

Julian Assange and the European Arrest Warrant

Bernard Porter

The Assange affair rumbles on. Assange is still holed up in the Ecuadorian Embassy, at a cost of God knows how much to the taxpayers of Ecuador, and more to those of the UK, to pay for the police stationed around it ready to whisk him away to Sweden if he ventures outside. The situation must be an embarrassment all round; not least to the British and Swedish governments, which have both shown signs recently of realizing how ridiculous the whole situation is. I'll come on to that at the end of this piece. In the meantime it may be worth recapitulating on events so far. Assange doesn't any longer surface much in either the British or the Swedish press – I'll touch on that at the end, too; and I have reason to think – from comments on a piece I posted recently on the *London Review of Books* site – that many people who ought to know about it don't, or have forgotten. So here is a run-down of the salient features of his case; the case of his attempted *extradition*, that is, rather than of Wikileaks more generally.

Assange in Sweden

Assange was in Stockholm early in 2010 to talk about Wikileaks, when he lodged with a female admirer, and – consensually (there's no doubt about that) – had sex with her. He also had sex with another admirer shortly afterwards. The first groupie was annoyed by this, which may (only may) partly explain what followed. Groupie no.1 was worried by the fact that their sex had been unprotected, and by his reluctance to have an AIDS test afterwards. So she went along to the local police in order to ascertain whether he could be forced to have the test. Somehow that mushroomed into an accusation of 'rape' against Assange, which groupie no. 1 persuaded groupie no. 2 to go along with. Assange consented to be

interviewed by the police in connection with that, after which they decided there was no convincing case against him, and let him go to Britain, which was the next place on his schedule. So far so good. Assange is obviously what we oldies used to regard as 'a bit of a cad' in his personal life, but probably no more. If we made a habit of extraditing cads, we wouldn't have many of our young male upper classes left. Alarm over.

Then, however, Marianne Ny stepped in. She's a prosecutor (not a judge) in Gothenburg, over on the other side of Sweden, who is well known for championing 'women's causes', and for recommending that even tentatively suspected sex offenders should be immediately incarcerated: viz.:

'only when the man is arrested and the woman is left in peace does she have time to get some perspective on her life, and then get a chance to discover how she really has been treated.'

Apparently Ny decided off her own bat that Assange's case needed to be reopened, and to apply under the European Arrest Warrant (EAW) to get him extradited immediately. Why her mere say-so sufficed to set this in motion is a mystery to many of us, but apparently was enough to persuade the British court that heard his appeal to let it go forward. In the end Ny's accreditation was the only point at issue; not the flimsiness of the evidence against Assange, which was apparently immaterial at that stage. That's what the Appeal judge said. He was bound by the EAW.

The EAW

I was taken aback by this. It was Assange's case that first drew my attention to the EAW, which had entirely passed under my radar when it was originally incorporated into British law in 2003, when David Blunkett was Home Secretary. I wasn't paying attention. I know something of the history of British extradition law before then. It had always been hedged around with certain safeguards: suspects could only be extradited to *countries whose legal systems we trusted*; if they

were *formally charged* with offences that were *offences in Britain too*, and explicitly *not* for 'political' offences; if a British court thought, *from the evidence*, that there was a good *prima facie case against them*; and with the assurance that, once extradited, they could not be charged with or *re-extradited for any other offence*. That last was very important, and was intended to prevent obvious abuses, like using the original extradition request as a mere pretext. Now all that has gone. The overt motive for this was to facilitate bringing terrorists and mobsters to justice – it was all part of that 'War on Terror' nonsense after 9/11; another might have been to cuddle up to Europe, even if it meant sacrificing fundamental 'British liberties'. Whatever; hundreds of people have been removed from Britain under the terms of the EAW over the last ten years, many of them entirely and indeed obviously innocent. Assange was one of them; or would have been, if he hadn't sought asylum in Ecuadorian national territory before they could get at him.

He wouldn't have needed to do that if Ny had met two simple conditions: that she question him in London (or by Skype), as is very common in these trans-national cases (there's a European mechanism for it); and that the Swedish state, or courts, or whoever has the ultimate say in this, promises not to extradite him on to the USA. That of course is why he wasn't willing to go back to Sweden voluntarily to 'face the music'. He has always protested his innocence. Sweden – especially the last centre-right coalition government – is more hand-in-glove with the Americans than it likes its people to think. That was something, incidentally, that one of the earliest 'Wikileaks' revealed (it was to do with 'rendition'). The USA certainly wants to extradite him for his Wikileaks 'offences', in order to try him on political charges that could land him in an awful American prison for decades. (If he is to go to prison, he'd do much better in a Swedish one; they're pretty comfortable – which is probably why Sweden has a lower rate of recidivism.) Sweden has so far refused to rule this out. No-one can understand why both these conditions have not been met.

Which of course makes the whole thing look *suspicious*. The obvious peculiarities of this case are such that its manipulation by the Americans, in league with the Swedish *Moderaten* Party (recently advised, for example, by Karl Rove of all people) – in other words, a ‘conspiracy’ – begins to seem the most credible of all possible options. I doubt whether Ny is part of this; she has enough ultra-feminist motivation of her own. Maybe the conspirators were just lucky to have her on hand; and that Assange’s alleged offences were the most likely to prejudice ‘progressive’ Swedes against him, whatever they might think of Wikileaks. The soil was well-tilled for a Swedish-British-American plot against him, if that’s what it was. The idea of his being flown over to the USA, after or even before a Swedish trial on the (mooted) ‘sex’ charges, may be on balance unlikely, but is not out of the question. If I were Assange, even if I were confident of being able to exonerate myself in a Swedish court, I would be afraid, too.

Our legal system and theirs

I’m less confident than I used to be (as a Swedophile) of his getting a fair trial in Sweden. This has surprised me, sharing as I do the common view (certainly on the Left) of Sweden as a progressive and liberal-socialist utopia, a model for us all. I still think it’s that in many respects, including most of its laws. But not its legal *processes*. I’ve learned a lot about those since the Assange case came up. So have many Swedes, who seem generally much more ignorant of their legal system than we are of ours, simply because they don’t *participate* in it. Sweden doesn’t have juries. Cases are tried by a judge flanked by two political appointees. (I’ve actually witnessed that.) Defendants are locked up pre-trial for months in isolation, and rarely granted bail. There have been cases where this has led to suicide. They often aren’t given full details of the charges against them until the last moment; this is happening to Assange too. I’m not sure that innocence is always *presumed*. The Swedes have a rather rigid, pedantic view of the law, which means that clearly innocent people can be convicted, and their convictions upheld on appeal, if it can be shown that

the legal processes have been followed correctly. (This happened in the recent notorious case of Thomas Quick – a convicted serial killer who turned out not to be. Never mind; if the trial was conducted by the book, he must have been.) The Swedish police are pretty dodgy, too; look at the mess they made over the murder of Olof Palme. (Don't go by Kurt Wallander.) The police, press and politicians seem to be allowed to prejudice trials in advance. Again, Assange is an example: prime minister Fredrick Reinfeldt made a public statement in February 2011 declaring Assange guilty; in Britain couldn't that have led to Reinfeldt's being imprisoned for contempt of court? He also claimed that our – British - problem was that we didn't take rape seriously. That's not going to help, in any Swedish trial of Assange.

I've no idea what Assange and his legal team think of all this. Obviously it wouldn't be a particularly bright idea if, before a possible trial in Sweden, they started trashing its system. For all they and I know that system might have advantages over ours – be more efficient, more consistent, less vulnerable to popular (jury) prejudice. For somebody brought up in the Anglo-Saxon legal tradition, however, it must seem unnerving to have to go to trial without the protection of twelve of your 'peers', under a system that goes back in Britain for centuries, and indeed formed the historical foundation of our sort of 'democracy'. A judge flanked by placemen: to us that appears almost to encourage corruption and tyranny. We fought a civil war against this sort of thing. Reasonable or not, this is a *cultural* matter, a deeply-ingrained distinction between Britain and the Continent. Again, if the Australian Assange felt uncomfortable with the Swedish system, I wouldn't blame him. I hope I never cross it when I'm there. But of course we can't say that of a respected fellow-member of the EU.

If Assange were returned to Sweden, after being questioned in the Ecuadorian embassy, and with the assurance that the Americans wouldn't be allowed to get him, one would have thought, from the evidence made public so far, that any case against him would be pretty easily

countered. The women were not forced into anything. They even boasted of their 'conquests'. Groupie no. 2 seems to have been a reluctant complainant in any case. The case mainly rests on a condom that Assange is said to have ripped deliberately: but then when the woman 'produced' it for the police, neatly cut, it turned out to have no traces of *anyone's* DNA. The other charge is that Assange, already in bed with groupie no. 1, and after one bout of sex, asked her for another go while she was 'half asleep'. I wonder how many of us, women as well as men, have been guilty of that? And remember it's only their words against his. Could a case for 'rape' be made out of this? Clearly not in Britain. But then we don't take rape seriously, according to the Swedish *statsminister*, no less. In Sweden they are far more advanced, or crazy, if you like (it's up to you), and have already assumed Assange is a rapist. That overrides everything: both the Wikileaks and the extradition issues. A pity; because if they could break free from this, they might come to understand more about their own legal shortcomings, and their government's true relations with America. On this last – the 'conspiracy theory' – I'll leave readers of this journal to judge.

Whatever the truth of that may be, it's pretty much submerged now as a public topic. Swedish newspapers scarcely ever mention anything to do with Assange now; it all seems too indelicate. British papers seem to find him almost as embarrassing. Some of them have done hatchet-jobs on just about everything about him, ranging from his alleged 'treason' to his personal hygiene; culminating in Andrew O'Hagan's long demolition of his character in a recent *London Review of Books*, after failing to establish a rapport with him as his ghost writer. I had the curious experience recently of being 'pre-moderated' (that is, blacklisted) from the *Guardian's* website for wanting to mention his name in connection with the European Arrest Warrant. Assange has had his spats with the *Guardian*, of course. I doubt if there's anything sinister behind these, but you never know. But it makes it difficult to discuss the Assange extradition case outside the (non-*Guardian*) blogosphere. In a recent Commons debate on the

EAW (the one the government at first tried to avoid) no-one brought up his case. Why not? You can understand why governments – any governments – and their stooges might want him buried. But what about the others? Could it be the 'sex' thing again? Is it impossible for a cad to be a hero any more? Have we progressed that far from James Bond?

Change is coming?

But it could all change soon. During the Commons debate on the EAW, Home Secretary Theresa May made it clear that the criteria for Britain's abiding by it had changed, so that much stricter criteria would be followed in the future. Formal charges would need to be laid against suspects, for example, not just accusations by prosecutors; and the British courts would expect to be allowed to judge the *prima facie* quality of the evidence. If these standards had been in place in 2010, there is little doubt that Assange could not have been extradited then; or at least, not under the terms of the EAW. (There are other, slower and more scrupulous extradition procedures available.) On the other side of the North Sea, an appeal court in Sweden recently dismissed a motion to have the EAW withdrawn in Assange's case, for the usual pedantic reason that it hadn't been *technically* wrong; but on the other hand strongly criticised Marianne Ny for refusing to question Assange in England. An under-secretary at the British Foreign Office, Hugo Swire, has stated that he would 'actively welcome' and 'do everything to facilitate' that. Apparently it's still up to Ny. (Yes, her alone.) She's said to be thinking about it.

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