

IV Laws Controlling the Residence of Natives
in Urban Areas

Natives Urban Areas Act 1923 as
amended by Act 252 1930 & the
Native Laws Amendment Act 1936

Native not employed in area may be removed
Compulsion to reside in hovel or hostel
or licensed premises or
employers premises.

~~hovel~~
Exemptions

Part V Laws Controlling the Conduct of Natives

Drauskerian Penal Code

Natal Native Code. Chap² II & XVI ^{sp. Law Communal Resp.} ^{adultery an offence}

Section 17 Natives Urban Areas Act ^{handicraft, unemploy. etc. desirable courses}

" 29. Native Admin. Act

Applicable

Removal from area

Applicable to all ~~native~~ races

Sections 4 & 7 Riotous Assemblies Act (19/1930)

The Criminal Law Highway Act.

Effects of Statutory Offences on Natives

Convictions

VI. Laws Controlling the Rights of Natives
Right to Own Property & to Deal To Own Property & To Trade

Reserves

Farms

Urban Areas.

Recomm. National 1903-5

Right to Purchase in New Areas

Urban Towns & selected
Urban Areas

VII Exemption from Native Law & Laws affecting Natives

(a) Repeal of Law 28 of 1865 & Match

(b) Cap & Voters ^{within constitution} in respect of ^{Residence,} Pass _{& Clubs.}

(c) Section 31 of Native Admin Act in respect of specified laws, except in respect of land, taxation & liquor.

N.B. Limited Issue of Exemption Certificates.

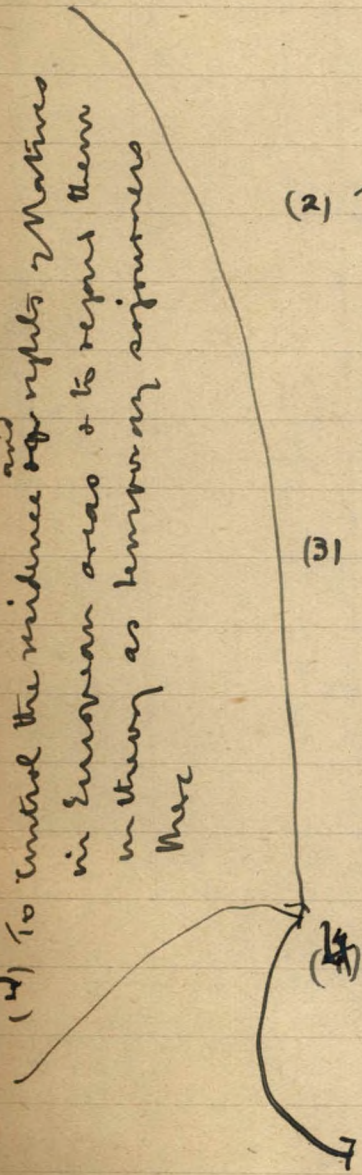
IV

To Summary.

It will be realized that the ~~present~~ prevailing policy is

- (1) To place the Native under the ~~general~~ jurisdiction of the Governor-General in Council ^{with specially appointed officers &} as Supreme Chief, with powers variable as desired to ensure greater control
- (2) To remove legislation respecting the Native more & more from the ordinary procedure & vesting edictal powers in the Governor-General-in-Council
- (3) To ~~remove Natives from as much~~ ~~supplement these two forms~~ ~~as possible from the jurisdiction~~ ~~of control over the person of the~~ Native of the ^{ordinary} courts and subject them to the jurisdiction of ~~the~~ ^{special} Native Courts or the Governor-General-in-Council.
- (4) To supplement these forms of control over the person of the Native by special legislation or special provisions in legislation.
- (5) To restrict to the minimum the

(4) To control the residence of Natives in European areas & to report them in theory as temporary sojourners there



admits escape of individual Natives from these forms of control.

(7) To ~~restrict the citizens~~ eliminate the Native from the obligations of citizenship
The policy is that initiated in

Natal, where however Law No 28 of 1865 was intended to open the door for the entry of Natives into ~~European~~ the legal ~~European~~ status of ^{the} European citizen.

~~European~~
Now repealed.

Merriman's sneer "Natal rules that does not civilise" may have been unjust to Natal. How far is it true of the prevailing policy of the Union?

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Political Status of the Native.

Cape

The struggle over the civil rights of the Hottentots & other free persons of colour resulted in ~~the~~ a victory for those who wished to ensure for them an equal^a legal status, equal with that of ordinary subjects of the Crown.

When parliamentary representation was being discussed at the Cape in the ~~late~~ 1830s & 40s, there were ^{in the population} only the comparatively small ~~population~~ ^{community} of Coloured (formerly Hottentot) & a few thousand Fingoes in the ~~Province~~ of Queen Adelaide. A draft Constitution prepared by the Colonists in 1850 provided for a franchise to be wide as possible to include & secure the consent of the coloured races!

Why. because the effective opposition had tricked.

Thus Representative Government in 1853 was based on a non-racial franchise, as suggested by the ^{White} Colonists of the Cape.

Franchise too low { Occupation - property values £25
 " Salary - £50 pa. or £25 + food + housing

∴ Inclusion of British Kaffaria in 1865

(2) . Transvaal Franchise, 1877 + 1885

Large Native populations

Act of 1892 increased qualifications

- (1) Occupa £75
- (2) Salary & prop £50

Residence etc.

- (3) Sign name & write address & occup

Act

franchise

Communal Holdings excluded

Glenside Holdings excluded

No of Voters never exceeded 16,500

in 1935 10,628.

Effects of Franchise

- (1) Sense of security & pride of Sectⁿ 1 Na. Act 1927.
- (2) Surprisingly small no. qualified.
- (3) Exclusion in financial provisions etc.

(4) Strong line of Cape delegates at National Convention

But N.B. Massey's opposition

Natal

Ord. 23 1849. April 1850.

Withdrawal of Natives from Colonial Law

Allowed by ^{Law No 11/1861} withdrawal from franchiseExceptions under ^{this} Act ~~1875~~.

- (1) Residence 12 yrs.
- (2) Exemption from Native Law for 7 years
- (3) Franchise Quals
- (4) Reporting Certificate of 3 European voters
- (5) Governor's discretion

Transvaal

Grandboek 1858

Article 9. No equality.

Franchise Law. 1/1876

S. 2. No person not regarded as belonging to the white population of the Republic shall be enrolled as a voter possessing the franchise according to article 9 of the Grandboek

Treaty of Vancouver

Par 8.

The question of granting the franchise to natives will not be decided until after the introduction of self-government.

Native Affairs Commission 1905

- ① Representation of natives in the legislature desirable
- ② No native to vote in same election as European voters (Commⁿ unanimous including Cape members)
- ③ Each legislature to fix extent of representation
- ④ Separate electoral districts and voting lists
- ⑤ Voting qualifications to be the same as European (
- ⑥ Qualifⁿ of representatives to be fixed by each legislature (No colour bar laid down).

National Convention

Cape Delegates stood for retention of franchise but differed as to what the Convention should be asked to do.

Meminan. ^{Existing} franchise ~~not to be altered~~ ^{to continue in}
 each Province & altered only by the same process as alterations to the Constitution.

Stanford. "All subjects of His Majesty resident in South Africa shall be entitled to franchise rights irrespective of race or colour upon such qualifications as may be determined by this Convention"

Fitzpatrick (T.D.) Revise the text to ensure civilisation, & set up permanent tribunal to give necessary certificate. No perpetual bar.

Moor (Natal). Native incapable of civilisation. Totally opposed to placing Natives in a position to legislate for white men.

• Fisher (V.P.). Native not fit. Equal rights involved no protection of Native

land, liquor etc. Native not really civilized
Prepare to consider test later on. Meanwhile
self preservation.

South (Cape) - Base experience proved value
Native had learned to look to South for redress
of Native franchise. Opposed differential
franchise. Prepared for test. Cannot
given fairly without representation.

Souths (TVA) High principle enunciation of
high principles will not lead them to
solution of the practical problem.

(cf Opening Remarks "So let us fix
our minds on great principles & not allow
our work to be spoiled by too much
attention to material interests or
difficulties of the day".)

Four solutions^{lines of} were ~~before~~ considered by the

Convention

1. Extension of Cape franchise to the
whole SA
2. Fixing of civilisation test for all
natives & persons of colour
3. Fixing of hard of fast colour line
4. Retention of existing position at
the Cape & leave Union Parliament
to decide later

Lord Kitchener (President) had discussed object
 of Convention in England. Statesmen there
 willing to give South Africa a free hand except
 (1) Native franchise (2) Control of Proterctorates.

The Imperial form regarded itself in a
 special sense as trustee guardian & trustee
 for the Natives in S.A. If the franchise
 settlement were considered to be unsatisfactory
 then the Proterctorates would not be handed.

Door should be kept open for Natives to
 qualify for full rights of citizenship
 General Durbog strongly opposed giving votes
 to Natives - there wd be constant pressure
 to lower the qualification standard & the
 European vote wd be swamped.

Selborne Test

Walton p. 147

Representation of Natives Feb 1936

Keen Struggle over Cape franchise
Compromises

Cape franchise v. No franchise
" " " v. Separate "

Compromise

1. Retention of the individual vote in the Cape & Transkei but separate votes rolls & separate represⁿ in Assembly & Provincial Council
2. Introduction of Separate Representation for all Province in the Senate on community vote through electoral colleges.
3. Natives Represent Council

Native leaders watching situations

(a) Cape resentment

(b) Transkei

Affected

Cape Natives, ^{voters} resentment

Otherwise new representation eagerly tried.

Native leaders not satisfied.

Too soon to express definite opinion

VI

To Sum up.

Natives legal & political status is definitely subordinate to ^{the} European. They are today very much what the ^{1800's} ~~1800's~~ ^{1800's} ~~1800's~~ were. They are subjects, hardly citizens.

European opinion overwhelmingly favours this position // Such as it is the status is today more definite ~~th~~ in the northern Provinces than it has ever been, and, in respect of political rights, more advanced. In the Cape the equal status has been ~~at~~ lost both legally & politically, and the result is resentment & bitterness. ~~It is the Native~~ In all the provinces it is the Native who in the Cape or Natal could qualify for entry into the European status who feels the position keenest most keenly, & it is he who will also benefit least from the developments in the Reserves, to be described in the next lecture,

Whether it is wise

statesmanship to leave the educated ~~African~~ African districts without hopes is a ^{question} ~~absurd~~ ~~which should be left for good consideration.~~ cannot be neglected. Is it wise policy to abandon the stepstone policy of providing a door through which qualified Africans can ~~enter into the~~ escape from the restrictions and forms of control which may be necessary in some measure in respect of the illiterate backward mass? Would not such a policy be our safeguard against a sullen, native leadership which abandons all hope of ^{advancement} ~~progress~~ through racial co-operation and ~~stepwise~~ ~~step-by-step~~ steady constructive efforts?

Wide is the ^{social} gap ~~which~~ between white & black and how is the distance between

how is the social distance between white & black, & wide is the gap between their economic levels, ~~where, if not in~~ ~~our~~ ~~uncertain~~ ^{matter} is the ^{hold} ~~fasthold~~ of the State upon ~~the~~ ~~roads~~ of civil liberty, ~~where, if not in the Constitution, are~~ ~~black & white~~ to find their ~~concerns~~ these things separate, ^{the races} what shall unite them in common loyalty to the State, ~~if not~~ ~~if even in the Constitution~~ ~~they~~ cannot find a rock of security?
 | the Black Native

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