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Book Review: The Naked Society

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REVIEWS

THE NAKED SOCIETY. By Vance Packard. New York: David McKay Co., 1964. 369 pp., $5.95.

MR. Packard's calling is that of a Viewer with Alarm. He stands at the head of his profession. He has Viewed with Alarm, and soaring sales, such unpleasant and possibly malignant social ulcers as high pressure advertising, planned obsolescence and social climbing. This time he has set out after bigger and uglier game — the increasing ability and proclivity of government (state and federal, executive and legislative), employers, the press and the schools, not to mention a horde of private Nosey Parkers, to snoop into what is none of their business.

The latest volume in Mr. Packard's series is vulnerable to criticism in a good many places, and I intend to have some whacks at its more inviting protuberances. But I must say at the outset that, all things considered, I wish it success as solid as its predecessors'; for its author's topic is of vast importance and his heart generally in the right place.

Whatever success *The Naked Society* may have will not be due to the beauties of its literary style, for it has none. Each chapter consists of a string of facts, near-facts and sometimes, I regret to say, non-facts, more or less related to the thesis of that chapter, inadequately connected by paragraphs of platitudinous moralizing. I am left with the impression that Mr. Packard has seized on a suggestion once thrown off by Edgar Allan Poe[1] — *i.e.*, he has composed his opus by hiring a clipping service, covering a large sheet of paper with mucilage, and blowing the clippings in the direction of the page. Moreover, he writes with a total lack of humor and more than his share of naiveté. He solemnly reports, for example, that the lack of privacy in modern families and houses has driven young people into using parked cars for their sexual experiments.[2] I yield to no man in resistance to the repulsive modern phenomenon known as "Togetherness," but I doubt that it is a substantial factor in the causation of such harm as there may be in vehicular venery.[3] I can bear witness that it was popular thirty years ago and more, in an era blessedly innocent of Togetherness, and no doubt it flourished in other forms in antediluvian times. Mr. Packard is guilty, in short, of a certain lack of selectivity and proportion in the things he Views with Alarm. This leads to chronic overstatement and consequent weakening of a case which is intrinsically extremely strong.

1. See *The Literary Life of Thingum Bob, Esq.*, in THE COMPLETE TALES AND POEMS OF EDGAR ALLAN POE 322 (Modern Library ed. 1938).

2. Pp. 149-50.

3. Mr. Packard seems somewhat opposed to sex, apparently on the ground that it involves a crossing of "the last frontier of privacy" of the participants. *Ibid.* The point is incontestable; worse, there seems to be no avoiding the danger, except possibly in the cases of earthworms and oysters.

Mr. Packard seems to assume that respect for the individual's privacy is innate and natural, and interference with that privacy degenerate. Primitive societies, he supposes, are marked by respect for privacy.[4] But the truth is that in most such societies the individual's every action is regulated by tribal mores, and policed by the rest of the tribe, with a thoroughness which would seem oppressive to a denizen of Communist China. The Inquisitive Society is the aboriginal model. It may be that *homo sapiens* is beginning to develop an instinct for privacy. But the instinct to snoop is of his very essence, for he belongs to the ancient and noble order of Primates. The cause of that order's preeminence is to be found above all in its insatiable, moneylike curiosity about everything and everybody, including itself.[5] Among other animals, even other mammals, the faculty of inquisitiveness is comparatively feeble or nonexistent. Take cats: a deplorable zoological ignorance is implicit in the proverb about curiosity and the cat. Man's excessive curiosity about the insides of the atom, if it does not lift him to the stars, may at least blow him to hellandgone; but no such instinct ever troubled the *felidae*. A race of civilized cats would no doubt make respect for privacy the first article in its Decalogue. But there will never be a race of civilized cats, for they lack the first prerequisite, which is a consuming urge to stick their noses into what does not concern them.

Given this ineradicable and on the whole desirable simian instinct, it should be clear to any reader of *The Scarlet Letter* or *Main Street* that the itch to learn our neighbor's secrets, to explore the recesses of his personality and police his private morals, is hardly a modern phenomenon. What is modern, of course, is the enormous progress in techniques for the gratification of the itch. The explosive proliferation of relatively simple and efficient devices for eavesdropping, spying, and probing personality has made the preservation of privacy exceedingly difficult. Mr. Packard describes these devices at some length,[6] including a piece of fiendish Russian ingenuity — originally reported by *Time* — a martini whose olive was a tiny transmitter, the toothpick serving as antenna.[7] Mr. Packard favors more and tougher laws to regulate and restrict the use of such devices,[8] but I suspect that in the long run the answer will prove to lie in improved methods of defense. At present, Mr. Packard notes, defensive techniques are too expensive for anyone short of the United

4. P. 15. Justice Brandeis knew better when he said that the right most valued by *civilized* men is the right to be let alone. Olmstead v. United States, 277 U.S. 438, 478 (1928) (dissenting opinion).

5. The gorilla, it must be admitted, seems deficient in the urge to snoop; stately and aristocratic beast that he is, he shrinks equally from exposing himself to publicity and from intruding upon the privacy of others. And where is he? Marching, not without quiet dignity, toward extinction.

6. Pp. 29-43.

7. But *Time* subsequently sneered at gulls foolish enough to believe such a story; anyone, it said, should know that the liquid would deflect sound waves and that Moscow bars are lavishly equipped with conventional bugs. Time, March 6, 1964, p. 55. The article failed to mention the source of the original report of bugged martinis.

8. Pp. 319-22, 326-27.

States Government or the holder of a Texas oildom,[9] but the demand is great, and it is very likely that comparatively cheap methods of detecting and neutralizing wiretaps and all the other contraptions for electronic eavesdropping will be developed. After which, of course, as with battleship shells and armor,[10] super-bugs will be developed, then new counter-techniques, and so on.

But as of now there is surely a problem, for nobody can doubt that the snoopers are abusing their advantage. Mr. Packard is right to ring the tocsin long and loud. His trouble, as I have suggested, is indiscriminate condemnation. Some invasions of privacy are desirable, or at least necessary. Thus, despite Mr. Packard's indignant objections,[11] an employer has a perfectly legitimate reason for finding out facts relevant to a job-seeker's probable performance. God Himself did it, in the well known case of Gideon's Army,[12] by observation of the candidates' reactions to a contrived situation, or, as some psychologists would label it, a controlled two-variable experiment on naive subjects.[13] Bank officers who treated as a cashier's private affair his dedication of his spare time to the theory and practice of the three horse parlay would certainly be subject to criticism and possibly to liability.[14] The valid point is not that employers have no right to pry into employees' affairs, but simply that they ought to confine their prying to those matters which are actually relevant to the performance of the job, as they ought to limit themselves to methods which are actually likely to produce relevant information. It probably doesn't matter if a prospective shoe salesman is a homosexual, unless he is the blatant sort of fairy who might irritate heterosexual customers, in which case it doesn't take an FBI investigation to ascertain the fact. The lie detector (a cause of particular offense to Mr. Packard) is objectionable not because it is wrong to interfere with the right to lie, but because polygraphs, and still more their operators, are not really very good at telling liars from the merely nervous.

Similarly, I decline to register either surprise or shock when I am told that banks install hidden cameras to shatter the privacy of the bashful bank-robber[15] or that other enterprises, instead of relying on the honor system to

9. P. 337. But elsewhere he says that one company sells for $300 a kit containing "a host of tools for detecting bugging devices." P. 35.

10. There was a fascinating formula: one inch of armor would turn a one inch shell at one thousand feet; two inches would turn a two inch shell at two thousand feet; and so on up to sixteen or eighteen inch shells and armor. It seems a pity that battleships faded away before we had a chance to learn the upper limits, if any, of their development. The same thing happened with the armed and armored dinosaurs.

11. See Chapter 3, whose general tenor is sufficiently indicated by its title, "How to Strip a Job-Seeker Naked."

12. Judges 7:4-7.

13. For this gorgeous specimen of jargon, I am indebted to my colleague, Leon S. Lipson.

14. *E.g.*, Bates v. Dresser, 251 U.S. 412 (1920); Gamble v. Brown, 29 F.2d 366 (4th Cir.), *cert. denied*, 279 U.S. 839 (1928).

15. Pp. 89-90.

hold down shoplifting and employee pilferage, resort to closed circuit television and plainclothes detectives.[16] I can think offhand of only one sizeable business, Exchange Buffet Corporation, which relied entirely on its customers' honesty; it recently went into bankruptcy. Such industrial spying and the need for it again go back to Old Testament times: it is written that a technique of clandestine surveillance devised by the prophet Daniel broke up a ring of three score and ten priests of Bel, who were stealing the King of Babylon blind.[17]

Likewise, Mr. Packard's lengthy report on the investigative activities of Credit Bureaus [18] arouses my indignation not at all: if you want to keep your finances private, you can always pay cash. Nor do I beat my breast and rend my garments in mourning for the Bill of Rights when Mr. Packard hands me the stunning information that the Bureau of the Census every ten years requires every fourth householder to spend thirty minutes filling out a questionnaire.[19] I feel no urge to rush to the barricades even when I am told that a securities salesman, resident in Briarcliff Manor, was fined $100 for refusing to comply; and I most certainly do not believe that "his offense, apparently, was that he wrote a sizzling article saying why he balked."[20] I note with some amusement that the said sizzling article appeared on the asbestos pages of William Buckley's *National Review*, whose editors and contributors were never known to share Mr. Packard's indignation at the really objectionable inquisitions of the House Committee on Un-American Activities, the late Senator Joseph R. McCarthy, or any of the other road-company Torquemadas, professional and amateur, who have infested the republic for the past thirty years.[21] But for some reason they regard the Census Bureau's relatively innocuous questions about the number of your TV sets, radios, air conditioners and children as intolerable "bureaucratic harassment." I am less amused by the fact that Mr. Packard seems to have bought another favorite grievance of the Birchers, Buckleyites and similar Saviors of the Republic, for he denounces compulsory medication in the form of fluoridation of water.[22] How he manages to condone chlorine while condemning fluorine I can't tell you, but it is a fact that he does.

Mr. Packard sheds tears (and so drags in a little marketable dirt) for Elizabeth Taylor, Richard Burton and other poor hams whose privacy has been invaded by the press.[23] Any reporter could have told him that they and their congeners have no more use for privacy than a fish has for fresh air. Whenever the interest of the press in their private lives shows the slightest

16. See generally Chapter 4, "The Hidden Eyes of Business."

17. This instructive tale is contained in the first twenty-two verses of the Apocryphal History of the Destruction of Bel and the Dragon. The King, an old fashioned employer, slew the offenders on the spot.

18. Chapter 10, "The Unlisted Price of Financial Protection."

19. Pp. 268-72.

20. P. 269.

21. See Chapter 13, "The Right to Have Unfashionable Opinions."

22. P. 294.

23. Pp. 218-19.

sign of flagging, they commonly resort to frantic mugging and capering, and if the inattention continues they perish. I do not go so far as a theatrical lawyer of my acquaintance, whose considered opinion is that his clients ought to be compelled to seat from the rear in buses and otherwise be classified as subhuman; but I am not profoundly concerned about their struggles with the naughty news media.

In short, Mr. Packard's recognitions that there may be two sides to the privacy question are few and somewhat grudging. The law is not so certain of the merits. Although the Warren and Brandeis article on "The Right to Privacy"[24] has been called "probably the most influential law review article ever written,"[25] today, three quarters of a century later, not many jurisdictions go much beyond protecting an individual's right not to have his name or picture exploited commercially,[26] and perhaps imposing liability for the more outrageous and gratuitous exposures of the secrets of people who have neither a craving for publicity nor legitimate news value.[27] Obviously, the right to privacy has in such cases to be reconciled with the invader's no less important right to freedom of speech, and equally obviously the line is very hard to draw, as the decisions demonstrate.[28] Cases in which damages have been awarded for pure invasion of privacy, such as electronic eavesdropping or other trespassory prying, not accompanied by publication, are still distinct rarities.[29] Here, of course, there is no collision with the first amendment, and the fact that the judges are so far behind the professors in protecting privacy in such cases is probably attributable to reluctance to sanction damages for purely emotional injury.

The problem is, of course, much more serious and much more difficult in the criminal context. Mr. Packard is not quite one of those who believe that it is unconstitutional to introduce evidence against a person accused of crime. But he does appear to believe that the prosecution of murderers, extortionists, narcotics magnates, Mafiosi and similar human sharks is a sport, rather like dry-fly trout fishing, whose object is to exact the greatest possible skill from the hunters and to give the hunted the maximum chance of escape, by labeling as unfair and illegal such efficacious, if unsporting, equipment as worms and wiretaps. "Wiretapping," he says, "is a form of unreasonable search that should

24. 4 HARV. L. REV. 193 (1890).

25. GREGORY & KALVEN, TORTS 883 (1959).

26. *E.g.*, Pavesich v. New England Life Ins. Co., 122 Ga. 190, 50 S.E. 68 (1904); see PROSSER, TORTS 635-44 (2d ed. 1955).

27. *E.g.*, Melvin v. Reid, 112 Cal. App. 285, 297 Pac. 91 (1931); RESTATEMENT, TORTS § 867 (1939); *but cf.* Sidis v. F-R Publishing Corp., 113 F.2d 806 (2d Cir. 1940).

28. There is a good collection in GREGORY & KALVEN, TORTS 888-95 (1959). As might be expected, there is no very coherent pattern.

29. *E.g.*, Byfield v. Candler, 33 Ga. App. 275, 125 S.E. 905 (1924) (intrusion in woman's steamer stateroom); McDaniel v. Atlanta Coca-Cola Bottling Co., 60 Ga. App. 92, 2 S.E.2d 810 (1939) (microphone in tort plaintiff's hospital room); Roach v. Harper, 143 W.Va. 869, 105 S.E.2d 564 (1958) (landlord's bugging of apartment). *But cf.* Chaplin v. National Broadcasting Co., 15 F.R.D. 134 (S.D.N.Y. 1953); Schmukkler v. Ohio Bell Telephone Co., 116 N.E.2d 819 (Ohio C.P. 1953).

put it under the prohibitions of the Fourth Amendment,"[30] and he criticizes the Supreme Court severely for failing so to hold. It is true that the present state of the law on electronic eavesdropping, which is based on the pharisaical reasoning that there is no search or seizure unless there is some sort of physical trespass,[31] and a somewhat strained and artificial construction of Section 605 of the Communications Act of 1934,[32] produces distinctions so fine-spun as to be preposterous.[33] The fact is, of course, that wiretapping, like other varieties of electronic eavesdropping and like other techniques of clandestine surveillance (such as mail covers and stakeouts with binoculars), is essentially a form of search and seizure. So far Mr. Packard [34] is right. But, though such eavesdropping may be peculiarly susceptible to abuse, it is not *ipso facto* unreasonable, and there is no reason to suppose that it is beyond legislative ingenuity to devise controls under which its use would be reasonable within the meaning of the fourth amendment. Even Mr. Packard concedes that Congress could constitutionally authorize wiretapping and microphoning, pursuant to court order, in "cases involving espionage, sabotage, or treason."[35] He is probably right, but it seems to me that these three do not by any means exhaust the catalogue of crimes against which we need all the protection we can get.

On this question of the constitutional limits on wiretaps and the like, Mr. Packard has talked to well-informed people, and his treatment of the problem, however tendentious, is reasonably thorough and informative. This is not true in other areas. He has a habit of dragging in problems which are only remotely related to his major thesis. Even "the right to have unfashionable opinions"[36] is not so much a question of the right prudently to keep such opinions to oneself as of the right to express them freely without being penalized. This and some of the other problems over which Mr. Packard flies at a considerable height and with great rapidity, such as sterilization of the unfit [37] and the right to travel freely *in partibus infidelium*,[38] are great and complex

30. P. 309.

31. Olmstead v. United States, 277 U.S. 438 (1928); Goldman v. United States, 316 U.S. 129 (1942); On Lee v. United States, 343 U.S. 747 (1952); Silverman v. United States, 365 U.S. 505 (1961). Mr. Packard ascribes Chief Justice Taft's decision in the *Olmstead* case, which involved bootleggers, to Taft's fanatic devotion to the cause of prohibition. P. 310. It would be painful to believe that a man of Taft's beatific appearance was a common wowser.

32. Nardone v. United States, 302 U.S. 379 (1937), 308 U.S. 338 (1939); Goldstein v. United States, 316 U.S. 114 (1942).

33. Compare, *e.g.*, United States v. Tane, 329 F.2d 848 (2d Cir. 1964); Cullins v. Wainwright, 328 F.2d 481 (5th Cir. 1964); United States v. Pasha, 332 F.2d 193 (7th Cir. 1964).

34. Or, more probably, the lawyers who educated him in this area. They included such able defenders of civil liberties as Morris Ernst, Frank Newman, Joseph Rauh and Harriet Pilpel.

35. P. 322.

36. Chapter 13.

37. P. 276.

38. Pp. 225-28.

issues. Others, such as the diagnostic methods employed by the more Freudulent psychologists,[39] and the increase in the amount of hide which motion picture actresses are expected to expose,[40] have more entertainment value than real importance. But all alike are treated in a manner which may charitably be described as sciolistic.[41]

All the same, I am glad that Mr. Packard picked these topics, and particularly the Bill of Rights, for the latest in his string of best sellers. If the gap between *The Naked Society* and the polemics of James Madison is as the Grand Canyon, be it remembered that Mr. Packard's useful and unpretentious volume is aimed at a mass audience which, if it lacks the wit and education to read and understand the prose of the founding fathers, is nonetheless allowed to vote, and on whose understanding depends the survival of our ancient liberties. The defense of the first ten amendments has been too often left to eggheads, while such masters of the popular style as the late Joe McCarthy systematically downgraded them to a point where millions of honest, if not overly bright, citizens regard as subversive contemporary advocacy of the ideas contained in the first, fourth, fifth and sixth amendments. If Mr. Packard can help to reverse that trend, he deserves well of the Republic.

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THE SUPREME COURT AND PUBLIC PRAYERS: THE NEED FOR RESTRAINT. By Charles E. Rice.* New York: Fordham University Press, 1964. 202 pp., $5.00.

RELIGION, THE COURTS, AND PUBLIC POLICY. By Robert F. Drinan, S.J.** New York: McGraw-Hill Book Co., Inc., 1963. 261 pp., $5.95.

Professor Rice's thesis is that government cannot remain neutral with respect to religion and that the Supreme Court's decisions in the school prayer cases[1] will merely substitute one religion, agnosticism, which entails "a perpetual suspension of judgment on the part of government as to the existence of God,"

39. See, *e.g.*, pp. 141-42, for a description of tests solemnly instituted to detect among school children Oral Eroticism, Anal Sadism, Oedipal Intensity, Penis Envy and other fearfully and wonderfully named specimens from the neo-Freudian bestiary.

40. Pp. 220-21.

41. One of Mr. Packard's bits of doubtfully relevant information is, however, worth the price of the book. Any transistor radio within a "few feet" can be put out of action by dialing your own set (silently) to a point 460 kilocycles below the wave length of the station broadcasting the offensive noises. P. 339.

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1. Engel v. Vitale, 370 U.S. 421 (1962); School District of Abington Township v. Schempp, 374 U.S. 203 (1963).