

THE BRITISH STATE VERSUS FREEDOM OF EXPRESSION: THE CASE OF *R. v. GRIFFIN*



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The past six months or so have seen a series of prosecutions of individuals in the United Kingdom which, in various ways, adversely affect the right to freedom of expression in this country. In November 1997, Saxon Burchall-Wood, Noel Molland and Stephen Booth, editors of the magazine *Green Anarchist*, were each imprisoned for three years for publishing a diary section in that magazine which listed events relating to “ecotage”, in which construction projects such as roadworks are illegally sabotaged by environmentalist protesters. The editors were convicted of “conspiracy to incite persons unknown to commit criminal damage and arson”.¹ In March 1998 they were released from prison on post-conviction bail and their appeal is currently before the courts. Two other defendants, Paul Rogers of *Green Anarchist* and Robin Webb of the Animal Liberation Front are currently also on trial on similar charges. Mr Webb is on trial for distributing the ALF’s newsletter, which lists events in which ALF members illegally enter places such as laboratories and fur farms in order to “liberate” the animals inside them. The distributors of the video *Visions of Ecstasy*, which included sexual fantasies involving the crucified Jesus, were convicted of blasphemy in the British courts; they appealed to the European Court of Human Rights, which upheld their conviction. In March the West Midlands Police raided the University of Central England in Birmingham, and seized homo-erotic photo-

graphs by Robert Mapplethorpe, which were the subject of a student’s dissertation and were considered by the police to be in breach of the Obscene Publications Act 1959. A prosecution under that Act is being considered. In Stockport, the police raided the home of a journalist who had been commissioned by a book publisher to write a history of pornographic films; they seized hundreds of vintage pornographic videos, although I have seen no reports of any prosecutions occurring as a result. Another case currently before the courts is that of Mick Marlow, who was arrested in 1994 for distributing a marijuana growers’ manual entitled *Tricameral Sensimilla*. After being convicted, and serving six months in prison, Mr Marlow sought the return from the West Mercia Police of a hard disc containing the text of another book entitled *Simple Sensimilla*. In January 1998 Droitwich magistrates court ruled against him, and he is currently appealing against that ruling to the county court.²

From 27th April to 1st May, Nick Griffin, editor of *The Rune* magazine and a member of the British National Party, was tried under section 19 of the Public Order Act 1986, which states that

a person who publishes or distributes written material which is threatening, abusive or insulting and intends thereby to incite racial hatred, or, having regard to all the circumstances, racial hatred is likely to be stirred up thereby

has contravened the criminal law. The subject of the prosecution was issue 12 of *The Rune*.

THE PROSECUTION

This case was the first time in which Holocaust revisionism, the historical argument that Nazi Germany did not carry out a policy of extermination against European Jewry, was, in part, the subject of a criminal prosecution in the United Kingdom. In 1996, Alex Carlile, QC, who was until 1997 the Liberal Democrat MP for Montgomeryshire, asked the local police to obtain for him a copy of issue 12 of *The Rune*, and the police obliged. Mr Carlile, who is Jewish, read the magazine and called the police again. He expressed outrage over the magazine, and particularly over those articles which claimed that the Holo-

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FOR LIFE, LIBERTY AND PROPERTY

caust did not occur. On the basis of Mr Carlile's complaint, the police raided Mr Griffin's farm in Wales, and the Croydon home of Paul Ballard, the magazine's distributor. The police seized copies of the offending magazine, together with other materials, including computers, files, floppy discs and video tapes, and arrested both men. In Mr Griffin's case the police employed the services of a non-police computer specialist, who joined officers on the raid in order to assist them in retrieving data from discs and other forms of data storage. On the basis of the evidence thus obtained, the Crown Prosecution Service prosecuted Messrs Griffin and Ballard for the contents of the magazine as a whole. When I learned about this prosecution, and especially the aspects of it relating to Holocaust revisionism, I wrote a paper for the Libertarian Alliance describing the serious dangers involved in any attempt to apply the criminal and civil law to an issue of history.³

Mr Ballard pleaded guilty for personal reasons and was therefore not tried. (If a defendant pleads not guilty and is convicted, he normally receives a harsher sentence than if he had pleaded guilty in the first place, and Mr Ballard wished to serve the shortest possible prison sentence.) Mr Griffin, who has a degree in law from Cambridge University, pleaded not guilty, and defended himself in court. The trial was held at Harrow Crown Court before His Honour Judge Copley. Sasha Wass was prosecuting counsel for the Crown. Before the jury was sworn in, the judge made clear that neither truth nor free speech were defences under the Act. On 27th April, the judge directed the jury, which included two South Asian women and one woman of Chinese extraction, to read copies of the magazine in question. The following day, Miss Wass put the Crown's case that *The Rune* constituted "written material which is threatening, abusive or insulting" with intent to stir up racial hatred, or that "having regard to all the circumstances, racial hatred is likely to be stirred up". She drew attention to the front cover, which displayed a drawing of a large white hangman's noose with the words "What has a rope got to do with WHITE UNITY?"⁴ on a black background. The editorial to which the cover referred called for the unification of all "white nationalist" organisations into a single body with the purpose of achieving "final victory over those who wish to destroy us so that they can rule forever over a mass of mongrel slaves." Then "payback time" would come, and "we can put the rope to capital work". Miss Wass argued that the picture of the noose and the editorial were "the clearest possible call to arms to white supremacists" and that the whole magazine had a "blatant racist message". She read extracts from an article which called on readers to evoke "the spirit of the Northmen" and "unsheath the sword of war", another which reported the killing of a white policeman by a West Indian murderer, with photographs, and another which requested video footage of a white man being attacked by a group of blacks in South Africa. She said that an article entitled "Inconvenient facts", which claimed that Jews held positions in the media and Hollywood vastly disproportionate to their numbers, would lead to resentment against Jews. She pointed to a cartoon in which some hens with what she called "Jewish noses" were saying things like "Hens are special" and

"Hens are chosen". The cartoon's caption referred to "greedy, pushy power-mad hens". She argued that this cartoon was likely to stir up racial hatred against Jews. She briefly mentioned Holocaust revisionism by arguing that it was generally accepted that anti-semitism had ultimately led to the Holocaust, and that the magazine's denial of the Holocaust, which it called the "Holohoax", was a means of expressing its editor's anti-semitism. The prosecution then played the tape of Mr Griffin's interview with the police while under arrest, which I summarised in an appendix to my earlier paper.⁵ When the police were searching his home, Mr Griffin had taken a telephone call and had said that "They're very civilised, not like the Met at all. No Pakis or Jews."

Miss Wass called only one prosecution witness, Detective Constable Aldicott, of the Welshpool CID, who explained how he had participated in the raid on Mr Griffin's home. Mr Griffin cross-examined DC Aldicott, who stated that he knew the defendant personally from the community in Wales in which they both lived, and had heard nothing to indicate that the defendant was of bad character.

SPECIAL BRANCH BACKS COMBAT 18

In his defence, Mr Griffin said that his political activities, of which *The Rune* magazine was a part, were motivated by a desire to ensure the survival of the white race, which, he argued, was threatened with extinction in less than a hundred years' time. He cited articles from the *Guardian* and *Time* magazine to support his view that, if current demographical trends continued, the combination of an aging white population, a fall in the white birth rate, non-white immigration and inter-breeding between people of different races in all Western countries would mean the disappearance of the white race. His aim was to build a political movement, in the form of the British National Party, which would come to power by electoral means and take measures to reverse this process. He said that he was a white separatist, and not a white supremacist. He felt no hatred towards members of other races, had no desire to rule over them, and merely wished for whites to live separately from them. Multi-racial societies, he argued, were unstable and do not work, and it would be in the interests of all races for them to live apart from each other. He accepted that the magazine was "shrill" and "impolite", but argued that this tone was necessary in order to inspire its readership to take the political action he desired. *The Rune* was aimed at individuals already largely convinced by the racial nationalist point of view, and not at ordinary members of the public or ethnic minorities.

Mr Griffin stated that Combat 18, a violent Nazi terrorist organisation, had been sending to members of his target audience thousands of copies of extreme publications, examples of which he displayed, containing details of how to make and plant bombs, accompanied by slogans such as "A bomb a day and they'll give us a homeland." Other articles in C18 publications encouraged the murder of members of ethnic minorities, with slogans such as "Send niggers home in body bags", as well as the killing of judges, police officers, political opponents and others.

Mr Griffin explained that C18 was trying to recruit racial nationalists away from law-abiding and peaceable political groups such as the BNP to its terrorist approach. In its publications, C18 had threatened to stab Mr Griffin to death for his moderating influence within the racial nationalist movement. He said that C18 was largely a creation of the Special Branch of the Metropolitan Police, and that its leader, Charlie Sargent, had been a paid Special Branch informer until he was sentenced to life imprisonment for murdering another member of C18, at which point he had forfeited the state's protection. Mr Griffin said that C18 had been distributing its material for over two years before the Crown Prosecution Service finally investigated that organisation, and eventually obtained convictions for incitement to racial hatred and other offences. By contrast, he said, issue 12 of *The Rune*, which advocated a lawful and electoral approach to racial nationalism, was prosecuted within weeks of its publication.

Mr Griffin explained that the hangman's noose on the cover reflected the BNP's policy of the restoration of capital punishment for the murder of children and police officers, and for terrorist murders. He presented in evidence a BNP leaflet which he had written, advocating the death penalty for the murder of children. The reference to "drawing the sword of war", he explained, was a metaphor similar to those in William Blake's poem "Jerusalem", and was not meant literally. The photographs and report of the policeman and his West Indian killer had come from daily newspapers which used stronger language than *The Rune* had. While Mr Griffin had described the murderer as a "Jamaican immigrant", the *Sun* had described him as a "cop-hating Yardie". The request for video footage of blacks attacking a white in South Africa was in order to produce a video arguing that multi-racial societies are a bad thing. The article about the alleged predominance of Jews in the media was intended to argue that Zionist Jews had a political agenda which they promoted through their control of the media, and which was not in the interests of the majority. The cartoon about hens was not directed against Jews as such, but merely against a certain type of Zionist politician. The remark about "Pakis or Jews" he had made during the police search was merely an observation that there were no Asian or Jewish officers present during the raid. The term "Pakis" was merely a shortened version of "Pakistanis", and was not a manifestation of racial hatred.

THE HOLOCAUST REVISIONIST

As a defence witness, Mr Griffin called Professor Robert Faurisson, formerly professor of French literature at the University of Lyons-2, who is the world's best-known Holocaust revisionist. He was accepted by the Canadian courts as an expert witness on the Holocaust in the trials of Ernst Zündel for distributing Holocaust revisionist material in 1985 and 1988. In his testimony, Professor Faurisson described how he became a professor of French, Latin and Greek, and a specialist in textual analysis and document criticism, and that he had been a lecturer at the Sorbonne before taking up his appointment at Lyons. In the 1970s he carried out extensive archival research in

France and the United States, and began to publish books and articles arguing that there had been no gas chambers in wartime German concentration camps, and no Nazi policy of exterminating the Jews. As a result, he had been subjected to severe harassment, violence and lawsuits which meant that he had had to stop teaching at the university because the authorities could not guarantee his physical safety. He had continued to promote his historical opinions, and in 1990 the French government passed a law which made the expression of Holocaust revisionism a criminal offence, punishable by a fine of up to £30,000 and a year in prison. Professor Faurisson has been prosecuted and fined 12 times for violating this law, and is facing further prosecutions in the near future, unless he publicly recants his views. "Your Honour, I am an arch-criminal," he told the judge, to the general amusement of the jury and members of the public. The French courts had accepted that his work is serious. Raul Hilberg, the world's leading Jewish historian of the Holocaust, had stated that Faurisson's arguments had enabled experts on the Holocaust to write the history of that event more accurately. Professor Faurisson then gave a brief statement of the case for Holocaust revisionism, arguing that the buildings at former Nazi concentration camps which are exhibited to tourists as homicidal gas chambers could not possibly have been used for that purpose. In her cross-examination, Miss Wass asked Professor Faurisson to confirm that the law under which he had been convicted was a law introduced by the French government against racism, which he did.

THE BLACK SEPARATIST

The next defence witness was Michael Newland, former press officer of the BNP. He told the court that after the BNP won an election to Tower Hamlets Council in 1993, a vitriolic media campaign was launched against the party. The anti-fascist magazine *Searchlight* had planted hostile stories in the press, including a report which appeared in the *Hampstead and Highgate Express* stating that the BNP had acquired bomb-making equipment and was planning to start planting bombs in a few weeks. There was no truth in this story. BNP members had never discussed causing violence, but only defending themselves against violence by their opponents. Mr Newland described how three masked men had attacked him in his home, tied him up and subjected him to severe physical violence, from which he had almost died. Mr Newland said that he had never heard Mr Griffin condone or express hatred towards members of ethnic minorities. The third witness was Colin Smith, another BNP member, who told the court that, on Mr Griffin's suggestion, the BNP had cooperated with a West Indian family who wanted to return to the Caribbean, and had held a joint demonstration with that family outside the Home Office, requesting a resettlement grant. Mr Smith confirmed that C18 had been partly financed and largely created by Special Branch.

The final defence witnesses was Osiris Akkebala, a black American separatist resident in Orlando, Florida. He said that his organisation, the Pan Africanist International Movement, aimed at the repatriation, with reparations, of

black people from the United States and other countries to a new black homeland in Africa. In the late 1980s, when Mr Griffin had been chairman of the National Front, Mr Akkebala had established friendly relations with him, and they had worked together for their mutual goal of the peaceful separation of the races. Mr Akkebala testified that he had never experienced any racial hatred or hostility in his dealings with Mr Griffin. He did not find issue 12 of *The Rune* in any way offensive. Having read the editorial which spoke of “white unity”, “white survival”, and so on, he said that the only thing he would change in it was the word “white” to “black”.

Before the final summing up, the judge stated that it was agreed that the magazine was not threatening, but that the jury would have to decide the question of intent to stir up racial hatred, and whether the magazine was insulting or abusive or both. Summing up, Miss Wass retreated considerably from the position she had originally taken. Instead of calling the magazine “blatant”, as she had two days previously, she said that it was “subtle”, that one had to “read between the lines” to understand its message, and that its anti-semitism was “disguised” by Holocaust denial. Summing up for the defence, Mr Griffin reiterated that the magazine could not be construed as inciting racial hatred, and predicted that a multi-racial jury would find him not guilty. He was wrong. The jury returned a unanimous verdict of guilty. The judge imposed a nine-month prison sentence on Mr Griffin and a six-month sentence on Mr Ballard, both sentences being suspended for two years. Costs were awarded against the two defendants.

WILL THE STATE DETERMINE HISTORICAL TRUTH?

The question arises as to whether, as a result of this conviction, further prosecutions may be attempted against Holocaust revisionism under existing legislation. My answer to that is: probably not. The prosecuting counsel made little mention of the Holocaust revisionist pieces in the magazine, and did not challenge Professor Faurisson’s argument, which was the first time the Holocaust revisionist case had been accepted as sworn testimony in a British court of law. It would be very difficult to prove a case that the expression of an historical opinion relating to the Holocaust is “threatening, abusive or insulting” to any ethnic group, or that “racial hatred is likely to be stirred up thereby” under present legislation.

The danger to intellectual freedom lies in the possibility of future legislation aimed against Holocaust revisionism. In May 1996, Neville Nagler, executive director of the Board of Deputies of British Jews, asked Jack Straw, who was then shadow Home Secretary, to introduce legislation making Holocaust revisionism a criminal offence if Labour were to be elected.⁶ This was a reversal of the Board’s previously stated position, which had been against the introduction of such a law. In September 1996, the Labour Party’s annual conference voted unanimously in favour of the introduction of a law against Holocaust revisionism. When he was Leader of the Opposition, Tony Blair stated several times that Labour

were considering ways in which such a law could be introduced. Since Labour was elected in 1997, there has been no public statement about any proposals relating to the introduction of such a law, although Mr Nagler wrote to the *New Statesman* in April 1998 stating that over the past year the government had consulted the Board on the subject of legislation against Holocaust denial.⁷

It is to be hoped that wiser counsels have prevailed, and that the Labour government has abandoned any intention it may have had of introducing legislation relating to this subject. If not, those of us who believe in intellectual freedom will have no alternative but to mount a national — and possibly international — campaign against any such proposal. This campaign could become equivalent in scope to that which has been mounted in defence of Salman Rushdie’s right to freedom of expression. With the rapid growth of the Internet, such a campaign would have a very strong chance of success. In January 1996, the German national telephone company Deutsche Telekom blocked subscribers to its Internet service from accessing websites containing Holocaust revisionist material. The move was prompted by a request from prosecutors in Mannheim who were investigating the German-Canadian Holocaust revisionist Ernst Zündel. Internet users at three universities in the US, where Mr Zündel’s website is based, responded by ‘mirroring’ the material on their own sites in protest at the ban, thereby making the Deutsche Telekom restriction irrelevant.⁸

But far more important than such techniques would be the moral and philosophical imperative of defeating any proposal for such a law intellectually in the minds of all thinking people. Professor Noam Chomsky, of the Massachusetts Institute of Technology, is the world’s greatest living philosopher of linguistics, as well as the best-known critic of American foreign policy and a formidable defender of intellectual freedom. In a letter commenting on my earlier paper about Holocaust revisionism, Professor Chomsky summed up the issue in a nutshell:

Read your pamphlet with interest. I am surprised to learn that the Labor government intends to introduce the principle that the state will henceforth determine historical truth. One begins to wonder what the Second World War was about.⁹

NOTES

1. London Gandalf Support Campaign updated report, London, nd [1998], p. 1.
2. *Index on Censorship*, vol. 27, no. 2, March/April 1998, p. 104.
3. David Botsford, *Freedom of Expression, Dissenting Historians, and the Holocaust Revisionists*, Historical Notes No. 29, Libertarian Alliance, London, 1998.
4. Capitals in original. The quotations from *The Rune* are from what I heard in the court, and may not be exact.
5. Botsford, op. cit., p. 22.
6. *Jewish Chronicle*, 31st May, 1996, p. 5.
7. *New Statesman*, Letters to the Editor, 17th April 1998, p. 34.
8. *Index on Censorship*, vol. 25, no. 2, March/April 1996, p. 89.
9. Letter from Professor Noam Chomsky to David Botsford, 27th April 1998, p. 1.