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Let me add two modest threads to the incredibly complicated fabric of privacy that is the subject of this issue. First, privacy was an almost alien concept to America's founding settlers, and we rightly can be proud of the progress we have made in gaining individual autonomy. The march toward privacy is a uniquely American success story. Second, although this has been an American success story, we should take great care not to lose, in the name of privacy, some of the efficiencies modern technology has made available to government.

America was not born in or with privacy. Both government and neighbors intruded on one's "privacy" in ways unthinkable today. Americans lived mostly in small, confined communities where everyone knew everyone else's business. Your neighbor's business was your business, and state authority often backed this up.[1] A citizen could, and often would, be turned in by a neighbor for adultery, wife beating, dressing immodestly, flirting, homosexuality, masturbation, sodomy or violation of "community religious and moral values."[2] New Englanders thought nothing of spying on and interfering with their neighbor's most intimate affairs, in order, as one Massachusetts man said in 1760 "not to suffer sin in My Fellow Creature or Neighbor."[3] Most prosecutions in colonial courts were for moral offenses. The Puritans made homosexuality, masturbation, sodomy and bestiality capital offenses, and flirting in a lascivious manner and failure to attend church on Sunday were matters for prosecution.[4] People would gather around the post office and demand a public reading of their neighbor's private letters considered to be of special interest, and travelers often would find themselves sharing a bed with a stranger at an inn.

In most states, citizens were compelled to fund religion and their "souls" were public business. Nine colonies funded churches; the separation of church and state existed only in Rhode Island, Delaware, New Jersey and Pennsylvania.[5] Until the mid-nineteenth century, American citizens publicly financed churches, usually Congregational or Anglican.[6]

No clear delineations existed between the "public" sector and the "private" sector. The government often performed its functions by requiring citizens to perform municipal jobs. If a municipality had a public need it would often enlist its citizens to perform it. Street cleaning and paving were accomplished by obliging each person and business in the city to clean or repair the street abutting his house or shop. Many functions considered public today were mandated to be performed by the citizenry, and charters were issued to private individuals to collect fees for many municipal services like toll roads and education. Sanctions were issued against private persons for failure to perform their public duties.[7] A person's life and lifestyle were closely connected to that of his or her neighbor. People's private actions were subject to public monitoring, and their time was subject to appropriation by the community.

The thinking behind the American Revolution and the Constitution changed this dramatically. People were no longer "subjects" but "citizens," and republicanism eliminated the Crown's prerogatives and granted them to state legislatures. Government ceased controlling matters of personal morality. Public taxation was expanded, and public and private functions separated. Public education was initiated, and separation of church and state expanded gradually, with Massachusetts being the last state to abolish a state funded church in 1833.[8] While strong pressures to conform to certain moral standards existed, the structure of those post-Revolutionary War institutions that separated the public and private sectors started America down the road to autonomy and privacy.

My second point is that while there are dangers of ignoring or under-reacting to the issues raised by privacy, there are also dangers of overreacting. The threat to personal privacy and the Orwellian implications of our surveillance technologies are awesome, worrisome, intrusive and liberty threatening. Many, including Ronald

Corbett and Gary Marx, have pointed out the dangers of a surveillance society: "Such a society is transparent and porous. Information leakage is rampant. Barriers and boundaries –distance, darkness, time, walls, windows, and even skin –that have been fundamental to our conceptions of privacy, liberty and individuality give way."[9]

In this issue, others articulately illustrate this danger to life, liberty, autonomy and dignity. But in an attempt to balance the scales somewhat, I would like to point out some examples of efficiency and effectiveness that will be precluded if we overreact. For twenty years, I was on the front lines of the battle between the concepts of privacy and the promise of new technologies to enhance government efficiency and citizen convenience.

Building prisons is immensely frustrating for most state governors. Corrections has been one of the fastest growing parts of state budgets for the last 25 years. That is certainly true of Colorado. I personally have investigated and helped adopt the use of modern surveillance devices in corrections and have been the subject of criticism for doing so. I believe we can make use of some modern surveillance technologies without fear that our society will become like that of Orwell's *1984*. We can save the taxpayers' money and, at the same time, offer more humane settings for offenders. However, we must think through the privacy issues.

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The use in corrections for surveillance of non-violent offenders within the community allows them to hold jobs, continue to support their families, and even allows us leave some offenders in the community for their entire sentence. Surveillance technology allows the state to expedite a phased reentry of incarcerated inmates into society. It is more economical and humane than a $25,000-a-year prison cell. A central monitoring system allows the state to monitor offenders day and night, and conduct random checks at anytime of day. Only the offender and authorities need know of the surveillance's existence, and offenders can maintain a job.

Many states have installed video cameras in state patrol cars to the mutual benefit of both state patrol officers and the public. Big Brother? Hardly. Surveillance allows cleaner arrests and gives us a record on those rare occasions something goes awry. Similar video cameras surround the Governor's mansion and also monitor the State Capitol during non-working hours. Cheap, efficient, effective.

Likewise, sobriety check stops on heavy drinking nights prove to be a very powerful tool with minimum intrusion. Clearly, a short stop by the state police and a brief exchange with the driver is a powerful tool against the biggest highway killer, drunk driving. I admit this was a controversial issue, but I supported it and found it a useful tool against drunk drivers during high-risk holidays.

Requiring people entering the State Capitol or City and County Building to go through security gates is unfortunate but necessary, and hardly merits the excess rhetoric that greeted its arrival. Likewise, some schools in high-crime areas have found it necessary to institute scanning devices. While we may feel sad that such measures are necessary, they hardly signal the fall of the Republic.

Electronic tolls on roads, tunnels and bridges add immensely to an efficient transportation system. Surveillance will allow many new innovations, like direct charging by vehicle type, weight, location and time of day. We stand on the threshold of "smart highways" which have great promise in easing traffic delays, but all of these innovations involve privacy issues. I believe the concerns are valid but manageable. Some of these technologies can function without collecting personal or vehicle specific information. There are privacy enhancing technologies which allow us to adopt the technology, yet limit the manner, means, and data collected. We must give great thought to how this information is safeguarded and used, and certainly to whom has access to it. As we have all seen with driver's licenses, it is possible to balance individual privacy with public need.

Obviously, we do have to consider the cumulative impact of all of these minor intrusions and the many others of a similar character. The total effect of these minor intrusions into privacy can clearly be more than the sum of their parts, and it is well worth debating whether we are entering a time of permanent, unceasing surveillance of the citizenry. We must also worry about "function creep," where initially reasonable technologies overreach and become oppressive. But from a public policy standpoint, it is hard to believe that we can run a populous modern state without using technologies that have the potential to threaten privacy. This will be an incredibly important balancing act.

America was not born with privacy as a way of life, but we have grown up with it. Privacy has become indispensable to our personal lives and what we value

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about being American. I do believe, however, that we can utilize many modern technologies in government and business as long as we fully appreciate and evaluate the larger stakes. There has been too much blind criticism and too much jerking of the knees on this subject. Government has a stake in both efficiency and privacy. We have large problems that need to be managed by modern technologies. But, government also has a stake in maintaining privacy. Meaningful privacy guarantees are necessary to ensure public confidence in government. After all, privacy is the foundation of the secret ballot, search and seizure protection, doctor-patient and lawyer-client privilege, and our whole concept of being a free and independent American.

Richard D. Lamm is Director of the Center for Public Policy & Contemporary Issues at the University of Denver. He is one of the new breed of policy analysts who argues that the challenge of the 21st Century is to meet new public needs by reconceptualizing much of what government does and how it does it. Lamm maintains we cannot retire the baby boomers under our current social systems, nor provide health care without rethinking the goals of medicine.

Lamm has always been in the forefront of political change. As a first year legislator, he drafted and succeeded in passing the nation's first liberalized abortion law. He was an early leader of the environmental movement. Reacting to the high cost of campaigning, he walked the state in his campaign for Governor of Colorado. Lamm was elected to three terms as Colorado's top elected official, and in serving as Governor from January 1975 and retiring in January 1987, he was the longest-serving Governor in Colorado's history to that date.

Lamm was selected as one of Time Magazine's "200 Young Leaders of America" in 1974, and won the Christian Science Monitor "Peace 2020" essay in 1985. In 1992, he was honored by the Denver Post and Historic Denver, Inc. as one of the "Colorado 100" - people who made significant contributions to Colorado and made lasting impressions on the state's history. He was Chairman of the Pew Health Professions Commission, and a public member of the Accreditation Council for Graduate Medical Education.

During 1996, Lamm appeared on virtually every national news program, including *Larry King Live* and *Inside Politics* (CNN), *Today* (NBC), *Meet the Press* (NBC), ABC's *Good Morning America*, *Lehrer NewsHour* (PBS), and CBS's *Face the Nation*. His editorials have appeared in the *San Francisco Chronicle*, *New York Times*, *Christian Science Monitor*, *Newsday*, *Boston Globe*, *Los Angeles Times*, and *Chicago Tribune*, as well as in a number of academic and medical journals. While Governor, Lamm wrote or co-authored six books: *A California Conspiracy*, with Arnold Grossman (St. Martin's Press, 1988); *Megatraumas: America in the Year 2000* (Houghton Mifflin Company, 1985); *The Immigration Time Bomb: The Fragmenting of America*, with Gary Imhoff (Dutton and Company, 1985); *1988*, with Arnie Grossman (St. Martin's Press, 1985); *Pioneers & Politicians*, with Duane A. Smith (Pruett Publishing Company, 1984); and *The Angry West*, with Michael McCarthy (Houghton Mifflin Company, 1982).

The Center for Public Policy & Contemporary Issues advances the University of Denver's commitment to the study and discussion of American society's most critical issues. Research produced by the Center is targeted at influential policy makers nationwide. The Center contributes to the national policy dialogue through an active program of conferences, seminars, courses, forums, and several monograph series. It also grants degrees in public policy through its Public Affairs Program, an interdisciplinary, honors-based program designed to create analytical skills that can be applied to public policy questions through courses involving virtually every major social issue.