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Nineteen Eighty-Four and the Eclipse of Private Worlds

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Nineteen Eighty-Four and the eclipse of private worlds

by Francis A. Allen

Editor's Note: *This article is excerpted from a paper Professor Allen presented last year at a University of Michigan symposium on "The Future of 1984." It appears* in toto, *along with the other papers presented, in the collection of essays* The Future of Nineteen Eighty-Four, *published by the University of Michigan Press and edited by U-M Professor of English Ejner J. Jensen.*

To answer fully why a novel for over a generation has remained embedded in the consciousness of persons in widely differing situations and of varied backgrounds and convictions, would be, perhaps, to say more about the society than the work of art. George Orwell's *Nineteen Eighty-Four,* whatever its limitations, has amply demonstrated its power to strip bare many of the half-realized fears of persons inhabiting the Western world in our time, and of giving the terrors tangible shape. The book has trascended a merely literary influence. Just as many persons ignorant of *Don Quixote* speak of tilting at windmills, so too Big Brother is regularly denounced from public platforms and in newspaper columns by persons unable to account for the origin of the term.

When one inquires more precisely about which fears of modern men and women are identified and confirmed in Orwell's somber vision, more than one answer may be forthcoming. Some may point to Oceania's systematic debasement of language, for example, or to the extinction of memory by the deliberate falsification of the past. Yet it seems likely that for most readers the particular horror evoked by the society imagined in *Nineteen Eighty-Four* stems from its brutal and premeditated destruction of the private worlds of its members.

Orwell's delineation of a society committed to the destruction of private worlds may be seen as containing, among other things, an urgent message for the public policy of modern pluralistic states. An initial response to the novel's forebodings might take a form such as this: If the preservation of the values of human individuality depends on the drawing and maintaining of clear lines separating the public realm from the private, let us by all means build walls about the private worlds; let us build them boldly and high and defend them against any who would weaken or penetrate them.

Yet reflection on the nature of human aspirations and human affairs quickly leads to the conviction that exhortation is not enough, that the defense of the private realm in our time requires more than good will and moral fervor. One way to give point and poignancy to Orwell's vision is to inquire why threats to private worlds have arisen in Western culture and why the defense of the privacy value is beset by such formidable difficulties.

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I

The concept of the private world is obviously central to the liberal society, and support for the value predates the recent centuries of the modern era since that society came into being. Deep countercurrents emerged early in the history of Western culture, too, and continue strong in modern America. The society envisioned in Plato's *Republic* is one in which the good life is conducted in the public world almost to the exclusion of the private. The persisting populist and egalitarian tendencies in American society have often weakened defense of the privacy value, the concept of a protected private world being seen at times as elitist and at others sinister.

In the post-Vietnam, post-Watergate world, new and exotic manifestations of populist attitudes have burgeoned, many of which express hostility to the private world. Characteristic phenomena of the present and recent past include the rise of investigative journalism under the banner of "the people's right to know," the flourishing of the gossip industry, "sunshine" laws, the encounter movement. Some social analysts have found little more in the defense of the private world than a pathological effort to escape legitimate social obligations and involvements. Indeed, it is not possible to give assurances that privacy will not often be used for ignoble and selfish ends, just as other great privileges such as freedom of speech or of economic enterprise may be employed in destructive and inhumane activity. These concessions, however, do not detract from the assertion that enhancement of the quality of the public life, if it occurs, will result, not from the weakening, but the strengthening of the private worlds, in which friendship, compassion, and the other life-enhancing values are first and most strongly experienced.

It should not be overlooked that the political alienation of many persons in American society, in particular many members of the intelligentsia, has resulted from a political style, populist in origin, that reveals small regard for personal privacy and at times results in gross assaults upon the private worlds of individuals. The McCarthy era, to cite only one series of events, confirmed the anti-political biases of many intellectuals, attitudes founded on over a century of American experience. There is ample reason to suppose that the losses in personal autonomy that underlie alienation are exacerbated by the invasions of the private world characteristic of modern technological society.

Nineteen Eighty-Four's affirmation of the importance of the private world to human interests and humane values eases the burden of its modern defenders. It is, however, one thing to affirm, quite another to define and protect. These latter difficulties reveal themselves most clearly in the legal experience, and consulting that history may contribute to their understanding. The private world encompasses some of the most basic of human aspirations; inevitably such aspirations are reflected in jurisprudential reflections and in the definitions of legal rights. Yet the "legalization" of the private world gives rise to perplexing problems, and its results are often tentative and unsatisfactory.

The difficulties are in the first instance conceptual in nature. Privacy has proved to be a mercurial idea, one difficult to capture within the confines of a legal formula. Not all privacy claims are of the same kind or of similar importance. They arise in extraordinary profusion, and they tend to adopt the coloration of the particular context from which they arise. The rights of privacy visualized in the law of torts to protect individuals from unwelcome public exposure by other private persons are significantly different from the constitutional right against compelled inquiry by the state or against the unsanctioned invasion of homes or papers by police functionaries. The right of a woman to determine when or if she is to bear a child is different from either.

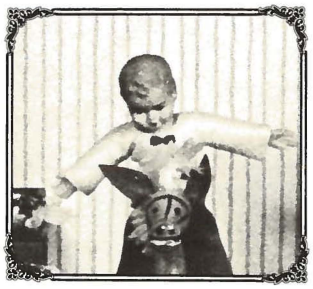
Although the privacy value is the subject of considerable legal attention, no completely satisfactory analytical structure defining and supporting the various privacy interests has to date emerged. In such a situation the disorderly conduct of concepts can be anticipated, and that expectation is amply realized in much of the judicial literature. Some judges have promoted a bold and imperialistic expansion of the privacy concept. Thus, in the well-known case of *Griswold* v. *Connecticut* Justice Douglas for the Court invalidated a state statute that provided criminal penalties for "Any person who uses any drug . . . or instrument for the purpose of preventing conception."[1] The interest that the state statute was said to have offended was a constitutional right of privacy. And where does the right come from? It is not to be found in the express language of the Con-

stitution, said Justice Douglas; the right has its origins in "emanations" from the "periphery" of several Bill of Rights provisions.[2] But why the privacy rationale? The Fourteenth Amendment forbids a state to deny "liberty" without due process of law. The injury done by the statute might be thought to fit comfortably into that historical category, but the category had been engulfed in all too much history. "Substantive due process" doctrines were employed by the old Court at the turn of the century to invalidate such legislation as that limiting the hours of labor of workmen, and the present majority was unwilling to revive doctrines tainted by such uses in the past.

Since the case of *Meyer* v. *Nebraska* in 1923, the Supreme Court has announced a small number of decisions, including those in the abortion cases,[3] that are said to delineate a sphere of interests, denominated privacy concerns, in such areas as marriage, procreation, and child rearing. The cases are, as one commentator observed, "a rag-tag lot." Many of them appear to speak principally to values other than those now attributed to them. How broadly or narrowly the constitutional right of privacy is to be drawn in the future, and by what processes of reasoning such questions are to be resolved or even thought about, remain obscure. These efforts of the Court to give constitutional definition to the privacy interest are not the products of principled decision making, and whatever social benefits they confer do not include that of strengthening the rule of law.

A very different and perhaps equally dubious reaction to the privacy value can be found in the reductionist positions taken by other courts and by some legal commentators. These writers and judges, far from urging an amorphous inflation of the privacy concept, believe it in most situations to be extraneous and unnecessary. Typically, it is said, questions of privacy are associated with other interests and values—interests in reputation, in the protection of property from trespass or appropriation, and the like. Proper resolution of such disputes is facilitated by proceeding directly to the consideration of such interests unencumbered by reference to the privacy concept.

It may be doubted, however, that such a rigorous purging of privacy from the vocabulary of the law best serves our long-term interests. It is clear that in much modern discourse, both within and outside the legal arena, there is reluctance to confront fundamental issues of the private world and that the shyness is often displayed even when the privacy concern is real and in need of identification and consideration. The tendency to evade basic issues may well be encouraged by the absence of an established conceptual system persuasively and usefully articulating the privacy values. Thus, in the debates that have arisen from time to time in the last two decades concerning the use of lie detectors in the hiring practices of public and private employers, discussion tends to wind down in questions about the technical reliability of the polygraph, leaving fundamental concerns of human dignity unidentified and unanalyzed. The use of so-called rehabilitative techniques on persons convicted of crime or suffering from mental disorder, especially such procedures as psychosurgery, aversive conditioning, and extreme drug therapies, tend to be opposed, if opposed at all, on grounds that they do not work, are unreliable, or produce unfortunate side effects. Remaining unstated and unconsidered are questions of the propriety, in a liberal society, of the government's manipulation of human beings by penetrating or engulfing their conscious defenses.



The values of the private world are not our only values, and the defense of that world consists largely in struggles over where boundaries dividing the private from the public and the social are to be drawn. Unhappily there is no calculus that unfailingly locates the borders of these realms in positions guaranteeing optimum social and personal advantages.

The difficulties encountered in the legal defense of the private world, however, are not confined to problems of definition and articulation, important as these matters are to the life of the law. Even more significant is the circumstance that the claims of the private realm are by their nature contingent rather than absolute. In a famous dissenting opinion, Justice Brandeis referred to a "right to be let alone—the most comprehensive of the rights and the right most valued by civilized men."[4]

Yet clearly no individual can be both in society and also wholly immune to its demands. The values of the private world are not our only values, and the defense of that world consists largely in struggles over where boundaries dividing the private from the public and the social are to be drawn. Unhappily there is no calculus that unfailingly locates the borders of these realms in positions guaranteeing optimum social and personal advantages. In a liberal state, unlike Oceania, attacks on the private realm are ordinarily launched by those who, often sincerely,

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profess attachment to the privacy value, but who in the particular instance urge that a larger value is gained by a constriction of the private world.

There is, of course, nothing surprising in this. The fashioning of all basic legal and constitutional immunities involves problems of balancing interests and values (although some have dreamed that First Amendment rights can be defined as absolute). Seeking equilibrium between centrifugal and centripetal tendencies is the constant preoccupation of liberal societies. Yet if the problems of maintaining the values of the private world are not unique in this respect, their defenders are, nevertheless, often in positions of comparative disadvantage. In a world of conflicting values and interests the most important question may often be, Who has the burden of persuasion? It might be thought that, given the importance of the private world to the most fundamental liberal values, the onus of proof should be placed on those who seek to justify invasions of the private realm on the ground that larger social interests are being served. In many areas of American law and policy precisely the opposite presumption is being applied.

An especially stern test of our commitment to privacy values is to be found in the area of criminal law enforcement. Before the decision of the abortion cases and their antecedents, a lawyer speaking of "the right to privacy" was most likely referring to the protections afforded by the Fourth Amendment to the United States Constitution. The contingent nature of those rights is made apparent in the language of the amendment itself. It is only "unreasonable" searches and seizures that are forbidden. Privacy may be invaded and papers and other evidence seized, provided formalities of justification have been satisfied and the official conduct does not transgress the scope of the authorization. Nevertheless, the bulwark of the Fourth Amendment is constantly beseiged by claims of social interest and expediency, and for constriction of the rights it protects.

The first and perhaps most important reason for this is that Fourth Amendment privacy rights are most often asserted by persons who have something criminal to hide. In a period of extreme public sensitivity to crime like the present, many in the community tend to regard the Fourth Amendment simply as a refuge for felons. Even when privacy values in criminal justice administration are identified and it is recognized that a police establishment ignorant of and hostile to such values constitutes, in the long run, a peril to the entire community, the claims of privacy may be perceived as weak, speculative, and remote when compared to the insistent demands of law enforcement.

Vigorous judicial enforcement of privacy values is also inhibited by the fact that courts are agencies of government and under constraint to permit legislatures and administrative personnel to perform, and within limits to define, their own functions. Once the legislature initiates a penal policy that, for example, criminalizes the use of drugs and alcohol, gambling, and certain forms of sexual expression, the courts will often respond by conceding authority to the enforcement agencies to perform their difficult duties; the concessions tend toward the limitation of constitutional inhibitions on governmental action. However persuasive the case for contemporary penal policy in these areas, the fact, plainly stated, is that it has substantially constricted the boundaries of the private world in American society.

The implications of these developments are more somber than is sometimes understood. A contagion effect sets in. Attitudes formed in the context of counterespionage or organized crime are readily transmittable to surveillance of the activities of politically suspect groups or even of political rivals. Watergate taught us that.

Sometimes, in responding to the exigent claims of law enforcement, the courts, with insufficient awareness, appear willing to open wide the gates of the private world to state power. In the famous "pen register" case, a prevailing majority of the present Supreme Court held that the government, without a warrant, may acquire evidence of the phone numbers dialed by a suspected person, apparently on the ground that because the caller necessarily discloses this information to the telephone company it cannot be deemed private.[5] Yet in an interdependent technological society one cannot function, or even survive, without a plethora of limited disclosures. If the tendency of this decision continues and if, as against government, the citizen is not permitted to maintain the limitations on his limited disclosures, then we shall have ceded an enormous tract of the private world to uninhibited state scrutiny.

The canvass of dilemmas and difficulties encountered in the legal experience does not and is not intended to suggest that the record of the law in defining and protecting the limits of the private world is simply one of waste and futility. In Oceania there is no law, and maintenance of the values of

human individuality is hardly conceivable without it. Yet if the private world is to have meaning in the postmodern age, we must be disabused of the notion that all that is required of us is to permit the law to undertake its initiatives and pursue its objectives. The law ultimately reflects the struggle of interests and values going forward in society, and the future of law is one of the interests at stake in the struggle. That there are dimensions to the social and ethical issues in dispute that transcend the merely legal is best demonstrated by a scrutiny of the legal experience itself.

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II

Given a political society as intent as Oceania's to blot out the past, it is perhaps not surprising that the reader of the novel is left in doubt about how the regime, firmly ensconced in Winston Smith's day, had established itself. Orwell tells us only a little about the events that led to the reality of 1984. Although the history of the previous half-century is shadowy, one deduces that Oceania did not emerge from an established Hitler-like or Stalin-like dictatorship. Rather it appears in some way to have evolved principally from the Western capitalist societies of Britain and the United States. One suspects that a warning is being issued here, and the suspicion is strengthened when Orwell is found writing in "The Prevention of Literature," one of his best-known late essays: "In our age, the idea of intellectual liberty is under attack from two directions. On the one side are its theoretical enemies, the apologists of totalitarianism, and on the other its immediate, practical enemies, monopoly and bureaucracy."

The notion that the modern threat to individual autonomy and the other values fostered by the private world comes not alone or, even, principally from the state, but rather from society itself, has been frequently advanced in the recent past. The great dichotomy is not that of public and private; it is that of the *social* and the private. In short, it is modern culture that subverts the private world, and, according to some who have addressed the question, the true issue is how the grip of society can be eased or the culture overthrown.

Before proceeding with a consideration of this argument and the evidence invoked to support it, one preliminary matter requires attention. Either as a political tactic or as a rhetorical embellishment, some who attack Western society as depersonalizing and, hence, as dehumanizing, have argued that the true enemy of the private world is not the state and that the defenders of that world need not maintain their traditional wariness of state intrusion. Such assurances convey no conviction and deserve no credit. Any governmental organism commanding the sorts of electronic and computer technology that are available today in all developed nations must be regarded not simply as a potential but as an active antagonist of the private world. We shall ill serve our vital interests if in our haste to indict Western culture we underestimate the current massive and burgeoning threat of state power.

Yet one need not assume the diminishment of the political threat to recognize the force of the argument of those who indict modern culture for its devastating effects in the private realm. According to the picture drawn, the inhabitants of the Western world with its mass media, mindless popular entertainment, and advertising, are being manipulated and conditioned, not in the fashion of Oceania's tyrannical rule over party members like Winston Smith and Julia, but rather in a manner closer to its handling of the lower orders of society, the proles.

In *Nineteen Eighty-Four* the telescreen that may be dimmed but never turned off constitutes a primary symbol of the state's intrusions into the private lives of its subjects. Yet how great are the differences between such a society and one in which persons who because of cultural constraints, loneliness, apathy, and diminished sense of personhood, can never

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bring themselves to turn off the television set? And what is seen on television may often consist of education in the devaluation of privacy. Much of its "harmless entertainment" consists of revelations into the intimate lives of media personages. If, even with their complicity, we scrutinize the lives of public personalities as if they were animals in a zoo, have we not suffered losses in human dignity of all persons and reduced the value of privacy in our own lives?

Other expressions of the policy of Oceania have been identified in contemporary Western society. We are developing, some have said, our own versions of Newspeak. Thus, Herbet Marcuse argued that the technological culture promotes a language of overwhelming concreteness, highly functional in character, ill-adapted to conceptual thinking, and discouraging to criticism and evaluation. Perhaps of more immediate concern is our apparent inability to inculcate language facility of any sort in many of our young. Because it has become familiar, it no longer startles us that it is possible for young persons to complete their studies in what are ostensibly the great universities without gaining a command of language above the levels of technical literacy and without acquiring sufficient understanding of language to respect it. Such persons are deprived of a capacity essential to autonomy, and lack adequate defenses against the aggressive inroads of political propaganda and cultural imperatives into their private worlds.

It is argued by critics on the right that the very assumptions of a liberal society unleash the assaults of popular culture on certain vital aspects of privacy. The unrestrained license of speech and publication mandated by that society denies refuges and living space free from recurrent manifestations of overt sexuality to individuals and families desiring such freedom. Even the huckstering of hammers and saws takes place in a synthetic atmosphere of blatant sensuality, even the sale of candy bars to children. These phenomena are importantly implicated in the rise of political activism within fundamentalist religious groups. Their aggressive political program may rest less on optimism about the redemption of American society than on a determination to make effective their separation from the moral contaminations of society. It reflects a purpose to construct areas of privacy for themselves, however destructive the agenda may be to the autonomy and privacy of persons committed to different values and perceptions. The liberal society thus creates its own enemies and provides them with their most effective weapons.

The critique of modern culture is many faceted, but the overarching allegation is that it produces human beings crippled in character and personality, incapable of autonomy, lacking in identity, leading lives of despair, and prone to violence. One recalls a recent rash of instances of persons falsely claiming to have found dangerous foreign objects in packaged food and drugs. Most often, motivation for the claims appeared to include a thirst for attention, a craving for an identity created by a minute's exposure before a television camera. If it is argued that the behavior is merely that of a lunatic fringe, the answer is that the form a society's lunacy takes may have much to say about the attributes of the prevailing culture. The tendency in American society to identify fame with notoriety is surely not one confined to an eccentric few. There is reason to suspect that the tendency points to a weakening of the sense of self, a shrinking of what Erickson calls "ego identity": in short, a condition in many persons that renders the concept of the private world unfathomable and ultimately frightening.

In an almost perfect phrase, Montaigne asserted that "a man must flee from the popular conditions that have taken possession of his soul." It is hard advice. Given the force of the intrusions in the modern world, both those launched by the state and also those created by the prevailing culture, where is the man to flee? And, even more difficult, how may the "popular conditions" be altered and made less threatening to his private realm? In much of the current literature, especially that coming from the left, a strong note of fatalism is sounded about the capacity of Western society to cure itself. That society, it is asserted, is impotent to confront the drift toward destruction of the private worlds by measures short of an overturning of social institutions and a complete recasting of social, political, and economic relations. If the prescription is rejected, then inevitably the Western world will keep its rendezvous with the cold day in April when the clocks are striking thirteen.

It is a somber forecast and one sufficiently buttressed by evidences and omens to be taken seriously. Yet the diagnosis and prescription are hardly disinterested. The cure proposed, moreover, may prove more virulent than the disease. Still, troubling questions persist: Is Western society any longer capable of producing and nourishing an individualism appropriate to the times? Will it prove able to hold back the threatened eclipse of the private worlds?

There may, indeed, be reason to hope that, despite evidences of decay, Western individualism is a hardier plant and its roots more firmly anchored than the critics of the modern state and contemporary culture allow. The values of human autonomy and uniqueness are susceptible of many forms of expression. Manifestations of the ideals that emerged in the early decades of the Industrial Revolution do not represent their only possible expressions. The rejection or modification of some earlier manifestations does not necessarily entail surrender of the values themselves.

The critical issues in the defense of the private world may prove to be questions of will and strategy. There is evidence that the desire to promote and defend some privacy interests has waned. But not all the evidence points in the same direction.

In the course of the past two decades a stronger outcry than ever before has been raised against certain intrusions into the private realm. The widespread protest against subliminal advertising supplies one illustration. A proliferation of statutory enactments dealing with a broad spectrum of privacy intrusions and a plethora of judicial decisions concerning related issues provide other examples.

It is true, of course, that the growing public sensitivity to at least some privacy issues and the reaction of legislatures and courts may itself constitute evidence of increasing and intensified assaults against the private world in the United States. The burgeoning of law relating to the rights of individuals is indicative of a crisis of liberty that has persistently afflicted the Western world since the First World War. But if modern concerns reflect an ominous challenge to the private world, they are also part of a defensive response. And response is vital to any hope that Oceania is not to be the ultimate destination of Western society.

There is irony and danger in the fact that a strategy for defense of the private world necessitates struggle in the public arena. Such a strategy necessarily entails more than the framing and enforcement of legal measures, but the existence of enforceable rights constitutes a vital part of it. The rise of electronic and computer technology and their ready availability to government and private business groups enormously complicates the devising of strategy. The private world lies continuously under the shadow of power capable of being used for invading and obliterating the private realm. These exigencies, however, provide opportunities for the creation of policy. We are unable to eliminate such threats, but there are ample occasions for mandating uses of technology that minimize, instead of magnify, interferences with private lives.

Nor should one overlook the importance of the judicial and legislative defense of privacy values in the development of personal attitudes. Learned Hand once suggested that the freedoms of the First Amendment thrive only among a people capable of valuing them. Yet it is also true that debates on freedom-of-speech issues in the Supreme Court since 1917 have done much to educate public attitudes and that modern support of the values springs in important part from the advocacy of great judges, sometimes expressed in dissent.[6] So also, adjudication of interests vital to the private world may contribute to the formation of a vigorous public opinion and hence produce effects going far beyond the particular issues adjudicated.

Yet there are limits on what may be demanded or expected from law and public policy. It is surely not paradoxical that the survival or loss of the privacy value depends most importantly on what is done by individuals in their private lives. What is done may, in turn, depend importantly on how well institutions dedicated to cultivation of the life of the mind and to aesthetic sensibility perform their tasks, and whether those efforts can escape submersion in the mindlessness this society spawns.

There are no guarantees. The case for hope is an uneasy one, but this is a time when all liberal hopes rest on uneasy premises. As this becomes increasingly clear, many persons will return to *Nineteen Eighty-Four* to be reminded of what is at stake.

FOOTNOTES

1. 381 U.S. 479 (1965). The criminal defendants in the case were not marital partners who used birth control substances but rather employees of a birth control clinic who provided materials and instructions to clients and were charged as accessories to the statute's violation.
2. "The present case, then, concerns a relationship lying within the zone of privacy created by several fundamental constitutional guarantees." *Id.* at 485. See Bork, *Neutral Principles and Some First Amendment Problems*, 47 IND. L. J., (1971).
3. These include such cases as Meyer v. Nebraska, 262 U.S. 390 (1923); Pierce v. Society of Sisters, 268 U.S. 510 (1925); Skinner v. Oklahoma, 316 U.S. 535 (1942); Eisenstadt v. Baird, 405 U.S. 438 (1972); Roe v. Wade, 410 U.S. 113 (1973).
4. Olmstead v. United States, 277 U.S. 438, 478 (1928).
5. Smith v. Maryland, 442 U.S. 735 (1979). See also United States v. Miller, 425 U.S. 435 (1976).
6. See especially the opinions of Justice Holmes and Brandeis in Abrams v. United States, 250 U.S. 616 (1919); Gitlow v. New York, 268 U.S. 652 (1925); Whitney v. California, 274 U.S. 357 (1927).

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