Big Data and Personal Data Protection Challenges and Opportunities

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1. **Big Data: Big Legal Uncertainty?**

2. **Principles of Data Protection**

3. **Emerging Regional Tendencies**

1. Big **D**ata: Big **L**egal **Uncertainty**?

Term utilised since the 1990s and features in numerous official documents

Big Data analytics

Capture, aggregate and process **large amounts** of data to **uncover hidden patterns, correlations** and other insights

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rely on **powerful processors** and **algorithms**

characterised by **high Velocity, Variety** and **Volume** in order to **extract high Value**

Definitional Vagueness

Big Data

"Big Data is like teenage sex; everyone talks about it, nobody really knows how to do it, everyone thinks everyone one else is doing it, so everyone claims they are doing it."

-Dan Ariely, Duke University
Director of the Center for Advanced Hindsight

valuable insight

By combining **personal** and **non-personal data**, **Big Data analytics** can uncover **patterns** and **predict** *e.g.* what **individuals will do**

1. **Personal data** frequently **feed big data analytics**

2. **Patterns** and **correlations** are inferred *ex post*

not possible to **communicate** the **reason** and **purpose** of the analyticsn in order to request CONSENT *ex ante*

2. Principles of **D**ata **P**rotection

Data **Privacy**

legal protection to individuals against the **inappropriate use** of technology for processing **information relating to them**

Goal

Strike fair balance between **individual privacy** and the **free flow of information**

The goal is **not** to **prevent the processing** of personal **data**

BUT

To **provide safeguards** whenever information technology is used for personal data processing

The **Notice and Consent** approach

First designed in the 1970s

Growing use of **automated systems** aimed at **collecting and processing data** about individuals

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THE PRIVACY ACT OF 1974

1974 U.S. **Privacy Act**

Fair **I**nformation **P**ractice **P**rinciple**s**
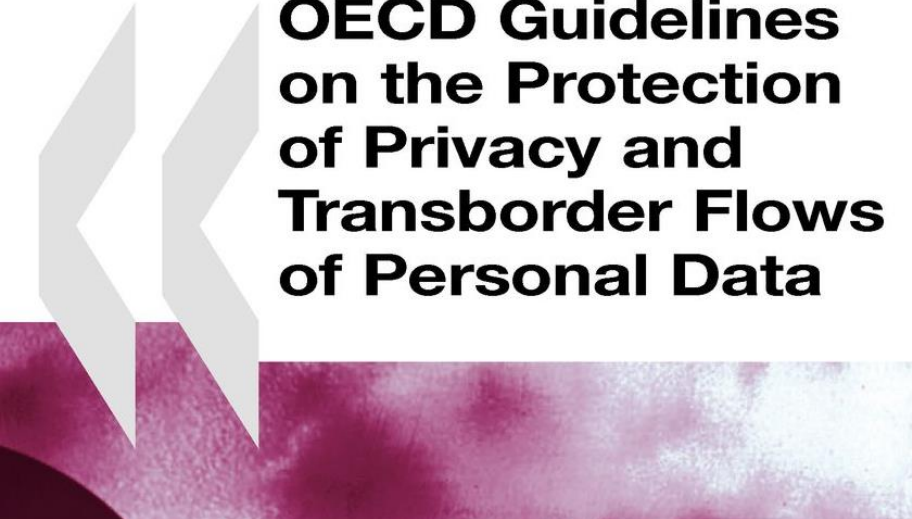
1978:

French *Loi Informatique et libertés*

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OECD Guidelines on the Protection of Privacy and Transborder Flows of Personal Data

Convention for the Protection of Individuals with regards to Automatic Processing of Personal Data and Protocol thereto

COUNCIL OF EUROPE

CONSEIL DE L'EUROPE

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"*Census*" Decision

German Constitutional Federal Court, 1983

"**Info**rmational **Self**-determination"

Individual right to **oversight** and **control** on what **personal information** about us **is accessible** and **how can be used**
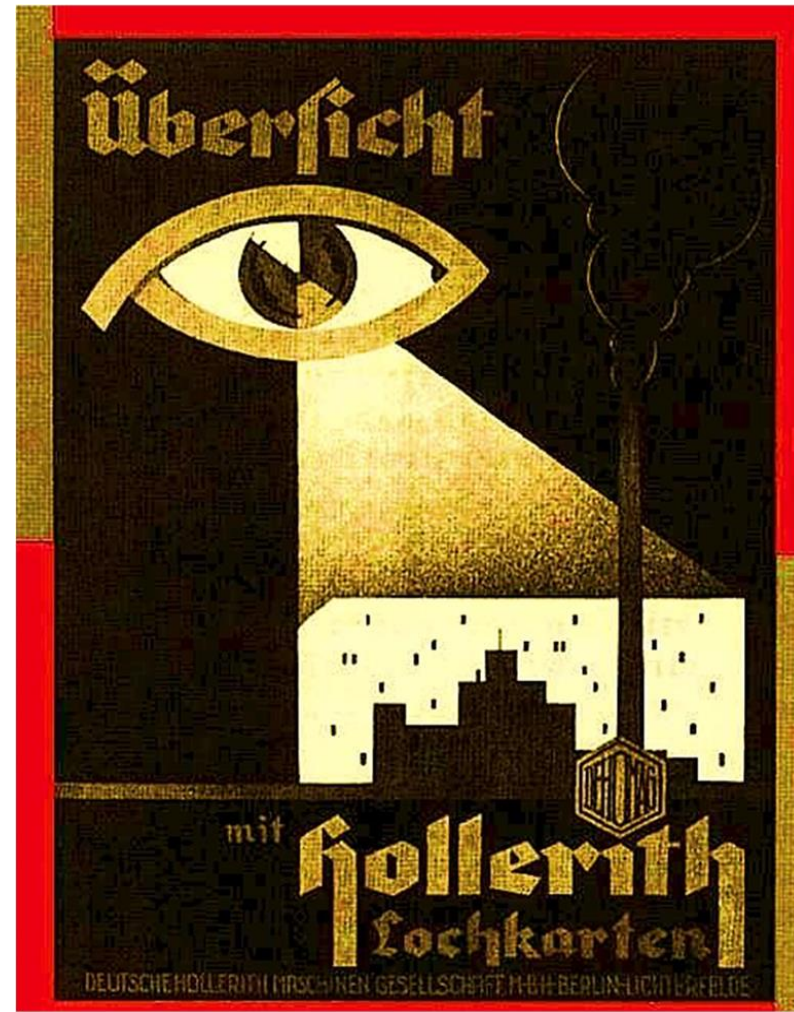
IBM supplied Hollerith punched card devices to Nazis for census management, to

"*report every **individual characteristic** on a little card*"

and

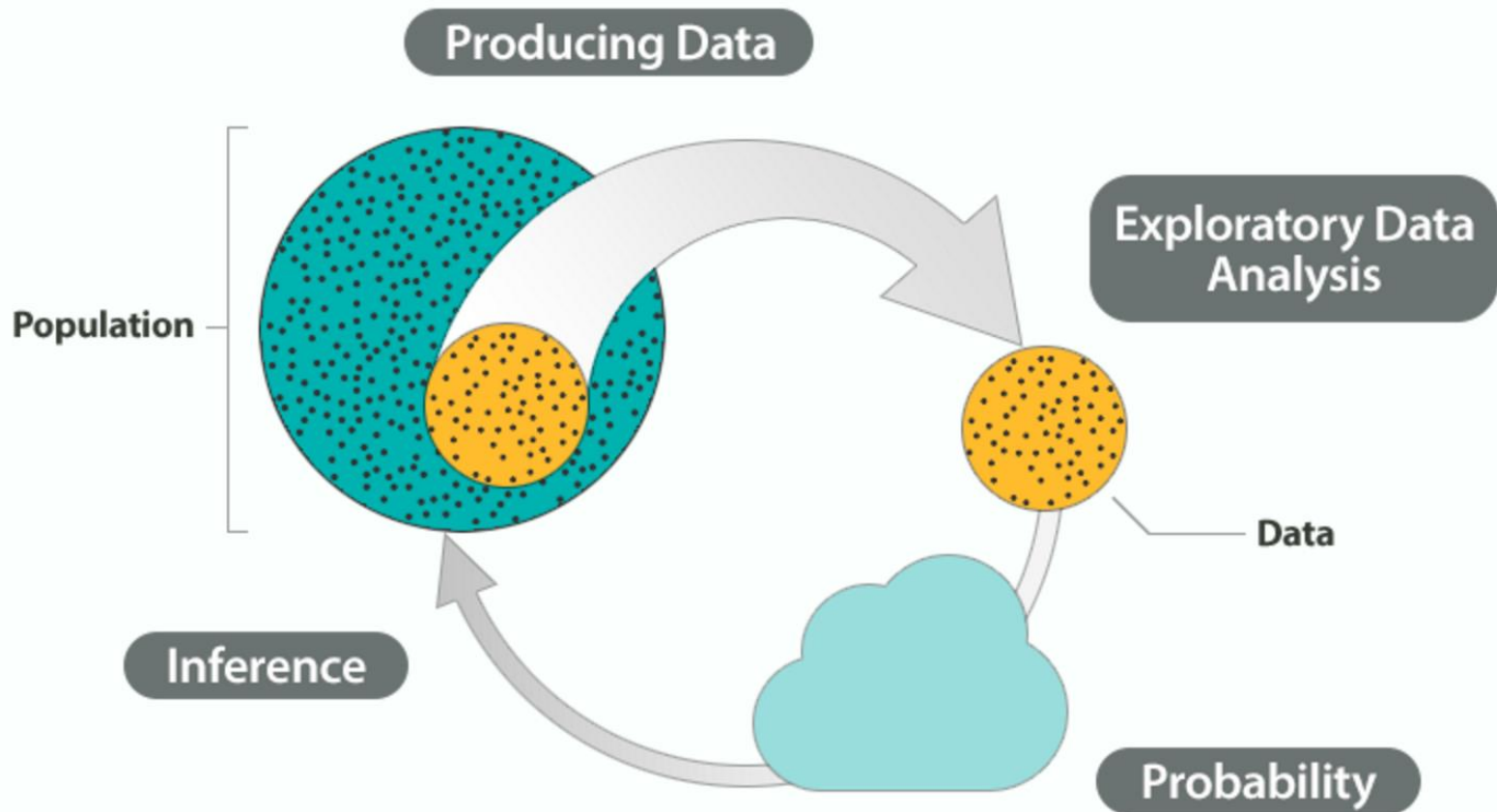"***sort cards*** *according to certain* **characteristics**"

Willy Heidinger

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Privacy self-management

Implementation of Informational Self-determination

Only those who are **properly notified** of the **reason**, **context**, and **purpose** of their **personal data collection** and **processing** will be able **decide freely** whether to **consent or not** to such activities

free, **specific**, **informed** and **unambiguous** consent?

purpose limitation?

transparency?

3. Emerging Regional Tendencies

Big **Problem**:

Big Data **collection** and **analysis can happen without the knowledge, consent, or understanding of data subjects.**

USA:

no comprehensive federal data protection **law**

Sectoral **laws** *e.g.* Fair Credit Reporting Act; Equal Credit Opportunity Act

Data privacy is under the **general protection** of **Courts**

Europe:

Personal **data protection** is a specific **fundamental right**

General **D**ata **P**rotection **R**egulation 2016/679

- **T**ransparency,

- **d**ata **m**inimisation,

- **p**roportionality,

- **p**urpose **limitation**,

- **c**onsent,

- **a**ccountability,

- **d**ata **security**,

- **rights** of data **a**ccess, **c**orrection and erasure,

- **Enforcement** through economic **sanctions**

GDPR **compliance** demands clear **insight** on **what** personal **data** are managed, **where** and **how**

A challenge but also an **opportunity**:

updating data governance means **more insight** on one's **data assets**

Brazil:

New general data protection legislation

law 13.709/2018

Largely based on GDPR

Art. 2º A disciplina da proteção de dados pessoais tem como fundamentos:

I - o respeito à privacidade;

II - a autodeterminação informativa;

III - a liberdade de expressão, de informação, de comunicação e de opinião;

IV - a inviolabilidade da intimidade, da honra e da imagem;

V - o desenvolvimento econômico e tecnológico e a inovação;

VI - a livre iniciativa, a livre concorrência e a defesa do consumidor; e

Both **GDPR** and the Brazilian law (**LGPD**) do not apply to data that have been **anonymised**

GDPR recital 26:

data protection should therefore not apply to **anonymous information**, namely information which **does not relate to an identified or identifiable natural person** or to personal data rendered anonymous in such a manner that the **data subject is not or no longer identifiable**

GDPR Recital 26

This Regulation does not therefore concern the processing of such anonymous information, including for statistical or research purposes.

LPDP art 5.III

anonymised data: data relating to a **data subject** that **can not be identified**, **considering the use of reasonable technical means available** at the time of treatment

LPDP art 7.

The processing of personal data may only be carried out in the following cases:
[...]
IV to carry out studies by a research body, guaranteed, whenever possible, the anonymisation of personal data;

Luca Belli, Molly Schwartz, Luiza Louzada. (2017)

Selling your soul while negotiating the conditions: from notice and consent to data control by design.

Health and Technology. Special Issue on Privacy and Security of Medical Data

tinyurl.com/BelliDataControl

Thank you for your attention!

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