



1:30 pm–2 pm

**Institute's Library tour**  
Elisabeth Martin

**SESSION 4 – THE SOCIETAL PERSPECTIVE:  
PRIVACY, INTERPERSONAL RELATIONS AND  
TRUST**

**Chair:** Woodrow Hartzog

2 pm–3:30 pm

**On the Power of Shifting the Boundary between  
the Private and the Public**  
Beate Rössler; Discussant: Tobias Matzner

3:30 pm–4 pm

*Coffee Break*

4 pm–5:30 pm

**Privacy and Trust**  
Neil Richards; Discussant: Johannes Eichenhofer

5:30 pm–6 pm

**Final remarks**  
Elisa Orrù

6 pm

*Optional: Hike (45–60 mins) to the Black Forest  
Restaurant St. Valentin and informal dinner  
(self-payers)*

CONFERENCE

July 11–12, 2024

## Organization

**HOST:** Max Planck Institute for the Study of Crime,  
Security and Law (MPI-CSL)

**TIME:** July 11–12, 2024  
July 10, 7:30 pm, informal dinner,  
Hotel Oberkirchs Weinstuben (self-payers)

**LOCATION:** MPI-CSL  
Fürstenbergstraße 19  
79100 Freiburg i. Br.  
Seminar room (F 113)



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CONCEPTIONS  
OF DATA  
PROTECTION  
AND PRIVACY

## WHY NOW?

In recent years, transatlantic relations have seen repeated clashes over data protection issues, including the Court of Justice of the European Union openly judging the level of data protection in the United States to be inadequate. Conversely, the United States often considers European and, in particular, German data protection concerns exaggerated and fears that “neo-Luddite” attitudes will stand in the way of technological innovation, security, and economic growth.

## THE CONCEPTIONS BEHIND THE CONTROVERSY

At the heart of these disputes lie different conceptualizations – rooted in legal theory and philosophy – that see privacy and data protection through many different lenses. They comprise an individual’s ability to control access to their body and to information about themselves; the opacity of individuals as opposed to the transparency of public power; people’s ability to freely develop their personality; or trust and the integrity of social contexts. Other conceptualizations emphasize the complexity of the object of privacy, which goes beyond data to encompass knowledge, information flows, and decisions. Some conceptualizations go as far as denying the existence of a common core of rights protected by privacy, which is seen as an umbrella term to protect various rights linked by “family resemblances.” Still others believe that privacy is not a right in itself that protects a specific substantive good, but rather an enhancement of other fundamental rights. It has even been suggested that what we normally seek to protect by resorting to privacy may be better protected if we conceptualized the associated fundamental rights violations as property violations.

But not only data protection and privacy as such are interpreted in many different ways. Views also diverge on the relationship between them. Are they two distinct rights? Are there partial overlaps? Is one a mere specification of the other? And are privacy and data protection negative rights that require mere non-interference by the state, or positive rights whose realization presupposes positive intervention by public powers?

## THE CONFERENCE

More often than not, these conceptualizations remain implicit. This conference seeks to make them explicit and explore the complexities of privacy and data protection to better understand the issues at stake in legal policy disputes. Three questions will take center stage:

- What is safeguarded by privacy and data protection?
- What is the relationship between privacy and data protection?
- Are they independent rights at all, and if so, what kind of rights?

# Program

July 11, 2024

9 am–9:15 am

**Arrival**

9:15 am–9:30 am

**Introduction**, Ralf Poscher

**SESSION 1 – THE RIGHTS-BASED APPROACH I: WHICH KIND OF RIGHTS ARE THE RIGHTS TO DATA PROTECTION AND PRIVACY?**

**Chair:** Elisa Orrù

9:30 am–11 am

**Data Protection in German Constitutional Law**  
Gabriele Britz; Discussant: Ralf Poscher

11 am–12:30 pm

**Privacy as a Civil Right. Some Reflections on Discrimination, Language and Politics**  
Anita Allen; Discussant: Gloria Gonzalez Fuster

12:30 pm–1:30 pm

*Lunch*

**SESSION 2 – THE STRUCTURAL VIEW AND THE RELATIONSHIP BETWEEN THE PUBLIC AND THE PRIVATE SPHERE**

**Chair:** Gloria Gonzalez Fuster

1:30 pm–3 pm

**Privacy, Society and the Architectures of Power**  
Woodrow Hartzog; Discussant: Maria Grazia Porcedda

3 pm–4:30 pm

**Understanding the Opacity Concept in Its Context**  
Paul de Hert; Discussant: Nikolaus Marsch

4:30 pm–5 pm

*Coffee break*

5 pm–5:45 pm

**Elisa Orrù: A comment on Helen Nissenbaum’s Contextual Integrity Approach**

7 pm

*Working dinner: Heiliggeist-Stüble*

July 12, 2024

**SESSION 3 – THE RIGHTS-BASED APPROACH II: WHAT KIND OF INTERESTS DO DATA PROTECTION AND PRIVACY PROTECT?**

**Chair:** Ralf Poscher

9:30 am–11 am

**A Property-Based Understanding of Data Privacy under the 4th Amendment**  
Neil Gorsuch; Discussant: Tim Tymkovich

11 am–12:30 pm

**Conceptualizing the Protected Interests in Data Protection Law**  
Marion Albers; Discussant: Johannes Masing

12:30 pm–1:30 pm

*Lunch*