

SECURITY, PRIVACY, AND THE GERMAN-AMERICAN RELATIONSHIP

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I. Introduction: A Stunning Theft of Intelligence

The U.S. Intelligence Community (IC) comprises sixteen secret agencies.¹ Eight are located within the framework of the Defense Department; seven in civilian policy departments, such as the Federal Bureau of Investigation (FBI) in the Justice Department; and one, the Central Intelligence Agency (CIA), stands alone as an independent civilian organization outside any of the policy departments. Since its creation in 1947, the CIA has been the titular leader of the Intelligence Community, serving as the headquarters for U.S. espionage activities, for the government's senior analysts, and (until 2005) as the home of the Director of Central Intelligence or DCI. The military intelligence agencies include the National Security Agency (NSA), founded in 1952 as an outgrowth of the Army Signals Intelligence Corps. It serves as America's codebreaking, encrypting, and electronic surveillance organization, engaged primarily in worldwide eavesdropping on telephone conversations and social media (such as e-mail). Both the CIA and the NSA played an important role in the souring of U.S.-German relations since mid-2013, when a major theft of classified U.S. intelligence documents revealed widespread NSA spying against Germany.

Each of America's intelligence agencies has been relatively autonomous, led by a program manager or director who is expected on some matters to answer to the DCI or, since 2005, to the Director of National Intelligence (DNI, the new coordinator for the Intelligence Community) and to contribute to the nation's collection of intelligence from around the world. These agency managers have budget and hiring authorities, however, that are separate from the DNI's control. The sixteen agencies and their directors have been notorious for behaving as if they were "silos" or "stovepipes," separate from one another. Given the considerable power of each of the directors, they are known in Washington slang as "the gorillas in the stovepipes."

In 2004, in response to the 9/11 terrorist attacks against the United States, Washington officials attempted to provide greater cohesion

¹ This article is based on a lecture delivered at the German Historical Institute in Washington on June 4, 2015. On the sixteen intelligence agencies, see Loch K. Johnson, *National Security Intelligence: Secret Operations in Defense of the Democracies* (Cambridge, UK: Polity, 2012).

to America's spy agencies by creating a DNI, through passage of a law known as the Intelligence Reform and Terrorism Protection Act. These aspirations for a closer integration of the agencies in the Intelligence Community failed, though, because the Pentagon lobbied against the idea of centralization under a DNI. The Pentagon convinced key members of Congress, especially on the Armed Services Committees in the House and the Senate, to block the creation of a powerful civilian intelligence leader. The Secretary of Defense at the time, Donald H. Rumsfeld of the second Bush Administration, feared a diminution of the military intelligence mission under the strong DNI model. However unfounded that fear may have been (any DNI would have continued to place assistance to U.S. combat men and women foremost on the list of intelligence priorities), the end result of the lobbying efforts was the establishment of a stripped down version of a DNI — a position devoid of significant budget and appointment powers over the entire Intelligence Community.

In this permissive management environment, the CIA and the NSA (as well as their companion agencies) continued to enjoy broad discretion in the crafting and implementation of intelligence operations, especially in the counterterrorism domain, reined in from time to time (if at all) by the White House and the National Security Council (NSC). The two intelligence oversight panels on Capitol Hill, the Senate Select Committee on Intelligence (SSCI) and the House Permanent Select Committee on Intelligence (HPSCI), displayed only a spotty interest in questions of accountability, restrained from an energetic exercise of oversight by the shock of the 9/11 attacks and the worry about additional assaults on the American homeland by foreign or perhaps even domestic terrorists. With some exceptions, lawmakers put close supervision of the intelligence agencies on hold.

As a result, a tone was set at the highest levels of government that discouraged the rigorous application of safeguards against the possible abuse of secret power by the intelligence agencies. This atmosphere would lead to excesses, including the CIA's extraordinary renditions and secret prisons abroad, its torture of suspected terrorist prisoners (or, in the Agency's euphemisms, the use of "enhanced interrogation techniques" against "detainees"), and the unleashing of the NSA's global programs of signals intelligence ("sigint," or the interception of telephone messages and other electronic forms of communications). The 9/11 attacks had changed the world, at least

from the American perspective, and counterterrorism took on a certain ferocity in the hopes of preventing future 9/11s.

In the pursuit of the bulk collection of “metadata” and related surveillance programs, the NSA — the largest of the American intelligence organizations — hired Edward J. Snowden in 2013 to help with some of its high-speed, complex computer work. At the time of his employment at the NSA, Snowden — a twenty-nine-year-old high school dropout from suburban Maryland and a former information-technology (IT) expert at the CIA — was under contract as a data specialist with the giant defense firm Booz Allen Hamilton. The NSA outsourced some of its work to this Beltway contractor — a common practice at the time for most of the U.S. intelligence agencies, as a means of supplementing their own permanent staff. In his short stint at the NSA, Snowden stole over a million classified documents from its vast computer banks, one of the most significant security breaches in U.S. history. Before releasing the first of these documents on June 5, 2013 — as a means, Snowden declared, of protesting against the NSA’s broad surveillance activities — he fled the United States in search of a safe haven, first to Hong Kong and then (after other options fell through) to Russia.²

During his brief stay in Hong Kong, he leaked many of these documents to U.S. and British journalists; and, in Russia, he continued to send classified materials to reporters (especially on the staffs of the *Washington Post* and, in the United Kingdom, *The Guardian*), as an ongoing protest against what he referred to as the American surveillance state. The pilfered documents disclosed that the NSA had been engaged in the gathering of telephone and social media records at home and abroad, using a dragnet approach rather than obtaining individualized warrants based on a reasonable suspicion that a target was involved in terrorism. The Snowden disclosures showed that, as part of its global sigint surveillance, the NSA had collected the communications data of millions of German citizens, as well as of officials at the highest levels of government in Berlin. These revelations shook the U.S.-German relationship.

II. America as a Modern Roman Empire

Imagine how early Germanic tribes might have viewed the Roman legions marching into the Rhine river valleys under the command of Julius Caesar. On the horizon would appear a vast forest of spears; thousands of banners in the air; chariot wheels, steel shields and

2 For an account, see Glenn Greenwald, *No Place to Hide: Edward Snowden, the NSA, and the U.S. Surveillance State* (New York: Henry Holt, 2014). Also: Loch K. Johnson, ed., “An INS Special Forum: Implications of the Snowden Leaks,” *Intelligence and National Security* 29 (December 2014): 793-810.

long-blade swords glittering in the sun; the legions spread across the landscape — a disciplined colossus moving inexorably forward. Today, the United States is looked upon by many in the Federal Republic of Germany (and elsewhere) as an even mightier and more arrogant empire, with nuclear weapons capable of annihilating the world; warriors stationed in more than seven-hundred military bases around the globe; drone runways from Uzbekistan to Djibouti and beyond; submarines beneath every sea, each carrying more explosive firepower than all the combined weaponry detonated in the Second World War; bombers and fighter planes that command the skies; missiles able to reach, within minutes, any city or village on the planet; sophisticated surveillance satellites, reconnaissance aircraft, and sigint antenna strategically positioned on the continents; spies in every capital; Internet eavesdropping capabilities that make Big Brother of Orwell's *1984* seem relatively benign.

Add to this America's behemoth economy that disseminates U.S.-made products and advertisements — Coke, Apple, McDonalds, Starbucks, among thousands of other brands — into every nook and cranny of the global marketplace; the tentacles from L.A. film and recording studios; and the cornucopia of gadgets from computer app and game manufacturers — all reaching out across the latitudes to swamp local cultures, languages, and norms. In the words of an American journalist, “. . . our enemies tweet on iPhones, and kids worldwide bop to Beyoncé.”³

The analogy between U.S. and Roman imperial dominance falls short when considering that America lags behind many other nations in, for example, life expectancy (30th from the top), high school matriculation (49th), mortality rates for mothers in childbirth (55th), and cellphone use (87th). Moreover, on the military front, the United States has fallen short of its objectives in Korea (1950-1953), Cuba (1961), Vietnam (1965-73), and, most recently, Iraq (2003-2013), with military advisers, drones, and fighter aircraft now re-engaged there to assist the Baghdad government in its struggle against the terrorist organization called the Islamic State (IS, and known as well as ISIS or ISIL). Thousands of American soldiers have been fighting in Afghanistan, too, since 2002 and counting, with only minimal success in subduing the Taliban adversary.

Still, the image of the United States as a modern imperial empire has a ring of veracity to many foreign observers who find the aggressiveness and scope of its military and intelligence activities altogether

3 Nicholas Kristof, “Enjoying the Low Life,” *New York Times* (April 9, 2015), A27.

disquieting. Without question the United States bristles with weaponry, spending more on arms and soldiers each year than the next ten nations combined (including China and Russia). Further, America boasts intelligence agencies that consume an annual budget dwarfing every other nation's spending on spy activities — at a high of \$80 billion in 2010, presently around \$53 billion, and likely to grow again. (In comparison, the United Kingdom reportedly spends about \$3.6 billion a year on its intelligence agencies.⁴) With respect to America's current involvement in warfare, the presence of U.S. troops and military aircraft has been highly unpopular in the Middle East and Southwest Asia, even among the local factions their presence is meant to help.

This portrait of the United States standing astride the globe, like Galileo in Honoré Daumier's famous etching (although absent Galileo's dismay at the proliferation of armaments beneath him), raised suspicions — long before the Snowden affair — about the intentions of Washington officials, even in some quarters normally disposed toward trusting Americans. The reservoir of good will toward the United States was once deep and reliable among Germans, as President Harry S. Truman and his successors led the way toward the reconstruction of war-wrecked Europe after 1945. In recent decades, though, this reservoir has periodically displayed significant drops.

III. The Bumpy Road of U.S.-German Relations

Even at the end of the Second World War some German intellectuals and politicians argued that, since their nation rested roughly equidistant geographically between East and West, it should refrain from leaning one way or the other politically. The first West German chancellor, Konrad Adenauer, had other ideas, however, as well as a strong will and exceptional political acumen. Concerned about possible Soviet aggression toward Western Europe, and calculating that Bonn was likely to have more success trying to influence London, Paris, and Washington than it would the hardliners in Moscow, he committed his nation unequivocally to *Westbindung* — an anchoring to the West. In return, the United States and other allies in the North American Treaty Organization (NATO, formed in 1949) offered West Germany a protective military shield during the Cold War, without which the Kremlin might have engaged in westward expansion.

4 Philip Johnston, "GCGH and the License to Eavesdrop," *Daily Telegraph*, London (August 27, 2010), A1.

The first twenty years after the war were a golden age of American popularity in Germany. Then came the Vietnam War, which drew strong opprobrium across the Federal Republic, especially among the younger generations. This disillusionment with the use of U.S. force abroad was followed by protests against the placement of American intermediate-range missiles in West Germany during the 1970s and 1980s as a further deterrent against the Soviet Union. As Germany's economy and self-confidence strengthened, its junior status in the Western alliance became less and less palatable in Berlin and to the German public. Further, the peace movement was widely supported in West Germany during the Cold War, especially its criticism of nuclear weaponry. In this grassroots longing for world peace one can find additional seeds of the alienation from the United States that began to grip the German public, driven by a sense of international idealism that persisted long after the U.S. military withdrew from Indochina in 1973. As the foreign affairs columnist William Pfaff observed in 1989: "Having provided the world with a model of evil in the past, these Germans now imagine themselves providing a necessary model of good again in a millenarian spirit."⁵

A revival of appreciation toward the United States appeared when the Reagan Administration helped tear down the Berlin Wall and dispatch the Cold War to the history books, a transformation for which the reform-minded Soviet President Mikhail Gorbachev also deserved much credit. By the time of German reunification in 1990, President George H. W. Bush proudly referred to Germany as America's premier ally.

Over the years, most Germans have been grateful for this military and trade alliance with the United States and other Western nations in NATO. America's security assistance included guidance from the Department of Defense and the CIA in developing Bonn's, and now Berlin's, military and intelligence capabilities. Further, the two nations have had a strong association on the economic front, with trade streaming across the Atlantic in both directions. At the end of the Cold War, Germany and the United States also worked together on a "grand bargain" to infuse the former Soviet Republics with Western capital and know-how, in a joint effort to avoid a slide back to the old communist regimes — or perhaps even a civil war in Russia and East Europe.

Yet America's burgeoning weapons arsenal, its multiple go-it-alone military and paramilitary interventions abroad since 1945, and its

5 William Pfaff, *Barbarian Sentiments: How the American Century Ends* (New York: Wang & Hill, 1989), 60.

penchant to treat Germany as a subordinate rather than as a partner, have been vexing and demeaning to the Germans. This sense of dependency on the United States inevitably began to grate, however benevolent and well-intended officials in Washington may have been. German Chancellor Gerhard Schröder complained in 2002, for example, that “consultation cannot mean that I get a phone call two hours in advance only to be told, ‘We’re going in.’” Only through newspaper accounts had the Chancellor learned about the likelihood of the impending invasion of Iraq. Schröder continued: “Consultation among grown-up nations has to mean not just consultation about the how and the when, but also about the whether.”⁶ The Chancellor’s lament echoed frustrations felt by many German government administrators and parliamentarians at the time, and today as well. Germans had begun to discern an “arrogance” and an “imperialistic” streak in American foreign policy.⁷

By 2002, the Americans and Germans — elites and the public alike — found themselves sharply at odds over the wisdom of invading Iraq. Among the many disturbing implications of the Bush Administration’s decision to invade Iraq was a growing uneasiness in Germany about America’s capacity for prudent global leadership. Thus, on the one hand, Germans remained grateful for America’s defensive shield during the Cold War years, for its long-standing trade ties, and for its shared interests in culture and the arts. Yet, on the other hand, one could note a growing conviction among Germans that Berlin and Washington might be less than perfectly aligned on foreign policy objectives — and doubt whether the two countries shared the same basic perceptions about world affairs.

This ambivalence between the two nations has led to a fragile equilibrium of interests, friendly for the most part but clouded by a perception on both sides of a widening gap in their fundamental security concerns. The uneasy state of this alliance was ripe for dislocation; all that was needed was a controversy that might call further into question the congruence of interests. The spy theft in 2013 provided just that shock.

IV. The Snowden Affair

Into the setting of fear and uncertainty in the United States that followed the 9/11 attacks stepped the NSA, encouraged by the second Bush Administration to take off the gloves and use whatever sigint methods were available to rout out terrorists around the world who

6 Quoted by Steven Erlanger, “German Leader’s Warning: War Plan Is a Huge Mistake,” *New York Times* (September 5, 2002), p. A1.

7 Eva Jobs, “Rethinking Trust: U.S.-German Relations Beyond the NSA Affair,” paper, American Institute for Contemporary German Studies, Johns Hopkins University (2014), p. 2.

sought to harm America. The NSA's response brought it, again, into controversy. In 1975, the Church Committee investigation into U.S. intelligence abuses (led by Senator Frank Church, Democrat, Idaho) had revealed the NSA's questionable use of wiretaps (Operation MINARET), as well as its improper interception of international cables sent and received by Americans over decades (Operation SHAMROCK). The Church Committee's investigation led to the passage of the Foreign Intelligence Surveillance Act (FISA) of 1978, which required that the NSA's wiretaps be approved by the newly created Foreign Intelligence Surveillance Court (or FIS Court). In 2005, the *New York Times* disclosed that the NSA had been wiretapping the telephones of selected American citizens without FISA court warrants, in violation of the Foreign Intelligence Surveillance Act. Soon after 9/11, the Bush Administration had ordered the director of the NSA, General Michael V. Hayden, to bypass the FIS Court and use his agency's massive eavesdropping capabilities as best he could in the struggle against global terrorism without always seeking a warrant. Vice President Cheney, in particular, was convinced that in foreign and security affairs, the president reigned supreme and had the right to proceed as he wished — the so-called “unitary theory” of the presidency popularized by the Administration's Justice Department attorney, John C. Yoo.

Instead of suggesting to the Administration that it seek to amend or repeal the Foreign Intelligence Surveillance Act before proceeding, General Hayden saluted and returned to Ft. Meade, the NSA's headquarters in Maryland, to expand his agency's signal dragnet, free of judicial review. A few members of Senate Select Committee on Intelligence (SSCI) and House Permanent Select Committee on Intelligence (HPSCI) were informed about this departure from the law, but were provided with no details and warned they could not discuss the merits of this venture with colleagues or expert staff. Lamentably, the anointed few accepted these restrictions, thereby putting a large dent in the evolution of serious intelligence oversight in Congress.

Among the programs adopted by General Hayden, based on this dubious green light from the White House, was an activity known as “metadata” collection. Bypassing warrant procedures, the NSA began to gather the records of telephone numbers dialed, and the duration of conversations, for about a third of all the telephone calls made by American citizens, both inside the United States and with parties overseas. Moreover, the agency gathered data on the use of social

media by U.S. citizens. The appropriateness of this “bulk collection” method of intelligence collection, without a FISA warrant, became a topic of heated national debate when revealed by Snowden in 2013, and has continued since. Hayden and his successors appeared to prefer a vacuum-cleaner approach to electronic surveillance; in contrast, the NSA’s critics advocated a more pinpointed targeting of individuals, based on a reasonable standard of suspicion that they might be involved in terrorist activities.

The Snowden leaks disclosed that the NSA’s metadata program was worldwide. One of the agency’s sigint targets in Europe was the mobile phone of German’s top government official, Chancellor Angela Merkel. According to German Finance Minister Wolfgang Schaeuble, “she [was] not amused.”⁸ The Minister bemoaned that “this is so stupid, it can only make you weep.”⁹ Nor were other Europeans pleased about the revelations of extensive NSA surveillance against them.

In the United States, a *New York Times* headline in August of 2013 blared: “Surveillance Revelations Shake U.S.-German Ties.”¹⁰ An A-list of America’s leaders expressed chagrin over the extent of NSA spying, including key members of the congressional oversight committees for intelligence. The NSA had failed to inform most lawmakers on SSCI and HPSCI. This prevented the more energetic watchdogs, Senators Ron Wyden (D, Oregon) and Mark Udall (D, Colorado), for example, from airing their misgivings with associates and aides. Not even the SSCI’s leader, Diane Feinstein (D, California), had been briefed about the sigint targeting of Chancellor Merkel’s telephone for over a decade; Senator Feinstein expressed dismay over the eavesdropping against one of America’s most important friends.¹¹

V. The Wellsprings of NSA Surveillance Against Germany

At the heart of the NSA’s operations in Germany was no doubt the still recent memory that Hamburg had been the place of residence for some of the terrorists who planned the 9/11 attacks against the United States, including the group’s leader, Mohammed Atta, who recruited supporters from a local radical mosque (since closed). In addition, when the United States had relied on German’s Federal Intelligence Service, the Bundesnachrichtendienst or BND, for information about the likelihood of weapons of mass destruction (WMD) in Iraq prior to America’s invasion of that country in 2003, it provided inaccurate information to the CIA based on a German agent known by the codename “Curveball.” The agent claimed direct knowledge

8 Madeline Chambers, “Germany Expels US Intelligence Official Amid Spying Investigation,” Reuters (July 10, 2014).

9 Chambers, *ibid.*

10 Alison Smale, “Surveillance Revelations Shake U.S.-German Ties,” *New York Times* (August 26, 2013), A4.

11 See Ken Dilanian, “Senate Creating Secret Encyclopedia of US Spy Programs Following Merkel Eavesdrop Disclosure,” Associated Press (April 8, 2015).

of Iraqi WMDs, especially chemical, but he turned out to be a fabricator. The BND refused CIA access to Curveball during this period, which led DCI Porter Goss to declare after the 9/11 attacks that the Agency would never again rely on Germany or any other nation for its intelligence. It was a fatuous position for the DCI to take, given the importance of intelligence liaison with allies in a world grown too large and complex for the United States to monitor on its own, but one born of frustration over the Curveball incident.

Present, as well, as an influence on the NSA's spying was a concern about Germany's expanding commercial ties with Russia (some 6,000 German firms and 300,000 employees rely on trade with Russia¹²), not to mention its reliance on Russian gas. A further tug to the East had evolved with Germany's burgeoning flow of exports to China. Conceivably, Berlin could again tilt toward the East, as the Nazi government had done with the signing of a non-aggression agreement with Russia in 1939 (the Molotov-Ribbentrop Pact, shredded when the Wehrmacht invaded Russia in the summer of 1941).¹³ A modern-day Ostpolitik, run rampant, is a fretful mote in the mind's eye of Washington officials.

Some pronounced worry-warts even feared the rise of a new right-wing politics in Germany. As the Federal Republic became economically stronger, perhaps Germans would dream of a powerful and aggressive Fourth Reich. Visions of German gas attacks, the sinking of passenger liners, aerial bombings, and the horrors of Auschwitz-Birkenau danced in the overheated imaginations of these observers in the United States, unfairly discounting Germany's overwhelming and persistent rejection of ever repeating its dark, xenophobic past.

A further explanation for the NSA's zealous espionage activities in Germany lies in the history of its spying practically everywhere throughout the Cold War, and, accompanying this strategy, the bureaucratic inertia that perpetuates America's quest for global intelligence hegemony. Finally, NSA hubris also played a role — a belief that "If we have the latest spy technology, let's use it." As a top CIA official familiar with its activities has said: "The NSA had largely been collecting information because it could, not necessarily in all cases because it should."¹⁴

Central to the debate over the legality, ethics, and wisdom of the Snowden leaks was the question of whether he was a patriot for disclosing to the public a questionable intelligence program or a traitor

12 Elizabeth Pond, "Misreading Berlin," *Foreign Affairs* (March/April 2013), p. 174.

13 Vyacheslav Molotov was the Soviet Foreign Minister at the time; and Joachim von Ribbentrop, the German Foreign Minister.

14 Michael J. Morell, quoted in David E. Sanger, "In Book, Ex-C.I.A. Official Rebuts Republican Claims on Benghazi Attack," *New York Times* (May 4, 2015), p. A8.

for his unauthorized disclosure of classified information (much of it going beyond the metadata program that he claimed had justified his actions). General Hayden's successor as the director of NSA, Keith B. Alexander (another general), called the Snowden leaks "the greatest damage to our combined nations' intelligence systems that we have ever suffered." In contrast, his replacement in 2014, Admiral Michael S. Rogers, deplored the leaks but downplayed their damage, concluding that there was no indication that "the sky is falling."¹⁵ The *Times* noted that none of the secret agencies had presented "the slightest proof that [Snowden's] disclosures really hurt the nation's security."¹⁶

In May of 2015, by a vote of 338 to 88, the U.S. House of Representatives passed a bill to overhaul the Patriot Act of 2001, whose ambiguous language had encouraged an expansion of the NSA's sigint powers. The House "USA Freedom Act" sought to trim back the reach of the metadata program. Also in May, the U.S. Court of Appeals for the Second Circuit in New York declared the NSA program illegal, a decision that added pressure on the Senate to pass the House measure. After considerable back-and-forth, senators finally agreed on June 2, 2015, to support the USA Freedom Act. Authority for the existing metadata program had come to an end, at least for the time being. President Obama quickly signed the bill, which allowed a continuation of bulk data collection by the NSA, but with more substantial safeguards. These safeguards included, chiefly, a limitation on collection to only two communications linkages out from an initial terrorist suspect, along with storage of the data in the files of the telephone companies — which, with a proper warrant, the NSA could then visit to examine the information as it related to key terrorist suspects.

The German and American public alike continued to wonder, though, how many other NSA surveillance programs might exist that lie outside this new Freedom Act's jurisdiction. The debate over the proper scope of mass surveillance had not been fully resolved, even if the Freedom Act had signaled a shift of the pendulum in the United States from excessive concentration on security matters back to a better balance between security and privacy. Advocates of greater privacy and civil liberties in the United States resumed their attacks against the NSA; and many Germans, along with other Europeans, remained up in arms about U.S. spying on their telephone calls, computer transactions, and use of social media.

15 These quotes are from David E. Sanger, "Sky Isn't Falling After Snowden, N.S.A. Chief Says," *New York Times* (June 30, 2014), p. A1.

16 "Edward Snowden, Whistle-Blower," unsigned editorial, *New York Times* (January 2, 2014), p. A18.

VI. The German Reaction to the Snowden Leaks

“The NSA Affair,” as it is known in Germany, produced a firestorm of controversy in the Federal Republic. Germans were appalled by the NSA’s wiretapping of their head of government, Chancellor Merkel, a member of the Christian Democratic Union (CDU) party who, because of her popularity at home (she is in her third term), her impressive leadership abilities in the European Union (EU), and her gift at quiet diplomacy, has become quite possibly the most important political figure in all of Europe and the anchor of the Western alliance. Not everyone would agree with that appraisal. For example, the Greeks feel she has been too demanding on EU economic austerity programs affecting their country; and the leaking of a diplomatic cable by WikiLeaks revealed a portrait of her by a U.S. diplomat in Berlin as someone “rarely creative.”¹⁷

The NSA’s interception of the Chancellor’s cellphone messages was both rash and unnecessary. The news organization Reuters reported that the scandal “chilled relations with Washington to levels not seen since Merkel’s predecessor, Gerhard Schröder, opposed the U.S. invasion of Iraq in 2003.”¹⁸ Under Schröder, Berlin had also eschewed participation with the United States in establishing a no-fly zone over Libya in 2011 — although the Schröder government refused to seek the extradition to German courts of CIA officers allegedly involved in the rendition of a German citizen, Khaled el-Masri, in 2010.

When she assumed office in November of 2005, Merkel had stepped away from the heavily “German way” adopted by Chancellor Schröder and devoted more attention to the NATO alliance. Her history of outreach to Washington made the cellphone spying all the more hurtful; German officials and the public felt a sense of desertion by an old friend, after Berlin had been making stronger efforts to woo Western capitals. The Chancellor was said to be “infuriated.”¹⁹ On background, a journalist with a prominent German newspaper commented that “wiretapping Merkel’s phone was perceived as backstabbing in Berlin . . . By [spying] on Merkel, U.S. intelligence stole more than data from the German government; it somehow stole the Chancellor’s credibility by proving those who support Snowden right.”²⁰

Despite some initial frostiness, the Chancellor soon responded in her signature cool-headed manner, suggesting that if the American government wanted to know what she was thinking about one policy option or another, it should just ask her. It was a simple and

17 See Loch K. Johnson, *American Foreign Policy and the Challenges of World Leadership: Power, Principle, and the Constitution* (New York: Oxford University Press, 2015), p. 417.

18 Chambers, op.cit.

19 Ken Dilanian, “CIA Halts Spying in Europe,” Associated Press (September 19, 2014).

20 E-mail communication with the author (March 9, 2015).

endearing reply to the question of whether the United States should be covertly listening to the telephone conversations of top leaders in nations closely tied to Washington. She observed, further, that “spying on allies . . . is a waste of energy. We have so many problems, we should focus on the important things.”²¹ In a similar vein, the German Foreign Minister Frank-Walter Steinmeier expressed dismay that the United States felt compelled to spy in Germany. “We speak to each other all the time, and nobody keeps their views secret,” he said. “The attempt to use conspiratorial methods to find out about Germany’s position isn’t just unseemly, it’s unnecessary.”²²

VII. Intelligence Operations in Germany

In 1848, Lord Palmerston opined on the floor of the House of Commons that “England has no external friends; England has no perpetual enemies; England has only eternal and perpetual interests.”²³ In a corollary to this adage, a U.S. intelligence officer has suggested that “there are friendly countries, but no friendly intelligence services.”²⁴ It is true that the policy preferences of the United States and Germany are not necessarily congruent in every case — just as with any other nation, including the United Kingdom, Canada, Australia, and New Zealand (known in intelligence circles, along with the United States, as the “Five Eyes,” who closely share intelligence with one another). Still, as with the Five Eyes, German-American views match up on many important topics, which is what made, for many, the eavesdropping on Merkel a surprise and a disappointment — even if it is no secret that spying goes on in every nation around the world, short of a few small island kingdoms, and that both the United States and Germany have their eyes open wherever their global interests may lie.

The disclosure that the NSA had intercepted the Chancellor’s cellphone messages stirred a tsunami of resentment among Germans aimed at the NSA specifically and the United States generally. The German Vice Chancellor and the Economics and Energy Minister of Germany, Sigmar Gabriel, summed up the disaffection:

The apparent unlimited access of the NSA to the personal data of Internet users without any specific suspicion, the disregard for the fundamental rights of any constitution based on the rule of law: this has destroyed trust. Tapping the German Chancellor’s cellphone cannot be interpreted as a gesture of friendship.²⁵

21 Chambers, *op.cit.*

22 Interview, *Saarbruecker Zeitung* (July 9, 2014).

23 Henry Temple, 3rd Viscount Palmerston, speech, House of Commons (March 1, 1848).

24 James M. Olson, “The Ten Commandments of Counterintelligence,” *Studies in Intelligence* 11 (Fall-Winter 2001).

25 Sigmar Gabriel, speech, Harvard University (October 23, 2014).

Beyond the finding about the Chancellor's intercepted phone conversations came the broader realization that the NSA was conducting intelligence collection across the Federal Republic, a U.S. sigint program for all of Germany. Merkel responded that "Spying among friends — that is simply not done."²⁶

Adding insult to injury, the government of Germany discovered in 2014, soon after the initial Snowden leaks about the NSA metadata program, that the CIA had recently been engaged in the recruitment of agents ("assets," in Agency terminology) within the Federal Republic, successfully persuading two German officials to spy against their own country, one in the Defense Ministry and another in the BND. These revelations may have been less startling than the NSA's espionage operation directed against the high office of Chancellor, since it is widely understood that the spy organizations of virtually every nation engage in "humint" or human intelligence — the recruitment of locals in other countries for purposes of espionage. Nonetheless, coming on top of the NSA spy disclosures, the discovery of CIA moles in Germany took on added meaning. Chancellor Merkel called this second wave of American spying a "very serious development" and a "clear contradiction of the notion of trustworthy cooperation."²⁷

An expert on American foreign policy at the John F. Kennedy Institute in Berlin branded the CIA spy cases "a low in U.S.-German relations."²⁸ Officials in Berlin felt the need to take a stand against U.S. espionage, which had come to seem highly aggressive against Germany. The government expelled the CIA's chief-of-station in Berlin (the only time a chief-of-station had suffered that fate in Germany), and it arrested the newly recruited Agency assets. A contretemps of this magnitude involving U.S. intelligence had not been seen in Europe since 1995, when the French threw several CIA officers out of their country for spying on its Foreign Ministry in advance of world trade talks.²⁹ Still, despite this latest dust up, diplomatic conversations continued between the United States and Germany on a host of topics; moreover, their embassies remained open, and both Merkel and Obama visited one another's countries.

This is not to dismiss the strains between Berlin and Washington, which have been real. Interior Minister Thomas de Maizière and other German officials made it clear that, henceforth, counterintelligence (CI) — the mission to protect a nation against hostile foreign intelligence agencies, handled in Germany by his Ministry through the

26 Alison Smale, "Germany, Too, Is Accused of Spying on Friends," *New York Times* (May 6, 2015), A3.

27 Tony Paterson, "Germany Plans Counter-Espionage Against Britain and US," *Daily Telegraph*, UK (July 7, 2014).

28 Assistant professor Lora Anne Viola, quoted in Frank Jordans, "Germans Probe 2nd Spy Case," *Huffington Post* (July 9, 2014).

29 William Drozdiak, "France Accuses Americans of Spying, Seeks Recall," *Washington Post* (February 23, 1995), A1.

Federal Office for the Protection of the Constitution (Bundesamt für Verfassungsschutz or BfV) — would be directed against the United States, the United Kingdom, and France.³⁰ The Minister vowed to have “360 degree surveillance of all intelligence activities in Germany by “so-called allies,” including all members of the Five Eyes.³¹ For the first time, the German intelligence agency responsible for foreign intelligence and counterintelligence would throw up barriers against the presence of U.S. spies operating in Germany. Further, the logical implications of a robust counterintelligence program suggested that the BfV might even attempt, in coordination with the BND, to penetrate America’s intelligence services with a mole or two of its own. In addition, Berlin decided in May of 2015 to limit cooperation with the U.S. spy agencies in the collection of intelligence, scaling back on a secret intelligence liaison accord signed by the two nations in 2002, which the Germans claimed had been “permanently” breached by the NSA.³²

These were startling new developments in the relationship between German intelligence and its “founding father,” the CIA, as well as with the NSA, both of whom had long supplied the BND with frequent intelligence reports and vice versa. (*Der Spiegel* reported that BND officials gave intelligence to the NSA or CIA in some 40,000 instances over a recent ten-year period, including Internet addresses, mobile phone numbers, and data on the European aviation giant Airbus Group.³³) The *Süddeutsche Zeitung* in Munich accurately observed that “when a friendly intelligence service breaks these rules [against penetration of one another with moles], it commits the most serious breach of trust known to the world of espionage.”³⁴ The Associated Press reported that “the German intelligence community is up in arms.”³⁵

When, following the already tumultuous NSA controversy, the two CIA counterintelligence cases became public knowledge, Chancellor Merkel calmly asserted that “trust can only be restored through talks and certain agreements.”³⁶ She vowed to seek out such talks, but did not anticipate any quick resolution. Her objective, according to media reports in 2014, was to seek a private agreement with President Barack Obama that the United States would not engage in espionage against partners. Obama treaded water, however, in meetings with the Chancellor, and no immediate agreement of this kind was reached. For those who had lost confidence in the U.S.-German relationship after the Snowden disclosures, this apparent “unwillingness

30 According to Thomas de Maizière, Germany’s Interior Minister, quoted in *The Independent* (July 7, 2014); see, also, Chambers, op.cit.

31 Patterson, op.cit.

32 Alison Smale and Melissa Eddy, “Pressure Grows on Merkel Over Espionage Claims,” *New York Times* (May 7, 2015), A13; and Alison Smale, “Germany Limits Cooperation With U.S. Over Data Gathering,” *New York Times* (May 8, 2015), A8.

33 “Germany Orders Intelligence Agency to Fix Flaws in Operations,” Reuters (April 23, 2015); Melissa Eddy, “Germany Is Accused of Helping U.S. Spy on European Allies,” *New York Times* (May 1, 2015), A7.

34 Paterson, op.cit.

35 Frank Jordans, “Germans Probe,” op.cit.

36 Quoted by Frank Jordans, “German Chancellor Angela Merkel Seeks ‘Sensible’ U.S. Spy Talks,” Associated Press (July 18, 2014).

to compromise increased anti-American sentiment,” according to Eva Jobs, a German scholar studying in the United States.³⁷

Additional obstacles to an intelligence agreement loomed on the German side of the equation. “The Germans didn’t want Five Eyes when we learned about it,” an unnamed German diplomat told *The New Yorker* magazine. “We’re not in a position, legally, to join, because our intelligence is so limited in scope.”³⁸ With the experiences of Adolf Hitler’s Gestapo and Waffen-SS as a backdrop, West Germany’s 1949 Constitution, the so-called Basic Law, placed tight restrictions on the nation’s intelligence agencies; and it also held the German army, the Bundeswehr, to a strictly defensive posture when West Germany rearmed in 1955. Not until 1995, when Western nations asked Germany to provide some offensive support after the massacres at Srebrenica in former Yugoslavia, was this defense policy amended to provide limited military assistance.

Under German law, the BND has to operate under a collection ceiling of 20 percent of all Internet and telephone communications; and, in fact, the agency gathered only 5 percent until the NSA controversy led to an expansion of BND sigint activities. Moreover, the BND is not allowed to store the data it collects, but rather the agency quickly sifts through all the “noise” to extract important “signals” about possible terrorist leads from the flood of information it gathers. It then acts on this information and deposits the extraneous material into a burn-bag.³⁹ Some programs pursued by the NSA, such as its controversial Echelon program launched in the late 1990s to surveil European communications about international economic activities (especially whether European nations were cheating on trade agreements), is an illustration of an operation that would be prohibited for the BND. Moreover, the legal penumbra emanating from the German Constitution prevents its intelligence agencies from providing targeting coordinates for U.S. drone strikes. Nor does Germany maintain detention prisons, or have a capacity to engage in covert action or its own drone attacks (so far). A leading German scholar in the field of intelligence studies, Professor Wolfgang Krieger, surmises that “the German public is simply not prepared to go along with the kind of beefing up of our intelligence capabilities, which would be required to make a German ‘Five-Eyes’ membership feasible.”⁴⁰

While some Germans hoped for an out-and-out “No Spy Agreement” with the United States, others longed to amend their Constitution in a way that would permit Five-Eyes-like cooperation with the United

37 Eva Jobs, e-mail communication to the author (March 2, 2015).

38 Quoted in Packer, “The Quiet German,” *New Yorker* (December 1, 2014), p. 61.

39 See Loch K. Johnson, “German-American Intelligence Relations, 1969-1997: An Ambivalent Partnership,” in Detlef Junker, ed., *The United States and Germany in the Era of the Cold War, 1968-1990*, vol. 2 (Cambridge: Cambridge University Press 2004), 171-177, with Annette Freyberg; Wolfgang Krieger, “US Patronage of German Postwar Intelligence,” in Loch K. Johnson, ed., *Handbook of Intelligence Studies* (New York: Routledge, 2007), 91-104; and Mark M. Lowenthal, *Intelligence: From Secrets to Policy*, 6th ed. (Los Angeles: Sage/CQ Press, 2015), 482.

40 E-mail communication to the author (December 17, 2014).

States — perhaps even the fashioning of a Six Eyes arrangement that would welcome the Federal Republic into the exclusive espionage club. Given the history of U.S. intelligence activities abroad, a no-spying agreement was unlikely to materialize, although the CIA adopted a moratorium on spying in Germany for a time after the Snowden leaks.⁴¹ As well, it was unlikely that the United States would again tap the telephones of European heads of state, at least if they had a clear record of friendship toward the United States. At any rate, the BND's relations with U.S. intelligence agencies seemed to be weathering the storm over both CIA and NSA spying in the Federal Republic. As Jobs writes, the “BND feels a little bossed around by American agencies, but is fully aware of its own dependency”⁴² — a reference to the stronger global spying capabilities of the United States, the products of which are shared in part with the German intelligence agency.

The BND also has significant capabilities of its own for some intelligence collection missions, though, and resents being viewed as a puppet of the CIA. The knowledge its officers possess about Russia and the Middle East is deep. Indeed, in 1945 (and after) the United States overlooked the Nazi backgrounds of key BND officials, because Washington needed help in understanding the Soviets and Eastern Europeans, as well as the dynamics of nations in the Middle East. During the controversy over the Snowden leaks, the head of the BND, Gerhard Schindler, waved away as “absolutely absurd” the notion that his agency was Washington’s “compliant tool” — although he did concede that “we need them more than they need us.”⁴³

Even though a specific U.S.-German espionage accord failed to emerge from the spy scandals, Chancellor Merkel — like most German elites — has been inclined to be forgiving, no doubt in consideration of the large areas of existing cooperation between the nations, especially in the realms of security and trade. The Chancellor seemed to imply that the mindless blunders of America’s spy agencies should not be allowed to wreck potential win-win trade agreements. Indeed, the year after the Snowden scandal, U.S.-German trading registered a higher level than the year before. The only major economic hiccup between the two nations that came out of the NSA spy scandal was Germany’s cancellation of its contract with the American telecommunications giant, Verizon Wireless, which had been sharing (begrudgingly) its telephone and social media data with the NSA at that agency’s request.⁴⁴

41 See Dilanin, “CIA Halts Spying in Europe,” *op.cit.*

42 Jobs, e-mail communication, *op.cit.*

43 See, respectively, Smale, “Germany, Too, Is Accused,” *op.cit.*; and Alison Smale and David E. Sanger, “Another Spying Scandal in German Adds to Merkel’s Political Troubles,” *New York Times* (May 22, 2015), A10.

44 Alexandra Hudson, “German Government Cancels Verizon Contract in Wake of U.S. Spying Row,” Reuters (June 26, 2014).

Chancellor Merkel even attempted to defend Berlin's relationship with the NSA as legal and useful for counterterrorism, rebuffing those who sought to compare the agency's sigint operations in Germany with the kind of schemes associated with the Ministerium für Staatsicherheit or "Stasi," the East German secret police and intelligence apparatus during the Cold War. As a result of growing up in East Germany, she developed an understanding of the dangers that secret spy organizations can hold for society. Merkel said: ". . . it is part of their job for our intelligence services, especially the BND, that they must and will cooperate internationally to protect the bodies and lives of 80 million Germans as best they can," adding that "first and foremost" this meant cooperating with the NSA.⁴⁵ Yet, her governing coalition partner, Vice Chancellor Sigmar Gabriel, leader of the Social Democrats, spoke at the same time of a "secret service scandal, which could set off a very grave tremor."⁴⁶

Further, Berlin continued to allow the Pentagon and the CIA to use a U.S. military base at Ramstein and related facilities in Wiesbaden that handle electronic guidance links to Predator and Reaper drones, many laden with Hellfire missiles for targets in Afghanistan, Iraq, and Yemen, as well as Somalia and other locations in Africa.⁴⁷ When asked about U.S. spying inside the Federal Republic, the Chancellor said that Germany and the United States would remain close allies "and nothing about this will change."⁴⁸

Still, in the face of widespread public concern about the NSA's spying, the Chancellor called upon her nation's federal prosecutor, based in Karlsruhe, to formally investigate the metadata scandal. A year later, in June 2015, the prosecutor closed the case, announcing that his investigators could not acquire sufficient evidence to pursue legal action against the NSA.⁴⁹ Along with throwing the CIA's chief-of-station out of Berlin, some action had to be taken in the light of negative public opinion toward America's sigint snooping. During the Cold War, a dissatisfaction with secret U.S. trolling in Germany would have been dealt with quietly by asking the White House to recall home one or more of its intelligence officers or diplomats. Merkel at first tried to play down the NSA operations; but, according to a German intelligence expert, the further uncovering of the CIA recruitments "blindsided" Berlin officials, "forcing the German government's hand."⁵⁰ The German government felt that it had been pushed too far and had no choice but to react.

45 Smale, "Germany, Too, Is Accused," op.cit.

46 Ibid.

47 See Jeremy Scahill, "Germany Is the Tell-Tale Heart of America's Drone Warm," *The Intercept*, First Look Media (April 4, 2015).

48 Quoted by Jordans, "German Chancellor Angela Merkel," op.cit.

49 Mellissa Eddy, "German Drops Inquiry Into N.S.A.," *New York Times* (June 13, 2015), A4.

50 Erich Schmidt-Eenboom, quoted by Jordans, "Germans Probe," op.cit.

It did not help that President Obama never publicly explained, or apologized for, the NSA's overreach in intercepting the Chancellor's cellphone calls; instead he expressed regrets to Merkel only in private. "The U.S. has contributed to the uproar German politicians have obsessed about for months by not reacting sensitively enough," said a professor of international politics at the University of Kiel, Joachim Krause, in 2014. "By now, the anger has grown to an extent where it has become difficult for German politicians to remain nuanced and objective."⁵¹

Hoping to calm down the level of distress, German Foreign Minister Steinmeier observed that "ties between the United States and Germany are necessary and essential for both of us," noting further that "we want to work on reviving this relationship, on a foundation of trust and mutual respect." Sharing a podium in Vienna with Mr. Steinmeier, the U.S. Secretary of State, John Kerry, agreed. "We will continue to work together in the kind of spirit we exhibited today in a very thorough discussion [of the NSA controversy]." Like many American officials before him over the years, Kerry emphasized that "the relationship between the United States and Germany is a strategic one." He pointed to the "enormous political cooperation" between the two nations and declared: "We are great friends."⁵²

VIII. Coming to Terms with the Snowden Affair

In light of the ubiquitous spying that goes on in the world, the debate about NSA and CIA activities in Germany struck some as a mixture of hypocrisy in some quarters and naïveté in others. After all, the forests of antennae on the roofs of German embassies around the world are not there for gaining clearer reception of the afternoon soaps, any more than are comparable American "listening posts" overseas. Some of the wind came out of the sails of NSA critics in Germany when the media revealed that the BND had been spying on a NATO member, Turkey, raising questions for some about Berlin's trustworthiness as a partner in the Western defense organization.⁵³ The events were really not comparable, however, as Germany and Turkey (unlike Germany and the United States) have never had a tight-knit relationship.

Additional media inquiries indicated that the BND had intercepted the communications of Hillary Clinton and John Kerry as they served, one following the other, as secretaries of state. This reporting raised eyebrows in Washington, and even accusations in some quarters

51 Quoted in Rick Noack, "Yes, Berlin Has Its Own Spying Scandals, but Don't Expect Germany to Forgive the NSA," *Washington Post* (August 20, 2014).

52 "Kerry Stresses U.S.-Germany Relationship Amid Spying Allegations," Reuters (July 13, 2014).

53 Philip Oltermann, "Turkey Summons German Ambassador Over BND Spying Allegations," *The Guardian*, U.S. edition (August 18, 2014).

that Berlin officials were hypocrites. Observers saw this turning of the tables as “another deep blow in German-American relations that are already battered.”⁵⁴ Yet because the evidence was compelling that this intelligence had been gathered by the Germans inadvertently (as a “by-catch” during legitimate BND sigint counterterrorism operations), Washington officials stepped back from pushing the matter. They accepted the explanation that, once the BND collectors identified the Kerry conversation, it was quickly destroyed. The fate of the Clinton communication proved more tangled. This document had been stolen soon after the telephone interception, by the same BND officer secretly working for the CIA and subsequently arrested by the German government as one of the double-agents ousted in the wake of the Snowden Affair. The German mole had passed the Clinton material along to his CIA handler in Vienna, at which point the Agency ordered its immediate destruction.

As for Snowden, Chancellor Merkel was less critical of him than Washington officials would have liked, when she commented that “we learned things [from him] that we didn’t know before, and that’s always interesting.”⁵⁵ The Chancellor refused, though, to consider granting the notorious leaker asylum in Germany; a decision otherwise would have truly set back relations between Washington and Berlin. Most German officials followed suit in taking a moderate, if miffed, stance toward the United States on the Snowden Affair — a rallying of the elites, as is usually the case in Germany on foreign policy issues.

Chancellor Merkel and Foreign Minister Steinmeier continued to face some dissent inside Germany, however, over their willingness to shake hands all too quickly with American officials and move on from the NSA and CIA controversies. For example, from her perch as a member of the parliament in Berlin (the Bundestag), Eva Högl harshly denounced the “terrible activities” of the NSA. “Germany can’t sit idly by as even the friendliest nations surveil German citizens as a matter of course and spy on the government’s internal affairs,” she said. “This has to end! It’s just not appropriate. The U.S. needs to finally put its intelligence services on a tighter leash . . . Many Germans have come to distrust the U.S. and are critical of American arrogance.”⁵⁶ Jürgen Trittin, another opposition politician, ridiculed Merkel and a couple of her cabinet members for behaving as “three wise monkeys” turning a blind eye to the NSA scandal.⁵⁷ A former German Defense Minister, Karl-Theodor zu Guttenberg, out of

54 Nikolaus Blome, et. al., “How Germany Spies on Its Friends,” *Der Spiegel Online* (August 18, 2014).

55 Jordans, “German Chancellor Angela Merkel,” *op.cit.*

56 *Huffington Post* (July 11, 2014).

57 Noack, *op.cit.*

office and free to ignore diplomatic niceties, spoke just as bluntly. “Anti-Americanism is already flourishing alarmingly,” he said, warning that President Obama needed to rehabilitate the U.S.-German relationship or “he will go down in history as the gravedigger of the transatlantic friendship.”⁵⁸

Public opinion polls in Germany did indicate a steep decline in support for the United States and the NATO alliance. As the *New York Times* reported, “Mr. Snowden is more of a popular hero here [in Germany] than elsewhere in Europe, and anti-N.S.A. sentiment remains high.”⁵⁹ Just over 50 percent expressed a favorable view of America in 2014 — the lowest percentage of any nation in Europe other than Greece, which never seems to have much affection for the United States and where, in 1975, a terrorist faction in Athens murdered the CIA’s chief-of-station.⁶⁰ America’s use of drones, which have accidentally killed hundreds of innocent bystanders in attacks against suspected terrorists, are opposed by 67 percent of Germans.⁶¹ Moreover, on the cultural side of the bilateral relationship, Jobs points out that fewer and fewer German high school students are engaged in educational exchange programs in the United States. In addition, budget cuts have taken place for several transatlantic cultural programs; and young Germans are finding America less attractive as a place for travel.⁶²

Nevertheless, a wider examination of public views in Germany since 2002 reveals that the United States has coped with even lower standings in the opinion polls, falling as low as 30 percent in 2007 in reaction to America’s ongoing war in Iraq. The U.S. decision to invade Iraq in 2003 produced a much more negative response among the German people than the controversy over NSA spying, although neither was helpful to the transatlantic relationship.

The polling data further indicated that a majority of all Germans in each age group retained a favorable image of the United States in the wake of the NSA Affair.⁶³ Still, that almost half of the German public had a negative outlook on Americans remains troubling. The German unhappiness about NSA and CIA spying seemed to be a rude awakening in the Federal Republic to a more hostile and uncertain world than the simpler, binary standoff of the Cold War.

On top of these anti-American sentiments came the announcement by the Obama Administration of a U.S. foreign policy “pivot toward Asia.” Many Germans became convinced that the Federal

58 Lothar Determann and Karl-Theodor zu Guttenberg, “Spies Will be Spies in War, Peace and Cyberspace,” *Hastings Constitutional Law Quarterly* 41 (4/2014), 878-902.

59 Smale, “Germany, Too, Is Accused,” *op.cit.*

60 See Loch K. Johnson, *A Season of Inquiry Revisited: The Church Committee Confronts America’s Spy Agencies* (Lawrence: University Press of Kansas, 2015).

61 Cora Currier, Ryan Devereaux, and Jeremy Scahill, “Secret Details of Drone Strike Revealed as Unprecedented Case Goes to German Court,” *The Intercept*, First Look Media (April 17, 2015), citing findings by Micah Zenko, a fellow at the Council on Foreign Relations who specializes in research on the use of drones by the United States.

62 Jobs, “Rethinking Trust,” *op. cit.*

63 “Opinions of the United States,” Pew Research Global, Pew Research Center, Washington, D.C. (2014). These statistics capture the widespread German popularity of Obama’s election to the presidency; he was viewed as a “dove” following the hawkish Administration of George W. Bush. See, also, Richard Wikes, Bruce Stokes, et al., “Global Opposition to U.S Surveillance and Drones, but Limited Harm to America’s Image,” Pew Research Global, Pew Research Center (July 14, 2015).

Republic — indeed, all of Europe — was no longer of much importance to the United States. Pushing back on Washington soon proved to be good politics. The caucus leader of the Social Democratic Party (SPD), Thomas Oppermann, declared that “a failure of the [no-spy] agreement [with the United States] would be unacceptable,” and would result in changing “the political character of relations.”⁶⁴ Like-minded Bundestag members, responding to the SPD faction, established a parliamentary investigative committee — the so-called NSA-Untersuchungsausschuss — with a mandate to probe into the extent of the NSA’s activities in Germany. (The CIA spy caught within the BND reportedly was passing information to the Agency regarding this investigation, among other documents.⁶⁵) The purpose of the inquiry was to focus on the extent of BND cooperation with the NSA and other Five-Eye intelligence services. A member of the investigative panel reported that the BND was cooperating fully with the investigation, providing “I am almost certain, as much transparency [as any service anywhere in the world] since 9/11 — or even the Church Committee [of 1975] for that matter.”⁶⁶

Among the thirty-two questions the Bundestag panel of inquiry hoped to address were these: (1) Whether, in what way, and on what scale the intelligence services of the Five Eyes collected, or are collecting, data on communication activities (including content-related, subscriber, and traffic data), their content, and other data-processing actions (including Internet use and stored address directories) from, to, and in Germany. (2) Which laws in Germany, Europe, and internationally did or do such activities contravene? (3) Have U.S. bodies carried out or initiated telecommunications surveillance, arrests, or targeted killings through the deployment of combat drones on, or from, German territory?⁶⁷ Interim reports from the Committee have suggested, according to Professor Mayer, that German intelligence services operated outside of the law and openly defied constitutional restrictions.⁶⁸

The difference in the attitudes toward the United States expressed by German elites and by the general public, so clearly visible during the missile controversy in the 1980s, has been on display again in the case of the NSA spying in the Federal Republic. According to a recent magazine profile, Chancellor Merkel, “ever passive, expressed more annoyance than outrage, but with the German public the sense of betrayal was deep.”⁶⁹ It was bad enough to target the German Chancellor’s cellphone and worse still to spy on millions of

64 “Top German Lawmaker Presses for US No-Spy Deal,” Associated Press (January 14, 2014).

65 “CIA Was Involved in U.S. Spying On Germany,” Reuters (July 7, 2014).

66 Bundestag member Johannes von Ahlefeldt, e-mail communication to the author (December 20, 2014). The German news media, though, reported that Chancellor Merkel had withheld from the panel information about BND cooperation with the CIA and the NSA (see Eddy, *op.cit.*). On the Church Committee, see Johnson, *Season*, *op.cit.*

67 “Establishment of a Committee of Inquiry,” German Bundestag, 18th Electoral Term, Berlin (March 18, 2014), Section B (1), (3), and (14).

68 Mayer, *op.cit.*

69 Quoted in George Packer, *op.cit.*, p. 61.

communications traveling to and from ordinary German citizens — the “every day and everyone” dimension, as political scientist Jobs puts it. Elites and the public remain divided over their appraisals of Snowden. According to a *New York Times* correspondent, the leaker “became a hero to many Germans” for standing up to the NSA’s invasion of personal freedoms in the United States, Europe, and elsewhere around the world. The Times hypothesized that the determination of Germans “to guard their privacy is a legacy of Nazi and Communist rule, when the state snooped on citizens.”⁷⁰

These negative views of the United States among the German public have grown in recent years, in part because of a number of questionable foreign policy and intelligence decisions made in Washington, from the war in Iraq that began in 2003 to the CIA foreign prisons, the use of torture, the renditions (including the mistaken abduction of an innocent German citizen, taken to Cairo and dealt with in a medieval manner by the Egyptian intelligence service), and the lack of counsel for prisoners in Guantánamo. The question became: Was the foreign policy of the United States any longer in competent hands? The depictions of agent Jack Bauer torturing people on the popular TV show, “24,” then going on to save the world, didn’t help America’s image in Germany as a benign leader.⁷¹ Olaf Boehnke, head of the Berlin office of the European Council on Foreign Relations, reflected in the wake of the controversy that “there was always some kind of anti-American sentiment in the German public, but this is skyrocketing” and “really worrying.”⁷²

IX. The Importance of Cultural Differences

Part of the reason for U.S.-German tensions stems from differing cultural perceptions in the two countries regarding the proper balance between security, on the one hand, and liberty or privacy, on the other hand. Germans and Americans have profoundly different approaches to their understanding of privacy and the place of government in the lives of citizens. In Germany, people remember the suppression and tyranny of the Nazis and, during the Cold War in East Germany, the sinister activities of Stasi. Intelligence agencies are, as a consequence, perceived as potentially toxic organizations. “German people are very sensitive, very hysterical [because of Germany’s past],” remarks Thomas Wölfing, the German Deputy Consul General for the southern United States.⁷³

70 Alison Smale, “Jet Crash Tests Nation’s Faith In Its Precision,” *New York Times* (March 30, 2015), p. A1.

71 My thanks to the Swedish journalist Therese Larsson for reminding me of this point, e-mail correspondence with the author (December 30, 2014).

72 Quoted in “Germany Is Not a Classic Western Ally,” *The Cable* (July 9, 2014).

73 Interview conducted by Patrick Steck (graduate student in the Department of International Affairs, the University of Georgia), Atlanta, Georgia (April 22, 2015).

Americans have had their own troubles with secret agencies. The CIA, the NSA, the military intelligence units, and the FBI were all found to be spying against Vietnam War protesters and civil rights activists during the Cold War — the focus of the Church Committee investigation. Yet nothing in the U.S. experience, even the recent dark chapters of using torture against suspected terrorists, came close to the brutalities perpetrated by the Nazis and the Stasi. So while both Americans and Germans are inclined to sacrifice some liberties if that might improve domestic security against terrorism, in Germany the public — with the memories of the totalitarian experience still in mind — is less willing to tolerate NSA-like intrusions into their private lives. As a result, German intelligence expert Krieger points out, “Germans do not much appreciate the value of good intelligence work.”⁷⁴

A further consideration is the fact that the United States suffered through 9/11, when nearly 3,000 of its civilians in New York City and Washington lost their lives in an astonishing moment of aerial attack by Islamic extremists (Al Qaeda) using hijacked commercial airlines as missiles — a gruesome event captured on television. Based on this experience and the fear of still more attacks, many Americans are inclined to give their intelligence agencies some leeway — although the efforts by Congress in the summer of 2015 to rein in the NSA show that even Americans are seeking more limits on spying.

Further, the United States has had a uniquely close relationship with Israel in the Middle East and, thereby, has attracted the direct wrath of Islamic extremist groups, from Al Qaeda and its 9/11 brutalities to ISIS, with its barbaric beheadings and threats to assault the U.S. homeland. America has also been engaged in three major wars in the Middle East and Southwest Asia (two against Iraq and one currently against the Taliban in Afghanistan, spilling over into the northwestern region of Pakistan). At one point in the first war against Iraq (1990-1991), U.S. troops bivouacked near Mecca, close to holy shrines in Saudi Arabia, as a holding-station for their invasion into Iraq — an inflammatory intrusion, in the minds of Islamic fundamentalists. Germany, in contrast, has managed to keep a relatively low profile in the Middle East and, despite the large number of Muslims in the Federal Republic (most of them law-abiding citizens), the acts of terrorists in the nation have been few in number and limited in scope: the Red Army Faction (also known as the Baader-Meinhof Gang) in the 1970s and 1980s; the attacks at the 1972 Olympics Games

74 Krieger, *op.cit.*

in Munich; and a West Berlin disco bombing in 1986. Fortunately, the Federal Republic has been spared a 9/11 event, leading to a sense among Germans that such events are something that happen elsewhere.

Moreover, Germans are less accustomed to a military-oriented society, as the United States has become, with its seemingly endless armed interventions abroad. This Fortress America posture has dulled the sensitivity of Americans toward the dangers of a state devoted to military power — a rejection of the suspicion of standing armies that was once a bedrock principle in the nation. In Germany, large military and intelligence establishments remain anathema to the public, in light of the Nazi experience.

Many Germans have enjoyed an economic boom that allowed them to embrace a new era of Biedermeier-style quiescence, with its focus on the good material life. Even with this attempted escape from unsavory international affairs, however, Germans continue to expect their post-Nazi government to honor the principles of the German Constitution, including the exercise of tight controls over BND operations and an avoidance of policies that might ignite Islamic extremism in Germany. Thus, while the NSA's operations have been grudgingly accepted in the United States (though criticized by both liberal and Tea Party political factions, and spurring some useful reform efforts⁷⁵), the broad German public has found these spying activities repugnant and unacceptable.

X. New Directions

What can be done to reset the relationship between the United States and Germany? The starting place is to understand that the uneasiness between the two great nations has roots that reach far deeper than the Snowden Affair. Changes must come across the board, not just in the intelligence domain. These changes must include improved dialogue on foreign affairs, especially regular and genuine consultation; the further cultivation of trade relations; and, instead of a “pivoting” toward the East, a realization that the United States has a destiny and a commonality of interests that lies much closer to Europe than to Russia and China — most notably, a devotion to equality and human rights.⁷⁶ This is not to say that Washington should turn its back on the East, but rather to suggest that each of the world's major power centers — Europe, Russia and China — are important to the United States and can be nurtured as friends and trading partners.

⁷⁵ See, for instance, Liberty and Security in a Changing World, Report and Recommendations of The President's Review Group on Intelligence and Communications Technologies (December 12, 2013).

⁷⁶ This point is nicely expressed by Gabriel, *op.cit.*

Missing at the moment is a more sensitive appreciation in Washington for the roles that Germans and Americans can play together in the flourishing of peace and democratic principles around the globe. An America carrying a big stick has an insufficient draw as an alliance partner; officials in Washington must also carry hearing aids, and work more on their capacity for empathy — trying to see the world, including the United States, as other nations see it. Greater trust and transparency have to be the coins of the realm, and this will take a serious investment of time and dialogue between the United States and the Federal Republic.

Specifically with respect to intelligence activities, both the United States and Germany must keep closer tabs on their secret agencies, with Washington officials drawing back from overzealous collection operations, and Berlin beginning to take spy accountability more seriously by establishing a stronger intelligence oversight panel in the Bundestag with subpoena and budgetary authority. Moreover, just as Germany will need to join even more earnestly in the military defense of the democracies against terrorism and other threats (it already has the third largest number of troops in Afghanistan today), so will it need to expand its intelligence activities toward this end — even in light of the Nazi and Stasi experiences. Of course, strengthening the German secret services must go hand-in-hand with a careful and vigorous exercise of intelligence oversight by the Bundestag and the German media. Some observers critical of using intelligence gathering as a counterterrorism strategy will accuse Berlin of becoming Islamophobic, since radical Muslims (estimated at some 5,000 in Europe⁷⁷) will be the chief targets of expanded clandestine collection activities. In fact, however, neither the Federal Republic nor the United States are Islamophobic, as shown by their rallying behind Bosnian Muslims in the 1990s and their efforts today to ensure religious diversity for their citizens.

In addition, both nations must continue the ongoing debate about the proper balance between security and privacy within their territories, as well as how they can enhance information-sharing so that the temptation to spy upon one another recedes. The United States will continue to spy in Germany no doubt, so long as the possibility exists of a future Mohammed Atta and more 9/11 attacks. However, instead of the overreach displayed by the NSA's recent dragnet approach to counterterrorism, collection operations should be more focused and based on reasonable suspicion — a fundamental democratic

⁷⁷ Data from Europol, quoted by Public Broadcasting System, PBS (January 16, 2015).

principle. Equally important, U.S. clandestine operations in Germany should be carefully coordinated with Berlin and, in all but the most extreme cases, ideally conducted jointly by American and German intelligence units, in close allegiance with German law. Necessary, too, are strong bilateral agreements and, ultimately, international treaties on such intelligence matters as the sanctity of a citizen's personal data in all law-abiding nations, along with clear rules and limitations on the use of drones.

Jobs writes that the “German public is used to perceiving intelligence at large as potentially dangerous, shady, or even criminal, as well as incompetent.”⁷⁸ Many Americans feel the same way about their secret services. Both publics are right to some extent, for on both sides of the Atlantic intelligence abuses have occurred; that is why parliamentary panels for intelligence accountability are so important. America's system is hardly perfect, though it has blazed important trails in this once-ignored sphere of governance.⁷⁹ Yet dangers lurk in the shadowy world of terrorism, not to mention international criminal activities related to drugs and human trafficking. Germans and Americans — indeed, Russians, Chinese, and all civilized people — must learn how to band together more effectively to counter these pernicious forces. Intelligence can be the first line of defense; and, when the spy agencies of different nations work together against these dark elements, the results can be all the more powerful and effective. Naturally, as long as there are nation-states there will be differences of opinion and interests among them; but there is so much that can unite the sensible governments of the world, including trade relations, cultural and educational exchanges, and intelligence-sharing on common foes — even participation in joint overt and covert actions against the likes of IS and Al Qaeda.

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78 Jobs, “Rethinking Trust,” op.cit., 3.

79 See, for example, Loch K. Johnson, “Accountability and America's Secret Foreign Policy: Keeping a Legislative Eye on the CIA,” *Foreign Policy Analysis* 1 (Spring 2005), 99-120.

