

Chapter 3

PUBLIC SECURITY VS. THE RIGHT TO “BE LET ALONE”

Issues of public or national security have spawned many questionable needs such as establishing new information banks and expanding existing databases that collect and retrieve private information about individuals. Such demands are usually based on two grounds: the need to fight criminality on the one hand, and the need to fight terrorism on the other. With regard to these needs, new ideas and suggestions arise on almost a daily basis. This chapter will examine two examples of such demands and reflect on possible implications and consequences of complying with them. The first example is the desire for a comprehensive collection of information about an individual, thus constituting a clear invasion of the private domain. I take the strict rejectionist position on this issue and bring several arguments to support my view. The second example concerns the limited need for access to specific personal information about individuals; in this case I argue for qualified compliance with the iron-clad proviso that close surveillance and control must be maintained over the access to such a database.

The idea of limiting or even violating certain rights including human rights due to reasons of national emergency is quite familiar. There are human rights theorists, and even human rights Conventions and Covenants, which permit the infringement of human rights during situations of national emergency. For example, James Nickel, a major scholar of human rights (and a sincere adherent of their promotion), supports this position and says “human rights standards will provide substantial guidelines in emergency situations only if they are specific

about which rights can be infringed in emergencies.”¹ Nickel finds The European Convention on human rights to be most appropriate and applicable, vis-à-vis the Universal Declaration of human rights (1948) that is silent on this issue and International Covenant on Civil and Political Rights, which leave most of human rights open to infringement when a necessary test is satisfied.

Nickel thinks that human rights can be violated in order “to protect national survival and security, during a period of extreme stress.”² He acknowledges that such situations are problematic for human rights theories, since “they present both reasons for infringing human rights and conditions in which it is easy to exaggerate dangers and make mistaken judgments.”³ However, he still thinks that there are grounds for infringing upon basic rights such as the freedom of movement, the freedom of choice of residence, the rights to property and freedom for forced labor. He even feels that the right to due process can be infringed during national emergencies.⁴

An approach that acknowledges situations of national emergency as possible justifying grounds for the violation of basic rights could support, at least to some extent, the first case in this chapter. However, the acceptance of such an approach nevertheless cannot provide a carte blanche for violating basic rights, including the right to privacy, definitely not a comprehensive violation as allowed above.

CASE 1

The first example I want to deal with is a request, raised at the beginning of the current millennium, by the Intelligence Departments of the British Police and the two British security and intelligence services, MI5 and MI6, respectively. These agencies asked the British Ministry of the Interior to initiate legislation that would compel companies that supply electronic communication services to document and keep records of e-mails and Internet transmissions for a period of 7 years. The official reason for this demand was that sophisticated criminals, pedophiles, terrorists, white-collar criminals, and drug dealers use the Internet for promoting their malicious intentions. However, since they cannot determine in advance who is involved in such illegal activities, they need the record of all users.

Such a demand was a drastic change from the usual norms where warrants for using electronic apparatus for tracing information (such as telephone tapping) were issued in Great Britain under very limited circumstances, and only with regard to offenses that were already committed or in the planning stages:

¹ Nickel James. *Making Sense of Human Rights*. University of California Press, Berkeley, 1987, p. 131.

² Ibid.

³ Ibid.

⁴ Ibid, pp. 142–143.