

**Although still in its infancy**, the new millennium has already witnessed an array of far-reaching developments, three of which are especially pertinent to the activities of a trustee.

Following a prolonged phase of government-sponsored 'easy money' – which ultimately spawned the dot-com and, more recently, real-estate bubbles – many countries now find themselves stuck in a seemingly bottomless economic, political and social quagmire. The state coffers are more than empty, economic activity is still flatlining despite valiant efforts to defibrillate it, and anxieties about the future are beginning to spread within society. This precarious situation is being used by some to advance the adoption of measures that enable an ever-deeper peek into one's personal matters. The US *Foreign Account Tax Compliance Act* (FATCA), automatic exchange of information in tax matters, big data, and the recording of air passenger particulars are but a few examples.

At the geopolitical level, a still somewhat veiled backroom battle is being waged over the claim to global leadership. A shift in

the traditional pecking order among the world's hegemonic powers appears to be under way, a development that has the potential to cause political, economic and social upheavals.

A disconcerting trend is also at work in the virtual world. Today, hardly anyone lacks a digital device of some sort and, of course, a social media account. Intelligent credit cards will take us into the next realm of personal transparency. This means that everything and everyone is connected in some way – the net is being cast further and drawn tighter. That was not the case prior to the turn of the millennium. The worrisome part of all this is that new media make it possible for us at whim not only to interact, but also to transact and disclose personal information without giving a second thought to the ramifications. But that information is compiled, evaluated and interlinked in the blink of an eye and with no time limitation. Complete strangers, and especially the state, can peer into our most private sphere.

#### **WHAT DO THESE CHANGES MEAN FOR TRUSTEES?**

We are wending our way through unstable times that harbour countless uncertainties and risks; this situation poses a tremendous threat not just to individuals per se, but also to their wealth. If one considers today's social, economic and political *Sturm und*



# CHALLENGING TIMES

**Francis von Seilern-Aspang** on the need for privacy in the context of wealth preservation

# “The more personal information that becomes accessible in the public space, the more vulnerable people become as individuals. And that applies in equal measure to family and personal wealth”

*Drang* (and the related compulsion to heighten surveillance), along with the fact that the new media are eroding the private sphere to an ever-greater extent, it becomes obvious where the future challenges lie for a trustee. The more the private sphere is encroached upon via surveillance mechanisms, the easier it is for institutions, organisations and individuals to get their hands on that private wealth.

## FIRST CHALLENGE: DEFINING ‘PRIVACY’

Interestingly, it was the US – the birthplace of the concept of privacy – where, in 1890, attorney and later US Supreme Court justice Louis D Brandeis joined his professional colleague Samuel D Warren to pen *The Right to Privacy*,<sup>1</sup> thereby laying the cornerstone for what is commonly referred to as the private sphere. What a twist of fate that, of all places, it is the US that has now been unmasked as conducting vast surveillance operations on American and other citizens.

Privacy is a fundamental human right and is upheld as such in article 12 of the *Universal Declaration of Human Rights*. This means that, in principle, nothing and no-one has the right to arbitrarily inspect one’s private circumstances – not even one’s financial circumstances.<sup>2</sup> Unfortunately, it is precisely the new media channels and technological gizmos that lend themselves best to divulging personal information without one being aware of the possible consequences. The greater the amount of personal information that becomes accessible in the public space, the more vulnerable people become as individuals. And that applies in equal measure to family and personal wealth.

For trustees, ‘protecting privacy’ means that, today, they should be more keenly cognisant of the need for a private sphere and, in the same vein, take a considerably more prudent approach to dealing with personal data – both that of clients and co-workers. With big data, even the state can be a threat to one’s personal freedom.

## SECOND CHALLENGE: EXPLAINING THE CONCEPT OF ‘WEALTH PRESERVATION’

The time has come to distinguish ‘wealth management’ and ‘wealth preservation’.

Usually, a trustee is not a wealth manager but a wealth preserver. In wealth management, the appraisal and administration of assets takes centre stage. Wealth preservation comes into play one step earlier. Here, the key question is how tangible and intangible assets – to which traditions, values and skills are also attached – can be structured in the most sensible manner so they remain protected from risks and hazards, fulfil a specified purpose, and endure for generations to come. This differentiation needs to be emphasised more frequently not only to clients, but also to the broader public (including politicians and the media). One should bear in mind that it is wealth preservation that enables in the first place a long-term and generation-transcending approach to wealth management.

## THIRD CHALLENGE: INCREASING AWARENESS OF THE TRUSTEE’S PROFESSION

Trustees are pivotal in wealth preservation. They ascertain and assess the manifold risks and hazards to which assets are exposed. They assist in formulating the goals that are to be achieved with the assets. They provide clients with the facts necessary for arriving at a decision on the asset structure that makes the most sense. They redirect existing assets into appropriate repositories and legal entities. They make sure that the nature and administration of the assets are in line with the objectives of the client’s personal fortune.

Essentially, the activities of trustees centre on conceiving and implementing a far-sighted wealth plan that ultimately accrues to the good of the beneficiaries of the structured assets.<sup>3</sup> A trustee is, therefore, a counsellor, designer and implementer all at once. And they are a guardian of privacy, because a lack of privacy can at times lead to the collapse of an entire wealth structure.

## CONCLUSION

Preserving the inviolability of the private sphere is the best protection for an individual and their wealth. Dealing with personal data in a conscientious manner is the means to that end. Understanding the concept of wealth preservation is crucial to

ensuring the long-term, beneficial destiny of a personal fortune. Thus the challenge for trustees in this millennium is twofold: on one hand, to foster a deeper understanding of the private sphere and encourage clients, as well as employees, to deal with personal data more cautiously, and, on the other, to dispense with the one-dimensional view of what is commonly known as wealth management, and shed brighter light on the art of wealth preservation.

Furthermore, it would be beneficial if the topics of privacy and wealth preservation appeared more frequently on the public agenda and were discussed by a wider audience. Professional organisations such as STEP have the clout to bring these issues into the public eye and make people more aware of their relevance. If that can be accomplished, then the function of a trustee will gain greater significance and asset structures can become more effective instruments.

## PRIVACY IN THE SPOTLIGHT

In the May issue of the *STEP Journal* William Ahern called on STEP members to fight against leakage and misuse of personal information that is rightly private and confidential. ‘We must make sure information is only provided to governments who can secure its confidentiality and its legitimate use,’ said William.

In this month’s issue, Joseph Kellogg explains how he was inspired by William’s article to research the topic to find out what information is deemed personal and also where one might have a defensible expectation of privacy. A Google search produced some interesting results. Turn to page 17 to find out more.

1 ‘The Right to Privacy’, *Harvard Law Review*, volume IV (15 December 1890), no.5

2 Reference is made here to article 17 *Universal Declaration of Human Rights*, which states: ‘(1) Everyone has the right to own property alone as well as in association with others. (2) No one shall be arbitrarily deprived of his property.’

3 For example, family members, future generations, third parties from one’s own circle of acquaintances or society in general



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