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Decisions at the data border: discretion, discernment and security

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Abstract:	<p>Amidst a widespread turn to data analysis and automated screening in security contexts, the question of how decisions are made at the interface of embodied humans and algorithmic processes becomes pressing. This paper is concerned with the production of security decisions at the data border. It makes two contributions. First, it presents qualitative fieldwork amongst data processors at a European smart border targeting centre and, second, it traces a largely obscured cultural history of discretion as means of reflecting on the politics of contemporary data-led decision-making. Discretion is an important concept in contemporary administrative contexts, referring to a decision about the (non)application of a rule in contexts of public power and authority. Its etymon, <i>discretio</i>, however, referred historically to spiritual and visual discernment, as well as prudence and humility. I present the history of discretion to make two arguments: 1) decision-making at the data border is an uncertain visual practice oriented to seeing and authorising what is there and 2) discretion in contemporary data-led contexts revises the conventional ethical relationship between general and particular that has always been intrinsic to discretion. My overall point is that contemporary debates about judgement in automated security decisions are the most recent manifestation of long-standing tensions between rule and judgement, authorisation and uncertainty.</p>

Decisions at the data border: discretion, discernment and security

Abstract

Amidst a widespread turn to data analysis and automated screening in security contexts, the question of how decisions are made at the interface of embodied humans and algorithmic processes becomes pressing. This paper is concerned with the production of security decisions at the data border. It makes two contributions. First, it presents qualitative fieldwork amongst data processors at a European smart border targeting centre and, second, it traces a largely obscured cultural history of discretion as means of reflecting on the politics of contemporary data-led decision-making. Discretion is an important concept in contemporary administrative contexts, referring to a decision about the (non)application of a rule in contexts of public power and authority. Its etymon, *discretio*, however, referred historically to spiritual and visual discernment, as well as prudence and humility. I present the history of discretion to make two arguments: 1) decision-making at the data border is an uncertain *visual* practice oriented to *seeing and authorising what is there* and 2) discretion in contemporary data-led contexts revises the conventional ethical relationship between general and particular that has always been intrinsic to discretion. My overall point is that contemporary debates about judgement in automated security decisions are the most recent manifestation of long-standing tensions between rule and judgement, authorisation and uncertainty.

Introduction

Data analysis appears to solve a key problem of contemporary border security: how best to target risky people while expediting licit flows? Border screening programmes (such as Passenger Name Record systems in Europe and the United States Automated Targeting System) subject passenger data to matching and profiling techniques in order to pre-check and risk score travellers. The turn to data in border security has fuelled interdisciplinary debate about the wider politics of pre-emption and governing by risk (Amoore 2013; Amoore and de Goede 2008) and has also raised concerns about discrimination, privacy and data protection (see, for instance, Korff 2015). A prominent question within the burgeoning literature is how, precisely, decisions about immigration and security are authorised. One response has been to reconsider the work of immigration, customs and border security agents. These agents are understood to exercise considerable discretionary power in the (non)enforcement of law and policy, and their everyday decisions have been widely construed as performing and constituting the contemporary border (Heyman 2009; Makaremi 2010; Pratt 2005; Hall 2012). New technologies, however, are reconfiguring border agents' work. More specifically, when data-led screening and risk profiling at the border appear to automate decisions about who to stop, question, and investigate, there are complex shifts in the enactment and meaning of discretion (see Côté-Boucher 2016; Kalman 2015).

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3 This paper focuses on discretion at the contemporary data border. I am concerned with the
4 way in which algorithmic analyses are transforming ‘the decision’ in immigration and
5 security controls. I build on recent studies that have described border security as practice
6 (see Côté-Boucher et al 2014), and I also draw from the wider interdisciplinary literature on
7 data and technologies in public life. Key within this wider literature is the idea that
8 algorithms have a growing (but little understood) power in contemporary social, cultural,
9 political and economic life (e.g. Steiner 2012, Ziewitz 2015). Prominent also is the post-
10 human understanding of human activity to be fully entangled with technologies of all kinds,
11 with ramifications for conventional ideas of decision, accountability, even liability. This is
12 particularly important, given the ubiquitous invocation by border security authorities of
13 what Hayles (1999) terms the ‘liberal humanist subject’ - whose decisions and actions are
14 wholly separable from technological systems. So, for instance, the US Automated Targeting
15 System is defended because (it is claimed) it is a “decision-support tool” that “enables
16 decisions” that are “better informed” but it is still a human who decides (Heyman 2011).
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20 I agree with Aradau and Blanke (2015: 5) when they note a depoliticizing tendency in the
21 authorities’ insistence on the strong separation of humans and technologies in the governing
22 of security, and the tendency of critical social science to downplay the “division of labour
23 between humans and computers” (ibid.) in the rise of digital technologies. My approach is
24 one that takes seriously the performative power of technological processes, but which resists
25 re-instating (or making redundant) the human, or resorting to techno-determinism. First, I
26 present qualitative fieldwork among data processors in a European border targeting centre
27 who are responsible for checking automated security matches. My concern is to understand
28 the production of decisions at the smart border: How are subjects of interest identified and
29 eliminated? How are algorithmic processes authorised at the interface of embodied humans
30 and algorithmic processes? What *is* the division of labour at this particular security site?
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34 Second, I seek to gain critical traction on the contemporary politics of data and border
35 security via an expanded consideration of discretion. Discretion is a central concept in law
36 and policy, referring in our times to a decision about the (non)application of a rule in
37 contexts of public power. It combines meanings of authority and freedom to decide (there
38 are also secondary connotations of confidentiality and secrecy). Discretion is, inevitably,
39 bound up with Hayles’ liberal humanist subject (1999: 287) – with spaces of apparent
40 freedom and choice in the modern rule-bound bureaucratic administration of law and
41 policy. Discretion, however, has a complex history. Literatures in the humanities and arts
42 collectively document a tangled cultural genealogy in western thought, and it is to this
43 genealogy that I turn. Discretion, it transpires, shares a history with *discernment*. Both have
44 their roots in the Greek term *diakrisis*, and its Latin translation, *discretio*, which originally
45 meant separation or discrimination, as well as judgement (Rich 2007: xxiv). It is not entirely
46 new to note that discretion and discernment have a common history (see, for instance,
47 Kleinig 1996: 82) and in one sense it is somewhat obvious – their modern meanings clearly
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3 overlap in the idea of exercising good judgement, for instance. What has been underplayed,
4 however, is how *discretio* has historically been a site for exploring ambiguities regarding the
5 human senses, particularly vision, and the difficulty of judging truth in uncertain contexts.
6 Restoring historical depth to the idea of discretion will allow me to argue that contemporary
7 debates about algorithms, judgement and security decisions are not wholly novel. They are,
8 instead, the most recent manifestation of long-standing tensions between rule and
9 judgement, deference and freedom, authorisation and uncertainty.

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13 The discussion proceeds in four parts. First, I briefly outline the 'problem' of discretion, and
14 introduce the data targeting centre where I conducted fieldwork. Second, I present a brief
15 history of *discretio spirituum*, discernment of spirits, which was for centuries a key problem
16 in Christian theology. Put briefly, *discretio* (from which our modern discretion comes)
17 referred to the ability to distinguish true and false spiritual visions. However, *seeing what is*
18 *there* and *authorising the visual* were rife with problems. I will indicate how these issues
19 unfolded, became lodged within modern ideas about discretion and describe the
20 implications for contemporary data-led security decisions. Third, I chart the shifting
21 historical relationship between *discretio* and the rule, drawing on Foucault and Agamben.
22 Modern thought, Daston (2017) argues, tends to "oppose rules to some other elusive
23 desideratum, such as interpretation, judgment, creativity, discretion, or simple common
24 sense", but rules were not always imagined as opposed to discretion. While the
25 contemporary concern with the reach of algorithmic rules is quite specific to our times, the
26 search for a rule through which truth might be discerned is not. Finally, I conclude by
27 demonstrating how the contemporary politics of border targeting can be illuminated by
28 viewing automated processes as a particular resolution to the gap between what we think
29 we see and know – features that have long been part of the history of discretion.

30 31 32 33 34 35 36 37 38 39 40 **Discretion and the data border**

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42 The European smart border targeting centre where my fieldwork took place is an open-plan
43 multi-agency centre including police, immigration and customs staff. It operates 24 hours a
44 day, 365 days of the year. The centre's remit is to screen passenger data from airlines and to
45 alert ports of entry about subjects of interest. I interviewed 25 processors who work with
46 automated systems and the immigration, police and security databases. These systems use
47 algorithms to match travellers to immigration, terrorist and criminal watchlists, using
48 personal identity information from passports and visas (what is known as advance
49 passenger information, API). The interviews I conducted were voluntary and took place
50 during work time within the centre. All interviewees were guaranteed anonymity, and it
51 was a criterion of my fieldwork that the centre's identity was protected. Participant
52 observation was precluded because of the sensitive security context. Interviews were
53 informal and loosely structured, with participants being invited to discuss their experience
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3 of work with the automated systems and of decision making around the matches. The work
4 of the basic level processor as they described it is this: he or she accesses a list of potential
5 watchlist 'hits' generated by the system. The processor must decide whether the passenger
6 *en route* is genuinely a match for the watchlist subject, by referring to visa, passport and
7 other data as necessary. If the hit is verified, the relevant data is checked by a senior
8 colleague and if the passenger is positively identified as a watchlist match, an alert is issued
9 to the frontline authorities.

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13 The watchlist matching is coupled with what processors referred to as rules-based targeting,
14 largely based on Passenger Name Record (PNR) data. The PNR is a commercial dataset
15 generated by the airline industry. It may include credit card and ticketing details, travel
16 agent information, frequent flyer data, email addresses, travel companions and itineraries.
17 Whereas the API matches, put simply, are concerned with identifying *known* suspects before
18 they travel (Is this passenger wanted by the police? Is she on a terrorist watchlist?), rules-
19 based targeting identifies potentially risky subjects not yet known to the authorities.
20 According to the security authorities, PNR contains data from which 'aspects of the
21 passenger's history, conduct and behaviour can be deduced' (House of Lords 2007: 9). New
22 passenger data is run against established risk profiles (e.g. common drug trafficking routes,
23 indicators associated with human trafficking) to reveal new subjects of interest. In these
24 cases, the data processor must similarly verify and refer onwards the automated matches.

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26 For its advocates, data matching and targeting uses incontrovertible digital traces (credit
27 card transactions, travel histories) to target threat rather than potentially discriminatory
28 profiles or subjective judgements based on appearance or background. The apparent
29 objectivity of data as a means of targeting passengers was often noted by the processors:

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37 I think the use of data and watch lists is being used to objectify the decision making
38 process for the very good reason that, certainly from an immigration point of view,
39 decisions which are subjective or arbitrary or capricious or are inconsistent are not
40 something that we should be paying civil servants to take. In a democracy we
41 shouldn't be having officials taking contradictory, capricious, or skewed decisions.
42 So there is a kind of a cross-party desire to objectify the decision making process
43 [and] databases are absolutely ideal (Interview 1)

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47 However, the processors simultaneously saw their 'judgement calls' about matches to be
48 important.

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51 Well, it [targeting] can only be used to support human decisions. I don't think you
52 can say well, I don't like the look of this passenger's travel history just from the data.
53 Why is he flying Nairobi to London, London to Dubai on a regular basis? Why isn't
54 he going Nairobi-Dubai, what's he up to? The guy could say, well I've got very
55 narrow margins, it's cheaper to do it that way. Erm, it [data] can only be used to
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3 support a decision I think, and if you rely on data too much, to the exclusion of the
4 human element, you're going to be in a bit of trouble (Interview 2).
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7 The processors, then, held an ambivalent view of their decision-making. This ambivalence
8 emerged during the interviews, during which many people complained about the centre's
9 strict organisational hierarchies and the protocols surrounding the data. More specifically,
10 processors who had previously worked as frontline immigration or customs officers often
11 noted a lack of discretionary power in their work with the data: "you're not making life and
12 death decisions [here], you're not deciding, do we detain that person, do we refuse them
13 leave to enter?" (Interview 3). As one woman put it:
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17 There would be circumstances [in my previous role], where you could use your own
18 discretion... [There were times when] I've not detained somebody and I gave them
19 the option to go and remove themselves, so to speak. That's a judgement call you
20 make at the time (Interview 4)
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23 In contrast to "life or death" discretionary decisions of conventional border work, processors
24 understood their choices about automated hits to be part of an assemblage of security, where
25 the generation of immigration or security alerts emerged from dispersed decision-making
26 across various technological and human interventions. One of the senior processors told me
27 that junior colleagues "shouldn't actually be taking decisions at all. I think the level of
28 discretion is right for each grade" (Interview 5). Basic-level analysts were supposed to pass
29 potential hits to senior processors for review. The senior processor, in turn, would pass the
30 alert on to the port authorities:
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35 They [frontline authorities] decide whether the information that we've given them
36 warrants further investigation. So, even as a [senior processor], I'm not making a
37 decision, I'm giving somebody else [my] decision for them to make a decision. I'm
38 setting that out to make someone else make a further decision (Interview 6)
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41 What is clear from the interviews is that the data processors' understanding of 'true'
42 discretion – as potentially arbitrary yet necessary, as a choice about the (non)invocation of a
43 rule or law, as an individualised "judgement call" – mirrors almost exactly the conventional
44 account.
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47 Discretion, put simply, is "when an official is empowered to exercise public authority and
48 afforded scope to decide how that authority should be exercised in particular
49 circumstances" (Pratt and Sossin 2009: 301). Discretion refers to the exercise of good
50 judgement, and to the authority of public officials (granted through position and expertise)
51 to (not) apply a rule or policy (Kleinig 1996: 82 LaFave 2006). Discretion is considered
52 inevitable within legal and administrative contexts because the contextual application of
53 legal or policy rules is a "process by which abstraction becomes actuality" (Hawkins 1992:
54 11). It is the combination of authority and the freedom to interpret that makes discretion "a
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3 political issue, not simply a legal one" (Pratt and Sossin 2009). The large interdisciplinary
4 literature on the subject attests to the idea that it is via the discretionary decisions of public
5 officials (from immigration officers to judges) that any legal or administrative system
6 distributes its burdens and benefits (Gelsthorpe and Padfield 2003: 1; see also Pratt 2005;
7 Lipsky 1980).
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11 Moreover, this literature conventionally posits that (legal or policy) rules and discretion are
12 distinct, negatively-correlated entities (Pratt 2005: 54-5). There are several ideas contained
13 within this 'zero-sum' account. First, that law is the primary instrument of social regulation,
14 with discretion as a residual "space between legal rules" where actors make choices (Pratt
15 2005: 53). Second, that discretion is exercised by essentially free, rational and autonomous
16 decision-makers, although of course these decision-makers are influenced by many political,
17 economic, social and organisational forces (Hawkins 1993: 15, 38). These pervasive
18 assumptions cast discretion as both a problem and a solution. On one hand, discretion
19 appears subjective and arbitrary – the antithesis of the liberal rule of law – raising concerns
20 about inconsistency and injustice (Pratt 2005: 69-70). On the other hand, discretion is viewed
21 as an ethical and 'humanising' device allowing the abstract rules of law and policy to be
22 justly applied to individual cases (see Sossin 1994).
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28 Discretion has been considered particularly problematic at borders. If "border policing
29 facilitates potent forms of exclusion and generally does so without accountability
30 mechanisms" it is largely because border agents are understood to wield significant
31 discretionary powers (Côté-Boucher 2016: 50). In this sense, the decisions of border agents
32 epitomise discretion as the lawless "space between rules" (Hawkins 1992: 11). Heyman
33 (2009: 367), however, argues that discretion should not be seen as a "formless domain of
34 uncontrolled action but, rather, an analysable domain of patterned actions"; discretion is an
35 important form of "non-action" (Heyman 2009). Moreover, studies of wider law
36 enforcement contexts have demonstrated the multiplicity of "rules" within police work, and
37 how they are selectively deployed (or ignored) to "creatively to accomplish desired
38 outcomes" (Ericson 2007: 394). Studies like these go some way to troubling any binary
39 opposition between rule and discretion. Moreover, recent work has highlighted the way that
40 border technologies are curtailing traditional discretionary practices (Côté-Boucher 2016)
41 but also facilitating their creative reframing (Kalman 2015).
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48 In the discussion that follows, I see discretion as neither the opposite of rule, nor the space
49 where rational individuals exercise judgement already constituted. I follow Pratt (2005), who
50 argues that we should interrogate the idea of discretion as 'law's rival' within the discourse
51 of liberal legality. If, after Foucault, liberalism is a political rationality, a broad historical
52 discourse that "rationalises and systematises specific governmental programmes and
53 policies for the ordering of social life in particular historically specific ways" (Pratt 2005: 15),
54 then liberal legality is a "metanarrative" that construes law in terms of universal principles
55 grounded in reason. The rule of law, in this line of thinking, is one of many intersecting
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3 modes of regulation within the “conduct of conduct” (Foucault 1982). Administrative
4 discretion is a governmental technology that carves out a domain of freedom to
5 accommodate the contradiction between universality and particularity within liberal law
6 (Pratt 2005: 16). Discretion is a means of governing itself, materialising within historically
7 specific discursive formations. The question becomes – and this is important for the
8 subsequent discussion – how do rule and discretion mutually constitute one another within
9 a situated decision, and with what effects?
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13 When some ex-immigration officers at the targeting centre described a lack of discretion in
14 their new work, they were doubtless noting what Côté-Boucher (2016: 64) describes as the
15 “shift in the distribution of decision-making capabilities in border policing” brought by
16 technological change. Nonetheless, all the processors spoke in their interviews about using
17 their intuition, experience and knowledge to eliminate matches or ‘enrich’ the hits in their
18 everyday work with the data and automated system:
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22 I had one today, Mohammed Ali, born 1990, born the 1/1. But you get loads of
23 Somalians, you see hoards of them 1/1. They’re not worried about birthdays, like we
24 do, so they just get categorised by the year. So I had one this morning where it was a
25 Mohammed Ali born 1/1/1990. And the person on the watchlist was Afghan, and the
26 person on the flight to Northern Iraq has the same name and the same birthday. But I
27 knew it wasn’t the same person because I knew that an Afghan wouldn’t want to go
28 to Northern Iraq, so I discounted it because it was a name like Mohammed, with a
29 DOB – there are literally thousands of them. So I took the decision that it wasn’t the
30 same person (Interview 7)
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36 The point here is that the processors’ work with the automated matches always involves a
37 specific judgement – and this is discretion. These discretionary judgements, and their
38 relationship to the algorithmic rules through which security and immigration are
39 increasingly being governed, warrant close attention. The application of intuition and
40 knowledge to eliminate or verify a match exceeds the idea of an agent who assumes that
41 “automated decision making systems are infallible” (Korff 2015: 29). My fieldwork also
42 troubles the idea of the sovereign human agent whose decisions are simply enabled by the
43 technologies. In the next section, I develop the idea of discretion as *discernment* to argue that
44 automated security practice and its discretionary moments are profoundly visual, concerned
45 with *seeing what is there*, or, more specifically, *authorising the visual*. These two issues, it
46 transpires, have always historically animated accounts of discretion.
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52 53 **Authorising the visual**

54 55 **The tradition of *discretio spirituum***

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3 Discretion has several meanings. First, it is the power or authority to decide (in law, for
4 instance), as well as the freedom to decide according to one's will. This sense is separated
5 from a second, the faculty of discernment and discrimination, and, third, the action of
6 discerning or judging¹. The etymon of all of these senses is the Latin *discretio*. *Discretio* was
7 the translation of the Greek *diakrisis* (from *diakrino*), meaning to separate or distinguish, as
8 well as to settle, decide or judge (Liddell and Scott 1929: 162). The early western Christian
9 use of *discretio* was influenced by NeoPlatonic ideas about *diakrisis* as judgement, but it was
10 the specific Biblical use of *diakrisis* which exerted the most formative influence on the
11 development of *discretio* as a concept. In Corinthians, St Paul used *diakrisis* (translated as
12 *discretio*) to warn about Satan's power to disguise himself as an "angel of light". An angelic
13 apparition, Paul warned, could actually be a visitation from the Devil, and good Christians
14 thus had to separate – to discern – spiritual visions. In other words, post-classical Latin
15 equated *discretio* with discernment as a spiritual and *visual faculty*. The subsequent tradition
16 of *discretio spirituum* (discernment of spirits) elaborated this idea, combining new religious
17 concerns with the much older questions of Greek *diakrisis*. As Foucault argues, *discretio* was
18 where these ancient questions were "reinserted, reactivated, and taken up again in
19 Christianity" (2014: 258) in a way that was to have lasting influence over western thought.

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22 In the earliest ascetical Christian writings in the third and fourth centuries, then, *discretio*
23 cautioned about the discrepancy between truth and appearance, or put differently, the
24 danger that good and evil might appear exactly the same (Copeland and Machielsen 2013:
25 2-3). *Discretio spirituum* warned about the terrible power of the devil, but also asserted the
26 visual as a site where divine truth could manifest itself. The visual element of *discretio* was
27 prominent throughout the medieval period, when the concern was how to *authorise the*
28 *visions* that appeared wholly real to the seer, but might be inauthentic. The work of Jean
29 Gerson is emblematic of this era. In 1401, Gerson, then Chancellor of the University of Paris,
30 wrote a famous treatise on spiritual discernment (Anderson 2011). He eschewed "proofs that
31 could be tested by the senses of others" such as miracles or independently verifiable signs
32 (Christian 1981: 192-3). Instead, he placed importance on the seers' virtues, character and
33 emotions, which were interpreted as moral or divine indicators (Christian 1981: 201).
34 Problematically, however, Gerson understood virtues to be in practice indistinguishable
35 from their vices (the virtue of patience could be obstinacy in disguise, for instance). His
36 ultimate argument was that discernment was a matter of faith, not reason, and had to rely
37 on experience and intuition, specifically that of Church authorities (Ossa-Richardson 2013:
38 236). No rule could ever definitively distinguish truth and falsity.

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41 The medieval *discretio* tradition settled uneasily on moral and affective tests of authenticity,
42 but never questioned the visual manifestation *per se*. In the European Renaissance, however,
43 *discretio spirituum* became part of wider debates about the fallibility of vision. The
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57 ¹ These three meanings are distinguished from discreet, and the senses related to being discrete (or
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3 development of linear one-point perspective is generally thought to have established a
4 rational, logical basis for vision that permeated multiple fields of enquiry (Berger 1972; Jay
5 1994). However, Clark (2007) argues that Renaissance and early modern vision was actually
6 highly insecure. Illness or madness, for instance, could make people see non-existent things,
7 and popular theatrical optical trickery exposed the fallibility of human sight. Discussions
8 about *discretio* reflected this insecurity. If visions, argues Clark (2003: 146-7), “included real
9 appearances with a false content and false appearances that were altogether imaginary” –
10 then they were no longer simply theological puzzles, but “visual puzzles” too (Clark 2003:
11 146-7). So, as well as featuring prominently in battles between Catholicism and the
12 Protestant reformers in this period, *discretio* was one of many areas – the arts, new optical
13 sciences – where a culturally-grounded visual relativity was invoked (Clark 2007: 228).

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15 By the sixteenth and seventeenth century, the visual problems that had previously been
16 encompassed by the *discretio* tradition – Can we trust what we see? Who (with reference to
17 what rules) can authorise the visual? – became the problems of an increasingly secular
18 philosophy. Hobbes, for instance, dismissed apparitions as confusion about the nature of
19 appearance or elements of “daemonological religions” (Clark 2007: 221). Descartes, too, was
20 troubled by the deceptiveness of the senses. His elevation of reason as the foundation for
21 judgement and authorising the visual was partly a response to his belief that we cannot trust
22 our senses until the existence of a non-deceiving God has been established. But if reason
23 proves the existence of God, sensory evidence is safeguarded because we can correct errors
24 ourselves (Ossa-Richardson 2013). In short, the new theories of sensation offered by Hobbes,
25 Descartes and others in the early modern period made apparitions the subject of mainstream
26 philosophical accounts of “appearance” (Clark 2007: 222). *Discretio spirituum* remained a
27 theological issue, as it is today, but the problems of “the reliability of private experience and
28 private judgment” (Ossa-Richardson 2013: 235) became encompassed by new secular ideas.
29 Vision, aided by new technologies and increasingly free of its sacred functions, became the
30 dominant (albeit troubled) sense of the modern (Jay 1994: 45).

31 32 33 34 35 36 37 38 39 40 41 42 43 44 *Discernment and security: seeing what is there*

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46 It is impossible to do justice to the complex *discretio* literature in this context. I offer the
47 summary as a means of making two points. First, the historical view of *discretio* as a
48 visual/spiritual issue problematizes the ‘discovery’ of discretion in the mid-twentieth
49 century (Walker 1993: 6). To be clear, the issues with which discretion is associated in
50 contemporary times – applying a legal or policy rule in ambiguous contexts – are obviously
51 specific to the modern bureaucratic administration of law and policy. There are no
52 straightforward historical comparisons. I am making the case, however, for the legal and
53 bureaucratic connotation – which in our times has at its centre the judgement of a reasonable
54 liberal subject – to re-admit the wider historical senses from which it emerged.

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3 *Diakrisis/discretio* historically expressed a choice between alternatives, the ability to
4 distinguish and discern matters (Rich 2007: 11). Discretion as an activity of judgement was
5 and is, in part, a visual problem related to the (literal and metaphorical) difficulty of *seeing*
6 *what is there*. Second, *discretio* as discernment refers to the specific desire, within the
7 ocularcentric history of the west, to authorise visual truth amidst the “specious comings and
8 goings of sensory particulars” (Ossa-Richardson 2013: 256). Put simply, *discretio* named not a
9 decisive resolution via the judicious (non)application of a rule. Instead, *discretio*
10 acknowledged the difficult, provisional nature of any decision.

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15 What, then, might we learn by viewing contemporary decisions at the data border in light of
16 this history of discretion? What if border security practice were not construed in terms of
17 automated rules-based risk scoring followed by “rapid and accurate decisions in real time”
18 (SAS Analytics 2015), but as an ambiguous *visual* practice oriented towards an uncertain
19 future? At the border targeting centre, the analysis of data was understood in visual terms:

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23 [I]f you've ever seen a Nigerian passport with a five-year multi-entry visit visa in, it's
24 just been concertina stapled together with all the previous Nigerian passports... Even
25 a trained immigration officer's going to find it really difficult to work out the travel
26 history from passports with countries that stamp in and out, from countries that only
27 stamp in, from countries that only stamp out. You get all the data on the screen and
28 when does somebody with a very good travel history become somebody with a
29 travel history that's really too frequent? Looking at data like that, you will be able at
30 some point to realise, hang on, this guy with a visit visa is spending the majority of
31 time in this country, they're not a visitor at all! (Interview 1)

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36 Getting the “data on the screen”, then, offered an augmented view of the passenger that
37 humans would find impossible. The software developers promise precisely this – the
38 collation of “massive amounts of data for a single view of all available relevant information”
39 (SAS Analytics 2015). This single view – exposing a travel history, a ‘hit’ against indicators
40 with numeric score – is a visualisation of threat attuned to the problem that has haunted the
41 post-9/11 security terrain: the terrorist travelling as an innocuous passenger citizen. The data
42 promises to see what is *really* there, giving an authoritative visualisation of the subject to
43 enable “instant and confident” judgements in situations where “public security and safety
44 needs to be balanced against convenience and cost” (SAS Analytics 2015: 5).

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49 Data analysis in this sense occupies the space between appearance and truth (the space that
50 previous accounts of *discretio* acknowledged openly) by associating digital traces – a credit
51 card transaction, unchecked baggage, a distinctive journey. In this way, the analytics, argue
52 Amore and Piotukh (2015: 343-4), make data intelligible (and actionable) in a way that
53 fundamentally alters human capacities to make sense of the world. They are *instruments of*
54 *perception*, shaping what can be “perceived, known and acted upon” (ibid.: 344). So, in the
55 border targeting centre, the visual field of security is narrowed to a particular set of screened
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3 hits, with everything else falling away. This is the troubling point: seeing what is there and
4 authorising the truth of a subject appears to be devolved to the algorithm, with the occlusion
5 of prejudices within “objective” data analysis (Korff 2015).
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8 Against the history of *discretio*, however, we can read the analysis of data is a desire for
9 certainty via the application of an authoritative rule – a desire that is as fierce, and as
10 impossible, as the one embodied in the medieval *discretio* debates. Important here is Amore
11 and Piotukh’s (2015: 361) argument that analytics produce the “imagination of an infallible
12 world”. The political difficulty of the decision – its structure and uncertainty – is obscured
13 by the analytics’ promise to make visible “all human propensities” and render tractable the
14 most “turbulent of situations” (ibid.: 361). The responsible decision, in Derrida’s (1994: 39-
15 40) terms – one that must advance towards a future “which cannot be anticipated” – is
16 replaced by “the mechanical application of a rule”. Algorithmic analysis *authorises the visual*
17 in a way that appears to “resolv[e] through knowledge” (Derrida 1994: 37) the difficulties of
18 discernment and judgement. As the processor described, “[they] shouldn’t actually be
19 taking decisions at all” (Interview 5).
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25 Yet a focus on the situated practices of the data border are revealing. Their accounts showed
26 processors understand the requirement for a decision that is “heterogenous to the
27 accumulation of knowledge” (Derrida 1994: 37). Their work is always more than a passive
28 retrieval of an algorithmic calculation about a passenger. Take, for instance, the automated
29 system’s glitches. Contrary to the promises of software designers, watchlist matching was
30 beset by data entry and quality issues. The work becomes a “monotonous, very, very
31 boring” (to quote one processor) rectification of the system’s flaws:
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36 You get what they call numeric validation - ninety one to a hundred. But ninety one,
37 what they're saying is it's really not a match... It's a bit swekkiff, that rating system. A
38 hundred should be a spot on match, but we get that sometimes when it isn't... That's
39 why they need human intervention. Take date of birth 2-0-0-1, two thousand and
40 one, and 2-0-1-1, two thousand and eleven. Yeah, that's on a visa or a date of birth,
41 that would say that's a possible match, because there's only one [element] different.
42 That's how it works, it works by the binary side of it. So there's a lot of crap data in
43 there. Half the time you can look at it and go select, select, select, bling, bling, bling,
44 because it's all crook. (Interview 8)
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49 For the processors, the ‘recognition’ of the illegal or suspicious subject via automated
50 analysis is always provisional, despite the claim that the data can see what is really there. So
51 when the processors described a process of ‘rooting around’ or ‘enriching the hit’, they were
52 engaged in a *re-visualisation* of the life being approximated by the data, using geopolitical
53 knowledge, for instance, or immigration or customs expertise. Their field of vision was not
54 fully constrained by the algorithmically-generated matches.
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3 You might be looking at a target... and you're looking at the flight manifest and
4 you're looking at Mr Smith, who is a cigarette smuggler and you notice another Mr
5 Smith – is that a family member? Let's just run a check on him. He doesn't have the
6 same travel history as this fellow... actually it's a lot worse! Why isn't this guy on a
7 watchlist? I suppose this is how intelligence-led crime detection takes place. That
8 could be one way of targeting (Interview 3)
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12 The algorithmic identification of the subject via an “accumulation of knowledge” (Derrida
13 1994: 37) is, for the processors, certainly not an authoritative revealing of risk. Their work, in
14 the language of Derrida, was to uncover the heterogeneity and contingency of a life between
15 the data elements – a different form of discernment. Against the history of *discretio* that I
16 have uncovered, discretion at the data border is not simply the (non)invocation of a rule –
17 whether legal, administrative or social (see Ericson 2007) – and the processors
18 acknowledged this. Rather it is a profoundly visual practice, a kind of discernment, a matter
19 of *seeing what is there*. The aligning of security attention via the rules-bound automation and
20 the discerning eye of the processor are neither wholly separable nor collapsed.
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27 **The general and the particular**

28 *Discretio and the rule*

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32 Historically, the *discretio* literature cautioned against individual decision-making in relation
33 to visions (Ossa-Richardson 2013). Appearances were deceitful and human senses were
34 untrustworthy: the rule was there could be no rule and *deferring judgement was best*. For large
35 swathes of history *discretio* meant almost entirely the opposite to modern-day connotations.
36 When Gerson described *discretio* as the ‘daughter of humility’, he was emphasising the
37 importance of seeking counsel on all aspects of private revelation (Burrows 1991: 247). This
38 deferral of judgement relates to another strand of the history of *discretio*, one that emphasises
39 the virtue of *moderation* or *prudence*. *Discretio* here referred to the avoidance of excess and
40 also to the ethical relationship between the general and particular. In this section, I lay out
41 this aspect of the history of *discretio*.
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47 The early Christian thinking on *discretio* was developed in texts produced for, and by, monks
48 about the ideals of monastic living: Foucault places great significance on the reinvigoration
49 of ancient philosophical themes by early Christians and its subsequent influence on western
50 subjectivity (2014: 266). He notes (along with many others) the emblematic work of John
51 Cassian (360-435 AD), a founder of western monasticism and widely acknowledged as “the
52 first theoretician of *discretio*” (Dingjan cited in Ragazzi 2014: 110). Cassian believed that evil
53 spirits could appear externally, in visions, but they were also able to enter the body and soul.
54 *Discretio* was vital not only because Satan and God could appear identical in external signs,
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3 but also because there was no absolute way to distinguish *Satan and the subject*. Cassian's
4 *discretio*, then, was an external scepticism and vigilant self-examination.
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7 Foucault is particularly struck by the centrality of obedience and humility to this idea of
8 *discretio*. Novice monks were taught "not to hide with false shame any of the thoughts that
9 gnaw at their heart" but "to obey in everything and hide nothing" (cited in Foucault 2014:
10 266). The principles of "incessant examination" and "exhaustive confession" could avoid
11 two concurrent dangers: laxity and excessive rigor (Foucault 2014: 290). In this sense, the
12 Christian theme of *discretio*-as-moderation appears to revisit the themes of ancient
13 philosophy. But Cassian's meaning was different, argues Foucault. For the ancients,
14 determining the difference between too much and too little was owed to *logos*: the "reason
15 he has in himself and that is perfectly clear to his own eyes" as long as he is not confused by
16 the passions (Foucault 2014: 294). The ancient philosopher could determine his measure for
17 himself. Cassian, conversely, implies that there is "no natural discretion immanent to man"
18 (ibid.: 294). What was in question in Christian thought was "not the truth of my idea: it is the
19 truth of myself who has an idea" (ibid.: 303). Exercising *discretio* on oneself meant to
20 "decipher the power of illusion and deception" that inhabits me (ibid.: 307). Foucault places
21 this centrally in his history of confession and western subjectivity.
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28 There are two things to emphasise for the purposes of this paper. First, Cassian's *discretio*
29 was to have a significant influence on the development of western moral thought. In
30 identifying *discretio* as a virtue of measure, Cassian was responsible for "injecting into the
31 term the very meaning that would later identify the function of prudence" (Ragazzi 2014:
32 110; Rich 2007: 84-85). So, specifically, St Thomas Aquinas' writings on prudence are known
33 to have been heavily influenced *discretio*, so that prudence "inherits everything that the
34 masters of the spiritual life had stored in this term" Deman (1947: 407-8, cited in Ragazzi
35 2014: 144). Second, and more importantly for this paper, the *discretio* literature describes a
36 shifting relationship between judgement, deference and rule. It is important to remember
37 here that early monastic 'rule' was very different from modern concepts of governing
38 precepts or laws. In early Christianity, rule denoted a moral code, or model, for arranging a
39 whole way of life (Erickson *et al* 2013: 39). So, in the Rule of St Benedict (480-547), famously,
40 *discretio* was a quality and virtue of the abbot, who had to display a "fine intuition into his
41 subjects' strengths and weaknesses" (Lienhard 1980: 528). Discernment here was not a visual
42 gift or spiritual judgement, but an "ability to see beyond single rules and practices and
43 comprehend the total effect of an action", and to comprehend the "spirit of the rule rather
44 than the letter" (Lienhard 1980: 521). Benedict argues that the abbot cannot dispense or
45 modify the Rule, but nor "is the rule enough of itself without the Abbott, by reason of its
46 abstract and general character" (Delatte 2000: 454-5).
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55 Agamben (2013) is struck by the significance of this sense of rule. He argues that monks did
56 not submit themselves to a particular set of precepts or the will of the abbot in their
57 communal life. Rather, they had "as their law the willfulness of their own desires" (2013:
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3 12). That is, monastic rules shaped the life of the monks as it was lived, rather than
4 providing external boundaries to life through the imposition of prohibitions. For Agamben,
5 what is at stake in early monasticism was not the enforcement of norms, but how the monk's
6 form of life creates his rules – how rules and life enter into what he calls a zone of
7 indifference. Agamben's overall argument is that the cenobitic project, by shifting the ethical
8 problem from the relation between norm and action to that of a form of life, "calls into
9 question the very dichotomy of rule and life, universal and particularity, necessity and
10 liberty, through which we are used to comprehending ethics" (Agamben 2013: 72). In the
11 context of this paper, what is interesting is how Agamben shows that rule and *discretio* were
12 once not external opposites, but co-constituting. Rule was not an exterior prescription, but
13 an ordering of conduct arising from a lived well in *discretio*.
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21 *Separating what is mixed: security and the rule*

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23 Again, this literature is complex and only a summary is possible here. I present the ideas,
24 however, to show that *discretio* – in the sense of "placing oneself in the middle, seeing what
25 is too much or not enough" (Foucault 2014: 290) – has been highly influential (yet often
26 hidden) in western moral thought. The root, as I have mentioned, is *diakrisis*, what Foucault
27 refers to as the ability to "separate what is mixed" (2014: 290). So, as well as a visual
28 discernment, *discretio* historically captured the importance of "overcoming the schematic"
29 (Widmann cited in Lienhard 1980: 521) and the tension between abstract and specific.
30 Modern ideas of discretion and discernment embody the idea of intellectual and ethical
31 discrimination. So, when John Locke identified discernment and abstraction as the highest
32 forms of mental activity (Ward 2010: 35), he was invoking Plato's argument that thinking
33 about something involves both 'collecting' and 'splitting' (Phaedrus 265 c-e). He was also
34 invoking the idea that discernment (*diakrisis*, *discretio*) involves seeing that the general idea
35 and the particular ideas are not the same. Modern ideas of good ethical judgement also
36 invoke the distinction between the abstract and the specific: discretion came to imply
37 precisely the flexible ability to accommodate "different configurations of times, place and
38 persons... when precept alone cannot provide an adequate guide" (Patrick 2007: 1).
39 Recalling the earlier monastic descriptions of *discretio* (and the older, ancient themes of
40 measure) good judgement requires discretion as the ability to "bring particulars into focus"
41 and to isolate "crucial differences between ideas, instances and situations" (Patrick 2007: 13).
42 This sense of discretion - the separation of the general and the particular as an ethical
43 activity – survives today as the "tailored and humane application of general rules and laws
44 to individual cases" (Pratt and Sossin 2009: 307). Contemporary discretion traces the
45 relationship between general (rule) and specific (case) by "discovering [a rule's] meaning,
46 characterising the present problem, and judging whether that problem is addressed by the
47 rule" (Hawkins 1993: 35). So, discretion means making sense of rules, and making
48 (constrained) choices about their relevance and (non)use in distinct situations.
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3 This, clearly, is not the division of labour at work in data-led security decisions. First, the
4 rules through which we are increasingly governed today – algorithmic rules – greatly
5 trouble the historical relationship between general (rule) and particular (case). It is the case
6 that some border security algorithms express in code a recognisable set of legal rules, for
7 instance the watchlist matching of API data to identify suspects who formally meet the
8 criminal legal requirements of “suspect” (Korff 2015: 8). In rules-based targeting, historical
9 data generates profiles and rules – smuggling travel patterns, terror risk factors – against
10 which new passenger data can be run. Users – like those I interviewed at the border
11 targeting centre – generate ‘input tools’ to “say to the system to pick up passengers who are
12 travelling from this flight, who have picked their ticket up three days prior to flying, for
13 example” (Interview 9). Watchlist matching and rules-based targeting, however differ from
14 what the developers describe as “speculative analytics-based targeting”. This is a form of
15 knowledge extraction that relies on the discernment of patterns rather than the application
16 of pre-existing rules. It mines data to “reveal patterns in passenger and freight data most
17 associated with risk” (SAS Analytics 2015: 13-14). The rules through which a subject is
18 targeted are ‘read off’ from life transformed into data.

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26 This is a troubling kind of *diakrisis*. The governing rules of our times in places like the border
27 targeting centre are not only difficult to understand and hard to recover (see Korff 2015), but
28 they are increasingly indistinguishable from life as it is lived. The blurring of life and rule
29 appears to resonate with Agamben’s monastic rule. Agamben’s concern is to show that the
30 monk’s form-of-life was “a human life entirely removed from the grasp of the law” (2015:
31 xiii), related to the world by *use*, rather than ownership. He critiques the neoliberal economic
32 order by documenting efforts to be free of law (and its exceptional power) altogether. In the
33 contemporary relationship between rule and life in the analytics, however, we see
34 something much more disturbing – the impossibility of ever truly separating life and rule. In
35 cutting edge analytics, it is no longer quite possible to place limits on what might be
36 considered “all available and relevant information sources” (SAS Analytics 2015). An
37 exterior governing rule that might be judiciously applied to a particular life is now replaced
38 by the algorithmic ‘making discrete’ of a governable subject from his or her dispersed and
39 heterogenous data.
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46 The question becomes, what kind of relationship between general and particular exists in
47 data-led security decisions? What kind of discretion (as “overcoming the schematic”) resides
48 in contexts like the border targeting centre? The automated process of distinguishing the
49 subject must, to work, “substitute differences in kind for differences in degree, collapsing
50 qualitative difference into enumeration and action” (Amoore and Piotukh 2015: 350). It is a
51 process through which vast swathes of data are discarded to produce ‘readable’ lives that
52 are “flattened and reduced to their common stems” (ibid.: 360, 347) – similar journeys,
53 common travel agents, shared credit card transactions. A particular subject of interest is
54 made discrete by what he or she shares with others, via clusters of risk and rules of
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3 association gleaned from the general. This visualisation says nothing, however, about the
4 “curious intangibility” of the singular life (Arendt 1957: 181) behind the data.
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7 Again, a focus on the situated practices of the data targeting centres is revealing. The
8 processors, my interviews show, were very much concerned with the particular and the
9 singular. Theirs was a style of enquiry oriented towards *what* the subject is (what threat does
10 she pose?) but also towards *who* she is (what is the story behind this risk flag?). In many
11 ways, their work was the opposite of the classic accounts of discretion: they had to discern
12 how and why ‘the rules’ had distinguished the hit.
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16 I always try to explore every little detail. It drives you mad. If it doesn’t add up or if
17 something doesn’t make sense.... Somebody’s gone from Sao Paulo to Madrid, and
18 then they’ve gone off to Oz and then they’ve come here. Well, why have they done
19 that? I mean that’s an extreme example, but I would always be thinking why have
20 they done that? Until I know they work for a company that has bases all over or
21 something, it doesn’t sit easy. So, that’s what I always find I’m doing. I don’t know
22 what [other team members] do, but I do think that I do go a bit extreme (Interview
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28 Somebody who's a frequent traveller on a budget airline to the Mediterranean may
29 be a cigarette smuggler, they may be a golfer, they may be an ex-pat. Is there
30 anything I see beyond that which might make a call between one and the other? [...]
31 Because, okay, they're arriving at midnight, and who goes on holiday to arrive at
32 midnight, especially when they're travelling with their kids? Erm, well people who
33 want to spend their money in the bar rather than give it to Easyjet, or people who are
34 on a business trip and are trying to reduce their margins (Interview 1)
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38 The discretion at work in the border targeting centre is not the discovery of the meaning of a
39 rule, “characterising the present problem, and judging whether that problem is addressed
40 by the rule” (Hawkins 1993: 35). Nonetheless, the processors were aware, in their efforts to
41 make a judgement call about a discernible life, that there was no “decisive analysis with
42 high accuracy” (SAS Analytics 2015). Instead, their experience was an uncertain, intuitive
43 and ambiguous effort to “overcome the schematic”. Just as Gerson warned in that “there is
44 no general norm [...] for distinguishing always and infallibly the revelations that are
45 genuine from those that are false and illusionary” (cited in Voaden 1999: 57), so the
46 algorithmic rules of border targeting were understood by practitioners to offer only a fallible
47 means of distinguishing a risky subject from millions of bits of data.
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54 55 **Discerning people** 56 57 58 59 60

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3 I have shown that viewing discretion along conventional lines – as an individual judgement
4 constrained (but also enabled) by legal or policy rules – has little purchase in burgeoning
5 contexts of automation. This is because it tends to replicate the strong (and problematic)
6 separation of humans and technologies in decision-making. My example has been the data
7 border, but the point is more broadly applicable. Viewing *discretio* in light of its rich history
8 – related to problems of authorising the visual and to the (intellectual and ethical)
9 relationship between general and particular – enables us to see more clearly how humans,
10 rules and technologies are associated within contemporary decisions about security. The
11 characterisation of discretion as the property of a visually secure and sovereign rational
12 liberal subject, whose relationship to the rule is one of constraint or freedom, choice and
13 (non)invocation, hides the tensions that *discretio* historically acknowledged prominently.
14 Despite the desire for (yet ultimate absence of) certainty in what we see and know, a rule for
15 discerning truth or authorising judgement “always and infallibly” (as Gerson puts it) is not
16 possible.
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23 My argument is that viewing discretion differently – as a matter of *seeing what is there*, and
24 *distinguishing the particular and the general* - illuminate contexts where technological
25 sophistication, algorithmic complexity and increased automation fast appear to be altering
26 human capacities to make decisions about the world. It is, after Aradau and Blanke (2015), a
27 matter of “divided labour” within socio-technical relationships. We must be wary of any
28 account of the turn to data within security (and elsewhere) which posits a redundant and
29 passive human subject within automated algorithmic analytics, but we must also be wary of
30 reassurances that it is “humans who still decide”. We must certainly revisit the discretionary
31 powers that border agents are said to embody. Paying attention to the situated and
32 contingent production of security decisions at the border demonstrate that authorising the
33 visual and discerning the particular are shared, uncertain and provisional endeavours,
34 whatever the promise of data *to see what is really there*.
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41 By way of conclusion, I would like to make two interrelated points. First, *discretio* has always
42 been associated with specific “procedures of subjectivation” (Foucault 2014: 309). For large
43 parts of western history, and in complete contrast to contemporary discretion, *discretio*
44 meant not making a decision at all, hesitating in everything, deferring to others to test the
45 truth of one’s senses and one’s very self. The subject brought into being by the practices and
46 discourses of *discretio* that Cassian advocated, for example, had to accept that illusion was
47 intrinsic to external vision, but also to her innermost life. Retrieving the history of *discretio*
48 simply reinstates the difference between the deferent obedience required by religious
49 authorities through swathes of Christian western history, and the self-confident liberal
50 subject of modernity, whose reason alone became the foundation for securing vision,
51 knowledge and judgement. There are clearly no straightforward analogies to be drawn.
52 What the history of *discretio* reminds us, however, is that each configuration of rule and
53 *discretio* produces different discerning subjects. So, the real question is not whether the rule
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3 or judgement holds sway – in our times, this question is widely posed as whether
4 algorithms or humans have power in decisions in public life. Rather, the question becomes
5 what kind of discerning and discretionary subject – with what kind of qualities and
6 capacities – is required by the rule and brought into being through discretion?
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10 At the border targeting centre, processors frequently described themselves as being *not*
11 responsible in their interactions with technologies. For instance, the most serious infraction
12 at the targeting centre was to claim a hit but not process it correctly. The mistake was not to
13 miss a suspect travelling into the country (although this was bad) but to fail to conform to
14 the expected protocol surrounding dealing with the hit.
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17 If we completely don't notice something, then I think we get away with it. But if we
18 pick up on something and deal with it wrongly then I think we'd be in big trouble... I
19 do think I disseminate the correct information (Interview 8)
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22 Moreover, the processors described a troubled *affective* relationship with the automated
23 system, one that resonates with accounts produced within media and cultural studies (see,
24 for instance, Ash 2015) but which rarely feature in accounts of discretion and decision-
25 making in contexts of public authority. So, for instance, processors sometimes experienced
26 the temporal pace of the system, itself a product of the airline arrivals systems, as stressful
27 and anxiety provoking. At other times, conversely, as on night shifts, the data processors
28 described a pleasurable 'plugging into the system' that was clearly embodied and affective,
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32 On night shift you can put the ipod on, plough through the matches. I bring my
33 slippers in – that gives me a bit of added value to the night shift. It makes night shifts
34 comfy. (Interview 12)
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37 The data is 'live' in the sense of having its own rhythm, but live also in the sense of it
38 "refreshing itself all the time, and it's about real people, real flights, you do get a sense that it
39 is, you are dealing with more real people than I was expecting" (Interview 5).
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42 My last point is that despite the growing understanding of the isolated (Turkle 2013),
43 distracted (Crary 2013) and distributed (Rotman 2008) subjectivity of our times, we simply
44 do not know enough about the ways in which affect, visual capacity and socio-cultural (as
45 well as organisational) understandings of 'decision', 'responsibility' and 'judgement' are
46 under revision in contexts of data-inflected public authority and power. This point is
47 pressing in border contexts – as Côté-Boucher (2016: 64) argues, scant attention has been
48 paid to "the impact of organisational instability and technological change on border officers'
49 discretion". The issues are wider, however, given the growing questions about
50 accountability in contexts of public and legal administration, where so much of 'the
51 decision' appears to have been folded into an algorithmic process. How does the
52 relationship between current technologies and the plasticity of human cognition, attention
53 (and judgement) manifest itself in administrative contexts of law, policy and public
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bureaucracy? With the diffusion of technologies into everyday decisions about how we are to be governed - from policing and finance, border security and health - the outline of the discretionary decision-maker is in flux, even if the problems of discretion as I have described them are perennial.

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