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from the South African Institute of Race Relations (Inc.)

van die Suid-Afrikaanse Instituut vir Rasseverhoudings (Ingelyf)

P.O. Box 97

Johannesburg

Posbus 97

RR.19/62

NOT TO BE RELEASED BEFORE 4 P.M. ON WEDNESDAY, JANUARY 17, 1962

CONSTITUTIONAL DEVELOPMENT IN THE FEDERATION OF
NYASALAND, SOUTHERN AND NORTHERN RHODESIA.

The refusal of a white minority to face the fact that Africa was rapidly changing, still less to keep in step with change, has always marked all constitutional advance in the Federation of Rhodesia and Nyasaland. The story of such constitutional advance has been a tragic one of last-ditch heroics that real statesmanship would have foreseen, and avoided.

This was the view taken by Mr. Maurice Webb in delivering his well-reasoned and concise survey of constitutional developments in the territories concerned yesterday at the 1962 Council meeting of the S.A. Institute of Race Relations in Port Elizabeth.

Mr. Webb described Southern Rhodesia as the "coy lady of the Federation" in connection with her rejection of the proposed 1916 alliance with Northern Rhodesia and her subsequent rejection of the Union's advances in 1922. Only Northern Rhodesia's copper had finally weighted the scales in favour of her ultimate alliance.

From the outset, Mr. Webb declared, the three territories, Nyasaland, Southern and Northern Rhodesia were "an ill-assorted menage", Southern Rhodesia was a British Crown Colony with responsible government, an all-White parliament and a very nearly all-White electorate: Northern Rhodesia was a British Protectorate with a Legislative Council of a fractional

multi-racial character, made up of officials and nominated and elected members, with a White electorate: Nyasaland, also a British Protectorate, had a Legislative Council of officials and nominated members, with no elected members or voters. "LegCo" included three Africans.

This then was the state of advance of the three territories which were to be welded into a partnership between the races, as Mr. Oliver Lyttelton described it in the House of Commons when winding up the debate on the Federation Bill - not merely a partnership of territories.

Unfortunately, Mr. Webb continued, the Protectorate Africans dislike and distrust Southern Rhodesia - they strive for an early independence, outside the Federation, and partnership has become a word for derision.

"Particularly to the articulate Africans of the Protectorates, if partnership meant anything, it meant equality. Equality of wages, opportunity and status. To the Whites it means nothing of the kind."

The past eight years have been marked by a series of Commissions, during which time the Africans have been given a greater say in government - but not enough to satisfy the vociferous majority who still demand "one man, one vote". Nevertheless Mr. Webb said that he felt there were solid grounds for hoping that the Federation would survive.

"There must be free negotiation between the representatives of freely elected governments, however, which will not be easy.

"At a time when a minority of voices and seats in a legislature would have been appreciated and welcomed they were denied, and now that they are offered, it is too late".

The continued refusal of the Whites to accept an inevitable African majority could only result in bitterness and ill-will. A hard road lay ahead, with no safe course to choose and no turning back. Many questions still remain unanswered but "The only choice is between danger and danger" Mr. Webb summed up dramatically "and the only answer to danger is - courage".

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CONSTITUTIONAL DEVELOPMENTS IN THE 17
FEDERATION OF RHODESIA AND NYASALAND.

by

Maurice Webb

(Revised)

Port Elizabeth - January 16-19, 1962.

SOUTH AFRICAN INSTITUTE OF RACE RELATIONS (INC)
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CONSTITUTIONAL DEVELOPMENTS IN THE
FEDERATION OF RHODESIA AND NYASALAND.

by

Maurice Webb

To the drafter of constitutions those parts of Africa where White people have permanent homes must seem to present the problem of trying to reconcile the irresistible force with the immovable object. When the force proves to be not quite irresistible or the object a little less than immovable, a Constitution Conference is held. The question then is whether the Constitution that emerges paves the way to hell with its good intentions or is the first of a series that will rise on their dead selves to higher things. So far the roughly annual constitutions that have been produced in the Federation look to be more the former than the latter.

Southern Rhodesia, the coy lady of the Federation, was hard to please. She rejected the advice of Sir Starr Jameson in 1916 to make an alliance with Northern Rhodesia. In 1922 she turned her back on General Smuts and the then Union of South Africa. But in 1923 she thought the time had come to consider her future and, the copper of Northern Rhodesia gleaming attractively, she set her cap to the north. The particularly ill-assorted menage of the Federation of Rhodesia and Nyasaland, after long negotiations, was solemnised on August 1st, 1953.

Regarded constitutionally the parties to the contract were: one British Crown Colony (Southern Rhodesia) with responsible government and an all-White Parliament of thirty and a very nearly all-White electorate; one British Protectorate (Northern Rhodesia) with a Legislative Council of ten officials, four nominated, (two of them *members* Africans) and ten members elected by White voters; one British Protectorate (Nyasaland) with a Legislative Council of officials and nominated members, including three Africans; no elected members and no voters.

The first Federal General Election, held in 1954, resulted in an Assembly of thirty-five members, six of them Africans. Thus the Federation had at the outset four legislatures and one hundred and ten legislators, eleven of them African. Over all, 216,000 Europeans were represented by ninety-nine; $6\frac{3}{4}$ million Africans by eleven, [4 elected by African Councils, 7 nominated, elected or appointed by Whites]. There were no Africans directly elected by Africans. In the Protectorates, however, White officials or nominated members often regarded Africans as their main concern.

Looking back on this situation across the last ^{light} ~~seven~~ years, it is a little difficult to see on what grounds Mr. Oliver Lyttleton said in the House of Commons when winding up the debate on the Federation Bill: "I believe that it will solve the question of partnership between the races". The attitude of those responsible for the Federation now looks smug. It was later described in the Devlin report as a belief "that apart from a small minority of trouble makers, the African wants what is best for him and that the Government knows what that is." Papa knew best and partnership was the blessed word.

The opposition of the Protectorate Africans, based on their dislike and suspicion of Southern Rhodesia and their hopes of early independence, voiced strongly during the negotiations for Federation, was ignored. It was to continue and to increase in intensity to the point where the Monckton Commission described it as "almost pathological".

The preamble to the constitution of the Federation says three things mainly:

1. Northern Rhodesia and Nyasaland shall remain under the care of Britain as long as they wish.
2. Partnership and co-operation between its peoples shall be the basis of the new Federation.
3. When all the peoples so desire the Federation shall go forward to full membership of the Commonwealth.

And the final clause of the Constitution says that after not less than seven and not more than nine years, the five Governments concerned (Britain, the Federation, Southern Rhodesia, Northern Rhodesia and Nyasaland) shall appoint delegates to a conference to review the Constitution.

The Federal Constitution does not define partnership. For Whites it has often been a blessed word to be repeated and forgotten. To Africans it has become a word for derision. Particularly to the articulate Africans of the Protectorates if it meant anything it meant equality: of wages, opportunity, status. To Whites it meant nothing of the kind. Mr. Kenneth Kaunda has recalled how when he asked Lord Malvern for its meaning, he was told that it meant the partnership of a rider and a horse. Lord Malvern is also reported to have said: "We do not pretend that there is any equality of partnership at present but the Native has joined the firm and has his foot on the lower rungs of the ladder." Later he was to say that in the distant future he might achieve equal partnership but would never go beyond it. Sir Roy Welensky dated the achievement of equal status, never to be exceeded, at two hundred to three hundred years hence.

Bernard Shaw says somewhere that the difference between heaven and hell is the difference between two ways of looking at the same thing.

To Whites the many changes made in the last few years seem great and far reaching: the lowering of social barriers, the extension of the principle of equal pay, opportunities in Government employment, desegregated hotels and cinemas and post offices; and, often hardest of all, the overcoming of life-long prejudices. But to the African, his eye on events elsewhere in Africa, fired with the idea of being, if not master at least equal, on his African soil, they seem small. He thinks not of the doors that are now open but of those that remain closed, of his bitter struggles such as those with White Trade Unionists over employment on mine or railway. Dr. Nkrumah's brash "seek first the

political kingdom" makes sense to him. The vote becomes the thing. Given the vote he will take care of his own advancement instead of struggling slowly upwards.

Very few Africans had votes when Federation started. There were four hundred and twenty nine registered African voters in Southern Rhodesia, ten in Northern Rhodesia, none in Nyasaland. The first Federal Assembly was elected, appointed, nominated, according to the existing procedures of the three territories. Southern Rhodesia had a common roll of nearly all White voters. Apart from Northern Rhodesia's ten, all Africans in the two Protectorates were excluded by being "British Protected Persons". Southern Rhodesia, which had always had and still has an all-White Legislative Assembly, conceded a point to the Federal Assembly by electing, by separate constituencies, two Africans. As the voters were 98% White, the idea appears to be: if you must have Africans in Parliament, choose them yourself.

If any African support was to be gained for Federation partnership had to mean votes.

At the end of 1956 Mr. Garfield Todd's Government of Southern Rhodesia appointed a Commission under the Chairmanship of Sir Robert Tredgold, Chief Justice of the Federation, "to consider and report on a system for the just representation of the people of the Colony in its Legislative Assembly under which the Government is placed in the hands of civilised and responsible persons". The Commission said: "We feel that we should emphasise at the outset that in our view the first requirement (justice) is more important than even the second", and "It may be accepted that the ideal system for the government of a people is democracy based upon a universal adult franchise". That was too much to ask of Southern Rhodesia so the commission turned to "the hands of responsible and civilised persons", and went on to make proposals which it hoped might be regarded as both practical and just. From the date of the report (March 1957) every conference on Constitutions in the Federation has played variations on a theme by Tredgold. While the basic melody is Justice, this has often not been discernable in the variations.

It has been said that civilisation marks the advance from the simple to the complex. By this definition Constitutions in the Federation which crop up at the rate of one a year have reached a high point of civilisation with the Macleod proposed constitution for Northern Rhodesia of June 26th, 1961, which one member of the British Parliament said could not be understood without a slide rule. Ruder things were said as well.

The Tredgold proposals were fairly simple. A common roll with two classes of voters, "ordinary" and "special". The qualification for the former (apart from age and residence common to both) to be property to the value of £1,500 or income of £60 a month and literacy; or, property £1,000 or £40 a month with standard six; or, property £500 or £25 a month with form 4. For the "special" qualification £15 a month and literacy. The "special" votes to be effective only up to one half of the ordinary votes cast. Constituencies to be delimited in such a way that "special" voters would number not more than one third of the total.

"One man one vote" which Africans consistently demand has the virtue of simplicity as well as affording recognition of manhood and a sense of belonging. All alternatives present difficulties which may well in the long run prove greater than is felt to exist in giving votes to all. Under the Tredgold plan, much of which has survived

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recurrent constitutional bargaining, if you have £1,500, provided you can fill up a form in English, you can be as ignorant as you like, and still be a voter in the upper ranks; or, you can be a Professor and earn only £25 a month and be with the elite. Alternatively, provided you are literate and earn £15 a month you are a second class citizen. But, if you are an illiterate subsistence farmer, you are excluded from participation in the affairs of your country which thus loses the help of its most stable and conservative element.

On the assumption that the "ordinary" voters would be nearly all White and the "Special" voters African, the Tredgold plan would give White a two to one majority over African voters. But it was to be a common roll and the reasonable expectation was that with the spread of education and rising wages, more and more Africans would qualify for the "ordinary" vote and the "special" vote would tend to disappear.

White Rhodesians reacted violently to these proposals. Garfield Todd's insistence that they be brought to Parliament contributed to his downfall.

In the Southern Rhodesia Parliament the Tredgold plan was watered down by the "special" voter having to have an income of £20 a month instead of £15 (or £10 a month and form II), and the ratio of effective "special" to "ordinary" votes was reduced from one third to one fifth. And, when the number of voters on the "special" roll reached one fifth of the "ordinary" roll no more would be added. After that, property £500 or £25 a month and Form IV would be the lowest rung of the ladder.

The General Election under the new franchise eliminated Mr. Garfield Todd and all his associates and, but for the transferable vote, would have defeated the Government. It was estimated that about ten thousand Africans could have qualified for the vote. Less than 2,000 did so. The reasons advanced included, vacillating advice from the A.N.C. which first urged boycott and then urged enrollment; hostility towards or on the part of the officials to whom application had to be made; and, reluctance on the part of wealthier Africans to disclose income that might result in their being assessed for income tax.

In 1957 discussions with the British Government resulted in changes in the voting for the Federal Government. In Northern Rhodesia "British Protected Persons" were no longer excluded. Nyasaland had voters for the first time. Voting was on two rolls open to all Federal Citizens or British Protected Persons but subject to qualifications almost the same as the watered down Tredgold plan adopted by Southern Rhodesia. For the second Federal General Election of November 12, 1958, 86,000 Europeans, 4,000 Asians and 6,700 Africans had votes, higher and lower rolls added together, the total Non-White vote being 12% of the White without any devaluation. In Nyasaland only fourteen Africans registered for the upper roll and twenty-four for the lower, a clear sign of the deep hostility to all things Federal. African members of the Federal Assembly were increased from 6 out of 35 to 12 out of 59, or from 17 to 20.3% mainly by extending the practice of White voters choosing African members.

Opinions differ widely as to the purpose of the review conference. Mr. G.F.M. van Eeden O.B.E., M.P., who was a member of the London Conference that agreed the Federal Constitution said in Lusaka as recently as October 31st 1959: that its job is "that of overhauling the Constitution with a view to removing technical

imperfections, of making it a more adequate administrative instrument, and, most important of all, considering whether or not the Federation should become a full member of the Commonwealth completely sovereign, at least in regard to internal affairs."

Sir John Moffat, who was also at the London Conference, says that the assurance was given to those Africans present who assented to the Constitution that the review would take stock of the whole question of the Federation and its future; that any attempt to limit the scope of the review would be a breach of faith.

The review was the main issue before the Federal General Election. Sir Roy Welensky asked for and obtained from his White electorate a mandate to demand advanced if not full Dominion status. The advance was to bring not only prestige but also economic stability and, more important, a free hand in dealing with Native matters in the Federal sphere without interference from Britain.

Sir Roy wanted the conference early before Nyasaland achieved the promised constitution that might result in an African Government appointing the delegation. His Party, the United Federal Party, had won the Southern Rhodesia and Federal General Elections. If it could win the coming Northern Rhodesia General Election it would be sitting three ~~for~~ two at the review Conference; neither the British Conservative Government nor the Colonial Government of Nyasaland being likely to oppose too strongly the advance of the Federation to Dominion status and full membership of the Commonwealth.

But Africans, particularly in Nyasaland and Northern Rhodesia, were alive to the situation. The Devlin report records that in 1957 the Governor of Nyasaland commented that the Nyasaland African National Congress had its eye on 1960 when it presented him with a demand that the new constitution should ensure an African majority.

During 1958 Mr. Lennox-Boyd, then British Colonial Secretary, failed to secure agreement on a new Constitution for Northern Rhodesia and, as Mr. Macleod had to do later, formulated his own proposals which increased the LegCo from twenty-six to thirty. A complicated arrangement of ordinary and special constituencies, as well as ordinary and special votes after the Tredgold manner, resulted in eight African seats in the LegCo. He also provided for an Executive Council of eleven, of whom two were to be Africans. The African National Congress had put before Mr. Lennox-Boyd "as a constructive but temporary solution" a plan that would ensure equal numbers of White and African, regarding this as an example of moderation. Sir Roy strenuously opposed the proposals as going too far and particularly the provision of two executive seats for Africans. The British Labour Party opposed it as not going far enough when it came before the House of Commons (Sir Roy in the Gallery). The 1958 N.R. Constitution had few friends.

Nevertheless in order to thwart the U.F.P., the A.N.C. decided to give it a go. Eight thousand Africans enrolled as special voters and demonstrated that even votes that can count only up to one third of the total votes cast can influence the result of an election. The A.N.C. urged Africans not to vote for any U.F.P. candidate. The result: the U.F.P. polled 60% of ordinary votes but only 6% of special votes, the U.F.P. although the largest single party failed to secure a clear majority; the Central Africa Party led by Sir John Moffat made its entry into Parliament.

The Federation had been going through a period of great material progress and equally great spiritual decline. Capital flowed

into the country and goodwill flowed out of it. Skyscrapers and tension mounted together, until, while the Northern Rhodesia election was in progress the storm broke. A state of emergency was declared first in Southern Rhodesia and shortly after in Nyasaland. In both countries the A.N.C. was banned as was Zambia (rival African organisation to the A.N.C.) in Northern Rhodesia. There came a time of violence of word and act; of people killed and homes destroyed; of threats and counter-threats; of repression and imprisonment without trial and the arming of men; of order maintained by ignoring law until in the darkness who would not cry with Job, "where shall wisdom be found and where is the place of understanding?"

Wisdom was there in the paragraph of the Tredgold Report quoted earlier. It goes on, after giving priority to justice: "No system that leaves any substantial section of the people labouring under a justifiable grievance can, in the end, prevail. It must result in a sense of cleavage which means that the consent of the governed, upon which all government must ultimately rest, is withheld. Unless the principle is accepted that all sections of a people have their highest interests in common, that people will perish. A house that is divided against itself cannot stand".

Understanding had its place when Dr. Hastings Banda was taken from prison to meet Mr. Macleod at Zomba, the little capital of Nyasaland with its lovely setting, and each found in the other a person with whom it was possible to reason, and, perhaps, happily, find agreement. The long promised consideration of a Constitution for Nyasaland could begin.

The Lancaster House Conference began on July 28th 1960 and ended in agreement, that at the time seemed almost miraculous, ten days later. One correspondent recorded that the Conference met in the music room in which Chopin played to Queen Victoria, perhaps suggesting that harmony lingered there. The agreed Constitution provides for two classes of voters on the lines of the Tredgold Report. The upper roll grading from income of £720 and literacy to £300 and secondary education; the lower roll property of £250 or income of £120 and literacy. Ministers of Religion and Chiefs qualify for the upper roll; people who have paid tax for ten years and are literate, master farmers, pensioners and ex-servicement for the lower.

The Legislative Council has thirty-three members; twenty elected by the Lower Roll voters, eight by the upper and five officials. All candidates must be literate in English and twenty-five years of age. Any voter may be a candidate. The Executive Council, which is advisory to the Governor who presides over it, consists of ten ministers, three from the Lower Roll members, two from the Higher and five officials.

There is no racial designation in the Nyasaland Constitution. On the assumption that the higher roll would be predominantly White, the lower African, it was expected that Africans would have twenty out of thirty-three seats in the Legislative Council and three Ministerial posts.

The Nyasaland Constitution agreed to, the way was open for the consideration of a new constitution for Southern Rhodesia and to try once more to reach agreement on Northern Rhodesia. Also for the Federation Constitutional review conference to be convened. It was thought to hold all three conferences at the same time, but this quickly proved impossible. The review conference opened on December 5th, 1960. African representatives from the three territories, having

stated their firm opposition to Federation in any form, declined to take further part. The conference adjourned on December 18th and has not yet been resumed as efforts are being made to reach agreement on constitutions for Southern Rhodesia and Northern Rhodesia and for elections to be held under new constitutions.

The new Constitution for Southern Rhodesia meant long and difficult negotiations. For Northern Rhodesia and Nyasaland the British Government can impose Constitutions though it much prefers that they should be based on local agreement. Southern Rhodesia, as a self-governing Colony, had to negotiate its own Constitution, the British Government helping and advising, and eventually confirming by legislation.

The Sandys Constitution for Southern Rhodesia is based on a franchise similar to the watered down Tredgold one which precedes it. The upper (A) roll qualifications are the same except that Chiefs and Headmen are added; the lower (B) roll lets in some new rather lower qualifications for people over thirty years of age, age being regarded as a compensation for money or schooling to a limited extent. The lower roll also admits Ministers of Religion who qualify for the upper roll in Nyasaland, suggesting an oblique tribute to the Church of Scotland.

A double roll, which Sir Ivor Jennings regards as the best device for making democracy work with an immature electorate, replaces the former common roll. The country is divided into Constituencies for "A" voters and into Districts for the "B". Both categories vote in both but in Constituencies "B" votes will count only up to 25% of the "A" votes; in the districts "A" votes will count up to 25% of the "B". The closing of the "B" roll when it reached 20% of the "A" disappears.

The Legislative Assembly is to have sixty-five seats in place of the present thirty: fifty elected for the "A" constituencies, fifteen for the "B" districts.

The effect is likely to be that at first the Legislative Assembly will have fifty White members and fifteen African. But if Africans were to take full advantage of the Constitution they might capture 3 or 4 of the "A" seats as well. All candidates will have to have some regard to the electors of a different colour than their own, because of the 25% Cross voting.

To the African, heartened by the New Constitution of Nyasaland and aware of the changes further North, the advance made by the Sandys Constitution ~~must~~ seems slight. If he should know his Clough, he might be inclined to parody:

For while the tired waves vainly breaking
Seem here no painful inch to gain
Elsewhere through constitution making
Comes swiftly flooding in the main

Mr. Duncan Sandys representing Britain, the watch-dog for Africans, seems to them to have sold Britain's reserve powers which Southern Rhodesia desperately wanted to buy (although they had never been used) at a very low price, but to White Rhodesians African advance in the Sandys Constitution appears substantial. To go from a Parliament that has never seen a Black face to one with at least fifteen Africans and from a cosily White electorate to one that could in a few years have an African majority seems to many Whites to be both generous and reckless.

Concise assessment of the possibilities of the Constitution shows that Africans could secure a majority in the Assembly in ten years

That since Federation more than half the countries of Africa have achieved independence, ten years is a long time.

We in South Africa, and particularly those of us who come from Natal, are in no position to point a finger at Southern Rhodesia. It has much in common with Natal. As with Natal, its White population is largely of British extraction with a strong sentimental attachment to Britain but with little regard for the great things of the British tradition. In Natal Whites are outnumbered eight to one; in Southern Rhodesia twelve to one. It is hard to think of Natal accepting by a two-thirds majority at a referendum a common roll franchise open to all who qualify and the immediate prospect of six Non-White members of the Provincial Council and the certainty of more to come, *or the admission of non-Whites to swimming baths in Pietermaritzburg any more readily than was the case in Salisbury.*

Northern Rhodesia proved even more difficult. In opening the conference on December 19th 1960 (the day after the Federal review conference adjourned), Mr. Iain Macleod suggested basic considerations on which discussion should proceed: a substantial increase in the number of Africans on the Legislative Council to the point of or a little beyond parity; an extension of the franchise as a step towards universal suffrage; a special place for Chiefs.

In the discussion the representatives of Chiefs, of the United National Independence Party, the African National Congress, the N.R. Liberal Party, as well as one Asian and one African member of the Legislative Council who participated, all accepted these as a basis for discussion but wished to go beyond them to "one man one vote" or an assured African majority in the Legislative Council. The United Federal Party and the Dominion Party opposed any substantial increase in African representation and extension of the franchise, thus making agreement impossible. The conference came to an end.

The British Government's proposals which it published on February 21st 1961 provides for a Northern Rhodesian Legislative Council of about fifty members in all, made up of five officials or nominated persons; fifteen elected on an upper roll, fifteen elected on a lower roll (with in each case qualifications similar to those of Southern Rhodesia), and fifteen "National" seats elected by the upper and lower rolls voting together. There was also to be an Advisory House of Chiefs and a Bill of Rights, not defined.

Although these proposals fell very far short of the clear African majority for which all parties at the conference, including Chiefs, apart from the U.F.P. and D.P., had hoped, Mr. Kenneth Kaunda, as head of the largest political party in Northern Rhodesia, said that he would advise his followers to accept them.

The United Federal Party, however, opposed them with unrestrained agitation. The British Government gave way in the face of the agitation and issued revised proposals on June 26th.

Fierce objection now came from the African and White liberal side. Mr. Kaunda said that the promise he had received of a constitution similar to that of Nyasaland had not been kept and that he had lost faith in Britain. There were serious disturbances, lives were lost and property destroyed.

The February proposals, while not ensuring an African majority in the Legislative Council, favoured, in the fifteen National seats, African candidates, or, European candidates who could win African votes. There was the probability of a Government made up of the United National Independence Party and the N.R. Liberal Party led by Sir John Moffat: genuine political partnership at Government level.

Through intricate manipulations of the qualifying conditions

for candidates seeking nomination, attributed to Mr. Julian Greenfield whom Sir Roy kept in London constantly at Mr. Macleod's elbow, the possibility of a working majority for the U.F.P. was contrived in the June version. The battle had become one not for "responsible" or "civilized" Government but for the advantage of a political party. Lord Salisbury complained that Mr. Macleod in his "slide-rule" constitution had been too clever by half. Perhaps the remark might have been more aptly made of Mr. Greenfield.

As minorities lose power attention is directed to means by which the rights of individuals and minorities may be protected. In his 1961 Hoernlé Memorial Lecture, Professor Cowen spoke of the importance of "judicially enforceable constitutions which place fundamental human rights and freedoms beyond the reach of legislative bodies and executive decisions". While recognising, as we in South Africa know all too well, that no safeguards are completely safe "against human artfulness and passion", Professor Cowen contends that "A Bill of Rights in a properly drafted constitution... can do much to tame power and prevent tyranny... and have great educative value in providing the written criteria by which to measure governmental conduct".

In the four constitutions of the Federation, safeguards rested with Britain: by direct responsibility in the Protectorates, by the reserve powers in Southern Rhodesia and by the right to disallow discriminatory legislation of the Federal Assembly. Britain, however, proved to be a somnolent watchdog.

In the Sandys constitution for Southern Rhodesia, a Declaration of Rights takes the place of the watchdog. It follows closely the United Nations Universal Declaration of Human Rights; an independent Constitutional Council and access to the courts are designed to ensure enforcement.

It is understandable that both White and Non-White Rhodesians feel that they would rather have the power to look after their own rights than to trust to a constitutional device which for them is as yet untried. Africans, particularly, regard the Declaration of Rights with doubt as while it should prevent the enactment of new discriminatory legislation, it leaves that already enacted untouched. It looks to them to be a device to protect the European minority when power has changed hands rather than a charter of rights for them now. The Declaration of Rights can be set aside at any time by the declaration of a state of emergency; or by re-enacting infringing legislation by a two-third majority, or by a simple majority after 6 months.

No Bill of Rights is included in the Nyasaland constitution. The proposals for Northern Rhodesia provide for a Bill of Rights but make no mention of contents or method of enforcement. The Monckton commission stressed the importance of safeguards in all constitutions in the Federation and particularly in the Federal constitution itself: should the Federation survive the impending review.

Hope for the Federation to survive, and there are solid grounds for hoping that it does, must lie with free negotiation between the representatives of freely elected Governments. This was the burden of some of Mr. MacMillan's speeches in Africa in 1960. To reach this position much hard ground has to be travelled. Mr. Reginald Maudling, the new British Colonial Secretary, presenting his first review of the work of his department to the House of Commons, said that the constitution for Northern Rhodesia "was the most difficult of all problems now facing us". That problem must be solved and a new government elected.

The Constitution for Southern Rhodesia, although accepted

This is at the root of much African opposition. The 50/15 ratio of "A" to "B" seats is seen as ^a device to make new discriminatory legislation possible. That there would still be access to the courts is not generally appreciated.

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is seen as a device to make new distinctions

at the foot of which will be opposition. The 20/12 ratio of

by a two-thirds majority of the nearly-all-White voters is facing strong African opposition which, spilling over into violence, has led to the banning of the National Democratic Party and some of its leaders. Mr. Duncan Sandys, speaking in the House of Commons on October 20 said, "I believe the Federation can only rightly continue if it wins the general acceptance of the population as a whole within reasonable time". The Sandys Constitution for Southern Rhodesia has not yet won that "general acceptance". The Government is in a difficult position and is compelled to speak with two voices. It must gain a majority of White votes to win the coming general election in order to put the Constitution into operation. It must have wide African support for the constitution to be workable. Any appeal it makes for the one endangers the other.

Only Nyasaland, after its election of August 1961 is in a position to take part in a Federal Constitution Conference that would have any prospect of real success.

That Nyasaland General Election had significant results. In spite of repeated warnings to the contrary, it passed off peacefully. The 95% poll disposed of the tenaciously held "handful of agitators" myth. The Malawi party captured not only all twenty of the lower roll seats but also two of the upper. In the new Legislative Council the Malawi Party has a majority of twenty-two to five with one sympathetic independent. All U.F.P. candidates in the lower roll lost their deposits. The result was a spur to Africans in Northern Rhodesia; a red rag to a bull in Salisbury.

I once heard G.K. Chesterton deliver a lecture with the title "Shall we abolish the inevitable?". I can think of no title more likely to attract large White audiences in the Federation.

This story of recent constitutional change in the Federation which is still far from ended is marked throughout by the refusal of a White minority to face the fact of change in Africa, still less to keep in step with it. It is a tragic story of last ditch heroics in the face of events that statesmanship would have foreseen.

At a time when a minority of votes and seats in a legislature would have been appreciated and welcomed, they were denied. Now that they are offered, it is too late. What profit is there in meeting a suggestion of parity with reference to two hundred years hence only to have to concede it two years later? What results from refusing to accept an inevitable African majority other than bitterness and ill-will?

Nothing, apart from a fleeting party-political advantage, was gained by thwarting with sound and fury the Northern Rhodesia draft Constitution of February 1961; instead, deep bitterness was engendered and lives lost. The story of the Constitutional developments in the territories of the Federation of Rhodesia and Nyasaland suggest that it might be sound political sense when the mile is demanded if not to go the second mile at least to go willingly the one.

Questions loom as the constitutional struggle in the Federation enters a new year:

- Will the British Government produce a constitution for Northern Rhodesia that has no racial roll and makes possible an African majority in the Legislative Council?

- If Sir Edgar Whitehead wins the Southern Rhodesia election will he

There is good reason to believe that had the constitution provided for 40 "A" seats to 25 "B" instead of 50/15 there would have been substantial African acceptance. But would it then have secured a majority at the referendum? Now there is the problem of lawless political agitation, which, however deplorable, seems to be inseparable from political change. British women did not gain the vote as a reward for ladylike behaviour.

repeal remaining discriminatory statutes? And will he see that Africans realise that with full participation Africans could have a majority in the Legislative Assembly in 1972 and negotiate with African leaders on a programme to advance that date?

- Will African leaders work out a common Federal policy; and will Sir Roy Welensky agree to an African majority in electorate and Assembly as the basis of the new Federal constitution?

These are the testing questions. There is a hard road ahead with no safe course to choose and no turning back. The only choice is between danger and danger. And the only answer to danger is courage.

These are the testing questions now. Soon there will be the question whethr when African ^{nationalists} gain power ^{they} it will show any more tolerance of opposition, care for individual freedom, regard for minorities, respect for law, than has ^{we} White nationalists ~~(irrespective of party)~~ in South Africa.

There is a hard road ahead with no safe way to choose, no time for hesitation nor caution and no turning back. The only choice is between danger and danger. And the only answer to danger is courage.

Collection Number: AD1715

SOUTH AFRICAN INSTITUTE OF RACE RELATIONS (SAIRR), 1892-1974

PUBLISHER:

Collection Funder:- Atlantic Philanthropies Foundation

Publisher:- Historical Papers Research Archive

Location:- Johannesburg

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