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Dancing to the Pied Piper's Tune

Irving Janis would have been appalled had he been alive today. This year the late psychologist would have reached 100 years of age and almost 50 years ago he introduced us to the term “groupthink” via his publication, “Victims of Groupthink”, which was published in 1972. George Orwell would probably have considered it a good read, he of the criticism of gumming together long strips of words provided by pernicious persuaders of sheer humbug. In his groundbreaking “Politics and the English Language Guide to Writing”, which was published over 70 years ago, he feared that the English language was already in a bad way (he was not to know how worse it would become in the twenty first century).

Charles Baudelaire, the nineteenth-century French poet and essayist, once said “If a word does not exist, invent it; but first be sure it does not exist”. Wise thoughts, but in today’s environment, with its lexiconic laxity, meanings of even existing words are reinvented; It was the twentieth-century American writer, John Steinbeck, and a Nobel laureate famous for his social perceptions, who said that “words can change their

meanings right in front of you”. On that point, the United Kingdom no longer has an empire, and yet one can still become a member in 2018 of The Most Excellent Order of the British Empire, whereas the United States of America does not declare itself an empire, but it displays all the trappings of one. More challenges lie ahead, because we are adding over 1,000 new English words every year to our vocabulary of, already, more than one million words.

Accepting that persuasive writing or oratory can, in the wrong hands, become a dark art, it is important to note that collective decision-making can have its virtues – provided each participant travels along an independent-thinking path before arriving at a conclusion, a path along which I hope that most readers of my newsletter travel, rather than being led lemming-like by the hand.

We need not look too far into history to find just how groupthink, particularly in foreign policy, has produced disasters; the US invasion of Cuba’s Bay of Pigs; the escalation of the Vietnam War; and, more recently, on the economic front, the West’s 2008 financial crisis that Ben Bernanke, a former US Federal Reserve Bank

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Chairman, described as the “worst financial crisis in global history, including the Great Depression” which had, of course, direct financial consequences, but, as it turned out, profound political ones, too, that still resonate today and which has brought a surge of populism in its wake.

Huge economic risks built up and we found that the judgement of those we had assumed had a firm hand on the tiller, or the till, in the case of the bankers, proved illusory. Bankers, in a famous quote, continued to dance until the music stopped, lured like the children in Robert Browning’s “The Pied Piper of Hamelin”. This time it was a mountain of debt rather than a door in a mountain-side, that the investors faced. Crucially, the trust in both bankers and bureaucrats collapsed, leading to an upheaval of the political landscape in several countries. Admittedly, the ground had been rumbling for years before this earthquake struck.

This, indirectly, brought on the drive for goldfish-bowl transparency which has since become an all-out assault on privacy. Certainly, an effect of the 2008 financial crisis gave birth to a general public outrage when hundreds of millions of ordinary people lost their homes and jobs while the dancing bankers, despite everything, received their bonuses from banks which continued to be supported by their respective elected governments. Along with this anger came revelations of offshore chicanery and tax-dodging which went on to fan the flames. The Panama Papers came to light in 2016, to be followed by the Paradise Papers in 2017, and which prompted John Peterson, the head of the Organisation for Economic Co-operation and Development’s aggressive-tax-planning unit, to comment that “The Panama Papers and the Paradise Papers have focused the public’s attention on the global reach of the tax planning industry”. “Focused” has, of course, metamorphosed into fury.

Although supporting the revelations of, clearly, illegal activities, the sinister implications of unwarranted exposure got lost in the fog. Mr. Peterson’s public should have also focused its attention on the principles of confidentiality applicable to lawful activities also revealed by The International Consortium of Investigative Journalists from records containing privileged information and which had patently been stolen. This was a blatant breach of unjustified client confidentiality, without any thought of whether or not

the released documents gave rise to any matter which fell within the normal definition of public interest.

This is just one illustration of what appears now to be a wilful disregard of privacy, such as Mark Zuckerberg’s instant message to a friend as long ago as 2004, after amassing personal data, including photos, emails and addresses of some 4,000 of his social network’s users: “They ‘trust me’... dumb f..ks”. Confidentiality is no longer of paramount importance and is another casualty of present-day mores.

A researcher from Cambridge University had been able to obtain approximately 300,000 Facebook users details in 2012 by encouraging them to download an app and take a survey. He then shared the data harvested with a political consultancy, Cambridge Analytica, which reportedly made this available to third parties, including Donald Trump’s presidential campaign. The ensuing scandal resulted in two hearings for Mr. Zuckerberg, first before a joint hearing of two Senate committees, and then a House of Representatives committee which opened up a can of worms. It turned out that about 87 million Facebook users, for example, were affected due to former policies of Facebook that had allowed people using a third-party’s app to share details about themselves and their friends too, but without their knowledge.

The politicians confronting Mr. Zuckerberg gave him an easy ride, and what we saw was a further example of ignorance winning the day: those on the committee at the hearings displayed how little they knew about Facebook, or the way that the world of digital communications operates. So Facebook was not brought to book. Did Mr. Zuckerberg mutter, I wonder, the same words, under his breath, inclusive of the expletive, that he once used to describe his social network users?

Politicians, not unlike government bureaucrats, are often in control of things they know far too little about, and I recall Mark Twain’s acerbic wit, when giving his view of his own government: “Suppose you were an idiot, and suppose you were a member of Congress; but I repeat myself”. It is a sentiment, I’m sure, that citizens of other countries sometimes express about their own government.

Whispered in the Closet

Irving Janis, George Orwell and John Steinbeck would have appreciated why the late Lord Carrington, a



former British foreign secretary and servant of six prime ministers, had said that his favourite book was “Alice’s Adventures in Wonderland”, because it helped remind him always of the absurdity of the world in which we live. Lewis Carroll, its author, famous for his children’s novels and nonsense verse, was a nineteenth-century mathematician and fellow at Oxford University who applied his logical and analytical mind to his love of paradox, creating many characters, such as the Queen of Hearts, Mad Hatter and the Cheshire Cat. Farce does indeed sit well with the times in which we live and had Carroll shared these times with us, he would have grinned as broadly as his Cheshire Cat because instead of Alice we surely occupy our very own Wonderland, one of amazement, stupefaction and bewilderment.

There was a time when privacy was drawn along simple, narrow lines. In the US, for example, the Fourth amendment was, originally, very clear in spelling out citizens’ rights and who were to “be secure in their persons, houses, papers and effects”. But innovations in the nineteenth century, and a thirst for making private affairs public ones, started an erosion that continues to this day, as we have seen.

The author, Henry James, lamented about “the devouring publicity of life, the extinction of all sense between public and private”. In 1890 the eminent Boston lawyers, Samuel Warren and Louis Brandeis, wrote an article in the Harvard Law Review on the “Right to Privacy” that spoke of “instantaneous photography” and a “prurient newspaper enterprise” which had “invaded the sacred precincts of private and domestic life”. The two lawyers wanted to widen the concept of privacy, suggesting a shield be put in place to protect “the right to one’s personality”. After all, the target of the lawyers’ article was the new “mechanical devices” that supported the prediction that “what is whispered in the closet shall be proclaimed from the house-tops”. Our Wonderland has humans with attributes that fit perfectly, like the Mad Hatter’s hat, many of the characters created by the Oxford professor. He may have died just before the start of the twentieth century, but his message most certainly did not. On that score, the Titanic hit an iceberg but the good ship privacy hit a Zuckerberg.

Virgins and Tomatoes

From Cheshire Cats to Virgins, and two particular ones basking in the Caribbean sunshine. But first a little detour, further afield (yet not to the subject) to Delaware, the tiny East Coast state that is approximately 25 minutes away by aeroplane from Washington DC. It has been described as the American Luxembourg where private companies remain just that and meaningful transparency can be avoided. Gypsies, rogues, tramps and thieves have not needed to set sail for tropical offshore islands to bury their ill-gotten gains. Delaware may be close to Washington DC but not to most of its lawmakers thinking about today’s concerns over transparency – despite rejection of the Common Reporting Standard mentioned again further on.

Although an island does, to some, present romanticism and intrigue, any piratical practices today will likely have you walking the prosecutor’s plank. Drug traffickers, embezzlers and money launderers will find an almost impenetrable wall to climb that lies beyond the beach, due to the harsh realities of offshore transparency standards that counter the contradictory and easy-going American view of them. A dearth of information awaits investigators in Delaware and, it must be said, also in several other states, which is startling, considering the prevailing, international public opinion. A leading international adviser has said that if one is a non-resident alien, earning no income from a US source, then the US can virtually represent a black box. The solution, whatever it may be, will need to be found at the federal level of Government. So far (read on) this is not encouraging.

We are, of course, usually focused on the word “offshore”. But when fruit tastes the same, it does not matter how you pronounce its name, or indeed whether it is grown onshore or on an island. I have the humble tomato in mind. The Common Reporting Standard comes up against a US brick wall and although the difference in distance between the British Virgin Islands and the US Virgin Islands is less than 20 miles, they are poles apart when it comes to corporate transparency controls. If nothing else, it is a contrasting tale of 2 Virgins, to paraphrase Charles Dickens, with practitioners, depending upon which beach they lie, having either the worst of times or the best of times.



Because the British Virgin Islands is an Overseas Territory belonging to the United Kingdom, they are now one step away from being compelled to open a public property registry (applicable also to other Overseas Territories, such as the Cayman Islands), as the British government continues its attempts to stem the flow of international dirty money, as well as combat tax evasion. The move to force 14 Overseas Territories to comply by the end of 2020 came after a successful vote in the House of Commons in May, and doubtless it will continue to be vigorously contested by the governments of prominent Caribbean financial centres. The same rules, however, will not apply to the British Crown Dependencies, which enjoy a greater degree of independence, and so the mood in Jersey, Guernsey and the Isle of Man is more optimistic. For now.

Despite what's been previously written, at the end of July the offshore world thought that there had been a possible seismic change in US policy and that the country was to fall into step with the troops marching under the banner of the OECD-inspired registration of legal entities' beneficial ownership. US House of Representatives Bill HR 6068 originally introduced a clause that would compel the national registration of beneficial owners of all US legal entities, capturing the

low-profile US Virgin Islands, not to mention Delaware and several states, in the net. The bill, however, has since been amended by the deletion of all transparency clauses. Lobbyists, no doubt, representing vested interests, turned the tables and put paid to the chances of seeing the clauses being agreed.

This federal bill had been introduced to Congress last November and would have embraced corporations and limited liability companies. Importantly, a vital consideration discarded by the OECD, but not the US Comptroller General to report, inter alia, on the extent of the resulting regulatory burden and costs imposed on financial institutions. No one, however, expects a change in policy, nor of the "non-compliant" ranking that the Global Financial Action Task Force has given the US and which is the lowest possible grade for determining beneficial ownership.

Lord Carrington had his copy of "Alice's Adventures in Wonderland" for solace and one might muse just how our own future Wonderland adventures will unfold in the age of a complex and contradictory US, and which is still the West's leading power; surely, Lewis Carroll might have introduced a Trumpty Dumpty character if he had been writing his book today?



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Engaging an offshore representative is an important decision and we advise all persons to seek appropriate legal and tax advice from professionals licensed to render such advice in the appropriate jurisdiction before making offshore commitments.

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