



# contact

FOR UNITED NON-RACIAL ACTION

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# APPEAL DISMISSED

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The unsuccessful appeal of Miss Ann Tobias, a former editor of Contact, heard in the Supreme Court, Cape Town, against her conviction in the Regional Court of contravening her banning order by attending a social gathering has not resolved the doubt as to what it is to 'attend a social gathering'.

The facts of the case are that Miss Tobias and two friends went by car to a picnic spot on Table Mountain, Cape Town, and held a braai-vleis. They were followed by members of the Security Police who kept them under observation for some time before arresting Miss Tobias.

Mr I.J. Aaron, who appeared for Miss Tobias, argued that if the getting together of two or three people who talked could constitute a gathering, the situation became absurd. He said that it was obviously not the intention of the legislature to inhibit the banned person from all social contact.

Mr Justice Beyers, who sat with Mr Justice van Heerden, said that he could not follow Mr Aaron's argument. "If it (a braai-vleis) is not a social gathering, what is it?" he asked. He dismissed the appeal and refused leave to appeal to the Appellate Division. Mr Justice van Heerden concurred.

We admire Mr Aaron for arguing an unarguable case - unarguable not in that what a social gathering is in law is indisputable, but in that the scope of the Suppression of Communism Act under which Miss Tobias is banned is so wide as to facilitate interpretations by the State that are unchallengeable.

Mr Aaron's case was unarguable in another sense: it rested on an appeal to an attitude which is foreign to our legislators. He said that the legislature could not have had the intention of inhibiting a banned person from all social contact which, in his view, is what

that section of the Act as interpreted by the State implies. However, we believe that the legislature probably did not grasp this implication of the Act, but that even if it had, it would have accepted this quite happily.

What the case reveals to us is the extent of the insecurity and fear in this country. To Mr Aaron's argument that drinking a cup of tea with friends is trivial and should not be the cause of a prosecution, Mr Justice Beyers replied that a cell meeting could be held over a cup of tea. This suggests that a prosecution is justified even if no evidence of plotting against the State exists.

Nevertheless the meaning of the expression 'attending a social gathering' remains undefined; certainly the learned judges made no effort to define it, although by dismissing the appeal they strengthened the view that a banned person conversing with two friends can be said to be attending a gathering.

There are, however, a few rules of thumb. A banned person is unlikely to be prosecuted for attending a social gathering if he or she is in the company of one other person (not of course of another banned or listed person), and

then only if there is <sup>no/</sup> suspicion that an attempt is being made to circumvent the banning order. In Grahams-town, Cape Province, Mr Terence Beard was convicted of contravening his banning order by attending a social gathering in that he was in the same house where a party was being held, although he stayed in a room of the house by himself and only met the members of the party one by one. Here the cause of the prosecution seems to be the doubt regarding Mr Beard's intention in going to the house. (The outcome of an appeal is awaited.)

And it would appear that if such a banned person comes to court, the onus of proving his innocence falls on him.

Then, again, if a banned person meets two others accidentally, he or she is unlikely to be convicted of an offence - not unlikely to be prosecuted, for a banned person has already been prosecuted for meeting a few friends by chance, although on appeal the conviction was set aside. We infer from the remarks made by Mr Justice Beyers in Miss Tobias's case that had she not organised her trip to Table Mountain he would have viewed the matter in a different light.

# MARQUARD on LIBERALISM

Below is a review of 'Liberalism in South Africa' by Leo Marquard, published by the South African Institute of Race Relations.

They say you can't get much for forty cents nowadays, but you can get fifty pages of Marquard for it. For less than one cent a page, you can get as sane and sensible stuff as anyone in South Africa can write. Mr Marquard has a steady and steadfast mind, and to read him is to undergo a steadying experience. This is helpful in times when so many South Africans, and in particular white South Africans, begin to doubt, amidst the blare of propaganda and, more importantly, amidst the threats which are made unceasingly against non-conformity, whether the things they believed in were really good things after all.

Mr Marquard writes:

"It is said that young Germans to-day, born after the fall of Hitler, who listen to records of his speeches, find it impossible to believe that

their parents could have accepted his ranting irrationalities."

Mr Marquard points out that this is because these young Germans know freedom in a way that their parents had ceased to know it. Once freedom is lost, one can believe nothing. Therefore, even while one has freedom, one must be eternally vigilant to preserve it. Once freedom is lost, whether because one has preferred security to it or whether because one has let it go because of one's fear of the State, the belief that suffers most is the belief in freedom itself.

The new Afrikaner Nationalists will of course declare that separate development means freedom for all, but when they are challenged with the bannings and banishments and ninety-day deten-

tions, they will shift their ground and declare that only Communists need fear the State. If they are then challenged with Peter Brown, they will declare that communism and liberalism are much the same thing. Or they will shift their ground altogether, and say that freedom is all very fine, but you cannot have freedom without law and order, and to enjoy really exceptional freedom you must have really exceptional law and order.

Professor van Selm tells of a member of the French resistance movement during the last war who shouted to the firing squad who were about to execute him, "You fools! Don't you understand that I am dying also for you?" Professor van Selm said of this man, "Though fettered, he was the only free man present there."

Mr Marquard is very clear and unequivocal when he writes about the conflict between security and freedom. It is a very real conflict. It is possible to believe that security is the prime essential, because without it one cannot have freedom. It is also possible to believe that freedom is the prime essential, because without it one cannot have that psychological security which is essential to free life. Mr Marquard comes

down heavily on the side of the second proposition.

Mr Marquard is also very clear about the individual and the state. Acton believed that the prime function of the state was to make it possible for a man to live the good life. A person like myself believes that one of the prime duties of the state is to protect its citizens against the powers of the state, as it does, for example, when it appoints an Ombudsman. But many white South Africans think this is nonsense. The reason is that most of them have no cause to fear material harm. Of the spiritual harm that is being done to them they unfortunately know nothing.

Are Mr Marquard's ideas outmoded? Do they belong to the days when British gunboats kept the peace of the world? Is Mr Marquard a square, while Mr Vorster is very much with it, and unfortunately very much with us too? If this is true, then it is not only Liberalism that has failed, but all belief in human reason, all belief in freedom, all belief in man. And that to me is not possible.

Why are the Nationalists so cruel to their opponents? Why does Mrs Verwoerd fear for the Afrikaans language? Why this almost desperate fear of

Liberals and Liberalism, when the Government exercises almost a totalitarian power? And why is this fear mentioned day by day, when this is obviously not psychologically sound?

The answer is simple. Whatever Liberals and Liberalism may be enduring now, and whatever they may have to endure in the future, the belief of Liberalism in freedom, in individuality, in rationality are indestructible, because they are fundamental to the establishment of any reasonable society, and fundamental to any concept of the dignity of man. Any lesser belief, therefore, has need to be afraid.

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## THE FUTURE OF CONTACT

Contact has cancelled its registration. We are now no longer a newspaper, which means that we will appear at irregular intervals.

Since re-registration would almost certainly cost us R20,000, the decision to forfeit our carefully preserved 7½-year-old registration was painfully taken.

Furthermore, Contact will be duplicated from now on.

A substantial part of the revenue of any newspaper comes from advertising. Five years ago, oil and tobacco companies had full-page advertisements. In 1965 none desires, or dares, to advertise in Contact.

The monopolist Central News Agency last year refused to continue selling Contact because the paper didn't look as though it were printed; yet the agency sold other photo-offset journals. Our own agents have in the past been repeatedly intimidated, while quite a few copies are continually 'lost in the post'. To save costs, we ceased to have a paid staff; we gave up our telephone (we think that hurt the Security Police more than us); and we moved to cheaper offices.

All this has meant the inevitability of being duplicated if we wished to continue. But though this is an undignified form, we hope to survive and to ensure that income balances expenditure.

Nevertheless, we still appeal for donations, which should be sent to P.O. Box 1979, Cape Town.

(Note: Our subscription rates are unchanged. The cost of a yearly subscription for residents in the African Postal Union is R1; the cost overseas R1.50/ 15/3 /\$2.10.)