

Heribert Prantl's book "Suspicious"

Growth of police-state measures in Germany

By Marius Heuser
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Heribert Prantl, *Suspicious: The authoritarian state and the politics of domestic insecurity*, published by Europa 2002, ISBN: 3-203-81041-7

In his book, *Suspicious: The authoritarian state and the politics of domestic insecurity*, published last May, journalist Heribert Prantl describes the systematic dismantling of democratic rights in Germany over the last 30 years. As the national political affairs editor of *Süddeutsche Zeitung* newspaper, he recounts in typically vivid language the various legal amendments, their implementation and the logic upon which they were based. However, when it comes to the question of the underlying causes of these changes and the contexts in which they took place, he skirts major issues.

Earlier restrictions on democratic rights, such as the ban on the KPD (German Communist Party) in 1956 or the Emergency Law of 1968, are only briefly mentioned by Prantl. He begins his exposition with a review of the anti-RAF (left-wing terrorist Red Army Faction) legislation of the 1970s.

Under the chapter heading "The Terrorist as Legislator-Part 1: The RAF", Prantl explains how at the time of the RAF terror attacks politicians of all parties rammed through parliament at breathtaking pace and without any debate laws abolishing the most fundamental rights. In the midst of the so-called "German autumn" on October 1, 1977, for example, the Prison Isolation Law was passed, enabling terrorists to be kept in solitary confinement.

A year later a second anti-terrorism law was passed, which gave the authorities greater power to order searches of private homes, deny people under indictment the right to a lawyer, and carry out personal identity checks. At the same time, the means of pursuing criminal prosecution were extended. Telephone tapping, data base searches and dragnets were increasingly employed against completely innocent people.

What Prantl actually finds so explosive about this development is the subsequent failure to redress the extremes of the legislation propounded at the time. Thus he writes: "What began as a virtual emergency law in the fight against the RAF was never subsequently subjected to thorough evaluation, but became in due course a standard component of criminal law."

Prantl goes on to show how the destruction of democratic rights continued to provide the pattern for domestic policy even after the era of RAF terrorism. A consequence of this was the Criminal Law passed in 1994. This statute allowed the BND (German Secret Service Agency) to record any telephone conversation—both domestic and foreign—in which certain key words are spoken, to evaluate them and to pass them on to the police, public prosecutors or other interested parties. Such a practice not only undermined the principle that the state must demonstrate reasonable grounds for suspicion before investigating someone; it was also a step towards the merging of the police force with the secret service.

In July 1999, the Federal Constitutional Court declared this law to be in part unconstitutional and demanded that it be made significantly more precise. It gave the legislative June 30, 2001 deadline to carry out these

changes. On May 11, 2001, the federal parliament—now with a Social Democratic-Green majority—passed an amendment to the law. Instead of being made more precise, as called for by the Constitutional Court, the amendment actually extended the authority of the BND. In addition to radio communication, long-distance calls via cable were now also to be monitored. Victims of eavesdropping could now only object to the procedure if they received official notification of the monitoring—otherwise they could do nothing about it.

Germany has since become the leading Western industrial society in the field of monitoring telephone calls. Prantl concedes that the federal government itself has authorised 1.4 million monitored telephone connections.

In February 1998, the German federal parliament also legalised an extensive wiretapping operation. A coalition of the SPD (German Social Democratic Party), the CDU (Christian Democratic Union) and the FDP (Free Democratic Party) sacrificed the fundamental right concerning the inviolability of private living quarters to the alleged fight against organised crime. Investigators can now secretly invade premises and plant bugs or monitoring devices. Often the people involved have not been informed about the invasion of their privacy even after the investigations have been concluded.

The new Federal Border Guard Law of 1998 also allowed federal border officers to search the luggage of persons who are in no way suspected of a crime. In this respect, policing procedures are systematically enveloping wider layers of the population.

While continuously working to toughen existing laws and restrict democratic rights in recent years, legislators have also systematically dismantled curbs on the activities of the police and secret services. Consequently, up to the present day there is no clear legal regulation concerning the use of genetic fingerprinting.

In April 1998, then Interior Minister Manfred Kanther authorised the BKA (Federal Criminal Investigation Agency) to establish a data bank of both DNA profiles and normal fingerprints. A law, passed in June of the same year, regulated in an extremely imprecise manner when and about whom such data could be collected and stored, but said nothing about how the information was to be used, or who was authorised access, etc. Genetic data about a person contains virtually all his or her hereditary information and is therefore of an extremely sensitive nature.

Prantl then goes on to summarise developments after the terror attacks of September 11, 2001, under the heading of "The Terrorist as Legislator—Part 2: Al Qaeda". First, he points out how quickly politicians of all parties seized the opportunity to introduce computer data bank searches and introduce new batches of laws.

According to Prantl, the computer search method was used most ineffectively. He claims that a computer search is only worth considering when a detailed profile of the suspect is available. Without this, the search net is far too broad for investigators to be able to draw meaningful conclusions from any findings. The actual consequence was to place

under general suspicion all Arab students in Germany, who were then monitored and spied upon with the above-described means.

Immediately after September 11, bundles of laws were hastily approved and pushed through parliament without any serious discussion. When the first of these Anti-Terrorist Laws was placed before parliament on December 14, hardly anybody knew what he or she was voting for. Prantl writes: "So the procedure no longer had to do with the normal course of law-making; it was and is a farce."

According to Prantl, the laws are ineffective against terrorism. In fact, they are accelerating the development, already begun in the 1990s if not earlier, in the 1970s.

The authority of the BND was further extended. Communications are allowed to be monitored not only abroad but also within Germany. Moreover, the BND can gain access to bank, post and air traffic data and can do all this without authorization from judicial or public prosecutors, which is always required in normal investigations. Data obtained in this way can be passed on to the police, thus easily evading existing restrictions on the gathering of evidence in criminal prosecutions. According to Prantl, "The Criminal Law of 1994 first opened a gap in (the door between the police force and the secret service agency). Now the door is being pushed open further and further."

From this time on, people who work in "positions crucial for the functioning of society" could be investigated by the intelligence services and, if deemed necessary, sacked or denied employment. According to a statutory order whose legal wording is very imprecise, the minister for the interior determines the group of people affected. The banning of people from certain professions, as occurred in the 1970s and 1980s, is thus possible not only in the public service but also in much wider fields of employment.

The grounds for deporting foreigners living in Germany have also been extended, as have the grounds for denying them a legal right to stay. People suspected of supporting a terrorist organisation can be extradited even though the question remains undefined as to which organisations are regarded as supporting terrorists and which as aiding liberation fighters. In recent times, opinion in such matters has moved towards deeming more and more organisations to be "terrorist".

At the same time, legislation relating to the formation of clubs and organisations has been changed. Organisations, consisting mainly of foreigners, can be banned, if "their purpose or activity impairs or endangers the development of informed political opinion."

Key concepts, like that of terrorism, receive no further definition anywhere in the text of the law. It remains imprecise throughout and can therefore be arbitrarily interpreted and exploited for reactionary political purposes. Experience with the implementation of earlier laws strongly suggests that this will take place.

Prantl also reveals how the secret service undertook its own initiatives, designed at further undermining democratic rights. He comments: "Having first arranged the matter with the prime minister in 1978, the secret service in Lower Saxony blew a hole in the wall of the prison in the city of Celle and blamed the deed on terrorists, in order to appear more effective to the electorate in the struggle against terrorism."

Another example was the smuggling of plutonium from Moscow to Munich, staged by the Federal Intelligence Agency in August 1994. In this case, Prantl writes: "German agent provocateurs sloshed so much money around for so long, until 'normal' criminals connected with the business of nuclear smuggling became involved."

Prantl sees a connection between crime and social inequality. He writes: "The old saying that the best kind of policy on crime is a good social policy also holds true in a globalised world." He regards the constant toughening of laws as an evasion of the problem, and the laws against so-called organised crime as an attempt to divert attention from "homemade crime". His analysis of the social causes of the rigorous

dismantling of democratic rights, however, goes no further than this.

His answer to the problem consists of an appeal to the forces of liberalism: "But the fundamental mistake of the liberal constitutional politics is that it has allowed the authority of the state to be undermined. It has been too timorous. For example, it hasn't had the confidence to promote the principle of rehabilitation." Prantl fails to question why this form of liberalism has proven incapable of holding back, or even offering any noteworthy resistance, to the development of an all-powerful state.

Although Prantl constantly draws examples from history in other instances, in this matter he fails to invoke his historical sense. Actually, the utter absence of a serious liberal tradition in Germany provides us with the key to an understanding of current legal developments.

While the American and French liberal bourgeoisies placed themselves at the head of the masses during their respective revolutions and established strong democratic traditions, the German bourgeoisie timidly raised its head only after a powerful working class movement had come into being—and then immediately took shelter behind the backs of feudal rulers. During the empire of Wilhelm II and the Weimar Republic, liberalism existed only in the form of national liberalism—liberal on economic issues, nationalistic and anti-democratic on political issues. Serious democratic principles were defended only by the Marxist working class movement.

After the Second World War, it was the victorious Great Powers which implanted a number of democratic principles into the German system of law—without these ever being fully digested and internalised by the judiciary. Confronted with increasing inequality and social tensions, the old authoritarian instincts are once again coming to the fore. The strengthening of the state apparatus is not merely a consequence of mismanaged anti-crime policies, as Prantl believes; it constitutes the preparation for a period of turbulent class conflicts.

As a trained jurist himself, Prantl is able in his book to expose the advocates of domestic security to be charlatans, and he denounces the systematic dismantling of democratic rights. To this extent, the book is to be recommended. But when it comes to countering this development and understanding its logic, he has nothing much more to offer than frenzied and excessive rhetoric—characteristic of a German jurist and public prosecutor.

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