

Rhodesia's 1961 Constitution

*Jack Woddis*¹

THE Southern Rhodesian Premier, Mr. Smith, has stated his claim for independence on the basis of the 1961 Constitution. Acceptance of this constitution as the basis of independence was also a feature of the policy adopted at the Tory Party Conference in October 1965. The resolution adopted on this matter declared, *inter alia*, "... a solution will be found by negotiation on the basis of guaranteeing the 1961 Constitution which enshrines the principle and intention of unimpeded progress to majority rule . . ."

On the other hand, the African people and their organisations and leaders have repeatedly rejected the 1961 Constitution, have refused to work it despite every kind of blandishment, and have emphasised time and again that they will never accept this constitution as the basis for independence.

Amidst all the discussions about a possible unilateral declaration of independence (UDI) by Mr. Smith, many people have overlooked the realities of the 1961 Constitution, while others have mistakenly regarded it as a valuable reserve on which the British Government could fall back in the event of the settlers being deterred from taking the plunge.

This, in fact, was the position taken by Mr. Wilson in his talks with the Rhodesian African leaders during his visit to Salisbury at the end of October. The official statements of the British Government spokesmen after Mr. Wilson's first talks with Mr. Joshua Nkomo and Rev. N. Sithole (the leaders of ZAPU and ZANU) made it clear that Mr. Wilson claimed that he could persuade Mr. Smith to refrain from UDI *providing that the Africans agreed to work the 1961 Constitution*.

It is therefore important to examine this Constitution in some detail, to see what it contains, and to examine to what extent it gives the African majority the possibility of achieving their democratic rights and self-determination.

The Southern Rhodesian Constitutional Conference was held from 16th to 24th January, and 30th January to 7th February, 1961 (See *Cmnd.* 1291). It took place in Salisbury, under the chairmanship first, of Sir Edgar Whitehead, at that time Premier of Southern Rhodesia, and then, in its second phase, under Mr. Duncan Sandys, then Secretary of State for Commonwealth Relations. Present at the Conference were representatives of the British and Southern Rhodesian Governments, of the United

Federal Party (the predominantly European party which was then in power in Southern Rhodesia), the other settlers' Party, the Dominion Party (well to the right of the reactionary United Federal Party), the National Democratic Party (including both Mr. Joshua Nkomo and the Rev. N. Sithole, who now lead ZAPU and ZANU respectively)², the small more liberal European party—the Central Africa Party, the Coloured Community (people of mixed racial origin), the Asians, and the Chiefs.

At the conclusion of their deliberations, the delegates agreed on the basic principles for preparing a new Constitution for Southern Rhodesia. The Dominion Party, which was represented by four M.P's, three of whom are now Ministers in Mr. Smith's Government, was opposed to the franchise proposals, urging that "there should be no change insofar as this would involve a lowering of existing standards", and advocating that "the present Lower Roll should be eliminated". In other words, Mr. Smith's colleagues were determined to prevent even the smallest concession to the African people.

The mass party of the African people, the National Democratic Party, urged the adoption of the principle of "one man, one vote", but the other delegates were opposed to this. In the event, the NDP delegates initially agreed not to oppose the Constitution, but when the full meeting of the NDP Executive Committee subsequently considered the matter in detail, it was decided to reject the 1961 Constitutional proposals.

These proposals were worked on by the British Government after the conclusion of the Constitutional Conference, and were presented to the British Parliament, in the form of a Southern Rhodesia

² The African people of Southern Rhodesia established their main political party in 1957, with the setting up of the new African National Congress (ANC). In 1959, this party was banned by the Southern Rhodesian Government. On January 1st, 1960, the African people established their new Party, the National Democratic Party (NDP). This, too, was banned in 1961, to be replaced ten days later by the Zimbabwe African Peoples Union (ZAPU). The last-named was banned towards the end of 1962. Divisions subsequently arose within ZAPU, and a small group broke away in July 1963, to form the Zimbabwe African National Union (ZANU). The banned ZAPU declined to set up a new party and continued to organise as an illegal party; at the same time a legal body, the People's Caretaker Council (PCC), was set up. This, too, was subsequently banned.

¹ See the first paragraph in Editorial Comments.

Constitution, in June 1961 (see *Cmnd.* 1400). In considering this Constitution, there are four main questions to examine: the Declaration of Rights, the Constitutional Council, the Representation and Franchise, and the question of Amendments to the Constitution and the Reserved Powers of the United Kingdom. In examining these four questions one has perforce to examine in some detail the economic and social conditions of the African people, and the extent, if any, of democratic liberties. In all cases, this examination must be made within the context of a society based on the most blatant practice of racial discrimination.

The Declaration of Rights

The Declaration of Rights, which is embodied in the 1961 Constitution, was supposed to have been inserted in order to protect the democratic rights of the people. The 1961 Constitution states: "The Declaration of Rights . . . will state first of all the fundamental rights and freedoms to be enjoyed by the people of Southern Rhodesia. Such rights will apply without distinction of race, colour or creed . . ." (Clause 38). The Declaration itself, which is contained in Appendix 2 of the Constitution, refers (point b) to "freedom of conscience, of expression, and of assembly and association". Section 9 of the Declaration states that "no person shall be hindered in the enjoyment of his freedom of expression, that is to say, freedom to hold opinions and to receive and impart ideas and information without interference, and freedom from interference with his correspondence".

Section 10 (1) states that "no person shall be hindered in the enjoyment of his freedom of assembly and association, that is to say, his right to assemble freely and associate with other persons and in particular to form or belong to trade unions or other associations for the protection of his interests". Section 11 (1) declares "No written law shall contain any discriminatory provision"; and Section 11 (2) states that a provision shall be regarded as discriminatory if persons of a particular description by race, tribe, colour or creed are prejudiced

"by being subjected to a condition, restriction or disability to which persons of another such description are not made subject of; or by according to persons of another such description of a privilege or advantage which is not accorded to persons of the first-mentioned description".

One has only to take a quick glance at what is the actual situation in Southern Rhodesia to appreciate how useless was this Declaration in practice. The white settler government had no intention of abiding by its provisions or its spirit; its inclusion in the 1961 Constitution was solely for the purpose of misleading British public opinion.

Freedom of association is specified in the Declaration of the 1961 Constitution—but every political party of the African people has been banned in turn. Trade unions are allowed, but European farmers prevent African agricultural labourers from forming trade unions; and for other African workers, the 1959 Industrial Conciliation Act provided for the setting up of so-called multi-racial unions in which votes of Grade A (journeymen—in practice, almost entirely European) count as four times the votes of Grade C (unskilled labour, almost entirely African). The Act even specifies that union branch committees must have five Grade A members and only one Grade C; and the Registrar is given powers to increase the representation of "skilled and minority" interests (i.e. European) on the union governing bodies from the branch level upwards.³

Freedom of assembly is asserted in the Declaration—but when peaceful crowds assembled to greet their leader, Joshua Nkomo, during the visit of Mr. Wilson, the police attacked them and set fierce Alsatian police dogs on them.

Freedom of expression is likewise specified—but the *Daily News* has been suppressed, students are asked to pledge themselves not to take part in politics, 35,250 members of ZAPU and ZANU are in prison or detained, the former premier, Mr. Garfield Todd, is restricted, and so is ZAPU's European legal adviser, Mr. Leo Baron.

A series of repressive laws make a complete mockery of the Declaration. When the 1960 Law and Order (Maintenance) Act was passed in 1960, the then Federal Chief Justice, Sir Robert Tredgold, resigned, stating that the Act "will remove any lingering vestige of doubt whether Southern Rhodesia can properly be called a police state . . . it outrages every basic human right". This Act is still on the Statute book.

In May, 1961, the Catholic bishops of Southern Rhodesia issued a Pastoral Instruction, *Peace Through Justice*, which declared that . . . "the doctrine of racial superiority as taught and practiced by many in this country, differs little in essence from that of the Nazis. . . ."

The Instruction went on to declare:

"Wages are inadequate, housing conditions in many instances are unworthy of human beings, terms of employment are such that husbands are separated for long periods from their families, and in many towns, locations and compounds, married quarters are so scarce that married workers pose as single men in order to find employment or

³ See the present author's *Africa, the Lion Awakes*, pp. 70-76, for further details on trade union rights in Southern Rhodesia.

accommodation. . . . Such a state of affairs cries to heaven for vengeance. . . . For far too long has this state of affairs been allowed to exist without protest. . . .”

A number of further repressive Acts and administrative measures have been since introduced. There are such Acts in operation in Southern Rhodesia as the Subversive Activities Act, the Unlawful Organisations Act, the Preventive Detention Act, and many others. The *New Statesman* (October 22, 1965) has summed up the position of democratic rights in Southern Rhodesia in these terms:

“Any statement imputing an improper motive to the legislature, government, ministers, officer or department of government is *prima facie* subversive; so is any statement likely (even if not intended) to excite dissatisfaction against the government, or to induce any person, actively or passively, to resist any law. Any organisation or publication can be banned at the government’s pleasure; any person can be restricted to any area for 5 years. The police can, without warrant, enter any home in which they suspect a subversive statement may be made. The courts must impose minimum sentences for a wide range of convictions: 3-10 years for intimidation directed at opinion; 5-20 years for throwing, or threatening to throw, an article at a car; 2-7 years for boycott; the death penalty for arson against property. All these laws, and others, are drastically applied.

“But, for any White Rhodesian inclined to resist UDI, the final irony may be prosecution under the Preservation of Constitutional Government Act. This provides imprisonment for up to 20 years for any resident who, within or without Rhodesia, even suggests the creation of any body attempting to coerce the government—coercion being defined to include the mere threat of boycott or passive resistance to any law. This comprehensive law has extra-territorial effect: woe to any Rhodesian who, at a British teach-in, let alone the UN, campaigns against the Land Apportionment Act! Such penalties apply to anyone who seeks the aid of even a single individual to suggest the formation of a pressure group. Moreover, as with many other Rhodesian laws, the accused must prove his innocence.”

The Constitutional Council

So much for the Declaration of Rights. The 1961 Constitution also established a new body, the Constitutional Council, whose job is to “advise the Legislative Assembly as to whether its Bills are in conformity with the Declaration of Rights”. The setting up of this Council meant the elimination of most of the reserved powers concerning legislation in Southern Rhodesia which had hitherto been vested in the Government of the United Kingdom. For nearly forty years, ever since the original 1923

Act, the British Government, despite its reserved powers, had done nothing to stop the appalling practice of racial discrimination and anti-democratic repression which was such a feature of the political scene in Southern Rhodesia. The new Constitutional Council has proved of similar uselessness to the African people, and to those few progressive Europeans who are opposed to the white settler Government.

Why is this so? Why have these provisions of the Constitution proved valueless? It is simply a question of political power. The decisive state power—the armed forces, the police, the machinery of law and government—remains in the hands of the representatives of the 220,000 Europeans; and the four million Africans are effectively deprived of any say in their own country. It is this which explains the racial discrimination and repression. It is this which explains why the economic wealth of the country—the best land, the mineral resources, the sources of power, banking, insurance, manufacturing and so on—are in the hands of Europeans, while Africans starve on a wretched pittance.

The 1961 Constitution is therefore a sham and a deception. The Tory Party Conference resolution claimed that African progress towards majority rule is “enshrined” in the 1961 Constitution. Similar claims have been made by Mr. Wilson in his TV broadcast setting out his five principles; and by other political spokesmen in Britain and in Southern Rhodesia. Nothing could be further from the truth. The 1961 Constitution was designed to maintain white minority domination, and nothing makes this more clear than the franchise and electoral provisions which are the heart of this Constitution. These provisions are so blatantly discriminatory in their purpose that the first act of the new Constitutional Council—if it was really to carry out the job for which it was ostensibly established—would have been to challenge the franchise and electoral arrangements laid down in the Constitution as being a direct violation of the Declaration of Rights included in that same Constitution.

Representation and Franchise

The 1961 Constitution introduced a most elaborate system for elections designed to block any possibility of the Africans becoming the decisive voice in the Southern Rhodesian Legislative Assembly. Under the new arrangements, there are two electoral rolls, “A” and “B”. Roll “A” elects 50 Members of the Legislative Assembly, and Roll “B” elects 15. It is therefore obvious that ability to get on to the “A” Roll is decisive. To be eligible for either Roll, one must be over 21 years of age, be a

citizen of the country, have residence and language qualifications. But to be on the "A" Roll one must have the following additional qualifications:

- (a) Income of £720 during each of two years preceding date of claim for enrolment, *or* ownership of immovable property of value of £1,500.

OR

- (b) (i) Income of £480 during each of two years preceding date of claim for enrolment, *or* ownership of immovable property of value of £1,000; *and*
(ii) completion of a course of primary education of prescribed standard.

OR

- (c) (i) Income of £300 during each of two years preceding date of claim for enrolment, *or* ownership of immovable property of value of £500; *and*
(ii) four years' Secondary education of prescribed standard.

OR

- (d) Appointment to the office of Chief or Headman. (See *Southern Rhodesian Constitution: Summary of Proposed Changes—Cmnd. 1399*).

The first thing to be noticed about these categories (apart from (d) which only concerns a few hundred Chiefs and Headmen) is that the higher your income, the lower is the educational qualification required. Despite all the propaganda of Smith and Co. that the "Africans are not yet educated enough to vote", the highest income category—£720 a year—*does not need any education whatsoever*. You can be an illiterate fool—but if you are rich you can vote.

It has been claimed by supporters of the white settlers that the franchise terms are not discriminatory since they do not refer to categories by race but only by education and income and property. An examination of what these income and educational qualifications mean in practice shows only too clearly that they are blatantly discriminatory. Let us examine income first. The average earnings of the European workers in 1961, when the Constitution was drawn up, were £1,036 16s. 0d. a year, and for the 612,573 African wage worker were £75 12s. 0d. Over half the African workers, mainly those in agriculture, earned less than £5 a month. Thus the average earnings of *European* wage and salary workers was above the *maximum income* qualification for the "A" Roll, and the average of the *African* was below the *minimum* qualification. An analysis made in 1964⁴ shows that at the time of the 1961 September Census, out of 612,573 African employees, only 6,100 or *less than one per cent*, received £25 a month or more—the lowest income qualifying figure for getting on to the "A" Roll.

⁴ See *National Accounts and Balance of Payments of Northern Rhodesia, Nyasaland and Southern Rhodesia, 1954-63—Salisbury, 1964. Table 163.*

The latest figures show average earnings for African workers (including payments in kind which are not included in the income levels for purposes of registering for voting) as £121 a year, and for European workers, £1,241 a year. Most African workers receive much less than £121.

The majority of Africans in Southern Rhodesia are not workers but peasants. According to Dr. Montague Yudelman (*Africans on the Land*), average *cash* earnings of African subsistence farmers are £4 per head per year. Other estimates give £12 per family holding, which, when one takes into account the number of people living off a family holding, works out at even less than Dr. Yudelman's estimate.

It is therefore clear that the majority of Africans are entirely ineligible for registering on the "A" Roll by virtue of their low income levels. But this is not only a case of racial discrimination; it is also a case of *class* discrimination, since the provisions enable a small handful of better off Africans to qualify, but debar the workers and peasants, who are the overwhelming majority.

The Rhodesian Government pretends that these income disabilities of the Africans have nothing to do with racial discrimination. A handout of the Southern Rhodesia Information Service (*This is Southern Rhodesia*) argues that "people of any race may qualify for either roll". It adds that "no one is barred from the vote by reason of race". It conveniently forgets to point out that it is a white minority Government which wields effective power—and that this power enables it to enact Minimum Wage Regulations, based on a "Poverty Datum Line" system, which lays down a minimum wage of £9 10s. a month (including £1 for accommodation) for workers employed in the towns—with a lower level in the countryside. It fails to point out that employment for Africans means employment in European concerns which naturally keep to the abysmally low minimum wage regulations of the Government.

In the same way, the white settlers' Government has enacted the Land Apportionment Act which deprives the 4 million Africans of nearly half the land in Southern Rhodesia, confining them to small six-acre plots on the worst, sandy soils. In addition, as Patrick Keatley has pointed out (*The Politics of Partnership*), the Tobacco Marketing Board uses its powers to prevent African farmers growing the higher-revenue Virginia type tobaccos; an African selling maize to the Grain Marketing Board receives only about two-thirds of the price given to the European farmer, since the African has to pay three special levies—for the Native Development Fund, for a traders' handling margin, and for a "transport equalisation fund charge". Under the terms of the

Hippo Valley Agreement, which provides for sugar production by a private company from the irrigated area, the Agreement signed with the Government states: "The Government shall assist the Company with the selection of suitable settlers, all of whom shall be of European origin".

Thus the political power in the hands of the white minority enables it at every point of the economy to ensure that African incomes are held down, not only in the interests of high rates of profit, but also to prevent all but a few Africans from qualifying for registration on the decisive "A" Roll. And if, at any time, it appears that more Africans than were intended are creeping up towards a higher income level, the Government, under the terms of the 1961 Constitution, simply increases the income qualifications.

The "B" Roll

When one examines the "B" Roll, here the income qualifications are considerably lower, ranging from £240 a year down to £120.

The details of "B" Roll qualifications in the 1961 Constitution were stated as follows:

- (a) Income at the rate of £240 per annum during the 6 months preceding date of claim for enrolment, *or* ownership of immovable property of value of £450.

OR

- (b) (i) Income at the rate of £120 per annum during the six months preceding date of claim for enrolment, *or* ownership of immovable property of value of £250; *and*
(ii) two years' secondary education.

OR

- (c) Persons over 30 years of age with:
(i) Income at the rate of £120 per annum during the six months preceding date of claim for enrolment *or* ownership of immovable property of value of £250; *and*
(ii) completion of a course of primary education of a prescribed standard.

OR

- (d) Persons over 30 years of age with:
Income at the rate of £180 per annum during the six months preceding the date of claim for enrolment, *or* ownership of immovable property of value of £350.

OR

- (e) All kraal heads with a following of 20 or more heads of families.

OR

- (f) Ministers of Religion.

Even here, however, it will be noticed that the lowest income level is on a par with the average earnings of African workers, and it is therefore instructive to find that in September 1964, the Southern Rhodesian Government simply increased the income qualifications on both rolls by 10 per

cent, thus making the minimum on the "A" Roll now £330, and on the "B" Roll £132. Thus, once again, the lowest minimum on both rolls is *above* the average wage of the African worker.

The question of raising the income qualification so as to keep Africans off the register is an old trick of the white settlers of Southern Rhodesia. In 1898, before there was a two-roll system, there was a single income qualification of £50 a year. In 1912 it was raised to £100; in 1951, to £240. It was raised again in 1958. Since 1961, with the introduction of the two-roll system, no increases in the income qualification had taken place until September 1964. By the increases introduced then, the Smith Government indicated that it was still ready to play the traditional trick. No matter what the Africans do, the elusive right to vote is effectively kept out of the reach of the majority of the people; and if they seem to be approaching near to their goal, then once again the white settlers remove the goal a bit further away. The Africans can never win on this basis. One might just as well play football against a team which has the power to change the rules every time you come near to scoring.

The same discrimination is shown in relation to the question of education. The lowest income category on the "A" Roll requires an educational qualification of *four years' Secondary education*. At the end of 1961, at the time that the Constitution laying down these conditions was introduced, the enrolment of African students in all secondary schools in Southern Rhodesia was as follows:

	Government		Mission		Total
	Boys	Girls	Boys	Girls	
Form I	604	218	1,327	390	2,539
Form II	318	127	919	253	1,617
Form III	108	18	278	40	444
Form IV	95	13	235	21	364
Lower VI	67	4	—	—	71
Upper VI	30	4	—	—	34
	1,222	384	2,759	704	5,069

From the above figures one can see that for the decisive Form IV there was a total of only 364 pupils. By 1964, this figure had crept to 655; with a total of only 35 in the Upper Sixth form. Thus, even if Africans can climb into that group of better-off citizens earning £330 a year, only a handful of them can pass the educational qualifications. Official estimates project that by 1973 there will be about 3,500 African children in Form IV of secondary schools;⁵ by 1970, according to present plans, about 12,000 Africans will have emerged

⁵ See *Crisis in Rhodesia*: by Nathan Shanmyarira (p. 129).

from school with some secondary education.⁶ These figures show conclusively that at the present rate of advance it will be decades before anything like sufficient Africans pass the educational barrier to getting on to the "A" Roll. Today nearly 90,000 Europeans are registered on the "A" Roll. Even if 3,000 Africans a year passed through Standard IV of secondary school, it would take at least thirty years to reach the European figure on the "A" Roll. On the basis of the 1964 figure of 655 African Form IV pupils, it would take nearly 140 years. And even then, the African might still not qualify because of his inability to reach the minimum income level.

As with income levels, the Rhodesian Government tries to argue that the lower educational qualifications of the Africans are not due to racial discrimination practised by the Government. Once again, it avoids admitting that it is its own educational policy which is responsible. Although the African people have to pay for education, the Government spends its educational funds on a blatantly discriminatory basis. For the 1964-65 school year, the Government of Southern Rhodesia spent an average of £110 per European child, compared with £9 12s. per African child. Thus, the bulk of African children have to depend on the charity-backed missionary schools.

Although, admittedly, Africans over 30 years of age, with an income qualification of £132 a year, can qualify for the "B" Roll on the basis of completion of a course of solely primary education of a prescribed standard, it counts for very little, for even if half a million Africans so qualified, the "B" Roll can only elect 15 out of 65 Members of the Legislative Assembly.

Thus, in every way, the franchise and representation clauses of the 1961 Constitution are heavily weighted against the Africans and provide no basis for African majority rule, nor any guarantee of any unimpeded progress in that direction, and certainly of no speedy progress. It has been claimed that 100,000 Africans could register under the existing Constitution. This claim is not supported by any statistical or scientific survey—and even if one accepts this dubious figure it represents only about 2½% of the African population. Further, the facts are that in the last elections, in 1964, there were only 2,263 Africans on the "A" Roll and 10,466 on the "B" Roll—a total of 12,729, or 0.325 per cent of the African population.

Estimates have been freely thrown around to the effect that Africans could have majority rule under the present Constitution within 15 years. Other

estimates put it as high as 50 years. Neither of these figures is based on any scientific analysis. If they are supposed to refer to the number of African voters on the "B" Roll, then the claim is valueless, since no matter how many Africans are on this Roll they can only elect under 24 per cent of the Members of the Assembly. If it is meant in relation to the decisive "A" Roll, then it is a false claim, since there is no way of estimating how fast the white minority will allow African annual incomes to advance towards the £330 minimum. Past experience shows that everything will be done by the settler government to prevent Africans ever advancing to a position of being able to exert their democratic will on the body politic of the country.

From what has been said above it should be clear that the African people are completely justified in refusing to work this fraudulent Constitution, and in demanding its suspension and the drawing up of a new Constitution based on the democratic principle of universal adult franchise or, to give it its popular term—one man, one vote. It is not out of place to recall, in this matter, that in March 1963 Mr. Wilson declared in respect of the 1961 Southern Rhodesia Constitution:

"We have said that no constitution is defensible which fails to allow the people of those territories to control their own destinies. *We have bitterly attacked the Southern Rhodesian Constitution for that, and a Labour Government would therefore alter it—we've made that very, very plain.*"

Mr. Wilson has now gone back on this pledge, as he has on so many others.

Constitutional Amendments and Reserved Powers

The final question is: Has the British Government the power and the possibility to change or suspend the Constitution?

The white settlers and their supporters make a dubious claim, based on past practice or "convention", that the British Government has no legal right to intervene. They further argue that the 1961 Constitution gives the Southern Rhodesian Government the right to amend the Constitution by a simple two-thirds majority of the Legislative Assembly—and, naturally enough, they are relying on the discriminatory electoral system prescribed in the 1961 Constitution to grant them their 50 seats out of 65—sufficiently more than the two-thirds figure of 44.

Prior to the 1961 Constitution, no amendments could be made to the Constitution of Southern Rhodesia without the approval of the United Kingdom. The 1961 Constitution did away with this absolute right, but laid down the following procedure. First, the Southern Rhodesian Government must

⁶ See *African Advancement in Commerce and Industry*: by D. S. Pearson (Journal of Modern African Studies, August 1965; p. 245).

secure the British Government's approval for any amendments affecting

"(a) the position of the Sovereign and the Governor; (b) the right of the United Kingdom Government to safeguard the position regarding: (i) international obligations; (ii) undertakings given by the Government of South Rhodesia in respect of loans under the Colonial Stock Acts."

Secondly, the 1961 Constitution gives the right to the Southern Rhodesian Government to make other amendments if it secures a two-thirds majority for these in the Assembly; but such amendments do not affect what is termed the "basic clauses". These basic clauses include Clause 12, which expressly forbids the elimination from the "A" or "B" Rolls of any person who was eligible for inclusion under the 1961 terms. If the Southern Rhodesian Government wishes to make such changes, it must, in addition to securing a vote of two-thirds of the Legislative Assembly, secure the agreement separately of "the four principal racial communities (i.e. European, African, Asian and Coloured)", the agreement to take the form of a simple majority of votes in a separate referendum for each community. "Until there are 50,000 Africans registered as voters, Africans over 21 years of age, who have completed a course of primary education of prescribed standard, will be entitled to vote in the African referendum." If the Government does not wish to hold a referendum, then it has to "seek the approval of the United Kingdom Government for the constitutional changes" it desires.

The incredible thing about this procedure is that, providing that the Southern Rhodesian Government can persuade or cajole 50,000 Africans to register, and can persuade or cajole 25,001 of these to support a worsening of the Constitution, then the Southern Rhodesian minority Government can do this.

But this procedure only covers what people are allowed to register for "A" or "B" Roll; it does not cover the question of the number of Members of the Legislative Assembly. "The Legislative Assembly, by a vote of two-thirds majority of its total membership, will have power to amend the composition of the Assembly" (*Cmd. 1399—Para. 11*). In other words, as Mr. Wilson admitted in the House of Commons when reporting on his visit to Southern Rhodesia (see *The Times*: November 2, 1965), "an independent Rhodesian Parliament, without check or constitutional hindrance", could reduce the "B" Roll seats from 15 to one or increase to 100 the "A" Roll seats, and thus postpone for many years the achievement of majority rule.

The African national leaders have stood firm, despite the considerable pressure and bullying to which they have been subjected. They have been faced with a virtual ultimatum: "Accept the 1961

Constitution or stay in detention." Mr. Wilson has not only refused to press for the release of the political prisoners, but has stated in the House that Mr. Smith was prepared to release the leaders provided that they gave a satisfactory assurance "that they would now revert to purely constitutional means of political activity". Mr. Wilson, when making this statement, must have been aware of the fact that practically every means of normal political activity is barred to the Africans; their parties have been banned, one after the other, over 35,000 people have been detained, publications have been suppressed, and meetings are restricted. In addition, a major form of political activity, voting, is denied to at least 97½% of the African people.

There remains only the question of the British Government's over-riding powers. In the *Report of the Southern Rhodesia Constitutional Conference (Cmd.1291)* it states (para. 34):

"The Southern Rhodesia Government asked that the United Kingdom Government should initiate legislation to provide that, in future, Parliament at Westminster would not legislate for Southern Rhodesia, except at the request of the Government of Southern Rhodesia, in regard to any matter within the competence of the Legislative Assembly."

The Report then ran: "The Secretary of State for Commonwealth Relations took note of this request without commitment." In other words, *the British Government did not surrender to the Southern Rhodesian Government Britain's power to legislate for Southern Rhodesia*. These powers indubitably remain with the British Parliament, which can either legislate for Southern Rhodesia or suspend the existing Constitution. Southern Rhodesia, from a legal standpoint, is still a colony, and the British Parliament still has sovereign powers to legislate for Southern Rhodesia. This has been underlined recently by Professor Stanley Smith, Professor of Public Law at the University of London:

"The Rhodesian Legislature, even by a two-thirds majority, is incompetent to restrict the ultimate sovereignty of the United Kingdom Parliament or the powers of the Queen in Council by asserting that laws for Rhodesia cannot be operative there without the Rhodesian Government's consent. If it purported to impose such a restriction it would be told unambiguously that sovereignty was sovereignty and that bootstraps were bootstraps" (*The Guardian*, October 27th, 1965).

* * *

No tinkering with the 1961 Constitution will do, for what is at stake is a fundamental question of political power. Shall power continue to lie in the hands of a racist, anti-democratic minority? Or shall it pass into the hands of a democratic majority? The best interests of the British and African people demand that it be the latter.