

CIVIL LIBERTY IN NEW ZEALAND

MARGARET MEAD, when she was here a few years ago, made the point that the visiting anthropologist has a duty to present his findings in a form acceptable to the society he's investigating. When in Rome, evaluate as the Romans do. If you observe that canny housewives habitually save and re-use pieces of string, you record that they're careful; you don't say they're stingy. Science, as well as good manners, demands that you don't rock the boat.

I'm afraid I'm not an anthropologist—hardly even a visitor, since I arrived from England over seven years ago, and look forward to staying here indefinitely. But I suppose that, in considering New Zealand attitudes to civil liberties, part of my job is to act as if I were a visiting anthropologist—to describe, to try to explain, not to say that in my view such-and-such is wrong, and that you should do this-and-that about it.

But one difficulty in applying Margaret Mead's rule is precisely that there are people in New Zealand who think that such-and-such in the civil liberties field is wrong, and that something should be done about it. A description in terms that approve the status quo would not be acceptable to them. It was, after all, a one-time Canterbury settler who remarked that a country is not without honour save in its own prophets. One can't satisfy everybody. So I hope to do the next best thing, and satisfy nobody.

Let's get two points clear at the outset. First, a line has to be drawn somewhere. Civil liberty isn't the only objective which governments exist to promote, nor can any right—whether civil or otherwise—be absolute. At some point it must be possible to read the Riot Act; at some point, that is, the right of the individual to freedom of speech must give way to the right of the community to prevent disorder. The question is, where should the line be drawn.

Secondly, in New Zealand the line will be drawn in a fairly liberal place. It will permit greater freedom to form and to spread heterodox social and political ideas than most societies have permitted in the past—or, indeed, than most societies permit today. "Rare is the felicity of the time," says Tacitus, "when you can think what you like and say what you think."

In the 17th century John Milton, William Penn, Roger Williams, were exceptional for the high value they placed on diversity of opinion, and for their consequent belief in toleration. Through Locke and Voltaire this attitude spread to the 18th century intelligentsia, through Jefferson and Tom Paine even more widely in the early 19th century, so that by the time New Zealand was being settled, the belief in heterodoxy was, as it were, becoming orthodox. At the time when New Zealand was achieving responsible government, John Stuart Mill was writing his *Essay on Liberty*.

The belief, then, that the line should be drawn in a very liberal place indeed, is part of New Zealand's ideological inheritance. One of the snags about such an ideal, though, is that—by definition almost—you can't realise it. Ideals conflict, for one thing—freedom with security, progress with stability. The best one can attain is a compromise. But even more seriously; when an ideal is transplanted—as the British

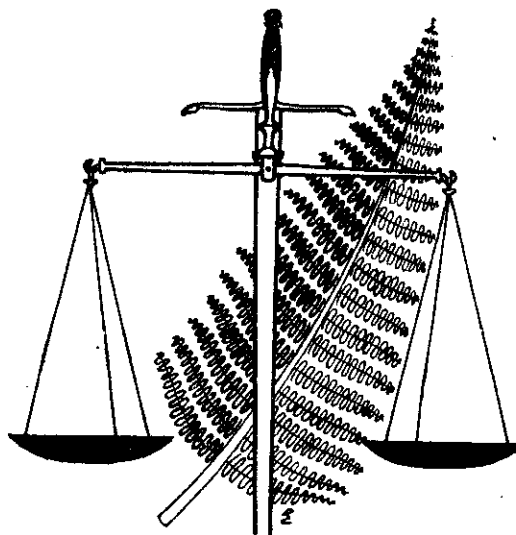
idea of civil liberty was transplanted to a different environment in New Zealand—the usual gap between ideal and reality, between profession and performance, tends to widen. It's not merely that the New Zealand record on civil liberties is spotty—all records are spotty, since all politics is compromise. But the New Zealand record is even spottier than that of Great Britain. For instance, in this country you may be tried for sedition in a Magistrate's Court, without a jury. The police may seize and hold your property—your typewriter, for example, or a duplicating-machine—for two months, during which time you can bring no action against them for recovery. At the discretion of the Government you may be ruled by emergency regulations for up to six months, without Parliament having been consulted. In these, and in other ways I'll mention later, you're worse off than is the citizen of the United Kingdom. What is it, in the New Zealand environment, that explains these deviations from the transplanted ideal?

What sort of man has in the past stood for liberty and the right to differ? The sort of man, I suggest, is the man who does in fact differ from the norm of his society. There's the renegade aristocrat, for instance, the man who enjoys prestige and property and can afford to differ; Charles James Fox, Mirabeau, Jefferson, Herzen, Tolstoy, Bertrand Russell. There's also the plebeian intellectual, the man who can't help but differ whether he can afford to or not, who—if he's lucky—acquires prestige and perhaps even property, by exploiting his difference in print: Voltaire, Tom Paine, Belinsky, John Stuart Mill, Zola, Menckes; who, at any rate, finds himself a job, probably in one of the professions (teaching, law, journalism) where he may enjoy a limited area of freedom in which to cultivate his idiosyncrasies.

I don't want to suggest that every intellectual is a libertarian—there are plenty of obvious examples to the contrary—still less that every teacher or lawyer or journalist is an intellectual. But I think it's significant that in 1953 and '54 when McCarthyism was at its peak, among the professors and lecturers and schoolteachers and lawyers and librarians and students I met in the United States, not a single one had a good word to say for Senator McCarthy. The Washington newspapermen, in their annual unpopularity poll, more than once rated McCarthy worst of the 96 Senators. Most of the columnists and radio commentators, in the New York area at least, seemed to be anti-McCarthy. Yet from the opinion polls one knew that close on half the American people supported him.

If one can make any inferences about attitudes to civil liberties from people's attitudes to McCarthy—and I think one can—it's pretty clear who the defenders of civil liberties are in America.

Now what about New Zealand? Have we a local equivalent of the nonconforming noble or the independent intellectual? For a time it seemed possible that the large sheep-stations might create an indigenous squatter-aristo-



The text of a talk by R. H. Brookes, senior lecturer in the School of Political Science and Public Administration, Victoria University, broadcast in the NZBS series, New Zealand Attitudes.

cracy, and it's plausible to suppose that eventually New Zealand too might have produced its Charles James Foxes and Bertrand Russells. But the power of this class was broken in the 'nineties, and under Ballance and Seddon and Ward two other groups came to the forefront—in the country the small farmers, in the towns the lower middle class. Let's look for a moment at the attitudes of these two important groups and deal with the intelligentsia later.

The small farmer is in many respects an estimable man, but he hasn't the power or the prestige or the property, generally speaking, to encourage him in undue eccentricity of opinion. Nothing is more inhibiting to dangerous thoughts than is the combination of the freehold and a large mortgage. The best example of the small farmer in politics, illustrating both his strength and his limitations, is Massey, the Reform Party Prime Minister. The limitations are pretty clearly exposed in the civil liberties field. Take the period of the First World War, for instance:

Some additional restraints on freedom were only to be expected—a censorship, for example. But under New Zealand's censorship regulations, reputable newspapers which divulged military information of value to the enemy were treated much more leniently than were disreputable newspapers which opposed conscription or favoured a negotiated peace or supported the rebellious Irish nationalists. Peter Fraser and Bob Semple were jailed for opposing conscription; Ramsay MacDonald and Philip Snowden expressed a similar opposition with impunity, though Britain's wartime record on civil liberties was by no means good.

Again, the provision made in New Zealand for conscientious objection was less than generous—but for the efforts of Sir Francis Bell it's probable that no exemption at all would have been granted. As it was, those C.O.'s who didn't fall within the religious categories for which Bell had made provision, were very harshly treated. Again, after the war the Government continued to ban the import of literature deemed by it to be seditious. Words were excluded which circulated freely in Britain and Australia. Nor was it left to the Courts to determine what was seditious; the decision was an administrative one. But the most flagrant example of point-

less intolerance in this period is surely the passing, in 1915, of a Government Bill designed to remove from the staff of Victoria College Professor von Zedlitz, who was guilty of having had one German parent, and of having lived in Germany (till he was nine years old).

When Massey became Prime Minister, about as many New Zealanders lived in rural areas as in towns. Since then the urban population has increased rapidly, the rural population relatively slowly; as a result the political significance of the lower middle class has increased, at the expense of that of the small farmer. What influence has this change had on attitudes to civil liberties?

The answer, I think, must be: Not much. This isn't the occasion for a disquisition on the nature of social class; I must make it clear, though, that the distinction I want to make between petty bourgeoisie and proletariat depends less on occupation or income than on attitudes and values. It's the difference between Walter Morel the miner and his wife Gertrude in Lawrence's *Sons and Lovers*; it boils down to a matter of "respectability."

Disregarding the gold-mining days, New Zealand has placed a high value on respectability. If not physically, then at least spiritually, the aspidochelone has been omnipresent in the New Zealand town and suburb. And it's not respectable to hold unorthodox opinions. The Labour Party increased its support in the 'twenties and 'thirties not because New Zealand developed a proletariat, but because the Labour Party became respectable, discarding in the process the proletarian class-consciousness of the old "Red Fed" phase. If the Massey Governments exhibit the small farmer in politics, the Savage and Fraser governments illustrate similarly the politics of the lower middle class. The petty bourgeois, like the small farmer, has his strength and his limitations, and the limitations show up once again in the civil liberties field, particularly as the politician, in his own pursuit of respectability, starts with an occupational handicap—he has to lean over backwards to appear to be upright.

So we find the Labour Government leaning over backwards to avoid the charge that it's soft towards conscientious objectors; as a result C.O.'s were treated more harshly in New Zealand than in any other Commonwealth country, or for that matter in America, though their treatment even so was better than during the First World War.

Once again, peace propaganda and opposition to conscription were more readily prohibited in New Zealand than in Britain; newspapers and journals which circulated freely in Britain were excluded from New Zealand. While the security police in Britain were on the lookout for Nazi spies, the security police in New Zealand seem to have been compiling dossiers on university students. And when the Cold War developed, the Government tried to prove that it wasn't soft towards Communists in the case of Mr. Holmes and his satchel—a most unfortunate episode, in that it now seems the Opposition haven't taken a strong line on civil liberties lest the Government throw the Holmes case back at it. For instance, only one member of the Parliamentary Labour Party was prepared to raise a question in the House when Mr. Guy charged the security police with blackmail and bribery and other unpleasantnesses a couple of years ago.

This episode illustrates very clearly one major difference between New Zealand and Britain: in a case of this sort

(continued on page 33)