privacy impact assessment as a tool of resilience?

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Institut du Management de l’Information
Université de Technologie de Compiègne
all about us

- works predominantly in English
- ca. 50 full-time researchers
- 3 spin-off’s:
  - Brussels Privacy Hub
  - Privacy Salon
  - Brussels Laboratory for Data Protection & Privacy Impact Assessments (**d.pia.lab**), created in 2015
- 1st policy brief of **d.pia.lab** published in May 2017 [EN] [FR]
part 1

introduction
(at least) three questions

1. how much sense does it make to look at privacy governance & management, incl. protection & promotion, through the lens of the theories of resilience?

2. to what extent, if ever, (D/P)IA can be used as a tool of (privacy) resilience? (the original question that Julien asked)

3. what the theory and practice of (D/P)IA could learn from the theories of resilience?
resilience

resilience | rɪˈzɪliəns | (also resiliency)

noun  [mass noun]

1 the capacity to recover quickly from difficulties; toughness: the often remarkable resilience of so many British institutions.

2 the ability of a substance or object to spring back into shape; elasticity: nylon is excellent in wearability, abrasion resistance and resilience.

(Oxford Dictionary of English)
resilience

- ‘bouncing back’ vs. ‘bouncing forward’
- recently, an “attractive overarching concept for a wide range of policies” (Kaufmann 2012)
  - everything needs to “become resilient” or to “build resilience”
  - ecology, economy, int’l relations, emergency governance, information technology, (national) security, surveillance, individual well-being (self-help), …
- critique
  - essentially contested concept
  - neoliberalism (Chandler 2013)
  - “a new fetish” (Neocleous 2013)
- intuitively concerns the ‘during’ & ex post
- against something bad/negativity (‘anything that can go wrong will go wrong’)
  - contextual, external, unavoidable
- an inherent feature (property) [now/future] vs. a process
  e.g. social solidarity [empirical]
  e.g. planning [strategy]

  - preparedness
  - mitigation
  - redundancy
  - recovery
  - prevention [from worse]

1. (physical) Résistance d’un matériau aux chocs répétés.
SYNONYME résistance aux chocs.
2. (psychol.) Aptitude à faire face avec succès à une situation représentant un stress intense en raison de sa nocivité ou du risque qu’elle représente, ainsi qu’à se ressaisir, à s’adapter et à réussir à vivre et à se développer positivement en dépit de ces circonstances défavorables (ODT). « Ils ont connu, les uns et les...
(some) tools of resilience

- communication
- training
- configuration (discovering, affecting, ...)
- ‘forward-looking measures’
  - evaluation techniques: risk mgmt, impact assessment, SWOT, CBA, ...
  - ’responsible research & innovation’
  - ...
  - re privacy & data protection: privacy by design
  - privacy by default
  - (D/P)IA
  - ...
- ...

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An impact assessment is a tool used for the analysis of possible consequences of an initiative on a relevant societal concern or concerns, if this initiative can present dangers to these concerns, with a view to support the informed decision-making whether to deploy this initiative and under what conditions, ultimately constituting a means to protect these concerns.

(Kloza et al. 2017: 1)
part 2

(D/P)IA as a tool of resilience?
resilience and privacy (substantive)
resilience and privacy (formal)

- (D/P)IA as a tool of resilience?
- *prima facie*: comparing apples with oranges
- differences
  - *ex ante* vs. *ex post*
  - positive vs. negative
- similarities
  - tool
  - systematic process
  - structure [sequence]
    - PIA, risk mgmt, ...: preparation – assessment – action (recommendations)
- ...

...
(P)IA as a tool of resilience?

- *nihil novi sub sole*?
- (D/P)IA is a tool [process] contributing towards (privacy) resilience [feature] of an entity
  - a tool to make an entity more (privacy-) resilient
  - to what extent?
    - concreteness, sophistication, maturity, ...
    - privacy engineering & assurance (‘доверять, но проверить’) (Dawson)
- alternative evaluation techniques?
- alternative privacy protection tools?
  - a link can be found between any two concepts
- contextual
part 3

(D/P)IA to learn from resilience?
goal: towards more ...  
- clarity  
- honesty  
- completeness  
- (legal) certainty  
- credibility  
- ...  
- integrity  
↓  
- better governance & management of privacy, incl. its protection
(D/P)IA to learn from resilience?

1. **longer time-frame**
   - plan beyond imminence
   - ‘restorative contingency measures’
   - if something goes wrong later on

2. **public participation [opinion] → public engagement**
   - in the implementation of the final recommendations
   - by training, (self-)organisation, ...
   - individual’s empowerment

3. **receptiveness**
   - continuity (revisiting)
   - on-going learning from previous experience

4. ...
(at least) three questions

1. how much sense does it make to look at privacy governance & management, incl. protection & promotion, through the lens of the theories of resistance?
2. to what extent, if ever, (D/P)IA can be used as a tool of (privacy) resilience?
3. what the theory and practice of (D/P)IA could learn from the theories of resilience?
so what?

Q1
- resilience might be yet another ‘f-word’
  - $f = \text{future}$
  - risk, impact, uncertainty, precaution, vulnerability, ...
  - rationalisation, ...
  - yet another ‘grand narrative’? cf. ‘un grand récit’ (Lyotard)
  - all equally contested

- pragmatism: privacy could be looked equally through a lens of risk, uncertainty, resilience, ... if it brings more benefits than disadvantages
- yet: we might see things we might not be able to see otherwise (Jones)

Q2
- (privacy) resilience yet another way of looking at (privacy) governance & management, incl. protection & promotion
- (D/P)IA one of the ways towards resilience, yet perhaps the most sophisticated thus far

Q3
- (D/P)IA to learn from resilience:
  - go beyond imminence, engage publics, learn, ...
merci bien !

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