



YOU SHOULD NOT BE PROSECUTED FOR DOING SOMETHING WHICH WASN'T ILLEGAL WHEN YOU DID IT:

THE FUNDAMENTAL LEGAL PRINCIPLE UNDERMINED AT NUREMBERG



STEPHEN HUFF

John F. Kennedy, like many Presidential candidates, wrote a book promoting himself before running for President. It was called *Profiles in Courage*,¹ and was a series of case studies about members of the Senate who had voted on principle against bills

popular with their constituents. It raises the interesting question of what our representatives should be, men of principle or simple voices of their voters. The Senate, being intended to be the older and wiser house, may be considered to have a

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Stephen Huff is a regular contributor to the Libertarian Alliance Forum, the LA's email discussion group, this piece being one of his postings to it, dated October 29th 2000 and originally entitled "Let Me Say Something Unpopular".

Email mario@libertarian.co.uk if you are also interested in contributing to the Libertarian Alliance Forum.

Asked for a biographical note, Stephen Huff emailed us the following: "I am afraid my biography may defy belief in some ways. I am a sixth generation Texan. I served for 12 years in the US Navy Submarine Service and for 8 years in the US Army Armor Corps. I have served as a voluntary Police Officer in Virginia Beach, Virginia. My education is irregular. I dropped out of High School and later tested to a BA in the Regents External Degree Program in Albany,

New York, with concentrations (majors) in Sociology, Political Science, History, Geography, Literature, and Philosophy. I then did some graduate work in International Studies at Old Dominion University in Norfolk, Virginia. I am currently a retired Staff Sergeant, working as a Security Guard in a Bank, and reading things like Durant's *Story of Civilization* (see note 3 overleaf — ed.), the Great Books of the Western World, and other light entertainment. For what it is worth I am also a member of Intertel, a high IQ club limited to the top 1%, and most of my family have been college professors, war heroes, and members of Mensa, not to mention Uncles in the Asylums. My website is <http://rivendell.fortunecity.com/perilith/919/> It has free religious artwork, free photography, Doom stuff and such."

The views expressed in this publication are those of its author, and not necessarily those of the Libertarian Alliance, its Committee, Advisory Council or subscribers.

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greater license under the Constitution to be men of principle. However, a lot of voters don't see it that way.

NO PERSON WILL BE TRIED *EX POST FACTO*

Some posters on other lists have maintained that *Profiles in Courage* was actually ghost written by someone else.² Still, these matters aside, one case in the book stands out in my mind as being quite important and relevant to our modern world: Senator Taft and his opposition to the Nuremberg Trials.

Our Constitution and Bill of Rights asserts that no person will be tried *ex post facto*. If action A is legal on Tuesday and outlawed on Thursday, you cannot be prosecuted on Friday for doing action A on Tuesday. Laws cannot be passed to punish people after the fact. People can only be punished for actions that were illegal when they were committed.

This should sound like common sense. Who can feel safe under a government which punishes you for actions that were legal when you committed them?

Nuremberg blurred that distinction. Senator Taft and a US Supreme Court justice have maintained that while the actions of the Nazis during the war were horrible and deserved punishment, they were not clearly a violation of existing law at the time.

CONDEMNATION PURCHASED AT THE PRICE OF VIOLATING THE PRINCIPLE

Perhaps Nuremberg is an example of how our times are better than past times. In fact, considering that no one cared about the 26 million or so killed by Stalin in purges or the 33 million or so killed by Mao in work camps, the fuss made over the 12 million killed by the Nazis is something of an historical anomaly. It appears on the basis of history that Nuremberg was largely a propaganda exercise by the allies to ensure that they had the high moral ground.

Still, the world has taken the lesson to heart, and may be a better place for it. Actions that were pretty common throughout history are now condemned as crimes against humanity. The Holocaust happened to the Jews every couple of hundred years. I would like to say that any person reading Durant's *Story of Civilization*³ and the sections specifically about the Jews in each book could not help but be touched by the horror of that history, but my opinion of mankind is too low to support such op-

timism. For doubtless there are anti-semites out there who would stand up and cheer on reading that black and ugly history. Nevertheless, today such actions are almost universally condemned and that is a good fruit of the Nuremberg trials.

However, that condemnation was purchased at the price of violating the principle of no *ex post facto* prosecution.

TOBACCO SELLING? ABORTION?

Consider tobacco. Everyone knows that it kills, and everyone who traffics in it is implicitly aiding and abetting its negative effects. If the World Court decides that such traffic is immoral and a crime against humanity, every shopkeeper in the UK could be tried and jailed for trafficking in tobacco while it was legal.

Consider abortion. Lots of very emotional people consider abortion to be a crime against humanity. If that viewpoint becomes popular and accepted in the World Court, every person involved in the abortion industry today could be prosecuted and sent to jail in their nineties for doing things that were perfectly legal in their day.

A MAJOR LOSS FOR HUMAN RIGHTS

People have been burnt at the stake for lesser crimes than selling tobacco or committing abortion.

The opinion of mankind is not necessarily fair or rational, and establishing clearly a world precedent in international law that allows *ex post facto* prosecution is a major loss for human rights.

Two wrongs do not make a right. Nuremberg as it happened is a threat to all human beings, especially with the growing power of World Courts.

NOTES

1. John F. Kennedy, *Profiles in Courage*, Harper & Brothers, New York, 1955.
2. Regarding the authorship of *Profiles in Courage*, Libertarian Alliance Director Dr Chris R. Tame emailed Stephen Huff as follows: "I believe that it is now generally accepted by historians of the period that the book was ghosted for Kennedy (by Pierre Salinger, if my memory serves me properly)." Huff replied: "I tend to agree that Salinger ghosted it. The chap on the other list, while hardly a libertarian, is noteworthy for his personal honesty and reliability as a source."
3. Will Durant, *The Story of Civilization*, English Edition: Heron Books, London, 1950-1967, 32 volumes; published in the USA by Simon & Schuster.