

IS PRIVACY A HINDRANCE TO LAW ENFORCEMENT?

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Is the sanctity of private life a hindrance to the execution of police, intelligence and security work? That's the question ! I have been with the Danish police for 41 years. I have worked for 20 years in the National Commissioner's Serious Crime Squad. And for the last 9 years I have been Detective Commander and Head of Operations in the Danish Security Intelligence Service. On the basis of this experience and with this kind of ballast, I can answer this question with a resounding: NO! And in a way I could end my speech and step of the floor

But things are not quite that simple. The question will be answered differently: depending on who you are, depending on your situation, and depending on which part of the world you are in.

Therefore, it is with good reason that privacy is protected by the UN Declaration of Human Rights in which it says:

"No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence ..."

Privacy is established as a human right. But at the same time it is also made clear that, in certain instances, this right can in fact be disregarded. The Human Rights Declaration refers only to "arbitrary interference". If one is to violate the sanctity of private life, one must have extremely weighty reasons.

The European Convention on Human Rights cites a number of concrete instances that may justify invasions of privacy. For reasons of national security, public safety, prevention of crime et cetera.

In Denmark, this is implemented in the Constitution, in the Administration of Justice Act and in a number of sections in the criminal code. Generally, police violations of privacy are subject to judicial review. Hence, any violation - by way of house search, opening of letters, wiretapping, bugging or gathering of historical communications data - must be approved by a court of law in a

court order given to the Police. As a matter of fact, there are 150 "distinct exceptions" that allow police and other authorities to violate the sanctity of private life – even without a court order. These comprise various exemption clauses in special legislation on for example fireworks storage, VAT, weapons and ammunition and radio installations.

So, objectively speaking, my initial answer would seem to be correct. Indeed, the protection of privacy is in no way a hindrance to the execution of law enforcement - on the contrary, most likely. And Denmark is actually one of the most liberal places in Europe when it comes to the really serious interventions in privacy – wiretapping and bugging, that is. But if we discount, for a moment, what can be established objectively, it becomes much harder to answer this question. As I pointed out in my introduction Because the answer depends on who you are, where you are, and what the situation is.

Privacy has always been one of the most controversial human rights, especially after 9/11 when the West began its war on terror – a war that accelerated following the attacks in Madrid and London. A war in which the predominant opinion seems to be that terrorism must be fought at all costs. On this basis, the inclusion of privacy in the UN Declaration of Human Rights does constitute a hindrance. And certain incidents have implied that, apparently, there are very few restrictions to the intervention in personal liberty. It is argued that this situation is justified, if we don't want to find ourselves completely powerless in the face of terrorist hordes.

This is just a national opinion; this is a global opinion as well. It is an opinion that has resulted in law amendments that would have been unimaginable to most people a mere decade ago. Amendments that make it perfectly clear that there is almost no limit to the violation of privacy. In the US, for example, these amendments have enabled wiretapping without warrants, unrestricted exchange of personally sensitive information between public authorities, internments, Guantanamo, the Bagram Air Force Base in Afghanistan, targeted killings of al-Qaeda suspects, introduction of extreme methods of interrogation, extradition of suspects to third-party countries that use torture, detention for 25 days without charges – and these are but a few of the new initiatives.

In Denmark, following the London bombings, a committee of government officials came up with 49 recommendations on how to strengthen the fight against terrorism. Some of these proposals have been implemented in Danish law. But others seemed so controversial that they were relegated to further discussion in various sub-committees. Here, I shall limit myself to name but one of them.

Proposal No. 29 recommends that "in exceptional situations, the police should be authorised to scan the contents of telephone conversations and similar forms of communication within a specific area". If, for example, one or two suspects are located in a specified geographical area, the police would have the right to scan the private and perhaps personally sensitive communication of hundreds or even thousands of innocent people. Some of the other proposals were carried into effect as part of the recent legislation on terror. Critics of this bill, myself included, saw this as an encroachment on basic civic rights. And many people felt that June 8th 2006 – the day this bill was passed in parliament – was a black day, indeed, for the constitutional state and the sanctity of private life. These terror laws open the possibility that the Security Intelligence Service may claim personal information from public authorities without a court order and, contrary to previous procedure, without a concrete assessment of whether this encroachment on personal liberty is truly necessary in the individual instance. This new legal authorisation enables the Security Intelligence Service to demand access to personally sensitive information from, say, hospitals, libraries, social services departments and educational establishments. Finally, the Security Intelligence Service was given access to information in the booking and passenger lists of the airline companies. On the face of it, this last part may seem quite harmless, but it does make it possible to determine whether you are the kind of person who always buys tickets at the last moment or the kind of person who plans far ahead in time, whether you prefer an aisle or a window seat, whether you want your in-flight meal to be vegetarian, Kosher or Halal, or whether you even care or not. These are just some of the things that can be monitored.

In the US, a database has been established on this very basis. Judging from official statements, the ATS (Automated Targeting System) is one of the world's most sophisticated tracking systems. Here, too, there seems to be no limit to the violation of privacy. Analyses and security assessments of the individual travellers can be kept on file for as long as 40 years, and the persons included in these files have no legal right to know how the authorities have assessed them, and so they will never come to know why they are repeatedly picked out for extra security control. Today, very little about of private life is still sacred. Even the most hardcore hawks must

find it increasingly difficult to keep insisting that the sanctity of private life is a hindrance to criminal investigation.

The very core of privacy has been invaded. And we participate in our own surveillance when we move about in public, when we walk in the streets of the city, when we use telephones and cash machines, when we book an airline ticket and when we write an e-mail. It is impossible to say. Stop. I want to get off !!!

If you have nothing to hide, you have nothing to fear, it is often said. In my opinion this assumption is false. Even if the effort to counteract and prevent terrorism is based on the noblest of intentions, and even if the loss of a few civic rights may be the price we must pay for security,

we must bear in mind that these interventions will be controlled and managed by systems such not only by the police and intelligence service, but also by private security-agencies. I have, of course, complete confidence in my colleagues in the Danish police force and the Danish Security Intelligence Service, but - in a crisis situation – all systems may be exposed to great pressure. The massive access to surveillance makes it possible to assess the profile and potential risk to society of a specific person, not merely in the form of entry control, but anywhere in Danish society. The massive surveillance and access to personally sensitive information can also be used for "social screening" and exclusion.

It is entirely unfeasible that systems should prove to be "ethically and morally robust" when under pressure. Hence, the risk of encroachment is very real. You must always bear in mind that, some day, it could be your worst enemy who wields these extensive powers.

In the long term, new powers of law enforcement that violate the sanctity of private life will create insecurity and lack of freedom among the population. Public administration and citizens alike will

adapt their behaviour to this condition and be careful not to vent "wrong doings" and "wrong opinions", and in the end this insecurity will be turned against the Security Intelligence Service and the police and create mistrust. And mistrust is something you certainly want to avoid in law enforcement: The greater the confidence you inspire in the population, the better you will be able to counteract and prevent crime and terror. Admittedly, in the political climate of today, it is hard to see how the cry for democratic responsibility and the demand for an ethical examination of surveillance systems could come across as anything other than liberal whining.

In spite of these facts I am certain that hardliners, whether in the US or in Denmark, and probably in the police force as well as among politicians, are of the opinion that privacy continues to constitute a hindrance to law enforcement.

Only with much reluctance, for example, did the Bush administration relinquish the so-called TIPS-programme (Terrorism Information and Prevention System). This system was meant to involve people with access to private homes such as cleaning staff, plumbers, mail carriers et cetera, so they could alarm and inform the police of any suspicious circumstances.. This, however, was going too far. A massive effort succeeded in having this plan withdrawn from the Patriot Act.

Even among the American population, there is rising recognition of the fact that terror is something we must learn to live with, and that, most likely, terror does not constitute a greater risk to life and limb than general traffic conditions. And yet many people still argue in favour of new initiatives that clearly reflect a continued view of privacy as a hindrance to any successful conclusion to the fight against terrorism.

American scholars, for example Phillip Heymann and Juliette Kayyem (Protecting Liberty in an Age of Terror), propose a legalisation and authorisation of harsh interrogational methods and targeted killings.

In conclusion, the answer to the initial question must be: A resounding "NO". In a way this is unacceptable. It would undermine the intention of the Declaration of Human Rights to protect the sanctity of private life.

So I am among those who feel that we should exercise extreme caution when devising new initiatives. The fundamental purpose is to protect the constitutional state and rights of privacy that

we have spent so many years trying to establish – this is what we really must uphold and defend. Every single act of terror has led to political reactions and new initiatives that violate the legal rights of the individual citizen. The question is whether we are not actually doing precisely what the terrorists want us to do when we waive our civic rights, the very hallmark of Western values. It is simply not possible to guarantee total security by way of legislation and encroachment on civic rights. As we know, this has not even been possible in totalitarian states. I am a fervent advocate of our European values, our democratic traditions and the "soft" use of force. Precisely for this reason, I believe that, rather, we must develop new surveillance technologies that allow for the rights of privacy, while being proportionate to the actual risk of crime and terror. Europe has the chance to do this and ought to lead the way in making other countries interested in backing this agenda. I really do believe that suitable technologies may contribute to an appropriate administration of privacy and law enforcement, so that one day I could answer the question
IS PRIVACY A HINDRANCE TO LAW ENFORCEMENT? WITH A RESOUNDING: YES -
AND SO IT SHOULD BE. !

Thank you for listening

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