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Farewell to Privacy **by Ridgway K. Foley**

States act predictably. An obscure professional official mutters an apparently innocuous statement to a small and equally obscure audience during a holiday period. In this fashion, states pretend full disclosure while simultaneously cloaking a forthcoming policy from critical insight and thoughtful appraisal.

Consider the chilling utterance of one Donald Kerr during the Veterans Day 2007 weekend. Kerr, the principal deputy director of national intelligence, declared that privacy no longer can or will mean anonymity for Americans. In an astonishing and shocking reminder of the prescient *Brave New World* and the double-think of *1984*, Kerr announced that henceforth government and business should safeguard all communications and financial information of each inhabitant of the United States.

In plain terms, privacy no longer will mean privacy, the right to live an anonymous life free to act nonaggressively in all domains. Instead, privacy will now mean that all aspects of every human life must and will become the property of the community and subject to review, censure, and direction. True to form, no outcry emerged from a population more interested in holiday bargains and whether Tweedledee or Tweedledum might occupy the White House in 2009.

The enormity of a sea change sometimes overwhelms the comprehension and imagination of most people. To this passive majority, it appears that privacy will remain private, that only the guardians of the private life will change, and that the change constitutes an alteration both necessary and efficacious. Yet, once again and always, appearance and reality differ, and in this instance they differ significantly.

At the outset, and on a superficial level, consider the new stewards, business and government. History reveals that neither entity possesses either the ability or the will to act as a good steward. Governments and public officials, banks and other financial aggregates, hospitals, and medical organizations, to name but a few, lose or transmit or misplace private recorded information about millions of men and women in the United States, and these events take place with disturbing frequency and harm. Promises and assurances that the problems have been

solved, that misadventure will not happen again, and that losses are contained also appear redundantly, accompanied by no apparent improvement in security and no discernible reduction of personal harm. The reason for repeated negligent or intentional disclosures by corporate or state officials arises from a fundamental natural law: the owner or possessor takes greater care and employs better judgment over his life and his personal assets and information than any other person or body. As with all natural laws, while one may freely disregard and violate the norm, the rule of cause and consequence reigns and exacts a toll for poor choices.

Moreover, corporate and state workers possess scant incentive to safeguard individual privacy. The malevolent will find a use for private information, either for reasons of greed and envy, or in the support of a cause close to their hearts. The stupid and elite will be careless or, worse, delude themselves into believing that they know better than the individual what he should do, how he should live, and what he should avoid. There is no more damaging adversary than one who acts for another's own good.

Existing intrusions into the private domain provide able harbingers of the future, but elemental analysis of these markers divides such aspects of modern life into three categories, two distinct, one amorphous.

Voluntary and involuntary intrusions

The first category includes the preferred-customer status or club-card thrust upon retail-store customers and enabling the purveyors of foodstuffs and other goods to profile all purchasers. The card records purchases and tracks trends, permitting the vender to target each buyer with promises and promotions. This group also encompasses credit and debit cards that perform similar functions; the issuing bank or creditor could quite easily sell the resulting profiles to an array of bidders. A cardinal feature differentiates these private business ventures from governmental intrusions apparently envisioned by Kerr: customer cards and credit cards require consent in a market. No one compels any customer to accept a Sam's Club card or a Chase credit card; the recipient agrees to the terms of the card and may freely decline or terminate the relationship under those terms.

The second category contains myriad compelled disclosures by the modern surveillance state, for example, the contents of mandatory annual state and federal income-tax returns filed by each productive inhabitant hurdle into an ever-increasing multitude of government agency records, records that history demonstrates are anything but secure from the determined hacker or bandit. The constitutional command for a federal census every 10 years has evolved from a simple identification and head count into a gargantuan forced disclosure of private tidbits. The endless litany of intrusions in this second category includes DNA records and other bodily intrusions, birth certificates, and compulsory education reports, among obligatory meddling disclosures too numerous to mention.

Those two categories exhibit relatively clear boundaries. Private individual bargains grant private business encroachment into private lives; in contrast, the surveillance state commands entry into the personal realm by the implied or explicit use of force against nonaggressive men and women.

The third category differs: it involves compelled disclosures to business units acting at the behest of, or in place of, the state. As we trundle ever closer to the encompassing fascism of the corporate state, the third category grows in size and pervasiveness. Many examples touch each life today. Private telecommunication companies abet federal government internal espionage by intercepting private messages. Private regulated insurance companies process, administer, and often deny claims to government insurance coverage. Regulated banks spy on customers and report “suspicious” private transactions to police-state authorities. Professional compulsory unions integrated into state law, such as some bar associations, determine whether a person may practice his craft and whether he has complied with governing ethical rules. When Kerr assigned “government and business” as the new conservators of personal privacy, does anyone doubt he envisioned this conspiratorial third category?

The right of privacy

In addition, and with the second and third categories in mind, let us delve more deeply into the policy eliminating privacy and consider an even more alarming undercurrent of the plan. Under fundamental freedom philosophy, by what right does any individual or group invade any other person’s private matters or personal secrets? I do not recognize any such right; neither did the Founders of this nation. The unique American experiment rests on the elemental understanding that each person possesses inherent dignity and worth, and each person cedes only a limited function of communal force to the state — to protect against aggression and fraud, and to resolve disputes between citizens that they cannot mediate on their own. The personal power to choose constitutes an essential element of the humanity of each such person. Acting man selects among alternatives, each selection having consequences, consequences bearing moral attributes and effects for which the actor must accept responsibility.

Contrast the slave. He cannot make many choices. Instead, some individual or aggregate master imposes most decisions on the one subdued by overt or covert coercion. The choice to maintain a private life undisclosed to public view hence constitutes a basic feature of the choosing nature of the human actor, and it helps define the division between freeman and slave. Compelled disclosure of that which I wish to keep secret, compulsory exposure of my private life, enforced revelation of my anonymity not only exposes me to needless danger but also strips me of an essential attribute of my very humanity — something constitutionally protected, at least in a more thoughtful time. Empirically no man can live my life as well as I can, and morally no man

possesses any valid or acceptable reason to substitute his choice for mine, save in the constrained sphere of prevention of aggression.

Additionally, modern times witness overemphasis on the community to the derogation of the individual. Judges order criminals to perform “community service,” normally activities no one would carry out by choice. Clueless experts exhort others to behave in a manner supposedly calculated to better the community. Professional trade unions, such as mandatory bar associations, urge their unwilling members to “give back to the community.” One sure and certain result arises if the community swamps the individual: no one will remain to counter the popular delusions and madness of crowds so eloquently articulated by Charles MacKay more than 150 years ago in his book *Extraordinary Popular Delusions and the Madness of Crowds*. The community is generally wrong-headed and hidebound, subject to foolish fads and false premises. Without the breakout induced by private individual thinking, mankind will tend to slog along in the bog of time, advancing by incremental small steps if at all.

Donald Kerr, the selected speaker, identifies the convenient, if superficial, reason for this new policy of public privacy. Cast aside the fact that “intelligence,” national or not, in this context provides quintessential meaning to the word “oxymoronic.” Nonetheless, the spokesman’s pedigree conveys the problematic message that the state knows something mere private citizens not only do not comprehend but also cannot handle on their own. This obscured and implied declaration conjures up fears and quells any inherent disquietude concerning opening private lives to public scrutiny. The hearer lacking critical insight accepts the implication that “terror” from abroad threatens his life, that only the government and its business allies can deal with this threat, and that all good little citizens should calmly and completely trust state wisdom and communal power for personal protection. Surely, the true patriot should not balk at full disclosure for the good of the order. Certainly we have no reason to suspect “terror” from within, from our friends, our neighbors, our elected officials and their colleagues. Only those who read history and those who think clearly recognize that the enemy within can be quite as fearsome as the enemy from across the sea.

Liberty versus security

Many mistakes confound this attitude. Rational thought, empirical contemporary evidence, and the historical record coalesce and demonstrate that we common folk have much more to fear from the surveillance state than from evil people beyond our shores. Incremental losses of liberty are losses nonetheless, and once lost, liberty can seldom be reclaimed without a bloody revolution. More salient, free citizens are much better able to defend themselves from aggressive intruders than are slaves who cede their defense to a bumbling state. Wise men have warned that choosing security in place of liberty guaranteed neither safety nor freedom. Throughout thousands of years of record every state has demonstrated a single attribute above all

others: the alarming and ineluctable tendency to increase coercive power at the expense of the individual. Concomitantly, and to this end, all states have employed, and continue to use, fear of assault as a means to the end of greater coercion and the ceaseless growth of power. In this respect, today differs not from the past save in one critical aspect: the surveillance state today possesses ever greater technological means and methods of invading private lives, from a swarm of satellites stalking the skies to hordes of police scientists and soldiers poking into crevices of all kind and kindred, implanting chips, tracking DNA, hacking computers, listening by spike mikes, ogling by street-corner cameras, reclaiming seemingly-erased Internet fingerprints, and generally snooping into every nook and cranny of human existence. Robert Ludlum and Allen Folsom may write fiction, but their heroes, pursued by modern means of evil and relentless oversight, portray a real and terrifying present. Walt Kelly had it right: “We have met the enemy and he is us.”

One cardinal question still pesters many minds: Why would any honest man or woman wish to keep secrets, to maintain a private life, to live in anonymity? Concede at the outset that some people, perhaps many, gain pleasure from an open life. The Internet miracle of personal postings confirms this fact. Yet, as mothers past told their offspring, a neighbor’s child’s ability to do something does not mean all children should do likewise and make the same mistakes. Individuality enables virtue. We may physically and mentally resemble one another, but we are discrete individuals possessing individual natures and separately responsible for the consequences of our behavior.

Many men reside beyond the concession that other men like to open their lives to virtual and untrammelled view. These dissidents prefer to live private lives free from the busybody and the elitist who wish to comment, control, or condemn according to their small minds and minimal morals. Why should we be forced into the Procrustean bed espoused by the exhibitionist? The staunch and self-reliant individual of yore carved the United States from a harsh and forbidding land. We of today deserve anonymity if that is our choice.

Moreover, behind the cardinal question resides the implied assumption that the seeker after a secret life harbors malevolent purposes under his mask of anonymity. Put aside the fact that many who wish to open private lives pursue their own malicious agenda. Acknowledge that anonymity will hide some terrible secrets. Nevertheless, even a little thought permits one to arrive at any number of reasons a person may desire privacy. The traditional American frontier allowed men and women to start over, to find a new life after heartbreak, bad luck, unpleasant experiences, or just plain old failure.

We differ only minutely from our ancestors in this regard, as in most instances. Individual men and women still value the right to escape the past and start anew — from a difficult childhood, an unhappy marriage, an impossible career, an accident, an assault, or a terror, or from grief or discomfort or bad choices. Yet, unlike the world of the past, the world today offers scant

chance of sanctuary. Kerr and his malevolent minions would concoct a world of virtual fences that no person could scale, from which no one may escape.

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