Matrix of Data Protection

(Version 1.0, based on Kai von Lewinski's *Die Matrix des Datenschutzes,* 2014 and presented at the panel *Towards a Comprehensive Theory of Privacy* at the *Amsterdam Privacy Conference*, October 26th, 2015.)

Concepts of Protection / Topics	Factual Protection		Normative Protection		Institutional Protection		
	Informational Restrictions	Self-Protection	Social Norms	Legal Norms (Interdictions, Liability, Sanctions)	Institutional Framework	Abstraction (cf. the following line)	
Ultimate Cause (Human Dignity, Personality)	• Autonomy	• Shame • Adaption of Behaviour	• Taboos • Appreciation • Recognition	• Protection of Personality Rights	• Person as a Legal Entity • Legal Concepts of Dignity and Personality Rights	• "Private Spheres"	"Data protection" (and "privacy") is not about the protection of data, but a human condition. This first layer of protection focusses on the core values and vulnerability of the human being.
Physically, Socially or Logically Controlled Spheres	• Obstacles (Distance, Language) • Family, Clan • Complexity of IT-Systems	• Access Barriers (Doors) • Esprit du Corps • Encryption	• Trespass • (Non)Acceptance in a Social Group • Confidentiality	• Domestic Authority • Professional Secrecy (Doctors, Lawyers etc.) • (German) Fundamental Right to Ensure the Confidentiality and Integrity of Information Technology Systems	• Privileges to Refuse to Give Evidence / Nemo tenetur (in Court) • Screened Zones (e.g. Confessional Box)	• Conceptualization of the Informational Sphere	Because dignity, personality, honour and other paramount values are so fragile, and because violations are often irreversible, they are cushioned by a second layer of protection. In a kind of "spatial turn" spaces can be imagined and designed around the ultimate cause for "privacy" and "data protection"; these spaces are often called "spheres".
Informational Subjection (so-called "Informational Self-Determination")	• Technical and Technological Restrictions of Data Processing	• Behaviour • Concealment • Taking Up a Certain Role • Staying Anonymous	• Manners • Proscription of Curiosity • Social Claim for Attention	• Protection of Confidential Information • Portrait Protection • Right to Informational Self-Determination (Data Protection Law) = (Current) Data Protection Laws (in Europe)	• Data Protection Commissioners • Processors' Self-Regulation	• Ability to Dispose of One's Image	A third layer of protection for "privacy" and "personal data" was developed by the German Constitutional Court in 1983: "informational self-determination". In (legal) practice and in data protection legislation, this concept actually does not address self-determination as such but allows for informational restriction and subjection of data processors. Data protection laws give no more (and no less) than the power to restrict and forbid processors.
(True) Informational Self-Determination / Market Privacy	• Marginal Costs of Transaction of Fine-Granular Information	• Setting Market Prices • Self-Manifestation (Outfit, Image)	• Reciprocal Openness in Personal Communication	• Consent • Property Rights pertaining to Personal Data	• Collecting Societies • Data Business Law	• Equalization of Informational Inequalities	True informational self-determination can be located on a fourth layer, if data and privacy become (legal) objects like movables and immovables, receivables, and other goods. (And) if data becomes an object, the so-called data subject can be a *real* subject and as such withhold or dispose of data.
Informational Balancing of Society ("Informational Checks and Balances")	• Bad Public Image of "Data Leeches"	• Active Citizenship • Privacy Awareness ("Privacy Empowerment")	• Public/Social Consent about Privacy	• Freedom of Information • Public Sessions of Parliament • Antitrust Law (Essential Facilities Doctrine)	• Media • Data Protection Commissioners • Freedom of Information Commissioners • Separation of Powers	• Warranty of the Ultimate Cause of Human Dignity (Autonomy)	A fifth layer can finally be found on the level of society. In the same way as we know checks and balances in a political and constitutional context, we might think of informational checks and balances as well.

Concept of the Matrix

Data protection—and privacy in a wide understanding—is not a concept in itself but as a cascading combination of concepts. The whole field of what is called "data protection" and privacy can be sliced into five layers corresponding to what they mean to protect ("Schutzgüter"); these are represented by the lines of the above matrix.

These topics of protection all show similar modi or concepts of protection ("Schutzkonzepte"): factual protection, normative protection, and institutionalised protection (with further sub-differentiations). The concepts of protection are represented by the columns of the above matrix.

The topics (lines) and concepts (columns) do not only form the above matrix. The lines are linked in a way that one form of institutionalized protection is thought of as a new layer, or concept, of protection of data and privacy. This is represented by the last column and the corresponding following line. — In this way, the lines of the matrix form a ribbon.

As a last twist, the informational order of a society (last line, last column) constitutes the individual informationally. This is where the snake bites its tail, and the ribbon becomes a circle. *(See schematic figure on the right.)*

Potential and Use of the Matrix

First, the above matrix shows that privacy as well as data protection is based on a cascading model. Because of the sensitivity of the matter, certain aspects of privacy respectively data protection are not addressed as such, but on a more abstract level (following line).

Being aware that privacy and data protection are based on a multi-layer concept or matrix, is vital for professional and—even more so—scholarly communication within jurisprudence, for comparing legal systems und when discussing questions on an interdisciplinary level. It helps to contextualize and to pinpoint one's position in the discussion

And finally, the cascading matrix offers an explanation for some inconsistencies which occur in applying (legal) rules to privacy and personal data in practice. The fivefold ribbon of privacy forms a bimetallic strip of five layers—a penta-metal. It does not only bend in different temperatures of privacy issues but shows odd movements—tensions which result in theoretical frictions and practical (legal) toothache.

Schematic drawing of the matrix