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The perfectly ordinary case of Ryan Lavery [1]

Written by **Lawsmith** [2] | Tuesday 31 January 2012

In Northern Ireland, there is a man named Ryan Lavery, who used to live next to the Ballykinler military installation in County Down. Lavery, whose solicitor describes him as a "trainspotter, an anorak, a nerd with no friends" and who would, if "put beside an airport... take pictures of planes," used to be in the habit of taking photographs of cars entering and leaving the nearby base from his home. From time to time, he would write down a list of registration numbers of cars he observed in this way, and it is on account of this unusual hobby that, last Friday, Mr Lavery found himself standing before a Northern Irish magistrate [3], deprived -- at least for the moment -- of his liberty.

Information on his case is scant, and media coverage light. What I have been able to glean from open-source media reports is that Mr. Lavery is accused "of collecting information likely to be useful to a person committing or preparing an act of terrorism," namely the photographs, and of "having a document likely to be of use to terrorists", i.e., the list of registration numbers. While my familiarity with the Lavery case goes no further than that which has been reported by the media, I am going to venture a guess that he has been charged under the Terrorism Act 2000, s. 58 - which proscribes "possessing or making a record of information of a kind likely to be useful to a person committing or preparing an act of terrorism, or possessing a document or record containing information of that kind." While it is a defence to this charge for the accused to demonstrate that he had a reasonable excuse for making the images and possessing the list of registration numbers, whether Mr. Lavery's brand of budget, home-bound trainspotting will hold water with a judge is another question entirely. If it does not, the allegedly friendless Mr Lavery has a potentially very serious problem on his hands: the maximum penalty for contravening s. 58 is ten years imprisonment.

It would, of course, be wildly inappropriate to speculate as to Lavery's guilt or innocence at such an early stage, and from such a great distance, physical and factual, as I do from my perch in London. Yes, taking photographs of car number plates is something that someone with sinister intentions might do, but it is no more unusual than trainspotting or planespotting (though as far as hobbies go, I can think of better ones). However, given the legislation currently on the books, we should not find the fact of his arrest unusual in the least.

Even before the September 2001 attacks against the United States, terrorism has presented a vexing problem for liberal democracies: on the one hand, while Western democracies exist largely free of separatist or revolutionary civil conflicts (changing governments through a polling booth is much more straightforward, and allows the majority of the population to do their bit and get home in time for TV Burp or Dancing on Ice), those who really wish to engage in political violence have historically not had a great deal of trouble doing so: wrote Paul Wilkinson in 2000, "The intrinsic freedoms of the democratic society make the tasks of terrorist propaganda, recruitment, organisation and the mounting of operations, a relatively

easy matter. There is ease of movement in and out of the country... Rights of free speech and a free media can be used as shields for terrorist defamation of democratic leaders and institutions and terrorist incitement to violence." Of course, when our governments address the threat and are "provoked into introducing emergency powers... (they confront) the paradox of suspending democracy in order to defend it." Unquestionably, Britain was so provoked (in 2005), and liberal democracy was suspended in due course.

Using the excuse that terrorism poses a greater existential threat to the state than other forms of extreme violence (e.g. GBH, youth rioting, or non-political murder), the government enacted legislation to curtail and restrain terrorist activity, all of which is drafted very broadly when viewed through the lens of traditional criminal law. Writing in 2008, Sally Ramage points out that this approach is deliberate: the point of such legislation is to "allow the state to intervene at earlier stages of a criminal enterprise", and, according to Clive Walker, serve as a "platform for investigative police powers where there must be some margin of error." As a result, the British people have been made to endure sweeping new powers of arrest and detention, the criminalisation of many forms of free speech (see the ongoing debate over s. 1(3), and ss. 1-3 generally, of the Terrorism Act 2006), and the banning of information which might be of use to terrorists -- even if it isn't going to be used by terrorists. All of this has created a "climate of panic" where anything that has even the remotest connection to terrorism, whether it be a young girl's poetry, an opera, or a PhD thesis [4] is treated as suspect by the nation's police forces, a broad range of culturally acceptable or benign expression is suppressed through fear of judicial sanction, and "prosecutorial discretion" is more determinative than the express intention of Parliament in deciding what is legal and what is not.*

Practically, this means police arrest far more citizens on suspicion of terrorism than are actually charged with any crime,** and we must keep in mind that this is the climate in which Ryan Lavery has been arrested. For that reason alone, his is a case worth following.

If the charges stick and there is in fact some sinister ulterior motive to Lavery's actions, then the local constabulary deserves a pat on the back and congratulations on a job well done. If, however, it becomes clear that there is nothing to this story and the charges are dropped -- which is my hunch, as I suspect the Co Down constabulary would have been rather more vocal with the press over the weekend if they had uncovered anything resembling a serious plot -- then the state, through the application of a widely criticised and overly broad act of Parliament, will have instantaneously blown apart the very private life of an eccentric, but nonetheless quiet, lonely, and reclusive man in front of the entire world. I can think of nothing more terrifying.

*Writing in 2007, Clive Walker pointed out that, "at the moment, too much depends on prosecutorial discretion as to who is treated as friend or foe. Plots against the Libyan regime of Ghaddafi were possibly encouraged years ago, but now there is rapprochement. Conversely, plots against Syria are openly tolerated." Expressing hopes for the violent overthrow of an Arab government is virtually certain to fall within the meaning of "encouraging terrorism" under s. 1(3) of the Terrorism Act 2006. Yet, while the Ghaddafi regime was still the competent legal authority running Libya, where were the arrests of supportive Tweeters, bloggers and journalists? A law which cannot be consistently applied without utterly crushing freedom of speech is not one which should be in force to begin with.

** *ibid*. at 331, referencing Hansard, HC Vol. 431, Col. 1621w (March 7, 2005) (Hazel Blears).

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