



K-12 Teacher EU Studies Bootcamp

Summer 2022

The EU, the US, and the Privacy Issue

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AP European History, Grade 10

Objective:*Students*

- Demonstrate knowledge of prevailing definitions of privacy by answering questions that require understanding of the theories.
- Demonstrate higher order thinking skills by answer questions that show their comprehension of how the definitions are related to current policies and debates.
- Students will answer questions orally, write on the whiteboard, complete the graphic organizer, participate in small group discussions and exhibit argumentation in an oral debate on the topic.

Teacher

- Lead discussion of Topic: Privacy
- Ask students questions that require them to demonstrate knowledge of the arguments of the documents and to address higher orders of thinking regarding the key concepts and historical developments

Essential Question:

How do the notions of privacy influence economic relations between the EU and US?

Lesson Standards (College Board):

CID – cultural and Intellectual Development

SCD – Social Organization and Development

INT – Interactions between Europe and the Rest of the World

ECD – Economic and Commercial Developments

TSI – Technological and Scientific Innovation

1.A – Identifying concepts, development and processes

1.B – Explaining historical concepts and processes

2. A, B, & C – Identify a source's point of view, historical situation

3..3.A – Identify and describe a claim in a text-based source

3.C – Compare the arguments or main ideas of two sources

4.A & 4.B – Situations context and historical developments

5.A & 5.B – Making connections

6 - Argumentation

Student Learning Activities:

Notetaking

Direct and indirect answering of questions

Reading primary documents (speech by NSA Director Clapper)

Outline the main arguments of the primary documents, writing on the whiteboard

Notetaking – Graphic Organizer

Group activity: associating arguments of primary documents with a multimedia source (New York Times article by Robert Levine)

Students will debate the merits and shortcomings of the arguments presented in the primary documents, secondary sources, and multimedia sources.

Assessment:

- Student will write an LEQ in accordance to the standards of the College Board to demonstrate their understanding and mastery of the content.

Review:

Students


- Students will participate in the class discussion and complete a graphic organizer comparing privacy as defined in the Western Europe against privacy as defined in the United States, prior to writing their essay.

Teacher

- Based on student performance the instructor will re-evaluate different methods of delivery and determine which content requires additional coverage and which method of delivery requires modification.

Attachments:

- PowerPoint Presentation
- Long Essay Question



The European Union, the United States and the Privacy Issue

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Main Topics



Historical Roots



20th Century
Transitions



Modern Conflicts



Historical Roots Privacy in the Three Main Cultural influences on Modern Transatlantic Privacy



France



Germany



The United States



France

French perceptions of privacy derived from older notions of interpersonal respect and is rooted in laws designed to protect the individual from insults and to protect personal honor.

As far back as Ancien' Regime, noble families wanted to protect financial information as way to protect status.

The French Revolution brokered a compromise. The Constitution of 1791 granted freedom of press but also protected citizens from insults and defamation, extending the privileges of the First Estate to the masses.



Germany

Germany unified in 1871, but was historically influenced by notions of “free” self-realization dating back to Christian Humanism of the Renaissance.

Privacy Laws developed in an effort to create a richer German alternative to English ideas of liberty.

Legal codes were established on Germanic notions of respect for inner-space, personality, self –responsibility and protection from insult espoused by Hegel, Kant, and Humboldt.



The United States

Ideas of privacy in the United States are influenced by the experiences prior to and during the American Revolution.

Citizens generally had a suspicion against state intrusion into the “private sphere”, so privacy centered on the sanctity of the home.

The Fourth Amendment



The United States

Jeb Rubinfeld argued that there was rift in hope the United States defined personhood that continues to this day.

Liberalism defines personhood through individual autonomy and therefore institutions of government should protect individual rights and privacy.

Republicanism defines personhood through participation in communal self-governance politics. the individual as a part of a greater political community.

Liberalism defends iconoclasm (the right to define ones' self in contrast to "the norm"), whereas, republicanism views iconoclasts as a threat to society. Therefore, individual privacy can threaten society if it masks behaviors that are counter to the "norm".



- ▶ Rubenfeld summarizes Michel Foucault and his “Repressive Hypothesis” then cites legal cases in which the government of the United States has long intervened into sex, marriage and procreation through “normative policing.”

Jeb Rubenfeld, *The Right to Privacy*, Harvard Law Review, February 1989 Vol. 012, No. 4, Page 744.

The great peculiarity of the privacy cases is their predominant, though not exclusive, focus on sexuality — not “sex” as such, of course, but sexuality in the broad sense of that term: the network of decisions and conduct relating to the conditions under which sex is permissible, the social institutions surrounding sexual relationships, and the procreative consequences of sex. Nothing in the privacy cases says that the doctrine must gravitate around sexuality. Nevertheless, it has.

Differing Notions of Privacy and the NSA



The World Wars



The Cold War



Modern Conflicts



World War One

- ▶ Privacy and Notions of identify in France and Germany were imbued with nationalism and honor. Protecting a person's public image through privacy remained important and codified.
- ▶ The United States chose to sacrifice individual privacy for national security as exemplified in the Espionage Act, Sedition Act, Palmer Raids and the creation of the Cipher Bureau.



The Origins of the NSA

- ▶ Due to fears of domestic unrest, the U.S. Army Military Intelligence Division created two divisions and worked with the US Navy, War Department, Department of State, and FBI to surveil people and communications in New York and along the southwest border of the United States.
- ▶ **Cipher Bureau (MI-8)**
- ▶ **Radio Intelligence Service**
- ▶ After the war, factions debated the need and legality of such organizations during a time of peace . The State Department defunded the program and it became “Black Chamber.”
- ▶ The U.S. Army Signal Corps Signal Intelligence Service covertly undertook some of training and functions of the Cipher Bureau.

World War Two

- ▶ *Nazism furthered notions of privacy with the emphasis on dignity and protection of personality, respect for workers, and the emphasis on being German, the Volk.*
- ▶ *The United States again focused on security over liberty and created the NSA.*



World War Two

- ▶ When the United States entered World War Two, “Black Chamber” was reactivated and evolved from the following agencies. U.S. Navy Office of Naval Communications created the Code and Signal Section (OP-20-G)
- ▶ OP-20-G Combined with the U.S. Army to form Army-Navy Communications Intelligence Board (ANCIB) (WW2)
- ▶ The name was changed to State-Army-Navy Communications Intelligence Board (STANCIB) (1945)
- ▶ The main issue was balance which agency controlled domestic communications security and which agency controlled international communications security.
- ▶ **After World War Two ended the National Security Agency was created to control both COMSEC and COMINT.**

The Cold War

- ▶ *Post War German law, notions of honor and the German welfare state were influenced by Nazism.*
- ▶ **National Socialist People's Welfare, 1931**
- ▶ *Since the end of World War Two, the right to protection of personality is central to German dignity in German market socialism.*



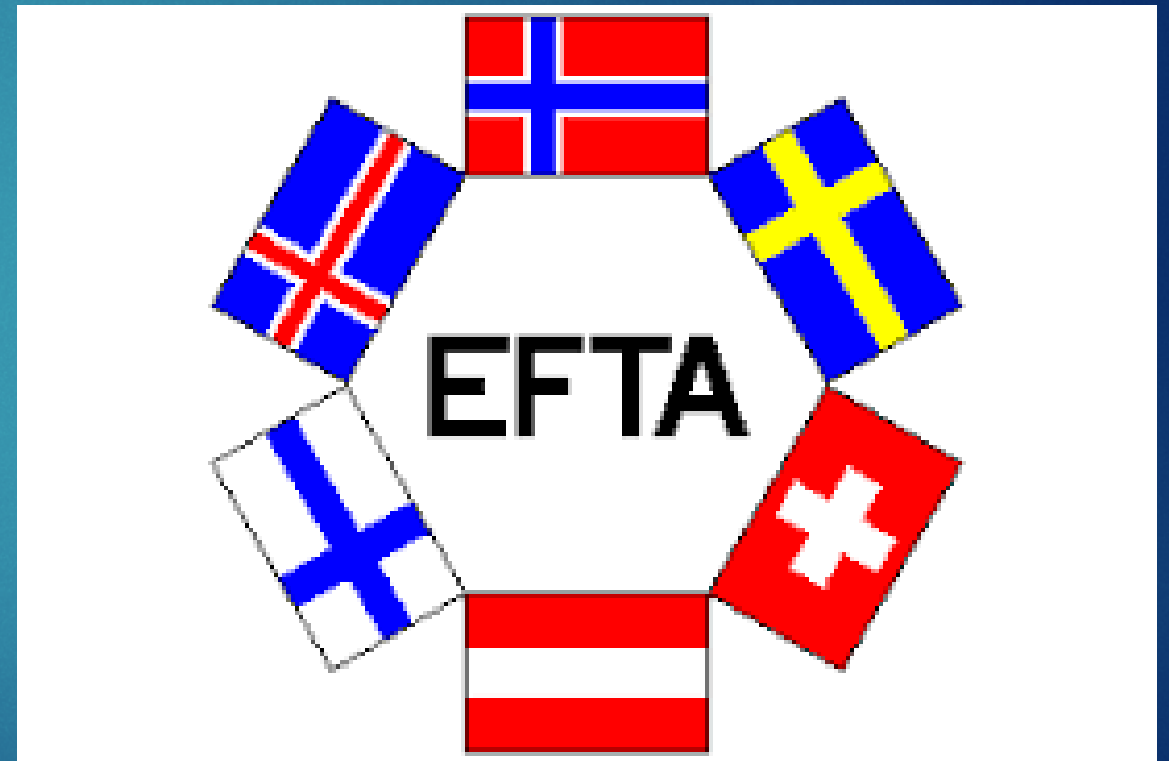
The Evolution of the European Union during the Cold War

- ▶ 1950 – The Schuman plan was a proposal to integrate coal and steel industries of Western Europe
- ▶ 1952, The European Coal and Steel Community is created from the Schuman Plan
- ▶ 1957, the Treaties of Rome extend the cooperation to other economic sectors
- ▶ 1962, The European Parliament officially replaces the European Coal and Steel Community



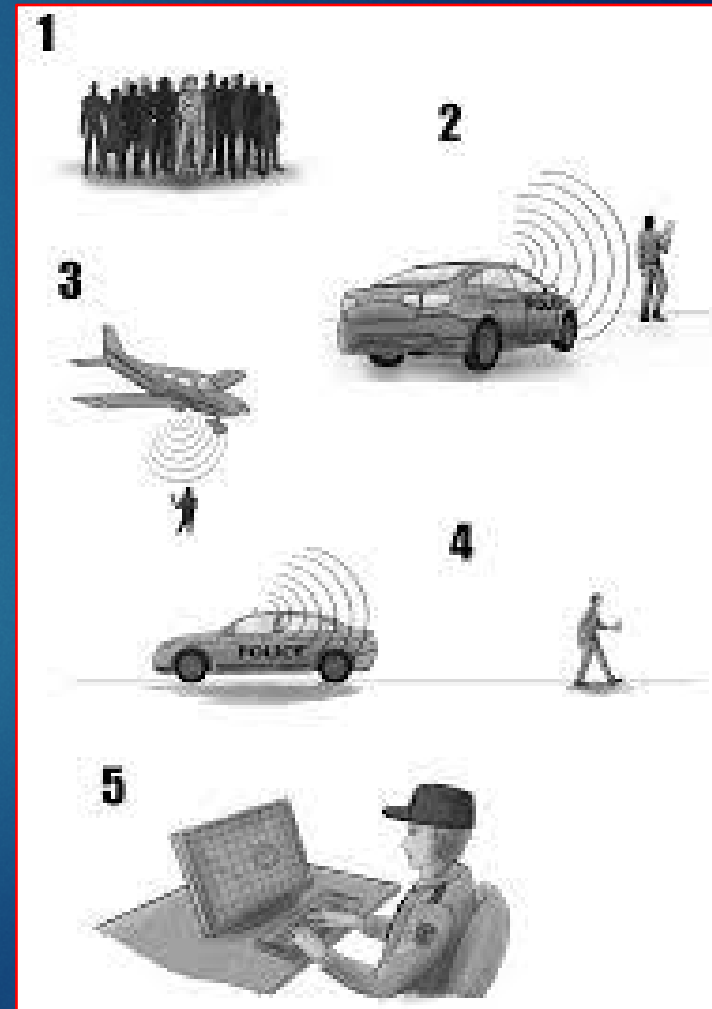
The Evolution of the European Union during the Cold War

- ▶ 1960, Austria, Denmark, Norway, Portugal, Sweden, Switzerland and the United Kingdom unite to form The European Free Trade Association
- ▶ 1965, The Merger Treaty united the European Coal and Steel Community, and the European Economic Community with the Euratom.
- ▶ 1986, The Single European Act revised the previous agreements in order to integrate all of Europe into a single internal market.



Modern Conflicts

- ▶ *Post-war developments were more tentative in France than in Germany but both still protect privacy of health, love, sex, and earnings: credit reporting, consumer data, salary.*
- ▶ *Ideals of privacy manifested in resistance to credit reporting.*
- ▶ *The Privacy Directive of 1995 determined that it is invasive of privacy for marketers to purchase data about consumers.*
- ▶ *“Traffic information” – Europeans trust the government more than the private sector with personal information and think that to lose of control of personal data is to lose of control of one’s image and dignity.*
- ▶ *Even in public, the “personal sphere” of respectability must be protected.*
- ▶ *Whereas, US privacy laws weaken the further a person is from their home, European workers and criminals have more protections in the workplace and in prison than Americans in regards to emails, private documents and phone records.*



Legal Disputes

- ▶ In July 2000, the European Commission adopted the Safe Harbor Agreement that established safeguards for data protection between the EU and US companies. However, framework relied on the self-assessment and self-certification by private companies.
- ▶ In October of 2015, the Court of Justice for the European Union ruled that the Safe Harbor framework was invalid.
- ▶ The European Commission adopted Privacy Shield on July 12, 2016, but it still depends on self-certification by US companies.



Privacy Shield



Mechanism For Data Transfer



NSA activities are major issue in the disputes over privacy.

THE NSA: EYES AND EARS ON THE WORLD

In 2013, the United States spent more than US\$52 billion on 16 different spy agencies, about double what it spent in 2001. Nearly half the money went to the NSA and CIA.



\$14.7 BILLION



\$10.8 BILLION



\$10.3 BILLION



OTHERS

\$16.8 BILLION

1,700,000,000

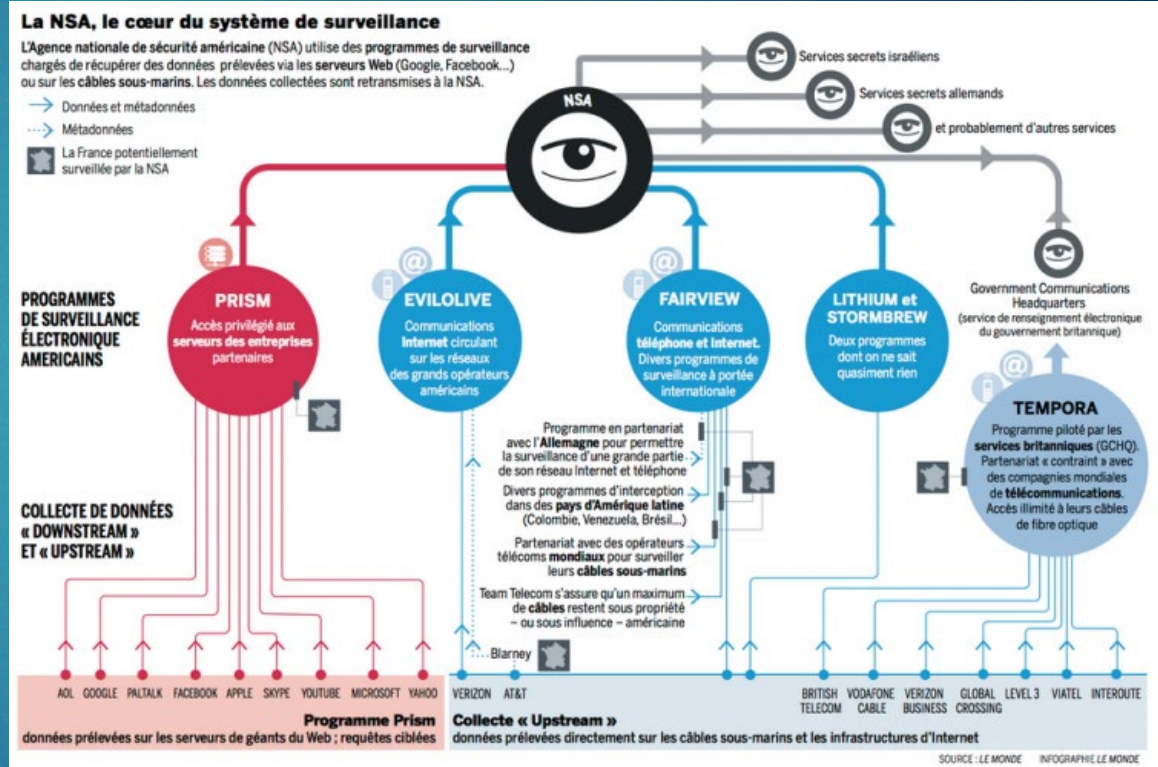
THE NUMBER OF PHONE CALLS, EMAILS AND OTHER COMMUNICATIONS THE NSA INTERCEPTED EVERY DAY IN 2010

700,000

THE NUMBER OF "VOICE OVER IP" (VOIP) FILES THE NSA STORED EACH DAY IN 2013, INCLUDING INTERNET PHONE CALLS AND SKYPE SESSIONS

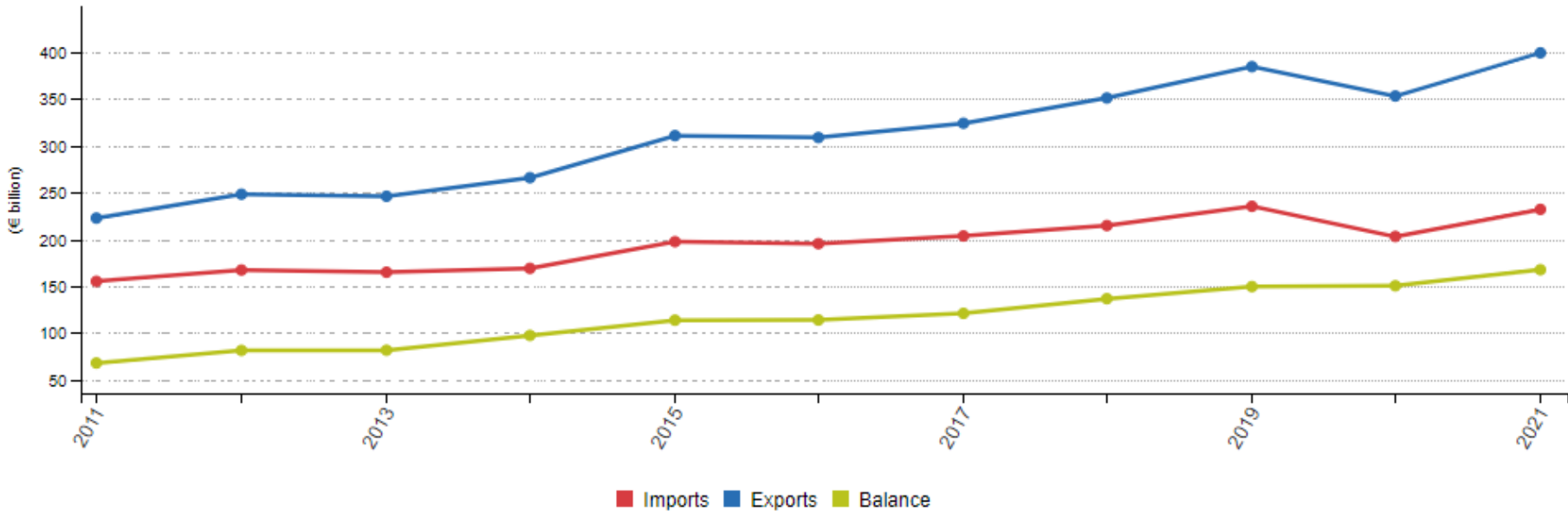
The U.S. intelligence budget exceeds the gross domestic product of more than **100 countries**

By 2013, the NSA directly employed roughly **40,000** – and many more private contractors – compared to an estimated **14,000** employed by the CIA.



Privacy advocates celebrate the court's decision but economists say that it will hinder economic progress.

EU trade in goods with the United States, 2010-2021



Source: Eurostat (online data code: ext_st_eu27_2020sitc and DS-018995)

EU imports of goods from the United States, 2021

	€ million	% of the United States in extra EU imports
Germany	53 615	12.3
Netherlands	45 142	12.0
Belgium	27 581	16.6
France	26 519	13.0
Ireland	16 481	26.4
Italy	15 810	8.0
Spain	14 922	9.3
Poland	5 238	5.4
Sweden	4 478	8.5
Czechia	3 832	8.1
Denmark	3 684	10.9
Austria	3 290	7.5
Portugal	1 994	9.1
Hungary	1 840	5.3
Greece	1 435	4.6
Finland	1 409	6.4
Lithuania	953	7.8
Romania	926	3.4
Luxembourg	687	28.5
Croatia	580	7.7
Slovakia	408	2.1
Estonia	303	5.4
Bulgaria	285	1.9
Slovenia	207	1.0
Latvia	187	3.4
Cyprus	116	3.8
Malta	82	3.4

Source: Eurostat (online data code: ext_st_eu27_2020sitc and DS-018995)

eurostat 

Table 1a: EU imports of goods from the United States, 2021

Source: Eurostat (ext_st_eu27_2020sitc) and Comext DS-018995

California Takes the Lead

California responded to the dispute by creating the California Consumer Privacy Act of 2018 (CCPA) which gives consumers in California the following protections:

The right to know the personal information a business collects about them and how it is used and shared

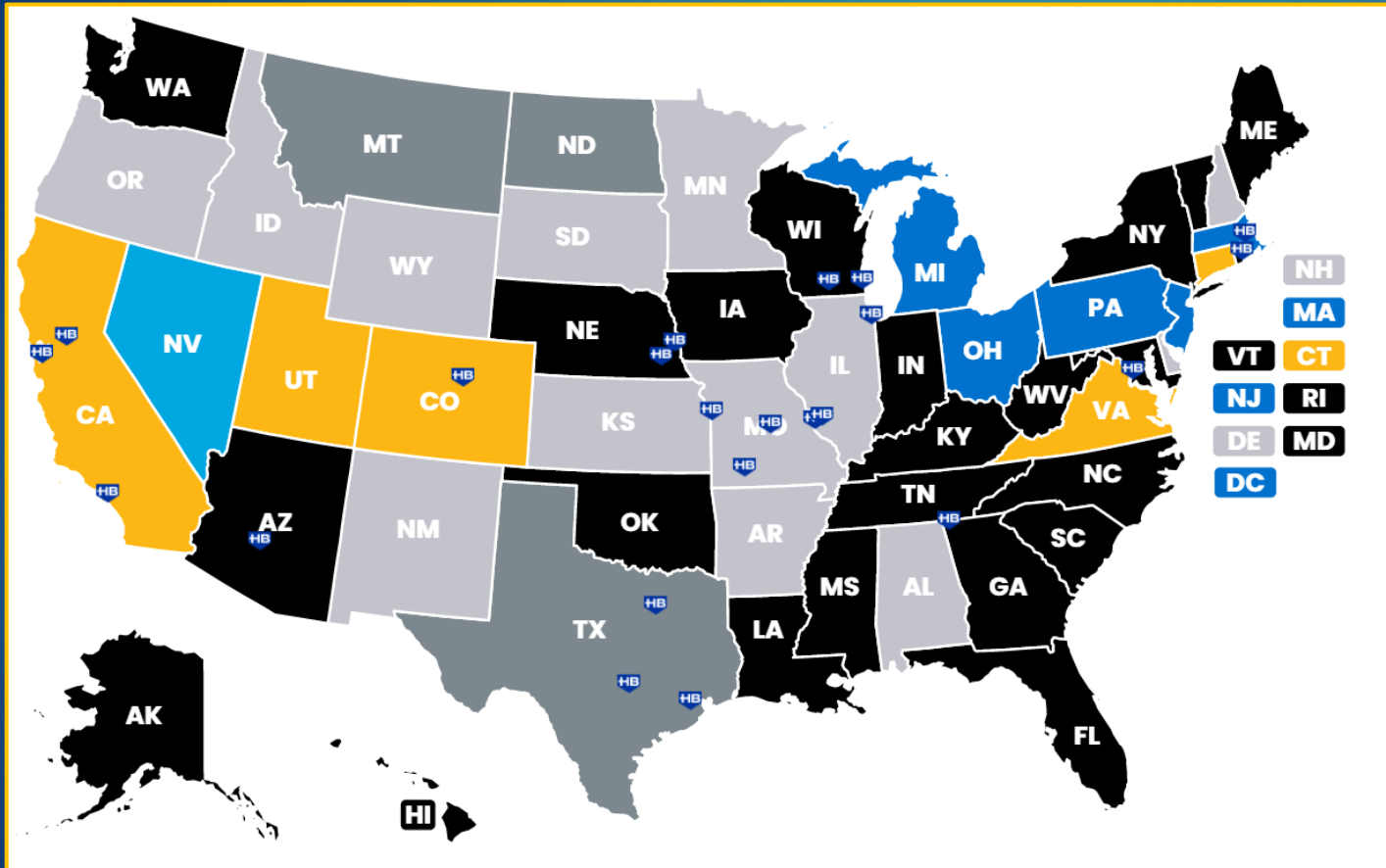
The right to delete personal information collected about them (with some exceptions);

The right to opt-out of the sale of their personal information

The right against discrimination for exercising their CCPA rights.



The United States and the CCPA



- Enacted legislation
- Active legislation
- Did not pass in 2022
- Excluded legislation
- Legislature not in session in 2022
- No bill proposed

Security, profits and privacy

Societies change and so do their values.

As corporations, defense agencies, and social media platforms interpret privacy, We the People are affected for better or worse.

What are the main issues between the EU and US reaching a transatlantic consensus on private data?

Landmark Court Decisions for discussion

- ▶ ACLU v Clapper, 2015
- ▶ Schrems v Facebook Ireland Limited
- ▶ FBI v Apple, 2016
- ▶ Directive 9EU) 2016/681 of the European Parliament and the Council of 27 April 2016



Works Cited

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- ▶ Robert C. Post, *Three Concepts of Privacy*, The Georgetown Law Journal, Vol. 89: 2087
- ▶ James Q. Whitman, *The Two Western Cultures of Privacy: Dignity Versus Liberty*, The Yale Law Journal, Vol. 113:1153, April 2004
- ▶ Robert Levine, *Behind the European Privacy Ruling That's Confounding Silicon Valley*, New York Times, October 9, 2015
- ▶ James R. Clapper, *The Ethos and Profession of Intelligence*, Office of the Director of National Intelligence, Thursday 19, October 2015
- ▶ Henry Farrell and Abraham L. Newman, *Of Privacy and Power: The Transatlantic Struggle over Freedom and Security* (Princeton University Press, 2019)

Works Cited

- ▶ History of the European Union (<https://European-union.europa.edu>)
- ▶ Sources accessed
 - ▶ <https://ec.europa.eu>

Long Essay Question

How have definitions of privacy evolved in Western Europe and the United States during the 19th and 20th Centuries? What are some of the main arguments of theories that shape notions of privacy in either case? Cite relevant examples from the lecture and reading assignments for this unit.