

Bottom-up data Trusts

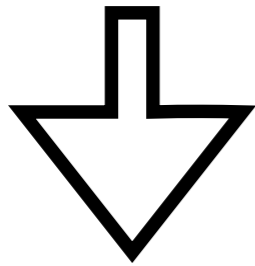
S. Delacroix and N. Lawrence

doi: [10.1093/idpl/ipz014](https://doi.org/10.1093/idpl/ipz014)

Bottom-up empowerment

19th Century Land Societies

Pooling resources



Right to vote

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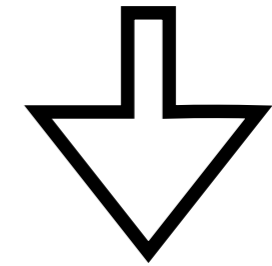
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21st Century Data Trusts

Pooling data



Political
&
Economic
Empowerment

Letter: Legal instruments exist to empower us, the data subjects

From Sylvie Delacroix and Neil Lawrence, The Alan Turing Institute



Data ownership?

- Intuition: ownership = control
- Link with: 'one's home is one's castle'
- Personal data is unlike homes (or castles). The type of property rights data can give rise to are more akin to the 'nonexclusive rights riparian owners have in a river that runs by their land' (Evans 2011)
- Not only unlikely to provide level of control wished for: ownership is also a poor answer to the type of problems (and vulnerabilities) at stake.

Data Trusts = remedy to:

- Lack of tool enabling long-term **collective** action
- Data **consent** rarely more than 'make believe'

Data Trustees

- *Fiduciary* obligation of undivided loyalty
- *Intermediary layer* between data subjects and data controllers

21st-century profession?

- 19th Century: advances in medic.Sc. called for birth of medical profession.
- Today: advances in data science call for Data Trustees

Holding data rights under a Legal Trust

1. Subject matter of the Trust = data Rights (not `property`)
2. Different kinds of data give rise to different kinds of rights in different juris.- from full portability, access and erasure rights all the way to `mere` information rights
3. Data trustees will need to be `mandated` to exercise the data subjects' rights on their behalf. In Europe, Art. 80(1) GDPR currently envisages such mandates only in relation to art. 77-79.

Implementation Models

- Centralised v. Decentralised
- Generalist Trusts v. Purpose-specific
- Participatory governance v. Hands-off delegation

Challenging the one size-fits-all approach



The need to be able to 'shop around' data Trusts

- Each Trust will instantiate one particular way of balancing data risks and responsibilities + possibility to switch
- The successful development of an ecosystem of Trusts is contingent on their ability to make use of currently limited rights around *data portability* and *data erasure* (in Europe: arts. 20 and 17 GDPR).

Reversing direction of consent

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Two challenges

1. **Exit Procedures:** need to be able to switch Trust when aspirations change. Shared provenance issues.
2. **Uptake:** publicly funded 'default' Trust in the absence of choice? Local data sharing needs?

Worth it?

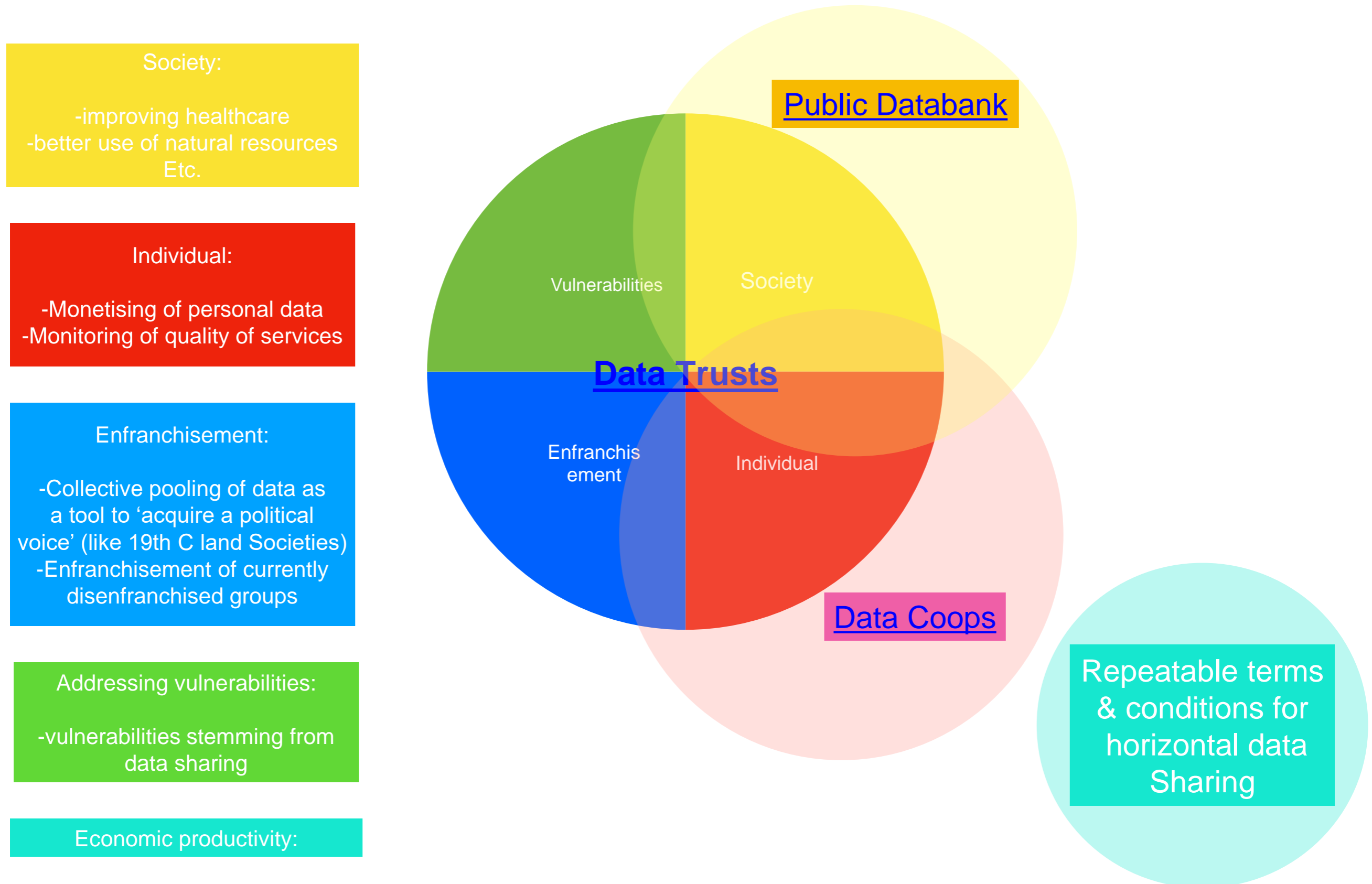
Given the vulnerabilities at stake:

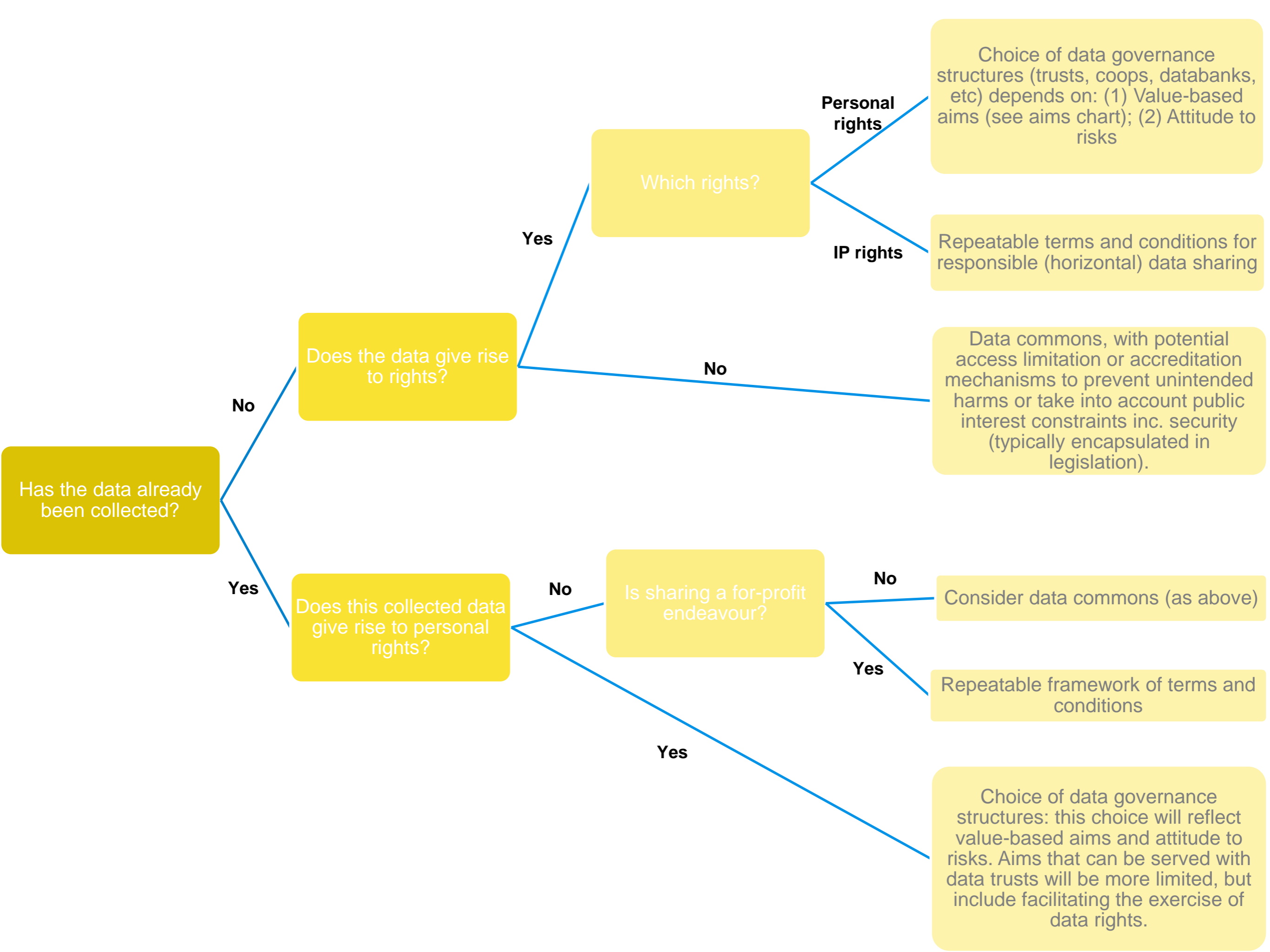
Yes

Unlike contractual or corporate frameworks, [e]quity employs ex post moral standards, emphasizes good faith and notice, couches its reasoning in terms of morals, and is sometimes vague rather than bright line'

Choosing among data institutions: a value-based choice

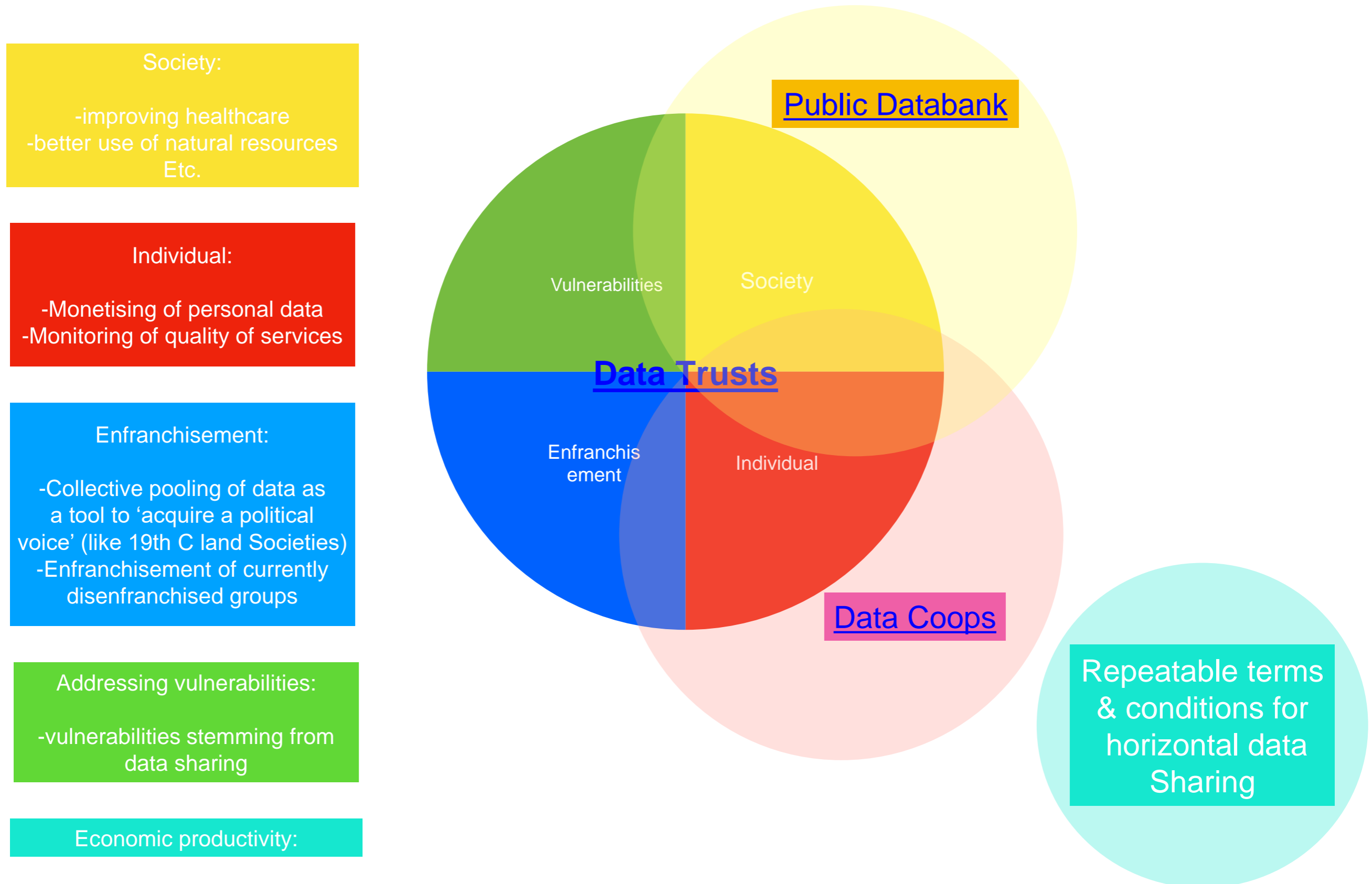
Mapping the suitability of different data governance structures for different aims





Choosing among data institutions: a value-based choice

Mapping the suitability of different data governance structures for different aims



Conclusion

- Top—down regulatory endeavours to curb contractual freedom cannot by itself reverse ‘feudal’ power imbalances. Nor can it address the insidious compromising of our sense of ‘authorship’.
- The availability of a variety of data Trusts promises a degree of adaptability to evolving needs and aspirations that top-down regulation is unlikely to match.
- By facilitating access to ‘pre-authorized’ data, our data Trust proposal may **remove key obstacles to the research potential** underlying large datasets.

Datatrusts.uk