

"COERCION OF OPINION IS A MISTAKE":

PREFACE TO THE GERMAN TRANSLATION OF *FREEDOM OF EXPRESSION, DISSENTING HISTORIANS AND THE HOLOCAUST REVISIONISTS*



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Germar Rudolf has asked for permission to translate and publish my paper on the censorship of Holocaust revisionism¹ in the *Vierteljahreshefte für freie Geschichtsforschung*, a German language journal published in Britain which contains articles, apparently of an academic nature, promoting Holocaust revisionism. I understand very little German, and, for all I know, the journal may be on the scholarly level of Erich von Däniken's "irrefutable proofs" that extraterrestrials constructed the Egyptian pyramids and the Nazca lines in the Peruvian desert. But that would be irrelevant to the defence of the right to express such opinions, and of the equal right of those with different views to challenge those arguments in the free market-place of ideas. Mr Rudolf is reprinting the paper on the understanding that permission for such reprinting should not be construed as supporting or opposing any particular historical, still less political, opinion.

CHALLENGING THE ACCEPTED VIEW

I had already heard of Germar Rudolf. He was a research chemist working towards his doctorate at the Max Planck Institute of Stuttgart. As far as I am aware, he is not a member of any political group, and promotes no political agenda. In 1991 he carried out a chemical analysis of samples from the building in the former Auschwitz concentration camp which is presented to visitors as a homicidal gas chamber, and wrote a report, which has been translated into English as *The Rudolf Report*, which claimed that the building was never used for homicidal gassings. In 1994 he also edited and published a book entitled *Grundlagen zur Zeitgeschichte (Foundations of Contemporary History)*, a collection of essays by various authors challenging the generally-accepted view of the Holocaust. For distributing these two publications the German government prosecuted him, at which point Mr Rudolf fled Germany and now lives in exile.² A criminal court in Germany sentenced him to several years in prison for expressing his historical and scientific opinions, and ordered the destruction of all unsold copies of his publications and

the printing plates used to produce them. I understand that the German government is seeking to extradite him, in order that the sentence be carried out.³ Mr Rudolf is a victim of the wave of repression in several countries against those who express, or participate in the expression of, any kind of doubt or criticism relating to the official history of the fate of European Jewry under German domination, 1939 to 1945. The only purpose of the following paper is to give factual information in support of the criticism of such repression in Germany by the international organisation Human Rights Watch/Helsinki:

Human Rights Watch/Helsinki believes that such measures seriously restrict the protected right to freedom of expression, association and assembly. We are mindful of the fact that international human rights laws provide different and conflicting standards in this area and base our opinion on a strong commitment to freedom of expression as a core principle of human rights. We believe that freedom of speech and equal protection of the laws are not incompatible, but are, rather, mutually reinforcing rights.

Certainly those whose expressive activities constitute a direct and immediate incitement to violence can and should be prosecuted to the fullest extent of the law. But sweeping restrictions that affect entire parties, organizations or philosophies inevitably cast too broad a net; they can be used to suppress dissenting political movements of all sorts and often encourage gratuitous restrictions beyond those initially foreseen. ...

Our own research has shown that such restrictions are often misused by majoritarian governments against minorities. It is our view that it is inherently dangerous for governments to have the power to determine which political philosophies are "threatening"; for this is a power that invites abuse against political foes. ...

Many governments and other actors that encourage or exploit group tensions use "hate speech" laws as a pretext to advance a separate political agenda or to enhance their own political power. ...

We therefore view as suspect any action by governments to criminalize any expression short of incitement to illegal action and consider any law or prosecution that is not based on a strict interpretation of incitement to be presumptively a violation of the right of free expression.⁴

By no stretch of the imagination can the expression of an historical opinion as to the course of events during a war which ended over half a century ago be construed as incitement to illegal action.



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FOR LIFE, LIBERTY AND PROPERTY

TRAHISON DES CLERCS IN GERMANY

I hope that readers will not be offended if I point out that German intellectual and political culture has long suffered from a serious shortcoming, from the libertarian point of view. In the decades following the revolutions of 1848, the dominant atmosphere in intellectual circles moved from the liberalism of such early 19th century figures as von Humbolt and von Goethe towards the chauvinistic power worship and political servility which Julien Benda was to label in 1928 as *la trahison des clercs*. In 1870, the physiologist Emil du Bois-Reymond, rector of Berlin University and president of the Prussian Academy of Sciences, proclaimed in an oration that "We, the University of Berlin, quartered opposite the King's palace, are, by the deed of our foundation, the intellectual bodyguard of the House of Hohenzollern."⁵ Such attitudes did little to create an atmosphere of tolerance for intellectual dissent. In 1874, Professor H. Ewald, of Göttingen University, was imprisoned for expressing "incorrect" views on the conquests of Friedrich II a century earlier.⁶ The Weimar Republic was the time of *Voraussetzungslose Wissenschaft* (science stripped of all preconceived notions, that is, of moral values). The study of history was dominated by historicism, which claimed validity only for what was currently applicable, that is, opportune. The Austrian historian Richard Grunberger notes that in the Third Reich,

The pace at which the 'coordination' (*Gleichschaltung*) of academic life proceeded after the seizure of power was made possible only by the voluntary self coordination of many faculties. The speed of this process aroused the suspicion and ridicule of many Nazi leaders. Hitler warned the Party against those who "suddenly changed their colours and moved into the new state as though nothing had happened." ... In May 1933, ceremonial burnings of defamed books took place all over Germany in the presence of suitably capped and gowned academic senates. Appropriately, the orations inaugurating these university quadrangle *autos-da-fé* were delivered by luminaries of German literary studies. ... The rector of Göttingen expressed himself "proud of the new appellation — barbarians". ... The actual sabotage of Germany's intellectual life (and with it, of her economic and even military potential) had, of course, been effectively initiated by the Nazi purge of the universities. ... When Reich Education Minister Rust asked the eminent Göttingen mathematician, David Hilbert, if his institute had suffered as a result of the departure of the Jews and their friends, the professor replied, "Suffered? No, it hasn't suffered, Herr Minister, it just doesn't exist any more."

The famous Göttingen circle of quantum physicists was dispersed, an event causally connected with the subsequent development of the atom bomb in the United States. Broadly speaking, Germany lost the world leadership in natural science that she had previously enjoyed, with the long-term result that to this day [1971] her universities have an uphill task in recovering lost ground and German industry is handicapped by the possession of patents by other countries. ... Anti-intellectualism and social demagoguery remained constant factors in the Nazis' manipulation of public opinion, and academics were castigated for having only been concerned with *Wissensbereicherung* (the selfish acquisition of knowledge).⁷

In physics, the SS newspaper the *Schwarzes Korps* labelled such figures as Heisenberg, Sommerfeld and Planck as "white Jews in the sphere of science" because they disagreed with the "German physics" developed by the Nobel Laureate Lenart who, along with Stark, another Nobel Laureate, and various Party ideologists, created difficulties for those scientists who continued to uphold the "Jewish spirit". In the field of history, Hermann Oncken was relieved of his professorship after he published a study of Robespierre with distinct anti-demagogic undertones. F. A. von Hayek, the Austrian-born Nobel Laureate in economics, remarked of the Third Reich:

The way in which, in the end, with few exceptions, her scholars and scientists put themselves readily at the service of the new rulers is one of the most depressing and shameful spectacles in the whole history of the rise of National-Socialism.⁸

Neither has this conflict really been resolved in the Federal Republic. In 1972, Chancellor Willi Brandt introduced the *Berufsverbot*, a decree which prohibits from state employment any person who engages in political acts considered detrimental to the Constitution, the ostensible aim being to prevent National Socialists and communists from infiltrating the state bureaucracy. Because university teachers in Germany are officially employees of the state, the *Berufsverbot* led to the dismissal of a number of academics who had engaged in unorthodox political activities which, while not actually illegal, were nevertheless interpreted as detrimental to the Constitution under that law. It moreover strengthened the habit among academics of strenuously avoiding researches which might raise political eyebrows.

Far more severe have been the laws under which Holocaust revisionists have been prosecuted and imprisoned. These laws have been applied both *ex post facto* and outside the jurisdiction of the legislature which passed them. The right of the defendant to present new evidence in his defence, and the right to a contemporaneous verbatim record, do not exist in trials brought under these laws. The independence of the judiciary has been undermined by penalties against judges who fail to deliver a sufficiently harsh judgement against the accused. Prison sentences have been arbitrarily extended beyond those originally imposed by the court. In 1993 the American Holocaust revisionist Fred Leuchter was arrested at a television studio where he was about to be interviewed, and spent four weeks in prison before he was released on bail pending trial, jumped bail and fled back to the US. Hans Schmidt and Gerhard Lauck are both US citizens who sent Holocaust revisionist and political material from the US into Germany in the form of mass-mailings. Schmidt was arrested while visiting Germany and imprisoned without trial for five months before being allowed to return to the US.⁹ Lauck was arrested at the German government's request while visiting Denmark, extradited to Germany in breach of international law, and sentenced to four years in prison.¹⁰ With the exception of a statement signed by 100 prominent intellectuals and business figures in the *Frankfurter Allgemeine Zeitung* in 1996, there has been very little public opposition to these laws.

... AND IN FRANCE

But it would be unjust to single out Germany in this respect. Things in France are hardly any better. In the early 1950s the late Maurice Bardèche spent nearly a year in prison after he was convicted of "apologising for crime" after he wrote

two books challenging the legitimacy of the International Military Tribunal at Nuremberg and denouncing the trials which took place there.¹¹ In 1978, when Professor Robert Faurisson, of the University of Lyons-2, began to publish his conclusions that no gas chambers existed in wartime Nazi concentration camps, a storm of defamation, harassment, obstruction, and violence was unleashed against him, with the participation or support of many intellectuals. Nine anti-racist and concentration-camp survivor organisations initiated civil and criminal lawsuits against him for “falsification of history in the matter of the gas chambers” in what became known as *l’affaire Faurisson*. Professor Noam Chomsky, of the Massachusetts Institute of Technology, the world’s greatest living philosopher of linguistics, was one of some 600 scholars who signed an international petition which stated, in part:

We strongly protest these efforts to deprive Professor Faurisson of his freedom of speech and expression, and we condemn the shameful campaign against him.

We strongly support Professor Faurisson’s just right of academic freedom and we demand that university and government officials do everything possible to ensure his safety and the free exercise of his legal rights.¹²

Professor Chomsky was himself subjected to a torrent of vilification and lies from the intellectual wolf-pack for signing this petition. He recalls that

... in the Stalinist/fascist atmosphere of Paris intellectual life, the petition ... was immediately denounced as a defense of F[aurisson]’s theses in hysterical diatribes by leading figures (the press, of course, refused responses, or worse, permitted fragments that they rewrote for their purposes, the left press being by far the worst). [Dr Serge] Thion asked me to write a brief statement making the obvious and trivial points about freedom of speech, which I did, telling him to use it as he liked. He added it as an “avis” (opinion) to a “memoir” of F[aurisson]’s that I did not know existed, in which he defended himself from the charges of “falsification of history in the matter of gas chambers.”¹³

Chomsky identified the real issues involved in an interview in 1988:

The Faurisson affair really is important, as a demonstration of the victory of fascism, the commitment of the intelligentsia to Stalinist doctrine, their cowardice in concealing all of this beneath a flood of lies, and the ways this is used to undermine criticism of Israel — the real heart of it all, obviously enough.¹⁴

The affair ended with a judgement by the Paris Court of Appeals on 26th April 1983 which convicted Faurisson only of reducing his research to malevolent slogans, and not of “falsification of history” as such. The court found that Faurisson’s researches had been neither frivolous, nor negligent, nor dishonest:

Mr. Faurisson’s research has dealt with the existence of gas chambers which, if one were to believe the many testimonies, were supposedly used during the Second World War to systematically put to death some of the persons deported by the German authorities;

Limiting ourselves for the time being to the historical problem that Faurisson wanted to raise on this precise point, it is proper to state that the accusations of frivolity made against him are lacking in pertinence and are

not sufficiently proven; in fact, Faurisson’s logical approach consists in trying to demonstrate, by using a line of argument [that he thinks is] of a scholarly nature, that the existence of the gas chambers, as they have usually been described since 1945, runs into an absolute impossibility, which would be sufficient by itself to invalidate all of the existing testimonies or, at least, to make them suspect;

... it is not the job of the court to make pronouncements about the legitimacy of such a method or about the full significance of the arguments set forth by Faurisson, nor is it any more permissible for the court, considering the research to which he has devoted himself, to state that Faurisson has dismissed the testimonies frivolously or negligently, or that he has deliberately chosen to ignore them;

... furthermore, this being the case, no one can convict him of lying when he enumerates the many documents that he claims to have studied and the organizations at which he supposedly did research for more than fourteen years.

The court upheld the right to study and express any opinion relating to the existence or non-existence of Nazi gas chambers:

... the value of the conclusions defended by Faurisson rests therefore solely with the appraisal of experts, historians, and the public.¹⁵

In 1982, Raul Hilberg, professor of political science at the University of Vermont and author of *The Destruction of the European Jews*, stated that Faurisson’s researches had value for Holocaust historians:

I would say that, in a way, Faurisson and others, without having wanted to, have rendered us a service. They have raised some questions which have had the effect of involving historians in new research. They have obliged historians to gather further information, to re-examine documents and to go farther in understanding what took place.¹⁶

Despite this, the Assemblée Nationale passed the Fabius-Gayssot law, which was signed into law by President François Mitterrand in 1990. This law made it a criminal offence, punishable by a fine of up to £30,000 or one year in prison or both, to contest the truth of any of the “crimes against humanity” with which the German leaders were charged in the London Agreement of 1945 which established the basis for the Nuremberg Trials. The Paris lawyer Éric Delcroix has described the wave of bans, fines and imprisonments launched against Holocaust revisionists under that law in his report entitled, quite appropriately, *La police de la pensée contre le révisionnisme*.¹⁷

“THE MOST IMPORTANT CONCLUSION EVER REACHED”

The following paper arose from my concern that the then-imminent criminal case of *R. v. Griffin* (1998) might have set a precedent which could have led to prosecutions against Holocaust revisionism in Britain. Nick Griffin, a member of the British National Party, was given a suspended prison sentence after he was convicted of “incitement to racial hatred” for editing and distributing a magazine which contained both controversial views on race relations and Holocaust revisionist articles. Fortunately, for reasons I explained in my report of that trial, no such precedent was set.¹⁸ Any attempt to

impose such restrictions in Britain would be vigorously opposed, for the reasons explained by the Cambridge University historian Professor J. B. Bury in 1913:

At present, in the most civilized countries, freedom of speech is taken as a matter of course and seems a perfectly simple thing. We are so accustomed to it that we look on it as a natural right. But this right has been acquired only in quite recent times, and the way to its attainment has lain through lakes of blood. It has taken centuries to persuade the most enlightened peoples that liberty to publish one's opinions and to discuss all questions is a good and not a bad thing. ... A long time was needed to arrive at the conclusion that coercion of opinion is a mistake, and only a part of the world is yet convinced. That conclusion, as far as I can judge, is the most important ever reached by men. It was the issue of a continuous struggle between authority and reason. ... In the Middle Ages a large field was covered by beliefs which authority claimed to impose as true, and reason was warned off the ground. But reason cannot recognize arbitrary prohibitions or barriers, without being untrue to herself. The universe of experience is her province, and as its parts are all linked together and interdependent, it is impossible for her to recognize any territory on which she may not tread, or to surrender any of her rights to an authority whose credentials she has not examined and approved.¹⁹

In 1951 another Cambridge historian, Professor Herbert Butterfield, warned of the dangers of "official history" written at the behest of government, and explained the need for independent history to act as a counter-weight to it:

Of all the principles which touch the life of States and peoples it seems to me that the most important in the secular sphere is the one which insists upon freedom of thought, by which I mean of course freedom in the expression of thought — freedom (supposing I am in a minority of one) to attempt the task of converting the majority. Under the shelter of this general principle, there will exist (where the body politic is healthy) an independent science of history, not hostile to the government but standing over against it — a science which will seek to present the cause of historical truth as distinct from the things which might be promulgated from motives of *raison d'état* or for the sake of a public advantage or in order to cover the imprudences of politicians and government servants. ... [W]hen men have inherited freedom, and have not had to fight for it themselves, they easily allow it to slide away, not realising that concessions apparently innocuous, when made to people whom we happen to like and trust, become at the next remove the ground from which a new generation of men can make a more serious encroachment on liberty. Some of our nineteenth-century historians wrote as though they remembered much more clearly than we do that freedom is always a fight, always a striving, always a matter of vigilance and alertness. ... It may be necessary that official history should be produced. It is equally necessary that it should be subjected to unremitting scrutiny.²⁰

AN HISTORIC VICTORY FOR FREEDOM

The existence of the Internet is the guarantee that independent history, and all other forms of dissent, will not only survive in the coming century, but reach more people than

they have ever done before. The reason for this is the First Amendment to the United States Constitution, which guarantees the right to freedom of speech and the press. In 1996, President Bill Clinton signed into law the Communications Decency Act (CDA), which aimed to give the federal bureaucracy the power to prohibit "indecent" on the Internet. The American Civil Liberties Union and other anti-censorship groups challenged that law in the courts, and obtained a Supreme Court judgement which struck down the CDA as unconstitutional and upheld, as a matter of law, the right to freedom of speech on the Internet.

This historic victory constitutes a *de facto* basis for the same degree of freedom — at least on the Internet — for everybody in the world. Anybody could establish a website based in the United States in order to promote any controversial idea, and any other person could access that website in order to study it. Governments might continue to ban, imprison and fine the individuals who express that idea, but they could not hope to prevent the spread of the idea itself. In the words of US District Court Judge Stewart Dalzell, in his ruling of 12th June 1996:

As the most participatory form of mass speech yet developed, the Internet deserves the highest protection from government intrusion. ... Just as the strength of the Internet is chaos, so the strength of our liberty depends upon the chaos and cacophony of the unfettered speech the First Amendment protects.²¹

NOTES

1. David Botsford, *Freedom of Expression, Dissenting Historians and the Holocaust Revisionists*, Historical Notes No. 29, Libertarian Alliance, London, 1998.
2. Hans Schmidt, *Jailed in 'Democratic' Germany*, Guderian Books, Milton, Florida, 1997, pp. 8, 33, 386-390, 394, 397.
3. Letter from Germar Rudolf to D. Botsford, 14th July 1998.
4. "*Germany for Germans*", Human Rights Watch/Helsinki, New York, Washington, Los Angeles, London and Brussels, 1995, pp. 70, 77, 108.
5. Quoted in F. A. von Hayek, *The Road to Serfdom*, first published 1944, Routledge and Kegan Paul, London, 1979, p. 142, n. 1.
6. Israel Shahak, *Jewish History, Jewish Religion*, Pluto Press, London, 1994, p. 105, n. 16.
7. Richard Grunberger, *A Social History of the Third Reich*, first published 1971, Penguin Books, Harmondsworth, Middlesex, 1974, pp. 390-393.
8. Hayek, *op. cit.*, pp. 141-142.
9. Schmidt, *op. cit.*
10. *Ibid.*, especially pp. 375-6.
11. Éric Delcroix, *La police de la pensée contre le révisionnisme*, RHR, BP 122, F-92704 Colombes Cedex, 1994, p. 72.
12. Reproduced in Robert Faurisson, "Revisionism on Trial", *Journal of Historical Review*, vol. 6, no. 2, summer 1985, pp. 180-181. The original was in capitals.
13. Letter from Professor Noam Chomsky to D. Botsford, 27th April 1998.
14. Quoted in Milan Rai, *Chomsky's Politics*, first published 1995, Verso/New Left Review, London, 1996 edition, p. 132.
15. Quoted in Faurisson, *op. cit.*, p. 181. The words in brackets were added to the judgement in handwriting.
16. Quoted in *ibid.*, p. 170.
17. Delcroix, *op. cit.*
18. David Botsford, *The British State Versus Freedom of Expression: The Case of R. v. Griffin*, Legal Notes No. 29, Libertarian Alliance, London, 1998.
19. J. B. Bury, *A History of Freedom of Thought*, Williams and Norgate, London, n.d. [1913], pp. 8, 14, 18, 20.
20. Herbert Butterfield, *History and Human Relations*, Collins, London, 1951, pp. 170, 183-185.
21. Quoted in *Index on Censorship*, vol. 25, no. 4, July-August 1996, p. 137.