hereditary land to any place in the Union. Note, that an alteration of boundaries can be made as an Administration Act without redress even from a Court of Law.

Compare this policy however with that declared by His Majesty's Government in Kenya,

"As regards land, it is the view of His Majesty's "Government that the first essential is to remove finally "from the native mind any feeling of insecurity in regard "to his tribal lands; and to keep available for all the "tribes land of such an extent and character as will fully "suffice for their actual and future needs. "They therefore "welcome the provision to this end which is made in the "Kenya Native Lands Trust Ordinance. They are in cordial "agreement with the declaration in this Ordinance that the "lands within the boundaries as finally gazetted for Native "Reserves are reserved for the use and benefit of the natives "for ever. Any derogation from this solemn pledge would, "in the view of His Majesty's Government, be not only a "flagrant breach of trust, but also, in view of its inevitable "effect upon the natives, a serious calamity from which "the whole Colony could not fail to suffer."....

"While nothing is more important than the removal from "the minds of the natives any feeling of insecurity in their "tenure of the lands definitely allocated for their "occupancy and use, it cannot be ignored that the interests "of a dependency as a whole inevitably make necessary, from "time to time, the compulsory expropriation of larger or "smaller plots of land for new purposes of public utility".... "Where the expropriation is required for public purposes, "it should be permitted only after ample notice to the natives "or other persons concerned, with a full and patient explana- "tion of the public purpose to be served, and a formal "public enquiry by some competent tribunal, which should be "required to access and determine the compensation to be made "to the persons or tribes thereby deprived of what the "Government had already promised to them in perpetuity..... "Such compensatory ought, it need hardly be said, ~~to be~~ "to be not only equal in superficial extent, but also, as "far as possible, equal in agricultural quality, convenience "and market value to that taken away. Where such complete "equality cannot be ensured, it will be for the comptent "tribunal to assess, in addition, the pecuniary compensation, "if any, required to makethe expropriation equitable." "(CMd. 3573)

NATIVE LAWS AMENDMENT ACT NO. 46 of 1937.

The main principle of the Act is that Natives are permitted to reside in town in so far as it is for the benefit of Europeans.The Native population in towns is to be limited to the labour requirements of Europeans.

Surplus natives are to be sent to the native areas. There is thus no protection for the native who was born in the town, and whose only home is in the town. There are at least

half...../

half a million detribalised natives who have no connection whatever with any Native Reserve.

No Native can acquire land or lease land or acquire any interest in land inside an Urban area or Township unless it be within a Native Location.

No Company can acquire any interest in Urban land if a Native holds a share in such company. The exceptions are Savings Bank and Insurance Companies and the like, and then only if approved by the Minister and Natives do not hold more than 20%/interest therein. This prevents a native investing his savings in mining or industrial concerns. (Sections 3 and 4 of Act 46 of 1937).

No School, Church,or place of entertainment can be carried on in an Urban Area except in a Native Location or except with the consent of the Municipality.

By Proclamation Natives can be prevented from moving into any particular Urban Area in search of work.

The Municipality or Local Authority can order an employer to pay over an amount up to 25% of a Native's wages for rent due by the Native to the Municipality or Local Authority.

Failure to pay rent is a criminal offence and carries with it imprisonment irrespective of ability to pay.

DEVELOPMENT.

It is true that the Department of Native Affairs in the Union is noted for its liberal policy of native developments. Their development account comprises of the following heads of expenditure :- 1. Education; 2. Agricultural Education, - (a) schools, (b) demonstrators, (c) supervisors and (d) engineers; 3. Hospitals; 4. Irrigation and boring operations; 5. Purchase of Livestock and equipment for the improvement of Native Stock and the furtherance of improved methods of cultivation; 6. Antisoil erosion measures; 7. Purchase

of...../

of land under Act 18 of 1936. (This is purchase of land in pursuance of segregation policy, with reference to which policy Mr. Oldham points out :

> "Owing to mistakes in the past, "the setting aside "sufficient lands for natives" is, as General Smuts admits, "impossible at present." White South Africa is unwilling "to pay the price which alone would make possible any "thorough-going application of a policy of segregation. Half "the native population is outside the reserves and cannot "be got into them"

Contrast this expenditure with that of the White Uninionists, you will find that their development account is, amongst others, made up of the following items of expenditure:-1.Loans to farmers; 2. Purchase of ground for settlement (anywhere); 3. Labour subsidies for prevention of soil-erosion; 4. Housing of Labourers; 5. Subsidies for export of stock; 6. Purchase of stock; 7. Purchase of bulls; 8. Rebate of railway rates on slaughter and droug ht-stricken stock; 9. Rebate on export charges on fruit; 10. Subsidies to maize farmers for construction of silos and sheds etc.

The culture and civilisation of a nation are determined by the level of its standard of living and this standard can only be gauged by individual enterprise, "which is a valuable stimulus and spur to Government". But the Union Government is keeping a vigilant eye over this enterprise on all sections of its people, and the policy adopted towards the native section is consistently one of surpressing this individual enterprise; no native must rise above the level of his people; while toward the white section it is a determined policy of uplift. This assertion needs no amplification beyond the policy of development quoted in the preceding paragraph. Have you noticed that in the case of Native Development the items of expenditure are distinctly for collective advantages, while those for the white inhabitants are mostly, if not solely, for individual improvement? Communal development can easily lead to the weakening of individual enterprise. This is strong illustration of

what...../

what the Union outlook is where its Native population is concerned. Out of the one million morgen so far purchased in terms of the Native Land Act not a single morgen has been made available for individual tenure, the whole being applied to tribal purposes.

EDUCATION.

In approaching this subject I will be pardoned if I quote at some length the remarks made by Dr. Kerr in his address on the "Need for Native Higher Education", to which I have already referred; he said :-

> "Native education is not a thing apart, but one branch "of education in general. There is almost nothing that "can be said about education that cannot at the same time "be said about Native Education, with other similar qualifi- "cations to those that might be required were our subject "English Education, or "Russian Education, Chinese "Education" .....

If we accept this view, we are shocked to learn from the Report of Inter-Departmental Committee on Education, that the amount expended on Native Education in 1935 was £2.11.6 per capita of those attending school. The comparison with European and Coloured being as follows :-

Native children per capita	£2.	11.	6	
Coloured " " "	5.	5.	0	
European " " "	14.	0	0	to
	16.	7.	6	

Again the enrolment of children in Native Schools for the year was 345,500 in round figures. (The increase in enrolment from 1926 to 1935 is estimated at 60%). For the purpose of my argument I will assume therefore that there are today about 400,000 children in Union Native Schools. The Native Economic Commission 1930-32 estimated the number of native children of school age to be 1,373,000. Over 900,000 - probably 1,000,000 - native children in the Union do not attend school, and what schools there are are either overcrowded or

applications ...../

applications for admission had to be turned down to keep down the enrolment.

This state of affairs can only be due to lack of facilities.

As to the source of financing Native Education I think Dr. Kerr has put the answer in a nut-shell , when he said:

> "We may remind ouselves that the state is not an entity "apart from the people who compose it. It is not a benign "god or godess with a store of wealth which it has somehow "acquired apart from the efforts of its citizens. All that "it disburses so liberally it has acquired by taking a share "of the wealth created by its members. To this wealth of "the State the Native population also contributes. Every "red blanket that a Native wears, every hut that he builds, "every pound of tea or sugar that he buys, has made its "contribution to the wealth of the State. There are many "natives who buy much more than these elementary products, "but the examples are sufficient to establish the principle. "To the pool of wealth out of which facilities for the "education of European children or youths are provided, every "adult native in the country has contributed, and it is as "reasonable for a native to ask why he should contribute to "the education of White children and Youths, as it is for us "to ask why the State should help the native towards the "education of his sons and daughters, be it elementary or "higher education. If higher education is beneficial to "European youths, so far as they are able to avail themselves "of it, it is also beneficial to native youths, so far as "they are able to avail themselves of it. The State cannot "in equity receive contributinns from all the members and "dispense its benefits only to one section."

POLITICAL.

In the "Joint Statement" regarding the transfer of the government of the High Commission Territories to the Union issued by the Secretary of State for Dominion Affairs and Gneral Hertzog, appears this passage :-

> "It has also seemed to us desirable that the peoples "of the Territories should have before them a clear picture "of the terms on which the transfer of the government would "take place, if decided upon. Such terms would naturally "follow closely the provisions of the Schedule to the South "Africa Act of 1909."

Whether it will be possible, after transfer, for British Government, - in view of the passing of the Statute of Westminster and the status of the Union Act, - to exercise any control of the legislation for the government of the now British Protectorates, is a matter of legal argument and upon which I am not able to

discuss ...../

discuss, but the following opinion has been given on this question by two eminent Advocates of the Cape Bar :-

OPINION.

Re Incorporation of the Protectorates and Union "Safeguards".

If the Bechuanaland Protectorate were incorporated in the Union (say on the terms set forth in the Schedule to the Act of Union) it would become subject to any law the Union Parliament might make applicable thereto.

In NDLWANA vs MINISTER of the Interior, 1937 A.D. 229, the Appellate Division decided that a Court of Law will not test this validity of any Act of Parliament passed after the Statute of Westminster and the Union Status Act.

Consequently if an Union Act were to alter or depart from (say) the Schedule to the Act of Union no Court would ever entertain an application to hold Parliament to the terms of such schedule or declare any Act, contradictory to the Schedule, bad or ultra vires.

What has been said above re the Schedule of the Act of Union would equally apply to any terms embodied in any Act of Parliament of Great Britain or the Union so far as the Union Courts are concerned.

Consequently it is impossible to devise any safeguard that would bind the Union Parliament in the Courts of the Union.

The Native Enfranchisement Act was not passed by Parliament but by a joint sitting of both Houses of Parliament, which joint sitting could, in constitutional law, only pass a statute which should in law "be deemed" to have been passed by Parliament provided certain limited matters were dealt with in that statute - Nevertheless the Appellate Division held that such Joint Sitting had put forth what purported to be an

Act ...../

"Act of Parliament" and after the status Act it was not competent for the Courts even to consider whether such Statutes fell within the powers conferred on such Joint Sitting by the Act of Union or not. In other words now that we have a Soverneign Parliament the Courts will not investigate the subjectmatter dealt with nor even the method in which Parliament expresses its Sovereign Will.

In view of the Appellate Division's decision in Ndlwana's case it is consequently impossible to devise any scheme for protecting the terms upon which the Protectorates might agree to enter the Union and which scheme could be enforced in the Courts of South Africa or in any other manner.

1. The Statute of Westminster provided that no future Act of the British Parliament should apply to the Union of South Africa unless it expressly declared that "the Dominion has requested, and consented to the enactment thereof."

But the Union Status Act goes further and provides that no such British Statute shall be law in the Union unless embodied in an Union Act.

In view of the decision in Ndlwana's case the Appellate Division will not even go into the question as to whether the Status Act is ultra vires (though constitutionally it is) in making this extra requirement for consent.

Moreover the Westminster Act itself provides that the Union Parliament may vary any British Statute in so far as it applies to the Union - Consequently any Union Parliament could by Act either withdraw its consent or simply repeal or otherwise vary such British Statute. If it did so, no Union Court of Law would ever permit an enquiry as to whether such Act were ultra vires or not.

11. A transfer of the Protectorate to the Union would not

necessarily ...../

necessarily make the Protectorate an integral part of the Union, although as a Protectorate of the Union , the Union Government would have supreme jurisdiction in and over the Protectorate.

But the Union Government being Sovereign could, after transfer, declare the Protectorate Territory duly annexed to the Union and Great Britain would have no legal power to prevent them doing so.

CONCLUSION.

CONSTITUTIONAL.

I have decided to deal with the constitutional relationship of the Bechuanaland Protectorate with Great Britain as a sub-head instead of a main heading of a chapter, because as far as we are aware Great Britain has not expressed any inclination to hand the government of the Bechuanaland Protectorate to the Union. Might I however remark that, in view of "the grave responsibility which the British Government and People have brought upon "themselves by having won the confidence" of the powerless natives of the Bechuanaland Protectorate, when any argument on the constitutional relationship is advanced by the natives, this is not taken up as a matter of right - for that would of course lead nowhere - but as plea that promised protection should continue in view of the undertakings of Great Britain which she made in the nineteenth century.

SOUTH AFRICAN AND BRITISH NATIVE POLICY.

The essence of the distinction between the "Union Native Policy of segregation" and the "colour bar" and the

British ...../

British Imperial Policy or trusteeship is as follows :
The basis of the Union Policy is that the African Population is a "national asset" and that the natural function of Africans ~~is~~ in society is to serve the European land owner, mine owner or industrialist in the capacity of a low paid, unskilled servant, disqualified by law from performing skilled or administrative work. Together with this principle is coupled that of residential (not functional) segregation - i.e. that the African is to reside separately from the European in urban or rural "locations" from which labour shall be drawn as required. This allocation of land under the policy of segregation is not even in perpetuity for the use of the natives whether as a tribe or as a whole race.

The Union Native Policy is most pointedly described by the traditional South African maxim : "kaffir work", "kaffir pay", and by the determinations continually expressed that there shall be no equality between white and black in State and that proper relations between Master and Servant shall be maintained.

The British Imperial Policy as enshrined in such documents as the "Report of the Commission on Closer Union of the Dependencies in Eastern and Central Africa", the "Kenya White Paper" etc. is based on that policy of trusteeship for backward races that has now received the official recognition of the civilised Western world through the Covenant of the League of Nations. This policy does not regard African communities as "assets" to others but as ends in themselves. "The only alternative to a policy of "treating the advancement of the natives as an end in itself would be a policy of consistent and perpetual repression. Such a policy must in the end be doomed to failure in "Eastern and Central Africa". (Report of the Commission on Closer Union of the Dependencies in Eastern and Central Africa page 38). Again, this policy, being one of trusteeship, only differentiates in legislation between

white ...../

white and black in so far as such diffrentiation is necessary for the protection of either one or the other. Hence a a legislative colour bar is foreign to this policy.

In the fact of the aforegoing facts is it really expected that the Union Government will as a special consideration mete out different treatment to the natives of the Bechuanaland Protectorate, than that which they practise on their own natives in the Union ? This is not possible, and should the Imperial Government decide to hand over the government of the Protectorates of South Africa to the Union Government, then the former will have defeated the object of their declared policy towards the weaker races as far as South Africa is concerned.

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ABX/ARM.

31st October, 1945.

Col. L. T. Stubbs,
Director of Non-European Army Services,
3, Artillery Row,
General Headquarters,
PRETORIA.

My dear Colonel Stubbs,

I beg to thank you and your staff for your kind offer of the books used for educational service in your section.

I propose to offer these books to certain African Secondary Schools in the Union as a gift through us from the Native Military Corps and would urge all of them to name their libraries or portion thereof - The N.M.C. Memorial Library.

As many of these people have no funds I would request that if at all possible the books be packed and addressed to the Principal of the school mentioned and the principal of the respective school be responsible for removing the books from the stations.

I hope this arrangement will be possible as otherwise it would be impossible for me to distribute the books if they were dumped in Johannesburg.

Yours sincerely,

A.B. Xuma