

that their motive is "baasskap", but what other purpose can they have in limiting the power of government to privileged groups if it is not to protect the interest of the privileged, i.e. *the whites*? Their fear is that under a total democracy the established privileges and rights of the present ruling group would, in the process of sharing, be jettisoned; and their power to boss eliminated. They, therefore, devise policies which would keep the bosses in power for the foreseeable future.

Unlike the Nats., the United Party and the Progressives are prepared, however, to dilute the ruling group with some admixture of "reliable" (i.e. politically conservative) non-whites. They are not prepared, however, to risk total democracy which they neither trust nor understand. They infer that because the white minority in South Africa have used political power to dominate over the non-whites, full enfranchisement would reverse the procedures and pass the tyranny of government from the minority of whites to the majority of blacks. This, of course, could never happen under the safeguards of a true democracy, because the virtue of democracy is that it is the only form of government evolved by man which does not permit either minority or majority tyrannies. It is irrelevant to cite the happenings in Ghana and the Congo. Where a Government can lock up its opposition, as in Ghana, freedom is destroyed and there is no democracy despite universal franchise. Likewise there was no democracy in Lumumba's Congo Government, where universal franchise was used to bring about mob-rule to pay off old scores against the previous ruling white minority.

In its proper and full form, democracy is *government in the open by free people through discussion*. Democratic institutions must, therefore, ensure that all the people are free; i.e. free to participate in government, free to criticise and free to change the government in power. Universal franchise is thus only one of the freedoms guaranteed under democracy and is no more important than the other freedoms; i.e. freedom of speech, assembly, criticism, movement, association; freedom from arbitrary arrest, etc. — which

together constitute democratic "civil liberties" under "the rule of law". Whatever people may call their government, there is no democracy if these freedoms are not guaranteed. In most democratic countries the liberty of the individual is enshrined in and guaranteed by the constitution itself, while in England it is as effectively guaranteed by the long-established practices, conventions, institutions and traditions of a freedom-conditioned people. In any true democracy, the right to invade these freedoms lies beyond the sovereignty of parliament or the powers of the executive and the only time they are ever restricted is in times of genuine national peril or disaster — such as war — and then only by consent of parliament for the minimum period of time necessary to combat those perils.

So long as individual freedom exists there can be no danger whatever of either a majority or minority tyranny, and the people are never divided up into bosses and the bossed. *In fact the right of the majority to make laws is no greater than the right of the minority to criticise them, and government is thus not simply government by the majority, but government by the majority with the consent of the minority — for consent to be governed is only given to a majority by people whose freedom is ensured.*

Transkei Subversion Charges Against Liberals

ON SEPTEMBER 4, 1962, Peter Hjul, Chairman of the Cape Division of the Liberal Party, was fined R200 (£100) in the Umtata Magistrate's Court, on being found guilty of subverting or interfering with the authority of the State or its officers. Mr. Hjul was prosecuted in terms of the Proclamation 400 of 1960, the "emergency regulations" introduced in the Transkei at the time of the East Pondoland disturbances. As a director of Selemela Publications (Pty.) Ltd., owners and publishers of the fortnightly independent news-review *Contact*, Mr. Hjul was held responsible for an article that had appeared in *Contact* on 28 December 1961. It

was headlined "Homeguard Terror" and claimed that deep division existed in the Baziya Mission Location in the Umtata District of the Transkei, as a result of measures taken by the headman, Absalom Yengwa. Mr. Hjul's appeal will be heard in the Eastern Districts Court, Grahamstown, on 29 October.

Mr. Patrick Duncan, editor of *Contact* and also a prominent member of the Liberal Party, was Mr. Hjul's fellow accused. Before summons was issued, Mr. Duncan had, by moving to Basutoland, defied a banning order confining him to the Cape Peninsula. On his non-attendance at the Umtata court, a warrant was issued for his arrest.

Uncivilised and restrictive law

The article in question concerned conditions in the Transkei, the activities of "homeguards", locally recruited units maintained under police supervision to protect Government-appointed or recognised chiefs and headmen believed to be in need of such protection. It also brought before the public eye Proclamation 400, which Mr. Hjul's defending counsel, Mr. L. R. Dison, described as "a law which severely restricts the freedom of people . . . an uncivilised and restrictive law which should be restrictively applied". Mr. Dison also said that it offended against his constitutional sense of rightness that a local law could be passed that in effect took away the freedom of the press.

Local interest in the case was clearly evidenced by the fact that the court was packed on each day of the hearing. Special seating had to be arranged for the crowds, who came long distances on lorries, trailers and buses.

The "Homeguard Terror" case having been accepted by the Attorney-General as a "test case", trial under a second charge was postponed indefinitely. In this second case, which will be heard in the event of Mr. Hjul's appeal being lost, Mr. Hjul, Mr. Patrick Duncan and Mr. Randolph Vigne (a national Deputy-Chairman of the Liberal Party) will be tried for a similar offence, based on the publication of a report entitled "Transkei Tyranny", which listed what it called

"some examples of suspension of the rule of law in the Transkei", under Proclamation 400. It reads in part:

"In Matanzima's Tembuland . . . emergency imprisonment is only a small part of the legalised tyranny. The chief's court continually extorts fines of up to R40 (£20) for 'disrespect', 'disobedience' . . . I have seen the criminal summonses for these 'crimes'. An unknown number of such appellants and others have been deported to distant locations without their stock. Their homes were knocked down. . . . The prisoners (under Proclamation 400) are mostly illiterate peasants, unaware of the fate of their families, stock and crops after long unexplained captivity".

Messrs. Hjul and Vigne may thus be tried under Proclamation 400 for having allegedly circulated in the Transkei a report "intended to have the effect of subverting or interfering with the authority of the State or one of its officers and/or a chief, namely Chief Kaizer Matanzima".

As Chief Kaizer Matanzima is the present presiding chief of the Transkeian Territorial Authority and has been the most consistent supporter of the Government's "self-government" plans for the Transkei, the case may be of particular interest.

FOOTNOTE.—At its Provincial and National Congresses in 1961 and 1962, the Liberal Party passed resolutions condemning Proclamation 400 and has repeatedly attacked it from its platforms. Such condemnations apply equally to an amending Proclamation, No. 413 of 1960, which grants to Native Commissioners, commissioned and non-commissioned officers of the South African Police the power of arrest and detention without warrant in certain circumstances, persons detained to be held until they have answered all questions "fully and truthfully". Section 20 of Proclamation 400 states that no person so detained shall, without the consent of the Minister of Bantu Administration and Development or a person acting with his authority, be allowed to consult with a legal adviser concerning his arrest and detention. No cases have yet been reported in which such consent has been obtained.

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