

Arresting New Labour: Lord Levy and the Police Conor Gearty

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There is a whiff of Charles 1 about New Labour. Forced loans were a ruse resorted to in the 1620s to avoid the inconvenience of parliament's control over taxation. Rich friends of today's governing party are told to substitute loans for gifts in order to avoid legislative scrutiny. In the first, the lender is disinclined to part with anything at all; in the second the benefactor is too keen to give it all away. But the underlying rationale of each loan is the same: to cheat parliament while staying technically within the law. In 1627 the King arranged to arrest those who would not play this clever little game and the courts afterwards (quite scandalously) upheld his right to do so: *Darnel's* case was eventually to lead to a proper law of habeas corpus. It is a measure of how civilised we have become that it is no longer the reluctant lender that the monarch's officers now arrest but rather the very agent of the chief minister of the Crown who was responsible for executing the wheeze on his leader's behalf.

It is unlikely that either parliament or the law of habeas corpus will be any good to Lord Levy in his current troubles. The bag-man of power never makes an attractive martyr: it is hard to imagine any petition of right emerging from the Commons to demand justice for 'Lord Cashpoint'. And habeas corpus is worse than useless these days, not least because of the vast expansion of criminal offences under Mr Blair's New Labour administration. Thus there is now not only the Honours (Prevention of Abuses) Act 1925 to take into account but also the much more complex provisions of the Political Parties, Elections and Referendums Act 2000. There have also been important changes in procedure, with Britain's traditional commitment to civil liberties having been superseded by a far more security-oriented approach. The law on arrest is a case in point. It has been said that the arrest of Lord Levy was both unnecessary and 'theatrical', contrived to make a point to parliamentarians who have been keen to investigate Lord Levy's actions for themselves but who are currently prevented from doing so by this ongoing criminal investigation. This might have been true a few years ago but not today.

It is perfectly true that arrest used indeed to be a last resort, something you did only when you were ready to charge and even then only when the service of a summons was impracticable: the bad guy was diving through the window after stabbing the shop-keeper or when the crime was so serious that the chances of the suspect answering a summons were remote indeed. In a leading case during the Second World War the judges were emphasising that 'where there is no danger of the person who has *ex hypothesi* aroused their suspicion that he probably is an "offender" attempting to escape, they should make all presently practicable enquiries' before engaging in an arrest. In 1969 Lord Devlin was emphatic that it was 'indeed desirable as a general rule that an arrest should not be made until a case is complete ... To give power to arrest on reasonable suspicion does not mean that it is always or even

ordinarily to be exercised.' The idea of arresting someone for the purpose of obtaining evidence, through questioning for example, is relatively new: it was only in 1984 that a House of Lords case controversially accepted the practice. Even then, the parliamentarians responsible for enactment of the Police and Criminal Evidence Act 1984 saw fit to draw a large distinction between arrestable and non-arrestable offences, with the latter attracting a power of arrest only in wholly exceptional circumstances.

So what has happened to turn arrest into an option of first rather than last resort? Since the 1980s both governing parties have turned themselves into cheerleaders for the police, wilfully refusing to temper their demands for further power with any kind of civil libertarian restraint. Making an arrest is attractive to the police because they have a whole range of powers following an arrest that they would not have had the arrest not been made. Questioning can be more robust; extensions of detention for more time for interrogation can be sought; searches of the suspect's persons and property (and in certain situations other places) can be made, all without the bother of a search warrant. The arrest thus greatly improves the opportunities the police have to conduct their enquiries with greater expedition and much less accountability. This was always a serious issue but mattered slightly less when the old 1984 distinction was maintained and arrests could be made largely only for serious or 'arrestable' offences.

This has now changed as a result of one of New Labour's myriad reforms designed to give the police the latest thing they want. From 1 January this year, it has been the case that if 'a constable has reasonable grounds for suspecting that an offence has been committed, he may arrest without a warrant anyone whom he has reasonable grounds to suspect of being guilty of it.' If an offence has indeed been committed, 'a constable may arrest without a warrant – (a) anyone who is guilty of the offence; (b) anyone whom he has reasonable grounds for suspecting to be guilty of it.' The old distinction between offences has gone. Furthermore the discretion to arrest for any offence whatever may be exercised not only where the suspect is fleeing, causing harm etc but also where the officer believes on reasonable grounds 'that it is necessary to allow the prompt and effective investigation of the offence or of the conduct of the person in question.' Of course the requirement for 'reasonable grounds' here acts as some kind of safeguard but it is a tricky one to challenge at the time and difficult to disprove in respect. If Lord Levy were to be detained at some point there would be little or no point in his friends throwing some of their largesse at a habeas corpus action: all that this ancient remedy demands is that an imprisonment be within the law which of course, thanks to New Labour, it certainly would be.

The chances of the prime minister becoming a suspect in this investigation cannot be ruled out entirely. He may already be a suspect, though this may not yet be based on reasonable grounds. If such a basis for suspicion emerges (and much depends on what various arrestees say under interrogation), then an arrest would be, these days, standard police practice. The old safeguards against abuse having been dismantled

by the Blair administration, the nature of the suspected crimes, their non-violent nature, and the fact that the suspect has no intention of absconding, would all be neither here nor there. Perhaps the Prime Minister might try to explain the arrest away as a technicality not to be taken seriously. The difficulty is that this is not what he says when it is a 'hoody' or an 'illegal' that is being apprehended. As New Labour might put it crime is always crime and the police must be given the powers they need to counter it. It would be sad but ironical end to Mr Blair's long tenure in office if he were brought down by his own enthusiasm for law and order.