big Brother, and the role of the census in the Federal Republic were »occasionally plausible, but frequently inadequate«.<sup>8</sup> In this work Wirsching views the new social movements of the 1980s as a defensive reaction to the structural changes in economic and cultural life since the beginning of the 1970s, and he argues that the more limited support for the 1987 boycott can be attributed to the emergence of a new, neo-liberal social formation, which embraced the new technologies as a solution to the economic problems of the previous decades and – gradually – as a means of personal self-realisation.

I will return below to Wirsching's claim that the critical attitude towards the new information technologies on the part of the census protesters was the product of a specific, historically-limited constellation. Here I would like to point out that, despite their opposing conclusions, both Aly/Roth and Wirsching measure the legitimacy and significance of the boycotts against the parallels that the protesters drew with the ›Third Reich‹. However, viewing the boycotts through the lenses of the Nazi past obscures other, more important factors that have not been the object of sustained analysis. In the 1970s and 1980s Germany was – after the United States and possibly Japan – the most technologically advanced country in the world. Without denying that the boycott was shaped by the memory of Nazi rule, I will argue that the protests were much more directly influenced by the new information technologies (that is, computers, databases, and the cable networks and telecommunication systems through which they were linked), which had been widely introduced in the public and private sectors since the late 1960s, and that the rhetoric of totalitarianism and surveillance only acquired its specific resonance in relation to these technologies and the disciplinary effects to which they gave rise.<sup>9</sup>

7 Götz Aly/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. In the preamble to the second edition (2000), Aly and Roth claim that subsequent research has substantially confirmed their description of the ways in which these population technologies were implicated in the »Final Solution«. However, *Gudrun Exner/Peter Schimany*, *Amtliche Statistik und Judenverfolgung. Die Volkszählung von 1939 in Österreich und die Erfassung der österreichischen Juden*, in: GG 32, 2006, pp. 93–118, suggest that census data could not have played as great a role as Aly and Roth claim because this data was largely outdated even before the census could be completed and the results collated.

8 *Andreas Wirsching*, *Abschied vom Provisorium. Die Geschichte der Bundesrepublik Deutschland 1982–1989 / 90*, München 2006, pp. 393–398, citation p. 398 (all translations by the author).

9 The works that most influenced the understanding of these technologies and the dangers they posed were *Peter Brödner/Detlef Krüger/Bernd Senf*, *Der programmierte Kopf. Eine Sozialgeschichte der Datenverarbeitung*, Berlin 1981; *Monika Binas/Burckhard Kretschmann* (eds.), *Das Datennetz. Computer bedrohen die Freiheit*, Heidelberg 1983; *Rudolf Lindner/Bertram Wohak/Holger Zeltwanger*, *Planen, Entscheiden, Herrschen. Vom Rechnen zur elektronischen Datenverarbeitung*, Reinbek 1984; *Herbert Kubicek/Arno Rolf*, *Mikropolis. Mit Computernetzen in die »Informationsgesellschaft«*, Pläne der Deutschen Bundespost, wirtschaftliche Hintergründe, soziale Beherrschbarkeit, technische Details, Berlin 1986, and *Joseph Weizenbaum*, *Computer Power and Human Reason. From Judgment to Calculation*, San Francisco 1976 (German translation 1978). For an attempt to quantify West Germany's position in the global market for information technology, see *Informationstechnik. Konzeption der Bundesregierung zur Förderung der Mikroelektronik, der Informations- und Kommunikationstechniken*, Deutscher Bundestag, 10. Wahlperiode, Drucksache 10/1281.

Second, not only were the privacy laws and the census boycotts a response to technological change. The post-war welfare state represented an immense engine for taming the contingencies of industrial society, and social planning was the technology through which this goal was to be achieved.<sup>10</sup> But the deepening of the welfare state, the enthusiasm for social planning, and the increasingly reflective approach towards the management of large-scale social processes in West Germany from the 1960s into the 1980s gave rise to an unquenchable thirst for personal information to support the statistical construction and administrative management of the population. I would also argue that the opposition to the surveillance state that crystallised around the census represented a delayed reaction to the expanded collection and use of personal information by a welfare state that was coming to understand the growing number of problems that it faced, including both social problems and crime and terrorism, in terms of the languages of risk, (in)security and prevention. While most social theorists used the term »information society« to describe the ways in which new technologies were altering work processes and firm structures (and to analyse the social effects of these changes), social planners, technocrats in business and government, and protesters were more keenly attuned to the productivity and power of information itself.<sup>11</sup> As one of the earliest works on information and privacy in Germany explained in the cybernetic vocabulary that was so popular at the time, »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 constituted by information« (»Gesellschaft wird durch Information geradezu erst konstituiert«).<sup>12</sup> This information was, as Interior Minister Gerhart Baum explained in 1979, necessary for the functioning of the modern »information and communication society.« Although information could not make modern industrial society less complex, »concrete facts can, however, render the fog of complexity more transparent and controllable.«<sup>13</sup> The recent literature on social planning has emphasised the precipitous disintegration of the social-liberal planning project in the very years of its seeming triumph.<sup>14</sup> However, although this may hold true for comprehensive macro-level social planning, planning did not so much collapse as retreat into the interstices of public and private bureaucracies and mutate into other, less visible forms, and expanded access to individual data on the clientele of the vast German social administration remained central to its functioning.

10 On the dynamic of risk, information, and contingency, see *Ulrich Bröckling*, *Vorbeugen ist besser ... Zur Soziologie der Prävention*, in: *Behemoth* 1, 2008, pp. 38–48.

11 The concerns of the present essay are generally not addressed in the literature on »Wissensgeschichte« and the »Wissensgesellschaft«. For an introduction to the contemporary debate on the information society and its connections to the question of privacy, see *Hessische Landesregierung* (ed.), *Informationsgesellschaft oder Überwachungsstaat. Strategien zur Wahrung der Freiheitsrechte im Computerzeitalter*, Symposium der Hessischen Landesregierung, 2 Vol., Opladen 1986.

12 *Wilhelm Steinmüller/Bernd Lutterbeck/Christoph Mallmann et al.*, *Grundfragen des Datenschutzes. Gutachten im Auftrag des Bundesministeriums des Innern*, Juli 1971, p. 35, *Deutscher Bundestag*, 6. Wahlperiode, Drucksache, 6/3826.

13 In an address to the *Deutscher Bundestag*, 29.11.1979, *Hessisches Hauptstaatsarchiv (HHStA)*, Wiesbaden, Abt. 502, Nr. 5570b.

14 The literature on social planning has grown rapidly in recent years. See *Gabriele Metzler*, *Konzeptionen politischen Handelns von Adenauer bis Brandt. Politische Planung in der pluralistischen Gesellschaft*, Paderborn 2005; *Matthias Frese/Julia Paulus/Karl Teppe* (eds.), *Demokratisierung und gesellschaftlicher Aufbruch. Die sechziger Jahre als Wendezeit der Bundesrepublik*, Paderborn 2003, and *Michael Ruck*, *Ein kurzer Sommer der konkreten Utopie – Zur westdeutschen Planungsgeschichte der langen 60er Jahre*, in: *Axel Schildt/Detlef Siegfried/Karl Christian Lammers* (eds.), *Dynamische Zeiten. Die 60er Jahre in den beiden deutschen Gesellschaften*, Hamburg 2000, pp. 362–401.

The expanded collection of personal information was a historical innovation. It altered established relations between the citizen and the state, as well as those between individual citizens. If we analyse the language of the protesters, we can see that they employed a rhetoric of mistrust, objectification, and instrumentalisation. They were afraid of being digitised (or informationalised), networked, cabled, misplanned, and sold out (*verdatet, vernetzt, verkabelt, verplant, and verkauft*). They saw the census (*Volkszählung*) as a forced interrogation of the people (*Zwangsbefragung*) or an inquisition into its soul (*Volksverhör*), as a painful measure being inflicted upon the nation (*Volksquälung*) by a state whose motives were neither clear nor trusted, as a kind of mass snooping program on the part of the government (*Schnüffelaktion*), and as an effort to ferret out the secret thoughts of the citizenry (*Aushorchung*). They feared that they would become »transparent citizens« (*gläserne Bürger*) standing naked and impotent before the gaze of the omniscient and perhaps malevolent »surveillance state« (*Überwachungsstaat*). These concerns antedated the census itself, and the privacy legislation of the 1970s, the boycotts, the census decision, and then the flood of privacy-related legislation that followed across the remainder of the 1980s represented an attempt to assuage these fears and resolve the underlying conflicts by recasting the changing social, political, and informational relations between citizens, the state, and each other in binding juridical form. One of the main landmarks on the intellectual terrain of the 1970s was the debate between Niklas Luhmann and Jürgen Habermas over the nature of sociological systems theory and social communication. I would argue that their work represents an attempt to understand the penetration of public and private bureaucracies and their information collection practices into the pre-existing communicative structures of the life-world and that the analysis below will help us contextualise and historicise their theoretical labours – and thereby move beyond the hermeneutic horizon of the times.<sup>15</sup>

As we shall see in greater detail below, the expanded use of computers to collect and process personal information gave these conflicts an additional dimension. Office machines, punched-card tabulators, and, since the 1950s, computers had been used for routine mass calculations and data processing in such areas as payroll and pensions. However, planning depended on finding ways to use computers to run scenarios that would project developmental trends in a specific domain of social life (population trends, for example) and relate them to parallel developments in other areas (such as public finances, schools, health and social services, technology), which constituted the environment of the first system and whose autonomous needs and effects had to be reflexively incorporated into the planning logic of the primary system.<sup>16</sup> It was this synthetic act that transformed data into information.

One of the first major initiatives of the German government in the informational sphere was a plan to transform the local, manual population registries into a computerised national population information system (based on a proposed national identification number) that was expected to become the primary source of demographic and social information for planning at every level of government. However, not only did this plan generate

15 As Spiros Simitis wrote, »the transparency achieved through automated processing creates possibly the best conditions for colonisation of the individual's lifeworld«; *Spiros Simitis*, Reviewing Privacy in an Information Society, in: University of Pennsylvania Law Review 135, 1987, pp. 707–746, citation pp. 733f. Although this article will focus on conflicts with the state over the census, it is important not to lose sight of equally important issues in the private sector. See *Larry Frohman*, Virtually Creditworthy. Privacy, the Right to Information, and Consumer Credit in West Germany, 1950–1985, in: *Jan Logemann* (ed.), Cultures of Credit. Consumer Lending and Borrowing in Modern Economies, Washington 2012, pp. 129–154.

16 For one perspective on this historical moment, see Hessian Minister President *Albert Osswald*, *Der soziale Rechtsstaat als Herausforderung*, Stuttgart 1974, pp. 35ff.

the initial impulses that led to the privacy legislation of the 1970s. This population information system was quickly co-opted by the police and intelligence agencies, who wished to supplement it with machine-readable, counterfeit-proof identity cards and passports to create a more modern electronic population identification and control system that they felt was necessary to fulfil the primary *raison d'être* of the state: to provide security against crime and external enemies. However, the proposed use of the 1983 census to correct the local population registries fuelled the belief that the real purpose of the census was less to gather the aggregate statistical information needed for better social planning than to insure that every single member of the population was registered by the state, which would then be in possession of comprehensive, up-to-date, digitised information on the life of each individual citizen and where they could be found. From this perspective, the boycotts need to be seen as a deferred unfolding of the contradictions between the emancipatory intentions underlying the informational and planning policies of the social-liberal era and their unintended disciplinary effects.

The political environment was not favourable to the discursive resolution of these conflicts, and the intense preoccupation with domestic security across the 1970s and the corresponding expansion of state surveillance capacity gave a distinctly German edge to concerns that were, at bottom, similar in all western industrialised countries. The dramatic conflicts between the state and environmental and peace activists in the late 1970s and early 1980s drew their energy from the intense sense of personal, existential affectedness (*Betroffenheit*) on the part of the protesters, and the chasm that separated the world-views of the two parties kept each from recognising the other as a legitimate discursive partner.<sup>17</sup> This political paralysis was theorised by both the left and the right in terms of a crisis of ungovernability.

However, it is important to remember that, at the time of the 1983 census, »1984« lay just around the corner.<sup>18</sup> Concerns about the totalitarian potential of police surveillance touched close to home for many, and, although the widespread fear that the development of this technological and informational infrastructure was accelerating Germany's drift towards an authoritarian surveillance state may in retrospect appear as overly exaggerated, this concern was not taken out of thin air. Since the early 1970s the police and intelligence agencies had been charged with investigating the political loyalties of all applicants for government jobs in order to prevent the leftist enemies of the state from completing their long march through the country's decision-making institutions, and in 1972 the Federal Criminal Police rolled out its new computer system INPOL, which linked the information held by the individual state police forces to form a national police information system. Moreover, during these years the »Innenministerkonferenz« was pushing a plan to expand the authority of the police to collect personal information and take full advantage of the new information technologies at their disposal so as to more effectively prevent,

17 Thomas Dannenbaum, »Atom-Staat« oder »Unregierbarkeit«? Wahrnehmungsmuster im westdeutschen Atomkonflikt der siebziger Jahre, in: Franz-Josef Brüggemeier/Jens Ivo Engels (eds.), *Natur- und Umweltschutz nach 1945. Konzepte, Konflikte, Kompetenzen*, Frankfurt am Main 2006, pp. 268–286, and Gabriele Metzler, *Staatsversagen und Unregierbarkeit in den 70er Jahren?*, in: Konrad Jarausch (ed.), *Das Ende der Zuversicht? Die siebziger Jahre als Geschichte*, Göttingen 2008, pp. 243–260.

18 All of these concerns were described at length in Jochen Bölsche (ed.), *Der Weg in den Überwachungsstaat*, Reinbek 1979, which originally appeared as a series of articles: Die neue Welt von 1984, in: *Der SPIEGEL*, 3.1.1983, pp. 19–30; APuZ 1984, No. 34; and Kursbuch 1981, No. 66, on »die erfaßte Gesellschaft«. For an analysis of this rhetoric, see Nicolas Pethes, *EDV im Orwellstaat. Der Diskurs über Lauschangriff, Datenschutz und Rasterfahndung um 1984*, in: Irmela Schneider/Christina Bartz/Isabell Otto (eds.), *Medienkultur der 70er Jahre*, Vol. 3: *Diskursgeschichte der Medien nach 1945*, Wiesbaden 2004, pp. 57–75.

rather than just investigate and prosecute, crime. The ideologically polarised and slightly paranoid public mood of the time was brilliantly captured by Heinrich Böll in his 1974 novella »The Lost Honour of Katharina Blum«, which appeared long before the conflict between the RAF and the state reached its bloody high point in 1977. The census boycotts represented the first major public protest against the expansion of state surveillance capacity, and after 1982 the Kohl administration (especially Interior Minister Friedrich Zimmermann) played up the challenge to the constitutional system of the Federal Republic posed by the boycott precisely in order to better profile its own determination to reassert the authority of the state and bring an end to the crisis of ungovernability.

Third, my research on the census boycotts is part of a larger project on surveillance, privacy and personal information in post-war Germany, and the 1983 census decision stands at the centre of that project. James Whitman has recently identified what he sees as a difference in principle between what he sees as two geographically distinct »cultures of privacy«: a continental tradition, which has employed the concept of privacy to extend to a democratic citizenry the sphere of discretion once reserved to the nobility, and an American tradition, which is based on individualist principles and an 18th-century suspicion of state power.<sup>19</sup> In this essay I will argue that the census decision marked the breakthrough into German constitutional thought of something very much akin to what Whitman sees as a distinctly American view of privacy designed to limit the intrusion of the state into the individual private sphere. This defence of privacy against the state and the bureaucratic colonisation of society created a space for collaboration between the liberals who had driven much of the social reform agenda of the Brandt administration and the libertarian sensibilities of the alternative milieu and the new social movements.<sup>20</sup> Moreover, I will show 1. that the court's reasoning in the case relied on the same critical analysis of the impact of the new technologies on individual liberties as that employed by both the protesters and the liberals who challenged the census in court, 2. that the Court provided an explicit constitutional foundation for the privacy protection laws of the 1970s by making the privacy rights of the individual, rather than reason of state or promise of efficiency gains, into the standard against which the authority of the state to collect and use personal information would henceforth have to be measured, and 3. that it did so by basing these rights on a new conception of informational privacy, which was widely perceived as being better attuned to the dangers posed by computers and information technologies than the older sphere theory that had dominated post-war German thinking on privacy.

Fourth, and last, the census decision was a mixed blessing for the protesters because it legitimated their concerns without necessarily eliminating the underlying cause. As a result, although the 1987 census failed in practice to live up to the privacy protections that it promised, protesters were hard put to find firm legal ground for continued opposition. However, there are other important issues beyond these immediate political happenings. Although the census protests are hardly mentioned in the literature on the topic, they should be seen as a logical extension of the culture and concerns of the alternative movements of the 1970s.<sup>21</sup> The centre of gravity of the privacy movement was located within the alternative milieu (with the nascent Green Party and Alternative Lists providing its organisational infrastructure and national coordination), though it also drew support from

19 James Q. Whitman, Two Western Cultures of Privacy. Dignity versus Liberty, in: Yale Law Journal 113, 2004, pp. 1151–1221.

20 Wirsching, Abschied vom Provisorium, pp. 160ff.

21 The boycotts are mentioned exactly once each in Sven Reichardt/Detlef Siegfried (eds.), Das Alternative Milieu. Antibürgerlicher Lebensstil und linke Politik in der Bundesrepublik Deutschland und Europa 1968–1983, Göttingen 2010, and Karl-Heinz Stamm, Alternative Öffentlichkeit. Die Erfahrungsproduktion neuer sozialer Bewegungen, Frankfurt am Main 1988.

parliamentary liberalism, the institutional defenders of personal privacy (i. e. the federal and state privacy commissioners), and, ultimately, the Constitutional Court itself. Here I would like to suggest 1. that the census boycotts represent one element of a distinct privacy-based social movement comparable in origins, aims and significance to the environmental, peace, and women's movements and 2. that, like these other movements, the census boycotts represented not only a political conflict over the authority of the state, but also a conflict over the nature of politics itself.

The question of privacy figures prominently in all attempts to define the nature of the alternative movement and its relation to mainstream society. In a certain sense, privacy was the *sine qua non* of the alternative movements. However, the privacy that they staked out for themselves was quite different from that of the niche society postulated for East Germany. Like the broader alternative culture of the 1970s and early 1980s, the census protesters rejected both the established parties and the New Left because they abstracted from, and ultimately neglected, what they perceived to be the genuine needs and desires of the individual. Instead, alternative movements sought to retreat into an informational space where they could revolutionise everyday life and pursue their search for immediacy and authenticity without subordinating their experiences to the distorting, alienating logic of bureaucratic rule – a danger that was epitomised by the intrusion of the census, and with it the police, into the milieu.<sup>22</sup> The pause that followed in the wake of the census decision created an opportunity for the Greens, who had emerged as the ambivalent leaders of a protest movement that they could neither control nor disavow nor provide with a coherent strategy capable of winning broad public support, to think systematically about the ways in which personal information was used to govern in modern society, and the struggle over privacy, personal information and the census played an important, though heretofore overlooked, role in shaping the self-understanding of the Greens across the 1980s.<sup>23</sup> The Greens argued that the collection of personal information by the state and other bureaucratic organisations imposed upon the individual abstract categories that reflected the strategic, technocratic interests of those who controlled the collection process – thereby alienating the individual from his own information, from his sense of identity, and from the possibility of controlling the way that this information was used. The Green response to this problem, as we shall see, was to invert the logic of technocratic governance and argue that information collection by both the public and private sectors had to begin and end with the »real needs and desires« of the concrete individual, who had to be involved in an integral manner in determining what information was to be collected and how it was to be used.

This essay is divided into five sections. The first section sets the stage by describing the privacy issues raised by the 1983 census. In the second section I will argue that the protesters' critique of the surveillance state grew out of their understanding of the normalising, disciplinary effects of the new information technologies and that their arguments represented a direct response to the writings of Horst Herold, president of the

22 *Joseph Huber*, *Wer soll das alles ändern. Die Alternativen der Alternativbewegung*, Berlin 1980, pp. 65 and 77. Huber has rightly argued that this retreat from mainstream political and social life into a more private domain should not be equated with the depolitisation of the movement. But see also his comments on the (mis)fortunes of personal privacy within the alternative milieu itself (pp. 81f.).

23 The ecological concerns that were otherwise so important for the Greens did not figure prominently in their analysis of the census and surveillance. In this respect Andrei Markovits and Philip Gorski are correct in maintaining that the real focus of Green politics was the defense of both the reproductive sphere and individual autonomy in relation to bureaucratic domination. See *Andrei Markovits/Philip Gorski*, *The German Left. Red, Green and Beyond*, Oxford 1993, p. 153.

Federal Criminal Police (»Bundeskriminalamt«) and the leading advocate for the informationalisation of police work. In the third section I will examine the 1983 boycott and the arguments made before the Federal Constitutional Court in April of that year. In the fourth section will I argue 1. that the oral arguments later that year pivoted around diverging interpretations of the impact of the new information technologies on the constitutional rights of the individual and 2. that the Court's reasoning in the decision largely adopted the account of the disciplinary effects of the new technologies laid out by both the protesters and the liberal complainants in the case. The final section will discuss the aims, organisation, and achievements of the 1987 boycott and then show how the Greens sought to develop an alternative form of statistical knowledge that would avoid the problems caused by the authoritarian, technocratic use of personal information by modern bureaucracies.

## I. THE CENSUS

Since the beginning of modern censuses in the late 1700s, a small number of people have always protested that these enumerations represented illegitimate snooping by the state into the private affairs of the citizen. But the first large-scale protest came in 1971, when 30% of the Dutch population refused to return their census forms (with many others providing patently inaccurate information). The Dutch boycott was inspired by both memories of the nefarious purposes to which carefully-maintained population registry data had been put by the German occupiers and fears of how, in the absence of sufficient privacy protection, the digitisation of census data was enhancing the repressive potential of such vast stores of personal information. The difficulties in establishing adequate privacy protections eventually led to the indefinite postponement of the next census, which was scheduled for 1981.<sup>24</sup>

In Germany, even before the scheduled start of the 1983 census, statisticians were privately worried that similar concerns might lead to organised opposition there.<sup>25</sup> However, the first call to boycott the German census, which was issued in September 1982 by the War Resisters' International, found only limited resonance. The members of this group were incensed by the fact that, although the government was spending hundreds of millions of marks on the census and deemed this data so essential that it permitted substantial civil penalties to be levied on those who refused to provide the required information, the government itself refused to answer questions of such vital importance to the public as the location of nuclear missiles. Asserting a right to such information, the initiative proclaimed – with a concluding rhetorical flourish that was eventually adopted by virtually every group opposing the census – »if the administration remains silent regarding nuclear missiles, then we'll remain silent for peace! Politicians ask – but citizens do not answer!« (»wenn die Regierung für Atomraketen schweigt, schweigen wir für den Frieden! Politiker Fragen – Bürger antworten nicht!«).<sup>26</sup>

24 *Hermann Bleich*, Den Holländern steht die Freiheit vor der Statistik, in: *Frankfurter Rundschau*, 12.4.1983, and: *Der gläserne Bürger*, in: *Der SPIEGEL*, 21.2.1983, pp. 104–105. The 2008 Norwegian film »Max Manus: Man of War« contains scenes in which the population registry office is bombed by the resistance and the backup cards stored in a private apartment are destroyed to prevent the Germans from using the files to draft local citizens for military service.

25 Senator für Inneres an den Senator für Finanzen, Durchführung der Volks-, Berufs-, Wohnungs- und Arbeitsstättenzählung in Berlin, 8.11.1981, Landesarchiv Berlin (LAB), B Rep. 004, Nr. 1125.

26 *Politiker fragen – Bürger antworten nicht!*, *Umweltmagazin* 1982, No. 6, pp. 35–36, in: LAB, B Rep. 004, Nr. 1121. The Berlin »Verfassungsschutz« characterised the War Resisters' Inter-

But the boycott was really sparked by events in Hamburg. The Hamburg protests grew out of a meeting that held to discuss the dangers of the human resources information systems that were coming into use at the time. Although the census question was introduced into the discussion by a woman who had been summoned to work as a census taker, the participants quickly realised how explosive the issue was. The Hamburg protesters were initially opposed to what they considered to be the »unsocial« effects of the census. Not only would the correction of the population registries on the basis of census information, for example, have flagged people who claimed that they lived in West Berlin in order to avoid the draft, but who actually lived elsewhere. Information on average rents in specific areas for apartments of a certain size would, the Hamburg protesters argued, put landlords in a position to raise rents in the same way that knowledge of wage levels would enable employers to push wages down. If people did not defend themselves, they would be »digitized, cabled, planned, and sold out« (»verdatet, verkabelt, verplant und verkauft«).<sup>27</sup>

Although the rhetorical power of these arguments clearly exceeded their analytical precision, the protest nevertheless took on a life of its own, and commentators used phrases such as snowball, avalanche, and prairie fire to describe the speed at which the boycott movement spread across the country. By the beginning of March, the Hamburg coordinating office counted 400 boycott groups nationwide.<sup>28</sup>

The first question that needs to be asked is why so many people found so many provisions of the 1983 census so dangerous. Not only did it not differ in any significant respect from previous post-war censuses; its scope had even been reduced in comparison to the 1970 census in order to save money, and many of the more intrusive questions had been eliminated.<sup>29</sup> Virtually all of the controversial provisions were contained in § 9 of the census law, which regulated who was to have access to what kinds of census data for what purposes.

Like its 1970 counterpart, the 1983 census law permitted local governments, which were directly responsible for carrying out the census, to compare their population registries with census data and to correct the former on the basis of the latter. The registry correction – in conjunction with the proposed creation of a national population information system – needs to be seen as a major effort to expand the ability of the state to continuously monitor its population across its entire territory.<sup>30</sup> In addition to enabling the state to keep track of its citizens, up-to-date registry data was important because this information was the basis for determining representation in elected bodies at every level of government, calculating federal transfer payments to the states, and a number of other purposes. Since people often failed to notify authorities when they changed their residence and were

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national as an umbrella group for a number of anarchist organisations. See Senatsrat Magen an die für die Dienstaufsicht über die Statistischen Landesämter zuständigen obersten Landesbehörden, Betr.: Boykott der Volkszählung, 11.2.1983, LAB, B Rep. 004, Nr. 1114. For a brief account of the 1983 boycott, see *Eva Hubert*, *Politiker fragen – Bürger antworten nicht!*, in: *Taeger*, *Die Volkszählung*, pp. 254–266.

27 *Ibid.*, pp. 258f.; *Volkszählung 1983. Beherrschen Computer das Land?* (pamphlet published by those who had attended the December conference); Grün-Alternative-Liste (Hamburg), *Volkszählung 83. Die Schaffung des »gläsernen« Menschen*, [spring 1983], both in: Archiv des Instituts für Sozialforschung (AlfS), Hamburg, SBe 444, VoBo-Büro Hamburg, Box 1; and *Volkszählung?* (Reutlingen), AGG, B. I. 1, Nr. 243.

28 *Hubert*, *Politiker fragen – Bürger antworten nicht!*, p. 260. Der SPIEGEL later reported 500 such initiatives involving tens of thousands of protesters: Ohne Drohgebärde, ohne Angst, in: Der SPIEGEL, 18.4.1983, pp. 17–23, esp. p. 20.

29 BGBl. I, 1982, p. 369, and Deutscher Bundestag, 9. Wahlperiode, Drucksache 9/1068.

30 The »Wohngemeinschaften« and squats remained the last blank areas on the state's map of its own interior. On police efforts to render these dark territories light and legible: *Hannah*, *Dark Territory*, pp. 16–23 and 68–70.



thus counted in more than one place, the registry count systematically overestimated the size of the population, but it did so in geographically unpredictable ways. Moreover, many people intentionally registered as residents in different places in order to take advantage of both differing approaches to policing the *Berufsverbot* and more lenient unemployment assistance regulations.<sup>31</sup> But the situation was complicated by the fact that, while individuals with more than one residence had in the past been permitted to declare which residence was their primary one, the recently-approved national population registry law required local government to determine primary residence based on criteria laid down in that law. As a result, getting an accurate census count depended on determining legal (rather than actual) residence, and the registry comparison appeared to be the most efficient way of simultaneously carrying out these interrelated tasks.

But this comparison created an obvious potential for abuse. The Munich government, for example, offered census takers a premium for uncovering people who were living in the town without having registered with local officials, and this premium was doubled for unregistered foreigners. In both 1983 and 1987, younger neo-Nazis volunteered as census takers in order to ferret out undocumented aliens, as did some of their unreconstructed elders.<sup>32</sup> And, as noted above, the comparison could have negative consequences for individuals whose truthful answers to census questions did not correspond to registry data. The »Bundestag« tried to sidestep the issue of self-incrimination by stipulating that information obtained from the census could not be used to the disadvantage of the individual. However, it was not at all clear how officials could be expected to ignore their responsibility to enforce the law simply because the knowledge they obtained came through ostensibly confidential census data, and both the protesters and the Federal Constitutional Court quickly saw through this transparent contradiction.<sup>33</sup>

§ 9.2 permitted the federal and state statistical offices to provide individual population census data – excluding name – to federal and state ministries (and to other agencies designated by these ministries) if such information was necessary for the lawful performance of the responsibilities of these ministries. The problem was that excluding the individual's name was hardly a guarantee of anonymity. One of the main points of the protesters was that computers now made it relatively easy to de-anonymise such individual data as long as one had access to a minimal amount of name-based supplemental information that could be compared against census data. In addition, § 9.2 appeared to permit, for example, the Interior Ministry to make census data on every citizen available to the Federal Criminal Police, tax authorities, or the intelligence agencies, that is, to precisely those agencies that had the supplemental data needed to de-anonymise this individual data. This was obviously not the intent of the »Bundestag«, but there was nothing in the wording of the law that specifically prohibited such an action, and this provision led the protesters to characterise the Federal Statistical Office as a potential »data supermarket«, where the most diverse government agencies would be able to freely help themselves to easily de-anonymised census data. Coming as it did only a few years after the massive manhunt for the kidnappers of

31 One prominent German professor recently admitted at a conference that at the time he was registered in five different cities in five different federal states for just these reasons.

32 Hamburger Rechtsradikale bieten sich als Volkszähler an, in: Frankfurter Rundschau, 9.5.1987. See the letter from one elderly woman, who volunteered to again work as a census taker not because she valued the premium for uncovering illegal residents, but because doing so lay close to her heart, LAB, B Rep. 004, Nr. 1117. The same issue has recently surfaced with regard to the 2011 census. See URL: <<http://www.taz.de/1/politik/deutschland/artikel/1/sachsen-gegen-npd-volkszaehler/>> [10.4.2011].

33 Berlin and other cities contemplated circumventing this problem by means of a separate law that would have permitted census takers to have individuals complete a separate declaration of registry data. Senator für Inneres, Senatsvorlage Nr. 1021/82, 10.8.1982, LAB, B Rep. 004, Nr. 1120.

industrialist Hanns Martin Schleyer, census protesters feared that considerations of domestic security might in some future crisis situation tempt the government to abrogate the nominal protections traditionally accorded to census data (as American officials had done to facilitate the internment of Japanese residents during the Second World War).<sup>34</sup>

Lastly, § 9.3 had been the source of constant friction during the drafting of the law because the statistical needs of local government were very different from those of the state and federal governments. Statistical data that had been aggregated across larger geographical areas was of little use to local officials, who governed on a much smaller scale.<sup>35</sup> But while local governments were unhappy about shouldering a large portion of the costs of a census conducted primarily to meet the needs of the federal government, the federal government was reluctant to allow local officials access to individual information with no strings attached because within such a small geographical area it was virtually impossible to maintain the anonymity of such data. The final version of the law permitted local government to obtain name-based individual data for their own statistical analyses and to use individual data – without names – for social planning. However, the absence of adequate safeguards for individual data at the local level led the protesters to portray local census offices as an electronic version of a Nazi block wardens (*Blockwart*).<sup>36</sup>

To make matters even worse, the census forms themselves were designed in such a way as to positively encourage people to believe that their personal information would be misused. Because the questions began on the back side of the sheet identifying the head of household, it was impossible to anonymise the census data before the forms themselves were destroyed (something that had, in case of the 1970 census, taken a full decade). People were also concerned about the eight-digit code printed on the form. Although the code was intended to be used only to monitor paper flow, it could also be used to link individual census data back to the specific individuals named on the paper form, and the absence of explicit regulations governing the anonymisation of data simply encouraged people to think the worst about the government's respect for their privacy.

## II. THE BOYCOTT, ROUND I: PRIVACY, THE POLICE, AND THE NEW INFORMATION TECHNOLOGIES

In thinking about Orwell's »1984«, the ›Third Reich‹ was never far from the minds of the protesters. For example, as the Union of German Journalists wrote to the Hessian Interior Minister,

»one need not have a guilty conscience or be a profound pessimist in order to see in a central computer containing information on more than 60 million citizens the utopia of the writer George Orwell glimmering on the horizon a year before 1984. If this information were to fall into the wrong hands, it would, for example, give the political police of a dictatorship a degree of power that Hitler's Gestapo could only have dreamed.«<sup>37</sup>

34 Kerstin Brückweh has recently linked similar debates over the British census to immigration reform in that country. *Kerstin Brückweh*, Ein Akt planerischer Notwendigkeit oder »an exercise in applied racism«? Die Produktion von Wissen über ethnische Herkunft in britischen Volkszählungen, in: AfS 50, 2010, pp. 353–371.

35 See the contributions to *Verband Deutscher Städtestatistiker* (ed.), *Statistik im Spannungsfeld der Gesellschaft*, Augsburg 1984.

36 *Der Blockwart läßt grüßen*, in: Die Grünen (Landesverband Hamburg), *Unsere Daten selbst schützen – Die Volkszählung boykottieren!* (1987), AIFS, SBe 444, VoBo-Büro Hamburg, Box 2, and *Die Grünen im Bundestag, Vertrauen zählt. Vernunft boykottiert*. Dokumentation Hearing 12.5.87, AGG, B. II. 1, Nr. 3129.

37 *Deutsche Journalisten-Union to Hessischer Innenminister Herbert Günther*, 23.2.1983, HHStA, 502, Nr. 5573.

Another letter-writer, who characterised himself as disinclined towards the New Left, but who nevertheless preferred to remain anonymous for fear of retribution, pointed out that such collections of personal information were intrinsically dangerous. After all, the Nazis did not come to power carrying with big signs announcing the crimes that they would later perpetrate. »It could be too late much faster than one thinks,« he warned.<sup>38</sup> Aly and Roth provided a scholarly foundation for such analogising, which reached its high – or low – point in 1987, with the characterisation of the census as the »precursor to mass annihilation« (*Vorstufe zur Massenvernichtung*) by the Green parliamentarian Jutta Ditzfurth.<sup>39</sup>

People on both sides of the debate conceded that the census questions themselves were more banal than dangerous. However, this very banality created suspicions. It hardly seemed worth staging an entire census to learn whether someone drove or took the subway to work or how a person heated his or her house, especially since the personal information already held by the social insurance funds, hospitals, the police and other agencies was much more sensitive than any of questions asked by the census. On top of all of this, many people were sceptical of the value of census data for social planning because they did not see how, in the absence of the requisite insight and political will, census data would lead to more effective measures to combat the country's social problems. The slogan for the 1983 census was »knowledge for the future« (»Wissen für die Zukunft«). However, in view of all of these manifest inconsistencies, the protesters could only conclude that the official argument that census data was necessary for better social planning was nothing more than a transparent pretext for the complete registration of the population for security purposes. But what was qualitatively new about the census was that it promised to provide the state with up-to-date information on the entire population and to store the information in digital form in a single, central location and in a standardised, easily searchable format.<sup>40</sup> In such a situation, the only way to protect the individual liberties guaranteed by the constitution was to avoid being captured by the registration campaign, that is, to boycott the census. This reasoning culminated in a complex political pun in which the protection of both individual freedom and the constitution itself (*Verfassungsschutz*) depended on protecting oneself against being registered by the state (*Erfassungsschutz*), which, if successful, would make the person visible to, and thus more subject to the control of, the domestic intelligence agency (the »Verfassungsschutz«).

Although such individual information might have enhanced the power of the police, it was less this potential for naked repression than the new information technologies, and the normalising, disciplinary effects to which they gave rise, that hold the key to understanding the protests. As one anti-census pamphlet argued, the growing amount of information available, its concentration in public databases, and the ability to connect all of this data were giving rise to a surveillance state in which every action of each and every citizen – and not just a few anarchists – could be continuously monitored and accessed. According to this pamphlet,

»the greatest danger facing us – to be registered in this way by the security Moloch – lies in simply being different, in not conforming to the norm. This means that the person as an individual can *no*

38 Anonymous letter to Hessian Ministerpräsident Holger Börner, 29.3.1983, *ibid.*

39 Heftiger Streit bei den Grünen über Kampagne gegen die Volkszählung, in: *Süddeutsche Zeitung*, 27.5.1987. Interior Minister Zimmermann rejected any comparison with the Nazi census as »tasteless«. See also: *Wo ist denn die Intimität?*, in: *Der SPIEGEL*, 28.3.1983, pp. 34, 37, 40, 42–43 and 45.

40 *Volkszählungsboykott. Informationsmaterial #4*, März 1983, AIfS, SBe 444, VoBo-Büro Hamburg, Box 5, and *Volkszählung 1987. 10 Minuten, die Sie noch bereuen werden*, 7. Aufl., März 1987, AGG, C NRW LaVo/LGSt 01, Nr. 38.

*longer move freely, but rather should be forced to conform to normal patterns of behaviour. It should be possible to determine in advance every one of his actions.*<sup>41</sup>

In such statements, the innermost kernel of the alternative identity shimmered through. However, as I will argue in the remainder of this section, assertions such as this also need to be understood as an extension of arguments made by privacy advocates at the time and as a reaction against the expanded use of the new information technologies by the police. At the time, the most incisive and influential analyst of such issues was Spiros Simitis, who had been appointed Hessian Privacy Commissioner in 1975.<sup>42</sup> In his writings on the nature of informational power, Simitis explained that both public and private bureaucracies were engaged in a continuous, reflexive planning process in hopes of reducing costs, maximising productivity, and enhancing their effectiveness, a process that had been given a quantum boost by the growing availability of both affordable computing power and digitised transactional data. While the use of the transactional data collected in the course of the everyday administration of social services or payroll systems could facilitate the rationalisation of the work of these organisations, such efforts also made planners aware of the limits of their knowledge, that is, they became aware of what they did not know and what they would need to know about social service recipients or workers in order to be able to plan more rationally. This awareness, in turn, stimulated efforts to gather ever more finely-grained information relating to the relevant individuals and then to develop more sophisticated methods of planning and information processing in order to use the growing amount of information at their disposal to manage processes that were, through this very process, becoming exponentially more complex.<sup>43</sup>

But the same rationalising process that drove this intrusion into, or this increasingly narrow circumscription of, the individual private sphere also gave rise to a second set of normalising effects that has received much less attention, but that is of more direct relevance for understanding the census boycotts. Taking the social administration as an example, Simitis argued that the reduction of costs depended on the intensified surveillance of the individual recipient, that is, on both gaining access to additional information – beyond benefit history – held by other agencies in order to determine all of the circumstances that might have contributed to rendering the person eligible for these services in the first place and then on using this information to continuously monitor the eligibility and behaviour of the individual benefit recipient. Similarly, planning for the optimal deployment of the production factor labour depended on knowledge not only of wage history, but also of training, work history, and other physical and psychological factors that might affect the performance of an individual worker in a specific position, as well as information about the physical demands and possible health dangers posed by the job.

While such surveillance might benefit the individual in various ways, Simitis warned that access to this information would also enable these bureaucracies to make individuals who deviated from established norms into the object of special solicitude and surveil-

41 Totale Überwachung. Die neue Welt von 1984 – Info, undated, AIfS, SBe 444, VoBo-Büro Hamburg, Box 5 (emphases in original).

42 The following paragraphs draw on *Spiros Simitis*, *Datenschutz: Voraussetzung oder Ende der Kommunikation?*, in: *Europäisches Rechtsdenken in Geschichte und Gegenwart. Festschrift für Helmut Coing*, München 1982, pp. 495–520; *idem.*, *Reicht unser Datenschutzrecht angesichts der technischen Revolution? Strategien zur Wahrung der Freiheitsrechte*, and *idem.*, *Gesetzliche Regelungen für Personalinformationssysteme – Chancen und Grenzen*, both in: *Hessische Landesregierung* (ed.), *Informationsgesellschaft oder Überwachungsstaat*, pp. 27–48 and 77–99.

43 This same dynamic also operated at the level of macrosocial planning. See *Fritz Scharpf*, *Komplexität als Schranke der politischen Planung*, in: *idem.*, *Planung als politischer Prozess*, Frankfurt am Main 1973, pp. 73–113, and *Metzler*, *Konzeptionen politischen Handelns*, pp. 404ff.

lance, which could very well lead to policies designed to improve, discipline, or discriminate against them: »the more, therefore, that the rationality of the social order is measured against the degree of compliance with pre-formulated administrative expectations, the clearer the manipulative function of data processing.«<sup>44</sup> Not only did this information increase the capacity of these bureaucratic organisations to intervene into the lives of these persons and influence their behaviour. The very awareness of the fact that these information systems could be used in this manner led people to preemptively adapt their behaviour to the norms and expectations of welfare experts and production engineers in order to avoid being labelled as deviant and thus being made the object of preventive normalising intervention. In short, the objective function of these systems was to make the individual into the object of technocratic manipulation, and the ability to represent the individual »without remainder« in such a system would mark, Simitis concluded, »the logical transition to a position in which the individual is regarded only as the object of a sequence of decisions or events that takes place apart from him and without his participation.« This process, Simitis concluded, would culminate only when the individual had internalised these external constraints and come to see them as the path to his own self-realisation.<sup>45</sup>

When census protesters complained about the dangers of *Verdatung*, they were not simply lashing out blindly against a new technology, but were, instead, echoing this academic discourse on the issue, and much of the rhetoric of the census protests must be understood as a response to Herold's claim that computers held the key to more efficient policing and greater security against crime, terror and social deviance. In fact, the pamphlet cited above should be seen as a direct response to a specific passage from one of Herold's essays that was widely cited by the protesters. In that 1980 essay, Herold had explained that

»the unlimited capacity of information processing would make it possible to accompany the individual along each and every step of his life, to continuously compile snapshots, comprehensive pictures, and profiles of his personality, to register, observe, and surveil him in every sphere of life, in all its forms and manifestations, and to keep the information won in this manner ready to hand without the grace of forgetting. The dangers of »Big Brother« are no longer mere fiction. The present state of technology has made them real.«<sup>46</sup>

Of course, the protesters regarded Herold as the quintessential embodiment of those very dangers against which he was trying to warn here. However, Herold's vision of crime prevention and social control in modern society was the touchstone of the boycott in other ways as well. In a controversial, often-cited interview that he gave in 1980, Herold had laid out his conception of the relation between information, information technology, policing, and politics.<sup>47</sup> Herold harboured a classically positivist conviction that all social actions could be understood as the outcome of objective social causes or laws (and he was correspondingly dismissive of those who sought psychological explanations for

44 Simitis, *Reicht unser Datenschutzrecht*, p. 42.

45 Simitis, *Datenschutz: Voraussetzung oder Ende der Kommunikation?*, p. 511.

46 Horst Herold, *Polizeiliche Datenverarbeitung und Menschenrechte*, in: *Recht und Politik* 16, 1980, pp. 79–86, citation pp. 80f.

47 Herold gegen alle – Gespräche mit dem Präsidenten des Bundeskriminalamtes, in: *Transatlantik* 11, 1980, No. 2, pp. 29–36. I have been unable to obtain a copy of this version of Herold's interview and have relied instead on an unpaginated version that can currently be accessed at URL: <[http://www.wikileaks.ch/wiki/Spiegel\\_and\\_TransAtlantik\\_injuncted\\_article\\_on\\_Dr.\\_Horst\\_Herold,\\_former\\_president\\_of\\_the\\_BKA,\\_1980](http://www.wikileaks.ch/wiki/Spiegel_and_TransAtlantik_injuncted_article_on_Dr._Horst_Herold,_former_president_of_the_BKA,_1980)> [10.4.2011]. Unless otherwise noted, all citations in the following paragraphs refer to this version. On Herold, see Birgit Seiderer, *Horst Herold und das Nürnberger Modell (1966–1971). Eine Fallstudie zur Pionierzeit des polizeilichen EDV-Einsatzes in der Reformära der Bundesrepublik*, in: *Mitteilungen des Vereins für Geschichte der Stadt Nürnberg* 91, 2004, pp. 317–350.

such phenomena as terrorism). Police files held extensive information on the childhood upbringing, education, family circumstances, and work history of criminals, as well as on the crimes that they had committed. Herold argued that this information represented a unique resource for understanding, and thus combating, the causes of crime. However, he bemoaned the fact that the bulk, dispersal, and diverse formats in which this information was held, as well as resistance by both an uninformed public and traditionally-minded police officials, all combined to prevent the police from fully exploiting the »epistemological privilege« latent in this material in order to uncover those statistical correlations that hinted at underlying social causality:

»First of all, we must be able to analyse [*durchdringen*] the massive amount of data held by the police and link these pieces of information in multiple ways. This can be accomplished by existing technology. This could easily be done if we did not have to struggle against the prevailing data neurosis. I estimate that the German police hold perhaps 15 million criminal files. For ages, now, information has been collected on why people take drugs and why they break into pharmacies to steal them, why people have had abortions and why they do this and that, how they got started on a life of crime, etc. All of this knowledge is simply lying around – only we don't know what we really know. [It is a scandal] that we can not fully exploit this knowledge and combine it to form a picture of society!«

Herold clearly understood how the linkage of digitised data (especially when manual filing systems and the mountains of paper that they generated were replaced by electronic information systems fed by a constant stream of transactional data) could produce new and unexpected kinds of knowledge, as did the protesters<sup>48</sup>, and I would like to briefly follow up on this issue before returning to the main thread of Herold's argument in this interview. In the past data that was collected in paper form could only be run through a system once and analysed in limited, predetermined ways; this was certainly the case with the massive data collected by previous censuses, which took years to tabulate. While these limitations had insured a relative degree of anonymity and privacy, the technological leap from the punched cards used to tabulate the 1970 census to the use of computers, digital storage media, and random access memory for the 1983 census promised to bring about a revolution in both the productivity of the personal information gathered through the census and its potential disciplinary power.

To cite one example given at the time, if in the past cash registers had simply multiplied price by quantity sold and added the result to a running total, the electronic cash registers that had already been introduced by the larger chain stores were in reality networked data entry stations that allowed the systems to generate an astonishing array of information on products, customers, and employees. And in his contribution to an important collection of essays and documents on the 1983 census, Johannes Schnepel argued that the introduction of computers had brought about fundamental change in the value of information in comparison with the age of paper records and punched cards. If, in earlier times, the value of any individual piece of information had been diminished by the effort involved in manually locating it and relating it to other pieces of information, the situation was inverted with the introduction of the computer, where the ease of accessing discrete pieces of information, connecting them in multiple ways, analysing the results of these linkages, and then disseminating this information in digital form was leading to an exponential increase in the value of such information. As Schnepel explained, »computers make information into a raw material for the automated mass production of an indeterminate number of new pieces of information.« The possibility of combining data in ways that had not – and could not have – been anticipated at the time when it was originally collected had been identified as one of the chief dangers of electronic data processing

48 For a later, influential account of policing as an information production process, see *Richard Ericson/Kevin Haggerty, Policing the Risk Society*, Toronto 1997.

by the architects of the country's privacy protection laws, and this line of reasoning led Schnepel to conclude – in terms that would be taken over almost directly by the Federal Constitutional Court – that

»in the computer age there is no longer any such thing as ›harmless‹ information because the restrictions on the subsequent use and linkages of information are undermined to an ever greater extent by computers and networks. Census data can be connected to information that is already held in [other] data depositories [*Informationssparkassen*] and to information that in the future will certainly be added to them.«

The greater the number of discrete sources of information that could be linked with one another in what Kevin Haggerty and Richard Ericson have called a »surveillant assemblage«, the greater the expressiveness of each individual piece of information. If steps were not taken to limit the use of these technologies, the protesters feared that the digitisation of ever more spheres of social life would bring about what Schnepel described as a »permanent, continuous [*alltäglichen*] census« – his version of the surveillance state.<sup>49</sup>

What distinguished the views of the Social Democrat Herold from more conservative conceptions of the role of police information systems was his belief that the primary purpose of these new technologies was to make repression less necessary, not (simply) to make it more effective, by mining the vast amounts of data available to the police in order to unearth the hidden social causes of crime and deviance that could then be made the object of preventive social policy. This was what Herold called the »social-sanitary« or social diagnostic function of the police.<sup>50</sup> As he explained in one of the most explosive passages in the interview, the mission of the Federal Criminal Police was

»to analytically penetrate the massive amounts of accumulated material concerning all abnormal, deviant forms of behaviour in society [zu allen abseitigen, abweichenden Verhaltensweisen in der Gesellschaft] in order to make rational insights available to society, to correct its own legal system, and to provide instruments for the prevention of crime.«

This passage was cited by the protesters at every opportunity. They regarded Herold's desire to use the new information technologies to identify, and then to eliminate, social deviance as a direct threat, and they linked this fear to the rhetoric of transparency, which Herold employed in this interview and which they bent to their own purposes. For the »taz«, it went without saying that the real purpose of the census was to register the entire population in order to provide the raw data needed for the cybernetic simulation of social processes so that steps could be taken to prevent social unrest. For the newspaper, the root of the problem was that the quality of the available information was declining because the statistics already collected by government agencies were based on the presumed existence of a regularly employed workforce and the reproductive framework of the nuclear family – precisely those institutions that were being most weakened by socio-economic crisis and cultural change. As a result, only a *Totalerhebung* could »make the underground [or subculture, *Untergrund*] transparent,« that is, only a full census could insure »the circumscription and computerised [*datemäßig*] registration of all of those per-

49 Johannes Schnepel, Volkszählung und Computertechnologie, in: Taeger, Die Volkszählung, pp. 244–249, and Kevin Haggerty/Richard Ericson, The Surveillant Assemblage, in: British Journal of Sociology 51, 2000, pp. 605–622. Schnepel's argument here is based on Johannes Schnepel, Gesellschaftliche Ordnung durch Computerisierung, Frankfurt am Main 1984.

50 On the Social Democratic vision of domestic security through social reform, see Albrecht Funk/Falco Werkentin, Die siebziger Jahre. Das Jahrzehnt innerer Sicherheit?, in: Wolf-Dieter Narr (ed.), Wir Bürger als Sicherheitsrisiko, Reinbek 1977, pp. 189–210, and Stephan Scheiper, Innere Sicherheit. Politische Anti-Terror-Konzepte in der Bundesrepublik Deutschland während der 1970er Jahre, Paderborn 2010.

sons whose way of life no longer corresponds with traditional schemata of production and reproduction and who can, therefore, no longer be captured in this manner.«<sup>51</sup>

The fear of the expanded use of information technologies by the police in the war on deviance resonated widely among the census protesters. Many of them had had first-hand experience with investigations of their political attitudes by the police and security agencies in conjunction with applications for jobs in the public sector. Homosexuals felt themselves especially threatened by a computer-enabled war on deviance. As one pamphlet warned,

»let's imagine that the Gestapo had had a tool comparable to modern computer files. Its terror against disagreeable contemporaries – among others, the later pink triangle concentration camp inmates – would have been even more perfect. Let's not make things so easy for the snoops [...]. We gays in particular, who have long been the object of ›pink lists‹, should be especially critical here and join the boycott.«<sup>52</sup>

Most of the imagery produced by the protesters played on either the connections between computers and massification or the ways in which expanded surveillance and the search for social transparency were distorting the process of individual identity formation. But one of the most frequently reprinted images in the first round of the census boycott (Figure 1) was based on a decidedly dystopian reading of the police and the census as vehicles for normalising and disciplining the population. Here, the viewer looks through the legs of a towering soldier or riot policeman, who is identifiable by his fatigues and combat boots. But rather than simply crushing the population like an overweening Leviathan in a display of naked power, the policeman is carefully cultivating the population by using a wide-toothed garden rake to weed out all of those individuals who deviated from prevailing social norms – leaving behind long columns of uniform, anonymous persons with blank, unexpressive faces.

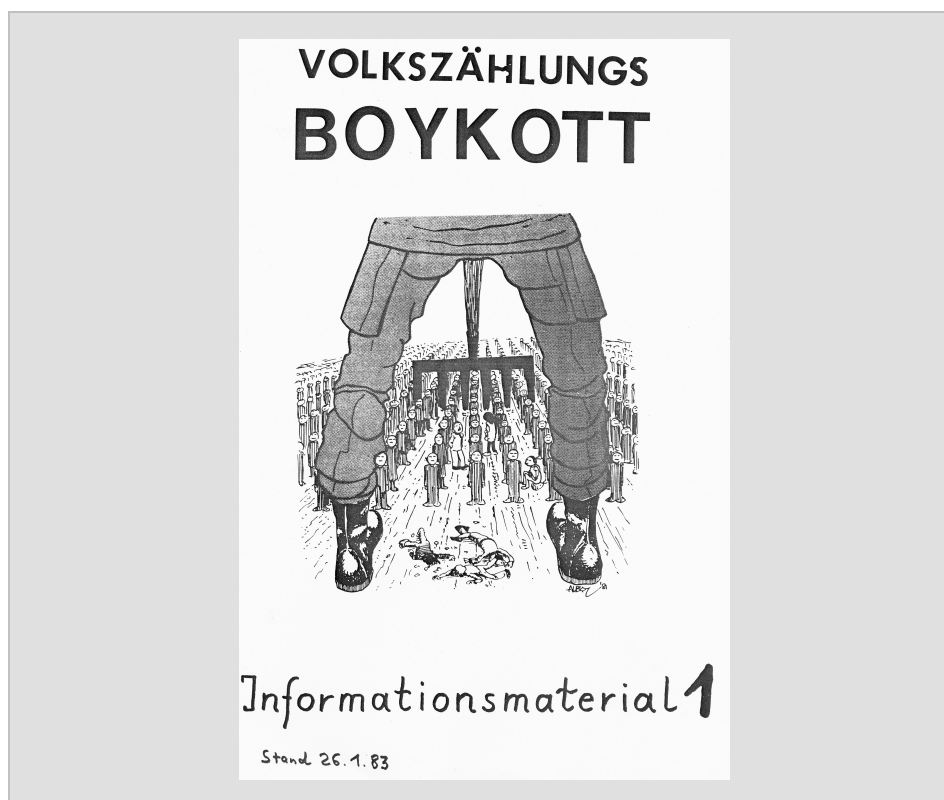
The boycott movement was nothing if not diverse, and not all of the boycotters were focused so closely on the new information technologies. Some on the more Marxist left linked the census directly to the problems of the capitalist state. For example, the Marburg »Bunte Hilfe« maintained that the primary function of the census was »to perfect imperialist economic planning, further secure the preventive, seemingly uninterrupted and ubiquitous surveillance of the entire population, and make possible both more precisely targeted counter-insurgency measures to combat covert struggle and anti-riot plans to put down disturbances«, and the group hoped that the boycotters would come to understand the connection between the struggle against the census and the broader struggle against imperialism.<sup>53</sup> However, despite the appeal of such claims to among the communist and anarchist groups who supported the boycott, the primary object of most of the protests were the new information technologies, not the capitalist state.

51 Den Untergrund transparent machen. Volkszählung als Planungsinstrument, in: taz, 12.4.1983, p. 3. The illustration to this story was a map taken from the »Kriminalitätsatlas Bochum«, a computerised analysis of the ecology of crime which was based on the files of the Bochum police and inspired by Herold's earlier work in Nuremberg. Hans-Dieter Schwind (ed.), Empirische Kriminalgeographie. Bestandsaufnahme und Weiterführung am Beispiel von Bochum, Wiesbaden 1978.

52 Schwule – Boykottiert die »Volkszählung«!, undated, AGG, B. II. 1, Nr. 3374. Investigations by the privacy commissioners concluded that neither the Federal Criminal Police nor any of the state police forces were maintaining records on homosexuals simply because of their sexual orientation. Helmut Bäumlert to Jutta Oesterle-Schwerin, 14.1.1988, AGG, B. II. 1, Nr. 5497.

53 Bunte Hilfe (Marburg), Volkszählung und Kriegsvorbereitung, AIfS, SBe 444, VoBo-Büro Hamburg, Box 5. See also Volkszählung? (Reutlingen, near Tübingen), AGG, B. I. 1, Nr. 243.



Figure 1: »Volkszählungsboykott«, 1983<sup>54</sup>

The perceived dangers of digitised census data were intensified by the positive synergies among the various information technologies coming into use at the time. One of the most controversial elements of this assemblage was the new national ID card, which had just received final approval by the »Bundesrat« in February 1983. The card had originally been proposed as a way of facilitating interaction between citizens and various state offices. However, the card took on an entirely different meaning with the intensified concern for domestic security in the 1970s. For the police, the most important advantage of the card – aside from the fact that it was much more difficult to counterfeit than the identification documents then in use – was the fact that it was machine readable: all that a policeman or border guard had to do was to swipe the card through a reader, which was connected via new communications technologies to the national police information system, in order to instantly verify the identity of the person and obtain all other relevant information on the individual. Since the identities of more people could be checked more quickly, the ID card promised to enhance police control over the country's borders and to make their control over the internal territory of the state more intensive and continuous.

But the ID card also had another effect that aroused the concerns of the census protesters. Every time the ID card was swiped, it left behind electronic traces, or »data shadows« (*Datenschatten*) documenting the circumstances of the inquiry. These data shadows were

54 This image first appeared on the cover of: *Volkszählungsboykott. Informationsmaterial #1*, 26.1.1983, AIFS SBe 444, VoBo-Büro Hamburg, Box 5, and AGG, B. I. 1, Nr. 243.

themselves sensitive pieces of information. However, the individual had no knowledge of what information might be recorded in such instances and no control over how it might be used. This transactional data was recorded for every contact, even though the individual may have been completely innocent or, at a minimum, not so strongly suspected of a specific misdeed as to permit the police to target him for investigation. The police were quick to seize upon the new capability – in conjunction with expanded stop-and-search authority – not only to trace the movements of suspect individuals, but also to mine this data in hopes of establishing connections between known suspects and other, as yet unknown individuals. These concerns were reflected in another cartoon (Figure 2), which shows Interior Minister Zimmermann holding up the new ID card. Although he proclaims to what looks to be a dubious journalist that the new ID card hardly has any drawbacks (literally »shadow sides«, *Schattenseiten*), the card casts on the brick wall behind him a shadow that is far larger than the laws of perspective would lead us to expect. This picture perfectly captures both the unknown dangers symbolised by the ID card and the fear that it would become yet another stone in the rising edifice of the surveillance state.

Figure 2: *Der neue Ausweis hat kaum Schattenseiten*<sup>55</sup>



As one pamphlet warned in apocalyptic language taken from Aldous Huxley rather than Orwell, the »caylon« of new information technologies and the creeping progress towards the ability to instantaneously register each and every member of the population was bringing about the advent of a »brave new world«. The dystopian future that this group of protesters saw looming before them took the form of

»a new social system, a life- and machine-world in whose centre stands no longer the living person, but only combinations of signs. The citizen, who has been disaggregated into his individual traits [*heruntergerechnet*], interchangeable, and always susceptible to being equivalently represented by another, whose leisure and reproduction can be the object of planning.«<sup>56</sup>

In other words, not only did those bureaucratic institutions that collected information impose their own logic and categories upon it, thereby alienating the individual from his

55 Entschuldigung, aber was ich beantworte, überlassen Sie freundlicherweise mir, AGG, C NRW LaVo/LGSt 01, Nr. 38. Originally published in *Hamburger Abendblatt*, 5.8.1983.

56 Vor den Ufern von K Babylon. Aufruf zum Ratschlag gegen die »Schöne Neue Welt«, Juni 1983, AIfS, SBe 444, VoBo-Büro Hamburg, Box 1 (emphases in original).

information – and from his identity – and limiting both the way that the individual could present himself to others. At the same time, this information could then – like an electronic Frankenstein – be reassembled (the *Zeichenkombinationen* mentioned above) in multiple ways to form what have come to be known as »data doubles« in which the individual could not always see himself reflected. The result was, as the jurist Jürgen Simon noted, a schizophrenic situation very much like that described in Fyodor Dostoyevsky's »The Double«. To solve these problems privacy protection legislation would have to go beyond preventing the misuse of personal information and, instead, impose systematic constraints on the normal operation of multifunctional databases.<sup>57</sup>

Turning now to the actual 1983 events, while liberals focused on the legal measures to block the census, almost all of the other protesters, including the Greens, who first secured »Bundestag« representation in March of that year, called for a boycott.<sup>58</sup> The problem was that calling on people to disobey the law was classified as a misdemeanour<sup>59</sup>, and both officials and police everywhere pulled out all of the stops to block the protest: the police closed down information stands and confiscated materials; cities refused to issue permits for protests or allow opposition groups to use public facilities for meetings; they pressured banks to close the accounts of boycott groups; reports on boycott activities became part of the chancellor's daily security briefing; and, of course, people were prosecuted. The boycotters were intent upon elbowing their way into the public sphere to establish the legitimacy of their protest – and the administration, the police, and the justice system were equally intent on denying them this symbolic victory. Only rarely did the courts side with the protesters on free speech grounds.<sup>60</sup> Even after the Federal Constitutional Court had blocked the census, Berlin officials insisted on continuing to prosecute one particularly vocal protester, arguing that, at the time of his actions, the law was still in force.<sup>61</sup>

All adults between 18 and 65 were liable for service as census takers; individuals who were selected could be fined if they refused. Officials everywhere were worried about the number of people seeking to avoid the job, and, as protests mounted in early 1983 and again in 1987, there was a pronounced tendency to rely on government employees, though it was impossible to do without substantial numbers of voluntary and honorary (*ehrenamtliche*) census takers. Officials were also concerned with guarding against both imposters and so-called Trojan census takers seeking to undermine the census from within, insuring the physical safety of real census takers, and taking down boycott signs and banners without arousing even more opposition. On the other side, protesters were busily setting up information stands, distributing fliers, holding meetings, and scribbling graffiti. They devoted a great deal of energy to devising ingenious ways of disrupting the census, such as explaining to the public that they could satisfy the letter of the law by providing all of the required information in a letter written by hand in miniscule Cyrillic script and carefully warning that the census forms could not be read by computer if they had been soaked in the bathtub, though without, of course, suggesting that upstanding

57 Jürgen Simon, Die erfasste Persönlichkeit, in: *Taeger*, Die Volkszählung, pp. 136–156.

58 Die Grünen (Hessen), Volkszählungsboykott!, and the Berlin Alternative List, Volkszählung '83? Ohne mich!, AGG, B. II. 1, Nr. 3319.

59 Until the 1970 reform of the criminal code, such calls had been classified as a more serious offence, and the »Frankfurter Allgemeine Zeitung« (7.4.1983) called for a quick return to the older version of the law.

60 See the decision by the Verwaltungsgericht Gelsenkirchen, 25.3.1983, LAB, B Rep. 004, Nr. 1119, which ruled that individual laws had to be interpreted with an eye out to the precedence of constitutionally guaranteed rights.

61 LAB, B Rep. 004, Nr. 1113.

citizens should engage in such actions.<sup>62</sup> Not all protest was non-violent: the Braunschweig registry office was bombed on April 11.<sup>63</sup>

While reluctantly conceding that the census law did raise serious legal questions, the conservative »Frankfurter Allgemeine Zeitung« tried to play down the importance of the boycott, arguing that, after the squatters movement and protests against the construction of both a nuclear power plant in Brokdorf and the west runway at the Frankfurt airport, the census simply provided »a new site on which the old opponents of our political system are gathering again.«<sup>64</sup> These arguments were echoed by Parliamentary State Secretary Horst Waffenschmidt and Interior Minister Zimmermann, who repeatedly insisted that the protests had been stirred up by a small number of »enemies of the state.«<sup>65</sup> And at the end of February there was a widely-publicised disputation between Günter Grass, who argued that there was more than ample reason to be mistrustful of the government, and federal privacy commissioner Hans Peter Bull, who took a more moderate position on the issue.<sup>66</sup>

In view of the rising tensions, a number of politicians from all parties suggested postponing the census until the legal and political issues could be clarified, though it was never completely clear whether these were strategic moves, statements of conviction, or some combination of both. However, administration officials were adamant that the census take place on schedule. In a last-minute effort to calm the seas, the federal and state privacy commissioners presented a list of suggestions that they felt would, if implemented by the states, adequately safeguard the privacy of census information.<sup>67</sup> Although federal and state interior ministry officials agreed to implement most of these suggestions, they did not affect the substance of the registry comparison or the other key provisions, and no law whose concrete meaning depended on such an informal agreement could have been expected to survive review by the courts. Nevertheless, by early April 1983 officials at every level of government were quite literally sitting at their desks gleefully rubbing their hands together in the expectation that the Federal Constitutional Court would quickly dispose of what they considered to be the manifestly unfounded constitutional complaints so that they could send out fines *en masse* before the count date to insure that these official reminders would have the desired effect.

### III. THE CENSUS DECISION, ROUND I: FROM THE STREETS TO THE COURTS

The first three months of 1983 witnessed a remarkable learning process. As »Der SPIEGEL« noted at the end of March, since the beginning of the boycotts the privacy con-

62 For one such example, see Bunte Hilfe – Startbahn West, Rechtliche Informationen über die Auskunftspflicht bei der Volkszählung, Stadtarchiv Frankfurt, S3/17.008.

63 Schutz von Meldeämtern wird verstärkt, in: Frankfurter Allgemeine Zeitung, 12.4.1983.

64 Friedrich-Christian Schröder, Amnestie durch das Volkszählungsgesetz, in: Frankfurter Allgemeine Zeitung, 11.4.1983.

65 Rede des parlamentarischen Staatssekretärs beim Bundesminister des Innern, Dr. Horst Waffenschmidt, im Bundesrat, 18.3.1983, HHStA, Abt. 502, Nr. 5572a. However, Hessian Minister President Holger Börner defended the protesters and criticised Zimmermann for dismissing their privacy concerns and rejecting their right to question state actions. Debattenbeitrag von Ministerpräsident Holger Börner über das Volkszählungsgesetz 1983 in der 520. Sitzung des Bundesrates am 18. März 1983, *ibid.*

66 Günter Grass/Hans Peter Bull, Ein Streitgespräch, in: Taeger, Die Volkszählung, pp. 42–57.

67 Die Konferenz der Datenschutzbeauftragten zur Volkszählung 83, Stadler-Euler/Wild papers; Ergebnisvermerk. Besprechung des BMI mit den obersten Landesbehörden über den Forderskatalog der Datenschutzbeauftragten in ihrer Konferenz vom 22. März 1983, LAB, B Rep. 004, Nr. 1119.

sciousness of the nation had »undergone a fundamental transformation«.<sup>68</sup> In the hearings leading up to the passage of the law, federal and state privacy commissioners had pointed out many of the problems with the census, but at the time neither they, the legislature, nor the public seemed to be fully aware of their import, and their criticisms of the census had become much more pointed as the boycott had gained force.<sup>69</sup> This learning process also affected the Federal Constitutional Court, which eventually chose to make the census the occasion for a broad statement of constitutional principle, rather than to decide the case on the narrower grounds available to it.

The Federal Constitutional Court received 102 formal complaints against the census and 1,121 less formal petitions.<sup>70</sup> Two of these complaints were selected for oral argument before the court: one by Maja Stadler-Euler, the former head of the liberal fraction of the Hamburg government, and her law partner Gisela Wild<sup>71</sup>, the other by Gunther von Mirbach, vice-chair of the Young Conservatives in Lüneburg, who was by his own characterisation »certainly no opponent of the state« (*Staatsverweigerer*). Since the final disposition of the case would take months, Wild argued that the court should issue a temporary injunction blocking the census. If the census were allowed to go forward and then later found to be unconstitutional, she argued, »the impotence of the citizen in comparison with the omnipotence of the state [would be] manifest«, and individual citizens might suffer immediate, irreparable harm because it was impossible to know what would be done with the information collected. On the other hand, she suggested, if the census were blocked and later found to be constitutional, then confidence in the rule of law could only be strengthened.<sup>72</sup>

The original complaint by Stadler-Euler and Wild charged that the census violated a number of constitutional rights. But the issue that stood front and centre in the written briefs submitted by the complainants and at the April 12 hearing was the impact of the new information technologies on the constitutional rights of the individual. Although the census questions, when taken individually, may have been anodyne, what made the census unconstitutional, Stadler-Euler and Wild argued, was the new ability to combine the individual pieces of information and link them to a specific individual. In its 1969 micro-census decision, the Federal Constitutional Court had ruled that a census would be unconstitutional a) if it asked questions on matters that, by their very nature, enjoyed special protection because they belonged to the inviolable private sphere or b) if their cumulative effect was »to use compulsory means to register and catalogue the full personality of the individual, even if this were done in the guise of an anonymous statistical survey.«<sup>73</sup> While Stadler-Euler and Wild maintained that in their totality the census questions did, in fact, violate the limits established in the microcensus decision, they also argued that the linkages among public sector databases and the absolute lack of control over the exchange of data within this network rendered anonymity meaningless. As they pointed out, in Hamburg the (still manual) population registry, the computer systems for the police, in-

68 Volkszählung: Laßt 1000 Fragebogen glühen, in: Der SPIEGEL, 28.3.1983, p. 30.

69 Hans Peter Bull, Erster Tätigkeitsbericht des Bundesbeauftragten für den Datenschutz, 10.1.1979, Deutscher Bundestag, 8. Wahlperiode, Drucksache 8/2460, pp. 19f., and Simitis to Staatssekretär Reinhart Bartholomäi, 29.1.1979, HHStA, Abt. 502, Nr. 5570b.

70 Heute Entscheidung über die Volkszählung, in: Frankfurter Allgemeine Zeitung, 13.4.1983.

71 For the biographical background and motivations of Stadler-Euler and Wild, see »Probieren, ob's legal geht«, in: Die ZEIT, 22.4.1983. One point that needs to be added to this article is that Stadler-Euler had served on the »G-10 Kommission«, which was responsible for reviewing the wiretapping and letter-opening activities of the intelligence agencies.

72 Unless otherwise noted, all references to the March 1983 arguments before the Federal Constitutional Court are taken from documents in the possession of Stadler-Euler and Wild.

73 Entscheidungen des Bundesverfassungsgerichts (BVerfGE) 6, 1.

telligence, and domestic revenue services, and the information systems for the rest of the state administration were all housed in the police headquarters building. In such a situation, it was simply impossible for the individual to know who was accessing personal information for what purpose once it disappeared into the »mysterious channels« (*unergründliche Kanäle*) connecting these offices. Moreover, computer scientists had shown that the ability to compare census data without names to the other public sector databases had reduced the effort involved in de-anonymising this data to such an extent that it was no longer possible to speak in any meaningful sense of the anonymity or privacy of census data. One of the many amicus briefs filed in the case had been submitted by Klaus Brunnstein, a professor of information science in Hamburg and a prominent FDP politician, and he was represented before the court by Wilhelm Steinmüller, who in 1971 had been the lead author on an important early report on privacy law commissioned by the Interior Ministry. As their brief explained, the 1983 census was taking place »in a technological environment that was entirely different from the one that had prevailed at the time of earlier censuses, one that had rendered previous safeguards obsolete.« Though these safeguards may have been effective in the past, they simply did not address the problems presented by large-scale computer systems, where »the problem that must be solved (and which in the case of the 1983 census has not yet been solved) is not so much their misuse as their normal use.«<sup>74</sup>

Most of the privacy commissioners continued to maintain that the legitimate concerns regarding census data could be met by the organisational precautions. Simitis, however, went further than most of his colleagues in criticising the law, and he supported the call for a temporary injunction, though he remained a staunch defender of the need for such statistics. His main point was that the advent of computers had raised novel constitutional issues that had to be addressed before the census should be allowed to proceed. »Even census data that appears harmless in itself,« Simitis told the court, »can, when combined with other data, produce dangers that can not be adequately described in the categories of the microcensus decision. Networking [...] data linkages [...] allow data that are not in themselves particularly sensitive to appear in a different light.« What this meant, Simitis concluded, was that »it is not the information itself that destroys the private sphere, but rather the dysfunctional dissemination – over which the individual has no control – of this information.«<sup>75</sup>

The Interior Ministry, on the other hand, considered the constitutional complaints to be manifestly unfounded, and its response was an intellectually anaemic document that refused to concede the legitimacy of any of the questions that had been raised about the privacy of census data and the impact of the new information technologies. It should, therefore, be no surprise that the decision came down so heavily in favour of the complainants. The eight-member court decided unanimously that § 9.1–4 of the census law raised so many serious questions that this part of the census would have to be suspended until these issues could be definitively resolved. The court also ruled – this time by a narrower 5–3 margin (with the names of the three dissenting conservative justices published as a sign of their opposition to this part of the decision) – that a partial stay of the census would not be sufficient because, until it were established that the collection of census data »under the conditions of automated data processing« would not entail a mass

74 See, in addition to his brief, the interview with *Wilhelm Steinmüller*, *Beten, daß die Sicherungen halten*, in: *Der SPIEGEL*, 21.3.1983, pp. 106–110.

75 Or, as the civil liberties advocate Sebastian Cobler would later summarise the issue in his oral arguments, since the privacy of information depends on the context within which it is collected and used, »there is no ›insignificant‹ data, no ›interior‹ or ›exterior spaces‹ with different levels of discretion«; Cobler, *Ausführungen in der mündlichen Verhandlung*, 18.10.1983, LAB, B Rep. 004, Nr. 1111.

violation of constitutional rights, the potential harm involved in letting the census go forward outweighed the cost of temporarily delaying it.

#### IV. THE CENSUS DECISION, ROUND II: THE RIGHT TO INFORMATIONAL SELF-DETERMINATION

Public reaction to the April injunction was mixed. There were predictable recriminations by the major parties, though all of them had voted for the law. While the »Bundesverband Bürgerinitiativen Umweltschutz« interpreted the temporary injunction as a victory for the extra-parliamentary opposition, the »taz«, which served as the mouthpiece for the boycott movement, complained bitterly that the decision had taken the wind out of the sails of a protest movement that, if it had only continued for another month, would have led to the complete rejection of large-scale statistical surveys, rather than simply the temporary prohibition on individual parts of the census. On the other hand, writing in the »Bayernkurier«, State Secretary Carl-Dieter Spranger characterised the boycott as a »rehearsal for insurrection.« The »Frankfurter Allgemeine Zeitung« described the decision as a »victory over the state« and scolded the Court for letting itself be misused by opponents of the state. The more liberal »Frankfurter Rundschau«, however, praised the protests for helping to teach the nation to question the state, rather than encouraging citizens to show unquestioning deference towards it. Bull provided one of the best assessments of the protest. Writing in »Die ZEIT«, he explained that

»the discussion reveals a great deal regarding attitudes towards the state and the administration [*Verwaltung*], regarding fears and civic courage, regarding estimates of the effectiveness of the law and the protections it promises – but above all regarding how much citizens trust politicians and civil servants and how much they expect of them. There can hardly be a better example of the much-discussed legitimation crisis of the state.«<sup>76</sup>

In temporarily setting aside the census, the court had explained that its ultimate ruling on the case would focus on the ways in which advances in statistics and information technology since the 1969 microcensus decision were impacting the constitutional rights of the individual, and by the time of the main hearing in October 1983 both sides had come to see the census as epitomising the privacy problems associated with multifunctional databases, where the value and expressivity of one piece of information was, as we have seen, enhanced by the ability to creatively connect it with other pieces of information in ways that had not been anticipated at the time when the information had originally been collected.<sup>77</sup>

The question here was whether the use of personal information for purposes that were quite different from those for which this information had originally been collected violated the rule of law by making it impossible for the individual to be able to clearly understand the consequences of their actions (i. e. of the answers they provided to census

76 BBU wertet Entscheidung als »Erfolg der Initiativen«, unidentified clipping, OSI Presse-Archiv; Widerstand geklaut, in: taz, 14.4.1983; Ein Sieg über den Staat, in: Frankfurter Allgemeine Zeitung, 14.4.1983; Nicht nur aufgeschoben, in: Frankfurter Allgemeine Zeitung, 15.4.1983; *Hans-Herbert Gaebel*, Niederlage von Untertanen, in: Frankfurter Rundschau, 15.4.1983; *Carl-Dieter Spranger*, Der geprobte Aufstand, in: Bayernkurier, 23.4.1983; *Hans Peter Bull*, Der Staat – nur ein datengieriger Riese?, in: Die ZEIT, 15.4.1983, p. 56.

77 In the early 1970s Adalbert Podlech had already argued that the computation of statistical correlations among descriptive data could be understood as the construction of the kind of personality profile that had been prohibited by the court. See *Adalbert Podlech*, Verfassungsrechtliche Probleme öffentlicher Informationssysteme, in: Datenverarbeitung im Recht 1, 1972/73, pp. 149–169, here: pp. 156f.

questions). As Wild told the Court in her October oral argument, the terms of the privacy debate were shifting from the question of »misuse« of data, whose prevention had been the original thrust of the Federal Privacy Protection Law, to the demand by the state »to use information, once it had been collected, for *any* purpose.« Her goal was not to deny the state information for specific purposes, but rather

»to curb the freedom of the state to gather data from its citizens without limit and to use this data for any purpose whatsoever [unbeschränkt und unkontrollierbar] [...]. The person who loses control over his personal information, who no longer knows who links which pieces of his information and in what context this is done, is helplessly exposed to the power of the state apparatus. He is deprived of the possibility of making himself heard, of representing himself, of enlightening [the user regarding the true meaning of the data], of influencing its use. He can not prevent his data shadow or, consequently, his personality from being deformed by this apparatus.«<sup>78</sup>

Arguing along similar lines, Simitis also tried to spell out the constitutional rationale for the imposition on the state of the strictest possible *Zweckbindung* for personal information. »Where the conditions under which information can be processed are not clearly defined and, in particular, do not insure compliance with this *Zweckbindung*«, he told the Court, »in the end the individual threatens to become – under the conditions of the automated processing of information pertaining to his person – an informational object that can be manipulated without limit.« Or, in the pithy wording of the jurist Adalbert Podlech that would later be taken over near verbatim by the court, »a social order in which citizens could no longer know who knew what about them, when, and in what context, as well as the legal framework that sustains this order, would not be consistent with § 2, 1 of the Basic Constitutional Law.«<sup>79</sup>

At issue here was the (re)definition of privacy. Post-war German jurisprudence had – building upon Lutheran notions of innerness and the 19th-century humanist idea of *Bildung* – conceptualised privacy in terms of a »sphere« into which the individual ought to be able to retreat from the demands of social life, and in the 1969 microcensus decision the Court had recognised the existence of an »inviolable sphere for the private development of the personality« (»ein unantastbarer Bereich privater Lebensgestaltung«). However, not only had the courts never succeeded in consistently delimiting the scope of this private sphere. Previous constitutional jurisprudence had also maintained that the individual was a social being, who had to accept those obligations and constraints that were necessary for ordered social life – limited only by the inviolability of that innermost sphere of personal freedom. This line of reasoning had subsequently been interpreted to mean that the privacy rights of the individual diminished in proportion to the extent to which he exited the mute, purely interior, private sphere and interacted with others in the external world. In the microcensus decision the Court had then ruled that this social nature meant that the individual was required to comply with statistical inquiries because they normally focused only on the external actions of the individual in the social world.<sup>80</sup> In addition, its focus on information that was deemed intimate or private by its very nature did not provide sphere theory with any way of addressing the problems arising out of the multifunctional combination of personal information that did not enjoy such protection. In view of this traditional understanding of privacy, Simitis urged the Court to reject the individualist premises of sphere theory and instead reconceptualise privacy in terms of the right of the individual to control the use of personal information in order to secure »that minimal degree of [social] distance that every individual needs in order to

78 As above, in the following all citations are from the Stadler-Euler/Wild papers unless otherwise noted (emphasis in original).

79 Podlech, *Stellungnahme ...*, LAB, B Rep. 004, Nr. 1111.

80 BVerfGE 27, 1, p. 7.



exercise his fundamental rights and that thereby first renders viable [*existenz- und funktionsfähig*] a democratically structured state.« Or, as Podlech told the Court,

»privacy, that is, the possibility of withholding information for one's own protection, or of disseminating it in one's own interest, is not a property of an individual conceived as a socially isolated monad [*des isoliert gedachten Individuums*], which is lost through communication or social interaction with others. Privacy is a possible [or potential] quality of intercourse with others; it is a social quality of the person.«<sup>81</sup>

This reasoning was challenged by the Interior Ministry. Friedrich Zimmermann continued to disparage the privacy concerns relating to the census as being »merely theoretical«, and he warned in frustration and incomprehension

»that a state that cannot even count its citizens, whose citizens may not be asked where they live or where they work, a state that is prohibited from ascertaining how heavily these citizens are burdened by the cost of their apartments, must abdicate politically, and especially in the domain of social politics.«<sup>82</sup>

The Interior Ministry rested its constitutional arguments on the microcensus decision, claiming that the scope of the private sphere was far narrower than that claimed by the complainants, that the census questions did not individually intrude upon the protected private sphere or collectively entail the registration of the individual's personality, that privacy rights ceased to be absolute as soon as one entered into relation with the external, social world, that the right to anonymity had to be weighed off against the needs of the state, and that, in balancing these needs, the »Bundestag« had made a legitimate decision that – with respect to the registry comparison and the availability of census data to other agencies – census data was to enjoy less anonymity than that otherwise accorded to federal statistical data.<sup>83</sup>

In its brief, which was – in every sense of the word – a much more weighty document than the one it had submitted in April, the Interior Ministry explained that the multifunctional use of census data grew out of the role of the census as the cornerstone of the entire system of statistics that had been developed over the previous century; it insisted that the elimination of census data would severely diminish the value of the information collected by other surveys; and it argued that a *Totalerhebung* with compulsory answers was necessary because sampling could not provide reliable information on small, geographically bounded (sub)populations. But while the complainants had rested their arguments on the constitutional import of the absence of a narrow *Zweckbindung* regulating the flow of personal information within the public sector, the Interior Ministry argued that not only had the Federal Privacy Protection Law specifically not included such a strict *Zweckbindung*, but also that, in fact, the country's Federal Basic Law had – in the principle of *Amtshilfe* – authorised all federal and state agencies to provide to each other all of the assistance and information needed to perform their constitutional mandates (though the ministry conceded that opinion was divided as to the scope of this authorisation).<sup>84</sup>

In its ultimate ruling on the case in December 1983, the Court largely adopted the reasoning employed by the complainants. Since the 1970s privacy protection legislation had been stranded in a conceptual no-man's land between the limited prevention of abuse and

81 Podlech, *Stellungnahme* ..., LAB, B Rep. 004, Nr. 1111.

82 Erklärung von Dr. Friedrich Zimmermann, 18.10.1983, LAB, B Rep. 004, Nr. 1111.

83 BMI to Präsidenten des BVerfG, Betr.: Verfassungsbeschwerden, 28.6.1983, LAB, B Rep. 004, Nr. 1111.

84 In *Rupert Scholz/Rainer Pitschas*, *Informationelle Selbstbestimmung und staatliche Informationsverantwortung*, Berlin 1984, the authors argued that the state was not only authorised, but also positively obligated to collect all of the information needed to discharge its security and welfare mandates.

the much stronger constitutional right to informational self-determination postulated by some privacy advocates.<sup>85</sup> However, even before the census decision, the Court had already begun to argue – as a remedy for the theoretical inconsistencies of sphere theory – that the individual should have a right to control the use of his or her personal information.<sup>86</sup> But the strong version of a right to informational self-determination – as a specific manifestation of the doctrine of *Persönlichkeitsrecht* – advanced by the Court represented a specific attempt to address the constitutional issues raised by computers. The Court's decision also reflected the thinking of the president of its first senate (which was responsible for adjudicating conflicts bearing on individual rights), former CDU Interior Minister Ernst Benda, who in 1974 had already published an important essay describing how the private sphere was being eroded by what he called the »dysfunctional dissemination« of personal information, a trope that, as we have seen, was cited by the complainants.<sup>87</sup> It was Benda who cast the deciding vote to postpone the census, and the Court decision ultimately reflected the arguments that he had made a decade before.

I do not have the space here to analyse in detail the census decision or the subsequent discussions around the right to informational self-determination. However, one key passage needs to be quoted in full because it sums up the Court's understanding of how state surveillance – both in electronic and traditional forms – can normalise, constrain, and discipline individual freedoms in ways that it concluded were ultimately inconsistent with the basic principles of liberal society. As the Court explained,

»individual self-determination assumes that – even under the conditions of modern information processing technologies – the individual is free to decide what actions to take or forebear from, including the freedom to actually act in accordance with this decision. Whoever can not with sufficient certainty determine what personal information about him is known in specific domains of his social environment, and whoever can not form a reasonable idea of the knowledge held by the people with whom he may enter into communication, may find his freedom to autonomously plan and decide to be constricted in essential ways. Any social order (as well as the legal order that makes it possible) in which the citizen could no longer know who knows what about him and in which context [this information is known] would not be compatible with the right to informational self-determination. Whoever is uncertain whether behaviour that deviates from the norm may be Registered at any time and permanently stored, used, or further disseminated will try to avoid attracting attention through such behaviour. Whoever can anticipate, for example, that participation in an assembly or a citizens' initiative will be registered by state officials and that this registration might prove detrimental to him, may choose not to exercise his fundamental rights. Not only would this limit the opportunities for individual development. It would also negatively impact the common good because self-determination is an elemental condition for the functioning of a free, democratic polity, which is founded upon the capacity of its citizens to act and participate.«<sup>88</sup>

In other words, the Court argued that the right to informational self-determination was essential to *both* the dignity and self-realisation of the individual *and* the proper functioning of a democratic society.

If we look beyond these broad statements of political principle, we can see that the Court's reasoning followed that of the complainants in maintaining that only a new conception of informational privacy could effectively protect the individual from the dangers

85 Earlier statements of such a constitutional right include *Wilhelm Steinmüller*, Grundfragen des Datenschutzes, Deutscher Bundestag, 6. Wahlperiode, Drucksache 6/3826; *Christoph Mallmann*, Datenschutz in Verwaltungs-Informationssystemen, Oldenbourg 1976, and *Podlech*, Verfassungsrechtliche Probleme öffentlicher Informationssysteme, pp. 149ff.

86 *Ulrich Amelung*, Der Schutz der Privatheit im Zivilrecht, Tübingen 2002.

87 *Ernst Benda*, Privatsphäre und »Persönlichkeitsprofil«. Ein Beitrag zur Datenschutzdiskussion, in: *Gerhard Leibholz/Willi Geiger* (eds.), Menschenwürde und freiheitliche Rechtsordnung. Festschrift für Willi Geiger, Tübingen 1974, pp. 23–44.

88 BVerfGE 65, 1, pp. 42f.

posed by the new information technologies. The Court agreed that the meaning of any individual piece of personal information depended not on its ostensible degree of intrinsic sensitivity or secrecy, but on the context in which it was used. Since this could not be determined in advance in the age of multifunctional databases and computer networks, the Court concluded in one of its most often-cited dicta that »under the conditions of automated data processing there is no longer any such thing as an ›insignificant‹ [or harmless, *belanglos*] piece of information«. <sup>89</sup> Therefore, if the individual were to be compelled to divulge his personal information, the scope of the permissible use of this data would have to be defined, as Simitis had argued, in a »precise, domain-specific« manner, and legislators would have to take appropriate measures to insure that information that had been collected for one purpose was not reappropriated for other, substantially different ends. The Court also ruled that the government could not warehouse personal information, that is, that it could not collect personal information without a concrete purpose in the anticipation that this information might eventually be of use for some later purpose (*auf Vorrat*). Moreover, because the intrinsic complexity of computer systems exceeded the technical knowledge of most citizens, the Court implied that the privacy commissioners had a constitutionally relevant role to play in protecting the right to informational self-determination. <sup>90</sup>

Nevertheless, the Court did uphold the constitutionality of the census. Both »comprehensive, continuous and constantly updated information on economic, ecological and social processes« <sup>91</sup> and the insights to be gained through the electronic processing of this information were essential, the Court argued, to the fulfilment of the social mandates of the constitution. However, the Court also made it clear that the state was not free to collect any kind of data it pleased. It ruled that the state would have to make do with less intrusive, anonymous data wherever possible and that it would have to provide for the functional anonymisation of personal information at the earliest possible moment and take the necessary steps to insure against its de-anonymisation: »Only under these assumptions can and may the citizen be expected to provide the information demanded of him under threat of penalty [*zwangsweise*]«. <sup>92</sup> The Court also concluded that, at the time, a *Totalerhebung* did not represent an excessively intrusive means of obtaining the desired information. However, it did rule that before any future censuses were conducted it would be necessary to determine whether there were any viable alternatives. <sup>93</sup> The Court insisted that a variety of organisational precautions would have to be taken to protect personal information during the census, when it could still be linked to specific individuals. <sup>94</sup> Finally, the Court declared unconstitutional both the registry comparison and the non-incrimination clause, as well as sections § 9.2–3, though it did rule that, if specifically authorised by the legislature, data that had been gathered for statistical purposes, but that had not yet been anonymised, could be made available to other agencies for statistical purposes, but only if the necessary precautions were taken to protect the rights of the individual. <sup>95</sup>

The Court defined the right to informational self-determination as »the principle that the individual himself has the authority to determine what personal information to reveal and how it can be used«. <sup>96</sup> In the immediate aftermath of the decision, many critics argued that a strong reading of this right would paralyse the state and bring an end to statistical

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89 Ibid., p. 45.

90 Ibid., p. 46.

91 Ibid., p. 47.

92 Ibid., p. 50.

93 Ibid., pp. 52–54.

94 Ibid., p. 58.

95 Ibid., pp. 61–69.

96 Ibid., p. 43.

civilisation as they knew it. However, as the Court itself made clear, its ruling did not imply that the individual enjoyed unlimited, sovereign control or ownership over personal information. Rather, the Court regarded the individual as »a personality, which develops within a social community and which, therefore, depends on communication. Information – even that which can be attributed to a specific individual – constitutes a representation of social reality, a representation that can not be ascribed exclusively to the concerned individual«<sup>97</sup>, and it ruled that it was the responsibility of the legislature to balance between the informational rights of the individual citizen and those of the community.<sup>98</sup>

In ruling that the unrestricted collection of personal information by the state was incompatible with the dignity and freedom of the individual guaranteed by the Federal Basic Law, the census decision injected a distinctly liberal element into a German political tradition, which in a Hobbesian manner tended to view the sovereignty of the state and the unhindered functioning of the executive and its bureaucracy as the source and guarantor of individual rights. However, this individualist moment was immediately reintegrated into the Court's long-standing conception of the individual as a social and communal being in such a way that, although the existence of an absolute limit to state information collection was reaffirmed, it remained the responsibility of the legislature to determine precisely where this limit lay in any concrete domain of social life – subject, of course, to review by the Court. Moreover, this liberal dimension of privacy was superimposed upon the continental understanding of privacy as discretion identified by James Whitman, though without supplanting it.

Although the protections afforded by the newly-proclaimed right to informational self-determination were directed specifically at the dangers of electronic data processing, as a statement of constitutional principle the newly-articulated right to informational self-determination quickly came to govern every aspect of the informational relations between the state and the citizen. Not only did the decision prevent the privacy protection legislation of the 1970s from dying of neglect at the hands of the Kohl administration.<sup>99</sup> It also necessitated the revision of a number of important laws to bring them into conformity with the principles laid out by the Court. These included 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 (the national population registry law, the ID card law, the passport law), as well as the country's police laws and the code of criminal procedure. Debate over these laws dominated legislative and public attention across the remainder of the decade, and the key issue in every case was balancing between the individual's right to privacy and the informational needs of the state. The decision also redefined the informational relations among individual citizens and set new standards for the collection, use and exchange of personal information by employers, banks and »Schufa«, the country's dominant consumer credit reporting agency.

The decision marked a virtually complete vindication of those who had challenged the census in the courts, though these persons were certainly disappointed by the subsequent political balancing between the rights of the individual and the informational needs of the state. It is, however, less clear whether the decision met the expectations of that segment of the population, whose goal was not simply to limit the reach of bureaucratic authority, but to revolutionise their own everyday life. If the 1983 court decision represented the victory of the liberal opposition to the unchecked expansion of the domestic security and planning state, then the 1987 boycott represented the moment – perhaps the last major political hurrah – of the alternative left.

97 Ibid., p. 44.

98 Ibid., p. 44.

99 *Ruth Leuze*, *Freundliche Töne, doch keine Taten*, in: *Süddeutsche Zeitung*, 20. / 21.4.1985, p. 10.

## V. THE BOYCOTT, ROUND II: »IM MITTELPUNKT STEHT IMMER DER MENSCH«

The second round of the boycott was longer and more complicated than the first, which had been abruptly truncated by the temporary injunction, and in this section I would like to begin by describing the boycott itself before turning to an analysis of the critique of technocracy through which the Greens came to understand the significance of their protest.

Almost immediately after the census decision was handed down, the administration set about drafting a new census law that would satisfy the conditions set out by the Court. For a moment, at least, it appeared that the administration would again give in to the demands of the cities for the more flexible use of individual information. However, since none of the parties was willing to take a chance on getting burned again, the administration quickly retreated in the face of criticisms from the privacy commissioners, and everyone felt that the law that was approved by the »Bundestag« in September 1985 could pass constitutional muster.<sup>100</sup>

Efforts to revive the slumbering boycott movement began in December 1986 with a coordinating meeting sponsored by several civil liberties groups hoping to halt the advance of the surveillance state and its »informational armament«. By the end of April there were approximately 1,000 boycott groups nationwide.<sup>101</sup> The Greens caused a minor uproar when their delegates wore boycott buttons to the first session of the »Bundestag« in February 1987, and they caused a major uproar by posing with a boycott banner in front of the parliament building in Bonn. The first action earned them a sharp admonishment from the »Bundestag« office, and the second led to a fine of 8,400 DM from the Bonn police for demonstrating within the protected zone surrounding the parliament building. Green parliamentarians and the authorities continued to spar through the spring and summer. When at a press conference the Greens gave an official phone number as the contact address for people seeking information on the boycott, the number was blocked, and they were warned that the use of official facilities for such a purpose constituted an infraction of the »Bundestag« rules. A new office phone number was also blocked, only to be mysteriously unblocked several weeks later. The police also passed up no opportunity to search the offices of both the Green »Bundestag« delegation and those of their state organisations, in the former case demonstrably forcing the lock despite an offer to provide the key.

But the Greens were not the only targets of police repression, which was by all accounts equally sharp in states governed by conservatives and Social Democrats.<sup>102</sup> Across the country, information stands were banned, printed materials confiscated, and phones tapped. In Rhineland-Pfalz alone there were at least 150 police raids on apartments, offices and print shops. The Bremen government voted in May not to participate in the census, though the courts quickly forced the city to reverse its position. In Berlin the state attorney sought to confiscate mail directed to the addresses of 20 boycott organisations. The country's highest prosecutor even got involved in the prosecution of a protest-related misdemeanour, explaining that a 10,000 DM fine would not be too high because of the possibility that opposition to the boycott would lead to terrorist acts.<sup>103</sup> Such a mentality

100 Deutscher Bundestag, 10. Wahlperiode, Drucksache 10/2814 and 3843, and BGBl. I, 1985, p. 2078. For a brief account of the key changes with regard to the 1983 law, see: Datenschnitt für eine Milliarde?, in: *Der SPIEGEL*, 16.3.1987, pp. 30–53.

101 AIFS, SBe 444, VoBo-Büro Hamburg, Box 5. This figure was often cited. For a list of 125 such initiatives, see *Verena Rottmann/Holger Strohm* (eds.), *Was Sie gegen Mikrozensus und Volkszählung tun können*, Frankfurt am Main 1987, pp. 320ff.

102 For a sampling of such measures, see: *Repressalien im Zusammenhang mit der Volkszählung*, AGG, B. II, 1, Nr. 5466.

103 *Die Strategie: Starker Staat*, in: *Die ZEIT*, 12.6.1987.

equated a dispute over the role of the state with a terrorist attack upon it. Whether the fear that the boycotts would open the door to terrorism was real or just a pretext for intimidation, it came out later in the year that the state police forces were, in fact, collecting information on boycotters and entering it into the national police information system because they considered such protests potential political crimes. Officials relied here on the assumption that even terrorists began with small offences.<sup>104</sup> This line of reasoning created a gap big enough to drive a truck through, and the important thing to bear in mind here is that all of the repressive measures by the state represented an attempt – perhaps the first serious one since the banning of the communist party in the 1950s – to criminalise unwelcome political speech and to use the concerted power of the state to intimidate political opponents.

On the other side, once forced into a corner, protesters also played cat-and-mouse games with the police and the census apparatus. There were numerous cases where census takers were robbed of the cardboard briefcases containing their census papers, and officials decided as a precaution not to send census takers into the Hamburg Hafensstraße, choosing instead to rely on the post. There were, however, instances where protesters resorted to violence. The Leverkusen registry office was bombed, and an unsuccessful attempt was made to bomb the Oberhausen statistical office. The people who claimed responsibility for these actions portrayed their opposition to the census as part of a larger struggle against imperialism.<sup>105</sup> In addition, on May 1 a police raid on a boycott coordinating office in the Berlin district of Kreuzberg – a centre of the city's alternative *Szene* – set off two days of serious rioting, which was fuelled by a host of underlying social factors. In this way the boycott quickly became an exercise in the art of not being governed: in part an effort – sometimes violent – to avoid being irrevocably embraced by the informational grasp of the state, in part an effort to stake out a physical and social space for an alternative culture within the interstices of this state by means of a carnivalesque inversion of its logic.<sup>106</sup>

Although the local groups were essentially autochthonous, as the group with the highest profile and the greatest resources, as well as the only one with a nationwide organisational network, it was inevitable that the Greens would take on a leading role in the boycott. But deciding on a strategy and persuading the other groups to follow their erstwhile leaders was an entirely different story. The Greens had originally joined with a number of other groups in calling for a complete boycott.<sup>107</sup> However, from the very beginning there were

104 However, the federal privacy commissioner Alfred Einwag concluded that more than half of the 21,000 names in this file had been entered for cases of minor property damage (including snipping the numerical codes off the census forms), that another large group were related to insults, trespassing or resisting arrest charges in conjunction with blockades and demonstrations, and that about 75% of the total number of names contained in the file were due to minor offenses that, in the absence of other evidence, should not have been entered into the system in the first place. Einwag to BMI, Betr.: Datenschutzrechtliche Kontrolle bei der Abteilung Staatsschutz des BKA, 7.12.1988, AGG, B. II. 1, Nr. 6009, and Ruth Leuze, 8. Tätigkeitsbericht der Landesbeauftragten für den Datenschutz, Landtag Baden-Württemberg, Drucksache 9/5230, pp. 51–53. Other state police forces followed a similar policy. On the prosecution of such cases, see *Peter Quint*, *Civil Disobedience and the German Courts*, London 2008.

105 *Kommunikee: Die Bombe ist gezündet – der Widerstand auch; Solidarität mit den Gefangenen. Wir lassen uns nicht spalten*, both in: AIfS, SBe 444, VoBo-Büro Hamburg, Box 2.

106 *James Scott*, *The Art of Not Being Governed. An Anarchist History of Upland Southeast Asia*, New Haven 2009. For the carnivalesque aspects of the protest, see, for example, the film »Ach wie gut, daß niemand weiß ...«, Vergissnes Produktion, 1987, AIfS. On the discussion of violence in relation to the census, see *Hannah*, *Dark Territory*, pp. 165ff.

107 Resolution des Bundeshauptausschusses der Grünen vom 15. Februar 1987, in: *Blätter für deutsche und internationale Politik* 32, 1987, p. 631.

debates over just what was meant by this hard line and what it was supposed to achieve. Some people interpreted this as meaning that they should simply refuse to accept the census forms. On the other hand, the Greens wanted to collect as many forms as quickly as possible in order to provide irrefutable evidence that the government had failed in its effort to force through the census and to thereby lower the threshold of resistance for others who may have supported the boycott in principle, but who feared retribution. This was the strategy adopted by the 250 to 300 persons who attended the nationwide boycott coordinating meeting held on April 26.<sup>108</sup> However, not everyone supported this approach. For example, one Bochum boycott group complained that the Greens had all along been exploiting disagreements among the boycott groups in order to dominate the movement, and they argued that the Green strategy represented a covert means of degrading the local boycott groups, which provided the grassroots support for the entire movement, into mere messengers whose function would be exhausted in delivering over their census forms at the designated collection points. Such a strategy, they argued, undermined the solidarity of the local groups and left their members to face official retribution on their own.<sup>109</sup>

However, despite their rhetorical commitment to the cause, the Greens remained reluctant to wholeheartedly embrace the boycott. The more pragmatic Otto Schily, for example, opposed the boycott and criticised the party's tendency to justify opposition by claiming moral superiority for its own position – even though he had been a strong supporter of the boycott in 1983. In practice many of the Greens advocated what came to be known as a soft boycott or *Schummellinie*, that is, a strategy of evasion, resistance, delay, disruption, and systematic falsification of census returns in ways that they hoped would escape the plausibility checks of the local census offices. The assumption behind this approach was that throwing sand in the gears of the census machinery on such a massive scale would cause it to collapse while rendering the information collected of such doubtful accuracy as to be completely unusable. A classic example of such tactical resistance was the letter from Petra Kelly to the Bonn census office asking officials there to kindly answer 125 detailed questions so that she could make an informed decision about completing the form.<sup>110</sup> However, opponents of the *Schummellinie* argued that it was naive to believe that the local census offices would simply throw up their hands in resignation in the face of such resistance, and they pointed out that those who adopted such a strategy were willing, in principle, to give the state the information it asked for and that this strategy undermined the solidarity and anonymity of the protesters and thus made it easy for census officials to pick off these persons one by one once they had them in their sights.<sup>111</sup>

However, despite the unwillingness of many Greens to fully commit to the boycott, the party was criticised from all directions for ignoring the principle of majority rule whenever it appeared politically opportune.<sup>112</sup> As the Social Democratic Interior Minister of North Rhine-Westphalia wrote to Green »Bundestag« delegate Antje Vollmer,

»even if I can sympathise with the fact that individual citizens are not supporting the census, I cannot, on the other hand, understand that a political party is calling for the obstruction of a state measure that has been enacted as law by the German Bundestag. This is tantamount to openly calling

108 Kurzbericht vom Initiativentreffen am 26.4. in Köln; Beschluß der Bundeskonferenz am 26.4.87, both in: AGG, B. II. 1, Nr. 6017.

109 Rundbriefe zum Mikrozensus; Volkszählung, hrsg. von der VoBo-Gruppe Bochum-Langendreer 1987, Nr. 11, both in: AIFS, SBe 444, VoBo-Büro Hamburg, Box 3.

110 Kelly to Erhebungsstelle Bonn, 27.5.1987, AGG, Kelly papers Nr. 227.

111 Rundbriefe zum Mikrozensus; Volkszählung, hrsg. von der VoBo-Gruppe Bochum-Langendreer 1987, Nr. 11, both in: AIFS, SBe 444, VoBo-Büro Hamburg, Box 3.

112 On the broader question of civil disobedience and the limits of democracy in the 1980s, see *Wirsching*, Abschied vom Provisorium, pp. 98–103, and the literature cited there.

on citizens to break the law. I cannot imagine that, as a democratic party, the Greens wish to call into question the principle of majority rule that, according to our constitution, formally legitimates political decisions.«<sup>113</sup>

Such arguments, together with their own reluctance to challenge the law in court, made it difficult for the Greens to justify their call to boycott a law whose constitutionality was widely recognised, and it is not clear that they ever developed a compelling answer to this question. While some of the Greens argued – echoing an argument that had been made against the stationing of NATO nuclear weapons in Germany – that the census posed such an immediate existential danger as to justify resistance, the legal staff of the Green »Bundestag« delegation rejected such notions of civil disobedience and insisted that the party had to respect the principle of majority rule. Nevertheless, they went on to argue that the boycott could still be justified as a means of achieving full recognition for the right to informational self-determination. Since this right was implicit in the constitution, resistance could, they suggested, be seen as a struggle *for*, rather than *against*, the constitution.<sup>114</sup>

Despite these arguments, support for the 1987 boycott remained more clearly limited to the left or alternative milieu than had been the case in 1983, and it never succeeded in winning the support of the moderate middle classes, at least not for the hard line.<sup>115</sup> According to Stephan Maria Tanneberger, the boycott coordinator for the Greens in North Rhine-Westphalia, one reason for this failure was that the boycott movement had remained a single-issue movement. This view was echoed by the socialist boycott groups, which recognised that »most people were concerned only about the boycott and not about the rejection of the surveillance state, or even the existing state.« Since the fall of 1983, people whose privacy consciousness had been awakened by the first round of the boycott had begun to hold regular meetings to study the impact of new technologies and the other elements of the surveillant assemblage (especially the new identity card). Tanneberger argued that one way to win broader support for the boycott was to look beyond the census and try to forge a new social movement around the issues of surveillance and information technology: »Why should it remain a pipe dream to organise [...] a nationwide network of initiatives, comparable to the peace or anti-nuclear movements, focused on the development of control and surveillance technologies?«<sup>116</sup>

Once the actual counting began in late May 1987, the boycott shifted into a different register because it was impossible to know exactly what was happening. Mounds of census returns piled up in local offices, and it was clear that no one was going to know anything for certain until officials had had time to work through these papers. Moreover, no one knew how accurate the information was in those returns that had been received. One thing that was clear, however, was that all of the organisational precautions that the

113 Roderich Reifenrath, Legalität – Legitimität, in: Frankfurter Rundschau, 25.2.1987, and Schnoor to Vollmer, 3.3.1987, AGG, B. II. 1, Nr. 3103.

114 Schily empfiehlt Methode Schwejk, in: taz, 25.2.1987; Wir untergraben unsere Position, in: taz, 26.2.1987; Die Grünen und der Boykott, in: Frankfurter Rundschau, 10.3.1987; Die Grünen im Bundestag/Justitiariat, Über den Unsinn einer Volkszählung, den Sinn eines Volkszählungsboykottes und dessen legitimatorische Probleme, undated, AGG, B. II. 1, Nr. 2522.

115 Similarly, within the peace movement support for civil disobedience remained limited to a minority who also identified with the Greens. *Wirsching*, Abschied vom Provisorium, p. 103.

116 Info-Mappe, 3. Aussendung, 4.6.1987, AIfS, SBe 444, VoBo-Büro Hamburg, Box 3; Thesen der Vereinigten Sozialistischen Partei (VSP) zur Bewertung der bisherigen VoBo-Bewegung in Hamburg, *ibid.*, Box 4. For evidence of the way that concern about the new information technologies helped place the 1983 census in a broader context and generate broad support for the 1987 boycott, see the minutes of the second Koordinierungstreffen in Sachen Personal- ausweis, and the materials relating to the Kabylon meetings, in: AGG, B. II. 1, Nr. 3087.



Court had required census officials to take in order to protect the privacy of personal data during the census itself were widely, and intentionally, ignored.<sup>117</sup>

By the early fall, the fines that the cities levied on boycotters were beginning to take their toll on the movement, which was clearly running out of steam, and in early October the refusal of the Constitutional Court to review complaints against the census dealt the boycott a serious blow.<sup>118</sup> By this time, boycotters were coming to a more realistic, though not necessarily disillusioned, appraisal of the situation. As the Bavarian Greens noted at the end of October, most people had put the boycott behind them in one way or another; they »had weathered fines, penalties, appeals, motions and complaints, but in the end they had not managed to avoid completing (in one way or another) the form.« Nevertheless, neither they nor other groups considered the boycott a failure. The Bavarian Greens concluded that, although they had originally favoured the hard line, the success of the movement should now be measured in terms of a heightened popular awareness of the problems of privacy and data protection. As the Berlin political scientist Wolf-Dieter Narr wrote in the name of the »Committee for Constitutional Rights and Democracy«, it was important that a sizeable minority had stood up for civil liberties and that a much larger number had only filled out the forms under duress, not out of belief in the inherent legitimacy or necessity of the census. But, Narr emphasised, there was no reason for boycotters to hold out at any cost.<sup>119</sup> Even though the boycott was now on the defensive, the leaders of the protest argued that it was important to remain focused on its political significance, rather than on the success or failure of their legal challenges. As one group calling itself the »Data Pirates« argued, the strength of the boycott movement lay less in its legal sophistry than in the ability to mobilise a broad segment of the population. In the face of recent setbacks, the task was to provide the movement with an opportunity to demonstrate their continued opposition to a census that they could not halt:

»For sure, the boycott movement is not a revolutionary movement. But neither is it a mere association of progressive lawyers. There must be a way for those protesters for whom [...] the boycott itself is over to articulate [their political goals]. These boycotters represent the majority of the movement, and they can be mobilised [...]. This potential for resistance is more impressive than a few hundred people willing to file lawsuits!«<sup>120</sup>

Nevertheless, it was clear that the boycott, hard or soft, was not going to bring the administration to its knees. By the spring of 1988, most cities were reporting a boycott rate of less than 1%.<sup>121</sup> And for these last few stragglers, the census law permitted officials to take information from the population registries as a last resort, so that by the time Zimmermann presented the preliminary results of the census he was technically correct to claim that nearly 100% of the population had participated. However, his claim that these results were due to the success of the administration in convincing the people of need for

117 *Leuze*, 8. Tätigkeitsbericht der Landesbeauftragten für den Datenschutz, pp. 17–59; *Claus Henning Schapper*, 6. Tätigkeitsbericht des Hamburgischen Datenschutzbeauftragten, Hamburgische Bürgerschaft, Drucksache 13/1412, pp. 48–66.

118 Volkszählung: Massenwiderstand endgültig abgehakt?, in: *taz*, 14.10.1987.

119 Winfried Eckardt, Die Grünen, Landesverband Bayern, Volkszählung 87 – (Vorläufiges) Resümee einer Kampagne. Bericht an den Landesausschuss der Grünen am 31.10.87 in Regensburg, AGG, Petra Kelly papers, Nr. 227, and Wolf-Dieter Narr, Offener Brief an alle diejenigen, die sich nicht ohne weiteres »volkszählen« ließen, insbesondere aber an die Volkszählungs-Boycott-Initiativen, 5.11.1987, AGG, C NRW LaVo/LGSt 01, Nr. 41.

120 Datenpiraten, Thesenpapier zur Perspektive der Vobo-Bewegung in Hamburg, [October 1987], AIfS, SBe 444, VoBo-Büro Hamburg, Box 3.

121 For some of the exceptions, see: Vertraulich – Senatsdrucksache Nr. 603, 12.4.1988, AIfS, SBe 444, VoBo-Büro Hamburg, Box 5b. City officials noted that they stood to lose 3,000 DM in federal funds for each individual who was not counted.

their information and the state's commitment to protecting their privacy was part delusion, part newspeak.<sup>122</sup>

The newsweekly »Die ZEIT« was less overtly ideological, but no less critical, in its assessment of the boycott. The paper argued that the movement's attack on the need for and the quality of statistical data had failed to understand that the welfare state had to do its best to manage the problems with which it was confronted and that, at a minimum, reliable data would increase the probability that the outcomes would also be good. As proof, the paper noted that, according to the city's population registries, Berlin should have had a population of 1,881,000. However, the actual census count had come in at 2,041,000. The former figure would have indicated a population decrease of 241,000 persons in comparison with the 1970 census, the latter a decrease of only 108,000. The difference between the two figures was approximately 133,000 persons, »an additional large city for which schools, housing and public spaces must be planned.«<sup>123</sup>

As I have tried to suggest in the preceding pages, the census protests should be understood as a response to the same political developments and macro-sociological transformations of the post-war welfare state that have elsewhere been identified as the catalysts of the new social movements. In the concluding pages of this section I will argue that the census boycotts also gave the Greens an opportunity to think not only about issues of privacy and surveillance, but also about the purpose of the census and the ways in which statistical information was subsequently used, and that they took advantage of this opportunity to develop a systematic critique of the technocratic use of statistical data by public and private sectors, which clearly reflected the thinking of the alternative milieu and the new social movements out of which the party had grown.

In their pamphlet »Only Sheep Let Themselves Be Counted« (»Nur Schafe werden gezählt«), the Greens began by explaining why the compulsory collection of statistical data was incompatible with the autonomy and self-determination of the individual. Not only did such data pools lend themselves to misuse, and not only did such information have the potential to make the individual into a digitised, fully transparent object of observation by public and private agencies. The collection of statistics in this manner was also, they argued, based on an elitist, authoritarian, technocratic conception of democracy.<sup>124</sup> One could, as »Die ZEIT« had done, argue that better statistics lead to better policy. However, the Greens rejected this approach, maintaining instead that such statistics could not lead to better policy as long as the way in which the problem was defined pre-determined the possible answers and thus barred the way to meaningful participation by the individual citizen. Compulsory answers to census questions whose phrasing reflected the interests of the organisations collecting and using the data inevitably degraded autonomous individuals, they insisted, into the object of technocratic rule by others. Such an approach was characteristic of what they called an »authoritarian welfare state.« In such a polity, they continued, the state

»ascertains [...] the objective data, defines social problems and grievances, and provides citizens which what it has determined to be their needs. Citizens are occasionally called to the polls, but their desires with regard to housing, work and transportation are [regarded as] merely subjective and, therefore, statistically and politically irrelevant. We reject such a conception of politics.«<sup>125</sup>

122 Bulletin des Presse- und Informationsamts der Bundesregierung Nr. 167/1988, pp. 1488–1489. See the criticism in: Die Predigt wurde nicht verstanden, in: Die ZEIT, 22.11.1987, p. 2.

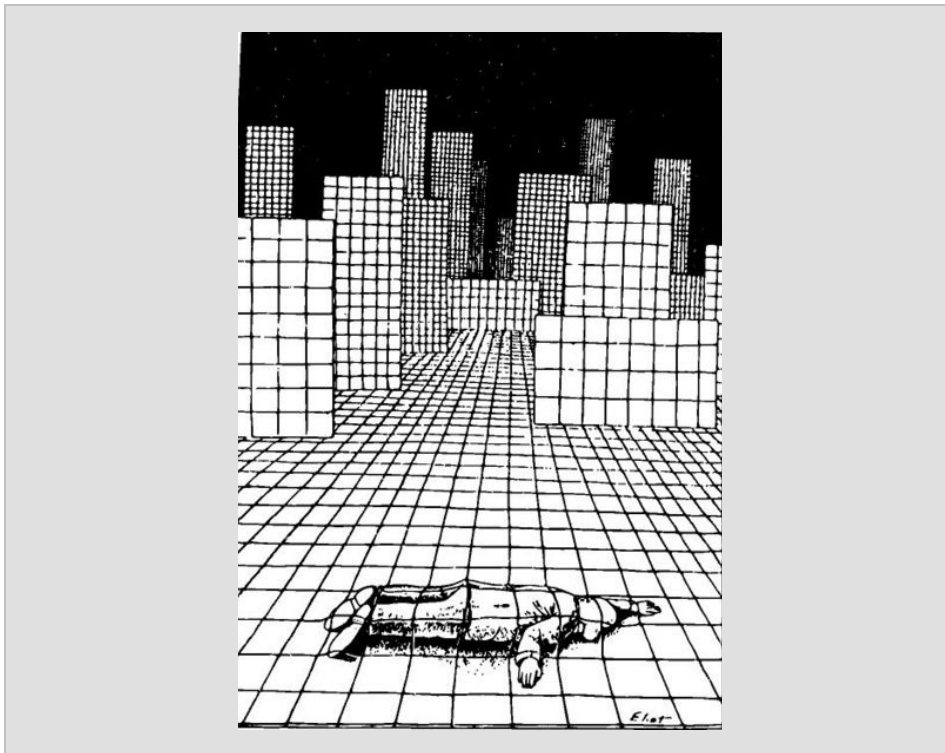
123 Horst Bieber, Neue Fakten übers Volk, in: Die ZEIT, 16.12.1988, and *idem.*, Viele Fragen – und welche Antworten?, in: Die ZEIT, 20.2.1987.

124 Die Grünen, Nur Schafe werden gezählt, 1987.

125 Die Grünen im Bundestag/Justitiariat, Über den Unsinn einer Volkszählung, AGG, B. II. 1, Nr. 2522.

The outcome of this process is captured in Figure 3. Here, the individual has been emptied of all concrete needs and desires to such an extent that he can only appear as the passive object of the rectangular logic of technocratic social planning and of the abstract statistical schemata through which he is represented. In this view of the world, the individual is not a real person, but a cipher devoid of all agency and individuality. He becomes simply one more element in the calculable structure of the planned society. Constructing a viable alternative to technocratic rule would require, the Greens argued, a number of changes to the political system: more participation by citizens in the planning process, the displacement of decision-making authority from officials to the public at the local level, the development at all governmental levels of new institutional forms for such participation (referenda and co-determination), the right to examine the planning documents used by the administration (*Akteneinsicht*, or freedom of information), the right of citizens' groups to be heard in the planning process and standing to challenge decisions in the courts, and the strengthening of the extra-parliamentary opposition, »because otherwise in the end nothing can be accomplished at the parliamentary level.«<sup>126</sup> Only these changes would make it possible for political decision-making »to orient itself towards the genuine, actual needs of the population.«<sup>127</sup>

Figure 3: »Volkszählung. Die nächste kommt bestimmt!«<sup>128</sup>



126 Die Grünen, Nur Schafe werden gezählt.

127 Entschliessungsantrag der Abg. Dr. Vollmer, M. Such und der Fraktion Die Grünen/Bündnis 90, 23.10.1990, AGG, Bestand A, Manfred Such, Nr. 84.

128 AGG, B. II. 1, Nr. 2522.

Many of these issues were addressed at a February 1985 hearing on the microcensus law, which in the aftermath of the census decision had to be revised to insure its constitutionality in advance of the microcensus scheduled for later that year.<sup>129</sup> In view of the court's strictures to use the least intrusive methods possible to gather the least amount of information needed to achieve its goals, the administration rolled out all of the big statistical guns to buttress its claim that the microcensus, in conjunction with the traditional *Totalerhebung*, represented the only way to collect the information needed to govern the welfare state.

Since the end of the 1960s, state officials and social researchers had been working to develop a system of social indicators, which they hoped could be used to measure, and thereby guide the production of, that elusive thing known as »welfare«, and they saw these social indicators as the cornerstone of a system of social monitoring, which they hoped could be used in a cybernetic manner to guide the development of social programs and then to assess their success in enhancing »quality of life.« One of the leading figures in this field of empirical social research was the sociologist Wolfgang Zapf.<sup>130</sup> At the hearing, Zapf linked the need for census data to the advent of the information society. He noted that, although there had been much debate recently concerning the transition from an industrial to an information society, the discussion had focused primarily on the way that technology was altering productive and administrative processes, but not on the information itself. However, he warned,

»a society that has no knowledge of its most elementary vital processes can not be considered an »information society«. [...] A society with televisions, video terminals and phones, and personal computers is not an information society if it does not know anything about itself, if it does not have empirically founded knowledge of its structures and processes, of the objective and subjective living conditions of its citizens, of old and new inequalities.«

For Zapf, statistical knowledge constituted the »informational infrastructure« of modern society.<sup>131</sup>

While the protesters had suggested that the intrusive *Totalerhebung* should be replaced by smaller, more focused samples modelled on public opinion or social research surveys, virtually every expert testifying at the hearing argued, first, that the census and the microcensus had to be maintained in their present form because this integrated statistical program provided the only way of linking structural and developmental data, and, second, that, since the census and microcensus together provided the baseline for sampling, they could never be reliably supplanted by such methods. They also argued with equal vehemence that mandatory answers had to be retained in order to insure that the data collected provided a complete and accurate foundation for state social policy. Tellingly confusing cause with effect, Egon Hölder, the president of the Federal Statistical Office, argued that it was not the resistance aroused by the legal requirement to complete the census, but rather the boycott and the current political climate, that was threatening to impair the quality of census results – and thereby making mandatory answers all the more necessary. Arguing along similar lines, Zapf described census data as the indispensable »informational tax« owed by all citizens as an act of solidarity; he blamed the privacy discussion of recent years for encouraging individuals to think of themselves as self-enclosed

129 Deutscher Bundestag, 10. Wahlperiode, Drucksache 10/2600.

130 Wolfgang Zapf, Sozialberichterstattung. Möglichkeiten und Probleme, Göttingen 1976; Wolfgang Glatzer/Wolfgang Zapf (eds.), Lebensqualität in der Bundesrepublik, Frankfurt am Main 1984.

131 Zapf, Stellungnahme, 11.2.1985, AGG, B. II. 1, Nr. 139. Zapf had set out some of these arguments in: Der Zugang der Wissenschaft zur statistischen Information – Forderung und Realität, in: Statistisches Bundesamt (ed.), Datennotstand und Datenschutz. Die amtliche Statistik nach dem Volkszählungsurteil, Stuttgart 1985, pp. 38–49.

monads and thus to neglect the ways in which they were enmeshed in market exchanges and other social systems; and he argued that mandatory answers to census questions were the only way to prevent the worrying gap between the rights of the individual to state social services and »the willingness of citizens to make possible – through the provision of information – the rational provision of these services« from growing too wide.<sup>132</sup>

But from the perspective of the Greens, what such arguments overlooked was that statistical data always reflected the interests, the definitional power, and the logic of domination of those bureaucratic organisations that collected and controlled this information, and they linked the increasingly authoritarian informational policies of the state to an intensified concern for domestic security and to the need to preventively manage the inter-related social, political and economic problems that were threatening the stability of the capitalist welfare state.<sup>133</sup> But the Greens also went on to develop an alternate theory of statistical governance in which the real needs and desires of the individual would play a central role. As Ulrike Erb, one of the Green experts on computers and the new information technologies, explained, the bureaucratic structures of the political and economic domains shared a common logic of domination that enabled them to define what counted as statistical knowledge, to organise this information in ways that corresponded their own interests, and then to impose these schemata upon the public via mandatory answers. The problem with a census organised in this manner, she argued, was not that it collected too much information, but rather that it did not collect enough information and that the information that it did collect was systematically distorted by the imposition of these alienating and disempowering schemata of social knowledge. The statistical categories used by the census, Erb argued in a language of *Betroffenheit* that embodied the longing for authentic experience that was the core value of the new social movements, »always distort the reality they depict because they filter out individual aspects from a complex system while neglecting other essential factors [...]. Such a computer-compatible population census is not conducive to the humane solution of individual, regional, and social problems.« In order for the census to really contribute to the solution of urgent social problems, it would, she maintained, have to inquire into the real »needs and desires« of the population. What Erb and others meant by this was that the census should not simply inquire into the education, the income and the means of transportation used most often by the individual. Rather, the census should ask »which activities one would prefer to engage in, whether income is sufficient to live on, and where one would like to see public transportation expanded in order to be able to abstain more often from driving.«<sup>134</sup>

It was precisely this issue that so many people had in mind when they argued that the mere collection of data – so long as it had been pre-structured by those who wished to use it for planning purposes – created a near-irresistible pressure to adopt certain kinds of policy responses. As the Greens explained in their pamphlet »Only Sheep let Themselves Be Counted« (»Nur Schafe werden gezählt«),

»the census asks about the means of transportation that people (must) use to get to work, but not about the form of transportation they would like to be able to use. Whoever is forced to drive will

132 See the memoranda submitted by Egon Hölder, Heinz Grohmann (president of the »Deutsche Statistische Gesellschaft«), the »Deutsches Institut für Wirtschaftsforschung«, and Zapf, AGG, B. II. 1, Nr. 139.

133 See Roland Appel, Sicherheitsstaat und formierte Gesellschaft als Strukturelemente konservativer Politik, AGG, B. II. 1, Nr. 5466, and Roland Appel, Vorsicht Volkszählung!, in: *idem./Dieter Hummel* (eds.), *Vorsicht Volkszählung!*, Köln 1987, pp. 12–36. Appel's arguments here are similar to those advanced by Joachim Hirsch, *Der Sicherheitsstaat. Das »Modell Deutschland«, seine Krise und die neuen sozialen Bewegungen*, Hamburg 1980.

134 Ulrike Erb, *Volkszählung zwischen den Interessen von Volk und Staat*, in: *Appel/Hummel, Vorsicht Volkszählung!*, pp. 82–85 (emphases in original).

provide information that will later be used to justify the construction of new roads and the expansion of existing ones. In the past anonymous housing ghettos, inner cities dominated by the banks, municipal highways and mammoth schools have been justified by planners in this and similar ways.«

This created a perverse situation in which, according to a Green policy paper, »the state is no longer there for the citizen, but the citizen for the state«, that is, it created a situation where »citizens [...] are no longer asked for their opinion, but only for their data, which is then used to control them.« In this way, Erb explained, the politically incapacitated citizenry was »forced into a permanent press data corset« and so manoeuvred by the census questions as to create a situation »in which they can no longer either pose any inconvenient demands or express individual interests [...]. In order to govern people and politics, people are reduced to categorisable and calculable data.«<sup>135</sup>

The thrust of these arguments are nicely captured in the poster by the graphic artist Klaus Staeck (Figure 4), whose caption reads »The individual always stands at the centre« or, in a more figurative rendering »Man (or the unalienated individual) is always the measure.« The way in which the face (or the head, in either case, the seat of the person's individuality) is covered or replaced by a bar code symbolises the ways in which the fullness of individual experience is always attenuated or reduced by being forced into the statistical categories that reflect the logic of technocratic rule. It is, however, impossible to determine whether the caption is intended to be read as a description of reality (which seems unlikely) or as an imperative to be realised – or whether it represents an ironic comment on the growing distance between ideal and reality.

Figure 4: Poster by Klaus Staeck, 1981<sup>136</sup>



135 Ulrike Erb, Volkszählung zwischen den Interessen von Volk und Staat. BVG-Verhandlung zur Volkszählung, 19.1.1984, AGG, B. II. 1, Nr. 3255; Die Grünen, Nur Schafe werden gezählt.

136 Reprinted by permission of Klaus Staeck.

This attempt to make personal, private, and ostensibly more authentic experience into the basis for social life and politics was a central feature of the alternative movement. However, such efforts were not unproblematic. The alternative media had struggled with the contradiction between the reporting of authentic experience outside the alienating channels of mainstream media (*Betroffenenberichterstattung*) and the role of the journalist in interpreting such experiences to the broader public, and Erb's statement here seems to imply that the meaning of such experience would be self-interpreting. However, there was always the danger that such an emphasis on immediacy and authenticity would imprison its advocates within their own subjectivism and make it impossible to put Erb's alternative vision of statistical governance into practice for communities that were larger and structured in a more complex manner than the alternative milieu.<sup>137</sup>

## VI. CONCLUSION

The immediate outcome of the boycott was neither the reenchantment of the state envisioned by Friedrich Zimmermann nor the carnivalesque inversion longed for by the Greens, but rather an intense sense of disenchantment and disillusionment with political life (*Politikverdrossenheit*) and a festering mistrust of the technocratic state. Although the state may have saved itself from abdication, it did so at the cost of dissipating the loyalty of many of its citizens. This mood was captured by Anselm Kiefer in a work entitled »60 Millionen Erbsen«, or »Sixty Million Peas.« This over-sized installation was composed of large metal storage shelves holding dozens of thick, leaden folio volumes with peas pressed between their covers to symbolise the objects of the census (Figure 5). Contained within their leaden, bureaucratic pods, the peas, which were dried and uncounted (Kiefer himself was one of the boycotters), make a powerful statement about the ultimate (in)significance of the census, while the uneven volumes give the unmistakable impression that, despite the importance attributed to the census by the administration, this particular archive represents a repository of knowledge that was seldom consulted and, in fact, hardly deserving the name. Kiefer's ironic distance from the census is further reflected by the »Hampelmann« – a child's puppet-toy manipulated by pulling a string and here symbolising the machinations of a state intent on asserting its authority – hanging upside down from one of the volumes. The surveillance cameras mounted in the corners of the room make clear the connection between this massive act of bureaucratic hubris and the looming surveillance state, while the film hanging out of the cameras raises the question of the legitimacy and the capacity – both technical and political – of that state, as well as the role of the boycott in blunting the intrusion of the state into the private sphere.

The 2011 census was the first full-scale count since 1987. The 1991 census was called off due to reunification, which was probably fortunate since there could not have been much enthusiasm for conducting another count so soon after the events of 1987. However, the methodological and political debate over the best means of determining the size and characteristics of the population continued after 1987, and by the mid-1990s a tentative decision had been reached to abandon the traditional *Totalerhebung*. The 2001 census, which in lieu of a full count simply drew together information from the population registries and the microcensus, was a product of this transitional moment. The 2011 census was based on an entirely different approach. Population figures were drawn from the local registries; descriptive information were collected by bringing together registry information with information from the Federal Employment Administration (»Bundes-

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137 On the alternate media, see *Stamm*, *Alternative Öffentlichkeit*.



Figure 5: »60 Millionen Erbsen«, 1987<sup>138</sup>



agentur für Arbeit«); and household information were be constructed from individual information on the basis of a shared address and other data.<sup>139</sup>

As noted at the outset, in contrast to the 1980s there has been surprisingly little public protest against the 2011 census<sup>140</sup>, and the question is, in part, to what extent the absence of such protest can be seen as the result of a sea change in German political culture since the mid-1980s? On the one hand, the spread of computers through the public administration and the expanded use of personal information for social planning was a long-term process that began in the mid-1960s and that reached a provisional conclusion or saturation point across the 1980s. Although the census decision had made it clear that the informational relations between the citizen and the state were subject to constitutional limita-

138 bpk, Berlin/Hamburger Bahnhof – Museum für Gegenwart, Nationalgalerie, Staatliche Museen, Berlin, Germany/Photo: Jens Ziehe/Art Resource, New York. Compare also: *Der SPIEGEL*, 18.3.1991.

139 *Heinz Grohmann*, Von der Volkszählung zum Registerzensus. Paradigmenwechsel in der deutschen amtlichen Statistik, in: *Wirtschafts- und Sozialstatistisches Archiv* 3, 2009, pp. 3–23, and *Deutscher Bundestag*, 16. Wahlperiode, Drucksache 16/12219. In 1988, *Die ZEIT* found the traditional *Totalerhebung*, with all its faults and limitations, preferable to a Scandinavian-style registry-based census. *Bieber*, Neue Fakten übers Volk.

140 One explanation – that has been advanced from a number of quarters – for the relative absence of public protest is that, since only a small proportion of the total population are being personally interviewed, while the primary count is taking place by computer behind the scenes, not as many people feel directly affected by the census as was the case in 1987. See, among others, *Sebastian Heiser*, Die Vermessung der Republik, in: *taz*, 11.3.2011.



tions, it was left up to the »Bundestag« to balance between the individual right to informational self-determination and the informational needs of the community, and the concrete meaning of this right was defined – and constrained – by the packet of security laws passed in the second half of the decade, by the police laws passed by the various federal states (which were, primarily, information-collection laws), by the 1990 revision of the Federal Privacy Protection Law, and by numerous administrative regulations and court decisions (such as that governing the collection and distribution of personal information by »Schufa«). This gradual juridification of privacy protection left a bad taste in the mouths of many persons, who felt that it simply sanctified the overly-intrusive practices long employed by the police, and these laws, regulations, and court decisions constrained the space available for political protest.

In addition, as Andreas Wirsching has shown, the »fear and suspicion [*Angst*] of the computer«, which had been so pervasive in earlier years, began to dissipate in the 1980s. The birth and inexorable spread of the personal computer since the second half of the 1970s posed a serious challenge to the original privacy protection paradigm, which had been oriented around the control of mainframes, and gave computing, which had heretofore been monopolised in the hands of large, powerful, and opaque bureaucratic organisations, a human face. The 1980s saw the birth of hacker culture, and the computer did increasingly come to be seen both as a potential solution to the structural problems that had plagued the economy since the early 1970s and, gradually, as a vehicle for individual self-realisation.

Where Wirsching's otherwise compelling analysis gives pause is in his suggestion that the energies of the social movements and their protest potential dissipated across the middle of the 1980s because the advent of a new neo-liberal economic and technological paradigm, in conjunction with the cultural reorientation that accompanied this change, rendered their concerns increasingly irrelevant, thus consigning them to the dustbin of history. Since the spread of mainframe computers for administrative purposes from the 1960s through the 1980s altered the way that individuals interacted with both the state and large corporations, it is hardly surprising that this moment of technological discontinuity provoked both sustained reflection and political protest, though this pan-Atlantic process was polarised in Germany to an unusual degree by domestic terrorism, the expansion of state surveillance capacity, and the diverse efforts to integrate these developments into larger narratives of the country's modern history. However, the privacy concerns that were institutionalised in the census decision remain a vital element in Germany's political culture, and, after a period of political exhaustion in the 1990s, over the past decade this concern for privacy has reemerged as a potent political force – the meteoric rise of social networking sites from »Friendster« to »Facebook« notwithstanding. In its 2008 *Online-Durchsuchung* decision, the Federal Constitutional Court expanded the 1983 right to informational self-determination to include what it called a right to the confidentiality and integrity of information technology systems; this represented a response to both advances in information technology and the expanded use of these technologies by police and intelligence agencies since 2001.<sup>141</sup> Similarly, in March 2010 the Court overturned the law on *Vorratsdatenspeicherung*, imposing much more restrictive conditions than originally stipulated by the »Bundestag« (and than required by the European Union).<sup>142</sup> And the last thing that I saw at the end of a recent research trip to Germany was a television interview with Simitis, who was explaining the privacy problems raised by the recently-implemented – and even more recently abandoned – system for tracking work history and associated social data (ELENA).

141 BVerfG, 1 BvR 370/07, 27.2.2008, URL: <[http://www.bverfg.de/entscheidungen/rs20080227\\_1bvr037007.html](http://www.bverfg.de/entscheidungen/rs20080227_1bvr037007.html)> [10.4.2011].

142 BVerfG, 1 BvR 256/08, 2.3.2010, URL: <[http://www.bverfg.de/entscheidungen/rs20100302\\_1bvr025608.html](http://www.bverfg.de/entscheidungen/rs20100302_1bvr025608.html)> [10.4.2011].

Privacy may no longer provide the moving force for a broad-based social movement seeking, as it did in the 1980s, to revolutionise everyday life. However, in this, as in so many other domains, the decline of the social movements of the 1970s and 1980s has gone hand in hand with the entry of their ideas into mainstream culture and the institutionalisation of their concerns within the political system of the Federal Republic. The right to informational self-determination was the legacy of both the liberal and alternative challenges to the 1983 census and to the broader expansion of state surveillance that it symbolised, and this new approach to understanding the informational relations between the citizen and the state still defines the parameters of German thinking on these issues.