

DESCRIPTION
of
REPRESENTATION OF NATIVES BILL

59/35

A. Purpose of the Bill

The purpose of the Bill is to establish the principle of the Political Segregation of Europeans and Natives by

- (a) excluding Natives completely from voting for members of the House of Assembly; and
- (b) providing alternative machinery by which their views, upon matters affecting themselves, can be brought to the notice of Parliament. *no matter affect them without some way affecting white*

B. The Present Franchise Laws

1. At Union (1910). Under the Act of Union, the franchise laws of the four provinces were left unchanged, as follows:
- Cape: Male adult franchise, both European and Non-European, subject to wage, property and educational qualifications.
- Natal: Male adults, subject to wage and property qualifications, except that Natives and descendants in the male line of countries not possessing, in 1896, the parliamentary franchise (e.g. India) are ineligible, unless possessed of a certificate of exemption from the Governor-General-in-Council.
- Transvaal: White male adult only.
- Orange Free State: White male adult only.
2. Today (1935). Act No. 18 of 1930 conferred the franchise on adult White women throughout the Union, and Act No. 41 of 1931 extended the franchise to all adult White men throughout the Union, the qualifications at the Cape and in Natal being removed, so that today the position is as follows:-
- Europeans: Men and women over twenty-one are registrable without further qualification.
- Number on Roll (1933) 886,592, of which
- 450,809 males
- 435,783 females

Natives and other Non-Europeans:

Cape. Adult male suffrage, subject to

- (a) Education - ability to write name, address and occupation;

- (b) Either Occupation of Property, value £75, for not less than twelve months prior to registration, or Salary or Wages, at rate/not less than £50 per annum, earned for not less than twelve months prior to registration, with a break of not more than one

/of

The appreciable drop of about 6000 /month. in the number of registered Native voters, between 1930 and 1933, is to be ascribed, in no small part, to the strictness with which this requirement of continuity of employment or occupation has been enforced since 1930.

Number on the Roll (1933) - Native 10,777

(cf. highest figure of 16,480 in 1927)

- Coloured 23,534

- Asiatic 1,471

Natal. No Native or Asiatic may vote, unless he has a certificate from the Governor-General entitling him to register (see earlier)

Number on the Roll (1933)-Native 1.

-Asiatic 13.

Coloured may register, subject to

- X (a) Ownership of property valued £50, or renting of property of yearly value of £10, or income £96 per annum;
- (b) Residence - three months of previous seven months in the division.

Number on the Roll (1933) - 302

Transvaal and O.F.S. No Non-European franchise.

C. What the Bill Proposes
further

- X 1. Prohibition of any registration of Natives as voters on the ordinary parliamentary voters' roll, though those at present on the rolls will not be removed, unless they lose their qualification. (See Section B.2.-Cape and Natal above.)

- X 2. Inauguration of a new uniform and Union-wide system of political representation for Natives through

- ✓ a) Four^(x) White Members of the Senate, elected by four purely Native electoral colleges.

These colleges will be formed as follows:-

- (i) In the Transkei - the Native members of the United Transkeian General Council.
- (ii) In the three areas of (1) the Transvaal and Orange Free State (both combined), (2) Natal and (3) the Cape Province (excluding the Transkei) - chiefs of tribes where there are no local councils; Native members of local councils, reserve boards and urban advisory boards; and (in the Cape) headmen of rural locations not under a chief or local council.

- (b) A Native Representative Council consisting of twenty-two members, sixteen of whom will be Natives, viz. twelve elected by the abovementioned electoral colleges⁽⁺⁾, and four nominated by the Government. ✓

/viz. Six will be Europeans, / five Chief Native Commissioners, without voting power, and the Secretary for Native Affairs, with a casting vote only.

3. Special Representation of Natives in the Cape Provincial Council through an additional member of the Council for each of the two electoral areas - Cape Province and Transkei. Both may be Natives (or members of other Non-European groups), provided they are parliamentary voters in the Cape. This representation is to cease if the Cape Provincial Council ceases to function in respect of Native education, etc.

- (x) There is provision for a possible increase, after seven years, of the number of electoral areas to six, with corresponding increase in the number of Senators.

A proposal that the urban advisory boards should have their own Senator, was rejected in the Joint Committee.

- (+) They will be elected as follows:- three by Transkei, two each by Cape Province, O.F.S., Transvaal and Natal (excluding the urban advisory boards) and one by the urban advisory boards outside the Transkei.

Nothing for urban
native

4. Provision of a new definition of "Native", and of a legal procedure by which, in certain circumstances, a person can be declared to be a "Non-Native".

D. What the Proposals Mean

1. Exclusion of Natives from the General Electorate

The first clause of the Bill's preamble and Section One of the Bill itself are the crucial portions of the Bill. They raise in direct and challenging form an issue which nearly wrecked the National Convention of 1909. While Union was found to be unattainable without the exclusion of Non-Europeans as members of Parliament, it was also only achieved by the compromise that the existing franchise laws of the four colonies should be maintained, for the time at any rate.

The extension (in 1930 and 1931) of the franchise to all European adults (male and female) has changed the situation, even since General Hertzog introduced the Native Bills in 1927. Then the total European vote in the Union was 300,800, and the Non-European was 40,860 (including 16,481 Native voters). Today^(x) the European vote (of which 369,184 is in the Cape) is 886,592, and the Non-European 36,098. Of the latter figure, the Native vote amounts to 10,778 (of which 1 is in Natal). The Native voters, as a group, therefore form 1.2 per cent. of the Union electorate (and 2.7% of the Cape electorate).

The White adult franchise has also served to place the citizenship of the European upon a different basis from that of the Non-European, for, not only are Non-European women excluded from the franchise, but Non-Europeans, where they have the franchise, must continue to possess qualifications no longer demanded of Europeans.

If the Bill is passed into law, it will eventually segregate the Native population from the ordinary political structure of the country, except for (a) the four special European representatives in the Senate, (b) the two special representatives in the Cape Provincial Council.

The issue is thus a fundamental one. No unanimity could be secured on it at any stage of the Select Committee consideration of the question. Clause One of the present Bill was adopted in Joint Select Committee of both Houses of Parliament by fifteen votes to eight.

Note:- Senator F.S. Malan, on several occasions, moved in Select Committee that a Non-European franchise be introduced (applicable throughout the Union) based upon a franchise test of (a) monogamy, (b) a standard of living, (c) educational qualifications, and (d) property or wage or salary or income qualifications, those so qualified to be placed on the ordinary voters' roll. For unqualified Non-Europeans he proposed indirect or elective representation in the Senate. The proposal was always negatived.

- The -

(x) The figures given are those of 1933. A new register is now (1935) being compiled.

The Honourable Jan Hofmeyr moved an amendment to the foregoing, limiting it to the Cape Province and restricting the number of Natives to be admitted to ten per cent. of the total voters' roll in the Cape Province; also providing for the nomination, by the Governor-General, of one Senator for Natal and another for the Transvaal and O.F.S. to represent Natives, until such time as Senators would be elected by General Native Councils; and also providing for a Standing Joint Council of Europeans and Natives to advise the Minister on matters affecting Native interests. This was also negatived.

2. New System of Native Representation

I. Representation in Parliament

/European

General Hertzog's Bill (1927) proposed that, on the abolition of the existing Native franchise, Natives throughout the Union should be represented in the House of Assembly by seven members^(x) elected by Natives on separate rolls. The parliamentary rights of these members were to be restricted in certain respects.

In 1930 a new Draft Bill (introduced to the Joint Select Committee by Mr. Heaton Nicholls) proposed that four Native electoral colleges be formed to elect four Senators to represent Native interests in Parliament, and that the Senators might be "British subjects of Non-European descent". The Joint Select Committee, by seventeen votes to nine, "accepted the principle contained in the proposal submitted by Mr. Nicholls provided that no representation is given to Natives in the House of Assembly". At a later meeting in the same year the representation was limited to "European" Senators.

The present Bill retains the main features of Mr. Heaton Nicholls' Bill indicated above, with the stipulation that the four senators must be Europeans.

It should be noted that there are already four Senators, nominated by the Governor-General-in-Council under Section 24 of the Act of Union "on the ground mainly of their thorough acquaintance, by reason of their official experience or otherwise, with the reasonable wants and wishes of the coloured races in South Africa". The extent to which these Senators do actually represent Native interests is questioned today; otherwise it might have been said that these four nominated Senators and the four Senators to be elected under the Bill would provide eight "representatives" of Native interests in a Senate of forty-four members.

The powers of the Senate are limited to the extent that

- (a) it may not amend Bills in so far as they impose taxation, or appropriate revenue or moneys for the services of the Government; although it may reject such Bills;

- (b) -

(x) The House of Assembly then consisted of 135 members; in 1935 the number is 150.

- (b) it may not amend Bills so as to increase any proposed charges or burden on the people, although it may reject such Bills;
- (c) its rejection, failure to pass, or amendment of Bills is subject to reversal by a joint sitting of both Houses of Parliament.

In other respects, the legislative powers of the Senate "are co-ordinate with those of the House of Assembly".

In the Joint Select Committee of 1930, Colonel Stallard proposed the establishment of a Grand Committee of the Senate, to consist of the four Senators elected as under this Bill, the existing four nominated Senators and five other members of the Senate. The Committee was to report upon (a) proposed legislation as it affected Natives, (b) matters referred to it by the Minister, or by any general Native Council established under the Native Affairs Act of 1920, (c) any matters relating to the conduct of the administration of Native affairs. The Committee was itself to be free to initiate legislation in the interests of Natives, and every bill affecting Native interests was to be referred to it. The Committee was also to function if necessary during the time Senate was not in session.

Colonel Stallard also proposed that the powers of Parliament be increased so that (a) Senate might initiate Bills imposing taxation solely on Natives and appropriating the proceeds for the benefit of Natives, and (b) that Senate might amend any Bill sent from the House of Assembly in so far as it imposed taxation solely on Natives or appropriated monies for the benefit of Natives.

These proposals were embodied in the Bill brought before the Joint Select Committee in 1935, but the Minister of Native Affairs (Mr. Grobler) proposed instead the establishment of the Natives Representative Council and this was adopted.

II. Natives Representative Council

General Hertzog's Bill (1927) proposed the creation of a Union Native Council to put into a permanent and formal organisation the Native Conferences, with a Government nominated membership, which have been held on three or four occasions, under section 16 of the Native Affairs Act of 1920, which provides that such conferences may be convened from time to time for the purpose of discussing any contemplated legislature in so far as it affects the interests of the Native population. The last Conference was held in 1930, and the matters which were placed before the Conference included the Native Service Contract Bill, Amendments to the Liquor Act affecting Natives, the position of chiefs, codification of Native law and custom, Native education and the pass laws.

Under the present Bill (Sections 18 and 19) the functions of the Council are to consider and report to the Minister of Native Affairs upon

- (a) proposed legislation (Union or Provincial) in so far as it affects the Native population (and such legislation must be submitted to the Council before it is introduced in Parliament or a Provincial Council)

- (b) the estimate of expenditure in respect (i) of the moneys to be appropriated by Parliament to, or otherwise to be received by, the South African Native Trust Fund (to be established under the Native Trust and Land Bill), (ii) the amount to be contributed by the Consolidated Revenue Fund, or otherwise to be received by, the Native Development Fund, (to which the "local tax," a proportion of the Native "general tax" is paid), and (iii) any other funds to be appropriated by Parliament in the special interests of Natives;
- (c) any matter referred to it by the Minister;
- (d) any matter affecting Native interests generally which the Council itself may raise. (insert (x) below)

The reports are to be laid upon the Tables of both Houses of Parliament within a specified time.

It should be noted however that the stipulation that the Council shall meet annually is limited to the consideration of the Estimates. In the absence of other proposed legislation affecting Natives, the annual session of the Council might be restricted to discussion of the Estimates only.

It should also be noted that the Council has no executive authority - it is consultative and deliberative only.

A comparison may perhaps be made here between this aspect of the Bill and the functions and powers of the United Transkeian Territories General Council under Proclamation No. 279, dated 18th November, 1930:- The functions and powers of the Council include

- (a) the initiation and consideration of any matter relating to the economic, industrial and social condition of the Native population of the Union, or any part thereof, in so far as it affects the Natives within the area of the jurisdiction of the Council;
- (b) the consideration of any proposed legislation or existing law which specially affects the Native population of the Union, in so far as it affects the Natives within the area of the jurisdiction of the Council;
- (c) consideration of any specific matters submitted to it by the Governor-General or by the Minister;
- (d) the passing of resolutions on any such matter.

The United Transkeian General Council, with its subordinate district councils, is an auxiliary to the administration. It is concerned with administrative and local government organisation of the Territories, with an annual budget of about £200,000, the estimates of revenue and expenditure being considered and voted upon for submission to the Governor-General.

An Executive Committee, consisting of the Chief Magistrate, three magistrates and four Native councillors is responsible for the administration and control of the following Council affairs:-

- (a) -

(x) to be inserted above - it is not a footnote

Attention is drawn to the provision whereby the Minister of Native Affairs and members of the Native Affairs Commission may attend meetings of the Natives Representative Council, but not to vote. No such provision is made either for the elected or nominated Seantors specially concerned with Native interests.

- (a) Establishments - appointment, discipline and dismissal of pensionable officers.
- (b) Education - scholarships.
- (c) Agriculture - establishment of new agricultural institutions; erection of new agricultural institution buildings; acquisition and disposal of farms; establishment, acquisition and disposal of plantations.
- (d) Public Works - consideration of tenders for service, where the lowest tender is over £100.
- (e) General - institution of legal proceedings.

III. Special Representation in the Cape Provincial Council

The following points should be noted:-

- /now
- (a) Non-Europeans are not/excluded from membership of the Cape Provincial Council; there is a Non-European member at the present time. Section 70(2) of the Act of Union provides that "Any person qualified to vote for the election of members of the provincial council shall be qualified to be a member of such council". Natives who continue on the voters' roll will still be eligible for election as ordinary members of the Cape Provincial Council. A Native excluded from the ordinary voters' roll may only become a member, if he is qualified to be a member of the Natives Representative Council (i.e. if he is a Union-born Native, liable to Native taxation, domiciled in the Union during the five years previous - and for the last two years of this period domiciled in the area for which he seeks election or appointment) and is elected as one of the two special members.
 - (b) This special representation is subject to the Cape Provincial Council continuing to deal with Native education, hospital provision for Natives, and certain roads in the Transkei and the Glen Grey district.

3. Definition of "Native"

Section 28 contains the special definition and section 26 provides machinery for the hearing and granting of applications for exemption from the operation of the definition. or

All pure, / full-blooded Natives will be subject to the Bill but if it is intended that none shall be exempted under Section 26, the present phrasing of the definition needs amendment.

The definition intends to create a new class of "law-made" Natives, viz:- all persons, one of whose parents, or even one of whose grandparents, is a pure or full-blooded Native. Thus, a person who might pass as White, but who is known to have one Native grandparent, is a "Native" for the purposes of the Bill, unless specially declared a "Non-Native" under Section 26.

E. How the Bill will WorkAdministratively:

The electoral units will vote in their own districts. Outside the Transkei, chiefs and the bodies forming the electoral college will each cast collective votes representing the number of Natives liable for, or exempted from, payment of the (Native) general tax. (In urban areas only Natives who have had their permanent homes there for the previous three years will be counted.) In the Transkei each member of the electoral college will cast one vote. The transferable vote system will be used.

While it is laid down that each electoral unit will vote in its own district, the method of nomination is left to be dealt with by regulation, save that no nomination is valid if the nominating units have fewer than two thousand votes. It is not clear how candidates will be brought into touch with their electors.

Politically

The central principle of the Bill, i.e., the segregation of the Native population from the general political organisation of the country, is of too great significance to escape violent controversy, but this statement, if it is to be helpful to thoughtful readers, must avoid any attempt to assess the relative merits of the opposing views.

The gravity of the issues involved justifies a plea for the most thoughtful and conscientious consideration being given to the following points:-

1. What will be the effects of the abolition of the "Cape Native Franchise" upon
 - (a) the Native population,
 - (b) the European population,
 - (c) the immediate and ultimate relations between these two sections?
2. Are the "compensations" offered adequate substitute for the
 - Is the Native representation in the Senate likely to be effective as a parliamentary instrument? Will the membership of the Natives Representatives Council be large enough, and sufficiently in touch with the needs of the five and a half million Natives throughout the Union?
 - Is the machinery adequate to ensure that the Council will be heard by Parliament?

Loss of the Cape Native Franchise and all it implies)

It is hoped that the information given in these articles will be sufficient to enable serious-minded citizens to decide upon their own answers to these questions with knowledge and understanding.

/LR.

Collection Number: AD843

XUMA, A.B., Papers

PUBLISHER:

Publisher:- **Historical Papers Research Archive**

Location:- **Johannesburg**

©2013

LEGAL NOTICES:

Copyright Notice: All materials on the Historical Papers website are protected by South African copyright law and may not be reproduced, distributed, transmitted, displayed, or otherwise published in any format, without the prior written permission of the copyright owner.

Disclaimer and Terms of Use: Provided that you maintain all copyright and other notices contained therein, you may download material (one machine readable copy and one print copy per page) for your personal and/or educational non-commercial use only.

People using these records relating to the archives of Historical Papers, The Library, University of the Witwatersrand, Johannesburg, are reminded that such records sometimes contain material which is uncorroborated, inaccurate, distorted or untrue. While these digital records are true facsimiles of paper documents and the information contained herein is obtained from sources believed to be accurate and reliable, Historical Papers, University of the Witwatersrand has not independently verified their content. Consequently, the University is not responsible for any errors or omissions and excludes any and all liability for any errors in or omissions from the information on the website or any related information on third party websites accessible from this website.

This document is part of the archive of the South African Institute of Race Relations, held at the Historical Papers Research Archive at the University of the Witwatersrand, Johannesburg, South Africa.