

personality.¹ And it is to this particular conflict in values that this article is addressed.

I. THE MORAL CLAIM TO PRIVATE PERSONALITY

Although scholars may trace its origins into antiquity, the recognition of a moral claim to private personality is relatively modern. For most of our recorded history, privacy was not physically possible in either the home, or the place of work or of public accommodation. Furthermore, privacy of belief or opinion clearly was not respected until the last few centuries. The record of autocratic government, both temporal and spiritual, is long and disheartening. Robert Bolt, in his moving drama, *A Man for All Seasons*, had the doomed Sir Thomas More say to his inquisitors: "What you have hunted me for is not my actions, but the thoughts of my heart. It is a long road you have opened. For first men will disclaim their hearts and presently they will have no hearts. God help the people whose statesmen walk your road."²

Three of the great forces that have nourished the modern claim to privacy are science, the secularization of government, and political democracy. It was, for example, science that brought about the industrial revolution and made privacy physically possible. Consider, as a small sample, what steam heat and plumbing have done to the design of our homes and to the manner of our living in them. Further, the separation of church and state encouraged pluralism as well as diversity in religious belief. And it was political democracy that in the last analysis truly elevated the concept of the essential worth and dignity of the individual to the place it now holds in the western world.

It is therefore only in the last few centuries that the primacy of the individual has emerged, has been articulated by philosophers, reflected in political institutions, and implemented in law. Although the moral claim to a private personality has developed along with the claim to individual freedom and dignity, such development has proceeded at a slower rate, perhaps because the western preoccupation with private property as the tangible expression of the dignity of the individual has tended, for more than a century, to obscure the claim to private personality on which the claim to private property was based. Not only did the interest in private property obscure the human claim to privacy but, over the years, it tended to define the claim itself.

Thus, in the absence of trespass, bodily injury, theft, or tangible damage measurable in money, as in the case of defamation of reputation, our law has often failed to perceive injury to the private personality. This has led to such legal anomalies as now exist with electronic eavesdropping devices. Thus, if an eavesdropping device is placed next to a wall by a police officer, or brought into one's room concealed on the person of an invitee, then, under present

1. See generally Shils, *Social Inquiry and the Autonomy of the Individual* in *THE HUMAN MEANING OF THE SOCIAL SCIENCES* 114 (Lerner ed. 1959).

2. BOLT, *A MAN FOR ALL SEASONS*, ACT II, at 157 (Random House 1962).