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GOVERNMENTAL THREAT TO PRIVACY IN THE NETHERLANDS

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1. Introduction

The Dutch government has intensified its hunt for fraud and crime. A strong weapon in the fight is information technology. Computers, networks, and link-ups between databases supply the government with information on individuals or groups who do not tend to be very particular when it comes to regulations. The possibilities are nearly inexhaustible now that there is not only the technological infrastructure present, but also the political will to maximize its exploitation. This political will is supported by the people, if we are to believe the Dutch Prime Minister (NRC/Handelsblad, 15 September, 1992). "According to Prime Minister Lubbers, the social climate is now ripe to tackle fraud on a large scale." A special ministerial commission, headed by the Prime Minister himself, will oversee the operations against fiscal and social fraud.

That fraud and crime are being tackled is in itself a good thing. But it should be noted when considering the aim that apparently all means are justified. This approach has consequences for the privacy of the individual, for the relationship government- subject, and for the generally lauded constitutional state.

An essential feature in this struggle is the SOFI number, the binding element which makes link-ups and comparisons possible. The SOFI number is vital in wielding the information weapon. It is, however, not the only weapon at the disposal of the government.

2. Numbers in the Netherlands

In the Netherlands, a public debate on numbers is no unknown occurrence. The discussions first flare up in 1970 shortly after the publication of the Westerhout Commission's report. The report contains a proposal to set up a central data bank with information on every Dutch citizen. Part of this operation will include assigning a personal registration number to each citizen so as to transfer information more efficiently to those institutions requiring it. Not only are institutions in the public sector, under consideration, but also those in areas of the private sector such as insurance companies. Because of activities against the census-taking, which occurs shortly thereafter, the debate becomes more general. Partially due to pressure caused by the protests, the government decides against a central data bank. The plans for the introduction of personal registration numbers goes ahead. Every Dutch citizen is quickly given an A number, or administration number, under which he or she is registered in the municipalities' administration.

On another level, be it several years later, personal registration numbers come under discussion. This time it concerns the fiscal number which is changed in 1989 to a social-fiscal number, better known as the SOFI number. During the debate about this number, the fear is again expressed that the number will eventually be used to link up databases. After the minister's promise that this is not the aim, the Lower House agrees to the numbers' application being extended to the area of social security.

Thus does the Dutch citizen have the privilege of having two numbers at his or her disposal: one for municipal registrations and associated institutions, and one for the Inland Revenue and joined to the social security system. In the meantime, the inefficiency

of 2 numbers has been recognized and the proposal will be made in the not too distant future to replace the A number with the SOFI number.

3. Pros and cons

There is no doubt that the use of numbers instead of names does have its advantages. Mistakes made when writing a name and initials are avoided and unique individual information can be pulled out of extensive registry databases. Besides, numbers are easier to use than names when comparing data.

The other side to this is the individual's anxiety that his privacy will be invaded. The fear of link-ups is especially central to this. Information is gathered by means of link-ups without the knowledge of the person involved. Many people feel that this goes completely against the right to know where what data is to be found and for which purposes it is to be used. This form of right to self-determination is also encroached upon when profiles of consumers and suspected offenders are compiled. These profiles can create the threat of guilt by association: all members of a group are expected to have the characteristics of the profile.

4. Weighing up interests

Weighing up the various interests is the main concern when using personal registration numbers and the information weapon. The expediency of this use must be weighed against the negative aspects such as the invasion of individual privacy. Political assessment is implicit in this decision-making. In practice, almost nothing can be seen of this. Two examples illustrate this.

After the SOFI law is passed, the number's application is further extended, with little debate, to sectors not originally mentioned: the Informatiseringsbank (administration of study grants), the Ministry for VROM (Housing and Environment - individual rent subsidies), municipal social services, and, in the near future, employment exchanges and the ABP (General Pension Fund). No assessment worth mentioning has taken place. The expedience of this step is apparently so patently obvious that this extension is considered acceptable.

Within the framework of the introduction of (limited) mandatory proof of identity, the VNG (Union of Dutch Municipalities) is preparing an identity card. Originally the A number was to be put on the card. After extensive discussions it is suggested that the SOFI number be put in its place. An important argument for this is that the number can contribute to the fight against fraud.

These are the first steps in the introduction of a general, national personal registration number, to be used in different sectors, private as well as public. The similarity to the Social Security Number in the United States is obvious. There too, the interests of expedience prevail over those of privacy.

The insidious introduction of the SOFI number fits into the picture of a government which finds increased efficiency more important than any other interests. A pursuit worthy of praise, if the main concern is indeed expedience. Expedience however has many faces. The face of increased efficiency has in the meantime been replaced by that of a tool in the struggle against depravity. For years our society has been painted as fraudulent and criminal in which honour for norms and values has become obscure. Such a society deserves to be dealt with harshly. The examples the past, present and future mentioned here support this image.

- * Investigators of social fraud enjoy wide powers in investigating those who are suspected of forming one economic unit (people sharing housing and two-income families). Single women claiming benefit are especially targets of investigation.
- * From August 1, ex-partners are expected to contribute in paying costs which the government makes to support former partners. Since the execution of this measure causes considerable problems, the start of this has been postponed for the time being.
- * People who park their cars illegally or drive through red lights will be traced by means of the present technology. The fines will be automatically deducted from bank accounts.
- * Applicants for special benefits will partially be assessed on the basis of the value of the car which they arrive in.
- * Money-laundering in financial institutions will be tackled through separate regulations and European Guidelines.
- * There will be mandatory identification checks in certain situations to combat fare dodging in public transportation, football vandalism, moonlighting, illegal financial transactions, and tracing illegal foreigners.
- * Twice now, large controls have been held at companies suspected of illegal employment, during which the attitude towards the (mostly coloured) employees was anything but gentle.

5. Controlled society

These measures, which at the moment are, for the most part, proposals and tentative suggestions, change our image of society. From a "permissive society" in which too much was accepted for a time, we are threatening to end up a 'repressive society' in which the level of acceptance is becoming seriously low. The citizenry is the object of all the attention. Many weapons are being used in this fight: information technology, and also, it seems, propaganda to promote the image of a criminal society. More and more examples are publicized to show how fraudulent the people, especially foreigners, are. And this sometimes without all too much proof, as in the recent example of 'frequent' false registration to receive more child allowance, and the example of 1100 Turks living in one home.

Legislation is also an important weapon. Laws are changed without batting an eye, and without taking existing political agreements into account. At the introduction of the fiscal number, it was said that legislative measures would prevent the number's external application (outside governmental institutions) from leading to undesirable developments. It was also said that the aim was not to create a general administration number. Only a few years later, the first proposals have been made to replace the A number with the SOFI number, thereby more or less generalizing the number's application. The SOFI number will, as indicated, also be put on the VNG identity card. Especially this last proposal will make the number a general and public number, considering the number of situations in which people will have to prove their identity.

Laws are amended by democratic procedure, it's true. The amendments are passed, without a peep, to achieve an intended goal. There is a certain amount of levity concerning legislation. Here too the development of the use of numbers is a prominent example. On one hand it's repeatedly demonstrated that the use of numbers is restricted. As the memorandum 'Administration numbers and the central government' states, indicating foreign legislation for protection of privacy: 'It has been shown in these countries that partially due to this type of legislation, undesirable use of numbers can be avoided.' On the other hand, this protection is systematically being eroded simply by proposing new legislation for each development. And it is not only reported on there. In the memorandum 'Abuse and improper application in the area of taxes, social security, and subsidies' (Upper House, 1991-1992, 17 050, nrs, 145-146), it is stated that the exchange of information between the Central Register of the Informatiseringsbank and

social services is desirable; but that is not allowed according to present laws. Without examining the possible existence of a particular reason for this, for instance the protection of privacy, it establishes: "New legislation will be necessary to allow for the dissemination of information from these registers."

6. Suspicious society

There is an even more serious aspect common to developments in the direction of a more controlling society. The government distrusts the people, as is shown in previous examples. And judging by the recent results of a poll carried out by Bureau Veldkamp, the people distrust the authorities. Only 17% of the people questioned admitted having complete trust in the government. People will suspect each other and will hope to contribute in the fight against fraud. Anonymous tips are the result.

In the science fiction story by Poul Anderson, his main character, Sam Hall - controlled by technology - sighs: "The police state was founded on suspicion. Nobody could trust anybody else." This statement could apply to our present society. New measures are primarily supposed to strengthen the control over the people, as they are based on a fundamental feeling of suspicion toward the people.

7. Constitutional state and police state

It is not meant by the above that we are already living in a police state. The relationship between a constitutional state and a police state is too complicated to support such a statement. Theoretically it concerns two extremes which in practice can be found in flowing transition from one to the other. In a police state, law is also applied; in a constitutional state, use is made of force alongside that of law. The way to differentiate between a constitutional state and a police state cannot be determined by balancing up the amount of law and the amount of force, but by the deeper purpose of using both. And this purpose seems to be becoming increasingly clearer: to gain control over the people.

The result is that fundamental achievements of the constitutional state will be brought up for discussion. Reversal of the burden of proof will increasingly be accepted, and that primarily when using information technology and especially link-ups. Groups of suspects develop through comparisons and it is up to each individual to prove that he or she does not belong to a certain group. Silence will equal approval in the prevailing form of public participation.

By introducing mandatory proof of identity, the achievement of not having to participate in one's own conviction threatens to be destroyed; all the more strengthened by the Anonymous Suspects Law (a new law giving police the power to search a suspect's person and clothing without their permission to ascertain their identity).

8. Conclusion

A society in which information technology is almost unquestioningly used as a weapon, in which political agreements are short lived, and in which the law is adapted to suit the struggle against the individual, serious consideration must be taken as to the extent the constitutional state is in danger and becomes a police state. Certainly when suspicion of the people is the prevailing factor in determining procedures. Faber's observation [Faber, 1985] that there is a threat of two worlds, that of the authorities and that of the people, is in danger of being confirmed. This is in itself serious, but even more so is that the authorities have increasingly more power and are prepared to wield it.

9. References

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[Faber, 1985] Faber, *The estrangement of citizenry and government*, The Hague, 1985.