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# Conscience in the Datasphere

Stephen Humphreys<sup>\*</sup>

**Abstract:** Much of the anxiety concerning ‘privacy’ in contemporary conditions of data immersion—which I here characterise as ‘life in the datasphere’—may be better understood by reference to the neglected notion of conscience. This article undertakes an historical inquiry into this rich concept to reframe the debate on privacy, law and technology. To simplify, ‘conscience’ has historically articulated an impulse either to hide from an omniscient moral authority (‘bad conscience’) or to act righteously according to informed reason (‘good conscience’). Originating as a powerful premodern governing principle combining personal with public morality—notably in the medieval notion of *synderesis*—the personal and political content of conscience were each effectively critiqued by, respectively (in the examples I investigate here), Freud and Hobbes. The concept itself became ultimately marginal to public life. In this article I suggest that conscience in both guises returns forcefully under conditions of data ubiquity, pointing to broader shift in political settlements.

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Let me begin with two contemporary parables of conscience.

The first is fictional. In Michael Haneke's 2005 film *Caché*, a well-heeled Parisian, Georges, finds himself subject to anonymous surveillance, sparking a series of events that lead him to reflect on his past. Specifically he is prompted to recall his jealous response as a child in rural France to the arrival in his home of an Algerian boy orphaned when his parents were killed in the 1961 'Paris Massacre'.<sup>1</sup> Georges dissembled and lied to ensure the boy, Majid, was eventually sent to an institution. Back in the present, Georges locates Majid, now living in a drab flat in the Parisian suburbs, only to witness his violent suicide. In the film, Georges's response to these events shades between anger and resentment, but as viewers we are conscious that he also feels guilt. Although he has committed no crime, his conscience appears to have been awoken with regard to his private past. But the film also hints at the relevance of the public past—that of France and its actions in Algeria and towards Algerians. If the private home is a repository of secrets and guilt at risk of discovery, so too, Haneke indicates, is the public domain.

The second story is non-fiction. In September 2014, 43 veterans and reservists of an elite Israeli intelligence gathering outfit, Unit 8200, signed a public letter refusing to do any further service in the Occupied Territories.<sup>2</sup> The signatories claimed the surveillance they were required to undertake failed to distinguish between combatants and civilians, put innocent lives at risk, and was used for blackmail and other political ends. According to one, named only as Nadav, '[w]hen you rule a population ... they don't have political rights, laws like we have. The nature of this regime ... especially when you do it for many years, it forces you to take control, infiltrate every aspect of their life.'<sup>3</sup> According to another, D, '[t]he only limitation is the limitation of resources. There's no procedural question regarding who can and cannot be surveilled. Everybody is fair game.' Coincidentally, the second story too has a filmic element: *The New York Times* reported that, for one of the letter's signatories, 'the transformational moment came in watching *The Lives of Others*, the 2006 film about the surveillance operations of the East German secret police.'<sup>4</sup>

Conscience, which is my subject in this paper, has, then, two very different faces. In *Caché*, Georges never learns who has been watching him or why: it is the condition of being watched that itself gives rise to his *crise de conscience*. His is a sliver of knowledge, of self-recognition, emerging from a fog of ignorance, and it

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<sup>1</sup> An assault by Parisian police on 30,000 Algerian demonstrators on October 17, 1961, in which between 70 and 200 Algerians were killed. See Neil Christian Pages (2010) 'What's Hidden in *Caché*', *Modern Austrian Literature* 43(2): 1-23, 3-4. Thanks to Paul Sheehan for drawing my attention to this text.

<sup>2</sup> Peter Beaumont, 'Israeli intelligence veterans refuse to serve in Palestinian territories', *The Guardian*, September 12, 2014; Elio Levy, 'IDF intelligence soldiers refuse to serve: We won't work against innocent Palestinians', *Yediot Aharanot* September 12, 2014.

<sup>3</sup> Peter Beaumont, 'Israel's Unit 8200 refuseniks: 'you can't run from responsibility'', *The Guardian*, September 12, 2014.

<sup>4</sup> Judi Rudoren, 'Veterans of Elite Israeli Unit Refuse Reserve Duty, Citing Treatment of Palestinians', *The New York Times*, September 12, 2014.

manifests in guilt: Georges has a bad conscience. The Unit 8200 veterans too feel guilty but, by contrast with Georges, they know too much. Not only do they know more than they believe they should; they also know that their knowledge is itself secret: their conscience prompts them to ‘go public’ (albeit anonymously).<sup>5</sup> They are driven not (merely) by guilt but by (to revive a Biblical term) righteousness. Unlike Georges, they strive to do the right thing, to act with a *good* conscience. I take these two scenarios as representative, in certain key respects, of the rapid normalization of data-collecting practices giving rise to a widely-articulated anxiety concerning privacy.

In this article, I turn to conscience in part to illuminate the broader problem of ‘privacy’, in part to bracket it. Privacy is a complex composite notion, closely associated with a lengthy historical—culturally specific, if universally expansive—process: the emergence of a public-private divide, together with corollary notions of private personhood, a protected private sector, and the cognate poles of privation and privilege.<sup>6</sup> To have a capacity for ‘privacy’ has historically meant access to wealth, property and physical force (an army, a treasury, the castle walls). Insofar as privacy is today ‘democratised’ (the home, the family, the police), it is still not equally available to all. Moreover, the notion of a ‘private person’ is so thoroughly bound up with the conceptual apparatus of contemporary state and society that privacy can be invoked to support numerous differing, even contradictory arguments (think of the supposed ‘balance’ between ‘liberty’ and ‘security’, each of which can be recast in terms of privacy). So although privacy has been an inevitable anchor for contemporary anxiety in conditions of data excess, the concept may lack both the terminological precision for sharp analysis and the mobilising force for collective response.

I suggest we gain more analytic traction by focusing in on the component elements of privacy: conscience is one; others might include conceptions of space, of intimacy, of sexuality, of subjectivity, of autonomy. These are, of course, interconnected concepts; my wager in this article is that they can be fruitfully disaggregated. Conscience, in particular, inheres in the (social, political, ethical) person, predates privacy, and apparently names universal problems of action and self-contemplation. In this specific instance, I use ‘conscience’ to highlight the bond between two contemporary privacy concerns that may otherwise appear merely coincidental: the problem of invasive monitoring producing paralysis (bad conscience), on one hand, and of righteous informed action (good conscience), on the other. Framing these problems in terms of conscience, rather than privacy, allows me to reconnect both with cognate themes of knowledge and authority. In short: how do changing conditions of knowledge production and dissemination,

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<sup>5</sup> According to *The Guardian*, ‘They had engaged a high-profile lawyer to avoid breaking Israeli law – including by identifying themselves in public.’ Beaumont, ‘Israeli intelligence’.

<sup>6</sup> Compare for example, Georges Duby ‘Private Power, Public Power’ in Duby (ed.), *A History of Private Life* (vol. II), *Revelations of the Medieval World* (Cambridge, MA: Belknap, 1988) with Antoine Prost, ‘Public and Private Spheres in France’ in Philippe Ariès and Georges Duby (eds), *A History of Private Life* (vol. V), *Riddles of Identity in Modern Times* (Cambridge, MA: Belknap, 1998).

and shifting loci of authoritative access to, and evaluation of, this data, together redefine what it means to be a ‘private person’?

So in this article, I have two related aims. My broader aim is to reframe the stakes of continuing anxiety over privacy, to begin to theorise this complex notion in such a way as to make contemporary experience available for analysis—and, in doing so, to enrich and contextualise a troubling but somewhat opaque contemporary predicament. My narrower aim is, with an eye to the specific problematic of conscience, to take first steps towards such an analysis. How do contemporary conditions nurture, pressure, or reawaken long-standing articulations of ‘bad’ and ‘good’ conscience? What does this mean for the familiar character, or caricature, of a ‘private person’, and for their implicit relationship with the state and law?

It is relevant to the argument I will make here that, in the two examples I gave above, bad conscience is associated with ignorance, good conscience with knowledge. Taking Georges and Unit 8200 as modern archetypes, I am less interested in their ‘guilt’ or ‘righteousness’ than in the conditions that structure or generate different kinds of conscientiousness today. Nor am I especially concerned, in what follows, with ‘surveillance’ in the usual sense of clandestine state or corporate accumulation of personal data. Rather, I have in view a broader contemporary condition of data immersion. Like Georges, we are all monitored today, all or most of the time: we are under surveillance as we walk the streets, take the bus, read the paper. If we are not, or not necessarily, ‘watched’, in the way Unit 8200 watches the population of the Occupied Territories, we nevertheless leave a detailed data-trail in our wake at all times.<sup>7</sup> Our digital footprint consists not only of sent emails, texts, ‘status updates’ and voicemails, but of draft and deleted documents, search histories, reading habits, ‘contacts’: a trail of digital detritus riddled with IP addresses, geolocations and other ‘metadata’. Every form we fill out—online or off—every purchase we make, every digital afterthought, winds up (or *may* wind up—we just don’t know) in a database somewhere; our itineraries, calendars, credit cards and memos, are systematically stored, transferred, parsed, put to use, becoming searchable, trackable, hackable. This point is, by now, well rehearsed.

Perhaps less often remarked is the degree to which this condition has become fundamental, today, to our lives as workers, citizens, ‘private persons’. The point is not that we habitually work, play, associate ‘online’—it is rather that the distinction between online and offline, real and virtual, appears to be increasingly blurry or irrelevant.<sup>8</sup> For many of us—not restricted by any means to the old West or middle classes—the internet really has become a ‘worldwide web’, inextricably threaded through our daily lives, in our pockets, our health records, our public services. A hive of data processing, image collection and computer

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<sup>7</sup> Notwithstanding the evolving ‘right to be forgotten’.

<sup>8</sup> See Mark Nunes, *Cyberspaces of Everyday Life* (Minneapolis, MN: Univ. of Minnesota Press, 2006), ch. 1.

networking now underpin our social and economic, civic and political activities: the ubiquity of dataflow in our lives extends far beyond state surveillance.

In this paper I will refer to this condition of data immersion as life in the ‘datasphere’. I use this term by analogy with the old ideal of a ‘public sphere’, in order to capture the degree to which data saturation is today a profound, structural aspect of our working, playing, communicating, politicking, networking, consuming, self-policing selves.<sup>9</sup> In the datasphere, we cede and emit information about ourselves constantly—but we are also flooded by information, by the possibility of knowledge. The datasphere is our home. And yet, the experience of data immersion is also marked by ignorance. We don’t know how much data concerning ourselves is out there, where it is stored, who (if anyone) has access to it, how ‘secure’ it is. In the main, we don’t even know in which jurisdiction(s) our data is held or what law(s) govern it. We don’t know how the system works; we don’t know *if* the system works; we don’t know if there *is* a system.

The question of conscience, in this condition, is a question of knowing how to act in this space, of knowing how to assess action, of acting ‘with-knowledge’ (con-science). It has several facets. On one hand, like Georges in *Caché*, we may fear exposure, that our secrets and sins become known. We may find our conscience roused to examine our past actions. From this perspective, the datasphere itself acts something like a conscience, or accedes to the authority of conscience: situated between our knowledge (that information about us is, in some sense, ‘out there’, legible) and our ignorance (what data? out where? legible by whom?). Like conscience, it pricks and nags and queries whether we have a guilty past, a guilty secret. On the other hand, we may worry that deeply held beliefs and opinions will be publicised, that—guilt aside—our innermost selves are at risk of invasion or transgression by some external authority, like ‘prisoners of conscience’. Beyond this again, we may be overwhelmed with information, struggling to *inform* ourselves, to do the right thing, to connect our actions to knowledge, to act ‘according to conscience’ as the Unit 8200 veterans attempted, to be the authors of our own moral histories. What we blandly refer to as ‘privacy’ is, I suggest, implicated in each of these questions of conscience, even if they do not exhaust the term.

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Conscience, it turns out, has a history. If current scholarship on the data-privacy relation has not given much thought or space to the idea of conscience, this is presumably because the notion itself has largely fallen out of general circulation. Associated with an often arcane set of religious strictures, the concept has no doubt seemed less relevant in a forthrightly secular era. Its quotidian use may, by now, seem adulterated or atrophied, more a rhetorical flourish than a serious concern. In international law, it is practically exhausted by the vague, sweeping appeal to a ‘conscience of humanity’ and the somewhat anodyne motif

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<sup>9</sup> Extending Jodi Dean, *Publicity’s Secret: How Technoculture Capitalizes on Democracy* (New York: Cornell Univ. Press, 2002).

of ‘conscientious objection’. Historically, it turns out, this is something of a demotion. Conscience, initially conceived as the space wherein each individual worked to realise an ethical acting self, became instead the name for a legitimate zone of personal secrecy protected by—and from—a secular sovereign. Indeed, if we follow Hobbes (as I will presently), the modern state is partly *founded* on the subjection of conscience to, or its replacement with, the positive law—in return for the protection of a personal ‘private’ space, protected from the state. If so, that bargain, I will suggest, is now unravelling.

In the remainder of this article, I explore the historical evolution and application of this term in the writings of certain medieval (Aquinas, Bonaventure, Philip the Chancellor) and modern (Hobbes, Freud) scholars. Following some early historical backgrounding, I sketch the pre-modern concept of *synderesis*—the Scholastic conception of innate individual knowledge of universal natural law, through which the individual becomes her own judge and source of right action (albeit prone to error in practice).

I then follow two historical strands. Relying on St Augustine and Sigmund Freud, I first examine the relation between knowledge and authority expressed through a ‘bad conscience’. What was in Augustine an ecstatic internalisation of overwhelming, divine, but essentially irrational, authority is reframed, in Freud, as a powerfully inhibiting social mechanism of internalised prohibition. The divine, unmoored from human agency and reason, becomes merely punitive and repressive (while retaining a monopoly on ‘knowledge’ of the self). Freud’s caustic debunking may have killed off the punitive conscience: through the next century, its grip withers. However, the contemporary proliferation of personal data in the hands of countless unknown public and private bodies creates, I will suggest, fertile soil for the paralysing revival of ‘bad conscience’ in the datasphere.

I then turn to the very different figure of ‘good conscience’, the radical repositioning of ultimate authority within the informed, self-conscious and conscientious human person. Thomas Hobbes provides the clearest theoretical account of both the revolutionary power of this politically disruptive force and of its suppression through the emergence of the modern state. The Hobbesean bargain, through which the security of a sovereign polity and the rule of law is bought at the price of repressed ‘private’ conscience, is remarkably consonant with Freud’s account of conscience as inhibition. Returning to the present, then, I will sketch how the conditions of life in the datasphere reawaken and disturb these by now long-standing settlements, extending and pressuring the locus of conscience in the private person. This is a rich history and I am constrained both to treat much of it cursorily, even simplistically, and to trust its contemporary relevance will be plain, given the modest space for exposition.

## I. GOOD CONSCIENCE / BAD CONSCIENCE

The notion of conscience goes to the heart, we might think, of what it means to be private, to the innermost sanctum of the private person. This metaphor is perhaps even stronger than it looks at first glance: for conscience has always signified that which is ‘written in the heart’. A 1676 dictionary defines ‘conscientious’ as ‘according to *Conscience*, the witness of one’s own heart’; one scholar traces the ‘interwovenness’ of the imagery of the ‘heart’ with the symbolic burden later associated with ‘conscience’ back as far as pre-Hellenist Egypt.<sup>10</sup> So when we ‘speak from the heart’—when we articulate that which is most particular to ourselves, a perspective so thoroughly ‘ours’ that we ourselves must seek it out and read it—when we do this, the implication is, we act on conscience. The ‘knowledge’ we act ‘with’ in such cases (breaking down the Latin *con* ‘with’ and *scientia* ‘knowledge’) could hardly be more private.

And yet, both the Latin *conscientia* and its Greek precursor *syneidesis* (which it translates directly), initially implied ‘shared’ or ‘common’ knowledge, in the words of one scholar, ‘such as a witness, confidant or accomplice would have’.<sup>11</sup> Already there is a hint of moral censure here. Indeed, one meticulous study of Greek usage uncovers a recurrent pairing with legal and judicial imagery: conscience appears not merely as witness, but also as judge, prosecutor, punisher.<sup>12</sup> This continues with a number of Roman authors: in the writings of Lucretius, for example, the term amounted essentially to a synonym for ‘remorse’, guilt or shame (*pudor*).<sup>13</sup> This etymological line will lead in due course to the powerful late medieval association of conscience with personal guilt, sin and remorse. Nevertheless, the ‘shared’ knowledge in the classical authors is not merely a ‘private’ knowledge shared with the self, as it were—it is the application of some larger shared sense of propriety or virtue, a public morality, to one’s acts. This is presumably Cicero’s sense when he declared that ‘virtue has no greater theatre than conscience’.<sup>14</sup>

Perhaps unsurprisingly, then, *syneidesis* / *conscientia* could also indicate the sense of doing the right thing—the meaning foremost in the writing of the stoics, both Greek and Roman.<sup>15</sup> Seneca would contrast ‘good’ with ‘bad’ conscience: ‘[w]hile a good conscience wishes to show itself publicly, the bad fears even the darkness’.<sup>16</sup> In this simple opposition, two quite distinct traditions are subsequently traceable. On one hand, the good conscience, wishing to ‘show itself publicly’, ripples through the writings and acts of, for example, Epictetus, St Paul, Luther, Roger Casement and Rosa Parks. On the other, bad conscience associated

<sup>10</sup> Anders Schinkel, *Conscience and Conscientious Objection* (Amsterdam: Amsterdam Univ. Press, 2006), 78–79; 88, citing James Henry Breasted, *The Dawn of Conscience* (1933).

<sup>11</sup> Don E. Marietta Jr. (1970), ‘Conscience in Greek Stoicism’, *Numen* 17(3): 176–187, 177.

<sup>12</sup> Ibid., 178–179.

<sup>13</sup> Clara Auvray-Assayas, ‘Conscience’, in Barbara Cassin et al. (eds), *Dictionary of Untranslatables: A Philosophical Lexicon* (Princeton: Princeton Univ. Press, 2014).

<sup>14</sup> Marcus Tullius Cicero, *Tusculan Disputations*, trans. J.A. King, Loeb Classic Library (London: William Heinemann, 1927), 64.

<sup>15</sup> G. Molenaar (1969) ‘Seneca’s Use of the Term *Conscientia*’, *Mnemosyne* 22(2): 170–180.

<sup>16</sup> Ibid.



with guilt, sin, shame, remorse—a conscience that must hide away in, and even fear, the dark: the darkness of the confession box, the darkness ‘under the floorboards’ (as Dostoevsky will characterize it),<sup>17</sup> the darkness of the unconscious—or worse, of the torture chamber, where the guilty may fear instruments that will drag their secrets into the light. Indeed the first modern tract critiquing the ‘balance’ between privacy and security, Alan Westin’s 1967 *Privacy and Freedom*, targeted the inquisitorial animus driving state surveillance—the coerced disclosure of what is properly private, placing it in a genealogy from the Spanish Inquisition to the CIA’s ‘black sites’.<sup>18</sup> The old idea of a ‘bad conscience’ still lurks behind today’s justificatory ‘nothing to hide, nothing to fear’ mantra; but of course this acknowledgement also serves as critique, for a strong intellectual tradition claims that a ‘bad’ or ‘guilty’ conscience is primarily an effect of culture, religion; even of the human condition, universal, ineradicable and dissociable from the specific persons to whom it attaches.<sup>19</sup>

But ‘good conscience’ too plays its part in life in the datasphere. Good conscience, the need, even obligation, to state and/or act on one’s private belief as a public matter, even in defiance of (unjust) law—the very essence of personal autonomy—often seems to be precisely that which is at stake in a spectrum of contemporary political moments. From flash mobs to the ‘blogosphere’ to data dumping (à la Wikileaks), to Anonymous, to Occupy, the datasphere offers countless opportunities, it seems, to act on conscience. In their grander moments—such as the (on some accounts social media-propelled) Arab Spring or the spate of whistleblowers perhaps best represented by Edward Snowden—these flashes of conscience display disregard for the sanctity of the positive law. They claim to act on a higher authority. As such they too reawaken a long-neglected ideal, which I will revisit below.

## A. SYNDERESIS: THE ‘ANGELIC PART’ OF HUMANITY

Medieval scholarship on conscience begins with a typo. The starting point is generally traced to St Jerome’s influential fifth century interpretation of the Old Testament Book of Ezekiel, especially a passage later picked up by Peter of Lombard—the twelfth century Bishop of Paris, whose *Sententiae* was for a long time a standard theological textbook—in a discussion on the weakness of human will. Ezekiel, a Revelations-style visionary prophecy, recounts the appearance, in a

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<sup>17</sup> Fyodor Dostoevsky, *Notes From Underground*, trans. Kyril Zinovieff and Jenny Hughes (OneWorld Classics, 2010 [1861]), xi (Translators’ introduction: ‘The Russian title means, literally, “Notes from Under the Floorboards”’).

<sup>18</sup> Alan Westin, *Privacy and Freedom* (New York: Atheneum, 1967), 1-5.

<sup>19</sup> Friedrich Nietzsche, *On the Genealogy of Morals* (New York: Vintage, 1989), 57-96 (“‘Guilt’”, “‘Bad Conscience’”, and the Like”); see also section IIb below on Freud.

cloud of fire, of ‘four living creatures’, each one human but with four faces human, lion, ox and eagle.<sup>20</sup> Here is Jerome’s gloss:

Most people interpret the man, the lion and the ox as the rational, emotional and appetitive parts of the soul, following Plato’s division ... locating reason in the brain, emotion in the gall bladder, and appetite in the liver. And they posit a fourth part which is above and beyond these three, and which the Greeks call *synteresis*: that spark of conscience [*scintilla conscientiae*] which was not even extinguished in the breast of Cain after he was turned out of Paradise.<sup>21</sup>

Since no ‘Greeks’ referring to ‘synteresis’ are known, it is generally presumed that Jerome in fact misrendered the Greek *syneidesis*.<sup>22</sup> But if it was an error, it was consequential: it allowed subsequent scholarship to distinguish between *synderesis* (as it came to be called) and *conscientia*, a distinction encouraged by the notion that conscience might have, or need, something to ‘spark’ it.<sup>23</sup> The image of *synderesis* as providing this ‘spark’ for conscience—a ‘little light’, as Philip the Chancellor of Paris would later put it, like a beacon or a pilot light—has proved extremely enduring: think, for example, of Amnesty International’s eternal flame held out for ‘prisoners of conscience’ or the logo of the UN’s Office of the High Commissioner for Human Rights.<sup>24</sup>

Jerome’s initial passage did not in fact endorse this reading of Ezekiel, but rather dismissed it as the ‘foolish wisdom of philosophers’, a point largely lost in subsequent scholarship.<sup>25</sup> One of the philosophers in question was Plato—whose *Republic* provides the tripartite division of the soul into rational, emotional and appetitive. Another—as Douglas Kries shows in detail—was the prolific third century theologian Origen. Above Plato’s three “parts”, Origen placed a fourth, represented by Jerome as the “eagle”, that would come to symbolise the special place and attributes of *synderesis*.<sup>26</sup>

Origen constructed an extraordinarily punctilious early Christian cosmology, but was ultimately declared anathema, with all extant copies of his writings destroyed. Among his controversial theses was a distinction between the soul and the ‘human spirit’, which he derived from a number of passing remarks in letters of St Paul.<sup>27</sup> Origen transposed Plato’s tripartite soul (appetite-emotion-reason) onto Paul’s distinction between body, soul and spirit (*soma-psyche-pneuma*). For

<sup>20</sup> The Book of Ezekiel, 1:4-1:11 (New International Version).

<sup>21</sup> Jerome, *Commentaries on Ezekiel*, in Timothy Potts, *Conscience in Medieval Philosophy* (Cambridge: Cambridge Univ. Press, 1980), 79.

<sup>22</sup> Timothy Potts, ‘Conscience’ in Norman Kretzmann et al. (eds), *The Cambridge History of Later Medieval Philosophy* (Cambridge: Cambridge Univ. Press, 1982), 689.

<sup>23</sup> Potts (1982), 690.

<sup>24</sup> Peter the Chancellor, ‘Treatise on Conscience’, in *Summa de Bono* (c. 1230), trans. in Potts (1980), 100.

<sup>25</sup> Douglas Kries (2002) ‘Origen, Plato and Conscience (Synderesis) in Jerome’s Ezekiel Commentary’, *Traditio* 57: 67-83, 68.

<sup>26</sup> Ibid.

<sup>27</sup> Ibid., 73-74. See St Paul’s letters to the Corinthians and to the Thessalonians.

Origen, the soul is caught between the spirit and the body, each of which pull it in different directions, up towards the spiritual/rational, or down to the base, bestial, corporeal. The soul itself has corresponding upper and lower parts, the upper part being the rational-spiritual (the human face in Jerome's Ezekiel), the lower corporeal part consisting of both the emotional-irascible (lion) and desiring-appetitive (ox).<sup>28</sup> Human life consists of the soul's struggle between the rational (spiritual) and the bestial (corporeal)—but just as the body pulls the soul down into desire, bodily satisfaction and sin, the spirit endeavours to reorient the soul up towards reason and God.

The human spirit—which Origen associates explicitly with an eagle—is set apart from the soul altogether; it partakes in the universal and divine Holy Spirit. For while each soul is individual to each person, according to Origen's cosmology, the human spirit is of a different substance, the stuff of angels.<sup>29</sup> Origen writes, 'in my opinion the conscience is identical with the spirit... the conscience functions as a pedagogue to the soul, a guide and companion'.<sup>30</sup> The face of the eagle, the 'spark of conscience', is, on this view, a part of the angelic in man, a spirit that—unlike the soul, which is unique to each person—is universal across the species, pulling each individual towards the light of redemption in the divine. Much as Origen's writing was subsequently expunged from the canon, his cosmology clearly informs this key section of Jerome's text: in consequence, Origen's spirit presides over the subsequent long debate on the nature of conscience, and in particular the spiritual eagle that provides its undying spark: *synderesis*. The eagle, Jerome says, is 'not mixed up' with the man, lion and ox, but 'corrects them when they go wrong'.<sup>31</sup> It 'discerns that we sin when we are overcome by pleasures or frenzy [or] are misled by an imitation of reason.'

The distinction between *synderesis* and *conscientia* was central to the scholastic debate on free will. The problem was this: since humans have a natural propensity to know what is right, why do they do wrong? Paul, for example (whose writings anchored much of the debate), despite his knowledge of the law ('God's law'), had to contend with 'another law at work in me', which he calls the 'law of sin'.<sup>32</sup> 'I do not understand what I do', Paul writes, '[f]or I do not do the good I want to do, but the evil I do not want to do—this I keep on doing'.<sup>33</sup> How to explain this discrepancy? Or the fact that, as Jerome put it, conscience may be 'cast down among some people, who have neither shame nor insight regarding their

<sup>28</sup> Ibid., 75.

<sup>29</sup> Ibid., 74-75.

<sup>30</sup> Origen, *Commentary on the Epistle to the Romans*. Cited in Kries 78.

<sup>31</sup> Jerome in Potts (1980), 79.

<sup>32</sup> St Paul, Letter to the Romans 7 (New International Version), especially 14-25.

<sup>33</sup> Romans 7:15 and 7:19. And yet, Paul says, his desire to sin was itself sparked by the law: 'I would not have known what sin was had it not been for the law. For I would not have known what coveting really was if the law had not said, "You shall not covet". But sin, seizing the opportunity afforded by the commandment, produced in me every kind of coveting. For apart from the law, sin was dead. Once I was alive apart from the law; but when the commandment came, sin sprang to life and I died.' (Romans 7:7-7:9).

offences’?<sup>34</sup> A series of thirteenth century scholars, three of whom I look at briefly below, elaborated a theory counterposing an infallible *synderesis* (knowledge of first principles) to an all-too-human *conscientia* (potentially erroneous application of that knowledge).

Around 1230, Philip the Chancellor (of Paris) explained that, after the Fall into sin and time, man struggles to understand and apply the universal wisdom of God’s law to his particular situation. Following an Aristotelian distinction between the universal law (*nomos*) and its (inevitably) flawed casuistic application (such as by judges), Philip mapped the distinction between *synderesis* and *conscientia* onto that between the universal and particular.<sup>35</sup> *Synderesis*, all that remains of Adam’s prelapsarian ‘righteous grace’, is ‘related to reason as an intrinsic light’ remaining ‘above’ reason, in the manner of a guide.<sup>36</sup> Philip explains *synderesis* as an ‘impulse to good’, which must be opposed to the human ‘impulse to sin’.<sup>37</sup> Here Philip ties his theory of conscience into a larger thesis placing ‘goodness’ on a par with ‘being’, ‘unity’ and ‘truth’, the interdependent ‘transcendental categories’ inherent to all existing entities.<sup>38</sup> As the guardian of the innate good, *synderesis* is never mistaken and cannot be extinguished—as is shown, according to Philip, by heretics who convert ‘on recognising their mistake’. But it may nevertheless become ‘clouded over by sin’.<sup>39</sup> With *synderesis* thus obscured, *conscientia*—which ‘dictates’ behaviour in specific cases—may be misled: Philip’s example is again that of heretics required by their conscience to ‘undergo martyrdom in order to defend their faith’.<sup>40</sup> In such cases, *synderesis* nevertheless ‘murmurs back in answer to sin’.<sup>41</sup>

The Franciscan Bonaventure (Giovanni of Fidanza) provides a similar account, but additionally contends that moral error is akin to logical fallacy.<sup>42</sup> We are furnished with a correct first premise, gleaned from *synderesis*, but mistakes enter ‘from adding the minor premise’, where we may resort to ‘mistaken reason’, resulting from the exercise of ‘free choice’ (i.e., desire).<sup>43</sup> And so *conscientia*, the ‘natural tribunal’, may err. Bonaventure asked: should we always obey our conscience, even when it is mistaken? His answer is yes, we must, but where conscience dictates against the law of God, our primary obligation is to correct it.<sup>44</sup> (Aquinas will call our obedience to a ‘false’ conscience ‘provisional’ as against

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<sup>34</sup> Jerome in Potts (1980), 80.

<sup>35</sup> Potts (1982), 690-695. This paragraph relies in particular on Philip the Chancellor in Potts (1980) as well as Potts (1980), 12-31.

<sup>36</sup> Philip the Chancellor in Potts (1980), 98.

<sup>37</sup> Potts (1980), 24.

<sup>38</sup> See Colleen McCluskey, ‘Philip the Chancellor’, in Edward Zalta (ed.), *The Stanford Encyclopedia of Philosophy* (winter 2014 edition).

<sup>39</sup> Philip the Chancellor in Potts (1980), 101; 104; 107.

<sup>40</sup> Ibid., 104-105.

<sup>41</sup> Ibid., 101.

<sup>42</sup> Bonaventure, *Commentary on Peter Lombard’s ‘Book of Judgements’*, trans. in Potts (1980), 110-121, 113.

<sup>43</sup> Ibid., 120.

<sup>44</sup> Ibid., 114-115.

the ‘absolute’ obedience owed to true conscience).<sup>45</sup> It is not enough, in such cases, that we follow God’s law *against* our conscience: to do so is still sinful, for what matters to God is not the act but the intention.<sup>46</sup> In righting our conscience, we should attend to *synderesis*, whose role, again, is to ‘sting and murmur back in reply to evil’, in which ‘use’ it ‘flourishes most in demand’.<sup>47</sup> The implication is that an ‘innate’ *synderesis* already aligns with something external: God’s law. This reading also appears to presume the centrality of an established (Church) authority to interpret God’s law—an assumption that might seem appropriate to an institution-builder like Bonaventure, an intellectual and administrative founding figure for the Franciscans.<sup>48</sup> And yet, his insistence that we must always do what conscience dictates, even against the law, points to a genuine radicalism in the *synderesis-conscientia* pairing.

Thomas Aquinas, writing 20 years later in *Disputed Questions on Truth*, channels Origen in attributing *a priori* generality to *synderesis*: ‘[H]uman nature, insofar as it comes in contact with the angelic nature, must both in speculative and practical matters know truth without investigation.’<sup>49</sup> So, ‘just as there is a natural habit [*habitus*] of the human soul through which it knows principles of the speculative sciences ... so, too, there is in the soul a natural habit of first principles of action, which are the universal principles of the natural law. This habit pertains to *synderesis*’.<sup>50</sup> Again, *synderesis* cannot be mistaken and it cannot be extinguished.<sup>51</sup> Ten years on, in *Summa Theologiae*, Aquinas clarified that the human ‘act of reasoning ... proceeds from the understanding of certain things’, which are the ‘first practical principles, bestowed on us by nature’.<sup>52</sup> These, he says, belong to a ‘special natural habit, which we call *synderesis*’ and which ‘is said to incite to good, and to murmur at evil’.<sup>53</sup> *Conscientia*, which Aquinas firmly qualifies as an *act* (as opposed to a ‘power’, like reason, or a ‘habit’, like *synderesis*), remains the application of these first principles to specific cases, either through logical deduction or practical action, and always with the possibility of error.<sup>54</sup>

In short, *synderesis* is our angelic nature, our innate goodness, but it must nevertheless be cultivated. Conscience may be mistaken, but, as the point of

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<sup>45</sup> Thomas Aquinas, *Disputed Questions on Truth* [1256], trans. James McGlynn (London: Henry Regnery Company, 1953), Q.17.3.

<sup>46</sup> Bonaventure in Potts (1980), 115.

<sup>47</sup> Ibid. (1980), 118.

<sup>48</sup> Tim Noone and R. E. Houser, ‘Saint Bonaventure’, in Zalta (2014).

<sup>49</sup> Aquinas, *Truth*, Q.16.

<sup>50</sup> Ibid.

<sup>51</sup> Potts (1982), 700-701. Aquinas, *Truth*, Q.16: ‘[F]or probity to be possible in human actions, there must be some permanent principle which has unwavering integrity, in reference to which all human works are examined, so that that permanent principle will resist all evil and assent to all good. This is *synderesis*, whose task it is to warn against evil and incline to good. Therefore, we agree that there can be no error in it.’

<sup>52</sup> Thomas Aquinas, *Summa Theologiae*, trans. the Fathers of the English Dominican Province (Christian Classics, 1981 [1947]) Q. 79, article 12.

<sup>53</sup> Ibid., Q.79, art. 12.

<sup>54</sup> Ibid., Q.79, art. 13. See also Potts (1980).

application of *synderesis*, must nevertheless be followed, even against the law—the burden, when conscience points away from law, is to get it right. Hence, examining one’s conscience. The point was not merely to *consult* conscience (as the casuists would have it) but to *test* it. The yardstick of the test was *synderesis*.

## II. BAD CONSCIENCE

*Synderesis* on every account ‘murmurs back’ at evil. This may mean talking out against wrongdoing, or it may mean whispering in the ear of the guilty. The guilty conscience is, of course, a tradition unto itself. Here I will introduce the notion through St Augustine’s embrace of the divine authority he presumed behind it, followed with Sigmund Freud’s unmasking of this same authority as an economy of secular control.

### A. AUGUSTINE: ‘I STOOD NAKED BEFORE MY OWN EYES’

Augustine frames his account of his conversion to Christianity, in Book VIII of his *Confessions*, with the story of another conversion, told to him by a fellow African, Ponticianus, working in the household of the Emperor in Milan. As Augustine listens to the story, he finds himself forced to examine himself, both observer and subject of his own gaze:

But while he was speaking, O Lord, you were turning me around to look at myself. For I had placed myself behind my own back, refusing to see myself. You were setting me before my own eyes so that I could see how sordid I was, how deformed and squalid, how tainted with ulcers and sores. I saw it all and stood aghast, but there was no place I could escape from myself. If I tried to turn my eyes away, they fell on Ponticianus, still telling his tale, and in this way you brought me face to face with myself once more, forcing me upon my own sight, so I should see my wickedness and loathe it. I had known it all along, but I had always pretended it was something different. I had turned a blind eye and forgotten it.<sup>55</sup>

It is not difficult to see, in this passage, the distinction Philip the Chancellor will apply 800 years later. Augustine is capable of looking at himself *with knowledge*, of applying his existing knowledge to himself. But he is equally capable of averting his gaze from himself, of turning a ‘blind eye’, of ‘forgetting’ the knowledge he has. The knowledge itself, however, is always there (‘I had known it all along’). With God’s help, in the right circumstances, his conscience revives—and, properly applying what he knew ‘all along’, judges him accordingly. His experience is

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<sup>55</sup> Augustine, *Confessions* (London: Penguin, 1961 [398]), 169.

remorse: ‘the time had now come when I stood naked before my own eyes, while my conscience upbraided me.’ The experience is discomfiting: ‘All the time Ponticianus was speaking, my conscience gnawed at me like this. I was overcome by burning shame ... My inner self was a house divided against itself.’<sup>56</sup>

Augustine’s shame and remorse were to loom large in the medieval imagination. Take the fourteenth century *Ayenbite of Inwit*, a Kentish dialect translation from the French, attributed to a cleric, Dan Michel of Northgate. The title ‘Ayenbite of Inwit’ intends a direct English vernacular translation of the Latin French subtitle, ‘remords de conscience’. The word ‘remorse’ arrives in English from French re-mordre, Latin remordere: to bite again.<sup>57</sup> Inner knowledge (in-wit) bites again. Conscience bites, it gnaws, it pricks, it nags: a source of shame and a reminder of guilt. In another French medieval characterisation, drawing on the prophecy of Isaiah, Guillaume de Deguileville’s *Pelerinage de l’Ame* (‘The Soul’s Pilgrimage’), the ‘worm of conscience’ appears, with teeth ‘forbroke, forweryd and forfaren’ from constant biting on the pilgrim’s ‘hard and obstynate ... wykked herte’.<sup>58</sup> Indeed, a bad conscience is consciousness of guilt. The guilt of a crime or a sin, of course, but also the guilt of ‘original sin’, the guilt of existence itself. Guilt is inescapable and conscience is its marshal, its witness, its judge. Conscience is analogous to a hairshirt, the ‘cilice’ of goatshair next to the skin, irritating the flesh as a reminder of guilt—or, more precisely, the cilice is conscience materialized (I will return to this image).

Needless to say, for Augustine, God is not only the *author* of what would later be called *synderesis*—‘For who but God has written the law of nature in the hearts of men?’<sup>59</sup>—God is also the *judge* who knows in advance what the application of conscience will reveal: ‘O Lord, the depths of man’s conscience lie bare before your eyes’.<sup>60</sup> The omnipresence of God is the universality of *synderesis* and, indeed, of humanity itself: ‘...there is no soul, however wicked, which can yet reason in any way, in whose conscience God does not speak’.<sup>61</sup> We are all sinners but, ‘even though blinded by passion’, we all access ‘the very light of truth’.<sup>62</sup>

<sup>56</sup> Ibid., 169–70.

<sup>57</sup> The French original of *Ayenbite of Inwit* was more modestly titled *Le Somme des vices et des vertues* (‘The Account of Vices and Virtues’) or *Somme Le Roi* (‘The King’s Account’). See Dinah Birch, *Oxford Companion to English Literature*, 7th ed., (Oxford: Oxford Univ. Press, 2009).

<sup>58</sup> Robert A. Greene (1991) ‘*Synderesis*, the Spark of Conscience, in the English Renaissance’ 52 *Journal of the History of Ideas* 195–219, 202, citing an anonymous 1483 translation, *The Booke of the Pylgremage of the Soule*.

<sup>59</sup> Augustine, ‘Our Lord’s Sermon on the Mount’ in Philip Schaff (ed.), *A Select Library of the Nicene and Post-Nicene Fathers of the Christian Church*, vol. VI (New York: T&T Clark, 1886), trans. William Findlay, chapter IX, para. 32.

<sup>60</sup> Augustine (1961), 207.

<sup>61</sup> Augustine (1886), chapter IX, para. 32.

<sup>62</sup> Ibid.

## B. FREUD: ‘NOTHING, NOT EVEN ONE’S THOUGHTS, CAN BE HIDDEN FROM THE SUPEREGO’

Sigmund Freud inverted this notional relationship between God and conscience. It is not God who informs conscience, but conscience that provides the model for ‘a higher being who deals out punishment inexorably’.<sup>63</sup> Freud addresses the problem of conscience directly in both *The Ego and The Id* and *Civilization and its Discontents*. The vehicle of conscience for Freud is, as is well known, the superego—but Freud in fact distinguishes between the superego and conscience along essentially Thomist lines: ‘The superego is an authority that we postulate, and conscience a function we ascribe to it along with others—this function being to supervise and assess the actions and intentions of the ego’.<sup>64</sup>

Freud’s account changes between the two books, but common to both is the claim that the superego results from a basic act of repression and from the guilt associated with the thing repressed. Freud begins, as is well known, with a self split in three: an *acting* ego, an *observing* (and judging) superego, and the id, the self at its most selfish, a repository of desire and repressed emotion, much of it unconscious. Freud’s tripartite self maps remarkably well onto Origen’s cosmology: there is the ‘lower’ or animal id; the ‘upper’ or human person (soul, ego); and the ‘human spirit’ or eagle, *synderesis*, superego—which directs the ego as to how to behave, and corresponds to what Freud repeatedly refers to as ‘the higher nature of man’.<sup>65</sup> As in Origen, the ego finds itself pulled in opposite directions by the id and the superego, each of which it attempts to placate.<sup>66</sup>

What is different and interesting in Freud, however, is the ‘intimate relation’ he consistently traces between the superego and the id: the superego ‘represents’ the id to the ego (Jerome’s eagle is presumably not conceived as having any such relation with the appetitive ox).<sup>67</sup> This is in part because the superego is *forged* (on Freud’s account) through an originary act of repression of the id, which is thrust into the unconscious by the ego and so cannot communicate directly with it.<sup>68</sup> The superego channels the repressed id into consciousness, but not straightforwardly. It is the frustrated anger of the id that returns in the superego, in the form of a ‘harsh’, ‘cruel’ or punitive voice—to which the ego must nevertheless respond

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<sup>63</sup> Sigmund Freud, *The Ego and the Id* (New York: Norton, 1960 [1923]), trans. Joan Riviere, ed. James Strachey, 56.

<sup>64</sup> Sigmund Freud, *Civilization and Its Discontents* (London: Penguin, 2004 [1930]), trans. David McClintock, 94.

<sup>65</sup> Freud (1960), 33.

<sup>66</sup> *Ibid.*, 58–62.

<sup>67</sup> *Ibid.*, 49, 54, 61. Moreover, Freud associates the ego, rather than the id, with the human body. It is through the experience of physical sensation (pain) that, on Freud’s account, the ego comes into being, and attempts to wrest control over the id. Freud likens the relation of the ego to the id to a man on horseback. Freud (1960), 19–20. Cf. Bonaventure, who likened *synderesis* to a “soldier who, so far as it lies in himself, always sits well on a horse, but if the horse falls, is said to be overthrown”. Bonaventure in Potts (1980), 119.

<sup>68</sup> Freud (1960), 49, 62: ‘The id ... has no means of showing either love or hate. It cannot say what it wants; it has no unified will’.



(Freud, somewhat mischievously, called this a ‘categorical imperative’).<sup>69</sup> However, it will not be possible for the ego to meet the exorbitant demands of the superego. As a consequence, ‘the tension between the demands of conscience and the actual performance of the ego is experienced as a sense of guilt’.<sup>70</sup> This is a permanent condition. The point is that, in contrast to scholastic *synderesis*, the superego is essentially irrational—or rather, there is no space wherein the ‘pure’ reason of a posited human spirit can be distinguished or unmixed from the ‘appetitive’ and ‘emotional’ body (id). Reason is inherently compromised and so conscience is condemned to be, as Bonaventure put it, ‘mistaken’.

The superego nevertheless demands obedience. But obedience to what? In Freud’s initial telling, the originary construction of the superego involves active identification with the father as source of authority. However, Freud suggests, this identification with the father involves two contradictory precepts: ‘you *ought to be* like this (like the father)’ and ‘you *may not be* like this (like your father)—that is you may not do all that he does, some things are his prerogative’.<sup>71</sup> In other words, the superego internalizes the attributes and dictates of an external authority, but does not usurp the authority itself. ‘As a child grows up, the role of father is carried on by teachers and others in authority; their injunctions and prohibitions remain powerful in the [superego] and continue, in the form of conscience, to exercise moral censorship’.<sup>72</sup> For this reason, Freud understands the transmission of the superego’s authority from generation to generation as a key characteristic in the development, not only of the individual, but of what he calls human history at ‘species’ level.<sup>73</sup> It is this observation that gives rise to the pessimistic thesis of his later *Civilization and its Discontents*.

In the latter book, conscience becomes critical to the continuation of ‘civilization’, by keeping the human propensity for violence (an innate ‘death drive’, Freud now believes) in check: the superego internalizes prohibitions on both sex and violence. However, Freud notes, unlike external authorities (family, church, state), the superego is ‘omniscient’:<sup>74</sup> ‘nothing, not even one’s thoughts, can be hidden from the superego’.<sup>75</sup> For this reason, it is irrelevant to the superego whether a sin or crime has actually been committed: there is no ‘difference between wrong-doing and the intention to do wrong’.<sup>76</sup> Again, as with Bonaventure, what matters is not the act but the intention. The result is a bad cycle:

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<sup>69</sup> Freud (2004), 77. Freud (1960), 56. Ibid., 31. Freud adds that the superego is capable of becoming ‘as cruel as only the id can be’. Cf. Nietzsche (1989), 92: the ‘man of bad conscience has seized upon the presupposition of religion so as to drive his self-torture to its most gruesome pitch of severity and rigour.’

<sup>70</sup> Ibid., 33. Cf. *ibid.*, 51.

<sup>71</sup> Freud (1960), 30. Emphasis in the original.

<sup>72</sup> Ibid., 33.

<sup>73</sup> Ibid., 31.

<sup>74</sup> Freud (2004), 95.

<sup>75</sup> Ibid., 79.

<sup>76</sup> Ibid., 79.

To renounce the drives [i.e. sex and aggression] is no longer enough, for the desire persists and cannot be concealed from the superego. Despite one's renunciation, then, a sense of guilt will arise ... Every renunciation of the drives becomes a dynamic source of conscience, every fresh renunciation reinforces its severity and intolerance... [Indeed we might say] conscience *results* from the renunciation of the drives[;] this renunciation ... *creates* the conscience, which then demands further renunciation.<sup>77</sup>

Conscience, on this reading, is a source of incapacitation. Freud's critique of what he roundly calls 'civilization' reads as a eulogy for the autonomy of the individual human person—who must be controlled and contained precisely because s/he is inherently destructive. The conscience is a mechanism of internal control, just as the law is externally: indeed the conscience internalises the law's punitive authority. Hence Hamlet's complaint that 'conscience does make cowards of us all.'

Needless to say, this is a source of perpetual malaise, according to Freud. Renunciation is done to ward off loss of love (of the parent, loved one, perceived authority, ultimately superego). However, love does not follow: the superego withholds the reward and ratchets up guilt.<sup>78</sup> It is this conclusion—the institutionalization, in Freud's view, of 'enduring inner unhappiness'—that leads him to identify guilt (as distinct from 'remorse', which attaches to acts actually committed) as 'the most important problem in the development of civilization ... the price we pay for cultural progress is loss of happiness, arising from a heightened sense of guilt'.<sup>79</sup> At the same time, 'a great part of this [increasing] sense of guilt must normally remain unconscious'.<sup>80</sup> It is probably true to say that with Freud's critique, conscience lost much of its remaining moral authority; at a minimum its disappearance from public normative discourse, though it begins much earlier (as we will see), now appears complete.

### III. CONSCIENCE IN THE DATASPHERE

It is perhaps worth articulating where we now stand: how does Freud's superego map onto *synderesis*, and what might either have to tell us about life in the datasphere? Like *synderesis*, the superego, on Freud's account, provides access to an overarching moral authority—comprising a point of innate access to external authority. There is an obvious difference: for Freud, reason is seated in the ego, the equivalent of Origen's 'soul', rather than the superego, which maps onto the human 'spirit'. The ego's rationality is essentially pragmatic and amoral. In the

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<sup>77</sup> Ibid., 82-3. Emphasis added.

<sup>78</sup> Freud (1960), 61. Freud concludes that the ego just wants to be loved by the superego.

<sup>79</sup> Freud (2004), 91 (see also 82).

<sup>80</sup> Freud (1960), 52-3.

superego, *synderesis* is orphaned from reason, subject instead to the desiring id, blind to its own motives.<sup>81</sup> Nevertheless, Freud insists that the superego, like *synderesis*, articulates a known ‘law’. No longer natural or divine law, this is the ‘law of the father’ (as Jacques Lacan will later term it), the positive law of the state, a ‘rule of law’, indeed, appearing to be the source of its own authority.

Moreover, the knowledge that informs Freud’s (like Augustine’s) all-too-human conscience functions, well or poorly, in the context of a higher *omniscience*: that of the superego. God, *synderesis* and the superego always already know our intent and see our sins even where we behave with propriety. Freud and the Scholastics agree: we may be guilty even when we have done no wrong, simply because our conscience makes it so.

It should hopefully be clear how this set of attributes maps onto the datasphere. Like *synderesis* and the superego, the datasphere—as a repository of knowledge pertaining to each of us—extends beyond our own knowledge of ourselves, towards a horizon of, well, omniscience. Like the superego, the datasphere combines self-knowledge (our data is steadily accumulating) and repression (it is easily forgotten).<sup>82</sup> But, like *synderesis*, the horizon of omniscience is located outside or beyond us, in a discrete and apparently unknowable repository, available for review (we must assume) to an inscrutable authority. The datasphere, in effect, *materialises* the superego.

We might therefore expect guilt, or better: unconscious guilt. Even if we feel sure, as we move through the datasphere, leaving behind a lengthy data-trail, that our digital effluvia is innocuous, to ourselves and others, we may also worry that some of it might not be or might not *appear* to be.

Four developments matter here. First, we might be concerned that our ‘guilt’ resides not in any violation of the law itself, but in keywords, patterns, or algorithmic markers, the basis of which are not necessarily known to us, the ‘data subjects’ (to use a term from EU law). We may worry about mistaken identity or about pre-emptive criminality.<sup>83</sup> Second, the enormity of the data-trail itself facilitates the construction of plausible fabricated cases against individuals, for politically or personally motivated reasons. Third, there need not be any single ‘authority’ compiling or analysing data, indeed there is unlikely to be: data may be sorted and assessed automatically or systematically, a process Richard Rogers refers to as ‘algorithmic authority’, bypassing human judgement altogether (but

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<sup>81</sup> Cf. Nietzsche (1989), 93: ‘In this physical cruelty there resides a madness of the will... the will of man to find himself guilty and reprehensible to a degree that can never be atoned for’.

<sup>82</sup> This would appear to be in the nature of the contemporary condition—far beyond the degree to which a ‘right to be forgotten’ may be raised in law or exercised in practice.

<sup>83</sup> On mistaken identity, see, for example, *El-Masri v. The Former Yugoslav Republic of Macedonia* (application no. 39630/09), Grand Chamber Judgment of 13 December 2012. On pre-emptive criminality, see Liberty, ‘From “War” to Law: Liberty’s Response to the Coalition Government’s Review of Counter-Terrorism and Security Powers 2010,’ (Liberty, 2010).

consisting, then, of what?).<sup>84</sup> Fourth, as Freud and Augustine remind us, we are, of course, always already guilty. The wider questions are: who is to judge and on what basis? It is not that we are more or less guilty than before. It is rather that, our capacity for guilt, which insistently remains, can only mount as we become increasingly discoverable, legible, transparent. For Freud, indeed, it is ultimately ‘fear of conscience’ that instils guilt, not vice versa.<sup>85</sup>

#### IV. GOOD CONSCIENCE

In Chapter 22 of Book 3 of his *Discourses*, transcribed by his acolyte, Arrian, the Stoic philosopher Epictetus provided a defense of Cynicism, the by-then 600-year old tradition of living ‘shamelessly’, rejecting human conventions in order to align oneself with ‘nature’ and so achieve *eudaimonia* or human flourishing:

[A]bove all, the reason of [a Cynic] must be clearer than the sun; otherwise he must necessarily be a common cheat and a rascal if, while himself guilty of some vice, he reproves others. For consider how the case stands. Arms and guards give a power to common kings and tyrants of reproving and of punishing delinquents, though they be wicked themselves; but to a Cynic, instead of arms and guards, conscience [*conscientia*] gives this power. When he knows that he has watched and labored for mankind; that he has slept pure, and waked still purer... why should he not dare to speak boldly to his own brethren, to his children; in a word, to his kindred?<sup>86</sup>

Conscience gives ‘power’ to the Cynic ‘to speak boldly’. While we are clearly in the same domain as before—the Cynic purifies himself so as to be able to cultivate the habit of what we might later call the ‘first principles’ of ‘natural law’—there is also clearly a distinction here: the *with-knowledge* is directed primarily outwards, rather than inwards, to become the scourge of ‘common kings and tyrants’ rather than of the repressed self. Conscience here does not ‘bite’; it roars. We are in the domain of what we might call ‘radical conscience’ or radical autonomy.<sup>87</sup> In this section I

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<sup>84</sup> Richard Rogers, *Digital Methods* (Cambridge, MA: MIT Press, 2013), 95-6. Rogers takes the term from Clay Shirky.

<sup>85</sup> The superego ‘once threatened castration’, Freud adds, ‘and this dread of castration is probably the nucleus around which the subsequent fear of conscience has gathered. It is this dread that persists as the fear of conscience.’ Freud (1960), 60.

<sup>86</sup> Epictetus, *The Works of Epictetus: His Discourses, in Four Books, the Enchiridion, and Fragments*, trans. Thomas Wentworth Higginson (London: Thomas Nelson and Sons, 1890) 2079-80.

<sup>87</sup> The Kant of the *Grounding for the Metaphysics of Morals* will famously explain autonomy in terms of self-legislation, responsive to a ‘pure reason’ that bears the clear genealogical imprint of medieval *synderesis* and appears as the ultimate authority. Immanuel Kant, *Grounding for the Metaphysics of Morals*, trans. James Ellington (London: Hackett Publishing Company, 1993 [1785]), 26 [416], 30 [421], 32-33 [424], 40 [433], 43 [438], 44 [440]. In the later, *Metaphysics of Morals*, however—no doubt with the history of radical conscience in view—Kant refuses to allow that this ‘autonomy’ provides any right of resistance, even to oppressive government, allowing that it may amount at best to a right of passive disobedience. The

turn to the part played by the figure of conscience in the emergence of secular authority in Europe.

## A. RADICAL CONSCIENCE

The notion that conscience refers the individual to a law internal to the self (*autonomos*) appears in a passage from Paul's second letter to the Romans, one that was popular with Reformation thinkers: 'For when the Gentiles, who have not the law, do by nature the things contained in the law, they, not having the law, are a law unto themselves, which shows the work of the law written in their hearts, their conscience [*syneidesis*] also bearing witness.'<sup>88</sup> To Reformation-era Puritans and Protestants, Paul's words read as a call to defiance: the official law having become corrupted, the individual must go back to the source. Martin Luther's riposte to the charge of heresy at the Diet of Worms is well known:

Unless I am convinced by the testimony of the Scriptures or by clear reason (for I do not trust either in the pope or in councils alone, since it is well known that they have often erred and contradicted themselves), I am bound by the Scriptures I have quoted and my conscience is captive to the Word of God. I cannot and will not recant anything, since it is neither safe nor right to go against conscience.<sup>89</sup>

Luther had, by this time (1521), developed a distinctive understanding of conscience, abandoning the notion of *synderesis* altogether.<sup>90</sup> His was a conscience derived from close attendance to scripture rather than from any 'innate' human propensity for good. In this, he shared a Protestant distaste for Renaissance humanism and a desire to skip over the scholastics and return directly to biblical text, notably Paul (who, recall, wrote well before Jerome's interposition of *synderesis*). In Luther, Paul appears as a 'hero of the introspective conscience', a man struggling with his own sin—as Luther himself claimed to be—and, damned by his own conscience, but arriving at redemption through faith in Jesus Christ.<sup>91</sup> Conscience performs a different function than in Aquinas: rather than merely applying knowledge to actions, it must judge the person as a whole, informed by

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reason given for this is (in an essentially Hobbesian argument) that the state is the only possible vehicle for justice and therefore overthrowing it cannot be just by definition. Immanuel Kant, *The Metaphysics of Morals*, trans. Mary Gregor (Cambridge: Cambridge Univ. Press, 1996 [1797]), 95-98 (6:318-323).

<sup>88</sup> *Romans* 2:14-15, New International Version.

<sup>89</sup> Martin Luther, 'The Speech of Dr. Martin Luther before the Emperor Charles and Princes at Worms', in *Luther's Works* (55 vols.), ed. Helmut Lehmann (Philadelphia: Fortress Press, 1957-1986), vol. 32, 112-113.

<sup>90</sup> Greene (1991), 202-203.

<sup>91</sup> Krister Stendahl (1963) 'The Apostle Paul and the Introspective Conscience of the West', *Harvard Theological Review* 56(3), 199-215. Stendahl argues that Luther fundamentally misread Paul on this issue.

faith.<sup>92</sup> Humans are not innately good, *pace* Philip the Chancellor, they are sinners in need of salvation. Luther retained the assumption that conscience could err. However, rather than ascribing error to ‘mistaken reason’, an erroneous conscience was one that trusted to human capacities rather than to God and scripture alone.<sup>93</sup>

Luther here begins—or was swept along in—a discernible trend: the term *synderesis* begins to disappear from philosophical and theological lexica around this time, although cognate terms—the ‘divine spark’, ‘spirit of man’, ‘light of nature’, ‘natural instinct’—continued to provide a vocabulary for Reformation-era controversies over determinism and free will, the sinful nature of mankind, and the proper source of redemptive authority.<sup>94</sup> Calvinists in particular rejected the humanism latent in *synderesis*. God’s ‘inspiration and revelation’ supply a ‘renewed conscience’, for Calvin, through direct divine enlightenment not via some universal human attribute.<sup>95</sup>

Claims made ‘in conscience’ went to the radical heart of politics over the revolutionary 17<sup>th</sup> Century. Keith Thomas refers to this period as an ‘Age of Conscience’.<sup>96</sup> Thomas’s main interest is in the extraordinary proliferation of ‘cases of conscience’ through this golden age of casuistry (for Catholics, Protestants and Puritans alike).<sup>97</sup> But of course his epigram is also descriptive of the recourse to conscience to justify the various stances adopted through an era of shifting conceptions of legitimate political authority. For example, the ‘Leveller Manifesto’, written in April 1649—mere months after Charles I was beheaded—by the imprisoned leaders of this briefly influential movement, invokes conscience throughout: in its opening statement of self-legitimation (‘our consciences are clear’), in its broader invocation of popular sovereignty (‘We the Free People of England ... stand[ing] clear in our consciences’), as a substantive provision (Art X guarantees freedom of conscience, by which is meant religion) and in signing off (‘in the sincerity of our hearts and consciences’).<sup>98</sup>

Let me pause with the Levellers for a moment and recall the context of their proclamation. A wave of radicalism crested in late 1640s England: Anabaptists, Quakers, Diggers, Ranters, and many more besides, most seeking new political settlements, all acting on the authority of conscience. By comparison with some of these groups, the Levellers were mainstream orthodox republicans, seeking to

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<sup>92</sup> See Michael Baylor, *Action and Person: Conscience in Late Scholasticism and the Young Luther*, Studies in Medieval and Reformation Thought, vol. 20 (Leiden: E. J. Brill, 1977), 202-203. Cited in Douglas Langston, *Conscience and Other Virtues: From Bonaventure to Macintyre* (Univ. Park, PA: Penn State Univ. Press, 2001) Kindle Edition, locations 896-898.

<sup>93</sup> Langston (2001), 71-86.

<sup>94</sup> See generally Greene (1991), and 196.

<sup>95</sup> Greene, 214. See also Keith Thomas, ‘Cases of Conscience in Seventeenth-Century England’, in John Morrill et al. (eds) *Public Duty and Private Conscience in Seventeenth-Century England* (Oxford: Oxford Univ. Press, 1993), 30.

<sup>96</sup> Thomas (1993), 29.

<sup>97</sup> Ibid.

<sup>98</sup> John Lilburne, William Walwyn, Thomas Prince, and Richard Overton, ‘An Agreement of the Free People of England’, reproduced in Andrew Sharp (ed.), *The English Levellers* (Cambridge: Cambridge University Press, 1998) 168-178.

replace the monarchy with elected, representative and accountable government, expanded (though not universal) franchise, equality before the law, freedom of speech and religion. Others went further. The Diggers sought the abolition of property, establishing proto-communist societies on the commons. The Ranters opposed conventional morality altogether with the doctrine that ‘to those who are pure in heart all things are pure’. By the end of the Age of Conscience, as is well-known, the idea that an authoritative institution existed to authorise the ‘first principles’ of a natural law *synderesis* was no longer plausible. What began as a competition between religious doctrines, moved through a phase of ‘tolerationism’ into a secular modern state, whose nominal authority would lie in eliciting political allegiance rather than theological truth.<sup>99</sup> Hobbes is our guide to subsequent developments.

## B. HOBBS: PRIVATE CONSCIENCE / PUBLIC CONSCIENCE

Radical conscience was, in key respects, Thomas Hobbes’s target in his 1651 *Leviathan* written during and immediately after the English civil war. A person may believe what s/he wants, according to Hobbes, ‘but when it comes to confession of that faith, the private reason must submit to the public’.<sup>100</sup> Hobbes argues that, in civil society, we are constrained to obey the law even against conscience; that not to do so would be *sinful* as well as criminal. In what follows I will suggest that Hobbes’s framing provides a persuasive account of the (background) role conscience has come to play in our basic assumptions about the individual’s relationship to law and the state. If his account feels familiar today, this is due, I will suggest, to the fact that the Hobbesean settlement appears to be unravelling.

Hobbes begins by arguing that conscience is, at one level, inviolable. ‘A private man has always the liberty (because thought is free) to believe, or not believe in his heart’.<sup>101</sup> This ‘liberty’ of thought is literal: the law cannot reach our innermost beliefs and nor should it try: ‘[t]he secret thoughts of a man run over all things, holy, profane, clean, obscene, grave, and light, without shame, or blame; which verbal discourse cannot do’.<sup>102</sup> It is an ‘error’, Hobbes writes, ‘to extend the power of the law, which is the rule of actions only, to the very thoughts, and consciences of men, by examination, and inquisition of what they hold,

<sup>99</sup> The thrust of John Locke’s *Four Letters Concerning Toleration* (1689). Cf. the English Act of Toleration, 1689.

<sup>100</sup> Thomas Hobbes, *Leviathan* (Charlottesville, VA: InteLex Corp, 2000 [1651]), 436. In addition to Hobbes’s own writing, this section draws in particular on Mark Hanin (2012) ‘Thomas Hobbes’s Theory of Conscience’ *History of Political Thought* 33(1): 55-85; as well as Ronald Beiner (2010) ‘Three Versions of the Politics of Conscience: Hobbes, Spinoza, Locke’ 47 *San Diego Law Review* 47(4): 1107-1124; Edward G. Andrew (1999) ‘Hobbes on Conscience Within the Law and Without’, *Canadian Journal of Political Science* 32(3): 203-25; Thomas (1993); and Johan Tralau (2011) ‘Hobbes contra Liberty of Conscience’ *Political Theory* 39(1): 58–84.

<sup>101</sup> Hobbes (2000), 436.

<sup>102</sup> *Ibid.*, 59.

notwithstanding the conformity of their speech and actions.<sup>103</sup> Anticipating a long line of argument on the inutility of torture, Hobbes's point here is essentially pragmatic: the inner life can neither be coerced nor governed *per se* and to attempt to do so is foolish.<sup>104</sup> Too much 'liberty of conscience', though, may pose a threat to the state. Hobbes's solution is to split conscience in two: there is a 'private conscience' of personal secrets and beliefs and a 'public conscience', that of the sovereign, responsive to 'public reason', and coextensive with the law. The point is to police the boundary between them.

Hobbes's argument has three planks. First, he shows that conscience is potentially seditious. Second, in 'civil society', the sovereign takes over the role of conscience from the individual in certain matters, leaving a residual role for 'private conscience'. Third, in cases where law and conscience conflict, we must follow the law over conscience; indeed, *not* to do so would be sinful.

As to the first plank, Hobbes undertakes some philology. Conscience has, he notes, the etymological sense of shared knowledge among two or more persons, but in time 'men made use of the same word metaphorically, for the knowledge of their own secret facts and secret thoughts'.<sup>105</sup> The key word is 'secret': the very notion of private personhood, Hobbes indicates, is the capacity to treat secrets as knowledge held in confidence with oneself, to treat the self as a double. In a further development, however, 'men, vehemently in love with their own new opinions (though never so absurd) and obstinately bent to maintain them, gave those their opinions also that revered name of conscience, as if they would have it seem unlawful, to change or speak against them'. Deployment of 'conscience' in this latter sense, may 'Weaken or Tend to the Dissolution of a Commonwealth':

I observe the diseases of a commonwealth that proceed from the poyson of seditious doctrines; whereof one is 'That every private man is Judge of Good and Evill actions'. ... From this false doctrine, men are disposed to debate with themselves, and dispute the commands of the commonwealth; and afterwards to obey, or disobey them, as in their private judgements they shall think fit. ... For a man's Conscience, and his Judgement is the same thing. ... [And] in such diversity, as there is of private Consciences, which are but private opinions, the commonwealth must be distracted and no man dare to obey the Sovereign Power, farther than it seem good in his own eyes.<sup>106</sup>

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<sup>103</sup> Ibid., 684. Ronald Beiner (1115-16) notes there is, for Hobbes, 'a crucial distinction between, on the one hand, the bad forms of conscience that had brought about the *summum malum* in England in the decade before *Leviathan* was published, and on the other hand, the good forms of conscience that had to be liberated from the Inquisitors who ruled Christian Europe.'

<sup>104</sup> Hobbes (2000), 493.

<sup>105</sup> Ibid., 54.

<sup>106</sup> Ibid., 310-311



As to the second plank, Hobbes maps the distinction between sin and crime to that between the ‘state of nature’ and ‘civil society’. In the state of nature, there are sins, but no crimes—since ‘the civil law ceasing, crimes cease’. In such a world, ‘every man being his own judge, [is] accused only by his own conscience’.<sup>107</sup> For this reason, conscience has seemed an important source of authority. In the move into civil society, however, this no longer holds:

[H]e that is subject to no civil law, sinneth in all he does against his conscience, because he has no other rule to follow but his own reason; yet it is not so with him that lives in a commonwealth; because *the law is the public conscience*, by which he hath already undertaken to be guided.<sup>108</sup>

In civil society, the sovereign ‘represents’ the citizen, in the sense that the citizen has *already* agreed to hand over his ‘judgement’ in certain affairs to the sovereign. In civil society, ‘sin’ and ‘crime’ bifurcate; not all sins become crimes. On some matters, ‘we are not every one, to make our own private reason, or conscience, but the public reason, that is, the reason of God’s supreme lieutenant, judge; and indeed we have made him judge already, if we have given him a sovereign power, to do all that is necessary for our peace and defence.’<sup>109</sup> The law is the ‘public conscience’; the sovereign is the source of ‘public reason’.

And so—this is the third plank—when Hobbes says ‘every crime is a sin; but not every sin a crime’, the implication is that it is *always* sinful to break the law, that is, to disobey the sovereign.<sup>110</sup> This would still be the case even if one were acting on ‘private conscience’. However, to act on law against conscience in such matters is no sin, says Hobbes, because there is no choice in the matter: essentially we act under duress.<sup>111</sup> So although we are compelled to obey conscience ‘*in foro interno*’, as Hobbes puts it, we are not so compelled ‘*in foro externo*’, that is, in our actions.<sup>112</sup> Moreover, it is *right in principle* to obey the public, rather than private conscience, where they conflict, because responsibility for the act belongs not to the actor but to the legislator: ‘whatsoever a subject ... is compelled to do in obedience to his sovereign, and doth it not in order to his own mind, but in order to the laws of his country, that action is not his, but his sovereign’s’.<sup>113</sup> In short, a person may object in conscience (i.e., in private) to anything s/he is required to do by law, but in acting according to law there is no moral violation: any sin is already reassigned from the sinner to the sovereign who has required that the sinner sin. Here, in

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<sup>107</sup> Ibid., 277–278.

<sup>108</sup> Ibid., 311. Emphasis added.

<sup>109</sup> Ibid., 435.

<sup>110</sup> Ibid., 278.

<sup>111</sup> Ibid., 145.

<sup>112</sup> Ibid.

<sup>113</sup> Ibid., 135; 235.

contrast to Bonaventure and Aquinas, it is the act, not the intent, that matters: there is no guilt for transgressions of conscience necessitated by law.

Needless to say, *synderesis* disappears from Hobbes's account. What there is by way of higher law is the state. In this way Hobbes remaps the old *synderesis-conscientia* distinction onto the newly emergent public-private distinction. We are left with a law that must be obeyed and a conscience that must stay hidden. If you find the law unconscionable, your duty is not to change your views but to keep them to yourself, 'secret'. In return, the state respects your privacy: the law has no business touching on people's innermost thoughts. Hobbes offers a bargain: believe what you want but obey the law; in return the law will leave you alone in your beliefs and protect you from (the beliefs of) others.

It is just this deal, I suggest, that is today unravelling—not so much because the state so often violates the bounds of 'private conscience' (this is not especially new), but because the boundary itself appears to be dissolving. The creeping criminality of inchoate acts is, from this perspective, symptomatic of a broader shift in which the secrets of conscience appear to take on materiality as they become artefacts of the datasphere.<sup>114</sup>

## V. CONCLUSION: *SYNDERESIS* IN THE BEDROOM

To finish, then, let me return briefly to the stories with which I began. In Michael Haneke's film, Georges appears to be overwhelmed by the turn of events—the surfacing of his personal secret, his implication in Majid's precarious life and death, an association, however fleeting, with the crimes of colonialism. Georges is wracked by guilt, but he has committed no crime. The situation of the Unit 8200 veterans is somewhat different. They appear to believe that their actions are—or ought to be—criminal, but for the fact that the law itself does not recognise any criminality ('they [the objects of surveillance] don't have rights [or] laws like we do'; 'the only limitations are limitations of resources').

To these two stories, let me now add a third. Edward Snowden's decision to disclose the extent of surveillance by the US National Security Agency (NSA) has much in common with the Unit 8200 public letter. Like the reservists, Snowden was prompted to act because of his discomfort at the extraordinary extent of the information available to him: 'If I wanted to see your emails or your wife's phone, all I have to do is use intercepts. I can get your emails, passwords, phone records, credit cards.'<sup>115</sup> Unlike the Unit 8200 veterans, however, who took great care to act within the law, Snowden's actions went beyond conscientious objection; he

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<sup>114</sup> See, for example, Patrick Wintour, 'David Cameron to unveil new limits on extremists' activities in Queen's Speech', *The Guardian*, May 13, 2015, citing the Prime Minister: 'For too long, we have been a passively tolerant society, saying to our citizens: as long as you obey the law, we will leave you alone.'

<sup>115</sup> Ewen MacAskill, 'Edward Snowden, NSA files source: "If they want to get you, in time they will"', *The Guardian*, June 10, 2013.

disclosed classified information and is (at time of writing) subject to an arrest warrant for having broken the law. Snowden, then, acted on conscience but did so apparently criminally.

Keeping this example in mind, let me conclude with two questions that have guided this article. A first is: What *happens* to conscience in what I am calling the datasphere? To the extent that secrets now leak and matters of ‘private conscience’ enter a public memory, the Hobbesian bargain appears to be unravelling. In this narrow sense at least, something called ‘privacy’ feels increasingly insecure. And perhaps now we might belatedly recognise how well Hobbes’s bargain had held up: our privacy, we can be forgiven for thinking, was (generally) protected as long as we obeyed the law. But the reciprocity of this deal seems to be dissolving. We don’t really know who is sharing our bedroom with us, what public or private personae—what ‘authorities’, human or algorithmic, state or commercial—are peering through our webcams, rifling through our ‘folders’, embedded in our smartphones. Perhaps we don’t care. Perhaps no-one is. Perhaps, if we forget about it, if we avert our eyes, it will have no, or minimal, impact on our lives. It’s hard to know.

A second question asks what it would mean to act ‘conscientiously’ in such a context? And here, of course, the context is not merely the increasing dataflows; it is also the (related?) phenomenon of a world that has come to depend on complex globalised networks for the provision of the basic stuff of life, one in which ethical decisions may loom larger, yet seem more opaque, than before. How, for example, were my clothes produced?<sup>116</sup> Were the conditions of labour, the wages, adequate to support the families of those who produced them? How did the animal on my plate die?<sup>117</sup> How, for that matter, did it live? How much carbon do I emit in my daily activities and with what consequences?<sup>118</sup> How much control do I exercise over any of these matters with which I already seem to be implicated? These public questions are not altogether dissimilar from those in the background of Georges’s private struggle: French colonialism too was premised on resource extraction and cheap labour under coercive conditions.

These are matters of knowledge, indeed they are matters of conscience. They are also matters that had, over centuries it seems, marked out what we might call public ‘conscientiousness’: a space in which the state regulated *conscientiously* (according to a widely accepted narrative)—declaring equality, extending franchise, abolishing slavery, improving living standards, instituting human rights, repealing colonialism. And yet, concomitant with the rise of the datasphere, most states

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<sup>116</sup> Consider, for example, leading UK clothes producer Primark’s factories in the collapsed Rana Plaza building in Bangladesh (<http://www.primark.com/en/our-ethics/news/rana-plaza>, last visited May 24, 2015); Kate Hodal, Chris Kelly and Felicity Lawrence, ‘Revealed: Asian slave labour producing prawns for supermarkets in US, UK’, *The Guardian*, June 10, 2014.

<sup>117</sup> See, for example, Jonathan Safran Foer, *Eating Animals* (London: Penguin, 2011).

<sup>118</sup> For a sense of the speed with which the carbon budget is being spent, see: <http://trillionthtonne.org/>, last visited September 16, 2014.

have, by now, long been retreating from this kind of explicit conscientiousness, as a matter both of capacity (how to police every stop in today's lengthy supply chains?) and of choice (since regulation has always been, even in principle, a sovereign matter). Globalisation, deregulation: the story of neoliberalism is also, paradoxically perhaps, a story of retreat into the 'private'.

And this story is also one which finds support in the different modernisms of Hobbes and Freud. If, as Freud suggests, guilt is a subjective matter, grounded in a superego that has shed any relation to *synderesis*, a moral authority divorced from reason, then it is also an alibi: after all, the guilt must attach to *something*. Repressed and fundamentally irrational, it must remain hidden (private, *caché*), but still—to hammer the point home—our guilt is not our fault. Hobbes too divorces morality from reason—a private morality from a public reason (of state). The point is that on neither account is it obvious how the citizen of the contemporary state is supposed to act conscientiously in the public sphere.

And presumably, to push the point, it is the distinction between public and private conscience that underpins the contemporary turn to a 'consumer ethics'. Working within the law, the conscience must be satisfied within the constraints of private action. How? First we might speak out. Then, since that will fail, if we are persistent, we may take steps: buying 'fair trade' goods when we can, sourcing our food locally, purchasing 'carbon offsets', if we can afford the extra cost. We could follow these with larger steps: we might stop flying or driving altogether; become vegetarian or vegan. Eventually, if we were still to pursue the point, our option would be withdrawal from a corrupt world. Both etymologically and historically, of course, it is just such a withdrawal that gave us the term 'private' in the first place.<sup>119</sup>

Perhaps this is why we, the people, don't seem to be holding up our side of the Hobbesean bargain either. What is most remarkable about the Snowden affair is how unimportant his law-breaking has been to 'the public'. We are more interested in his conscience than his obedience: his conscientiousness in, for example, ensuring innocents were not harmed by the information he released. He is a public hero: Snowden has had an impromptu statue erected to him in a Brooklyn park.

But to reach back before the Hobbesean deal is also, presumably, to reach back for something like *synderesis*. And it seems right to observe that something like *synderesis* is creeping back into public discourse. So, acknowledging that his disclosures may have put his own life in danger, Snowden said, 'I want to make it very clear that I did not do this to be safe. I did this *to do what was right*, and I'm not going to stop my work in the public interest just to benefit myself'.<sup>120</sup> A notional 'public' is critical here—as audience, actor, and also source of authority for

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<sup>119</sup> Georges Duby, 'Public Power, Private Power' in Georges Duby (ed.), *A History of Private Life* (vol. II): *Revelations of the Medieval World* (Cambridge, MA: Belknap Press, 1988).

<sup>120</sup> Edward Snowden, 'Here's how we take back the internet', TED talk, March 2014 (32:29).

knowing the ‘right’ thing to do.<sup>121</sup> But Snowden’s is not a *national* public; it is a *global* one. Explaining his actions, he claimed: ‘individuals have international duties which transcend the national obligations of obedience. Therefore individual citizens [sometimes] have the duty to violate domestic laws...’<sup>122</sup>

With this last remark, Snowden enters, perhaps unwittingly, into a complicated and heated debate that has been running at least since the Nuremberg trials. But he has placed that old debate into a new context. For through the datasphere, the ‘global public’ is that bit closer to becoming an object of governance. And it is also arguably at this global level, where ‘national obligations’ are ‘transcended’, that the Hobbesian deal breaks down most comprehensively: in the scramble for some source of authority other than the bordered, self-interested state, one that resonates with, on one hand, the growing knowledge we wield that seems to reach far beyond the law we know, and, on the other, an apparently emerging suprastatal law that seems to know so much more about us than we know about ourselves.

And so, to come full circle, it seems conscience is reviving in the datasphere. Indeed, we are poised between the return of bad conscience and of good conscience. On one hand, the paralysing realisation that our thoughts are naked and legible before an omniscient authority, whose knowledge and motives remain inscrutable. On the other, a slow awakening into a context and capacity to act autonomously on the information available to us. Snowden again—speaking, as he has done for years now, from his bedroom:

There is still hope, because the power of individuals has also been increased by technology. I am living proof than an individual can go head to head against the most powerful adversaries and the most powerful agencies around the world and win.<sup>123</sup>

Conscientious, certainly—but is he right?

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<sup>121</sup> ‘All I wanted’, he said elsewhere, ‘was for the public to be able to have a say in how they are governed’. Barton Gellman, ‘Edward Snowden, after months of NSA revelations, says his mission’s accomplished’, *The Washington Post*, December 23, 2013.

<sup>122</sup> Jeffrey Toobin, ‘Edward Snowden’s real impact’, *The New Yorker*, August 19, 2013.

<sup>123</sup> Snowden, TED talk (30:36).