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OUR DATA BODIES. RE-FRAMING OUR CONCEPTUAL AND NORMATIVE RELATIONSHIP WITH PERSONAL DATA

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Within the rapid development of data-driven technologies, manifold concerns have arisen on the effects of massive data accumulation, commodification and exploitation on people's lives, especially when the so called "personal data" are at stake. Much attention has been paid to how and to what extent big data exploitation is jeopardising the fulfilment of basic liberties and fundamental rights in democratic societies, as well as to what is the best way to protect people from the potential consequential harms.

Personal data are the object of the fundamental right to personal data protection, recognised in Article 8 of the EU Charter of Fundamental Rights. Besides, insofar as they are labelled "personal" data, they also fall within the scope of the wider fundamental right to privacy. The "personal" label is then central with regards to the legal framework for the protection of citizens' rights against the adverse effects of massive data exploitation. However, it is quite unclear under which circumstances we can affirm that certain data are "personal". We already know that aggregate and cross-reference big data analytics allow us to infer sensitive information and detect latent patterns of information from pieces of data that seemed innocuous when isolated. Data, then, are more closely related to *dividuals* (fragments of people's lives, characteristics and circumstances whose power lies in aggregation for the purpose of profiling similar *types of persons*), than to *individuals*. We also know that data provided by other people may concern us in undesirable and unpredictable ways, even when we do not know that person or are not aware of the mere existence of these data. Then, what exactly do we mean when we refer to personal data? According to the General Data Protection Regulation, personal data are any information "relating to" an identified or identifiable

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natural person. According to the EU Charter, the term refers to data “concerning” the right holder.

To say that something relates to a person or concerns him or her means that there is any specific sort of connection between them. However, in our case, it again remains unclear what is the specific type of connection that explains in what terms personal data relate to the person that holds a right of protection over them. In our view, this is a crucial question that the academic literature has not yet addressed in enough depth. And we believe it is relevant not only from a conceptual point of view (how we understand and define our relation with our data), but also from a normative point of view (what is the most accurate and desirable way of understanding this connection and at to what it entitles the right holder, also in social, ethical and political terms). In light of this, our paper aims at advancing knowledge towards a more accurate conception of our relationship with personal data. To do so, we draw on a three-step methodology.

Firstly, we discuss the three main recent contributions on this issue, taking into account both the conceptual and normative considerations derived from each of them, namely: data as property (Hazel, 2020; Murphy, 1996; Ritter & Mayer, 2018); data as raw material (Varian, 2018; Zuboff, 2019); and data as labour (Scholz, 2012; Fuchs & Sevigani, 2013; Fuchs, 2014; Cardon & Casilli, 2015).

Secondly, we argue why none of the latter seems to be neither accurate enough from a conceptual point of view, nor desirable from a socio-political perspective. Then, far from understanding personal data as something to be (fairly) *owned* by someone, or as a raw material to (not) be *exploited* by someone, or as the *product* resulting from someone’s digital labour, we explore a conception of personal data as *part of oneself*. We propose to understand our relationship with personal data as one more similar to the one we have with our bodies or their parts, with *our data bodies*.

Finally, we discuss the implications of the proposed conception, both on a conceptual and on a normative dimension, including why it may be useful to better protect citizens’ rights.

The idea of personal data refers to the person, a legal category that has been historically bound to the idea of things: the person in Roman law is defined as the one who can own things, who can have a patrimony (Esposito, 2017). The body, differently, has been an ambiguous terrain—navigating between these two poles—even giving rise, throughout Western history, to the colonisation, reification and depersonalization of certain bodies, which were considered as things that could be appropriated or owned by someone, as in the case of slaves. The efforts to overcome these aberrations to human rights placed the body on the side of the “person”, in order to avoid its commodification. Today there is a certain consensus that the body, or its parts (at least the vital ones), must be understood as non-transferable, non-exchangeable goods. Goods, therefore, that must be protected through the logic of fundamental rights, which excludes commercial exchange and whose guiding principle must be human dignity. It is precisely in that sense that we consider the body to be a fertile ground to rethink our relationship with personal data. Beyond that, in the light of the tensions that fields such as biotechnology have recently introduced in the univocal association *a person-a body*,

this proposal, far from confining the understanding of data as something exclusively related to the individual, will lead us to explore ways of understanding and protecting data from the common, overcoming the limits of individual action.

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