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The goal of this article is to explore – from the given theoretical framework – the effectiveness of the European Union's data protection capabilities, namely through the General Data Protection Regulation. The first and second sections develop the theory of control societies – as well as its historical background – and connects it with the theory of surveillance capitalism as its essential component. The third section delas with some critiques that have arisen in the few years after the GDPR came into force. The conclusion of the paper is that, only a few years after the GDPR came into force, it is still too early to decisively say what effect will it have on the big data industry. However, from the problems that have been elaborated, it seems unlikely that the big data industry will be meaningfully challenged when it comes to data protection.

Key words: *control societies, big data, Surveillance capitalism, general data protection regulation, data analysis.*

1. INTRODUCTION

Over the course of the last few decades there has been a unique trend of personal data exploitation that came to be wide spread with the massive expansion of digital technology especially with those that facilitate a large amount of data sharing. Concerns have been raised about the ways how this can infringe on fundamental rights, such as the right to privacy and data protection, as guaranteed by relevant domestic and international sources of law. To do so, one must adopt an analytic framework for understanding the phenomena at hand. As the title suggests, this will be attempted with the help of the post-structuralist theory of Gilles Deleuze as well as others.

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The paper is broadly separated into three subsections. The first subsection of the paper is concerned with explaining the theoretical background as conceived by Michel Foucault which Deleuze used as foundation for further development of his own theory. Through the analysis of the tools of sovereign and disciplinary societies, the ways in which control societies differ from them is portrayed, as well as which elements of sovereign and discipline societies still exist in the modern day. The second section deals with the very notion of control societies. Important concepts such as the dividual are defined so that this broad theory pointing at new ways modern technology and a change in subjectivity can be used for control can be set for concretization of the problem at hand. This is then done through the analysis of Shoshana Zuboff's concept of surveillance capitalism and its ways data is commodified. After explaining the ways this new form of commodification is performed, a part is dedicated to contextualizing the concept of surveillance capitalism within the Deleuze's theory of control societies. Finally, the third section is concerned with exploring the ways data is protected under the General Data Protection Regulation (GDPR) and critiques that may arise from the viewpoint of the presented theories.

At the end, the results of research are contemplated and a conclusion will be given that primarily tries to give a diagnose and explore some of the possible outcomes for the future of data protection after considering various problems that can arise during the enforcement of the GDPR.

2. HISTORICAL BACKGROUND

As Deleuze's analysis of modern societies is contingent upon the historical framework of his contemporary Foucault, we must first portray a sort of genealogy of power and the way it was exercised over legal subjects throughout history according to Foucault's theory.

2.1. Societies of sovereignty

Foucault defined power in relation to its object of control. In the case of what he identified as the ancient form of power, that would be the power over life and death. The first mention of sovereign power as the right over life and death came in *The History of Sexuality, Vol.*

1, in contrast to the notion of bio-power. Sovereign power, he claims, had its roots in ancient Rome in the form of the father's *patria potestas,* which over time transformed into an indirect right of the sovereign of retaliation (Foucault 1976, 135). Therefore, the right of the sovereign was manifested directly only in the case of transgression against him, and up until then it was only hypothetical.

Foucault claims (1976, 135–136) that this perspective is contrasted to the classical view of social contract theories epitomized in Thomas Hobbes since he does not claim that the power of the sovereign comes from the yielding of sovereignty innate in humans, but rather as a new right that came with the creation of "a new juridical being, the sovereign". Here we see Foucault's shift from dialectical explanations of history, explaining change as a result of societal struggle, to a non-systematic Nietzschean genealogy of change (Nietzsche 1990).

Compared to modern societies, sovereign societies functioned on the principle of "deduction"-namely, the right to take something away. Primarily, this meant that the ruler had the right to take a portion of his subjects' wealth, and even their life by asking them to wage war for him as mentioned before – this being most visible through the death penalty as a result of disobedience (Guttig, Oskala 2022)[1]. The principle of deduction also manifested itself in the form of exclusion and exile. Sovereign power is not totalitarian, it does not "...combine and compose, [it is used] to divide the masses rather than to isolate the detail; to exile rather than to seal off (its model is that of 'leprosy')" (Deleuze 1988, 35).

In short, sovereign societies were in a sense characterized by freedom so long as the subject refrained from threatening the sovereign – his legal order. Other than that, much of his life was left up to him to decide – a characteristic that stands in stark contrast to disciplinary societies.

2.2. Disciplinary societies

With the emergence of disciplinary societies in the 18th and 19th centuries, culminating in the 20th century, the object of power changed. The goal of power was no longer to tax but to organize production; not to rule on death, but to administer life (Deleuze 1997, 177–178). This means that the sovereign was only concerned with deducing, that

[1] See also: Stanford Encyclopedia of Philosophy, 2022a.

is, taking away what was his under the law– a portion of the serf's produce, for example – but he wouldn't go so far as to determine the serf's work schedule, shape his production, etc. In disciplinary societies, however, with the emergence of capitalism and industrialization, work became organized in a way to, among other goals, maximize production efficiency. The right of death, in a similar way, became secondary to the administration of life. What Deleuze referenced here was Foucault's concept of biopower. Unlike the right over life and death, biopower is positive, it seeks to "... exert a positive influence on life, that endeavors to administer, optimize, and multiply it, subjecting it to precise controls and comprehensive regulations" (Foucault 1976, 137). This, however, does not mean that the right over life and death is replaced with this softer power, but rather that it co-exists in the negative – in Foucault's formula "kill or let live" (Protevi 2009, 59), which is now reserved for only the most egregious of crimes – but also transforming into other indirect forms. Institutes like general conscription only came into existence with the advent of the French Revolution and became a symbol of biopower. Bodies are instructed and formed in ways that are in line with national needs.

How is this new form of power dispersed? A shift here is parallel to that of the direction of individualization. In the Middle Ages, individualization was concentrated at the summit, in the figure of the sovereign, while now it has trickled down to the base, to the population, since the individual members of a given population must be visible for the disciplinary society to be capable of gaining information about them. Power became anonymous, machine-like (Dosse 1998, 253). This entails a central shift in Foucault's analysis of change in power relations. Power once concentrated in the figure of the sovereign, has now become divided into numerous discursive flows, made manifest in institutions such as the asylum, the prison, the military, schools, and so on. Visibility, then, was the method used to shape modern subjectivity capable of being disciplined using certain new techniques.

2.2.1. Methods of disciplining

Following the notion of visibility, Foucault became particularly interested in how this new form of power became capable of exerting control (power) over people without such manifest exercise of force all the while being more effective than its predecessor (Guttig, Oskala

2022). He identified three main methods: hierarchical observation, normalizing judgment, and examination.

Observation became the central trait of disciplinary societies. In the past, for example, castles were built for the purpose of being seen and thus revered, while fortresses had the architecture optimized for the observation of external space – on the other hand, modern enclosed spaces are conceived as to build an internal system of control (Foucault 1995, 172). The purpose of enclosed spaces in disciplinary societies converged not in a way to produce a sort of dualism – where the purpose of architecture is to be seen but also to observe external spaces – but rather in a way that dismisses the previous border of internality and externality by making observation immanent, unavoidable. Foucault saw the prison as the model for all modern enclosed spaces in which power was dispersed – however, he also gives the example of the school and all of its "petty mechanisms" (the way supervisors' platforms were elevated to observe all the pupil's tables, the layout of dormitories, etc.) in describing the architecture of observation. The thought of being observed is enough for a subject to comply as if he was actually being watched.

The other two methods – normalizing judgment and examination – are closely intertwined and the latter in part makes the former possible. Disciplinary punishment upholds an order that is double in nature – on the one hand, it is the explicit normative rule (for example, the duration of the school curriculum), and on the other, a natural limitation (the cognitive development of a pupil at a given age). By combining these two components, one gets a picture of what is deemed normal or abnormal, thus introducing a moral component, whether something is good or bad. This is again a delineation from sovereign power, which only judges an action on the basis of whether it is prohibited. Here, punishment has not only a penal, but a normalizing component. Success is rewarded by advancement and punishment then is the opposite, regression.

Finally, through examination – present in various spheres of life, from psychiatry to schools – power structures are capable of monitoring the performance of disciplinary subjects and thereby controlling them (psychiatric evaluation, grading in schools, etc.). Based on this information, institutions create strata, grades, and norms that serve as the source of knowledge about the individual. The individual consequently becomes a "case" in the sense that he is the object of scientific

inquiry as well as something to be cared after (Foucault 1995, 170–175; Guttig, Oskala 2022). By this scientific empirical monitoring, be it medical, academic or legal – care becomes a new way of control as it is based upon the aforementioned collected data about the subject.

3. CONTEMPORARY THEORIES

Although connected to Foucault's theory, theoreticians like Deleuze and Zuboff locate the points of discipline and control in different but complementary ways, through the notion of surveillance. For Deleuze, new altered space and new technologies prove to be new ground for surveillance, while Zuboff analyzes how data is used for economic exploitation and the way that opens up a new way of surveillance (Galič, Timan, Koops 2017, 18–19). The point of this chapter is to elaborate both theories and propose a reading that suggests that surveillance capitalism is a subset of control societies that concretizes it.

3.1. Societies of Control

Building upon Foucault's schema, Deleuze (1997, 178–179) claims that we are presently witnessing another shift in the ways in which power exerts itself upon individuals. He thought of disciplinary spaces as molds – fixed and created to shape individuals. They are productive in the sense that they shape subjects. But with the advent of control societies, closed molds of institutions turned into open systems that function on the logic of modulations – that is, they adapt in accordance with changing conditions. At first, Deleuze noticed this trend in the shifting importance from the factory to the company, where the factory maintained a somewhat stable relation of production and wages, while the company, compared to the factory where there was a clear division of interests between the factory owner and its workers, stimulates constant rivalry through challenges, contests that modulate the individual, thus dissolving group interests (Deleuze 1997, 179). A transcendence is present, a duality of actuality and virtuality where there is an individual – the person as he or she is – but also a double who that individual strives to become (Moore 2009, 146). For Deleuze, then, unlike the possible, the virtual is already real – it's a part of reality, albeit ideal, but only in genesis is the virtual actualized. Therefore,

the virtual serves as grounds for anything actual and is presupposed[2]. This dualism is highly individualized and, for that reason, it becomes impossible to reassemble individuals into a traditional group (Moore 2009, 144–148).

All of this is in part a consequence of the change in material conditions where:

> "Capitalism in its present for is no longer directed toward production, which is often transferred to remote parts of the Third World, even in the case of complex operations like textile plants, steelworks and oil refineries. It's directed toward metaproduction. It no longer buys raw materials and no longer sells the finished products: it buys finished products or assembles them from parts. What it seeks to sell is services and what it seeks to buy, activities. It's a capitalism no longer directed toward production but toward products, that is, toward sales or markets" (Deleuze 1997, 181).

Here Deleuze is pointing to the fact that western capitalism has entered a new postmodern phase of production presently unique to it, which is contingent upon the existence of the so called third world through the delegation of traditional production. This does not exclude the third world from adopting trends of control societies, but it certainly widens the gap between it and the developed world, something that will be important for our further analysis of data protection.

A major shift was the analysis of open spaces instead of enclosed spaces in disciplinary societies. Before, an individual always started all over (from school, to the barracks, to the factory...), but that is no longer the case, since the individual is never finished with anything, but is in a constant state of development (Deleuze 1997, 180). As a result, the outside has now become confined. Before, enclosed spaces served the purpose of picking out one possibility out of infinite virtualities. Disciplinary institutions thus were not only repressive but also productive, since they chose the actual from the virtual. Deleuze claims that what is confined now is the virtual itself, and that is done through its periodic regulation and capture (Lazzarato 2009, 175–178).

From here, we see that the group has dissolved first into individuals, but for Deleuze, this is only a stepping stone. In disciplinary societies, Foucault located two poles, "the signature that designates the

[2] See also: Stanford Encyclopedia of Philosophy, 2022b.

individual, and the number or administrative numeration that indicates his or her position within a mass. This is because the disciplines never saw any incompatibility between these two and because at the same time, power individualizes and masses together, that is, constitutes those over whom it exercises power into a body and molds the individuality of each member of that body" (Deleuze 1997, 179–180). Here, the fact stressed is the importance of the mass (group) in shaping individual subjectivity, and vice versa. The corporation does not strive to achieve that level of control but rather seeks to manage only specific parts of the market that it pertains to. Due to the modulating nature of the social institutions, individuals have become less stable as a category, since their utility changes with the shifting nature of said institutions. As he (Deleuze 1997, 180). continues, "in the societies of control, on the other hand, what is important is no longer either a signature or a number, but a code: the code is a password". It is no longer individuals as a whole who play a pivotal role in interacting with different social systems, but rather only the individual's "representation", their behavior as a consumer. To explain this fragmentation of the individual, Deleuze coined the term "dividual" (Galič, Timan, Koops 2017, 19–20).

Using Deleuzes tools, Haggarty and Ericson (2000, 611) write of the body as the object of abstraction from its physical form, which is then it is reassembled in various new "data flows", a data double that is essentially virtual. The body is diffused into a multiplicity of "discrete signifying flows" (Haggerty, Ericson 2000, 612). Next, these flows of information, after becoming detached from corporeality itself, become "pure information", independent and ready for processing. This processing is done in "centers of calculation" which can include "forensic laboratories, statistical institutions, police stations, financial institutions, and corporate and military headquarters". Data doubles, according to them, permeate various centers of calculation, and are used for accessing resources and services in ways increasingly unbeknown to the individual, with the trend of increasing their use for marketing purposes (Haggerty, Ericson 2000, 613).

A dividual then is a different source of information depending on the institution you're interacting with. For example, to the bank, you are your credit score; to an insurance agency, you are a combination of your risk factors that determine the height of the premium you have to pay; to the police, you are your criminal record; on social media, you

are your preferences deduced from the type of content you consume, etc. The individual is turned into a multiplicity of data-banks.

3.2 Surveillance capitalism

To meaningfully develop the general theory put forth by Deleuze, one must introduce another idea. The American sociologist and philosopher Shoshana Zuboff was the one to fledge out the notion of surveillance capitalism first. She defines it as a new subset of information capitalism whose primary goal is to "... predict and modify human behavior as a means to produce revenue and market control" (Zuboff 2015, 75). The process initially stared developing with Google, but was perfected with Facebook. However, now it cannot be even identified with a single company as it has become entrenched in almost all internet activities. Digital technology (algorithms, sensors, machine intelligence, platforms etc.) is not to be understood as a dependent constituent of surveillance capitalism, as technology can exist without an economic creation (surveillance capitalism) while the reverse is not possible, but in that relation the economic component always has the primate over the technological one (Zuboff 2019, 12–13).

However, the notion of "big data", Zuboff claims, is not just some "autonomous process" of digital technologies, but an immanent part and the object of commodification within the system of surveillance capitalism. With the spread of computer mediation in various spheres of social life, many of our actions have become visible and accessible. But the important questions are to whom is this data visible and who decides what is accessible. Zuboff uses as a starting point for her analysis two documents written by Google's Chief Economist Hal Varian (Varian 2010, 2014). as a starting point of her analysis. Unlike her, Varian sees potential for human development in big data. By claiming that "computer-mediated economic transactions" get recorded and thus help improve future interactions, Varian, Zuboff (2015, 76–78) argues, entails an important aspect of big data, and that is that it subverts an important aspect of the neoliberal market – that it is unknowable. From there, building on Varian's four new uses implied by computer-mediated transactions, Zuboff contours the ways new capital accumulation is performed:

1. Data extraction and analysis. One of the main components of surveillance capitalism is its appetite for data collection and

analysis (data analysis), from which two characteristics can be deduced:

a) Formal indifference is the consequence of the asymmetry between the persons from whom the data is extracted, and the market actors (social media companies for example) who do the extracting of said data;
b) Structural independence signifies the fact that there are no reciprocities between the company and the population. For example, there are increasingly less durable employment systems, steady wage increases, etc. As a consequence, companies like Google are capable of creating enormous revenue with a relatively small workforce due to the fact that they primarily use algorithms to deal with other actors such as advertisers.

2. New contractual forms due to better monitoring. Real-time monitoring of contractual performance, people create a large quantity of data that is apt for monitoring, observation, and finally manipulating establishing conditions that increase control.
3. Personalization and communication. This characteristic refers to the way algorithms predict what the individual wants and needs to know even before the individuals knows it themselves.
4. Continuous experiments. Since big data analysis yields only correlational patterns, constant experimentation is necessary to expose causality. For example, Facebook continually does this by manipulating its users' behavior for the sake of monetization (Zuboff 2015, 78–85).

3.3. Connecting the two theories

How is this conception of surveillance capitalism connected to Deleuze? In our opinion, these two theories converge in three major ways. Those can be divided into relations concerning the subject of surveillance, the change in the frontier of control and in terms of the object of control.

First, in terms of the main actor in the new architecture of surveillance, both Zuboff and Deleuze agree that private enterprise has the primate over the state, and that state power is to be understood separately. As already stated, the interests of the company are drastically different in scope to the interests of the state and, therefore, they

rarely contradict each other, leaving space for the development of parallel forms of control.

Secondly, the change in the frontier of control is in both theories moved to the enclosure of the outside, or what was perceived to be out of the purview of control in the past. For Zuboff, that is overcoming the unknowability of the market which used to be postulated by neoliberal theory, and for Deleuze, with the breaking down of disciplinary institutions that served the purpose of channeling the virtual into a specific mold, now the virtual itself becomes regulated from a distance. For this Deleuze gave the example of how highways give the impression of freedom of movement, all the while posing as another form of control (Deleuze 2006, 322). The perception of freedom in the middle of monitoring is the dominant logic of control societies.

Thirdly, and most importantly, when it comes to the object of control/surveillance, for one to arrive to Zuboff through Deleuze, one must connect them through more recent interpretations. Since Deleuze wrote about control societies in the early stages of computerization he couldn't anticipate the impact information technology would have in this field. Therefore, one must expand his concepts so that they can be applicable for the modern day. Clarke (1988, 449) coined the term "dataveillance" to explain "the systematic use of personal data systems in the investigation or monitoring of the actions or communications of one or more persons". Dataveillance differs from panoptic ways of control in that it is far more efficient, since it utilizes digital instead of analog technology. If we consider the vast systematizing ability of digital databases as well as their quantitative abilities, one can see how the connection with the digital has been made with the aforementioned concept of the dividual. Data, through the spreading of the internet and social media, has become increasingly available to a greater number of data collectors, instilling a sense of increased uncertainty (Galič, Timan, Koops 2017, 28). If we take this interpretation of Deleuze, we believe that Zuboff's theory fits neatly within the framework of societies of control.

4. THE EUROPEAN UNION AND DATA PROTECTION

Since the before explained trends are not universal, but develop non-linearly in different regions of the world, and taking into consideration the fact that this asymmetry is in some sense inherent since the

West shifted toward "higher-order" production emblematic of control societies only after displacing the production of raw materials to the developing countries, we will focus on the way big data has been regulated in said developed countries. Specifically, attention will be devoted to the most recent attempt at protecting data – that is, the European Union General Data Protection Regulation (GDPR).

In 2016 the European Union (EU) passed the GDPR, which came into force in 2018, thus replacing the Data Protection Directive (DPD)[3] from 1995. This update in data regulation came to pass due to the rapid advancement in technology making the DPD outdated[4].

4.1. Big data and the European Union

Although there isn't a definition of big data included within the GDPR itself, a year after its passing, the European Parliament passed a resolution that defined it as "the collection, analysis and the recurring accumulation of large amounts of data, including personal data, from a variety of sources, which are subject to automatic processing by computer algorithms and advanced data-processing techniques using both stored and streamed data to generate certain correlations, trends, and patterns (big data analytics)"[5].

From this definition, a few points can be made about big data: Firstly, it usually but not always encompass personal data; the quality of the data is not all that important, but it's the quantity that counts; very importantly, due to the vast quantity of data, algorithms attempt to structure them and locate regularities; regardless of the intent to use it, all sources of data must be analyzed separately; a general formula can be inferred: the more data there is, the more precise the results; the results are never a consequence of only one data point but of a network of data. Because most of this data is unstructured, it is difficult to find

[3] Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, OJ L 281 of 23.11.1995.

[4] 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), OJ L 119 of 4.5.2016.

[5] Resolution (2016/2225(INI)) of the European Parliament of 14 March 2017 on fundamental rights implications of big data: privacy, data protection, non-discrimination, security and law-enforcement, OJ C 263 of 25.7.2018.

a genealogy of big data analysis due to its dispersed points of origin. It is therefore difficult to bind the purpose of data extraction and consent for its use, which is the greatest difficulty of data protection (Galič, Timan, Koops 2017, 61–63).

Most importantly, despite its quantity, the defining characteristic of big data is its ability to systematize said data for the sake of making precise prediction about the future behavior of users (Andrew, Baker 2021, 566), which is what Zuboff meant when talking about personalization and communication. This relation of yielding private data for the sake of gaining something in return is not balanced, since companies like Facebook and Google are not held accountable the same way traditional institutions can be. The users are quite oblivious to the ways their data is used for by these companies (Zuboff 2015, 83).

Deleuze pointed out in the already mentioned seminar that control societies no longer pass through places of confinement. By breaking down the boundaries of institutions, various previous spheres of life converge on each other. Control is not the same as discipline. Control, after it leaves the premises of confinement is seamless. Movement can seem free, but it is controlled at the same time (Deleuze 2006, 321–322). This is exactly what happens with big data. This is evident since human behavior is monitored through mundane activities such as going to the supermarket, online transactions, google searches, movement etc. (Andrew, Baker 2021, 567). Therefore, movement and consumption are encouraged because said activities increase the amount of data that can be collected and used for analysis.

4.2. Impact of the General Data Protection Regulation

Following the analysis of big data, the GDPR implicitly regulates a specific subset of big data pertaining to personal data through the notion of profiling. Profiling is defined as "any form of automated processing of personal data consisting of the use of personal data to evaluate certain personal aspects relating to a natural person, in particular, to analyze or predict aspects concerning that natural person's performance at work, economic situation, health, personal preferences, interests, reliability, behavior, location or movements"[6]. The GDPR prohibits automated processing, including profiling and establishes a

[6] 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

system of explicit consent.[7] However, there are enumerated exceptions to this rule, namely, the prohibition of automated processing, including profiling shall not apply if it "is necessary for entering into, or performance of, a contract between the data subject and a data controller"[8]. This is an improvement compared to the DPD[9] in the sense that an explicit necessity criterion is introduced. The problem is that this concept is not elaborated within the text of the regulation itself, so it will probably be fleshed out in the still undeveloped practice of the courts. In another respect, this exception is expanded. The DPD required the data subjects to explicitly request the contract, while now the exception includes the contracts the controller requests (Bygrave 2020, 536).

However, one is reminded of Zuboff's analysis of the role of the contract in her theoretical framework. Varian gave some dystopian suggestions of how contracts can, through computer-mediated transactions, facilitate new relations. He talked of how insurance companies could use monitoring systems to check if the customers are driving safely in order to determine if they want to continue providing the insurance. For Zuboff (2015, 81–82) this is the antithesis of the classical notion of the contract and the rule of law as "consensual participation", she writes, "in the values from which legitimate authority is derived, along with the free will and reciprocal rights and obligations, are traded in for the universal equivalent of the prisoner's electronic ankle bracelet". The contract has become a method of forfeiting privacy for something in return such as "a mortgage, medical advice, legal advice – or advice from your personal digital assistant" (Varian 2014, 30).

Another point of contention is the GDPR's introduction of de-identified data sets, namely anonymized[10] and pseudonymized data[11].

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personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ L 119 of 4.5.2016, Article 4(4).

[7] *Ibid*., Article 22 paragraph 1.

[8] *Ibid*., Article 22 paragraph 2 item (a).

[9] Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, OJ L 281 of 23.11.1995, Article 15 paragraph 2 item (a).

[10] 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), *OJ* L 119 of 4.5.2016, recital 26.

[11] *Ibid*., Article 4, paragraph 5.

The main difference between them is whether the data subject can none the less be reidentified at the end (Andrew, Baker 2021, 71–72). So, when it comes to anonymized data, this cannot be done, while in the case of pseudonymized data this is possible with the help of additional information. This, even though it is a step in the right direction, can prove to be another place for manipulation, especially if we consider the fact that anonymized data, which offers a more robust type of protection, is regulated in a recital, while pseudonymized data is set in an article of the regulation.

In order to propose another shortcoming of the GDPR, one must understand the conceptual distinction between privacy and surveillance risks. The former is concerned with the individual, it sheds light on the individual's right to protect his private information – it preserves the subject (Andrew, Baker 2021, 69), while the latter differs in scale and is connected with the problems controlling and governing the trade of personal data. Also, importantly, data surveillance does not need personal data for analyzing anonymized data sets. From the vast quantity of this data, personal data can be inferred (Andrew, Baker 2021, 71).

The GDPR, through prioritizing privacy risk in paragraph 26[12] by stating that the principles of data protection should pertain to information concerning an identified or identifiable person, incentivizes the collection of other de identified behavioral data, which, as stated before, can all the same be used for reconstructing behavior. Something which has been done by large companies such as Facebooks and Google for a long time (Andrew, Baker 2021, 74). In a way, by excessively affirming subjectivity through the protection of private data, the GDPR can have an effect of destabilizing it further, which brings us back to the notion of control societies. By stimulating the anonymous flows of information constituting the aforementioned data double, a pure virtuality that all the same can be used to shape our behavior as postulated by Zuboff, the GDPR missed the opportunity to protect data subjects from surveillance risks.

At this moment, only a few years after the coming into force of the GDPR, it is still too early to say if and what effect this will have

[12] 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), *OJ* L 119 of 4.5.2016, paragraph 26.

on the big data industry, but some signs might have already started to manifest. Zarsky (2016, 1018) proposes some scenarios for how the GDPR might affect data protection. First, the optimistic scenario is that the GDPR fulfills its ostensive purpose in safeguarding fundamental privacy rights. The idea is that citizens themselves will enjoy enhanced data protection, all the while experiencing the benefits of data analysis. There have already been some such indications – for example, a study conducted in the Netherlands, suggests that the GDPR had minimal effects on e-commerce companies, and that their business operated uninterrupted in spite of previously pessimistic forecasts. The study even suggests that the implementation of the GDPR enhanced data management within companies and increased customers' trust (Haddara, Salazar, Langseth 2023, 776). Also, there is the prospect of globalization of these rules due to GDPR's international jurisdiction, which opens the possibility of its use outside the EU, most importantly in the US. However, due to the fact that there are many situations of data analysis that the GDPR does not regulate or does so vaguely, which is why many call it "sluggish" (Diligenski, Prlja, Celović 2018, 17), there is a possibility that different EU countries will implement this regulation differently, for better or for worse (Zarsky 2016, 1019). Finally, the moderate forecast of its rules is that it will, due to its framework nature, provide enough wiggle room for data analysis companies to continue developing (Zarsky 2016, 1019).

5. CONCLUSION

The largest change that was observed in the shift from disciplinary to control societies was in the notion of the subject who is no longer the object of discipline which in large part shaped it, but rather has become an object of monitoring. The nature of this new subjectivity was examined, and the notion of the fragmented data double was introduced, so that it could be used for the further exploration of questionable data analysis that threatens fundamental rights and its attempts at curbing them.

The main takeaway from the theoretical part of the paper is that both the concepts of control societies and surveillance capitalism are relevant to the present and that they are in a relation of subordination. Surveillance capitalism can be viewed as a subset of control societies

and, being a narrower term, it can be efficiently used for the dissection of the trends of big data analysis as both a method by which data is commoditized and subjects are controlled.

Even though the GDPR provides unprecedented protection of private data, even after a short period after its coming into force concerns have been raised in theory. The first among them is the difficulty to bind the purpose of data extraction and consent for its use, so that it can be meaningfully protected. Also, in its attempt to mitigate privacy concerns, the GDPR might inadvertently incentivize the increased harvesting of behavioral data, which in turn could be a fertile ground for future behavior manipulation of users both online and offline. Another concern is that the implementation of the regulation might vary in quality and robustness among the 27 EU nations, which would further destabilize its utility. These critiques, as well as some others, on their own might be minimized, but taken together they make it seem increasingly likely that the GDPR won't have the power to meaningfully challenge interests of the emerging economic order.

The given analysis of the GDPR contributes to the picture of a crumbling notion of Foucault's disciplinary subject, which is becoming increasingly obscure and fragmented into a multiplicity of data flows. These, in turn, are used to predict and manipulate the behavior of said subject in spite of the ostensible attempts at protecting it, such as the one offered by this regulation.

All in all, given the fact that the trends of commoditization and of flows of data in control societies have proven to be immensely profitable, it seems unlikely that any number of lawsuits or new regulations would entirely undermine this new logic of accumulation, since abandoning it would mean the end of the present mode of capital accumulation. This outcome seems even more plausible when paired with the conclusion about the capabilities of the GDPR.

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