

# THE DRUG TRAFFICKING ACT VERSUS NATURAL JUSTICE

**J. ENOCH POWELL**



## INTRODUCTION

It was one of those ironies of contemporary politics that the group of “anarchists” who violently prevented Mr. Powell from delivering the following speech to Bristol University Conservative Association on Friday October 17th 1986 silenced a major libertarian statement. The Drug Traffic Act is a major reversal of one of the most vital elements of English Common Law, the presumption of innocence. And Mr. Powell is the only politician who, in a climate of moral panic over drugs, has spoken out against this ominous infringement of civil liberties. While there are, to say the least, considerable differences between the respective ideological perspectives of Mr Powell and the Libertarian Alliance, we are pleased to publish his principled statement on this issue.

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The Rt. Hon. J. Enoch Powell was until June 1987 the Member of Parliament for South Down. Formerly a Fellow of Trinity College, Cambridge and Professor of Greek at the University of Sydney, he was also Minister of Health from 1960 to 1963. He is the author of many books, including *First Poems*, *A New Look at Medicine and Politics*, *Freedom and Reality*, *Still To Decide*, *A Nation Not Afraid*, *No Easy Answers*, *Wrestling With The Angel*, *Joseph Chamberlain* (with Keith Wallis), *The House of Lords in the Middle Ages*, and (with Paul H. Douglas) *How Big Should Government Be?*

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**FOR LIFE, LIBERTY AND PROPERTY**

A little less than a year ago, addressing the University of Cambridge Conservative Association, I gave vent to an anxiety which has grown stronger in the interval.

The Government had then just announced its intention, to which Parliament obediently gave effect, of enacting that persons convicted of drug traffic offences should be made subject, besides other penalties, to the confiscation of the whole of their property unless they could show that it did not represent the proceeds of that criminal activity in general as opposed to the particular offence of which they had been duly found guilty.

I protested against the enactment of so manifestly unjust a law, which shifted the onus of proof from the accuser to the accused, which revived a penalty not known since the Middle Ages, and which inflicted it for offences of which those punished had not been convicted. I predicted that if such legislation went through, the rot would not stop there. Once made, the breach in natural justice would rapidly be extended beyond the context of drug trafficking.

## A DANGEROUS PRECEDENT

My protest was not heeded. I was told there was something so peculiarly evil and uniquely dangerous about the drug traffic that no precedent for other branches of the criminal law would be created. A very high legal luminary indeed wrote to me: “I agree that it is a dangerous innovation: I agree that it *must* be strictly confined to its purpose and not extended”; but he continued: “However, the drug situation is so horrifying that I believe these measures — or something like them — are really necessary.” The eminent authority was promptly proved wrong and I, alas, proved right. Within four months the Home Secretary announced that the Government was considering for the coming session “legislation to confiscate the assets of those convicted of organising prostitution and fraud”. Not only have I seen no repudiation of that proposal but, at least in the context of fraud, it has been given a general welcome. I read last week one of

those inspired reports to the effect that “Ministers are now considering to what extent similar penalties [to those enacted in the context of drug trafficking] should be extended to other crimes” and that their first instinct was “to take advantage of the widespread public revulsion at the activities of the drug barons by launching a blanket crack-down on the profits of organised crime”.

### **TAKING ADVANTAGE OF SOCIAL PANIC**

That expression “take advantage of public revulsion” is highly instructive. Nothing is more dangerous to the maintenance of our liberties under the law than panic producing “public revulsion” of which politicians then “take advantage”. Not only, though especially, in the season of the party conferences are politicians exposed to the outpourings of anger and panic and find themselves looking for votes by giving way to ill-considered invasion of long cherished and preserved legal rights and constitutional principles. Believe me; it is not only the “barons” but the politicians who are capable of cashing in on drugs, and they do it by trading away those things which it is their duty to defend.

### **THE ROLE OF SPECIAL INTERESTS**

Senior Scotland Yard officials were heard last May “calling for proposed legislation on the seizure of assets from drug traffickers to be widened to other major offenders *and the confiscated cash ploughed back into policing*”. The motive of self-interest which that report disclosed may be venial in policemen, whose business is with enforcement of the law and not with its integrity. It is unforgivable in governments and ministers. Nor was I reassured when I learnt that there is already an American precedent and that “in the United States the channelling of confiscated assets back into law enforcement has meant that the Drug Enforcement Agency has become practically self-sufficient” — a chilling and admonitory piece of information.

### **THE POLICE AND NATURAL JUSTICE**

Nevertheless there *is* a police interest in the protection of natural justice in legal code. Anxiety for the future about the relationship between the public and the police is widespread. Ill-considered changes in the penal law, spawned by panic or by financial considerations, could easily increase the justification for that anxiety. The Government has just made use through subordinate legislation of a power for which authority was provided in a provision of the Road Traffic Act that attracted culpably little notice or debate at the time. I refer to what are loosely called “on-the-spot” fines. More accurately expressed, the police have been given the power to convict and punish a citizen of any of a whole range of motoring offences, unless he exercises the option to take the case to court under threat of a higher penalty and of liability to pay the costs of both parties. Whether or not

the way for this was paved by system of traffic wardens and parking fines, it represents a breach of the general principle that the citizen is innocent of an alleged crime unless and until he is duly convicted of it by a court of law. The fact that so much concern and anxiety attaches to road casualties helps to explain, but does not help to justify, that breach, any more than the panic about drugs justifies the introduction into our law of the confiscation of assets unconnected with an offence duly proven.

There is another way in which the innovation of “on-the-spot” fines closely touches the relations between police and public. It is this. The reasonable exercise of discretion by the police is an indispensable ingredient in their public relations. It is underpinned by the policeman’s awareness that the citizen has an open redress through the courts if he is charged by the police in trivial or doubtful or even unreasonable circumstances. Armed with the power to fine “on the spot”, the policeman is positively deterred, if not prevented, from exercising that all-important duty of judgment. His identity as a member of the community like any other person is diminished. He moves a perceptible step closer to being the arm of an impersonal and oppressive state.

### **THE ALARMING LACK OF PUBLIC OPPOSITION**

It is to me alarming not that such proposals as I have been discussing are aired or that they emanate from government and its agencies but that they encounter so little public remonstrance and that the House of Commons, on which in the last resort the responsibility rests for safeguarding the citizen’s rights, has proved to be so prone to take the easy course of short-term popularity and panic-pandering. That is a default for which heavy payment falls to be made in the long term — and not always by any means by those who were guilty of it.

### **THE BREACH OF PROFESSIONAL INTEGRITY: ANOTHER OMINOUS PRECEDENT**

There is still another cause for anxiety which I do not want to pass over. The same panic about drug traffic has been the occasion for a breach of the duty of confidentiality between professionals and their clients, whereby the professionals have been given protection by statute for disclosure of their clients’ affairs when they choose to make it upon a suspicion that drug offences are involved. We are already being told that this proposal is to be extended to cover suspicion “of all other serious crime, where large profits are reaped”. That illustrates how a breach of principle once made is almost instantly widened. The journey is well under way towards a society where everybody is encouraged to spy on everybody else, under cover of the general detestation in which certain offences are held. Even if politicians join in this stampede, ought not the legal profession and those other professions whose independence rests on the principle of confidential duty to clients to be heard raising their voices in protest and opposition?