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Law and Everyday Forgetting: Preserving the Opacity of the Inner Self

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Abstract: This paper argues that law plays an important role in preserving the opacity of the inner self. For the purposes of the paper, rather than attempt to analyse the idea of the inner self in a comprehensive way, I focus on one aspect of it as an exemplar: oblivion as a facet of memory, in particular the notion of *everyday forgetting* or what Rapp calls the 'ordinary oblivion of the self'. The paper proceeds in four steps. First, I introduce the idea of the opacity of the inner self and discuss how it is an essential part of our humanness. Next, I explore connections between everyday forgetting and the idea of the inner self. I then work with two case studies, laws on spent convictions and the right to be forgotten, arguing that these laws carve out breathing space for everyday forgetting. Finally, in the light of these case studies, I discuss how these laws contribute in a significant way to the preservation of the opacity of the inner self.

Keywords: inner self; forgetting; spent convictions; right to be forgotten

1 Introduction

The notion that we have deep and rich inner lives or *fora interna* made up of unmanifested thoughts, feelings, emotions, hopes and desires seems so natural that we rarely interrogate it. Consistent with Descartes' famous observations about mind-body dualism, we tend to draw a distinction between what we experience on the inside and everything that we perceive to be on the outside such as our bodies, other people, objects and nature. In so doing, we differentiate the inner self from the *forum externum*, that is, the external world in which we manifest aspects of our inner lives in our speech and/or behaviour.

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The idea that we have inner selves has profoundly shaped how we think about ourselves and our place in the world. Charles Taylor, in his influential study on the *Sources of the Self*, argues that '[o]ur modern notion of the self is related to, one might say constituted by, a certain sense (or perhaps a family of senses) of inwardness.'[1] The idea of an inner self has had such a fundamental and enduring influence that it now feels natural in liberal societies to cherish and value the idea of the individual as a 'real impenetrable human person', as Iris Murdoch puts it.[2] She goes on: 'That this person is substantial, impenetrable, individual, indefinable, and valuable is after all the fundamental tenet of liberalism.'[3]

Against this background, we can understand the idea of the inner self as an important socio-cultural narrative, albeit one that is shaped by biological (and psychological) fact. After all, we cannot physically observe the inner workings of our minds nor, despite widespread concerns to the contrary, can even the most advanced neurotechnologies comprehensively chart the depths of our minds.[4] We believe that we are intimately familiar with certain aspects of our inner selves yet, at the same time, there are aspects that remain unknown, unexplored or ignored.[5] As a result, the inner self seems mysterious, puzzling and strange though it forms part of who we are, shaping our very identities.

While philosophers, theologians and artists have long been fascinated by this paradox, the Romantic poets and novelists were especially captivated by the insight that complete self-knowledge is unattainable. Novalis writes:

> '*Wir träumen von Reisen durch das Weltall: ist denn das Weltall nicht in uns? Die Tiefen unseres Geistes kennen wir nicht. – Nach Innen geht der geheimnisvolle Weg.* ('We dream of journeys

1 C. Taylor, *Sources of the Self: The Making of Modern Identity* (Cambridge, MA: Harvard University Press, 1989), 111.

2 I. Murdoch, 'Against Dryness' in P. Conradi (ed) Iris *Murdoch* (London: Random House, 1997), 294.

3 Murdoch, 'Against Dryness', 294. In the contemporary context of socio-technological transformations, consider also Hildebrandt's interesting thoughts on the 'incomputable self'. See M. Hildebrandt, 'Privacy as Protection of the Incomputable Self: From Agnostic to Agonistic Machine Learning' (2019) 20(1) *Theoretical Inquiries in Law* 82–121. '[I]n an era when anything – and potentially everything – is being datafied, numerized and rendered computable' (94), Hildebrandt argues that we should 'understand privacy as the protection of the incomputable self – and the right to privacy as the effective and practical remedy to *protect what counts but cannot be counted*: the fragile but robust, indeterminate but sustainable, ecological and irreducibly subjective self.' (96).

4 See P. O'Callaghan, O. Cronin, B. Kelly, B. Shiner, J. Walmsley, & S. McCarthy-Jones 'The Right to Freedom of Thought: An Interdisciplinary Analysis of the UN Special Rapporteur's Report on Freedom of Thought' (2024) 28 (1) *International Journal of Human Rights* 1–23, at 10–11.

5 For a theorisation of different aspects of the inner self in a legal (human rights) context, see F. Benziger, 'The Concept of the Inner Self in European Human Rights Law' (2026) *European Journal of Comparative Law and Governance* (forthcoming).

> through the universe: but is the universe not within us? We do not know the depths of our spirit. – The mysterious path leads inwards').[6]

It is within this context that we can speak of the *opacity of the inner self*.[7] The Oxford English Dictionary defines opacity as '[o]bscurity of meaning; resistance to interpretation; impenetrability; an instance of this.'[8] The inner self is all these things at once. Human beings are complex and deep – we 'contain multitudes' in Walt Whitman's famous words, so much so that there are aspects of our inner selves that will invariably resist interpretation and will remain obscure and inaccessible, not only to others but also to ourselves. If the inner self is a part of what makes us who we are, our very humanness, and if this substantial, impenetrable, individual, indefinable, and valuable human person is *the* fundamental tenet of liberalism in Murdoch's terms, then it surely follows that law and regulation ought to play an integral role in preserving the inner self's opacity. This claim, which is both descriptive and normative in nature, is the core theme of this paper.

There are many ways that law might be understood as safeguarding the opacity of the inner self, too many to consider within the confines of this short paper.[9] As a result, I will focus on interactions and intersections between law and one core aspect of the inner self: memory. However, the relationship between law and memory gives rise to a myriad of difficult and complex issues, ranging from the legal treatment of commemorative monuments to the establishment of truth and reconciliation commissions in post-conflict societies.[10] For this reason, I will focus my efforts on analysing oblivion as an aspect of memory.[11] Yet, even now I still not have gone far

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6 Novalis, *Blütenstaub* (1798), Fragment 16, available at https://www.textlog.de/23602.html (accessed on 14th February 2025).

7 The use of this term is inspired in large part by a reference Rapp makes to the 'opacity of the self' in J. R. Rapp, *Ordinary Oblivion and the Self Unmoored: Reading Plato's Phaedrus and Writing the Soul* (New York: Fordham University Press, 2014), 18.

8 Oxford English Dictionary, s.v. 'opacity (n.), sense 1.a,' June 2024, https://doi.org/10.1093/OED/6901970197.

9 See the conclusions below for some examples.

10 For key texts on the relationship between law and memory, see, for example, U. Belavusau & A. Gliszczyńska-Grabias (eds) *Law and Memory: Towards Legal Governance of History* (Cambridge: Cambridge University Press, 2017); M. Osiel, *Mass Atrocity, Collective Memory, and the Law* (Transaction Publishers, 1999); François Ost, *Le Temps Du Droit* (Odile Jacob, 1999); M. M. Sadowski, *Intersections of Law and Memory: Influencing Perceptions of the Past* (London: Routledge, 2024); J.J. Savelsberg & R.D. King, 'Law and Collective Memory' (2007) 3(1) *Annual Review of Law and Social Science* 189–211.

11 Some readers may question why I understand forgetting as an aspect of memory since popular discourse often treats these as binary opposites. However, the two are inextricably linked. The anthropologist Marc Augé argues that memory needs forgetfulness. See M. Augé, *Oblivion* (Eng. Tr.) (Minneapolis: University of Minnesota Press, 2004), 3. On his analysis, remembering and forgetting

enough in narrowing the scope of this paper since exploring oblivion, broadly understood, would require that I consider policies or practices such as amnesties, which would lead me back to questions about truth and reconciliation in post-conflict societies, for example.

It is for these reasons that, for the purposes of this paper, I will narrow my focus to *everyday forgetting* on the part of the individual: what Rapp calls 'the ordinary oblivion of the self'.[12] I will use everyday forgetting as a case study to illustrate (a) how the opacity of the inner self is an essential part of our humanness and (b) how law plays a key role in preserving this opacity. For the former, I will draw on philosophical and literary sources, paying particular attention to Lord Byron's closet play, *Manfred*, first published in 1817, a play which provides us with reflections about self-oblivion. As for the latter, I will consider two examples of situations in which law plays an important role in regulating how ordinary individuals are confronted with their pasts: laws on spent convictions and the right to be forgotten in data protection law. Before I begin this analysis, however, it is important that I explain the meaning of everyday forgetting or the ordinary oblivion of the self.

2 Everyday Forgetting or the Ordinary Oblivion of the Self

In the opening pages of her thought-provoking book, *Ordinary Oblivion and the Self Unmoored*, Rapp draws our attention to two lines of Emily Dickinson's poem, *One need not be a Chamber to be Haunted*:

> '[O]urself behind ourself, concealed -
> Should startle most - …'

Reflecting on these lines, Rapp writes:

> 'Dickinson expresses dramatically and figuratively a very ordinary feature of human living: Much of who we are remains hidden from view, and these obscured aspects of the self can unsettle and disrupt the apparent surface of who we take ourselves to be.'[13]

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have the same relationship as life and death (14). More than anything else, our memories are shaped by our propensity to forget – 'what remains [of a memory] is the product of an erosion caused by oblivion.' (20).

12 Rapp, *Ordinary Oblivion and the Self Unmoored*. For an interesting new book that explores related themes, see L. Pressly, *The Right to Oblivion* (Cambridge, MA: Harvard University Press, 2024).

13 Rapp, *Ordinary Oblivion and the Self Unmoored,* 3.

These aspects of our selves remain hidden from view because we may have forgotten them, they have 'escaped our notice'[14] or have been pushed to the 'margins of the self'.[15] Against this background, it follows that the self is made up of, among other things, 'spaces of ordinary oblivion',[16] the 'ordinary' here meaning 'the mundane everydayness of the ways …oblivion works within a life'.[17]

For some people, no doubt, there are aspects of their selves or past experiences that are perhaps not as obscured or marginal as they might wish they were. This might be true, for example, of those who have committed crimes that have led to a formal reprimand and punishment by the community. But as Rapp argues, '[t]o be of this world is to have forgotten'.[18] Moreover, she argues that her 'claim that we are constituted – not merely effaced or diminished – by the ordinary oblivions of our lives is to posit a form of fragility or precariousness as central to distinctively human life.'[19] The 'ineluctable tenuousness of memory entails a vulnerability in human persons…'.[20]

If, to be of this world is to have forgotten and if this also entails a vulnerability in us, which is part of our very essence, it follows that actions on the part of the state or third parties that have the effect of undermining the ordinary oblivion of the self may amount to an affront to human dignity or personhood.[21] To illustrate this point more clearly, consider the ghastly scenario imagined by several thinkers: a situation in which one is unable to forget.[22] Nietzsche speculates that this person 'would no longer believe in himself, would see everything flowing asunder in moving points and would lose himself in this stream of becoming.'[23] Forgetting, Nietzsche tells us, is important because it brings about happiness, even if this is just for the briefest of moments. In this way, forgetting is essential for life in the same way that 'not only light but darkness too is essential for the life of everything organic.'[24] Without forgetfulness, Nietzsche warns that the past risks becoming 'the gravedigger of the present.'[25]

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14 Rapp, *Ordinary Oblivion and the Self Unmoored*, 5.
15 Rapp, *Ordinary Oblivion and the Self Unmoored*, 101.
16 Rapp, *Ordinary Oblivion and the Self Unmoored*, 7.
17 Rapp, *Ordinary Oblivion and the Self Unmoored*, 5.
18 Rapp, *Ordinary Oblivion and the Self Unmoored*, 101.
19 Rapp, *Ordinary Oblivion and the Self Unmoored*, 19.
20 Rapp, *Ordinary Oblivion and the Self Unmoored*, 19.
21 See also P. O'Callaghan, 'Enlightened Remembering and the Paradox of Forgetting: From Dante to Data Privacy' (2023) 17 (2) *Law and Humanities* 210–227.
22 For details of a real-life case, see E.S Parker, L. Cahill & J.L. McGaugh 'A Case of Unusual Autobiographical Remembering' (2006) 12 *Neurocase* 35–49.
23 F. Nietzsche, 'On the Uses and Disadvantages of History for Life' in D. Breazeale (ed) *Untimely Meditations* (Eng. Tr.) (Cambridge: Cambridge University Press, 1997), 62.
24 Nietzsche, 'On the Uses and Disadvantages of History for Life', 62.
25 Nietzsche, 'On the Uses and Disadvantages of History for Life', 62.

The nightmarish theme of being unable to forget the past also features in Byron's closet play, *Manfred*,[26] for which, interestingly, Nietzsche had a 'predilection'.[27] The play's central protagonist is Manfred who seeks solace and solitude in the Alps, attempting to forget a traumatic past experience ('within me'), which is never revealed to the reader ('I cannot utter it').[28] No matter how hard he tries, Manfred cannot forget the past, obsessed with his memories throughout the day and night. He tells us:

> 'My Slumbers – if I slumber – are no sleep
> But a continuance of enduring thought
> Which then I can resist not, – in my heart
> There is a Vigil – & these eyes but close
> To look within'[29]

In a Faust-like way, Manfred summons seven spirits representing different aspects of the external physical world or *forum externum* and begs them for the chance to forget, for oblivion or, as he puts it, 'self-oblivion'.[30] But bringing about forgetfulness in this way is something that even these spirits cannot achieve since it is not in their 'essence' or 'skill' – after all, their immortality means they cannot forget; both the past and future are always present to them.[31] Manfred remains stuck with his thoughts: 'There are shades which will not vanish, There are thoughts thou cans't not banish'.[32] Tormented by his memories, his soul remains 'scorched'.[33] Manfred unhappily acknowledges the end result: 'I dwell in my despair – And live & live forever.'[34]

In similar vein, Borges' character Funes is unable to forget even the oldest and most trivial of his memories following an accident in which he falls off his horse, meaning 'anything he thought, even once, [now] remained ineradicably with him.'[35] What is more, he now experiences the present in a more vivid way: everything seems much clearer and richer but to the extent that the experience becomes 'almost

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26 I am using the edition of Byron's *Manfred* reproduced in P. Cochran, *Manfred: An Edition of Byron's Manuscripts and a Collection of Essays* (Newcastle upon Tyne: Cambridge Scholars Publishing, 2015), 23–124.

27 J. Soderholm, 'Byron, Nietzsche and the Mystery of Forgetting' (1993) 23(1) *Clio* 51–62, at 51.

28 Byron, *Manfred*, Act I, Scene I, 137–138.

29 Byron, *Manfred*, Act I, Scene I, 3–7.

30 Byron, *Manfred*, Act I, Scene I, 144.

31 Byron, *Manfred*, Act I, Scene I, 146–151.

32 Byron, *Manfred*, Act I, Scene I, 204–205.

33 Byron, *Manfred*, Act II Scene I, 73.

34 Byron, *Manfred*, Act II, Scene II, 151–152.

35 J.L. Borges, *Fictions* (Eng. Tr.) (London: Penguin, 1998), 97. See further Pressly, *The Right to Oblivion*, 123–124.

unbearable'.[36] Like Manfred, Funes has to suffer 'the heat and pressure' of an 'inexhaustible' reality.[37] He finds it difficult to sleep because '[t]o sleep is to take one's mind from the world'. Funes' world is 'teeming', but he is unable to turn away from it due to the sheer force of all the memories and information that confront him.[38]

If we were unable to forget, it is not only an unremitting obsession with the past and the ensuing information overload that would negatively affect us, rather our humanness would be undermined in other fundamental ways. Kundera writes that a person who is incapable of forgetting 'would be nothing like human beings: neither his loves nor his friendships nor his angers nor his capacity to forgive or avenge would resemble ours.'[39] This is because forgetting is 'part of the essence of man'.[40] Consider, in this context, Kierkegaard, who advocates 'remembering poetically'.[41] When one remembers in this way, one's present experience, one's actuality, is not burdened by a painful past rather it is focussed on the 'now', on 'how one lives' and 'especially of how one enjoys.'[42] Kierkegaard's thoughts on remembering poetically chime with his understanding of true forgiveness and reconciliation. When one suffers from the evil act of another, it is, of course, the one who committed the wrong who needs forgiveness.[43] But Kierkegaard emphasises that the one who suffered the wrong also has the need to forgive. When we speak of reconciliation in its 'perfect sense',[44] we do not mean forgiveness when the wrongdoer asks for it, rather 'the need to forgive almost before the other has thought of seeking forgiveness.'[45] This is precisely when forgetting becomes critically important. Elsewhere, Kierkegaard illustrates this point through a biblical reference: the father of the prodigal son, who waits 'with open arms' for his son, 'has forgotten everything and brings the delinquent himself to forget everything.'[46]

Against this background, the capacity to forget is not just an essential part of our human nature but it is also an important public good, these two goods of course being intimately intertwined. In this context, we can argue that law ought to play a role in safeguarding the breathing space for everyday forgetting or the ordinary oblivion of

36 Borges, *Fictions*, 96.
37 Borges, *Fictions*, 98.
38 Borges, *Fictions*, 99.
39 M. Kundera, *Ignorance* (Eng. Tr.) (London: Faber & Faber, 2002), 123.
40 Kundera, *Ignorance*, 123.
41 S. Kierkegaard, *Either/Or: A Fragment of Life* (Eng. Tr.) (London: Penguin Books, 1992), 234.
42 Kierkegaard, *Either/Or: A Fragment of Life*, 234.
43 S. Kierkegaard, *Works of Love* (London: Oxford University Press, 1946), 271.
44 Kierkegaard, *Works of Love*, 271.
45 Kierkegaard, *Works of Love*, 272.
46 S. Kierkegaard, *Eighteen Upbuilding Discourses* (Eng. Tr.) (Princeton: Princeton University Press, 1990) 63, as cited in M. Volf, *The End of Memory: Remembering Rightly in a Violent World* (Grand Rapids: WB Eerdmans, 2006), 169.

the self.[47] In order to develop this point further, I will now consider two examples of laws that seek to preserve such breathing space: (1) laws on spent convictions and (2) the right to be forgotten.

3 Laws on Spent Convictions

Like amnesties,[48] laws on spent convictions are 'institutionalized forms of forgetting'[49] Up to the eighteenth century, a person who had been convicted of a serious crime suffered a 'civil death'.[50] Even when he had completed his custodial sentence and reformed his character, the conviction meant that he would no longer be able to enjoy most of his civil rights. In the absence of a pardon,[51] he was, in effect, labelled an offender for the rest of his life. Over time, criminological theories about the role of social reintegration in preventing recidivism became more mainstream and influenced law reform.[52] By the mid to late nineteenth century, Victorian values, especially the ethic of self-improvement,[53] also began to shape institutional attitudes about those who had served their sentences and paid their debt to society. In *Leyman v Latimer* (1878), for example, Bramwell LJ remarks *obiter* that '[i]t is no doubt desirable that a time should come when a person who has been convicted of felony should cease to be called a felon, and it is cruel to rake up what is past…'.[54]

By the end of the twentieth century, most European legal systems recognised that at least some offenders could become 'ex-offenders' and be granted a fresh start

47 The use of the term 'breathing space' in this paper is inspired by Julie Cohen's use of the term 'breathing room' and 'space' in her scholarship on privacy. See, for example, J. Cohen, 'Surveillance versus Privacy: Effects and Implications' in D. Gray and S. Henderson (eds), *The Cambridge Handbook of Surveillance* Law (Cambridge: Cambridge University Press 2017) 458.

48 The amnesty, from the Greek *amnēstia*, meaning 'forgetfulness' has a long legal history. See, inter alia, K. Harter-Uibopuu & F. Mitthof, *Vergeben und Vergessen? Amnestie in der Antike* (Vienna: Holzhausen, 2013); D. Lowenthal (1993) 'Memory and Oblivion' (1993) 12(2) *Museum Management and Curatorship* 171; R. Poole, 'Enacting Oblivion' (2009) 22 *International Journal of Politics, Culture, and Society* 149–157; B. Vivian, *Public Forgetting: The Rhetoric and Politics of Beginning Again* (University Park, PA: Pennsylvania State University Press 2010), 43 ff.

49 Ricoeur, *Memory, History, Forgetting* (Tr. by K. Blamey & D. Pellauer) (Chicago: University of Chicago Press, 2004), 452.

50 T. Thomas & B. Hebenton, 'Dilemmas and Consequences of Prior Criminal Record: A Criminological Perspective from England and Wales' (2013) 26(2) *Criminal Justice Studies* 228–242, at 228.

51 It appears that a pardon from the King would restore an offender's civil rights. See S. Williston, 'Does a Pardon Blot out Guilt?' (1915) 28(7) *Harvard Law Review* 647–663, at 650.

52 Thomas & Hebenton, 'Dilemmas and Consequences of Prior Criminal Record', at 228–229.

53 A. Baltz Rodrick, 'The Importance of being an Earnest Improver: Class, Caste, and Self-Help in Mid-Victorian England' (2001) 29(1) *Victorian Literature and Culture* 39–50, at 39.

54 (1878) 3 Ex. D. 352, at 355.

in life. These contemporary laws reflect something that is deeply engrained in our culture: the notion that, on some occasions at least, we should be able to put our 'past behind us' and 'begin again'. Shakespeare's *King Henry IV* puts it this way: "Presume not that I am the thing I was; … I have turn'd away my former self".[55] To take just one jurisdiction as an example, in the United Kingdom, section 4 of the Rehabilitation of Offenders Act 1974 allows for certain categories of criminal conviction to become spent so that the ex-offender is not required to disclose details of the conviction, except in specific situations outlined in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975. This legislation was an especially significant measure in the employment context since it altered the common law position on questions posed by potential employers about criminal records. At common law, where a job applicant chose to answer a question about her criminal record, she could potentially face civil and criminal sanctions for failing to give a truthful answer.[56] So understood, the Rehabilitation of Offenders Act offers a significant opportunity, at least for some, to leave the past behind and have a fresh start.

Courts have placed particular emphasis on the need for a second chance in cases where the crime in question attracted only a private warning or caution, was committed some time ago and appears to be an example of 'childish error'.[57] In *R (on the application of T and another) v Secretary of State for the Home Department and Another*, one of the respondents had received police warnings as an 11-year-old in connection with a relatively minor crime. These warnings were disclosed several years later to a prospective employer and education provider as part of an enhanced criminal record certificate (an ECRC) under an exception to the spent convictions provisions of the 1974 Act.[58] The Supreme Court accepted that the warnings were a part of the applicant's private life under Article 8(1) ECHR and, thus, the disclosure of these warnings was an interference with his private life.[59] In addition, Lord Reed, with whom Lord Neuberger, Lady Hale and Lord Clarke agreed, determined that the disclosure could not be justified under Article 8(2)

55 *Henry IV*, Part 2, Act 5, Scene 5, 56–58.

56 The common law position is explained by Lord Reed in *R (on the application of T and another)* v *Secretary of State for the Home Department and another* [2014] UKSC 35, at [67]–[68].

57 Cautions and private warnings were not expressly included in the original Rehabilitation of Offenders Act 1974. The Criminal Justice and Immigration Act 2008 amended the 1974 Act and allowed for cautions and private warnings to be spent.

58 See Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (SI 1975/1023); Part V of the Police Act 1997. For a helpful account of this complex area of law and an analysis of human rights-related concerns see J. Purshouse, 'Non-Conviction Disclosure as Part of an Enhanced Criminal Record Certificate: Assessing the Legal Framework from a Fundamental Human Rights Perspective' (2018) 4 *Public Law* 668–686.

59 Lord Wilson and Lord Reed delivered the two main judgments, both agreeing that there was an infringement of Article 8(1). See [17] (per Lord Wilson); [119] (per Lord Reed).

since it was not in accordance with the law.[60] This was because the statutory scheme governing ECRCs required the 'indiscriminate disclosure' of personal information.[61] There were no safeguards against arbitrary interference with private life, safeguards which would allow for a proper examination of the proportionality of the interference to be undertaken.[62] So understood, the legislation failed to draw distinctions between offences, not taking into account, for instance, how minor they were or how long ago they had taken place or even the continued relevance of these past offences, which were likely to have been forgotten by almost everybody.[63] In *obiter* remarks, both Lord Wilson and Lord Reed referenced Article 40 of the UN Convention on the Rights of the Child, which stresses the 'desirability of promoting the child's reintegration and the child's assuming a constructive role in society'.[64] Lord Wilson queried whether 'entries reflective of childish error should be a particular candidate for total elimination in the interests of [Article 40]'.[65]

Cases such as *T* emphasise the importance of having one's past forgotten by the community, especially when the events in question took place in the distant past or when one was a child. Indeed, there are 'external effects' of not being able to shake off the past, the most obvious being barriers to employment that will remain in place.[66] But there are also 'internal effects': while there are almost always socio-economic factors leading to inequality, which need to be addressed if rehabilitation efforts are to succeed, studies have shown that for many people some form of 'internal transformation' is also vitally important if they are to desist from crime in the future and reintegrate into the community. Such a transformation could be hindered if people did not have the chance to leave the past behind.[67] In their study on the effects

60 Lord Wilson disagreed with Lord Reed on the legality point but held that the disclosure of the private information could not be deemed necessary in a democratic society (at [50]). Lord Reed agreed with Lord Wilson on the necessity point (at [121]).

61 Part V of the Police Act 1997.

62 [2014] UKSC 35, at [114] per Lord Reed.

63 [2014] UKSC 35, at [119] per Lord Reed. On the likelihood of these offences being forgotten by others, see Lord Hope's remarks in R*(L) v Commissioner of Police of the Metropolis (Secretary of State for the Home Department intervening)* [2009] UKSC 3, at [27]: '[T]he systematic storing of this information in central records means that it is available for disclosure under Part V of the 1997 Act long after the event when everyone other than the person concerned is likely to have forgotten about it. As it recedes into the past, it becomes a part of the person's private life which must be respected'.

64 [2014] UKSC 35, at [132] per Lord Reed; [41] per Lord Wilson.

65 [2014] UKSC 35, at [41].

66 The terminology, 'external effects' and 'internal effects', as used in this paper, closely follows Adams et al.'s distinction between 'external effects' and 'internal processes'. See E.B. Adams, E.Y. Chen & R. Chapman, 'Erasing the Mark of a Criminal Past: Ex-offenders' Expectations and Experiences with Record Clearance' (2017) 19(1) *Punishment & Society* 23–52.

67 Adams, Chen & Chapman, 'Erasing the Mark of a Criminal Past: Ex-offenders' Expectations and Experiences with Record Clearance', at 44.

of expungement orders in the USA, Adams *et al* quote one of the study's participants who describes the effects of the order in the following way: '[e]ven though this is fixing the outside, …it's fixing the insides at the same time.'[68] Adams *et al* observe that while the opportunity to secure expungement 'was not necessarily the impetus for ex-offenders to change, …it facilitated [their] efforts to move on from their past mistakes.'[69] Above all, '[i]t strengthened their sense of hope and self-efficacy, and helped them cement their new prosocial self-identities.'[70]

Against this background, we might argue that effective rehabilitation requires that there is *external forgetting* (that the ex-offender's past is forgotten by others) but *also* that there is *internal forgetting* or an ordinary oblivion of the self (that the ex-offender comes to terms in some meaningful way with her own past and, in so doing, is able to make it a more peripheral part of her identity).[71] Both forms of forgetting are surely necessary for true rehabilitation and personal transformation. I will return to some of these themes later in the analysis. For now, I turn to the right to be forgotten in data protection law.

4 The Right to be Forgotten

Information technology has long been pervasive or ubiquitous and there are three distinct features of this socio-technological reality that are relevant to the analysis in this section of the paper.[72] First, modern technology provides the capacity to *monitor and track* through a system of 'dataveillance';[73] in other words, technology can extract, store and exchange information about our various interactions and transactions online. So, whenever we check in for a flight or purchase something online, this information forms part of a 'dynamic record' of our activities.[74] Second, technology affords opportunities to *aggregate* such

68 Adams, Chen & Chapman, 'Erasing the Mark of a Criminal Past: Ex-offenders' Expectations and Experiences with Record Clearance', at 23.

69 Adams, Chen & Chapman, 'Erasing the Mark of a Criminal Past: Ex-offenders' Expectations and Experiences with Record Clearance', at 40.

70 Adams, Chen & Chapman, 'Erasing the Mark of a Criminal Past: Ex-offenders' Expectations and Experiences with Record Clearance', at 40.

71 On the various narratives used by ex-offenders in coming to terms with their pasts, see S. Maruna, *Making Good: How Ex-Convicts Reform and Rebuild their Lives* (Washington, DC: American Psychological Association, 2001).

72 Here I draw on H. Nissenbaum, *Privacy in Context: Technology, Policy, and the Integrity of Social Life* (Stanford: Stanford University Press, 2010) 21–66.

73 Nissenbaum, *Privacy in Context*, 23 citing R. Clarke, 'Information Technology and Dataveillance' (1988) 31(5) *Communications of the ACM* 498.

74 Nissenbaum, *Privacy in Context*, 23.

information, which makes it easier to *analyse* it.[75] The third feature is that technology allows easy *dissemination and publication* of information, sometimes to our detriment.[76] Media reports of 'digital scarlet letters' (e.g. cases where people lose their jobs after posting 'inappropriate' material online) encapsulate the nature of this problem.[77] In some ways, then, users of social networking sites act as their own editors and publishers and their potential readership is the world-at-large.[78]

What emerges from this overview is that our connected world is fundamentally different to predigital society; it is a world in which 'digital dossiers' exist, best illustrated by considering the data trails we leave behind when using the Internet.[79] Thirty years ago, searching for a telephone number in the yellow pages did not create storable data in the same way that an online search for similar information does today. Similarly, browsing in a shop did not generate the sort of information trails we now associate with online shopping.[80] Taken together, as Mayer-Schönberger has put it, this data provides 'huge digital information treasures'.[81] Moreover, socio-technological developments have 'facilitated a culture of creation, bricolage, and sharing in which we have abandoned traditional forms of information control.'[82] The result is that we have 'little incentive to forget'.[83]

Whatever the economic benefits, ubiquitous information technology surely has profound implications for individual behaviour and psychological wellbeing. For, as Don DeLillo articulates in one of his novels, 'every advance in knowledge and technique is matched by a new kind of death, a new strain'.[84] What, as Berardi provocatively asks, 'emotional, psychological, and existential price does the constant stress of our permanent cognitive electrocution imply?'[85]

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75 Nissenbaum, *Privacy in Context*, 36 ff.

76 Nissenbaum, *Privacy in Context*, 59–60.

77 D.J. Solove, *The Future of Reputation: Gossip, Rumor, and Privacy on the Internet* (New Haven: Yale University Press, 2007), 76 ff.

78 D.L. Zimmerman, 'The "New" Privacy and the "Old": Is Applying the Tort Law of Privacy Like Putting High-Button Shoes on the Internet?' (2012) 17(2) *Communication Law and Policy* 107, at 122.

79 D.J. Solove, *The Digital Person: Technology and Privacy in the Information Age* (New York: New York University Press, 2006), 1–2.

80 On these examples, see P.L. Bellia, 'The Memory Gap in Surveillance Law' (2008) 75 *The University of Chicago Law Review* 137, at 149.

81 V. Mayer-Schönberger, *Delete: The Virtue of Forgetting in the Digital Age* (Princeton, NJ: Princeton University Press, 2009, 91.

82 Mayer-Schönberger, *Delete*, 91.

83 Mayer-Schönberger, *Delete*, 91.

84 D. DeLillo, *White Noise* (London: Picador, 1985), 150.

85 F. Berardi, *The Soul at Work: From Alienation to Autonomy* (tr. By F. Cadel & G. Mecchia) (South Pasadena, CA: Semiotext(e), 2009), 90.

It is to Berardi that we now turn, more specifically his masterful book, *The Soul at Work: From Alienation to Autonomy*, which pays close attention to the consequences of information and communication overload for the individual and society. Berardi argues that we are surrounded and being engulfed by the 'uninterrupted noise' of the ever expanding 'Infosphere'.[86] We are constantly barraged with information, twenty-four hours a day, but our brains are simply unable to grasp or handle the enormity of the Infosphere and the 'infinite excess of signs circulating [within it].'[87] Berardi summarises the consequences:

> 'There is chaos when the world starts spinning too fast for our mind to appreciate its forms and meaning. There is chaos once the flows are too intense for our capacity to elaborate emotionally. Overwhelmed by this velocity, the mind drifts towards panic, the uncontrolled subversion of psychic energies premise to a depressive deactivation.'[88]

The notion of panic, as a precursor to depression, forms a core part of Berardi's thesis in diagnosing the psychopathology of 'the first connective generation'.[89] Panic is what we feel when 'faced with the infinity of nature' – we become overwhelmed by the chaos of the outside world.[90] He sheds light on this psychopathology by reflecting on the etymology of the word. We learn that the word finds its roots in the Greek word *pan*, meaning 'everything existing' and, according to Greek mythology, those who were visited by the god Pan were left feeling overwhelmed by a devastating sense of panic.[91] Today, the Infosphere has taken the place of Pan. Berardi explains that this panic can be understood as 'an individual manifestation' of a broader 'social psychopathology induced by the Infosphere's excess, by the hyperstimulation and the endless cognitive stress affecting the social organism and caused by permanent electrocution.'[92]

For Berardi, the overwhelming chaos of the Infosphere is the 'alienation of our times'.[93] The psychopathology of the first connective generation cannot be attributed to repression as theorised by Freud, even if we were able to explain the psychopathologies of previous generations in this way; rather, on Berardi's account, today's

86 Berardi, *The Soul at Work*, 108 & 101. The concept of the 'infosphere' is an older idea, developed by Floridi. See L. Floridi, *Philosophy and Computing* (London: Routledge, 1999), 8. As for Berardi's understanding of it, he defines it elsewhere as 'the sphere of intentional signs that surround the sensible organism.' See F. Berardi, *And. Phenomenology of the End* (Helsinki: Aalto ARTS Books, 2014), 34.

87 Berardi, *The Soul at Work*, 178.

88 Berardi, *The Soul at Work*, 125.

89 Berardi, *The Soul at Work*, 179.

90 Berardi, *The Soul at Work*, 100.

91 Berardi, *The Soul at Work*, 100–101.

92 Berardi, *The Soul at Work*, 101–102.

93 Berardi, *The Soul at Work*, 108.

psychopathologies find their roots in *excess*, in particular the 'excess of visibility'.[94] We must understand our contemporary situation within the 'technological and anthropological context' of 'hyper-expressivity' or the '*just do it*'.[95]

Though Berardi does not address this specific point, it might plausibly be argued that a prominent aspect of this excess is 'excessive remembering',[96] which contributes to the psychopathology of panic in the way it hinders everyday forgetting or the ordinary oblivion of the self. The apparent durability of information online has led some scholars to highlight the Internet's 'architecture of perfect memory'.[97] The 'just do it' pathology fuels hyper expressivity and the sharing of all sorts of personal information online. But to the extent that such information remains readily accessible online, it can be difficult to leave the past behind. Perhaps worse still, as Mayer-Schönberger points out, 'digital remembering negates time' in the way pieces of information from the past can be patched together, almost instantaneously, in the present.[98] Not only is there a risk that the resulting profile may misrepresent who we now are to other people, it can also affect our own cognitive processes. 'By triggering recall of what we thought we had long forgotten', Mayer-Schönberger explains, 'digital remembering has the ability to confuse us with conflicting memories that may cloud our judgment.'[99] So understood, digital remembering has the potential to undermine normative agency.[100]

It is against this wider setting of hyper expressivity and excessive remembering that we turn to the right to be forgotten as a potential means to safeguard the breathing space for everyday forgetting or the ordinary oblivion of the self.[101]

The right to be forgotten or *droit à l'oubli* in data protection law seems to have first emerged as an organising idea during the 1970s.[102] However, it is only in recent years

94 Berardi, *The Soul at Work*, 179.

95 Berardi, *The Soul at Work*, 179–180.

96 P. Bernal, 'A Right to Delete' (2011) 2 *European Journal of Law and Technology*, available at: https://ejlt.org/index.php/ejlt/article/view/75 (last accessed 27th February 2025). See generally V. Mayer-Schönberger, *Delete*.

97 On the idea of 'perfect memory', see Bellia, 'The Memory Gap in Surveillance Law'. Cf. M. Leta Jones, *Ctrl+Z: The Right to be Forgotten* (New York: New York University Press, 2016), 103 ff.

98 Mayer-Schönberger, *Delete*, 113.

99 Mayer-Schönberger, *Delete*, 123.

100 For Griffin, normative agency is 'our capacity to choose and to pursue our conception of a worthwhile life.' See J. Griffin, *On Human Rights* (New York: Oxford University Press, 2008), 45.

101 I have previously discussed the role of the right to be forgotten in creating breathing space for forgetting in P. O'Callaghan, 'Enlightened Remembering and the Paradox of Forgetting'. On the relationship between the right to be forgotten and 'oblivion' more broadly understood, see chapter 4 of Pressly, the *Right to Oblivion*.

102 F. Benziger & P. O'Callaghan, 'The Right to be Forgotten and the Media', in N. Witzleb, D. Clifford & M. Richardson (eds) *Research Handbook on Privacy and Confidentiality in Media Law* (Cheltenham: Edward Elgar, 2026).

that the right has come to international prominence. The first major development was the 2014 decision of the Court of Justice of the European Union in *Google Spain*.[103] Interpreting Articles 12 and 14 of the Data Protection Directive 1995, the Court reached the conclusion that search engines were data controllers, which meant that data subjects had the right to request them to erase search results containing personal data that were inaccurate, incomplete, outdated, or no longer relevant. This decision garnered world-wide attention though it was often mischaracterised as a form of censorship. In this context, it is important to note that there is no automatic entitlement to delisting (it is a right to *request* delisting – the search engine will weigh public interest concerns when making its decision). Moreover, even if the applicant is successful in having search results delisted, it does not follow that the information is erased from the internet – rather in these sorts of cases what tends to happen is that the personal information in question remains on the source website.

The second major development was the introduction of a 'right to erasure' under Article 17 GDPR, which allows the erasure of personal data on distinct grounds.[104] In theory, a right to completely erase personal data is available to those data subjects who find that their data is on the internet. In practice, however, complete erasure of the data is unlikely for two reasons. First, when personal data circulates online, it may appear on very many websites, making complete erasure very difficult. Secondly, when the personal data appears in a media report, an official report or some other forum in which there is a public interest, the data subject should generally expect no more than the successful invocation of the right to request delisting. This is because national authorities and courts are loathe to interfere with the integrity of the public record.[105]

Though there are misconceptions about the nature and scope of the right to be forgotten, it remains a powerful tool in the context of safeguarding the breathing space for everyday forgetting or the ordinary oblivion of the self. The right provides the individual with the opportunity to request erasure or delisting of personal information, often of an embarrassing nature. When such information is erased or, at the very least when it is no longer easily accessible, there is both *external and internal forgetting*. On the one hand, it becomes more likely that others will forget about this information since it is no longer available at the click of a button.[106] On the other hand, there are internal effects – even if the individual is unable to forget (in the sense of not being able to remember), because she knows that the information in

103 Case C-131/12 *Google Spain SL and Google Inc. v Agencia Española de Protección de Datos (AEPD) and Mario Costeja González* (13 May 2014).

104 The grounds are set out in Article 17(1). The exceptions are set out in Article 17(3).

105 This would appear to be the consensus across Europe. Consider, however, the European Court of Human Rights' decision in *Hurbain v Belgium* (2023) (ECtHR, Application no. 57292/16) as a possible outlier.

106 See O'Callaghan, 'Enlightened Remembering and the Paradox of Forgetting'.

question is no longer easily accessible online, she may feel like she has been given the chance to move on from her past and 'melt into the shadows of obscurity'.[107]

5 Preserving the Opacity of the Inner Self

Laws on spent convictions and the right to be forgotten are two examples of laws that carve out breathing space for everyday forgetting or the ordinary oblivion of the self, which in turn contributes to the preservation of the opacity of the inner self. A helpful way to conceptualise this breathing space is to draw on the work of the privacy scholar, Julie Cohen. Cohen is interested in the increasingly seamless integration of technology with our lives, whether that takes the form of monitoring and surveillance or attempts to predict behaviour.[108] Against this background, she argues that 'regulatory and technical interventions' should aim to bring about 'semantic discontinuity', which is:

> 'the opposite of seamlessness: it is a function of interstitial complexity within the institutional and technical frameworks that define information rights and obligations and establish protocols for information collection, storage, processing, and exchange. Interstitial complexity permeates the fabric of our everyday, analog existence, where it typically goes unappreciated. Is function, however, is a vital one. It creates space for the semantic indeterminacy that is a vital and indispensable enabler of the play of everyday practice.'[109]

This idea has broad resonance because our lives are full of such complexity. The stories we tell, how we understand ourselves and others and, importantly, how and what we remember are all characterised by 'gaps and inconsistencies'.[110] We do not have a complete understanding of ourselves and the people with whom we interact nor do we remember the past with perfect precision. There are events and experiences which we have long forgotten or remember vaguely. Of those experiences we apparently remember, we cannot be sure that we remember them as they really happened, a fact that is neatly captured by the adage that our minds tend to 'play tricks' on us. This is especially true of attempts to remember past experiences which generated or continue to generate a significant emotional response. So understood, gaps and inconsistencies in what we know, what we experience and what we remember, contribute to the shaping of our very identities. Moreover, as Cohen explains, interstitial complexity is necessary for culture and society more generally:

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107 *Briscoe v. Reader's Digest Association*, 4 Cal. 3d 529, 539, 93 Cal. Rptr. 866, 873 (1971).

108 J.E. Cohen, *Configuring the Networked Self* (New Haven: Yale University Press, 2012), 239.

109 Cohen, *Configuring the Networked Self*, 239.

110 Cohen, *Configuring the Networked Self*, 224.

> 'Creativity, critical subjectivity, and everyday practice flourish in conditions of (partial) unpredictability, and humans require creativity, critical subjectivity, and everyday practice to flourish.'[111]

For Cohen, '[w]ith practices this foundational at stake, freedom can consist in privileging discontinuity for its own sake.'[112]

Laws on spent convictions and the right to be forgotten privilege discontinuity and thereby seek to maintain interstitial complexity. This is undoubtedly true of the external effects of such laws. In ensuring, for example, that one must no longer provide details of a past crime to a prospective employer or in ensuring that personal information is more difficult to find online, these laws attempt to reinstate and maintain interstitial complexity in the *forum externum*. But what about the *forum internum*?

There are two ways that laws on spent convictions and the right to be forgotten can reinstate and maintain interstitial complexity in the *forum internum*. The first means is where the breathing space induced by these laws may allow the individual to eventually forget the past experiences in question. The second means, drawing on Rapp, is where the breathing space allows the individual to push these past experiences to the margins of her inner self.

It may well be that in some cases where an individual has been afforded sufficient breathing space that she will simply forget the past experiences at issue. But as various studies have shown, forgetting is challenging, particularly when the memories concern traumatic experiences or experiences which generate other strong emotions.[113] This leaves us with the second means: pushing the past experiences to the margins of the inner self – the memories are still present but are more peripheral; in other words, they are no longer of such significance that they continue to detrimentally affect the individual in question. While the shifting of memories to the margins of the inner self may happen in a subconscious way, given the nature of the memories under discussion in this paper, it would seem more likely that initiating this process would have to be a deliberate choice.

In a previous essay, drawing on Dante's *Divine Comedy* and Shakespeare's *Macbeth*, among other sources, I depicted this process as a choice to engage in 'enlightened remembering', a deliberate choice to think differently about the past, to remember in a more constructive or enlightened way.[114] But this choice does not always need to be an enlightened one; sometimes it can be more pragmatic or

111 Cohen, *Configuring the Networked Self*, 241.
112 Cohen, *Configuring the Networked Self*, 241.
113 See D. Wegner and D. Schneider 'The White Bear Story' (2003) 14 (3/4) *Psychological Inquiry* 326.
114 O'Callaghan, 'Enlightened Remembering and the Paradox of Forgetting'.

instrumentalist in orientation. To illustrate this point, we now turn once again to Byron's *Manfred*.

As we have seen, Manfred cannot move on from a painful past. It haunts him, so much so that he sees no joy or hope in his present or future. He feels destined to dwell in his despair forever. But something remarkable happens towards the end of the play, explaining why Manfred is understood as a heroic figure. Rejecting the interventions of both the spirits who try to tempt him and an abbot who tries to save him, Manfred finds his own voice. Responding to the spirits, he says:

> 'Must Crimes be punished but by other Crimes?
> And greater Criminals? Back to thy hell! –
> Thou hast no power upon me – that I feel –
> Thou never shalt possess me – that I know –
> What I have done is done – I bear within
> A torture which could nothing gain from thine –
> The Mind which is immortal makes itself
> Requital for it's good or evil thoughts –
> Is it's own origin of Ill & End –
> And it's own place & time'[115]

Exasperated and exhausted from the torment and pain he has experienced, Manfred decides that he has suffered enough and reaches two conclusions about this plight. First, he accepts that he cannot change the past ('What I have done is done'), echoing Lady Macbeth's advice to her husband ('what's done, is done'), they themselves wracked with the guilt of their own misdeeds.[116] Secondly, he realises that the difficult situation in which he finds himself is partly his own doing, not just because he was the one who did this unspeakable thing, but because he has chosen to ruminate and agonise over it in an obsessive way (his mind is 'it's own origin of Ill & End – And it's own place & time'). The nod to Milton's *Paradise Lost* is obvious. Milton's Satan says:

> 'The mind is its own place, and in it self
> Can make a Heav'n of Hell, a Hell of Heav'n.'[117]

Emboldened by these insights, Manfred releases himself from his self-made prison of torment and despair. Surprisingly perhaps, Manfred then dies; but he dies on his own terms, unbeholden to the spirits, the abbot and, most importantly, his past. Though

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115 Byron, *Manfred*, Act III, Scene IV, 123–132.

116 *MacBeth*, Act III, Scene II, 14.

117 John Milton, *Paradise Lost*, Book 1, 254-255. Scholars regularly note this similarity. See, for example, Cochran, *Manfred: An Edition of Byron's Manuscripts and a Collection of Essays*, 122, fn. 193.

there are significant differences, not least in how they end, in some ways, Manfred's journey reminds us of Dante's – Manfred descends to the very depths of hell before he can find peace within himself. Sperry describes Manfred's final moments in the following terms:

> 'Manfred's lines ring with a kind of lonely heroism. They suggest a man who, confronting the reality of his own misdeeds, has found it in his heart, if not to absolve, at least to release himself, a man who has achieved liberation not by self-repudiation but by going to the bottom of the night of his own experience and somehow reemerging on the other side.'[118]

Sperry also draws our attention to the stage direction Byron provides at this point in the play: 'The Demons disappear', underscoring once again that Manfred has finally overcome his past.[119]

Perhaps because he dies at the end, Manfred's journey does not provide the reader with the same comfort and solace that Dante provides. So understood, it feels more difficult to describe Manfred's engagement with his past as an example of enlightened remembering. Enlightened remembering has a more positive ring to it; it is about coming to terms with the past and retelling it in a more constructive way with the hope of a better future. By contrast, Manfred's attitude is borne from exasperation and desperation, at least in part, and seems more pragmatic and instrumentalist, if anything. Yet, what enlightened remembering and Manfred's approach both have in common is that they succeed in bringing about everyday forgetting or an ordinary oblivion of the self; both push the past to the margins of the inner self, ensuring that it no longer has the same hold over us, becoming more peripheral to our identities.

Laws such as those on spent convictions and the right to be forgotten have external effects in that they encourage forgetting on the part of the community. At the same time, they have internal effects: whether we end up forgetting (in the sense of not being able to remember) or remembering the past in an enlightened way or, indeed, whether we take Manfred's more pragmatic route and decide we have simply had enough in ruminating on the past, what is important about these laws is that they provide us with the breathing space to achieve these end results. In this way, they contribute in a significant way to the preservation of the opacity of the inner self. This is because these laws, to borrow Cohen's terminology again, privilege discontinuity rather than seamlessness and therefore seek to reinstate and maintain interstitial complexity in both the *forum externum* and *forum internum*. In Novalis' terms, we

118 Stuart M. Sperry, 'Bryon and the Meaning of "Manfred"' (1974) 16(3) *Criticism* 189–202, 201.
119 Sperry, 'Bryon and the Meaning of "Manfred"', 201.

are mysterious beings who do not know and perhaps can never know the depths of our inner selves. Laws on spent convictions and the right to be forgotten not only acknowledge but also place value on our enigmatic nature as complex, impenetrable and indefinable beings.[120]

6 Conclusions

In this paper, I have argued that law plays an important role in preserving the opacity of inner self. For the purposes of this paper, rather than attempt to analyse the *problématique* of the inner self in a comprehensive way, I have focussed on one aspect of it as an exemplar: oblivion as a feature of memory. In doing so, I have paid close attention to the idea of everyday forgetting or the ordinary oblivion of the self. Using this exemplar, I drew on works of literature and philosophy, discussing how the opacity of the inner self is an essential part of our humanness. Building on this discussion, I then worked with the case studies of laws on spent convictions and the right to be forgotten to demonstrate how law provides breathing space for everyday forgetting, thus contributing in a meaningful way to the preservation of the opacity of the inner self.

While the focus of this paper was on how law can provide breathing space for everyday forgetting, it is worth noting in these conclusions that there are other ways that law can preserve the opacity of the inner self. Consider, for example, the problems of 'surveillance capitalism',[121] the power and lack of transparency of algorithmic processes,[122] or technological innovations in neuroscience that can more accurately interpret and influence mental processes.[123] Whether, to name just some legal mechanisms, we draw on tort law, data protection remedies and regulation or human rights such as the right to freedom of thought or the right to mental integrity, in each of these cases, there are ways to use law as a sword and/or a shield in seeking

120 I am returning here once again to Murdoch's understanding of the person as set out in this paper's introduction.

121 S. Zuboff, *The Age of Surveillance Capitalism: The Fight for a Human Future at the New Frontier of Power* (London: Profile Books, 2019).

122 See, for example, M. Brkan, 'Do Algorithms Rule the World? Algorithmic Decision-Making and Data Protection in the Framework of the GDPR and Beyond' (2019) 27(2) *International Journal of Law and Information Technology* 91–121.

123 See generally P. O'Callaghan & B. Shiner (eds) *The Cambridge Handbook of the Right to Freedom of Thought* (Cambridge: Cambridge University Press, 2025). See also T. Deibel, 'Demarcation Problems in Law and Neurotechnology: Persons, Cyborgs and Neurohackers' (2025) 39(3) *International Review of Law, Computers & Technology* 406–425.

to preserve the impenetrability and indefinability of the inner self.[124] In the face of current and emerging socio-technological developments, then, we can argue that law and regulation have a key role to play in preserving the opacity of the inner self and, by extension, our very humanness.

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124 In this context see the work of the Law and the Inner Self Project: https://www.lawinnerself.org/ (last accessed 6th March 2025).