

# privacy impact assessment as a tool of resilience?

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**Surveillance, Resilience & Privacy**

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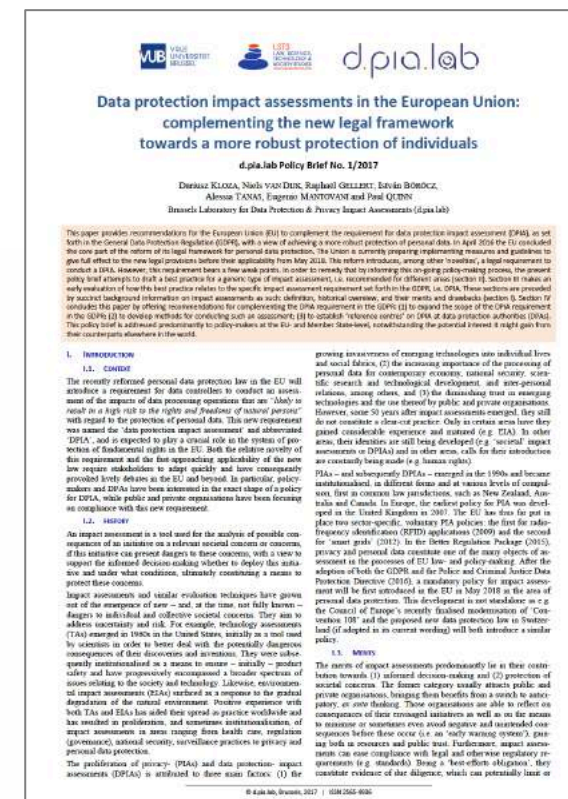
Institut du Management de l'Information

Université de Technologie de Compiègne



# all about us

- The Research Group on Law, Science, Technology & Society (LSTS) at the Vrije Universiteit Brussel (VUB), created in 2003
- 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
- 1<sup>st</sup> policy brief of d.pia.lab published in May 2017 [EN] [FR]



**WORK IN PROGRESS**

WHEELER & KILGUS  
No.  
79-83  
CONCRETE  
BLADE

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 | rɪˈzɪlɪəns | (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)

résilience n. f.

- 1 (*physiol.*) Résistance d'un matériau aux chocs répétés.  
SYNONYME résistance aux chocs.
- 2 (*psycho.*) 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 (GDT). «*Ils ont connu, les uns et les autres, une catastrophe, et ils ont reconstruit leur vie; ce sont des exemples de "résilience", ce mot jadis utilisé seulement en physique des matériaux pour la résistance aux chocs, et qui s'emploie désormais dans le domaine moral*» (Le Monde).

## Note Technique

Selon le GDT, le terme **résilience**, d'abord condamné comme calque de l'anglais, se répand de plus en plus en français, notamment dans la foulée des travaux sur le syndrome de stress post-traumatique.

(Multidictionnaire de la langue française)

# 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)

# resilience

- 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]

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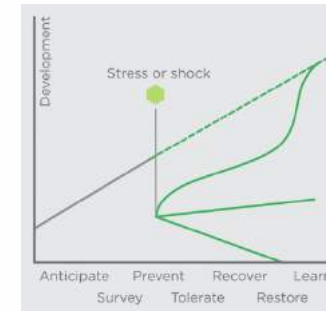
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- preparedness
- mitigation
- redundancy
- recovery
- prevention [from worse]

(Kaufmann 2012)



(Montpellier Panel 2012)



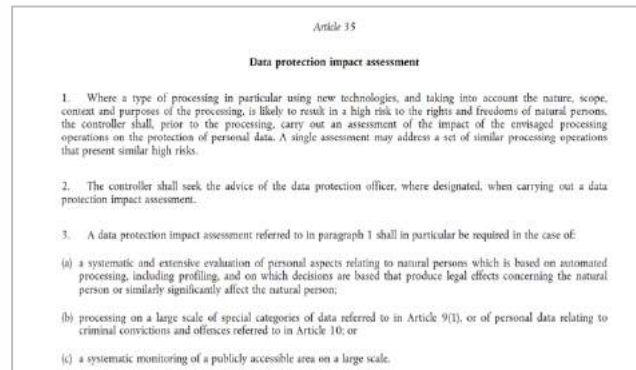
## (some) tools of resilience

- 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**  
...
- ...

# (D/P)IA

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)

COGITATIO

Media and Communication (ISSN: 2183-2439)  
2015, Volume 3, Issue 2, Pages 21-41  
DOI: 10.17645/mac.v3i2.220

Article

## Surveillance and Resilience in Theory and Practice

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### Abstract

Surveillance is often used as a tool in resilience strategies towards the threat posed by terrorist attacks and other serious crime. "Resilience" is a contested term with varying and ambiguous meaning in governmental, business and social discourses, and it is not clear how it relates to other terms that characterise processes or states of being. Resilience is often assumed to have positive connotations, but critics view it with great suspicion, regarding it as a neo-liberal governmental strategy. However, we argue that surveillance, introduced in the name of greater security, may itself erode social freedoms and public goods such as privacy, paradoxically requiring societal resilience, whether precautionary or in mitigation of the harms it causes to the public goods of free societies. This article develops new models and extends existing ones to describe resilience processes unfolding over time and in anticipation of, or in reaction to, adversities of different kinds and severity, and explores resilience both on the plane of abstract analysis and in the context of societal responses to mass surveillance. The article thus focuses upon surveillance as a special field for conceptual analysis and modelling of situations, and for evaluating contemporary developments in "surveillance societies".

### Keywords

democracy, privacy, public goods, resilience, security, surveillance

### Issue

This article is part of the special issue "Surveillance: Critical Analysis and Current Challenges", edited by James Schwoch (Northwestern University, USA), John Laprise (Independent Researcher) and Ivory Mills (Northwestern University, USA).

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### 1. Introduction

The dramatic revelations made in 2013 by Edward Snowden concerned the extensive and intensive surveillance operations of USA and allied intelligence services, involving covert collection of communications data on a massive scale, with or without clear legal warrant and often with the complicity of private communications, computing and media companies (Greenwald, 2014). Many of the specific and previously top-secret mass surveillance programmes that Snowden revealed were shown to be operating on an unimaginably huge scale. Increasing public knowledge of these practices has stimulated a variety of responses

from citizens, governments, civil society organisations, and other interests. Their views include a search for types of response that include opposition, a plea for regulation and control, and better ways of shaping the relationship between national security and the requirements of liberal democracy. Reactions by privacy and internet activists and advocates, by some parts of the media, and by a few politicians and lawyers, have been among the most considered, forceful and promising, with proposed reforming measures ranging from the technical to the legal, regulatory and political. However, we do not yet possess the conceptual apparatus to model the relationship these disparate means of addressing surveillance have to one another, nor to

Media and Communication, 2015, Volume 3, Issue 2, Pages 21-41

21

## REGULATIONS

### REGULATION (EU) 2016/679 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 27 April 2016

on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)

(Text with EEA relevance)

### Article 32

#### Security of processing

1. Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, the controller and the processor shall implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk, including inter alia as appropriate:
  - (a) the pseudonymisation and encryption of personal data;
  - (b) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
  - (c) the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident;
  - (d) a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing.



# 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)
    - *resilience*: anticipate – survey – prevent – tolerate – recover – restore – learn
- ...

# (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?

# (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**

**integrity** | ɪn'tɛɡrɪti |

noun [mass noun]

- 1 the quality of being honest and having strong moral principles: *a gentleman of complete integrity.*
- 2 the state of being whole and undivided: *upholding territorial integrity and national sovereignty.*
  - the condition of being unified or sound in construction: *the structural integrity of the novel.*
  - internal consistency or lack of corruption in electronic data: [as modifier] : *integrity checking.*

(Oxford Dictionary of English)



# (D/P)IA to learn from resilience?

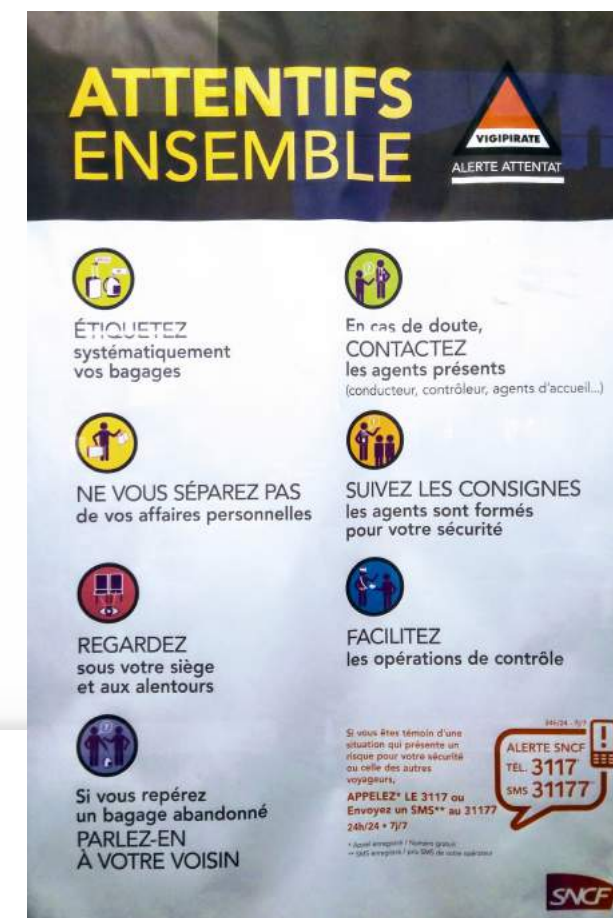
1. longer time-frame
  - plan beyond imminence
  - 'restorative contingency measures'
  - if something goes wrong later on
2. public participation [opinion] → public **engagement**
  - in the implementation of the final recommendations
  - by training, (self-)organisation, ...
  - individual's **empowerment**
3. receptiveness
  - continuity (revisiting)
  - on-going learning from previous experience
4. ...



(South Australian Fire and Emergency Services Commission)



(EFF)



(SNCF Les Vallées 6 déc.. 2018)

## (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* = 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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