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JOHANNESBURG JOINT COUNCIL

of

EUROPEANS AND NATIVES

GENERAL HERTZOG'S
SOLUTION

OF THE

NATIVE QUESTION

MEMORANDUM No. 1

NATIVES LAND ACT 1913. AMENDMENT BILL 1927.

**JOHANNESBURG JOINT COUNCIL OF
EUROPEANS AND NATIVES.**

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NATIVES' LAND ACT 1913, AMENDMENT BILL 1927.

1. Any utterance on Native affairs at the present time must be made with great seriousness and care. The whole of the Native policy of South Africa has been thrown into the melting pot by the Prime Minister's action, and the four Bills he has placed before the country contain proposals of the most far-reaching character intended to crystallise this policy, which in many respects remains still undetermined, into certain definite forms.

Attitude of
Joint
Council.

The Prime Minister does not doubt that the definition of such a policy is both possible and necessary, and the Bills he now proposes set out his long considered scheme for determining the Natives' position in South African Society.

The Joint Council has examined these Bills carefully and without prejudice or hostility, and regrets that it is compelled to view them with disappointment and alarm.

2. The four Bills are "The Representation of Natives in Parliament Bill, 1927," "The Union Native Council Bill," "The Coloured Persons' Rights Bill, 1927," "The Natives' Land Act, 1913, Amendment Bill, 1927," and we deal with the last of these in this Memorandum.

The four
Bills.

3. The questions we shall try to answer in respect of all these Bills are:—

- (a) Are the Bills framed with due allowance for the essential factors of Native life and for the conditions under which the Bantu people of South Africa live?
- (b) Are they practical and are they just?
- (c) Is Native progress encouraged in these measures, and are they aimed at the development of the Native to a higher state of civilisation?

Questions.

4. Before attempting to answer these questions for the Land Bill, we must shortly describe the conditions under which the Bantu people live in South Africa to-day. They can be classified as follows:—

Classes of
Natives.

- (1) Those living in Native territories and locations under tribal conditions and, for the most part, with communal tenure, who, in order to obtain funds to purchase their necessities, come out in large numbers to work for the European for wages.*

* "At any given moment nearly half the able-bodied men . . . are earning the money for the support of their families in areas outside these Territories."—*Lt.-Col. E. H. W. MULLER: Address on "The Administration of the Transkeian Territories," before Empire Parliamentary Delegates, 1924.*

- (2) Those living on farms owned by Europeans either as squatters,† labour tenants or full-time servants. Only a minority of these receive money wages, and in almost all cases these wages are small. Many squatters and labour tenants work for wages for part of the year away from their homes.
- (3) Those living in towns who work for wages, including in addition to those whose homes are in Native territories, a number for whom tribal ties have ceased to exist and who have no other home than their town lodging.
- (4) The educated Native—teacher, minister, farmer, clerk, etc.—who has outgrown tribal conditions and lives according to civilised standards as far as his limited resources will allow.

These different classes are affected by the Bill in different ways, and to an extent varying roughly according to the extent of their separation from their traditional tribal life. The effect of the Bill is to handicap every class of the Native population in their attempts to rise in the scale of civilisation. This will be made clear as we proceed.

Historical.

5. The demand for keeping European and Native land holdings apart existed before 1913, and prior to this date the purchase of land by Natives in European areas had caused apprehension, although the extent of such purchases had been exaggerated and large areas formerly owned by Natives had been acquired by Whites.

Act of 1913.

6. The Act of 1913 proposed to separate Natives and Europeans by demarcating areas within which all land should eventually come to be held solely by one race. The goal was a chessboard based on the ownership of interests in land. The schedule to the Act sets out certain areas (hence called scheduled areas) in each province, which were destined to become Native areas. But the Act recognised that these areas were quite inadequate for Native needs, and provision was made for the delimitation of additional Native areas by a Commission. This Commission was appointed under the chairmanship of Sir William Beaumont, and at the close of its investigations in March, 1916, recommended various additional Native areas and increases of those scheduled to the Act.

Beaumont areas.

7. The Native areas delimited by the Beaumont Commission were strongly objected to both by Europeans and Natives, with the result that the Native Affairs Administration Bill of 1917, to which they were scheduled, was not proceeded with, and five Native Land Committees, two for the Transvaal, and one for each of the remaining Provinces, were appointed to reconsider its recommendations.

Provincial Committees.

8. They reported in due course, and the Native Affairs Department acted on these Committee reports to the extent that Natives were allowed to buy land in the additional areas recommended by the Committees. No

† See Appendix "B,"

further action was taken by Parliament, and the Departmental practice would seem to have rested on the language of Section 1 of the Natives' Land Act which allowed any purchase of land by Native or European to take place "with the approval of the Governor-General." It does not appear that Section 4 of the Act, which authorised the expropriation of private land for Native occupation, was ever acted upon. Native acquisition of land has been confined to purchases in the open market.

9. In the Prime Minister's Smithfield speech (13th November, 1925), outlining his whole Native policy, the question of Native land is dealt with in one short paragraph which reads: "The solution is briefly as follows. In the first place provision must be made by Parliament by which the Native will be placed in the position to become possessed of the further ground which was promised to him under the Act of 1913. How this is to occur I need not now enter upon, but I may say here that this does not appear to be feasible by the unconditional acceptance of the Beaumont recommendations of 1917-18. Be that as it may, this question is not insurmountable, and a satisfactory solution for the Native as well as for the White man I hope to lay before Parliament."

Prime
Minister's
Smithfield
speech,
14th Nov.,
1925

10. Again in his speech to the Native Conference, 5th December, 1925, he added the following: "I want to see the Native in possession of the land which became his heritage under the Law of 1913, and this is part of the solution which I propose, only the details of the problem have still to be considered."

Speech to
Native
Conference,
1st Dec.,
1925.

"My plan to-day, and the only one I shall probably lay before Parliament, provides for (the removal of?) the restrictions imposed upon Natives under the Act of 1913, with reference to their acquisition of land in certain areas."

"Both European and Native will, therefore, be able to purchase or hire land with certain necessary restrictions. The Native will be placed in the position of acquiring as much land as was originally thought just by the Commission, and it will be the duty of the Government to assist the Native."

11. The new Bill has been hailed as a fulfilment of the promise inherent in the 1913 Act and apparently repeated in these speeches, that further land should be set aside for Natives; and there is no doubt that among persons who have not studied its provisions the assumption is general that if the measure pass into Law the lot of the South African Native will be materially improved. Nothing, however, seems to be more certain than that the new proposals, if carried into effect, will usher in a period of misfortune for the Native peoples unparalleled in our history.

Impressions
of Bill.

12. The land proposals in the first Section of the Bill differ radically from those of the Act of 1913, and its machinery will no longer be available. The Beaumont Commission and the Provincial Committees reporting under that Act set apart areas within which persons other than Natives

Land
proposals
not those of
1913.

should not be permitted to acquire land or interests in land. Under the present Bill only the restrictions preventing Natives from acquiring land are withdrawn and for them only so far as the "Released Areas" are concerned. In other words, the 1913 Act proposed to delimit areas in which Natives could buy land and Europeans could not, while this Bill leaves the Native exposed to European competition in the "Released Areas" without granting him any right to buy elsewhere; "Released Areas" being the additional areas scheduled to this Bill.

Farmers' Conference, 18th Aug., 1926.

13. In addressing a Farmers' Conference held in Pretoria on the 18th August last, the Prime Minister is reported as follows: "In 1913 the idea had been scouted (accepted?) of declaring certain large areas as Native areas, *but it would retard Native development if the areas were purely black.* The purpose of the Bill, therefore, was to slow down the process that had been decided upon and to give the Natives the right to buy land in certain areas. It was intended to stop indiscriminate buying of land by both whites and Natives."

Limited Native resources.

14. To anyone acquainted with the poverty almost universal among the Natives of South Africa it is clear that the purchase of land on a large scale by individual Natives cannot in generations become a practical proposition. Occasional tribal purchase will doubtless take place, but the area of Native owned land cannot be materially increased by purchase for many years to come.

Released areas.

15. We have already pointed out that under the Natives' Land Act of 1913 areas in addition to the scheduled areas were to be delimited in which only Natives could buy land, but that the Bill before us does not prevent sales and purchases between Europeans in "released areas." This relaxation will tend to keep up the prices of land in these released areas and in this way handicap Native purchasers. Incidentally it will also prove an obstacle to segregation, often proclaimed as the guiding principle of the Prime Minister's policy.

Limitations.

16. Again any released area is only open to Natives of the particular class or tribe designated in the first schedule to the Act, and the power of Natives to combine to buy land is still further limited by a clause stating that no association or aggregation of Natives, other than a recognised tribe, shall acquire land in a released area except under conditions prescribed by regulation, a recognised tribe being one recognised as such by the Governor-General.

17. These restrictions are very serious and are not removed by Section 26. Why should any group of Natives be compelled to make out a case for consideration by the Governor-General before they can acquire land, especially if this land is "their heritage under the Act of 1913"?

Further statement at Pretoria.

18. During the Pretoria Farmers' Conference above mentioned the Prime Minister also stated "that provision was made in the Bills for the employment and granting of land to Natives driven from the farms by the

labour provisions of the Bills. Detribalised Natives could buy land in released areas if they were not in larger groups than 10." We deal with employment later. The Bill contains no *grant* of land to Natives. No such concession to detribalised Natives is included in the Bill, and if it were included it would be useless unless any detribalised Native could buy in any released area. What funds are Natives, driven from the farms by the labour provisions of this Bill, likely to possess?

19. Again take the great case of the Witwatersrand, where Natives from every part of South Africa are employed and naturally form connections among those with whom they are brought into contact. Why should their rights to land be confined to the districts where they or their parents were born? Why should their associations and aggregations be frowned upon?

Witwatersrand.

20. The schedule contains one Transvaal area (No. 8, Vereeniging) described as available "for all classes of Natives." This admission justifies all that we have said, for this area is to-day occupied by Natives of different tribes, who having saved money on the Witwatersrand have bought plots of land and settled there.

Transvaal Area No. 8.

The proposal to allot particular areas to particular tribes is pressed too far.

21. Looking at the schedule of released areas as a whole, it must also be pointed out that, although the Provincial Committees appointed in 1916 have taken into account the probable increase of the Native population for the ten years then to come, this ten years has already elapsed, and, besides, no division according to tribes can be final or can stand the test of time. We cannot foretell how these areas will fill up. Basuto areas may become full while those allotted to Bakwena are still sparsely populated.

Division by tribes.

22. This, however, is for the perhaps distant future. Where these restrictions are onerous to-day is that they do not take into account the progressive Native (a large and increasing class) who has become detribalised and for whom tribal conditions are a mark of barbarism from which he has emerged. Not only will he have to seek for land in the area allotted to the tribe to which he no longer belongs, but he is also prevented from availing himself of the help of those with whom he associates, if, as is probably the case, they belong to other tribes.

The progressive Native.

23. In the debate upon the Natives' Land Bill in 1913, General Hertzog stated "the place of the educated Native is not among the white people but among his own people." There may be a modicum of truth in this statement, but it makes a great difference to the educated Native whether he lives among his own folks in a civilised Native community, or is driven back to live under tribal conditions of barbarism in a location. The latter would be a real hardship to him and a blow to civilisation.

Must not be driven back.

Native
development.

24. It seems as if the desire underlies the Bill to force the progressive Native, and indeed all detribalised Natives, back into tribal conditions; and there appears to be the further assumption that Native advancement does not lie along the generally accepted educational lines, but along some quite other lines, which he is expected to evolve and develop for himself when he is thrown back into reserves or locations. But South Africa knows well that the Native living in a reserve cannot support himself and his family without coming out to work for the European for wages.* So the proposal of the Bill amounts to forcing the progressive Native back to a position from which he has already risen, and is in flat contradiction to General Botha's view that "if there is one thing the European must keep before him, it is the improvement and development of these people."

Rhodesia.

25. We have not overlooked the fact that there are administrative reasons for encouraging particular tribes to occupy particular areas, but no rule along these lines should be made absolute. Even in Rhodesia, where the land question is absurdly simple as compared with the Union, and where there are few educated Natives, the Land Commission of 1925 finds that "they are not always able to obtain suitable land in the reserves and are hampered by the insecurity of tenure (inseparable from tribal conditions) and by the unprogressive attitude of the chiefs and people."

The fact is that the progressive Native requires individual tenure of land for his continued development, and this is not obtainable in tribal areas.

Result of
Repression.

26. But we must look a good deal further, and a remark of the late Mr. Merriman in the 1913 debate is very much to the point. "What would be the effect," he asks, "of driving these civilised Natives back into reserves? At the present time every civilised man, if they treated him properly, would become an owner of land outside the Native reserve, and therefore he was an asset of strength to the country . . . if they drove these people back into reserves they would become our bitterest enemies."

This ignoring of the wants of the progressive Native and the absence of any provision for him except under surroundings and conditions of barbarism is in our opinion a fatal blot upon the Bill.

Adequacy of
released
areas.

27. The next question to consider is whether the released areas are adequate, for it is clear that the Bill fixes their maximum acreage once and for all.

The released areas appear to coincide to a large extent with the Committee areas, but we have no information as to the extent to which they are to-day owned and/or occupied by Natives, and consequently no information as to the additional extent of potentially Native land which they include. If it is found that a large acreage therein is already owned by Natives there will not be enough land left to provide allotments for other

* See Footnote to p. 3.

Natives who wish to acquire land. Again it is impossible to prophesy how the Native will be employed in the future, or the extent to which he will depend for his livelihood upon the wages paid him by his white employers. Obviously it is essential to know this, and his numbers also, before a maximum limit to the allotted areas can be justified.

28. The next point to be considered is: Does the Bill contain the machinery necessary to enable the average Native to acquire suitable land in these areas? Machinery.

The machinery provided is altogether inadequate, indeed non-existent. It consists mainly of invoking the Governor-General, or Parliament, or both to settle matters of principle and of detail, which can only be satisfactorily determined as part of a general policy to be thought out and worked out beforehand.

A special department with permanent officials, or a section of the Native Affairs Department set apart to deal with the purchase of land by Natives, is an essential part of any scheme such as is put forward by the Prime Minister, and this department should have power to purchase and hold lands and dispose of them to Native applicants according to a considered programme. We attach a note of some of the matters which this department would probably be called upon to handle. (Appendix "A.")

29. The necessity for such a department becomes if possible more manifest when the provision and handling of funds is considered. Funds.

The average Native cannot be left to himself to acquire land; it will be necessary to purchase it for him in bulk and allot it in detail.* This is especially the case when, as the Bill lays down, only a definite limited area is made available for Native occupation. The area obtained by any individual Native will depend upon his capacity to pay, and will bear no relation to the total Native land requirements of the Native population requiring to be provided for in that area.

30. Again is it conceivable that Parliament will vote moneys to a Native Land Purchase and Advances Fund unless they are satisfied beforehand that it will be systematically and economically applied to the purpose for which it is voted? This belief can only follow the establishment of a permanent department formed for this special purpose. Attitude of Parliament.

31. But dominating all these problems of machinery is the all important question whether if land is made available by law the average Native will be able to buy it. His wages are small. Nowhere in South Africa to-day is the price of land negligible, and the only basis upon which Natives can acquire land under this Bill is to purchase it in the open market. Can the Native buy?

* "To buy land is a very difficult thing for a Native. We are not used to buying land. If I rub myself against a white man it will be like rubbing my nose against a file, and I do not think I can spare much of my nose." (Evidence before the Beaumont Commission.)

Fencing.

31A. The position of the Native purchaser who has the funds to acquire land is made still more difficult by the provisions of Section 2 of the Bill with regard to "fencing" set out in the Second Schedule. They are onerous and drastic, and it is difficult to justify an addition to the existing Union legislation which equally applies to the European and the Native landowner. Under it rates can be levied upon Native tribes for the fencing of locations held under communal tenure. What more is required?

The Bill no solution of land question.

32. Had the Bill contained the machinery necessary to enable ground not merely to be scheduled in bulk, but (in course of time) to be divided into plots suitable for individual occupation; (an enormous task, but necessary to the success of the Prime Minister's proposals); had the Prime Minister adopted the proposal of the majority of the Economic and Wages Commission and taken steps to ascertain the economic position of the Native; had he stated that this Bill would not be proceeded with until this inquiry determined that the necessary land obtained at current prices could be paid for by the Natives in 20 or even in 40 years, we might have retained some belief in this first portion of the Bill. These being wanting, we cannot consider that it supplies any solution of the Native land question, and must turn to Chapter II for its real meaning. That chapter demonstrates that this Bill is in no way a fulfilment of the promise of 1913.

Effect of Chapter II.

33. If it comes into force all estimates made in the past of the areas required by Natives will be valueless. There will at once be brought into existence a vast body of Natives faced with the grim alternative of seeking land at impossible prices in inadequate areas or becoming whole-time servants of European masters. The 1913 Act allowed the discretion of the Governor-General to be used in the direction of increasing the total land to be available for the Natives. That measure of elasticity is now gone. Provisions exist in the new Bill for substituting other land for the land in the "released areas," but as already mentioned, the maximum is inexorably fixed. There is thus nothing to prevent the full pressure of Chapter II being brought to bear upon the Native population.

Proclaimed areas.

34. The provisions of Chapter II now fall to be examined in detail.

This Chapter is concerned with the creation of "Proclaimed Areas." Within these proclaimed areas the residence of Natives is governed by severe restrictions. If the Native resident does not happen to be the owner of the land on which he resides he is virtually bound to engage himself to the owner of the land as a servant, receiving little in exchange for his service beyond the privilege of residence, or, as it might be put, beyond the security of not being turned adrift.

Creation of Proclaimed areas.

35. SECTION 15.—This section provides for the creation of proclaimed areas. It probably means that proclaimed areas can only be created in two ways:—

- (a) On the initiative of the Government within released areas;
- (b) In any area on the request of 50% of European owners,

The areas to be proclaimed are in the case of (a) European land within released areas, and in the case of (b) any Magisterial district. (The word "district" is used but without definition. Therefore, in accordance with the provisions of Act 5 of 1910, Section 3, the word "district" must be taken to mean "The area subject to the jurisdiction of the Court of any resident magistrate"). A magisterial district may include the whole or part of one or more scheduled or released areas. It is not clear whether the petitioners for the proclamation of such an area are only to be taken from the rural proprietors of the district, or from both the urban and rural proprietors. "Proprietor," as defined in Section 22 of the Bill, is wide enough to embrace both classes. But it may be that the Bill is to be read as subject to the provisions of Act 27 of 1913, since Section 29 of the Bill says that the two measures are to be read as one. And Section 8 (1) (g) of the 1913 Act says that its provisions do not apply to land within the limits of any local authority.

36. The alternative interpretation of Section 15 is that the Government may in addition to its powers already mentioned proclaim any area on its own initiative provided such area is outside the scheduled and released areas. Express words in support of this interpretation do not appear in the section, but it must not be ruled out as impossible. Alternative interpretation.

37. SECTION 16.—This section determines the capacity in which Natives may reside within proclaimed areas. Native residents must be either: Classes of Natives in proclaimed areas.

- (a) Owners.
- (b) Servants.
- (c) Licensed labour tenants.
- (d) Licensed squatters.
- (e) Wives or children of any of the above.
- (f) Members of the family of a labour tenant between the ages of 12 and 18 and actually dependent upon such labour tenant for their support. (See definition of "Labour Tenant" in Section 22.)

It will be found that the permitted residents are mainly owners and servants. The intention of the Act is to eliminate the Native squatter, *i.e.*, the Native who so commonly is allowed to reside on land owned by Europeans (on the same spot where his ancestors may have resided for unnumbered generations) without any contract of service but on more or less give and take terms between himself and the owner. (See Appendix "B.") This type of Native is to go. This appears from Schedule III, where a licence for each squatter amounts to either £3 or £5 per annum, according to whether the proprietor be a European in actual occupation in the one case and in the other a Native or an absentee landlord.*

* "These ferocious licences."—GENERAL SMUTS. See also Appendix "D."

Labour
tenants.

38. Towards the labour tenant the policy of the law is less severe, but he will be a much less popular person than a servant proper. Section 22 describes him. He is—

- (a) an adult male Native;
- (b) necessary to the prosperity of the owner because either his own or his family's services will be useful;
- (c) obliged to serve his owner on this land for at least 180 days per annum, not necessarily continuous (double the number required of the farm labourer who is the labour tenant under another name and is defined in Section 10 of the 1913 Act);
- (d) required to enter into a written contract if the services exceed 180 days per annum; and
- (e) gives nothing for his right of residence except his services.

The Third Schedule provides licences for labour tenants graduated according to the class of owner and the number of his tenants. Distinguished from this type of Native is the servant who is under a contract of continuous employment by the proprietor. All of the above descriptions are to be found in Section 22 of the Bill.

Their
contracts.

39. It is clear that a labour tenant will as a rule be the head of a family, and the definition shows that either he, or his family, or both must work for the proprietor. The labour tenant's own contract of service has already been mentioned. Section 18 brings this contract under the masters and servants law and makes the labour tenant a servant under that law, *i.e.*, his contract is enforceable by penal sanctions. So far as his family is concerned, if their services are necessary to the owner they may be made statutory servants and brought within the Masters and Servants laws if the labour tenant makes a written contract with the proprietor that they shall live and work on his land. The labour tenant's own contract need not be entered into before a Government official unless he is to serve for more than 180 days per annum (*see* Section 22) and his written contract on behalf of his family is not required to be entered into before such official at all. It may be that the proprietor could not compel the family to remain in his service if he ejected the labour tenant, but there are no express words in Section 18 which prevent the proprietor and the labour tenant from binding the family to any terms of service however onerous, and there is an entire absence of any Government supervision over the contract. Even if no written agreement binding the family is made there is nothing to prevent the proprietor from refusing to allow the family to reside on his land unless they render such services as he may demand. It is important to remember that the Native's right of residence on land in proclaimed areas can never rest on any firmer basis than the terms of such contract as the proprietor may choose to make with him. If the proprietor breaks his contract the Native's chance of successful litigation is extremely remote.

In the first place it is not likely that he will have the money necessary for litigation and in the second place his story will not have much chance of acceptance against that of the proprietor.

40. SECTION 17.—In many ways this is the most important section in the Bill. The sections already referred to reveal an intention of driving those Natives who are not registered owners of land into a service which cannot be described as other than forced. Section 17 provides the machinery for distributing this forced labour amongst the proprietors of land, who it need scarcely be said, will practically all be Europeans. *And the labour tenant will have no say in the choice of his master.* Labour requirements will alone determine whether the necessary licence will be granted or not. Licences.

41. The licensing of labour tenants is controlled as follows:—

- (a) Application must be made to the magistrate, who
 - (b) shall submit the application
 - i. to a divisional council or
 - ii. to a Board to be appointed by the Minister.
- Licensing Machinery.

Such Council or Board may hear objections from any proprietor of land to the application and may grant or refuse the application subject to review by the Minister.

- (c) If the application is granted a licence shall be issued.
- (d) The licence is renewable for one year unless there is an objection to its renewal. On hearing the objection the renewal may be refused.
- (e) Licence fees shall be paid as laid down in the Third Schedule.
- (f) Where no licence fees are payable renewal may be refused as under (d).
- (g) The Divisional Council or Board may *without* objection having been raised refuse to renew licences.

It is thus apparent that the control over these licences to be exercised by the Board and the Minister is absolute.

42. If in any district farmer A is plentifully supplied with labour tenants while farmer B is suffering from lack of labour, licences to the former can be refused in order to compel his labour tenants or some of them to take service with the latter. B has the right to object to A's application for licences. Instances of working.

It may be that if farmer A (at the instance of B) is denied licences for some of his tenants, whose families are bound as statutory servants under Section 18, the tenants may be forced to move, leaving their families behind them.

Possibly the only alternative to eviction from farmer A's ground and separation from his family would be the acceptance by the labour tenant of the inferior position of servant to A. No licence is required for servants and there is no provision in the Bill for removing servants compulsorily from point to point. But what will happen to the labour tenant whose presence is not desired upon any farm in the district?

Consequences. 43. The consequences of the proposed legislation therefore appear to be twofold.

- (a) If the Native elects to retain his superior status of labour tenant, he will have no guarantee of fixed residence on any farm for more than one year. Boards will sit in each Magisterial District throughout the Union and will distribute the labour tenant force amongst the European proprietors in a manner which cannot be truly differentiated from slavery. Indeed the labour tenant's plight may be worse than a slave's because the slave had the chance of spending his life in the service of a single master who was both just and kind.

And further in these conditions the land, which constitutes his tenancy and which he holds as tenant in exchange for services and which he cultivates as the sole source of support for himself and his family (the Bill providing neither him nor his family with wages), may be lost to him at the moment when his crops are ripening and before they have been gathered in. Who can say that he will necessarily have reaped the reward of his year's work by June 30th in any year, which according to Section 17 (d) is the fixed date for the termination of his licence?

No provision whatsoever is made for the protection of the labour tenant in his small, but to him vital, farming operations.

- (b) The great mass of Natives in the proclaimed areas will be servants and irreversibly tied to that position without hope of raising themselves above this status. (Appendix "C.")
1. As servants they can never hope to save enough money to purchase land in a scheduled or released area even if such land were available, for very few farmers pay money wages.
 2. If they migrate to the towns they may be precluded under the Colour Bar Act from industrial progress.
 3. They will have little chance of becoming labour tenants because the effect of the Bill will be the elimination of this class.

The lot of a servant in continuous employment should be preferable to that of a labour tenant who works for another for at least 180 days a year yet must support himself and his dependents and is subject to the complete uncertainty referred to above.

44. This unfortunate class will be confronted with a hopeless prospect. They will be forced to enter into contracts of service in order to obtain the right to reside upon some spot on the surface of the earth. They will have no real alternative except service, on terms which may be dictated by their European master, or prison. The Bill contains no provisions which will guarantee that the contract will be fair. A very large force of servants by necessity will be created, who will be compelled in effect to offer their services to whomsoever will give them a home. There will be no freedom of contract and the so-called servants will be indistinguishable from slaves. They will not dare to offend a master for fear of dismissal. To be out of work will mean to be homeless, and for a Native to be homeless in a proclaimed area is forbidden by the Bill.

Compulsory
service.

Is this any better than the condition of the Natives in South Africa before the abolition of the slave trade?

45. SECTION 19.—If a squatter (*see* Appendix "B") dies or moves on he cannot be replaced by another squatter, and the "ferocious" squatters' licences will compel the farmers to get rid of those they may wish to keep. And further, as the licences payable for Native labour tenants rapidly increase in amount with their number, the room for squatters as labour tenants will be limited. The result must be numbers of homeless Natives.

Squatters.

The period for applying for the renewal of squatters' licences is restricted to three months, so that the farmer has only to do nothing for three months after the fixed date and this law can be brought into force.

There is no free land to which the squatter can move, so he will be driven once the list of labour tenants is full to realise his stock, probably at a ruinous loss, and, *if he can find an employer*, to become a full-time servant. Should he fail to find an employer his lot is indeed hopeless, for under the Natives' Urban Areas Act he will probably be prevented from residing in any town, and, even if he is allowed to settle in a Native township, the Colour Bar Act may be invoked to limit his chances of employment.

46. The questions with which we commenced this Memorandum have been answered.

Answers.

This Land Bill is not framed with due allowance for the essential factors of Native life and for the conditions in which the Bantu peoples of South Africa live to-day. It is not practical and it is not just.

There is no idea of progress in this measure. It is not aimed at the development of the Native to a higher state of civilisation, but seeks rather to protect the European against such development,

Direct
solution
impossible
(Mr.
Merriman).

47. Can any attempt to solve the South African Native question by an enactment possibly succeed? We do not think so. "Meet the demand for a general declaration of policy with regard to Native affairs! A policy which should be applied to the highest civilised Native, the owner of a farm, and the Native barbarian! They could not do it." (Mr. Merriman, May 16th, 1913.)

(Mr.
Keyter).

48. Mr. Keyter said in the same debate that "from his experience of the different parts of South Africa and various Native tribes, neither this Parliament nor any future Union Parliament would ever be able to make one uniform Native law for South Africa. . . . Knowing how divergent were the different interests of South Africa and the wants and requirements of the inhabitants, and the customs of the Natives," he said, "it would be madness to even try to make one uniform Native law for South Africa." (19th May, 1913.)

(General
Botha).

49. With all deference we submit that the Prime Minister has attempted the impossible. "Why," said General Botha (May 17th, 1913), "did the matter remain such a difficult one? *Simply because the Native had got as much right in the country as the white man.* Some people thought the solution of the Native problem meant the finding of sufficient labour for their requirements. The Government could not supply their labour by legislation, they might facilitate the obtaining of labour, that was all. Above all, their laws must be fair and equitable. Of a kind which would have the effect of developing these people The white man must do nothing to oppress the Native. In the Union there was no room for oppression, there was only room for justice and good honest legislation."

What we
mean by
slavery.

50. In this memorandum we have used, and deliberately used, the word slavery. It remains to explain our meaning, as we do not suggest that Natives under this Bill will become the property of their employers, or that they will be bought or sold.

Clause 17 enacts that licences for labour tenants shall be issued either by a Divisional Council or a Board, appointed by the Minister, who will distribute these licences and the labour tenants to which they refer among employers, the sole ground on which these labour tenants are allotted being the Council's or Board's opinion as to the labour requirements of employers in its district.

Board's
limited
duties.

51. The Board is not charged in any way with the welfare of the labourer, nor is it asked to consider the conditions under which he will exist. His welfare is not even important enough to call for regulations! (See Section 25.) Is there any precedent for such a proposal? That it has been made clearly shows that South Africa is at the parting of the ways. Although this is not purchase and sale of human beings, it is equivalent to

the control of them body and soul by the Government, and this is what justifies our saying that the proposals contained in this Bill "cannot be truly differentiated from slavery." (Paragraph 43.)

52. And if they are controlled to this extent by the Government, what object can there be for the employer to become the legal owner of their persons? On the contrary, he will find that while he has them entirely in his power he is free from the obligations inseparable from ownership. Being without hope these labourers will have no incentive to acquire skill, and as their life becomes harder any trace of civilisation that they may have acquired will disappear. Their's will be forced labour in its most acute form. We are confident that South Africa will not stand by and see this measure passed. Ownership.

53. In the 1913 debate, Mr. Merriman reminded the House of Assembly that "when dealing with the Government of England in passing the Act of Union, South Africa gave their emphatic pledges in regard to the Natives who were placed in their care. They satisfied the Government of England that these Natives would be dealt with with the most scrupulous justice and with the uttermost toleration. . . . One of the great tasks imposed upon the white men of South Africa was to civilise and bring the Natives up, and not to trample on them and repress them." The position
of South
Africa.

54. It does not matter by whom or to whom these pledges were directly given. They were persons authorised to give and receive such pledges, and as a result South Africa received the Act of Union. Every South African is bound by this engagement, and by all of us it must be honoured. South Africa
pledged.

APPENDIX "A." (p. 8.)

MACHINERY REQUIRED.

1. Native Land Boards for the four Provinces to regulate and supervise the acquiring of lands by Natives, and a separate Native Land Purchase and Advances Fund for each Native Land Board.

2. Natives desiring land to apply to such Native Land Boards either singly, or in any groups, associations, or aggregations they may desire to form. On receipt of applications Native Land Boards to acquire the necessary land either by voluntary purchase, or by expropriation, and allot it to applicants.

3. To carry out this work Native Land Boards will require, in addition, powers—

- (a) to settle the forms of Native tenure of land and the manner of its allotment;
- (b) to utilise Crown lands in Native areas;
- (c) to settle the terms and conditions upon which prospecting and/or mining shall be carried out in Native areas;
- (d) to advise Parliament annually as to their financial requirements and to control the Native Land Purchase and Advances Funds;
- (e) to assist in educating Native land owners and occupiers, supply them with technical advice, etc.

Similar recommendations appear in Sir William Beaumont's memorandum, dated 4th March, 1916, paragraph 131.

APPENDIX "B." (pp. 3, 11, 14.)

SQUATTERS.

In introducing the Native Land Bill in 1913, Mr. Sauer said: "The crux of the whole matter was the unsatisfactory position with regard to Native squatters. This was a Bill to make provision for the settlement of the squatter question by providing land or places to which they might go if they were removed from the farms where they were now." A squatter being a Native who lived on a European farm, used his own cattle to cultivate the whole or part of it, and received as his reward a share of the ultimate proceeds. It is a wasteful form of tenancy, and Commission after Commission has reported against it; but the Native likes it, as the squatter is to a large extent his own master; and it suits the convenience of the less energetic European land owner.

Another speaker in the same debate remarked that "farmers had experienced the difficulty of getting loose hired labour, and had therefore been compelled to go in for the system of farming on shares;" and Mr. C. Fichardt said, "The squatting system is the most expensive that can be employed, but it is gradually breaking down. The trouble was that there was a large number of lazy and indifferent people who were able to work their farms under this system. He himself had adopted this system because it was impossible for him to get labour unless he did it," showing clearly that it suited the Native population.

Mr. Sauer gives a number of figures in his speech, and points out that "in 1912 there were 200,000 Native squatters in unlawful occupation." We are informed that since this date this number has largely increased. He was "convinced that in the interests of the Natives it was well that the question of squatters should be dealt with. Although many people were there illegally, it would be very difficult indeed to deal with some of those people who were squatters on land which they and their ancestors had occupied for 60 or 70 years. That was the case in the Transvaal and Natal, some of them had been there from time immemorial, long before the white men. In such cases these people were only technically squatters, and they had a right to very full and fair consideration when they came to deal with them." (*Cape Times*, 10th May, 1913.)

General Hertzog's position was:—

"Farming on shares was not a right the Native possessed, but depended upon the favour of the Government and could be taken away from them at any time. It is not a right they could insist upon." (*Cape Times*, 17th May, 1913.)

This Bill proposes to put an end to squatter tenancy and offers nothing but labour tenancy or the position of a full-time servant in exchange.

In cases of this kind particular instances are always useful, and a correspondent in the Eastern Transvaal writes as follows:—

“ There was a considerable gathering of Natives here, some of whom put some very shrewd questions, and all of whom evinced their thorough distrust and dislike of the Bill, which apparently aims at sweeping Natives out of their present high-veld farms where they are squatting, and replanting them in an area which is to be scheduled and which lies below the Berg.”

“ Most of the farms in this new proposed area are quite dry and very unfertile, and the area in question would be far too small for the Natives concerned if the policy is to be really enforced.”

“ Quite apart from the hardship inflicted upon farm owners (who will find their conditions of Native tenure and employment suddenly and violently disturbed), it seems to me that the Natives themselves in this district will be very hard hit as most of them are living as squatters on farms, where they have been for long periods in happiness and contentment, and where they know the conditions which will now be exchanged for a tenure on quite different ground in a quite different climate, and under quite different conditions, where it is very doubtful whether they can live in anything like prosperity.” (Released areas on 1,000 to 2,000 feet lower level.)

“ The Natives themselves are much alarmed—and as one chief stated at the meeting—one never knows what the Government really means, as the proposed new Bill is sure to be largely altered, and conditions which are now discussed with the Natives are more than likely to be entirely altered in a few months’ time, thus creating a sense of considerable insecurity and changeability in the Natives’ minds.”

“ It looks to me as if some of the supporters of the proposed Bill are really aiming at putting the Native in such a position that he will be forced to accept any living and working conditions which may be offered to him in lieu of his present tenure, and will thus find himself at the mercy of farmers who want Native labour at their own price and on their own conditions.”

“ I think that some such Bill could be equitably and wisely enforced if the Government is really serious in its wish to deal fairly and wisely with the Natives as well as with the white people, but it is absolutely essential that the proposed Native areas in districts such as ours should be of much wider extent and on more generous lines and of better quality than the areas at present suggested; whilst I would also advocate that terms of acquiring land in such areas should be more generous and the period of enforcing the proposed change should be much more gradual and lenient.”

APPENDIX "C." (p. 14.)

The following statement is quoted with approval and endorsed both by the East African Commission and the Rhodesian Land Commission of 1925:—

"A further point for consideration is that of instituting a policy of agricultural development under which the Natives can gradually become producers, and so help to increase the exports of the country and at the same time increase their own material well-being. I have discussed this question with the Director of Agriculture, who is prepared to deal with the matter, provided the policy is recognised by the Administration. I realise that such a policy is liable to be opposed by planters and others—who require Native labour—on the ground that if Natives are employed on their own plantations they will be reluctant to take on service as indentured labourers. This has been the attitude adopted by white men the world over where whites depend on black labour. *Morally, of course, there is no defence for any policy which keeps the black races in a position of constant servitude to the white employer.* This point is, however, so obvious that I do not propose to burden you with any argument on the subject, but I do propose to state that experience elsewhere has proved the fallacy of any argument which tries to prove that Natives who are industrious in the locations will not come out to work for employers under a system of fair wages and decent treatment. The absolute turnover of European opinion in the Kenya Colony on this subject is interesting evidence on this point. The labour problem in Kenya has been practically settled by the large proportion of voluntary labour offering from the more agriculturally developed districts. The explanation is that, notwithstanding the increased development of the Native districts, the more adventurous spirits cultivate a desire to go out and see other conditions, leaving their older relatives to carry on production at home. Increased industry amongst the Native people will not only add to their material wealth, but will give them fresh interests in life." (Col. John Ainsworth, C.M.G., D.S.O., late Chief Native Commissioner in Kenya, on his recent investigation (September, 1924,) of conditions in the Mandated Territory of New Guinea.)

This statement not only sums up admirably the moral side of this great question, but it indicates lines along which the squatter problem may gradually be solved, *viz.*, by training the Native squatter to become a skilled agriculturist. Incidentally it deals with a similar problem on the other side of the Indian Ocean.

APPENDIX "D." (Footnote, p. 11.)

With reference to the milder clauses of the Native Affairs Administration Bill of 1917 (*see* paragraph 7) the majority of the Eastern Transvaal Natives' Land Committee of 1917 report as follows:—

"The object of these provisions is, no doubt, to abolish squatting and labour tenancy conditions and to reduce all Natives resident in non-Native areas to the level of full-time servants within the meaning of the Bill. Any Native in a non-Native area who is not already a servant is, therefore, liable to be faced with the alternative of becoming one or of moving into a Native area; and, in any case, even in the possible contingency of his being allowed to remain as a squatter or labour tenant, he remains subject to the payment of an annual licence fee which may be as high as £3, in the case of the squatter, and which is fixed at 10s. in the cases of the labour tenant. The Government has, no doubt, satisfied itself that squatting and labour tenancy conditions are an evil which should be eliminated with all convenient speed. That is, of course, an issue which does not fall within the scope of this Committee's enquiry; but the Committee is vitally concerned with the issue how far these licensing provisions are calculated to react on the broad question of the adequacy and suitability of the areas, and, more especially (though discussion of this aspect is postponed to a later stage), on the position of high veld Natives.

"It may be premised, as a general proposition, that the squatter in a non-Native area will not be in a position to pay the licence money which, though chargeable to the owner of the land, will, as a matter of course, be recovered from the tenant. He will either have to become a servant (for even as a labour tenant he is subject to licence), or move into the Native area. Whilst declining to become a servant, he may or may not decide to move, but in any case he will not pay the licence money simply because he cannot. If he decides not to move, it is interesting, though not germane to the enquiry, to speculate upon the machinery that will be employed to compel him to do so; whether admonition will suffice, or whether, in the other extreme, physical force may not be necessary; and again, assuming that physical force is used, to what length in the employment of it authority will be driven in order to secure the full attainment of its ends. In any case if the squatter decides to move, as he may well do when confronted with the panoply of law and order, it becomes a matter of vital importance to decide whether, in fact, the areas are ready to receive him.

"Now, the question whether the areas are ready to receive a sudden large access of population is not a question of extent. It is not even a question of quality. It is a question wholly of "development." A family might well starve on the most fertile soil in the world in the interval that is necessary to reduce it into a condition of productivity. And, from the nature of the case, Native areas are almost entirely undeveloped. The developed portions are the occupied portions. It is in the undeveloped residue that the Native from the non-Native area must seek an asylum,

Much of the land which is described as "arable and productive" is still virgin "bush," and must be cleared before it is suitable even for the purposes of Native cultivation; much of it that is said to be suitable for grazing is waterless and must be supplied with boreholes before it can be made adequate to the needs of man or beast. When the Committee, therefore, states, in general terms, that a given tract of land is capable of supporting a definite number of people, it must be understood as contemplating a gradual process of settlement. It assumes that the Native settler will be guided, encouraged, and helped by some such body as the Land Settlement Board, which watches over White settlement. To transport Natives even from the exiguous conveniences of settled life in non-Native areas suddenly and in large masses to areas which they still have to prepare before they can exist in them would be disastrous in the extreme.

"What then is the remedy? Land Boards, though, in the opinion of the Committee, they are an indispensable adjunct to any scheme of Native Settlement, would afford no solution. They would simplify, perhaps even accelerate the process of gradual settlement, but they would be quite unable to cope with the 'dumping-down' of a multitude. In the opinion of the Committee, there is no alternative but the entire withdrawal of the licence provisions of this Bill. Why should it not be sufficient merely to prohibit fresh squatting and allow existing squatters to continue without impediment until they disappear in the course of a generation? Why should it be necessary indeed, to attempt to abolish squatting in a breath, as it were, and by a mere stroke of the pen? Economic forces are at work which are bound, in due time, to cause the total extinction of squatting in any event.

"As the country becomes more closely occupied from squatting to labour tenancy and from labour tenancy to the condition of full-time servant is but a step. We have seen the process throughout all its stages at work in the Cape Province and the Orange Free State. We see it running its course to-day in the Transvaal, as various areas are thrown open to white settlement. Granted that the squatting evil is flagrant, any attempt to extinguish it suddenly can end only in the creation of a new situation worse than the old. The Committee is confident that the utmost that can be hoped for, on lines of fairness and justice, is the extinction of squatting within a generation. To bring this about involves merely the refusal of fresh facilities—a very different thing from utter deprivation of facilities already granted or, at any rate, already tolerated. By these means the evil will disappear gradually but surely, without offence and without the unpleasant odour of victimisation which surrounds the licence provisions of the Bill. Moreover, once territorial separation becomes an accomplished fact, it is impossible to ignore the effect on the squatting system which will arise from the mental attitude of the squatter himself. Planted in a country where he feels himself to all intents and purposes an alien, subject to foreign law and customs, cut off from the majority of his people within Native areas, and deprived of the benefits they enjoy as the result of fixity

of tenure and a specialised Administration which keeps in view their own peculiar modes of life and customs, is it too much to say that every consideration of sentiment and profit will prompt him to sever a connection which he might well conceive to be as disadvantageous to himself as it is to his white masters?

“What has been said with regard to squatting applies equally, though perhaps in a less degree to labour tenancy. Like the squatter, the labour tenant is liable to be faced with the alternative of becoming a full-time servant or of moving into Native areas; in the cases where he is allowed to remain he is subject to the payment of a licence fee of 10s. The incubus is, in his case, lighter than in the case of the squatter—presumably because he is not conceived to be so great an evil as the squatter—but it is equally designed to eliminate him; it is an equally unpleasant form of compulsion; and it is, in the opinion of the Committee equally unnecessary. Here, too, the Committee is of opinion that a mere prohibition of fresh contracts would be sufficient, in itself, to bring about the object which the Legislature has in view, and to bring it about, moreover, without any violent disturbance of Native life.

“The question of the licensing and restriction of labour tenancy figures so prominently in the evidence laid before the Committee, that the Committee may possibly be excused if it makes a passing reference here to one aspect of the matter with which, in strictness perhaps, it is not directly concerned, namely—whether, in the present stage of farming development in the Transvaal, labour tenancy is, in fact, the evil that the Bill presumes it to be. It will be seen that the consensus of opinion is opposed to such a view. Granted that labour tenancy is a wasteful system, it appears to be the only system by means of which the average farmer can for the moment develop his land. It is, in short, the system of paying for service out of the only surplus at the farmer's command—his land; and it is the system which has facilitated, if it has not been solely responsible for, the degree of development that has already been reached. It will be found that farmers are opposed to any restriction of the system, though it is conceded that it requires more organisation and more co-ordination in order more effectively to distribute the available labour supply.

“In sum, then, the Committee feels that the whole question of adequacy and suitability of areas is inextricably bound up with the imminence of settlement in large numbers. The areas are adequate and suitable, if the settlement of Natives is slow and gradual, and if it is guided and directed under proper Government supervision. They are inadequate and unsuitable, and incurably so, if, as contemplated by the Bill, large numbers are to be driven into them holus-bolus, to find, without guidance and assistance and without system, such a living as they may. Nay more, the Committee is convinced that under conditions such as these no areas, however large or however rich, would be suitable or adequate by whatever test were applied; and that while the licensing provisions of the Bill remain the benefits of territorial separation are but a delusion and a dream.”

JOHANNESBURG JOINT COUNCIL
of
EUROPEANS AND NATIVES

GENERAL HERTZOG'S
SOLUTION
OF THE
NATIVE QUESTION

MEMORANDUM No. 2.

UNION NATIVE COUNCIL BILL, 1927.
REPRESENTATION OF NATIVES IN PARLIAMENT BILL, 1927.

JOHANNESBURG JOINT COUNCIL OF EUROPEANS AND NATIVES.

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UNION NATIVE COUNCIL BILL, 1927.
REPRESENTATION OF NATIVES IN
PARLIAMENT BILL, 1927.

CHAPTER I.

INTRODUCTION.

1. The purpose of these two measures is to abolish the Cape Native Franchise and to substitute machinery intended to fix once and for all the share of the Native population in the Government of South Africa. Purpose of Bills.

2. For the Cape Native Franchise the Bills under consideration substitute the following:— Nature of Bills.

(i) A Union Native Council to meet annually.

(ii) Seven European members in the House of Assembly to be elected by Natives, two for the Cape, two for the Transvaal, two for Natal and one for the Orange Free State.

3. Before we express any opinion on the principles involved in the general acceptance of either of these Bills, we propose to examine the provisions of each in some detail so that the reader of this Memorandum may be in a position to form an opinion upon their practicability. Discussion of Details.

NATIVE COUNCIL BILL.

4. The Native Council is to consist of 50 members, 15 of whom will be direct nominees of the Government and the remaining 35 elected by natives designated by the Governor-General-in-Council and therefore also nominees of the Government. It will be presided over by an Official of the Native Affairs Department, who may make rules of procedure and may in his discretion adjourn or close council meetings. This Council is to meet once a year. Personnel.

Electorate.

5. The basis upon which the Native Council electorate is founded is also that of the Parliamentary franchise discussed in paragraphs 15 and 16.

Function.

6. Its functions are purely deliberative and advisory. A semblance of legislative power is given to it by Section 4 (3) of the Bill under which the Council may pass Ordinances binding only on Natives in respect of any matter delegated to the Council by any future Act of Parliament. Any Ordinance can only be initiated by the Minister of Native Affairs, and has to be approved by the Governor-General after it has been passed. It is in the highest degree improbable that this Sub-section will ever become operative, since (a) Parliament is unlikely to delegate where it can itself legislate, (b) matters of legislation affecting Natives alone are difficult to imagine.

Powers Nil.

7. If Sub-section 4 (3) were ever put into force it would only mean that a Council of Natives all directly or indirectly Government nominees would express an unnecessary approval of the wishes of their nominator. It is therefore clear that the power of this Native Council is nil, and it is prevented by its constitution from being an organ for the ventilation of grievances. It is merely the Native Conference called under the Act of 1920 under another name, and does not give the Native any greater share in the Government of the country than he has without it.

Stringent Regulations.

8. We desire to call attention to Section 2 (2) and 3 (5) d. They read as follows:—

2 (2) The officer designated to preside over meetings of the Council shall have the power to make and alter rules for the procedure to be observed thereat, the conduct of business and the behaviour of members present at any meeting, and he shall have full discretion to adjourn or close any meeting of the Council. Such rules may impose penalties not exceeding a fine of £5 for any breach thereof, and when approved by the Governor-General-in-Council and published in the *Gazette* shall have the force of law.

3 (5) For the following causes every member of the Council shall, *ipso facto*, vacate his seat thereon . . . (d) failure to attend a meeting of the Council when summoned except for good and sufficient reason shown to the satisfaction of the said Minister.

Why Not European Precedents?

9. With regard to both these sections we cannot understand why the rules found suitable and sufficient for Parliament should not be adopted for Native Councils. If experience shows that they are deficient in any respect they can be added to. To mention money penalties in this connection is felt to be an insult, and to enact that a member shall lose his seat if he fails to attend a meeting of the Council when summoned, is unreasonable. What hope is there of any useful work being done by a Council condemned to meet in such an atmosphere of compulsion?

10. Under Section 4 (1) a. the Council has power to consider any ^{Limitations.} matter relating to the economic, industrial or social condition of the Native population and under 4 (1) b. it can consider proposed legislation or existing laws specially affecting Natives, but under 4 (3) it only has the power to pass laws at the request and on the initiative of the Minister, so that however strongly it feels on any matter, even if it is unanimous, its resolutions will be without effect of any kind unless the Minister requests that they be given effect to in an Ordinance.

11. Our view of this Bill is, that until the Native people have ^{Council} adequate Parliamentary representation as asked for later in this Memorandum, some kind of Native Council is required to ventilate Native opinion. It should be thoroughly representative and for the greater part, elected by personal vote. If local Native Councils are to be developed as a part of our local Government organisation we think the Union Native Council should in time become a congress of Local Councils. We do not support the idea that the Union Native Council should become a Native Parliament legislating for "Natives only." ^{Needed.}

12. We see no necessity for this Bill as it stands; but we do think ^{Act of 1920.} that the present Union Conference (which is established under the Native Affairs Act of 1920) should be mainly elected and not entirely nominated as at present, and that Natives should be able to qualify to become individual voters. When local Councils have become general their representatives might well be in the majority; personal electors being found only in areas where no local Council exists. The electorate of local Councils should also consist of individual voters as far as possible.

CHAPTER II.

REPRESENTATION OF NATIVES IN PARLIAMENT BILL.

13. The main provisions of the Representation of Natives in Parli- ^{Disenfran-}ament Bill now fall to be considered. The destructive side of the measure ^{chisement.} is contained in Section 7 which provides for the disenfranchisement of the Cape Native voter. It reads as follows:—

- (1) Anything to the contrary notwithstanding in any law providing for the qualification necessary to entitle persons to vote at elections of members of the House of Assembly or of a Provincial Council, no Native as hereinafter in this Act defined, shall after a date fixed by the Governor-General by

Proclamation in the *Gazette* be qualified to be registered as a voter or to vote at any such election except as is specially provided in this Act in regard to elections of members representing Native Electoral Areas.

- (2) If by inadvertence the name of any Native has not been erased from the voters' roll the fact that his name still appears on such roll shall not entitle him to vote in an election for any electoral division, anything to the contrary notwithstanding contained in the Electoral Act 1918 or any amendment thereof.

South Africa Act.

14. It has been suggested that Parliament has no power under Sections 35 and 152 of the South Africa Act to deprive existing Native voters of their votes.

Electorate.

15. Sections 2 and 3 of the Bill provide for the election of seven members of the House of Assembly to represent Natives of the Union. The electors are to be the Government nominees who form the electorate of the Native Council (*see* paragraphs 3 (2) c and d of the Native Council Bill). They will consist of designated chiefs, headmen, members of Local Councils and individual Natives, but their number is left uncertain and is to be decided by the Governor-General-in-Council. Neither their qualification nor the manner of their designation is defined in either of the Bills, so that the Government in power can alter the Native electorate as when and how it pleases if the members returned do not conform to its wishes.

Cape Native's Status.

16. Under these Bills the Cape Native loses his status as a citizen. No Native however educated or civilized he may be has a personal vote for his member, either on the Native Council or in the House of Assembly.

Electoral Areas.

17. There will be seven Native Electoral Areas for the Union, and the boundaries of these areas will coincide with groups of five of the Native constituencies returning representatives to the Native Council. These seven Native Electoral Areas therefore, cover half each of the Transvaal, Cape and Natal, and the whole of the Free State.

The areas of the four Provinces are:—

Cape	....	....	....	276,966 square miles.
Natal	....	....	....	35,284 square miles.
Transvaal	....	....	....	110,450 square miles.
Free State	....	....	....	49,647 square miles.

but the Act provides no machinery by which the Natives spread over these huge tracts of country can record their votes, nor does it even decide whether the seven members are to be elected by ballot or by show of hands.

For the Native voters scattered over these huge areas to assemble in one place to nominate or vote is impossible, and if it were possible they could not be identified.

18. The method of nomination is as follows:—

Nomination.

3. (1) In respect of each Native Electoral Area into which the Union has been divided as aforesaid, the Governor-General-in-Council shall, by proclamation in the *Gazette*, fix a date and places for nomination of persons for election.
- (2) On the date, and at the places so fixed, the electors designated in terms of Sub-sections (c) and (d) of Section 3 of the Union Native Council Act 1927 by the Governor-General for the constituencies constituting any Native electoral area shall, at a meeting of such electors called for the purpose, nominate for election in that Native electoral area of that Province not more than three persons qualified hereinafter provided.
- (3) If the names of more than three persons are submitted to such meeting a ballot or a show of hands shall take place and the three candidates selected at that meeting shall be regarded as duly nominated.

19. Under this clause it is clear that only one nomination meeting can be held in each electoral area, for unless the whole body of electors is present or is adequately represented at one place and time the particular three nominations desired by the majority of electors in that electoral area may not be selected. Whether the nominations at this meeting shall be reduced to three by ballot or by show of hands is left open.

20. The elections are to be held in accordance with *regulations* to be framed under the Union Native Council Bill. (*See* Section 3 (1).)

21. It would be difficult to imagine anything more haphazard or open to abuse than these election proposals, and it is a curious fact that in all the sections (except Section 7 (2) of this Representation Bill where it is repudiated) dealing with the election of these seven members the Union Electoral Act No. 11 of 1918 is ignored. Why has the Prime Minister refused to avail himself of the machinery found necessary by long experience to prevent abuses in Parliamentary elections? It is certain that the same care must be observed in elections under these Bills. Parliament itself should prepare the necessary safeguards.

22. Let us pass on to the position of the seven European members of the House of Assembly after they have been elected. They will be additional to those provided under the South Africa Act, and will have the same qualifications. Their rights and powers will also be similar except that:

- (a) A members so elected shall be incapable of sitting, speaking or voting in the House of Assembly or in Committee thereof whenever the matter for discussion or determination is whether there shall be an increase of the number of Native electoral areas or of members to be elected therefor, or whether any alteration shall be made in the qualifications or disqualifications of voters for such areas, or whether this section or any other provisions of this Act be repealed, altered or amended.
- (b) A member so elected shall be incapable of voting in the House of Assembly or in any Committee thereof on a motion of no-confidence or on a matter in respect of which the Prime Minister or, in his absence, the Senior Minister of State present in the House, upon a division being called states that the result of the voting of all the members of the House of Assembly taking part in the decision thereon, will be regarded by Ministers as one of confidence or no-confidence in the Government. The provisions of this proviso, however, shall not apply in respect of any Bill introduced, or clause thereof, or vote or resolution proposed or moved by a Minister of State in connection with any of the matters specified in the Schedule of this Act.

Schedule.

23. The schedule alluded to in this paragraph gives a list of subjects of legislation solely affecting Natives. On some of the matters Parliament never has legislated and is never likely to legislate; other matters fall within the ordinary sphere of Provincial Council legislation. The questions of industrial and liquor discrimination on the ground of colour, have either been dealt with recently by Parliament, or will have been dealt with before this Bill can become operative, and further legislation thereon is improbable in the near future.

Native
Interests
Isolated.

24. The principle underlying the special disqualifications of the Native representatives appears to be that Native interests are something apart from the interests of South Africa generally; that in the government of the country, affecting as it does every member of the community, the Native is to take no serious part; that whether the financial policy of the Government is wise or unwise is not a question in the decision of which the Native is to share; that industrial measures and tariff modifications in which the Native may be more deeply concerned than other members of the State may, if the Government of the day regards them as matters of confidence, be passed into law without the Native representatives being allowed to record their votes.

Unsound
Principle.

25. This principle is fundamentally unsound. The Native population of South Africa is an integral part of the community and has a right to adequate representation in all its councils.

26. Reference to the Prime Minister's Smithfield speech shows that the limitation of the Native representatives' powers was then opposed by him and he used the following arguments to justify his attitude:—

Prime
Minister's
Change of
Attitude.

"Fear has also been expressed to me," he says, "that the seven Native members in the Assembly may create a danger to the Government by combining and throwing their weight as a group against the Government in order to make the Government fall or compel them to accede to what they desire and what the Government would not otherwise have done. This is not impossible, but for various reasons which I do not at present wish to discuss, it seems hardly probable. Suppose, however, that it does happen that they combine to form a group against the Government, then we must not forget that the Government with all its followers are dependent upon the white vote only, and that should the Government proceed to barter the interests of the country for the seven Native votes, the white population of the Union would soon enough call such a Government to account. Here also, therefore, all fears to me appear to be groundless."

27. Why has the Prime Minister altered his opinion and allowed this fatal proviso to be introduced into the Bill? He has no right to assume that the Native vote will ever be given against the best interests of the country.

Fatal Proviso.

CHAPTER III.

DISCUSSION OF PRINCIPLES.

28. It now becomes necessary to discuss the general policy underlying these two measures.

Why Have
Bills Been
Introduced?

Why have they been introduced? The reasons were given by the Prime Minister in his speech at Smithfield on November 13, 1925. This speech stands as the only exposition we have had so far of these Bills from General Hertzog:

"It is clear to me," he said, "that the other three Provinces cannot permit that the Native franchise will be extended on the Cape basis. Neither can the Native be given the right to become a member of Parliament. It is clear further that the grant of the franchise to the Native on the Cape basis, or rather on the basis that he was to vote with the white man for a member of Parliament, would necessarily mean the ruin of the white population and of European civilization in the Union. . . . Unless this franchise is taken away from the Cape Native, or at least fundamentally altered, the Northern Provinces, I repeat, cannot possibly continue to close their doors against the Native franchise within their boundaries too. According to expert

judgment it will not be long before the number of enfranchised Natives in the Cape exceeds the number of white voters. This contention may appear exciting to more than one of you, but there is not a single ground for contesting it, everything points to this being a correct deduction from facts and figures."

The Prime Minister continued:—

"I am not exaggerating when I say that as things are going now, within the next forty years there will be but few among the fifty and more Cape M.L.A.'s who will dare publicly to oppose the extension of the Native franchise to the rest of the Union. . . . In most of the fifty-one (Cape) constituencies the Native vote is a very powerful one. Consequently the great bulk of Cape members, when it comes to matters touching the Native, . . . will only too often be ready to adopt a line that they would otherwise not have been prepared to adopt. . . . The deciding factor in their attitude is not what is really in the country's interests but how they can either keep or catch the Native vote."

In another passage General Hertzog says:—

"It is plain to me that the large majority of the European population of the Cape, and also a large number in the other Provinces . . . will oppose the abolition of the Cape franchise unless another form of Native representation in Parliament takes its place."

Criticisms.

29. Let us examine these extracts more closely. There are several points which call for our particular attention. Briefly put they are:

(1) *The Transvaal, Orange Free State and Natal will refuse to grant the general franchise to Natives.*

That feeling in the Northern Provinces is strongly against the extension of the franchise to Natives cannot be denied. What the future may bring forth we cannot say, but we can expend labour and time in creating a better spirit, and we know of nothing more calculated to attain this result than the development of Joint Councils throughout the Union.

(2) *The growth of the Native vote in the Cape has been so alarming that within forty years it will be so strong that the Cape members (50 odd Europeans) will compel the other Provinces to grant this franchise.*

Upon what facts or figures does the Prime Minister justify his statement, "it will not be long before the number of enfranchised Natives in the Cape exceeds the number of white voters"?

For the year 1922 we find that the European voters in the Cape Province numbered 156,500 and the Cape Native vote about 15,000—equivalent to, say, 10 per cent. of the Cape European electorate and less than four per cent. of the Union European electorate of 380,440.

- (3) *“In most of the 51 Cape constituencies the Native vote is a very powerful one”; consequently the deciding factor in the attitude of Cape members is “not what is really in the country’s interests, but how they can either keep or catch the Native vote.”*

The records of the old Cape Parliament show that this statement is not justified in so far as the past is concerned. The present Cape members can be left to speak for themselves.

- (4) *The extension of the franchise to Natives in the Northern Provinces would mean the ruin of the white population and European civilization in the Union.*

There is no evidence to support this dangerous statement, and its effect will be to increase ignorant fears. The fact that these fears of the Native franchise can hardly be said to exist in the constituencies where the Native vote is strongest confirms our outlook.

We again emphatically repudiate the view that Native interests are necessarily hostile to European interests, and that Natives will primarily vote *native* and not on the party lines prevailing at the time of the election. The danger to be guarded against lies in the growth of a conviction in the Native’s mind that there is nothing for him in European civilization, and that it would be to his interest to destroy it. Neither a common representation nor a differentiated franchise will save South Africa if racial fears and hatreds are fostered.

- (5) *No Native can be given the right to sit in Parliament.*

The refusal to permit Natives to sit in Parliament is a minor question as compared with the fundamental question as to whether they shall have adequate political representation or not.

- (6) *The large majority of the European population of the Cape and also a large number in the other Provinces will oppose the abolition of the Cape franchise unless another form of Native representation in Parliament takes its place.*

So far as we have been able to observe, this is the only justification yet put forward by the Prime Minister for any political consideration whatever being offered to the Natives. The whole basis of Native representation—including the present proposals—appears to rest upon mere expediency, a very insecure foundation. If expediency is to be the only

motive for granting a modicum of Native representation expediency may also sweep it away. In addition we do not believe that the Bills under consideration will satisfy any of those persons to whom the Prime Minister refers.

Fundamental Differences.

30. We have dealt with these points because they seem to show that there are fundamental differences between the Prime Minister's attitude towards the political rights of the Native people and ours. Party-political considerations (with which this Joint Council has nothing to do) have no doubt played their part in the past and present discussions on this subject, and we quite recognise the Prime Minister's practical difficulties. Nevertheless with a feeling of profound regret and disappointment we are compelled to oppose these measures.

Born of Fear.

31. It is deplorable (if we may judge from these quotations and from other speeches) that these measures have been born of fear—fear of the “ruin of the white population of the Union, and of European civilisation in South Africa.” We sympathise with the solicitude which causes this nervous apprehension, but our own anxiety arises from the dangers which will confront this country if the Prime Minister's measures are passed. Fear and injustice can no more exist apart than the two sides of the same coin.

Inherent Rights.

32. While the note of fear prevails throughout the Prime Minister's speech we miss any recognition on his part that the Native population has inherent political rights apart altogether from temporary political considerations. In criticising his speech and these measures we are therefore handicapped by the absence of any definite principles. We are compelled to examine his statements and these measures—not in the light of any principles enunciated by the Prime Minister, but under the searchlight of the political principles current in “modern European civilisation.” For if “European civilisation” is to survive in South Africa* it must do so under conditions favourable to its own growth. The acid test for these measures should therefore be political justice as known to “European civilisation.”

Grounds of Dissent.

33. Apart from details we find that we cannot accept these Bills on the following grounds:—

- (1) We see in them no recognition of the fact that the Native people—no less than any other section of the community—form an *integral part of the Union*. The Bills regard them as creatures apart. Even as the Prime Minister's policy seems

* The adjective “European” appears to be acquiring a significance in South Africa which we cannot accept, *viz.*, that this civilisation is an attribute of the white man only and cannot be acquired by non-Europeans. The words are understood to mean “a civilisation confined to Europeans” and not “a civilisation of European type in which all sections of the community are included.”

to follow no definite principles, so the franchise proposals are arbitrary and bear no relation either to the place which the Natives should occupy in the body politic, or to their actual needs. And just as the franchise is to be arbitrarily fixed, so may it be as arbitrarily removed.

- (2) The Bills contain no inducements to the Native either to advance towards civilisation or to bear his share of the government of the country. No encouragement is given him to develop as a citizen of South Africa, and no hope is held out to him of attaining citizenship. He is made to feel that whatever progress he makes in civilised ways, is unwelcome to Europeans. One of the few inducements to progress that he had as an individual (the civilised vote in the Cape), is withdrawn.

By discouraging the civilised Native, the Bills tend to "the ruin of European civilisation in South Africa," as they turn the Native back into barbarism and a dangerously primitive economic condition.

- (3) We cannot accept the view that Native interests are inimical to the welfare of the country, and that the interests of the European must be safeguarded by the withdrawal of the Cape Native franchise. There is nothing to support such a view in the history of the use made by the Cape Native of his vote. Wisdom demands that the Native people should be actively encouraged to believe that their interests are identical with those of South Africa generally.
- (4) Whatever may be the legal bearing of Sections 35 and 152 of the Act of Union, nothing that the Native voter has done in the past justifies what will be regarded by him as a punishment and a breach of faith. Is there any precedent under democratic rule for the withdrawal of the franchise from a people who have not only not abused it but who regard the privilege as a sacred one?

The Cape Native franchise is something more than the Parliamentary representation of the Cape Native. The Natives of the other Provinces regard it as in some degree a protection for themselves also. By them the removal of the Cape Franchise would be looked upon as a catastrophe.

NOTE.

The Johannesburg Joint Council of Europeans and Natives has now published two pamphlets—the first on the Land Bill and the present one. The “Coloured Persons’ Rights Bill” has not been dealt with in this way because, up to the present, the Joint Council has been formed of Europeans and Natives only.

The Joint Council believes it has done a public duty in responding to the Prime Minister’s general invitation of criticisms of his Bills. Before further steps are taken, it will await the Conference of Europeans and Natives which the Federal Council of Dutch Reformed Churches is about to call for the discussion of these measures.

Meanwhile the Joint Council invites observations on the two pamphlets issued and any other contribution to the discussion.

Communications should be addressed to the HON. SECRETARY,
P.O. Box 854, JOHANNESBURG.

JOHANNESBURG JOINT COUNCIL
of
EUROPEANS AND NATIVES

IN DEFENCE
OF THE
CAPE FRANCHISE

MEMORANDUM No. 4.

“ There shall not be in the eye of the law any distinction or disqualification whatever founded upon mere distinction of colour, origin, language, or creed, but the protection of the law in letter and in substance shall be extended impartially to all alike.”

Natal. Proclamation of 1843 by Her Majesty's Government.

V634:55

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IN DEFENCE OF THE CAPE FRANCHISE

1. It would seem a truism to say that the Cape Franchise must be understood before it is debated. But we have nowhere seen either its nature, or the extent to which it has been availed of by Natives adequately discussed, and undoubtedly great ignorance exists on these matters among all sections of our population.

NATURE OF THE FRANCHISE.

2. In the Cape Province no distinction is made as regards race or colour so far as the franchise is concerned. (Year Book 8, page 116) and the universal qualification for a vote is based:—

- (a) On education, and
- (b) On occupation of property or on income.
- (a) No person may be registered as a voter unless he can sign his name and write his address and occupation.
- (b) Any applicant for a vote must prove:
 - (1) Occupation of a building and/or land worth £75 within the Cape Province for twelve months before the registration commenced, and for the last three months within the electoral division for which the vote is claimed.

If there are joint occupiers who claim votes the share of each must exceed £75.

- (2) Wages of not less than £50 per annum earned within the Cape Province for twelve months before the registration commenced, and in addition that this shall have been earned for the last three months within the electoral division for which he claims to be registered, or that for the last three months he shall have resided within the division, or that when the registration commenced he was resident in the division.

EXTENT TO WHICH NATIVES HAVE QUALIFIED.

3. Particulars of the Cape Native vote are given in Appendix B. of the Report of the Select Committee on the Prime Minister's Native Bills. (A letter to the Committee from the Secretary for the Interior dated 16th June, 1927). It shows that during the twenty-three years from 1903 to December 31st, 1926, the Cape Native vote increased from 8,117 to 14,912 or 6,795 votes equal to 295 per annum.

During the same period the Cape European vote increased from 114,450 to 162,823, or 47,873 votes, equal to 2,081 per annum.

4. The nett increase of European over Native votes in the Cape Province was therefore 1,786 per annum, and the total European gain during the twenty-three years 41,078. On the 31st December, 1926, the excess of European over Native votes in the Cape Province was 147,411. In his speeches the Prime Minister lays stress upon the increase in the Native vote, but nowhere mentions the increase in the European votes **seven times as great**. One of his statements is worth quoting:—

“ According to expert judgment it will not be long before the number of enfranchised Natives in the Cape exceeds the number of white voters. This contention may appear exciting to more than one of you, but there is not a single ground for contesting it; everything points to this being a correct deduction from facts and figures.” (Smithfield.)

When the Prime Minister made this statement he could not have been aware either of the facts or the figures.

ESTIMATE OF TOTAL UNION VOTING POPULATION.

5. The Official Year Book, No. 8, pages 118/21, gives the 1923 total of 407,090 voters for the Union, of whom 38,532 were non-European. According to the letter above mentioned, the number of Native voters in this year was 13,848, so that there were 24,684 other non-European voters.

6. With the help of the 1925 figure, we therefore estimate the total voting population at the end of 1926 at 435,000, made up as follows:—

European Voters:

Cape	...	...	...	...	162,300
Natal	...	...	...	...	40,500
Transvaal	...	...	...	...	143,200
O.F.S.	...	...	...	...	49,000
					<hr/>
Forward	...	...	...	...	395,000

	Forward	...	...	...	395,000
Non-Europeans:					
	Coloured	...	...	25,100	
	Natives	...	...	14,900	
				40,000	
				435,000	

and we have for the Union in 1926 (Year Book No. 8, page 852):—

A European population of 1,679,900 with 395,000 votes.

A Coloured population of 568,200 with 25,100 votes.

A Native population of ... 5,115,400 with 14,900 votes.

(Cape, 1925=1,722,800—Year Book, No. 8, page 853.)

An Indian population of... 174,200 with — votes.

Cape Indian votes are included in the total of Coloured votes.

7. As Cape Natives who obtain votes do so on individual education and property qualifications, the total of Native votes has no direct connection with the figures of the Native population, and it should also be remembered that (a) while the educational qualification is not a high one it is sufficient to exclude the bulk of adult males, (b) Native wages in the Cape are low. (c) Limited as the obtaining of the property or wages qualification is to the Cape Province, the difficulty of any Cape Native employed outside the Cape Province becoming a voter is manifest.

8. In order that the position may be more easily grasped, we attach two diagrams:—

(a) Showing all the Cape figures contained in the letter above mentioned, and also particulars of the European voters in the other three Provinces for the years 1917/25. (Year Book, pages 118/121.)

(b) On a smaller scale, a proportional division of all voters as on the 31st December, 1926, tabulating the figures given in paragraph 6.

9. Faced by these figures and diagrams it is difficult to accept the Prime Minister's contention that the "Cape Native franchise must be fundamentally altered, unless we want to see either civil war, or the white man's ruin and that of European civilisation in South Africa" (Smithfield).

RESULTS OF EDUCATION.

10. It is alleged, however, that as the result of education the increase of Cape Native voters in the future will be much more rapid

than in the past, and the Prime Minister definitely raised this point at Malmesbury. He is reported as saying:—"When we consider the fact that the census of 1922 showed that there were at that time 235,000 Native children in the schools in the Cape Province and only 137,000 white children, we must realise at once what that awakening must mean to the country, namely, the handing over of white civilisation to the tender mercies of barbarism." These figures were again quoted by the Prime Minister in the Women's Suffrage Debate.

11. We are unable to verify this Native figure of 235,000, but have reason to suppose it is an estimate of the total enrolment of all non-European children—native, coloured and Indian—"at school in the Union in 1922. It is clear how the European figure has been arrived at, for Year Book 8, page 176, Table II gives, for the Cape State and State aided schools in 1922, 137,581 European and 160,085 non-European children.

12. We have obtained the latest figures prepared by the Provincial Education Departments. They are as follows:—

Native Children in School, 31st December, 1927.

CAPE	...	...	...	...	...	...	120,000
NATAL	...	...	...	...	...	...	45,000
TRANSVAAL	...	...	...	...	...	...	42,000
O.F.S.	...	...	...	...	...	...	19,000
							226,000

So this Union total of 226,000 at the end of 1927 is 9,000 less than the Prime Minister's total of 235,000 for the Cape alone in 1922.

13. We are not clear as to whether the above mentioned 1927 total of Native children in school—226,000—does or does not include those in private schools. But either way our point is not affected, for the numbers in private schools throughout the Union for the last quarter of 1924 were 20,490 European and 16,892 Native children (Year Book 8, pages 189 and 191, Table VI). Indeed, we may go further and state that the figures upon which the Prime Minister's reasoning is based in regard to the effect of native education on the Voters' Roll are so entirely at variance with the official figures that it is impossible to attach serious weight to his reasoning.

14. We therefore find that the Prime Minister's statement of the position as regards the Cape Franchise is defective because—

1. While mentioning the small increase in the Native vote he omits to mention the **seven times greater** increase in the European vote.
2. He assumes that any given number of European and Native children in school will produce an equal number of voters, leaving out of account the difficulty the Cape Native has and will continue to have in obtaining the necessary property or wages qualification **within the boundaries of the Cape Province.**
3. His figures of Native children in school are incorrect.

INFLUENCE OF VOTES AND USE MADE OF THEM.

15. The Prime Minister also points out that in certain Cape Constituencies the Native vote is strong enough to require attention to be paid to Native opinion. This is as it should be. What is the value of a vote otherwise? Native lives and interests are bound up in this their country, and the constitutional expression of their views on public questions should be welcomed and respected especially in view of the manner in which they have used their franchise throughout its history. "In the Cape Colony," Mr. Tielman Roos told the Pretoria Native Conference in 1926, "it may fairly be said that the Native voice has *never yet been able to raise* an issue of purely native concern." It would be more correct to say the Native voice *has never sought to raise* an issue of purely native concern. No such attempt has ever been made. Native votes have been used, as such a privilege should be used, for the benefit of the whole population of the Union.

16. For many years to come, if not for always, native voters will only form a small minority of the voting population, so that if they make any attempt to misuse their franchise it can be promptly checked. So far there has been no sign of misuse, and for this native voters should receive full credit. Having proved that they understand the use of this privilege and its limitations there is no justification whatever for cancelling it.

REAL BASIS ON WHICH PRIME MINISTER'S ATTITUDE RESTS.

17. The absurdity of arguments against this franchise based on "fear" must now be patent to everyone, and the Prime Minister cannot escape this conclusion by saying that this "fear" has its

“origin in reason and prudence, and not in cowardice” (Native Affairs Commission Report, 1925/6, page 20). His policy really rests not on “reason and prudence” but upon the dogma enunciated in the early Transvaal constitution: “There shall be no equality between white and black either in Church or State.” In a previous Memorandum we pointed out that fear and injustice can no more exist apart than the two sides of the same coin. In this case arguments based on “fear” are used in the name of reason and prudence to justify injustice.

THE NATIVE VIEW.

18. Fortunately we can state the Native view authoritatively in terms of the Resolution passed by the Government Native Conference in Pretoria, on the 3rd November, 1926, to which there were only three dissentients out of forty-four delegates nominated by the Government. (Native Affairs Commission Report 1925/6, page 68.) The resolution reads as follows:—

“In view of the strong and unanimous feeling expressed by the Transvaal, Free State and Natal representatives against the abolition of the Cape Native franchise as proposed under the Representation of Natives in Parliament Bill; and

“In view also of the fact that the proposed Native legislation affecting franchise emanates not from a desire to grant franchise to Natives in the Northern Provinces, but rather from the mistaken fear on the part of the European public that white civilisation and white supremacy will be endangered.

“This Conference finds itself unable to consent to this measure which is directed against the future political rights of the people of the Union.

“It rejects the Representation of Natives in Parliament Bill.

“Alternatively it asks the Government to initiate a small beginning of a grant of franchise rights to the Northern Provinces’ Natives, but leave the Cape Native franchise untouched.”

Similar views are expressed in the evidence given by the Johannesburg Joint Council of Europeans and Natives before the Select Committee (S.C. Report, pages 176/190). The principle underlying these statements is that of “equal rights for all civilised men.”

19. We have shown that the Cape franchise in no way "endangers white civilisation and white supremacy." It was granted more than 70 years ago and has never been abused. Indeed, we consider it to be the very thing that the Prime Minister is seeking:— "The necessary provision for the transition period, the bridge for the Native leading across the state of semi-barbarism on the one hand to civilisation on the other, a bridge that the Native can cross during his period of development" (Malmesbury).

TWO POLICIES.

20. Before us we have two policies, the one laying down that "there shall be no equality between white and black either in church or state," and the other demanding "equal rights for all civilised men." the first based upon a permanent colour bar, the second postulating that this barrier may be overcome by "civilisation." What is the meaning of the word "civilisation" in this connection?

21. All applicants for votes have to prove their possession of the necessary qualifications by an objective and measurable test. It matters not what this test is so long as it is definitely measurable and is applied to all those who claim votes. It is for Parliament to decide **what qualifications are necessary for full citizenship in a civilised community**, and everyone, irrespective of race or colour, should be free to qualify.

22. In this case of the Cape Franchise certain Natives have qualified for citizenship, and, having succeeded, it is clear that they conform to the standards required of "civilised" men. The grossest injustice would be done if they were deprived of their votes, or if the path by which they have reached "civilisation" were closed to their brothers and sons. The bridge is there and all qualified men should have the right to use it.

NATIVE OPINION ON THE CAPE FRANCHISE.

23. The Report of the 1926 Native Conference, published by the Native Affairs Commission, shows how definite Native opinion is on this matter. (N.A.C. Report, 1926, pp. 56/68.)

Cape—Councillor Sakwe: "It would take too long to recapitulate the privileges due to the franchise. Their progress was largely due to this. They told their children to learn to build better houses and to be thrifty, all with the object of getting the vote so as to escape

the curfew regulations, be able to walk on pavements and gain the respect of others. The Bill would kill all these incentives to progress. . . .

“ As a man from the Cape he was glad that the delegates from the other Provinces had expressed themselves against taking away the Cape franchise.”

Professor Jabavu: “ They could not compromise on the Cape franchise. . . . The Cape Native feels a sense of injury from the Prime Minister’s proposals. The obvious application is that he does not wish the Natives of a lower status to rise to the higher status of the Cape, but to bring the latter down to the lower. . . . The policy is to bring down the best to the level of the worst. . . . The Cape Natives had to defend that heritage, for it was held by them not for themselves alone but for their children, and for the future development of the other Provinces. . . . If the Natives were driven to believe that injustice was being meted out to them then they might be a real danger to the whites. . . . The safest policy was to prove and convince the Natives of the justice of every proposal and to give them liberty to develop to the best of their ability. . . . If injustice were committed to-day it would result in a legacy of discomfort, suspicion and ill-will.”

Transvaal—R. V. S. Thema: “ If it were true that the Natives in the Transvaal would get the Native vote in fifty years then the Natives in the north were prepared to wait that length of time. They could not in justice agree that the right given to the Cape should be taken away.

“ The Conference was asked to help the Government to violate the Constitution of the country. . . . In this particular case they were **not** going to concur. . . . Everything revolved on the fact that the Government wished to take away the Cape vote. There can be no compromise on the Cape vote.”

Transvaal—Chief Zibi: “ Mr. Thema had voiced the views of the Transvaal Natives by saying they would wait fifty years. They rejected the Bill, for they were asked to take a retrograde step.”

Natal—Chief Tombela: “ The Natives looked upon the Cape as the most enlightened Province. It was the hope of Natal and the Natives there did not want the franchise taken away from the Cape. The seven members would be useless. They would be knee-haltered dummies and mummies. The Cape franchise should remain and the vote extended to Natal, the Transvaal and the Orange Free State.”

Natal—Rev. Kuzwayo: “ He did not want the Cape Natives to be deprived of their franchise, which they regarded as a ladder for the Natives’ success.”

Orange Free State—Gonyane: “ The principle of the Bill was bad. The Cape franchise should remain and the franchise in some shape be extended to the north. No Native outside a lunatic asylum would agree to the Cape vote being taken away.”

Orange Free State—Chief Fenyang: “ The Orange Free State Natives had always looked forward to the time when they would get the same vote as the Cape, and they were not prepared to agree to anything which would result in the Cape franchise being abolished.”

SEPARATE NATIVE FRANCHISE.

24. We view the Prime Minister’s proposal for a separate Native franchise with alarm and regret. In our opinion the Cape franchise as it exists to-day embodies a vital principle, namely, that the interests of all sections of the community should be regarded as identical, and that the more these interests are correlated the better for the State.

25. We are convinced that any dual franchise will increase racial antagonism and that the longer it lasts the more powerful for evil it will become and the wider will be the cleavage between Europeans and Natives.

Not merely in the country but also in Parliament it will foster the belief that the two races are in opposition to one another, and the co-operation that is essential to the progress of South Africa will become impossible. If the proposals of the Prime Minister become law the steadying influence of the Cape vote will be lost. Instead, we shall find that the country will become more and more inclined towards one-sided and exclusive legislation. European interests will more and more dominate Parliament. The interests of non-Europeans will be isolated from those of the country as a whole. Native representatives will be driven to take undue advantage of party differences to snatch benefits for their constituents and will be unable to regard vital issues from a national standpoint. It will be fatal if European interests and Native interests are separately represented. Every member of Parliament should have the interests of all South Africa as his province, and these interests can only be protected by representatives elected on a franchise that knows neither race nor colour.

NOTES ON DIAGRAMS.

A.

1. This diagram plots all the figures given in Appendix B to the Select Committee's Report and shows to scale the totals of European and Native votes.

2. The distance between the curves on any vertical line gives the majority of European over Native votes in any year from 1903 to 1926, and it is obvious that this majority is steadily increasing.

3. The shape of the European curve (black) justifies the belief that the dotted line gives with some accuracy the rate of increase of European voters for future years as well as for the past; and the Native curve indicates that the rate of increase denoted by the Native line is not likely to be exceeded. It is therefore probable that the influence of the Native vote will be a diminishing factor in South African politics. The lower rate of increase for 1923/1926 is significant.

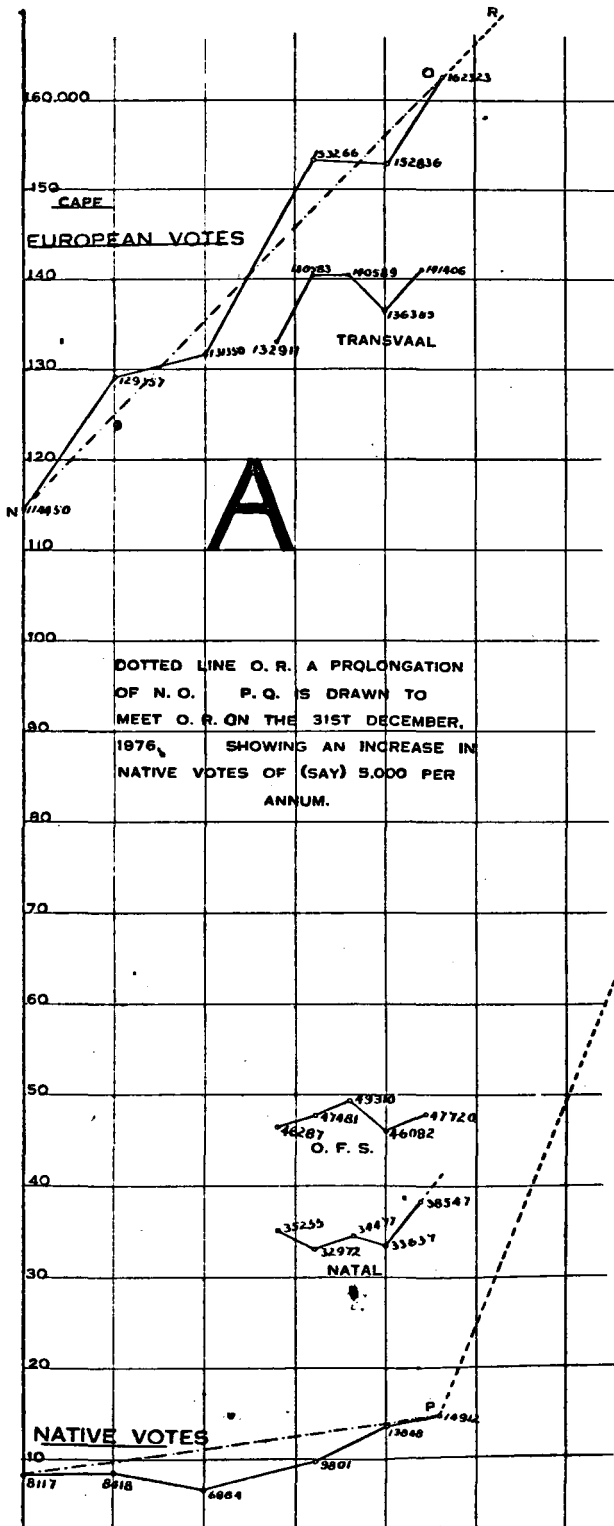
4. The European dotted line is produced and the Native dotted line is drawn so as to meet the European line on the 31st December, 1976. It shows that, supposing to-day's increase of European votes continues for fifty years, native votes will have to increase at the net rate of 5,000 a year to overtake it in fifty years' time, as against the present rate of increase of 295 per annum.

5. The Native curve is a curious one, and appears to indicate that some marked change took place in the conditions of Native life during the period 1903/26. About the year first mentioned, economic pressure made itself felt in the Cape Province, and we suggest that this curve may be the result of Cape Natives coming to work in large numbers in the Transvaal Gold Mines.

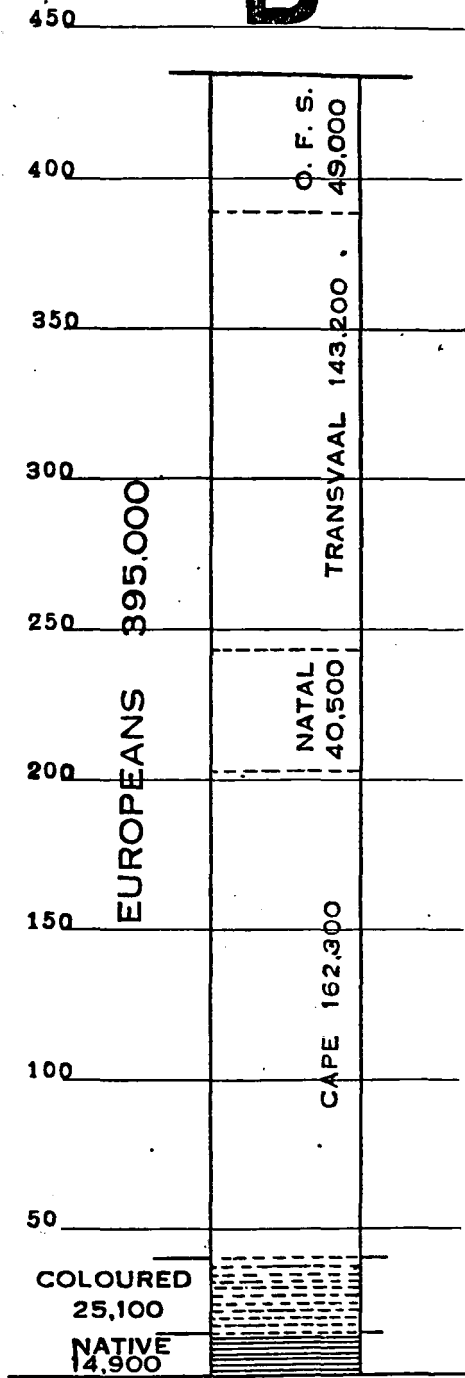
6. The figures for the Transvaal, Free State, and Natal appear in Year Book 8, pages 119/21.

B.

This diagram on a smaller scale is paragraph 6 of the Memorandum in tabular form.



B



SHOWING RELATIVE PROPORTIONS OF EUROPEAN, COLOURED AND NATIVE VOTES.

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4

SOME REFLECTIONS ON POPULATION.

BY

SENATOR A. W. ROBERTS, D.Sc.,
Native Affairs Commission.

JOHANNESBURG :

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Read 6 July, 1926.

INTRODUCTION.

In this paper I shall venture on a few reflections bearing on the profoundly interesting problem of population. I shall not enquire too exhaustively into the principles of population: that would require not a brief essay but a volume. I shall only, in the briefest manner, touch on the intimate relation of population to national conditions.

It is the quantity of population rather than the quality that will be considered. To my mind the quality of a people is too elusive to submit to clear definition, often too latent to measure, too vague to delineate. I do not mean to minimise the value of intelligence tests: but they are, at best, very uncertain, even if not unreliable. The great test of quality in a race is time, that final solver and settler. If a race persists through long periods of trial and centuries of progress, through decades of success and years of misfortune, then there is in its spiritual composition the quality and substance of unchanging greatness. But, as has been stated, the one supreme test of quality in a race is time, and time we have not got—at least to apply to nations at present existing.

So in this investigation, or rather in this record of reflections, I shall deal mainly with the numerical aspects of the problem, touching but briefly and only when they concern and explain the statistical position, on the principles and conditions, the physical qualities and psychological emotions that control population.

STATEMENT OF THE NUMERICAL PROBLEM.

Man must have existed on the earth for at least a hundred thousand years. Of that long span of time, long when humanity is concerned, we have only the most meagre of records—part of a skull here, a bone there: some stone implements in this cairn, a few flint weapons in that cave. But we know that, during those remote prehistoric ages, types of men came on the scene, had their day and then passed, unknown and unrecorded. No

doubt populations rose and fell as they do to-day, for the conditions which regulate population remain unchanged. The fundamental laws which control man and nature, germs and constellations, remain untouched by time. They are inviolable and immutable.

Population is, as it were, a vast ocean on whose surface waves play, currents flow, tides rise and fall. But underneath this constant rhythmic change, this ebb and flow, this majestic surge and swell, there are definite controlling laws. Nations do not increase incontinently or decrease discordantly. Their growth or decay is conditioned by race qualities and race conditions. The same forces which operated to produce a Nineveh or a Babylon, an Egypt or a Persia, a Greece or a Rome operate to-day; only the material on which they operate differs so much from age to age, from race to race, from nation to nation that, as yet, we have been able only vaguely to co-ordinate their results as ascertainable from historical or statistical records. As already insisted on, the facts of population most readily obtained are those of numbers.

It is seldom that a race, or a people alters suddenly. In nature there is rarely a *per saltum* change. Variation is slow, systematic and conditioned. Thus, in population there are three types of growth or decay. (a) There is the steady increase in numbers where the rate of increase remains unchanged. To give a simple illustration: Take a city of 2,000 inhabitants increasing in numbers yearly 5 per cent. At the end of the first year the population would be 2,100. Leaving out fractions, the growth might be stated thus:—

Beginning of 1 year	...	...	2,000
" " 2 "	...	...	2,100
" " 3 "	...	...	2,205
" " 4 "	...	...	2,315
" " 5 "	...	...	2,431
" " 6 "	...	...	2,552

In a little over 14 years the initial population of 2,000 would double itself. Several of the Colonies have increased at even a greater rate than this during the earlier years of their history, when land was plentiful, immigration was prodigal and hopes were high. But it would be clear that such a rate of growth could not continue. It would mean that, in a thousand years, this city of 2,000 people would grow to such dimensions that there would be over three thousand million persons on every square yard of the earth's surface. Long before the thousand years were reached, Nature would step in and call a halt to such increase. To-day no civilised nation increases at this unchanging rate.

(b) Then there is the type of population where the rate is steadily decreasing, or, as is rare in these days, steadily increasing. Take again our city of 2,000 inhabitants: suppose that the

increase in the first year is 5 per cent., in the second 4, in the third 3 and so on, decreasing by one per cent. each year. The numbers then would be:—

Beginning of 1 year	...	...	2,000
" " 2 "	...	...	2,100
" " 3 "	...	...	2,184
" " 4 "	...	...	2,250
" " 5 "	...	...	2,295
" " 6 "	...	...	2,318
" " 7 "	...	...	2,318

This is the condition of every civilised country on the face of the globe to-day. It is especially the case in England and Scotland where, after 1870, a steady decrease in rate set in. As is well-known, France has reached the sad condition where the annual increase is practically zero. America, Canada, Australia, New Zealand and certainly South Africa all show a declining rate. This declining rate is, for some unaccountable reason, a world-wide phenomenon.

(c) Some countries exhibit a secular variation in rate. That is, after a period of decreasing rate of increase, an increasing rate sets in only to be followed again by a decreasing stage. In a waving ascent the gross population of Europe has moved upward from the first to the twentieth century. The main stages have been:—

A.D.			
0	...	...	5 millions
1000	...	...	10 "
1450	...	...	50 "
1750	...	...	125 "
1800	...	...	200 "
1900	...	...	465 "

But far more dependable results are obtained from an examination of the population statistics of England, Scotland, America and Cape Colony. The variation in the rate of increase of the population of England is completed in 70 years, and of Scotland in 72 years. The wave length of the population curve in America measures 80 years, and there is this extraordinary circumstance about the curves of America and Great Britain that when the one wave is at a maximum the other is at a minimum, proving that the flexures in the former are due to immigration from the latter. When the population of America slowly rose, the population of England, Scotland and especially Ireland synchronously fell, showing that it was a transference of souls from the one land to the other that brought about the changing rate. An examination of the immigration and emigration statistics amply proved this.

Dealing with the population of the Cape Colony, and we have been able to go back two centuries, the curve is fulfilled

in 169 years. Of this secular ebb and flow there is no mistake as far as the past is concerned. Whether it will be continued in the future is another matter.

The population statistics of Natal indicate a rhythmic change completed in 51 years.

I am convinced, from a consideration of the population data of many lands, that this secular phenomenon is general. Such phenomena are in no way out of relation to other similar pulsations. To and fro in a centuries-long sweep, the magnetic pole varies from side to side. There are the secular variations of the sun spots; the slow rise and fall of sea-shores; the certain alterations in climate; the cyclical change in flora and fauna. Nature thus brings an endless variety of circumstance to our wonderful shores.

The whole of the changes in population of civilised lands falls into one or other of these three categories. Those of England, Scotland, Ireland, Germany, Canada, United States, Australia, New Zealand and the Union of South Africa exhibit a steadily declining rate of increase. All, I think, are influenced by a secular variation. The rise and fall of the rate of England, Scotland, Ireland, America, Cape Colony and Natal is so marked as to leave no room for doubt.

The populations of France, of Spain, of India and of China have slowly reached a stationary stage. Unless some change in natural aspiration and character, in economic conditions, in psychological response to a great need takes possession of some of these lands, their doom is certain.

Of all the lands on the globe that exhibit virility and growth at the present time, there is none equal to the United States. In another century, allowing for the present rate of increase, the population of this land will be equal to one thousand millions.

But perhaps the problem, as applied to different lands and diverse peoples, will be best exemplified by taking the countries that afford clear instances of the working of population laws one by one.

VARIATION IN POPULATION OF CERTAIN COUNTRIES.

ENGLAND.

It is held that in 1090, at the completion of Doomsday Book, the population of England could not have been far from 1,500,000.

A poll tax levied in 1377 would seem to indicate a population of 2,500,000, but the population in the century which preceded this must have been considerably affected by the Black Death and the plague which swept over Europe during those years. Other values are:—

1415	...	...	3,000,000
1509	...	...	4,000,000
1528	...	...	4,356,000
1603	...	...	5,000,000
1625	...	...	5,500,000
1700	...	...	5,475,000
1714	...	...	5,750,000
1750	...	...	6,467,000
1760	...	...	7,000,000

The drop between 1625 and 1700 is accounted for by the civil wars and the plague which followed.

These earlier figures can be explained by the theory of a slow rate of increase, 0·23 per cent. per annum, an increase which would double the population every 300 years. Had this rate continued the population of England would, to-day, be in the neighbourhood of 12,000,000. But with the close of the eighteenth century there arose over England, Europe and America a new epoch in history. The beginning of the nineteenth century saw the birth of industrialism. The invention of the steam engine and of all kinds of machinery as an auxiliary to manual labour, increased the output of mills and factories tenfold. Later on in the century, railways, penny post, telegraphs, steam ships, telephones, motors, made the period from 1801 to 1901 a *centurium mirabile* in the history of mankind.

The population rose from 8 millions in the first year of the nineteenth century to 32 millions in the first year of the twentieth century. In the first forty years of last century the population of England doubled itself, a unique record for a thousand-year-old nation. The birth rate rose steadily, the death rate fell, and, notwithstanding immigration from its shores, the evening of such expansion seemed far off. But the noon of this phenomenal increase was reached in 1870, after which the birth-rate steadily fell and is still falling. But as the death rate also fell sympathetically, the population still continued to increase, but more slowly. Between 1911 and 1921 England added only two million to the total of her population. Indeed, in 1921 the rate of increase was less than one per cent. It must be remembered, however, that the Great War is accountable for a fall of one and a quarter millions below the normal.

SCOTLAND.

It is very difficult to arrive at any reliable estimate of the population of Scotland prior to the opening years of the nineteenth century. It was certainly less than a million at the Union of the two Kingdoms. The poverty of the people had passed into a proverb. But, as with England, the nineteenth century witnessed the dawn of another and a brighter day.

In sixty-five years the one and a half millions of people with which the century began had doubled itself, and that in spite of

the continuous emigration to Canada, New Zealand, America and South Africa. To-day the population is five millions, but against this must be set a steadily decreasing birth-rate, a constant emigration, and the slow denuding of the rural districts. In the years between 1911 and 1921 Scotland has added only 120,000 to her numbers. At this rate it will take three hundred years to rise to ten millions.

But while Scotland in thus poorer by the yearly loss of her sons who find homes in distant lands, I do not think that the world is the loser, as on other shores they seem readily to obtain opportunity for the advance and for the wealth denied them in their own land.

IRELAND.

What can be said about this distressed and distressful land? Her variation in population indicates the agony through which she passed during the last hundred years.

In 1672 the population of Ireland was 1,320,000. By 1791, a hundred and twenty years later, it had reached 4,200,000. At the opening of the century it stood at 5,000,000.

The following figures are illuminating:—

1791	...	...	4,200,000
1800	...	...	5,000,000
1821	...	...	6,802,000
1831	...	...	7,767,000
1841	...	...	8,197,000

In the period between 1791 and 1841 Ireland had practically doubled her population, and then came the tragic descent. In the next fifty years, 1841-1891, it halved its population. By 1861 the eight millions had decreased to six. By 1881 it had reached 5 millions; at the close of the century it stood at a little over 4 millions.

For the last quarter of a century it has been practically stationary, the figures being:—

1901	...	...	4,459,000
1911	...	...	4,390,000
1921	...	...	4,400,000
1924	...	...	4,439,000

This is no place to discuss this tragedy. As is well-known famine, lack of employment for the increasing population, emigration, sporadic rebellion—all combined to bring about the disaster.

AMERICA.

During a hundred years, from 1790 to 1890, the population of the United States has increased at the extraordinary rate of almost three per cent., or 2·8 to be exact. In that time the numbers have increased from 4 millions to 62 millions. As

already stated, at this rate, before the century has run its course there will be a thousand million citizens in the United States, half the present population of the whole earth.

The rate of increase since 1890, in sympathy with that of every other nation, steadily slowed down and now stands at 1·4 per cent. or half the rate in 1890. This means that to-day the population is doubling itself in fifty years, not twenty-five years as was the rate from 1790 to 1890.

When the population statistics of the United States are subjected to rigorous analysis, a secular variation appears synchronous almost with the English and Scottish returns, but in the opposite direction, showing that the rise of one and fall of the other is due to immigration.

The Negro Population in the United States has shown a very steady decline in rate ever since the beginning of the nineteenth century. The population in 1800 was exactly one million: to-day in 1926, it is eleven millions. Last century began with an increasing rate of 2·5 per cent. and ended with 1·5 per cent. It now stands at 0·9 per cent., and is steadily decreasing.

If this decrease continues, by the end of the century the negro population in the United States will be stationary, having reached its high level mark of 15,000,000. Granting the present conditions to the whole population of the United States, the close of the century will witness, as already stated, the vast population of 1,000,000,000 souls.

CANADA.

The population of this country has never declined. The following figures show this advance:—

1700	...	...	15,500
1800	...	...	250,000
1825	...	...	800,000
1850	...	...	2,200,000
1900	...	...	5,100,000
1925	...	...	9,300,000

The rate per cent. of increase was in the neighbourhood of 5 in the middle of last century, an increase which, in a few centuries, would fill the world with Canadians. This rate of increase fell to 1 per cent. at the close of the century, but since 1900 it has been steadily rising, due almost entirely to immigration. In this aspect it is unique: it is the only civilised land that shows an increase in rate since the present century opened. Fortunately, the great Canadian spaces stand open to this increase. They will one day hold not ten millions but a hundred millions, with abundant food and work for all. The present is the place for a brief reference to the Indian population of both Canada and the United States. Steadily declining to about 1880,

the numbers then, due to more settled and more peaceful habits on the part of the Indians, began increasing with a very definite persistence. To-day their numbers are over half a million.

AUSTRALIA.

This sub-continent has shown an extraordinary increase in population during the century and a quarter since Cook first saw its shores. The following figures mark this advance:—

1800	...	...	5,000
1820	...	...	34,000
1840	...	...	190,000
1860	...	...	1,146,000
1880	...	...	2,231,000
1900	...	...	3,765,000
1920	...	...	5,411,000

The rate of increase, which at the beginning of the century was ten per cent., indicating that the population doubled itself every seven years, fell at the close of the century to 2½ per cent., indicating a doubling every 30 years. Had the higher rate persisted through the century, the population of Australia to-day would be over a hundred millions. There has been a vague indication of an increase in the rate since 1910. It now stands at 2 per cent. The lowest figure was reached between 1900 and 1910. During these years immigration into Australia was at a very low point, indeed, emigration, especially to South Africa, seemed to prevail.

NEW ZEALAND.

The following stages indicate the population progress of this country:—

1841	...	...	5,000
1861	...	...	99,000
1881	...	...	490,000
1901	...	...	773,000
1921	...	...	1,218,000

In the ten years from 1841 to 1851 the population of New Zealand increased ten times, and between 1841 and 1921, 244 times. Since 1900, however, the rate has steadily decreased, notwithstanding the fact that the death-rate in New Zealand is the lowest in the world, 9 per thousand. There seems a great difficulty in getting people to die there, a fact which would soon fill the land were it not that there seems an equal difficulty in bringing folk into the world.

The Maoris of New Zealand show a very distinct, but very slow rising population rate since 1881. Before that date their numbers were distinctly falling. Since 1881 they have been rising at the rate of 0·75 per cent. per annum. Their gross numbers to-day are 54,000.

SOUTH AFRICA.

Exact population statistics for the earlier years are very difficult to obtain, especially is this the case with the Northern Provinces. Diligent delving into old records and careful sifting of the material contained therein has enabled a very near estimate of the truth to be ascertained.

Taking *Cape Colony* first, research has enabled us to go back over two centuries in time. The following may be taken as a close approximation to be the true figures:—

A.D.			
1690	...	...	1,330
1765	...	...	8,630
1790	...	...	15,000
1806	...	...	26,000
1820	...	...	42,000
1850	...	...	95,000
1875	...	...	241,000
1891	...	...	380,000
1901	...	...	517,000
1911	...	...	582,000
1921	...	...	650,000
1926	...	...	705,000

These figures indicate an average increase of 2·8 per cent. The highest increase was reached seventy years ago, when it stood at 3·7 per cent. The average now is 1·9 per cent., and is very slowly falling. The Cape European figures indicate a cyclical variation in rate. We are at present passing, I hope, through the minimum phase.

Natal.—The figures for Natal may be stated briefly:—

1840	...	...	6,000
1850	...	...	9,000
1860	...	...	12,000
1880	...	...	25,000
1891	...	...	48,000
1901	...	...	95,000
1911	...	...	98,000
1921	...	...	137,000
1926	...	...	158,000

The numbers indicate the very high average increase of 4 per cent., showing that the whole population of Natal doubles itself every 19 years. Between 1883 and 1889 the population of Natal increased 6·7 per cent. To-day the rate of increase is exactly the same as that of the Cape, namely, 1·9 per cent. Natal exhibits also a cyclical variation, and it is indicated by an analytical consideration of all available figures that the population has just passed through its minimum phase.

The *Orange Free State*.—The following are steps in the the increase of population of this State:—

1845	...	...	2,000
1865	...	...	15,000
1881	...	...	63,000
1891	...	...	81,000
1901	...	...	130,000
1911	...	...	175,000
1921	...	...	189,000
1926	...	...	202,000

These figures indicate that the European population of the Orange Free State has been increasing in the average of 3.25 per cent. The present average rate is only 1.5 per cent.

The *Transvaal*.—The following numbers represent the growth in population of this Province:—

1855	...	...	15,000
1880	...	...	40,000
1890	...	...	114,000
1911	...	...	421,000
1921	...	...	543,000
1926	...	...	607,000

The average increase here is 5.9 per cent. The present rate of increase is 2.2 per cent.

The Bantu Population in South Africa.

Several circumstances militate against the accurate determination of native statistics. There is the constant movement of the population city-ward. This exodus from the village to the town is a marked phenomenon of these later days. Then there is the difficulty of obtaining exact information. Too often the enumerators are both unwise, unsympathetic and lacking in patience.

The following, however, may be accepted as a near approximation to the truth:—

1891	...	...	2,504,000
1904	...	...	3,484,000
1911	...	...	4,019,000
1921	...	...	4,699,000

The average increase indicated here is 2.4 per cent. The present increase is only 1.7 per cent, and is steadily decreasing. In some parts of South Africa the native has ceased to increase.

THE PRINCIPLES UNDERLYING POPULATION CHANGES.

What are the principles which lie behind these variations in numbers? Why does one race, one age, exhibit a stationary stagnant state; why does another suddenly witness an unparalleled expansion? What lies beneath these strange cyclic move-

ments of population of which we have spoken? Why, when one death-rate steadily falls, does the birth-rate change sympathetically in the same direction?

These are questions that we cannot answer fully. The laws which regulate organic change, which segregate species, which determine sex, which govern the rise and fall of nations are too deep seated for man yet to define, or even possibly to understand.

While not attempting to state the laws which govern mutations of population, we may state some of the conditions that modify its changes. A few of these are self-evident and need no argument for their support. On others there will be differences of opinion as to the extent of their influence. I shall now deal with these conditions in what I consider the order of their potency.

Climate.—This is the least potent, I consider, in its influence upon population. Still, it has a definite effect. Increase must naturally be slow when the death-rate due to disease, misadventure and ignorance is high.

At the Poles or in the Tropics it cannot be said that the conditions are such, or can be such for another thousand years, as to make living an easy matter and dying a difficult adventure.

No doubt modern science modifies beneficially the deadly work of climate, as witnessed in Central America and Central Africa. My memory goes back to a time when the shores of Lake Nyasa, the Isthmus of Panama and the low lying coast of West Africa were considered the white man's grave.

Wars.—Some wars take a great toll of human life. There are scholars who hold that the incessant wars that Rome waged in every part of its world drained the life-blood of the nation, destroyed the best elements in the race, and so prepared the way for the decline and fall of the Empire.

It is believed that the Thirty Years' War denuded Germany of one-third of its fighting men. And so with all the great wars and military upheavals of modern times. The wars of Chaka destroyed no fewer than one and a half million natives and reduced many portions of native South Africa to a solitude.

The 1921 census in England showed a population one and a quarter millions below the normal, and although nature is making a supreme effort to repair this terrible loss, the places of these gallant souls can never be filled. Their passing has meant empty cradles and unmarried women for a generation to come.

Disease and Disasters.—Smallpox in the eighteenth century, diphtheria and consumption in the nineteenth, influenza, heart disease and cancer in these days are far more deadly than war. The influenza epidemic in 1918 took more victims in four months than the Great War took in four years.

Some Chinese floods are responsible for deaths equal to the whole population of South Africa, white and black.

It seems a strange circumstance that, when an agrarian industry begins to flourish exceedingly, a devastating blight descends, or when men begin to multiply, nature steps in with some malady. I do not wonder why so many savage people picture the gods as malevolent, or why even intelligent people at times touch wood, or deem it unsafe to be too confident or too happy.

Occupation.—How men live has a very great influence on population. A race of hunters must have room. If their wanderings in search of game are restricted they begin to dwindle. Hunting folk also must be strong, agile, cunning in their craft. There is no room for the aged and feeble, the sick and the maimed. They then become the hunted. And so when a hunting people comes in contact with civilisation in the way of boundary fences, their day is over.

Thus the Red Indian, the Bushman, the Australian aboriginal have practically disappeared, not by the weapons of the stronger race, but because their conditions of life set them aside.

Next to the hunter comes the pastoral people. As in the days of Abraham and Lot they must have room. When room is not there, they also pass as the Hottentot has passed, and as the Bondel and the Richter is passing.

Then the farmer, too, must have room. He must have a certain definite area. If you divide the amount of land scheduled as Native Areas the population of the greatest farming class in South Africa, the Bantu, you will find that it amounts to 3·2 acres per head. It is to this deficiency that I partly attribute the dwindling rate of increase of the native people. It is this deficiency that is driving him, often against his will, to the industrial centres.

This is an age of industrialism, and so long as there is room to build skywards, there is no population pressure. One has only to think of Germany, of America, of England. The population of these lands has increased ten-fold in ten decades. To the demand for more hands to supply the newly discovered machinery, Nature answered by a prodigality of increase never before experienced, and so there has grown up, almost in a night, mammoth cities, the hives of our swarming industrialists.

But far more influential than any of these to modify population is the physiological and psychological disposition of a people, which shows itself in the customs, habits and attitude of mind of a people. Thus, no self-respecting Bantu woman will have a child oftener than once every three years. With some tribes in South Africa the period is four years. Among the more backward peoples, there is no care for the feeble.

child, an echo of the day when such unwelcome additions were killed. A condition of comfort and affluence diminishes the desire for children, more especially with women. Thus a psychological state of mind is set up which acts deterrently on race production in the long run. The present steady decline in the birth-rate in almost all civilised lands has its sources in this disposition of spirit, a craving after ease, comfort and affluence. Troops of children decrease motor tours, make dancing difficult, and cabaret evenings an impossibility. Beneath all this is Nature itself, watchful, ever wise and ever faithful to its high trust.

Is a race unworthy to live on, then it sows the seeds of death. Is there the need for men—then men will be forthcoming. Are there too many mouths to fill, then the thinning down begins. And so the Dinosaur and the Plesiosaur pass to give room to more suitable creatures. As the ages race on, Siberia becomes too cold for the hairy mammoth and so he gave up the unequal struggle. Thus, one type of civilisation gives place to another more fitted to aid man in his upward march, for we rise on stepping stones of our dead past to higher things. Behind this march, this adjustment, is Nature.

I can best illustrate the working of this great and wise force which I have, perhaps unscientifically, personified by a single and remarkable instance of adjustment. In twenty-five of the principal states of the world to-day more boys die in infancy than girls. Dr. Saleeby states that the proportion has increased greatly of late; eight-fold is my own judgment of this important death-rate. No explanation, that is, no sufficient explanation, has been given for this disparity. To make up the loss Nature sends more boys into the world than girls.

TO WHICH THE PRECEDING TENDS.

For many years my mind has been drawn irresistibly to the problem of population. It seemed to me to be one of the avenues of helpful thought down which one might travel profitably.

I was the more brought to this outlook by the cry which echoed so weirdly and so persistently in my youth—"The Yellow Peril." It seemed to me then, as it does now, how stupid a cry it was. We were increasing in those days at ten times the rate of the yellow people, with one single exception, Japan. To-day the white race out-numbers the yellow race and no one ventures upon the croaking cry, "The Yellow Peril."

But in my old age another cry has arisen, "The Black Peril." Once again I felt how unreasonable it was. The white population of the British Empire and of America alone is slightly greater than the whole black population of the world. The one race is increasing at eight times the rate of the other.

No one with any estimate of the present, any vision of the future, can reasonably hold the view that the black man at any stage in the world's history can be a menace to the progress and expansion of the white race. To harbour such a thought indicates not only a lack of faith, but, what is far worse, and without which faith is a poor support, a lack of knowledge.

To-day the population of the world stands thus:—

Whites	...	...	580 millions
Yellow	...	...	500 „
Brown	...	...	460 „
Black	...	...	180 „
Red and Others	...	...	50 „
Total	...	...	<u>1,770 millions</u>

With the single exception of Japan, there is no other than the white race showing signs of growth, of vitality and of progress. Japan's renaissance is due almost entirely to the nation entering upon an industrial age. When that energy has spent itself, and there are signs that it is already doing so, the race will again fall back into the somnolence of the immemorial East.

I do not bring forward this paper as in any way an exaltation of race. To do so would be vanity and most reprehensible vulgarity. I offer this paper as a contribution to knowledge that is much needed these days, as an aid to a certain quietness of mind, to the furthering of a kindly consideration of less favoured people, to a definite assurance in spirit of our own high calling. This latter is ever the hall-mark of a great people.

JOHANNESBURG JOINT COUNCIL

of
EUROPEANS AND NATIVES

GENERAL HERTZOG'S

SOLUTION

OF THE

NATIVE QUESTION

MEMORANDUM No. 1

NATIVES LAND ACT 1913. AMENDMENT BILL 1927.

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NATIVES' LAND ACT 1913, AMENDMENT BILL 1927.

1. Any utterance on Native affairs at the present time must be made with great seriousness and care. The whole of the Native policy of South Africa has been thrown into the melting pot by the Prime Minister's action, and the four Bills he has placed before the country contain proposals of the most far-reaching character intended to crystallise this policy, which in many respects remains still undetermined, into certain definite forms.

Attitude of
Joint
Council.

The Prime Minister does not doubt that the definition of such a policy is both possible and necessary, and the Bills he now proposes set out his long considered scheme for determining the Natives' position in South African Society.

The Joint Council has examined these Bills carefully and without prejudice or hostility, and regrets that it is compelled to view them with disappointment and alarm.

2. The four Bills are "The Representation of Natives in Parliament Bill, 1927," "The Union Native Council Bill," "The Coloured Persons' Rights Bill, 1927," "The Natives' Land Act, 1913, Amendment Bill, 1927," and we deal with the last of these in this Memorandum.

The four
Bills.

3. The questions we shall try to answer in respect of all these Bills are:—

- (a) Are the Bills framed with due allowance for the essential factors of Native life and for the conditions under which the Bantu people of South Africa live?
- (b) Are they practical and are they just?
- (c) Is Native progress encouraged in these measures, and are they aimed at the development of the Native to a higher state of civilisation?

Questions.

4. Before attempting to answer these questions for the Land Bill, we must shortly describe the conditions under which the Bantu people live in South Africa to-day. They can be classified as follows:—

Classes of
Natives.

- (1) Those living in Native territories and locations under tribal conditions and, for the most part, with communal tenure, who, in order to obtain funds to purchase their necessities, come out in large numbers to work for the European for wages.*

* "At any given moment nearly half the able-bodied men . . . are earning the money for the support of their families in areas outside these Territories."—LT.-COL. E. H. W. MULLER: Address on "The Administration of the Transkeian Territories," before Empire Parliamentary Delegates, 1924.

- (2) Those living on farms owned by Europeans either as squatters,† labour tenants or full-time servants. Only a minority of these receive money wages, and in almost all cases these wages are small. Many squatters and labour tenants work for wages for part of the year away from their homes.
- (3) Those living in towns who work for wages, including in addition to those whose homes are in Native territories, a number for whom tribal ties have ceased to exist and who have no other home than their town lodging.
- (4) The educated Native—teacher, minister, farmer, clerk, etc.—who has outgrown tribal conditions and lives according to civilised standards as far as his limited resources will allow.

These different classes are affected by the Bill in different ways, and to an extent varying roughly according to the extent of their separation from their traditional tribal life. The effect of the Bill is to handicap every class of the Native population in their attempts to rise in the scale of civilisation. This will be made clear as we proceed.

Historical.

5. The demand for keeping European and Native land holdings apart existed before 1913, and prior to this date the purchase of land by Natives in European areas had caused apprehension, although the extent of such purchases had been exaggerated and large areas formerly owned by Natives had been acquired by Whites.

Act of 1913.

6. The Act of 1913 proposed to separate Natives and Europeans by demarcating areas within which all land should eventually come to be held solely by one race. The goal was a chessboard based on the ownership of interests in land. The schedule to the Act sets out certain areas (hence called scheduled areas) in each province, which were destined to become Native areas. But the Act recognised that these areas were quite inadequate for Native needs, and provision was made for the delimitation of additional Native areas by a Commission. This Commission was appointed under the chairmanship of Sir William Beaumont, and at the close of its investigations in March, 1916, recommended various additional Native areas and increases of those scheduled to the Act.

Beaumont areas.

7. The Native areas delimited by the Beaumont Commission were strongly objected to both by Europeans and Natives, with the result that the Native Affairs Administration Bill of 1917, to which they were scheduled, was not proceeded with, and five Native Land Committees, two for the Transvaal, and one for each of the remaining Provinces, were appointed to reconsider its recommendations.

Provincial Committees.

8. They reported in due course, and the Native Affairs Department acted on these Committee reports to the extent that Natives were allowed to buy land in the additional areas recommended by the Committees. No

† See Appendix "B."

further action was taken by Parliament, and the Departmental practice would seem to have rested on the language of Section 1 of the Natives' Land Act which allowed any purchase of land by Native or European to take place "with the approval of the Governor-General." It does not appear that Section 4 of the Act, which authorised the expropriation of private land for Native occupation, was ever acted upon. Native acquisition of land has been confined to purchases in the open market.

9. In the Prime Minister's Smithfield speech (13th November, 1925), outlining his whole Native policy, the question of Native land is dealt with in one short paragraph which reads: "The solution is briefly as follows. In the first place provision must be made by Parliament by which the Native will be placed in the position to become possessed of the further ground which was promised to him under the Act of 1913. How this is to occur I need not now enter upon, but I may say here that this does not appear to be feasible by the unconditional acceptance of the Beaumont recommendations of 1917-18. Be that as it may, this question is not insurmountable, and a satisfactory solution for the Native as well as for the White man I hope to lay before Parliament."

Prime
Minister's
Smithfield
speech,
14th Nov.,
1925

10. Again in his speech to the Native Conference, 5th December, 1925, he added the following: "I want to see the Native in possession of the land which became his heritage under the Law of 1913, and this is part of the solution which I propose, only the details of the problem have still to be considered."

Speech to
Native
Conference,
1st Dec.,
1925.

"My plan to-day, and the only one I shall probably lay before Parliament, provides for (the removal of?) the restrictions imposed upon Natives under the Act of 1913, with reference to their acquisition of land in certain areas."

"Both European and Native will, therefore, be able to purchase or hire land with certain necessary restrictions. The Native will be placed in the position of acquiring as much land as was originally thought just by the Commission, and it will be the duty of the Government to assist the Native."

11. The new Bill has been hailed as a fulfilment of the promise inherent in the 1913 Act and apparently repeated in these speeches, that further land should be set aside for Natives; and there is no doubt that among persons who have not studied its provisions the assumption is general that if the measure pass into Law the lot of the South African Native will be materially improved. Nothing, however, seems to be more certain than that the new proposals, if carried into effect, will usher in a period of misfortune for the Native peoples unparalleled in our history.

Impressions
of Bill.

12. The land proposals in the first Section of the Bill differ radically from those of the Act of 1913, and its machinery will no longer be available. The Beaumont Commission and the Provincial Committees reporting under that Act set apart areas within which persons other than Natives

Land
proposals
not those of
1913.

should not be permitted to acquire land or interests in land. Under the present Bill only the restrictions preventing Natives from acquiring land are withdrawn and for them only so far as the "Released Areas" are concerned. In other words, the 1913 Act proposed to delimit areas in which Natives could buy land and Europeans could not, while this Bill leaves the Native exposed to European competition in the "Released Areas" without granting him any right to buy elsewhere; "Released Areas" being the additional areas scheduled to this Bill.

Farmers' Conference, 18th Aug., 1926.

13. In addressing a Farmers' Conference held in Pretoria on the 18th August last, the Prime Minister is reported as follows: "In 1913 the idea had been scouted (accepted?) of declaring certain large areas as Native areas, *but it would retard Native development if the areas were purely black.* The purpose of the Bill, therefore, was to slow down the process that had been decided upon and to give the Natives the right to buy land in certain areas. It was intended to stop indiscriminate buying of land by both whites and Natives."

Limited Native resources.

14. To anyone acquainted with the poverty almost universal among the Natives of South Africa it is clear that the purchase of land on a large scale by individual Natives cannot in generations become a practical proposition. Occasional tribal purchase will doubtless take place, but the area of Native owned land cannot be materially increased by purchase for many years to come.

Released areas.

15. We have already pointed out that under the Natives' Land Act of 1913 areas in addition to the scheduled areas were to be delimited in which only Natives could buy land, but that the Bill before us does not prevent sales and purchases between Europeans in "released areas." This relaxation will tend to keep up the prices of land in these released areas and in this way handicap Native purchasers. Incidentally it will also prove an obstacle to segregation, often proclaimed as the guiding principle of the Prime Minister's policy.

Limitations.

16. Again any released area is only open to Natives of the particular class or tribe designated in the first schedule to the Act, and the power of Natives to combine to buy land is still further limited by a clause stating that no association or aggregation of Natives, other than a recognised tribe, shall acquire land in a released area except under conditions prescribed by regulation, a recognised tribe being one recognised as such by the Governor-General.

17. These restrictions are very serious and are not removed by Section 26. Why should any group of Natives be compelled to make out a case for consideration by the Governor-General before they can acquire land, especially if this land is "their heritage under the Act of 1913"?

Further statement at Pretoria.

18. During the Pretoria Farmers' Conference above mentioned the Prime Minister also stated "that provision was made in the Bills for the employment and granting of land to Natives driven from the farms by the

labour provisions of the Bills. Detribalised Natives could buy land in released areas if they were not in larger groups than 10." We deal with employment later. The Bill contains no *grant* of land to Natives. No such concession to detribalised Natives is included in the Bill, and if it were included it would be useless unless any detribalised Native could buy in any released area. What funds are Natives, driven from the farms by the labour provisions of this Bill, likely to possess?

19. Again take the great case of the Witwatersrand, where Natives from every part of South Africa are employed and naturally form connections among those with whom they are brought into contact. Why should their rights to land be confined to the districts where they or their parents were born? Why should their associations and aggregations be frowned upon?

Witwatersrand.

20. The schedule contains one Transvaal area (No. 8, Vereeniging) described as available "for all classes of Natives." This admission justifies all that we have said, for this area is to-day occupied by Natives of different tribes, who having saved money on the Witwatersrand have bought plots of land and settled there.

Transvaal Area No. 8.

The proposal to allot particular areas to particular tribes is pressed too far.

21. Looking at the schedule of released areas as a whole, it must also be pointed out that, although the Provincial Committees appointed in 1916 have taken into account the probable increase of the Native population for the ten years then to come, this ten years has already elapsed, and, besides, no division according to tribes can be final or can stand the test of time. We cannot foretell how these areas will fill up. Basuto areas may become full while those allotted to Bakwena are still sparsely populated.

Division by tribes.

22. This, however, is for the perhaps distant future. Where these restrictions are onerous to-day is that they do not take into account the progressive Native (a large and increasing class) who has become detribalised and for whom tribal conditions are a mark of barbarism from which he has emerged. Not only will he have to seek for land in the area allotted to the tribe to which he no longer belongs, but he is also prevented from availing himself of the help of those with whom he associates, if, as is probably the case, they belong to other tribes.

The progressive Native.

23. In the debate upon the Natives' Land Bill in 1913, General Hertzog stated "the place of the educated Native is not among the white people but among his own people." There may be a modicum of truth in this statement, but it makes a great difference to the educated Native whether he lives among his own folks in a civilised Native community, or is driven back to live under tribal conditions of barbarism in a location. The latter would be a real hardship to him and a blow to civilisation.

Must not be driven back.

Native development. 24. It seems as if the desire underlies the Bill to force the progressive Native, and indeed all detribalised Natives, back into tribal conditions; and there appears to be the further assumption that Native advancement does not lie along the generally accepted educational lines, but along some quite other lines, which he is expected to evolve and develop for himself when he is thrown back into reserves or locations. But South Africa knows well that the Native living in a reserve cannot support himself and his family without coming out to work for the European for wages.* So the proposal of the Bill amounts to forcing the progressive Native back to a position from which he has already risen, and is in flat contradiction to General Botha's view that "if there is one thing the European must keep before him, it is the improvement and development of these people."

Rhodesia. 25. We have not overlooked the fact that there are administrative reasons for encouraging particular tribes to occupy particular areas, but no rule along these lines should be made absolute. Even in Rhodesia, where the land question is absurdly simple as compared with the Union, and where there are few educated Natives, the Land Commission of 1925 finds that "they are not always able to obtain suitable land in the reserves and are hampered by the insecurity of tenure (inseparable from tribal conditions) and by the unprogressive attitude of the chiefs and people."

The fact is that the progressive Native requires individual tenure of land for his continued development, and this is not obtainable in tribal areas.

Result of Repression. 26. But we must look a good deal further, and a remark of the late Mr. Merriman in the 1913 debate is very much to the point. "What would be the effect," he asks, "of driving these civilised Natives back into reserves? At the present time every civilised man, if they treated him properly, would become an owner of land outside the Native reserve, and therefore he was an asset of strength to the country . . . if they drove these people back into reserves they would become our bitterest enemies."

This ignoring of the wants of the progressive Native and the absence of any provision for him except under surroundings and conditions of barbarism is in our opinion a fatal blot upon the Bill.

Adequacy of released areas. 27. The next question to consider is whether the released areas are adequate, for it is clear that the Bill fixes their maximum acreage once and for all.

The released areas appear to coincide to a large extent with the Committee areas, but we have no information as to the extent to which they are to-day owned and/or occupied by Natives, and consequently no information as to the additional extent of potentially Native land which they include. If it is found that a large acreage therein is already owned by Natives there will not be enough land left to provide allotments for other

* See Footnote to p. 3.

Natives who wish to acquire land. Again it is impossible to prophesy how the Native will be employed in the future, or the extent to which he will depend for his livelihood upon the wages paid him by his white employers. Obviously it is essential to know this, and his numbers also, before a maximum limit to the allotted areas can be justified.

28. The next point to be considered is: Does the Bill contain the machinery necessary to enable the average Native to acquire suitable land in these areas? Machinery.

The machinery provided is altogether inadequate, indeed non-existent. It consists mainly of invoking the Governor-General, or Parliament, or both to settle matters of principle and of detail, which can only be satisfactorily determined as part of a general policy to be thought out and worked out beforehand.

A special department with permanent officials, or a section of the Native Affairs Department set apart to deal with the purchase of land by Natives, is an essential part of any scheme such as is put forward by the Prime Minister, and this department should have power to purchase and hold lands and dispose of them to Native applicants according to a considered programme. We attach a note of some of the matters which this department would probably be called upon to handle. (Appendix "A.")

29. The necessity for such a department becomes if possible more manifest when the provision and handling of funds is considered. Funds.

The average Native cannot be left to himself to acquire land; it will be necessary to purchase it for him in bulk and allot it in detail.* This is especially the case when, as the Bill lays down, only a definite limited area is made available for Native occupation. The area obtained by any individual Native will depend upon his capacity to pay, and will bear no relation to the total Native land requirements of the Native population requiring to be provided for in that area.

30. Again is it conceivable that Parliament will vote moneys to a Native Land Purchase and Advances Fund unless they are satisfied beforehand that it will be systematically and economically applied to the purpose for which it is voted? This belief can only follow the establishment of a permanent department formed for this special purpose. Attitude of Parliament.

31. But dominating all these problems of machinery is the all important question whether if land is made available by law the average Native will be able to buy it. His wages are small. Nowhere in South Africa to-day is the price of land negligible, and the only basis upon which Natives can acquire land under this Bill is to purchase it in the open market. Can the Native buy?

* "To buy land is a very difficult thing for a Native. We are not used to buying land. If I rub myself against a white man it will be like rubbing my nose against a file, and I do not think I can spare much of my nose." (Evidence before the Beaumont Commission.)

Fencing.

31A. The position of the Native purchaser who has the funds to acquire land is made still more difficult by the provisions of Section 2 of the Bill with regard to "fencing" set out in the Second Schedule. They are onerous and drastic, and it is difficult to justify an addition to the existing Union legislation which equally applies to the European and the Native landowner. Under it rates can be levied upon Native tribes for the fencing of locations held under communal tenure. What more is required?

The Bill no solution of land question.

32. Had the Bill contained the machinery necessary to enable ground not merely to be scheduled in bulk, but (in course of time) to be divided into plots suitable for individual occupation; (an enormous task, but necessary to the success of the Prime Minister's proposals); had the Prime Minister adopted the proposal of the majority of the Economic and Wages Commission and taken steps to ascertain the economic position of the Native; had he stated that this Bill would not be proceeded with until this inquiry determined that the necessary land obtained at current prices could be paid for by the Natives in 20 or even in 40 years, we might have retained some belief in this first portion of the Bill. These being wanting, we cannot consider that it supplies any solution of the Native land question, and must turn to Chapter II for its real meaning. That chapter demonstrates that this Bill is in no way a fulfilment of the promise of 1913.

Effect of Chapter II.

33. If it comes into force all estimates made in the past of the areas required by Natives will be valueless. There will at once be brought into existence a vast body of Natives faced with the grim alternative of seeking land at impossible prices in inadequate areas or becoming whole-time servants of European masters. The 1913 Act allowed the discretion of the Governor-General to be used in the direction of increasing the total land to be available for the Natives. That measure of elasticity is now gone. Provisions exist in the new Bill for substituting other land for the land in the "released areas," but as already mentioned, the maximum is inexorably fixed. There is thus nothing to prevent the full pressure of Chapter II being brought to bear upon the Native population.

Proclaimed areas.

34. The provisions of Chapter II now fall to be examined in detail.

This Chapter is concerned with the creation of "Proclaimed Areas." Within these proclaimed areas the residence of Natives is governed by severe restrictions. If the Native resident does not happen to be the owner of the land on which he resides he is virtually bound to engage himself to the owner of the land as a servant, receiving little in exchange for his service beyond the privilege of residence, or, as it might be put, beyond the security of not being turned adrift.

Creation of Proclaimed areas.

35. SECTION 15.—This section provides for the creation of proclaimed areas. It probably means that proclaimed areas can only be created in two ways:—

- (a) On the initiative of the Government within released areas;
- (b) In any area on the request of 50% of European owners.

The areas to be proclaimed are in the case of (a) European land within released areas, and in the case of (b) any Magisterial district. (The word "district" is used but without definition. Therefore, in accordance with the provisions of Act 5 of 1910, Section 3, the word "district" must be taken to mean "The area subject to the jurisdiction of the Court of any resident magistrate"). A magisterial district may include the whole or part of one or more scheduled or released areas. It is not clear whether the petitioners for the proclamation of such an area are only to be taken from the rural proprietors of the district, or from both the urban and rural proprietors. "Proprietor," as defined in Section 22 of the Bill, is wide enough to embrace both classes. But it may be that the Bill is to be read as subject to the provisions of Act 27 of 1913, since Section 29 of the Bill says that the two measures are to be read as one. And Section 8 (1) (g) of the 1913 Act says that its provisions do not apply to land within the limits of any local authority.

36. The alternative interpretation of Section 15 is that the Government may in addition to its powers already mentioned proclaim any area on its own initiative provided such area is outside the scheduled and released areas. Express words in support of this interpretation do not appear in the section, but it must not be ruled out as impossible.

37. SECTION 16.—This section determines the capacity in which Natives may reside within proclaimed areas. Native residents must be either:

- (a) Owners.
- (b) Servants.
- (c) Licensed labour tenants.
- (d) Licensed squatters.
- (e) Wives or children of any of the above.
- (f) Members of the family of a labour tenant between the ages of 12 and 18 and actually dependent upon such labour tenant for their support. (See definition of "Labour Tenant" in Section 22.)

It will be found that the permitted residents are mainly owners and servants. The intention of the Act is to eliminate the Native squatter, *i.e.*, the Native who so commonly is allowed to reside on land owned by Europeans (on the same spot where his ancestors may have resided for unnumbered generations) without any contract of service but on more or less give and take terms between himself and the owner. (See Appendix "B.") This type of Native is to go. This appears from Schedule III, where a licence for each squatter amounts to either £3 or £5 per annum, according to whether the proprietor be a European in actual occupation in the one case and in the other a Native or an absentee landlord.*

* "These ferocious licences."—GENERAL SMUTS. See also Appendix "D."

Labour tenants.

38. Towards the labour tenant the policy of the law is less severe, but he will be a much less popular person than a servant proper. Section 22 describes him. He is—

- (a) an adult male Native;
- (b) necessary to the prosperity of the owner because either his own or his family's services will be useful;
- (c) obliged to serve his owner on this land for at least 180 days per annum, not necessarily continuous (double the number required of the farm labourer who is the labour tenant under another name and is defined in Section 10 of the 1913 Act);
- (d) required to enter into a written contract if the services exceed 180 days per annum; and
- (e) gives nothing for his right of residence except his services.

The Third Schedule provides licences for labour tenants graduated according to the class of owner and the number of his tenants. Distinguished from this type of Native is the servant who is under a contract of continuous employment by the proprietor. All of the above descriptions are to be found in Section 22 of the Bill.

Their contracts.

39. It is clear that a labour tenant will as a rule be the head of a family, and the definition shows that either he, or his family, or both must work for the proprietor. The labour tenant's own contract of service has already been mentioned. Section 18 brings this contract under the masters and servants law and makes the labour tenant a servant under that law, *i.e.*, his contract is enforceable by penal sanctions. So far as his family is concerned, if their services are necessary to the owner they may be made statutory servants and brought within the Masters and Servants laws if the labour tenant makes a written contract with the proprietor that they shall live and work on his land. The labour tenant's own contract need not be entered into before a Government official unless he is to serve for more than 180 days per annum (*see* Section 22) and his written contract on behalf of his family is not required to be entered into before such official at all. It may be that the proprietor could not compel the family to remain in his service if he ejected the labour tenant, but there are no express words in Section 18 which prevent the proprietor and the labour tenant from binding the family to any terms of service however onerous, and there is an entire absence of any Government supervision over the contract. Even if no written agreement binding the family is made there is nothing to prevent the proprietor from refusing to allow the family to reside on his land unless they render such services as he may demand. It is important to remember that the Native's right of residence on land in proclaimed areas can never rest on any firmer basis than the terms of such contract as the proprietor may choose to make with him. If the proprietor breaks his contract the Native's chance of successful litigation is extremely remote.

In the first place it is not likely that he will have the money necessary for litigation and in the second place his story will not have much chance of acceptance against that of the proprietor.

40. SECTION 17.—In many ways this is the most important section in the Bill. The sections already referred to reveal an intention of driving those Natives who are not registered owners of land into a service which cannot be described as other than forced. Section 17 provides the machinery for distributing this forced labour amongst the proprietors of land, who it need scarcely be said, will practically all be Europeans. *And the labour tenant will have no say in the choice of his master.* Labour requirements will alone determine whether the necessary licence will be granted or not. Licences.

41. The licensing of labour tenants is controlled as follows:—

- (a) Application must be made to the magistrate, who Licensing Machinery.
- (b) shall submit the application
 - i. to a divisional council or
 - ii. to a Board to be appointed by the Minister.

Such Council or Board may hear objections from any proprietor of land to the application and may grant or refuse the application subject to review by the Minister.

- (c) If the application is granted a licence shall be issued.
- (d) The licence is renewable for one year unless there is an objection to its renewal. On hearing the objection the renewal may be refused.
- (e) Licence fees shall be paid as laid down in the Third Schedule.
- (f) Where no licence fees are payable renewal may be refused as under (d).
- (g) The Divisional Council or Board may *without* objection having been raised refuse to renew licences.

It is thus apparent that the control over these licences to be exercised by the Board and the Minister is absolute.

42. If in any district farmer A is plentifully supplied with labour tenants while farmer B is suffering from lack of labour, licences to the former can be refused in order to compel his labour tenants or some of them to take service with the latter. B has the right to object to A's application for licences. Instances of working.

It may be that if farmer A (at the instance of B) is denied licences for some of his tenants, whose families are bound as statutory servants under Section 18, the tenants may be forced to move, leaving their families behind them.

Possibly the only alternative to eviction from farmer A's ground and separation from his family would be the acceptance by the labour tenant of the inferior position of servant to A. No licence is required for servants and there is no provision in the Bill for removing servants compulsorily from point to point. But what will happen to the labour tenant whose presence is not desired upon any farm in the district?

Consequences. 43. The consequences of the proposed legislation therefore appear to be twofold.

- (a) If the Native elects to retain his superior status of labour tenant, he will have no guarantee of fixed residence on any farm for more than one year. Boards will sit in each Magisterial District throughout the Union and will distribute the labour tenant force amongst the European proprietors in a manner which cannot be truly differentiated from slavery. Indeed the labour tenant's plight may be worse than a slave's because the slave had the chance of spending his life in the service of a single master who was both just and kind.

And further in these conditions the land, which constitutes his tenancy and which he holds as tenant in exchange for services and which he cultivates as the sole source of support for himself and his family (the Bill providing neither him nor his family with wages), may be lost to him at the moment when his crops are ripening and before they have been gathered in. Who can say that he will necessarily have reaped the reward of his year's work by June 30th in any year, which according to Section 17 (d) is the fixed date for the termination of his licence?

No provision whatsoever is made for the protection of the labour tenant in his small, but to him vital, farming operations.

- (b) The great mass of Natives in the proclaimed areas will be servants and irreversibly tied to that position without hope of raising themselves above this status. (Appendix "C.")
1. As servants they can never hope to save enough money to purchase land in a scheduled or released area even if such land were available, for very few farmers pay money wages.
 2. If they migrate to the towns they may be precluded under the Colour Bar Act from industrial progress.
 3. They will have little chance of becoming labour tenants because the effect of the Bill will be the elimination of this class.

The lot of a servant in continuous employment should be preferable to that of a labour tenant who works for another for at least 180 days a year yet must support himself and his dependents and is subject to the complete uncertainty referred to above.

44. This unfortunate class will be confronted with a hopeless prospect. They will be forced to enter into contracts of service in order to obtain the right to reside upon some spot on the surface of the earth. They will have no real alternative except service, on terms which may be dictated by their European master, or prison. The Bill contains no provisions which will guarantee that the contract will be fair. A very large force of servants by necessity will be created, who will be compelled in effect to offer their services to whomsoever will give them a home. There will be no freedom of contract and the so-called servants will be indistinguishable from slaves. They will not dare to offend a master for fear of dismissal. To be out of work will mean to be homeless, and for a Native to be homeless in a proclaimed area is forbidden by the Bill. Compulsory service.

Is this any better than the condition of the Natives in South Africa before the abolition of the slave trade?

45. SECTION 19.—If a squatter (*see* Appendix "B") dies or moves on he cannot be replaced by another squatter, and the "ferocious" squatters' licences will compel the farmers to get rid of those they may wish to keep. And further, as the licences payable for Native labour tenants rapidly increase in amount with their number, the room for squatters as labour tenants will be limited. The result must be numbers of homeless Natives. Squatters.

The period for applying for the renewal of squatters' licences is restricted to three months, so that the farmer has only to do nothing for three months after the fixed date and this law can be brought into force.

There is no free land to which the squatter can move, so he will be driven once the list of labour tenants is full to realise his stock, probably at a ruinous loss, and, *if he can find an employer*, to become a full-time servant. Should he fail to find an employer his lot is indeed hopeless, for under the Natives' Urban Areas Act he will probably be prevented from residing in any town, and, even if he is allowed to settle in a Native township, the Colour Bar Act may be invoked to limit his chances of employment.

46. The questions with which we commenced this Memorandum have been answered. Answers.

This Land Bill is not framed with due allowance for the essential factors of Native life and for the conditions in which the Bantu peoples of South Africa live to-day. It is not practical and it is not just.

There is no idea of progress in this measure. It is not aimed at the development of the Native to a higher state of civilisation, but seeks rather to protect the European against such development,

Direct
solution
impossible
(Mr.
Merriman).

47. Can any attempt to solve the South African Native question by an enactment possibly succeed? We do not think so. "Meet the demand for a general declaration of policy with regard to Native affairs! A policy which should be applied to the highest civilised Native, the owner of a farm, and the Native barbarian! They could not do it." (Mr. Merriman, May 16th, 1913.)

(Mr.
Keyter).

48. Mr. Keyter said in the same debate that "from his experience of the different parts of South Africa and various Native tribes, neither this Parliament nor any future Union Parliament would ever be able to make one uniform Native law for South Africa. . . . Knowing how divergent were the different interests of South Africa and the wants and requirements of the inhabitants, and the customs of the Natives," he said, "it would be madness to even try to make one uniform Native law for South Africa." (19th May, 1913.)

(General
Botha).

49. With all deference we submit that the Prime Minister has attempted the impossible. "Why," said General Botha (May 17th, 1913), "did the matter remain such a difficult one? *Simply because the Native had got as much right in the country as the white man.* Some people thought the solution of the Native problem meant the finding of sufficient labour for their requirements. The Government could not supply their labour by legislation, they might facilitate the obtaining of labour, that was all. Above all, their laws must be fair and equitable. Of a kind which would have the effect of developing these people The white man must do nothing to oppress the Native. In the Union there was no room for oppression, there was only room for justice and good honest legislation."

What we
mean by
slavery.

50. In this memorandum we have used, and deliberately used, the word slavery. It remains to explain our meaning, as we do not suggest that Natives under this Bill will become the property of their employers, or that they will be bought or sold.

Clause 17 enacts that licences for labour tenants shall be issued either by a Divisional Council or a Board, appointed by the Minister, who will distribute these licences and the labour tenants to which they refer among employers, the sole ground on which these labour tenants are allotted being the Council's or Board's opinion as to the labour requirements of employers in its district.

Board's
limited
duties.

51. The Board is not charged in any way with the welfare of the labourer, nor is it asked to consider the conditions under which he will exist. His welfare is not even important enough to call for regulations! (*See* Section 25.) Is there any precedent for such a proposal? That it has been made clearly shows that South Africa is at the parting of the ways. Although this is not purchase and sale of human beings, it is equivalent to

the control of them body and soul by the Government, and this is what justifies our saying that the proposals contained in this Bill "cannot be truly differentiated from slavery." (Paragraph 43.)

52. And if they are controlled to this extent by the Government, what object can there be for the employer to become the legal owner of their persons? On the contrary, he will find that while he has them entirely in his power he is free from the obligations inseparable from ownership. Being without hope these labourers will have no incentive to acquire skill, and as their life becomes harder any trace of civilisation that they may have acquired will disappear. Their's will be forced labour in its most acute form. We are confident that South Africa will not stand by and see this measure passed.

Ownership.

53. In the 1913 debate, Mr. Merriman reminded the House of Assembly that "when dealing with the Government of England in passing the Act of Union, South Africa gave their emphatic pledges in regard to the Natives who were placed in their care. They satisfied the Government of England that these Natives would be dealt with with the most scrupulous justice and with the uttermost toleration. . . . One of the great tasks imposed upon the white men of South Africa was to civilise and bring the Natives up, and not to trample on them and repress them."

The position of South Africa.

54. It does not matter by whom or to whom these pledges were directly given. They were persons authorised to give and receive such pledges, and as a result South Africa received the Act of Union. Every South African is bound by this engagement, and by all of us it must be honoured.

South Africa pledged.

APPENDIX "A." (p. 8.)

MACHINERY REQUIRED.

1. Native Land Boards for the four Provinces to regulate and supervise the acquiring of lands by Natives, and a separate Native Land Purchase and Advances Fund for each Native Land Board.

2. Natives desiring land to apply to such Native Land Boards either singly, or in any groups, associations, or aggregations they may desire to form. On receipt of applications Native Land Boards to acquire the necessary land either by voluntary purchase, or by expropriation, and allot it to applicants.

3. To carry out this work Native Land Boards will require, in addition, powers—

- (a) to settle the forms of Native tenure of land and the manner of its allotment;
- (b) to utilise Crown lands in Native areas;
- (c) to settle the terms and conditions upon which prospecting and/or mining shall be carried out in Native areas;
- (d) to advise Parliament annually as to their financial requirements and to control the Native Land Purchase and Advances Funds;
- (e) to assist in educating Native land owners and occupiers, supply them with technical advice, etc.

Similar recommendations appear in Sir William Beaumont's memorandum, dated 4th March, 1916, paragraph 131.

APPENDIX "B." (pp. 3, 11, 14.)

SQUATTERS.

In introducing the Native Land Bill in 1913, Mr. Sauer said: "The crux of the whole matter was the unsatisfactory position with regard to Native squatters. This was a Bill to make provision for the settlement of the squatter question by providing land or places to which they might go if they were removed from the farms where they were now." A squatter being a Native who lived on a European farm, used his own cattle to cultivate the whole or part of it, and received as his reward a share of the ultimate proceeds. It is a wasteful form of tenancy, and Commission after Commission has reported against it; but the Native likes it, as the squatter is to a large extent his own master; and it suits the convenience of the less energetic European land owner.

Another speaker in the same debate remarked that "farmers had experienced the difficulty of getting loose hired labour, and had therefore been compelled to go in for the system of farming on shares;" and Mr. C. Fichardt said, "The squatting system is the most expensive that can be employed, but it is gradually breaking down. The trouble was that there was a large number of lazy and indifferent people who were able to work their farms under this system. He himself had adopted this system because it was impossible for him to get labour unless he did it," showing clearly that it suited the Native population.

Mr. Sauer gives a number of figures in his speech, and points out that "in 1912 there were 200,000 Native squatters in unlawful occupation." We are informed that since this date this number has largely increased. He was "convinced that in the interests of the Natives it was well that the question of squatters should be dealt with. Although many people were there illegally, it would be very difficult indeed to deal with some of those people who were squatters on land which they and their ancestors had occupied for 60 or 70 years. That was the case in the Transvaal and Natal, some of them had been there from time immemorial, long before the white men. In such cases these people were only technically squatters, and they had a right to very full and fair consideration when they came to deal with them." (*Cape Times*, 10th May, 1913.)

General Hertzog's position was:—

"Farming on shares was not a right the Native possessed, but depended upon the favour of the Government and could be taken away from them at any time. It is not a right they could insist upon." (*Cape Times*, 17th May, 1913.)

This Bill proposes to put an end to squatter tenancy and offers nothing but labour tenancy or the position of a full-time servant in exchange.

In cases of this kind particular instances are always useful, and a correspondent in the Eastern Transvaal writes as follows:—

“There was a considerable gathering of Natives here, some of whom put some very shrewd questions, and all of whom evinced their thorough distrust and dislike of the Bill, which apparently aims at sweeping Natives out of their present high-veld farms where they are squatting, and replanting them in an area which is to be scheduled and which lies below the Berg.”

“Most of the farms in this new proposed area are quite dry and very unfertile, and the area in question would be far too small for the Natives concerned if the policy is to be really enforced.”

“Quite apart from the hardship inflicted upon farm owners (who will find their conditions of Native tenure and employment suddenly and violently disturbed), it seems to me that the Natives themselves in this district will be very hard hit as most of them are living as squatters on farms, where they have been for long periods in happiness and contentment, and where they know the conditions which will now be exchanged for a tenure on quite different ground in a quite different climate, and under quite different conditions, where it is very doubtful whether they can live in anything like prosperity.” (Released areas on 1,000 to 2,000 feet lower level.)

“The Natives themselves are much alarmed—and as one chief stated at the meeting—one never knows what the Government really means, as the proposed new Bill is sure to be largely altered, and conditions which are now discussed with the Natives are more than likely to be entirely altered in a few months’ time, thus creating a sense of considerable insecurity and changeability in the Natives’ minds.”

“It looks to me as if some of the supporters of the proposed Bill are really aiming at putting the Native in such a position that he will be forced to accept any living and working conditions which may be offered to him in lieu of his present tenure, and will thus find himself at the mercy of farmers who want Native labour at their own price and on their own conditions.”

“I think that some such Bill could be equitably and wisely enforced if the Government is really serious in its wish to deal fairly and wisely with the Natives as well as with the white people, but it is absolutely essential that the proposed Native areas in districts such as ours should be of much wider extent and on more generous lines and of better quality than the areas at present suggested; whilst I would also advocate that terms of acquiring land in such areas should be more generous and the period of enforcing the proposed change should be much more gradual and lenient.”

APPENDIX "C." (p. 14.)

The following statement is quoted with approval and endorsed both by the East African Commission and the Rhodesian Land Commission of 1925:—

"A further point for consideration is that of instituting a policy of agricultural development under which the Natives can gradually become producers, and so help to increase the exports of the country and at the same time increase their own material well-being. I have discussed this question with the Director of Agriculture, who is prepared to deal with the matter, provided the policy is recognised by the Administration. I realise that such a policy is liable to be opposed by planters and others—who require Native labour—on the ground that if Natives are employed on their own plantations they will be reluctant to take on service as indentured labourers. This has been the attitude adopted by white men the world over where whites depend on black labour. *Morally, of course, there is no defence for any policy which keeps the black races in a position of constant servitude to the white employer.* This point is, however, so obvious that I do not propose to burden you with any argument on the subject, but I do propose to state that experience elsewhere has proved the fallacy of any argument which tries to prove that Natives who are industrious in the locations will not come out to work for employers under a system of fair wages and decent treatment. The absolute turnover of European opinion in the Kenya Colony on this subject is interesting evidence on this point. The labour problem in Kenya has been practically settled by the large proportion of voluntary labour offering from the more agriculturally developed districts. The explanation is that, notwithstanding the increased development of the Native districts, the more adventurous spirits cultivate a desire to go out and see other conditions, leaving their older relatives to carry on production at home. Increased industry amongst the Native people will not only add to their material wealth, but will give them fresh interests in life." (Col. John Ainsworth, C.M.G., D.S.O., late Chief Native Commissioner in Kenya, on his recent investigation (September, 1924,) of conditions in the Mandated Territory of New Guinea.)

This statement not only sums up admirably the moral side of this great question, but it indicates lines along which the squatter problem may gradually be solved, *viz.*, by training the Native squatter to become a skilled agriculturist. Incidentally it deals with a similar problem on the other side of the Indian Ocean,

APPENDIX "D." (Footnote, p. 11.)

With reference to the milder clauses of the Native Affairs Administration Bill of 1917 (*see* paragraph 7) the majority of the Eastern Transvaal Natives' Land Committee of 1917 report as follows:—

"The object of these provisions is, no doubt, to abolish squatting and labour tenancy conditions and to reduce all Natives resident in non-Native areas to the level of full-time servants within the meaning of the Bill. Any Native in a non-Native area who is not already a servant is, therefore, liable to be faced with the alternative of becoming one or of moving into a Native area; and, in any case, even in the possible contingency of his being allowed to remain as a squatter or labour tenant, he remains subject to the payment of an annual licence fee which may be as high as £3, in the case of the squatter, and which is fixed at 10s. in the cases of the labour tenant. The Government has, no doubt, satisfied itself that squatting and labour tenancy conditions are an evil which should be eliminated with all convenient speed. That is, of course, an issue which does not fall within the scope of this Committee's enquiry; but the Committee is vitally concerned with the issue how far these licensing provisions are calculated to react on the broad question of the adequacy and suitability of the areas, and, more especially (though discussion of this aspect is postponed to a later stage), on the position of high veld Natives.

"It may be premised, as a general proposition, that the squatter in a non-Native area will not be in a position to pay the licence money which, though chargeable to the owner of the land, will, as a matter of course, be recovered from the tenant. He will either have to become a servant (for even as a labour tenant he is subject to licence), or move into the Native area. Whilst declining to become a servant, he may or may not decide to move, but in any case he will not pay the licence money simply because he cannot. If he decides not to move, it is interesting, though not germane to the enquiry, to speculate upon the machinery that will be employed to compel him to do so; whether admonition will suffice, or whether, in the other extreme, physical force may not be necessary; and again, assuming that physical force is used, to what length in the employment of it authority will be driven in order to secure the full attainment of its ends. In any case if the squatter decides to move, as he may well do when confronted with the panoply of law and order, it becomes a matter of vital importance to decide whether, in fact, the areas are ready to receive him.

"Now, the question whether the areas are ready to receive a sudden large access of population is not a question of extent. It is not even a question of quality. It is a question wholly of "development." A family might well starve on the most fertile soil in the world in the interval that is necessary to reduce it into a condition of productivity. And, from the nature of the case, Native areas are almost entirely undeveloped. The developed portions are the occupied portions. It is in the undeveloped residue that the Native from the non-Native area must seek an asylum,

Much of the land which is described as "arable and productive" is still virgin "bush," and must be cleared before it is suitable even for the purposes of Native cultivation; much of it that is said to be suitable for grazing is waterless and must be supplied with boreholes before it can be made adequate to the needs of man or beast. When the Committee, therefore, states, in general terms, that a given tract of land is capable of supporting a definite number of people, it must be understood as contemplating a gradual process of settlement. It assumes that the Native settler will be guided, encouraged, and helped by some such body as the Land Settlement Board, which watches over White settlement. To transport Natives even from the exiguous conveniences of settled life in non-Native areas suddenly and in large masses to areas which they still have to prepare before they can exist in them would be disastrous in the extreme.

"What then is the remedy? Land Boards, though, in the opinion of the Committee, they are an indispensable adjunct to any scheme of Native Settlement, would afford no solution. They would simplify, perhaps even accelerate the process of gradual settlement, but they would be quite unable to cope with the 'dumping-down' of a multitude. In the opinion of the Committee, there is no alternative but the entire withdrawal of the licence provisions of this Bill. Why should it not be sufficient merely to prohibit fresh squatting and allow existing squatters to continue without impediment until they disappear in the course of a generation? Why should it be necessary indeed, to attempt to abolish squatting in a breath, as it were, and by a mere stroke of the pen? Economic forces are at work which are bound, in due time, to cause the total extinction of squatting in any event.

"As the country becomes more closely occupied from squatting to labour tenancy and from labour tenancy to the condition of full-time servant is but a step. We have seen the process throughout all its stages at work in the Cape Province and the Orange Free State. We see it running its course to-day in the Transvaal, as various areas are thrown open to white settlement. Granted that the squatting evil is flagrant, any attempt to extinguish it suddenly can end only in the creation of a new situation worse than the old. The Committee is confident that the utmost that can be hoped for, on lines of fairness and justice, is the extinction of squatting within a generation. To bring this about involves merely the refusal of fresh facilities—a very different thing from utter deprivation of facilities already granted or, at any rate, already tolerated. By these means the evil will disappear gradually but surely, without offence and without the unpleasant odour of victimisation which surrounds the licence provisions of the Bill. Moreover, once territorial separation becomes an accomplished fact, it is impossible to ignore the effect on the squatting system which will arise from the mental attitude of the squatter himself. Planted in a country where he feels himself to all intents and purposes an alien, subject to foreign law and customs, cut off from the majority of his people within Native areas, and deprived of the benefits they enjoy as the result of fixity

of tenure and a specialised Administration which keeps in view their own peculiar modes of life and customs, is it too much to say that every consideration of sentiment and profit will prompt him to sever a connection which he might well conceive to be as disadvantageous to himself as it is to his white masters?

“What has been said with regard to squatting applies equally, though perhaps in a less degree to labour tenancy. Like the squatter, the labour tenant is liable to be faced with the alternative of becoming a full-time servant or of moving into Native areas; in the cases where he is allowed to remain he is subject to the payment of a licence fee of 10s. The incubus is, in his case, lighter than in the case of the squatter—presumably because he is not conceived to be so great an evil as the squatter—but it is equally designed to eliminate him; it is an equally unpleasant form of compulsion; and it is, in the opinion of the Committee equally unnecessary. Here, too, the Committee is of opinion that a mere prohibition of fresh contracts would be sufficient, in itself, to bring about the object which the Legislature has in view, and to bring it about, moreover, without any violent disturbance of Native life.

“The question of the licensing and restriction of labour tenancy figures so prominently in the evidence laid before the Committee, that the Committee may possibly be excused if it makes a passing reference here to one aspect of the matter with which, in strictness perhaps, it is not directly concerned, namely—whether, in the present stage of farming development in the Transvaal, labour tenancy is, in fact, the evil that the Bill presumes it to be. It will be seen that the consensus of opinion is opposed to such a view. Granted that labour tenancy is a wasteful system, it appears to be the only system by means of which the average farmer can for the moment develop his land. It is, in short, the system of paying for service out of the only surplus at the farmer's command—his land; and it is the system which has facilitated, if it has not been solely responsible for, the degree of development that has already been reached. It will be found that farmers are opposed to any restriction of the system, though it is conceded that it requires more organisation and more co-ordination in order more effectively to distribute the available labour supply.

“In sum, then, the Committee feels that the whole question of adequacy and suitability of areas is inextricably bound up with the immi-
nence of settlement in large numbers. The areas are adequate and suitable, if the settlement of Natives is slow and gradual, and if it is guided and directed under proper Government supervision. They are inadequate and unsuitable, and incurably so, if, as contemplated by the Bill, large numbers are to be driven into them holus-bolus, to find, without guidance and assistance and without system, such a living as they may. Nay more, the Committee is convinced that under conditions such as these no areas, however large or however rich, would be suitable or adequate by whatever test were applied; and that while the licensing provisions of the Bill remain the benefits of territorial separation are but a delusion and a dream.”

JOHANNESBURG JOINT COUNCIL
of
EUROPEANS AND NATIVES 6

GENERAL HERTZOG'S
SOLUTION
OF THE
NATIVE QUESTION

MEMORANDUM No. 2.

UNION NATIVE COUNCIL BILL, 1927.
REPRESENTATION OF NATIVES IN PARLIAMENT BILL, 1927.

V63:55(476)

F7

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UNION NATIVE COUNCIL BILL, 1927.
REPRESENTATION OF NATIVES IN
PARLIAMENT BILL, 1927.

CHAPTER I.

INTRODUCTION.

1. The purpose of these two measures is to abolish the Cape Native Franchise and to substitute machinery intended to fix once and for all the share of the Native population in the Government of South Africa. Purpose of Bills.

2. For the Cape Native Franchise the Bills under consideration substitute the following:— Nature of Bills.

(i) A Union Native Council to meet annually.

(ii) Seven European members in the House of Assembly to be elected by Natives, two for the Cape, two for the Transvaal, two for Natal and one for the Orange Free State.

3. Before we express any opinion on the principles involved in the general acceptance of either of these Bills, we propose to examine the provisions of each in some detail so that the reader of this Memorandum may be in a position to form an opinion upon their practicability. Discussion of Details.

NATIVE COUNCIL BILL.

4. The Native Council is to consist of 50 members, 15 of whom will be direct nominees of the Government and the remaining 35 elected by natives designated by the Governor-General-in-Council and therefore also nominees of the Government. It will be presided over by an Official of the Native Affairs Department, who may make rules of procedure and may in his discretion adjourn or close council meetings. This Council is to meet once a year. Personnel.

Electorate. 5. The basis upon which the Native Council electorate is founded is also that of the Parliamentary franchise discussed in paragraphs 15 and 16.

Function. 6. Its functions are purely deliberative and advisory. A semblance of legislative power is given to it by Section 4 (3) of the Bill under which the Council may pass Ordinances binding only on Natives in respect of any matter delegated to the Council by any future Act of Parliament. Any Ordinance can only be initiated by the Minister of Native Affairs, and has to be approved by the Governor-General after it has been passed. It is in the highest degree improbable that this Sub-section will ever become operative, since (a) Parliament is unlikely to delegate where it can itself legislate, (b) matters of legislation affecting Natives alone are difficult to imagine.

Powers Nil. 7. If Sub-section 4 (3) were ever put into force it would only mean that a Council of Natives all directly or indirectly Government nominees would express an unnecessary approval of the wishes of their nominator. It is therefore clear that the power of this Native Council is nil, and it is prevented by its constitution from being an organ for the ventilation of grievances. It is merely the Native Conference called under the Act of 1920 under another name, and does not give the Native any greater share in the Government of the country than he has without it.

Stringent Regulations. 8. We desire to call attention to Section 2 (2) and 3 (5) d. They read as follows:—

2 (2) The officer designated to preside over meetings of the Council shall have the power to make and alter rules for the procedure to be observed thereat, the conduct of business and the behaviour of members present at any meeting, and he shall have full discretion to adjourn or close any meeting of the Council. Such rules may impose penalties not exceeding a fine of £5 for any breach thereof, and when approved by the Governor-General-in-Council and published in the *Gazette* shall have the force of law.

3 (5) For the following causes every member of the Council shall, *ipso facto*, vacate his seat thereon . . . (d) failure to attend a meeting of the Council when summoned except for good and sufficient reason shown to the satisfaction of the said Minister.

Why Not European Precedents?

9. With regard to both these sections we cannot understand why the rules found suitable and sufficient for Parliament should not be adopted for Native Councils. If experience shows that they are deficient in any respect they can be added to. To mention money penalties in this connection is felt to be an insult, and to enact that a member shall lose his seat if he fails to attend a meeting of the Council when summoned, is unreasonable. What hope is there of any useful work being done by a Council condemned to meet in such an atmosphere of compulsion?

10. Under Section 4 (1) a. the Council has power to consider any Limitations. matter relating to the economic, industrial or social condition of the Native population and under 4 (1) b. it can consider proposed legislation or existing laws specially affecting Natives, but under 4 (3) it only has the power to pass laws at the request and on the initiative of the Minister, so that however strongly it feels on any matter, even if it is unanimous, its resolutions will be without effect of any kind unless the Minister requests that they be given effect to in an Ordinance.

11. Our view of this Bill is, that until the Native people have adequate Parliamentary representation as asked for later in this Memorandum, some kind of Native Council is required to ventilate Native opinion. It should be thoroughly representative and for the greater part, elected by personal vote. If local Native Councils are to be developed as a part of our local Government organisation we think the Union Native Council should in time become a congress of Local Councils. We do not support the idea that the Union Native Council should become a Native Parliament legislating for "Natives only." Council Needed.

12. We see no necessity for this Bill as it stands; but we do think that the present Union Conference (which is established under the Native Affairs Act of 1920) should be mainly elected and not entirely nominated as at present, and that Natives should be able to qualify to become individual voters. When local Councils have become general their representatives might well be in the majority; personal electors being found only in areas where no local Council exists. The electorate of local Councils should also consist of individual voters as far as possible. Act of 1920.

CHAPTER II.

REPRESENTATION OF NATIVES IN PARLIAMENT BILL.

13. The main provisions of the Representation of Natives in Parliament Bill now fall to be considered. The destructive side of the measure is contained in Section 7 which provides for the disenfranchisement of the Cape Native voter. It reads as follows:— Disenfranchisement.

- (1) Anything to the contrary notwithstanding in any law providing for the qualification necessary to entitle persons to vote at elections of members of the House of Assembly or of a Provincial Council, no Native as hereinafter in this Act defined, shall after a date fixed by the Governor-General by

Proclamation in the *Gazette* be qualified to be registered as a voter or to vote at any such election except as is specially provided in this Act in regard to elections of members representing Native Electoral Areas.

- (2) If by inadvertence the name of any Native has not been erased from the voters' roll the fact that his name still appears on such roll shall not entitle him to vote in an election for any electoral division, anything to the contrary notwithstanding contained in the Electoral Act 1918 or any amendment thereof.

South Africa Act.

14. It has been suggested that Parliament has no power under Sections 35 and 152 of the South Africa Act to deprive existing Native voters of their votes.

Electorate.

15. Sections 2 and 3 of the Bill provide for the election of seven members of the House of Assembly to represent Natives of the Union. The electors are to be the Government nominees who form the electorate of the Native Council (*see* paragraphs 3 (2) c and d of the Native Council Bill). They will consist of designated chiefs, headmen, members of Local Councils and individual Natives, but their number is left uncertain and is to be decided by the Governor-General-in-Council. Neither their qualification nor the manner of their designation is defined in either of the Bills, so that the Government in power can alter the Native electorate as when and how it pleases if the members returned do not conform to its wishes.

Cape Native's Status.

16. Under these Bills the Cape Native loses his status as a citizen. No Native however educated or civilized he may be has a personal vote for his member, either on the Native Council or in the House of Assembly.

Electoral Areas.

17. There will be seven Native Electoral Areas for the Union, and the boundaries of these areas will coincide with groups of five of the Native constituencies returning representatives to the Native Council. These seven Native Electoral Areas therefore, cover half each of the Transvaal, Cape and Natal, and the whole of the Free State.

The areas of the four Provinces are:—

Cape	....	....	....	276,966 square miles.
Natal	....	....	....	35,284 square miles.
Transvaal	....	....	....	110,450 square miles.
Free State	....	....	....	49,647 square miles.

but the Act provides no machinery by which the Natives spread over these huge tracts of country can record their votes, nor does it even decide whether the seven members are to be elected by ballot or by show of hands.

For the Native voters scattered over these huge areas to assemble in one place to nominate or vote is impossible, and if it were possible they could not be identified.

18. The method of nomination is as follows:—

Nomination.

3. (1) In respect of each Native Electoral Area into which the Union has been divided as aforesaid, the Governor-General-in-Council shall, by proclamation in the *Gazette*, fix a date and places for nomination of persons for election.
- (2) On the date and at the places so fixed, the electors designated in terms of Sub-sections (c) and (d) of Section 3 of the Union Native Council Act 1927 by the Governor-General for the constituencies constituting any Native electoral area shall, at a meeting of such electors called for the purpose, nominate for election in that Native electoral area of that Province not more than three persons qualified hereinafter provided.
- (3) If the names of more than three persons are submitted to such meeting a ballot or a show of hands shall take place and the three candidates selected at that meeting shall be regarded as duly nominated.

19. Under this clause it is clear that only one nomination meeting can be held in each electoral area, for unless the whole body of electors is present or is adequately represented at one place and time the particular three nominations desired by the majority of electors in that electoral area may not be selected. Whether the nominations at this meeting shall be reduced to three by ballot or by show of hands is left open.

20. The elections are to be held in accordance with *regulations* to be framed under the Union Native Council Bill. (*See* Section 3 (1).)

21. It would be difficult to imagine anything more haphazard or open to abuse than these election proposals, and it is a curious fact that in all the sections (except Section 7 (2) of this Representation Bill where it is repudiated) dealing with the election of these seven members the Union Electoral Act No. 11 of 1918 is ignored. Why has the Prime Minister refused to avail himself of the machinery found necessary by long experience to prevent abuses in Parliamentary elections? It is certain that the same care must be observed in elections under these Bills. Parliament itself should prepare the necessary safeguards.

22. Let us pass on to the position of the seven European members of the House of Assembly after they have been elected. They will be additional to those provided under the South Africa Act, and will have the same qualifications. Their rights and powers will also be similar except that:

- (a) A members so elected shall be incapable of sitting, speaking or voting in the House of Assembly or in Committee thereof whenever the matter for discussion or determination is whether there shall be an increase of the number of Native electoral areas or of members to be elected therefor, or whether any alteration shall be made in the qualifications or disqualifications of voters for such areas, or whether this section or any other provisions of this Act be repealed, altered or amended.
- (b) A member so elected shall be incapable of voting in the House of Assembly or in any Committee thereof on a motion of no-confidence or on a matter in respect of which the Prime Minister or, in his absence, the Senior Minister of State present in the House, upon a division being called states that the result of the voting of all the members of the House of Assembly taking part in the decision thereon, will be regarded by Ministers as one of confidence or no-confidence in the Government. The provisions of this proviso, however, shall not apply in respect of any Bill introduced, or clause thereof, or vote or resolution proposed or moved by a Minister of State in connection with any of the matters specified in the Schedule of this Act.

Schedule.

23. The schedule alluded to in this paragraph gives a list of subjects of legislation solely affecting Natives. On some of the matters Parliament never has legislated and is never likely to legislate; other matters fall within the ordinary sphere of Provincial Council legislation. The questions of industrial and liquor discrimination on the ground of colour, have either been dealt with recently by Parliament, or will have been dealt with before this Bill can become operative, and further legislation thereon is improbable in the near future.

Native
Interests
Isolated.

24. The principle underlying the special disqualifications of the Native representatives appears to be that Native interests are something apart from the interests of South Africa generally; that in the government of the country, affecting as it does every member of the community, the Native is to take no serious part; that whether the financial policy of the Government is wise or unwise is not a question in the decision of which the Native is to share; that industrial measures and tariff modifications in which the Native may be more deeply concerned than other members of the State may, if the Government of the day regards them as matters of confidence, be passed into law without the Native representatives being allowed to record their votes.

Unsound
Principle.

25. This principle is fundamentally unsound. The Native population of South Africa is an integral part of the community and has a right to adequate representation in all its councils.

26. Reference to the Prime Minister's Smithfield speech shows that the limitation of the Native representatives' powers was then opposed by him and he used the following arguments to justify his attitude:—

Prime
Minister's
Change of
Attitude.

"Fear has also been expressed to me," he says, "that the seven Native members in the Assembly may create a danger to the Government by combining and throwing their weight as a group against the Government in order to make the Government fall or compel them to accede to what they desire and what the Government would not otherwise have done. This is not impossible, but for various reasons which I do not at present wish to discuss, it seems hardly probable. Suppose, however, that it does happen that they combine to form a group against the Government, then we must not forget that the Government with all its followers are dependent upon the white vote only, and that should the Government proceed to barter the interests of the country for the seven Native votes, the white population of the Union would soon enough call such a Government to account. Here also, therefore, all fears to me appear to be groundless."

27. Why has the Prime Minister altered his opinion and allowed this fatal proviso to be introduced into the Bill? He has no right to assume that the Native vote will ever be given against the best interests of the country.

CHAPTER III.

DISCUSSION OF PRINCIPLES.

28. It now becomes necessary to discuss the general policy underlying these two measures.

Why Have
Bills Been
Introduced?

Why have they been introduced? The reasons were given by the Prime Minister in his speech at Smithfield on November 13, 1925. This speech stands as the only exposition we have had so far of these Bills from General Hertzog:

"It is clear to me," he said, "that the other three Provinces cannot permit that the Native franchise will be extended on the Cape basis. Neither can the Native be given the right to become a member of Parliament. It is clear further that the grant of the franchise to the Native on the Cape basis, or rather on the basis that he was to vote with the white man for a member of Parliament, would necessarily mean the ruin of the white population and of European civilization in the Union. . . . Unless this franchise is taken away from the Cape Native, or at least fundamentally altered, the Northern Provinces, I repeat, cannot possibly continue to close their doors against the Native franchise within their boundaries too. According to expert

judgment it will not be long before the number of enfranchised Natives in the Cape exceeds the number of white voters. This contention may appear exciting to more than one of you, but there is not a single ground for contesting it, everything points to this being a correct deduction from facts and figures."

The Prime Minister continued:—

"I am not exaggerating when I say that as things are going now, within the next forty years there will be but few among the fifty and more Cape M.L.A.'s who will dare publicly to oppose the extension of the Native franchise to the rest of the Union. . . . In most of the fifty-one (Cape) constituencies the Native vote is a very powerful one. Consequently the great bulk of Cape members, when it comes to matters touching the Native, . . . will only too often be ready to adopt a line that they would otherwise not have been prepared to adopt. . . . The deciding factor in their attitude is not what is really in the country's interests but how they can either keep or catch the Native vote."

In another passage General Hertzog says:—

"It is plain to me that the large majority of the European population of the Cape, and also a large number in the other Provinces . . . will oppose the abolition of the Cape franchise unless another form of Native representation in Parliament takes its place."

Criticisms.

29. Let us examine these extracts more closely. There are several points which call for our particular attention. Briefly put they are:

(1) *The Transvaal, Orange Free State and Natal will refuse to grant the general franchise to Natives.*

That feeling in the Northern Provinces is strongly against the extension of the franchise to Natives cannot be denied. What the future may bring forth we cannot say, but we can expend labour and time in creating a better spirit, and we know of nothing more calculated to attain this result than the development of Joint Councils throughout the Union.

(2) *The growth of the Native vote in the Cape has been so alarming that within forty years it will be so strong that the Cape members (50 odd Europeans) will compel the other Provinces to grant this franchise.*

Upon what facts or figures does the Prime Minister justify his statement, "it will not be long before the number of enfranchised Natives in the Cape exceeds the number of white voters"?

For the year 1922 we find that the European voters in the Cape Province numbered 156,500 and the Cape Native vote about 15,000—equivalent to, say, 10 per cent. of the Cape European electorate and less than four per cent. of the Union European electorate of 380,440.

- (3) *“In most of the 51 Cape constituencies the Native vote is a very powerful one”; consequently the deciding factor in the attitude of Cape members is “not what is really in the country’s interests, but how they can either keep or catch the Native vote.”*

The records of the old Cape Parliament show that this statement is not justified in so far as the past is concerned. The present Cape members can be left to speak for themselves.

- (4) *The extension of the franchise to Natives in the Northern Provinces would mean the ruin of the white population and European civilization in the Union.*

There is no evidence to support this dangerous statement, and its effect will be to increase ignorant fears. The fact that these fears of the Native franchise can hardly be said to exist in the constituencies where the Native vote is strongest confirms our outlook.

We again emphatically repudiate the view that Native interests are necessarily hostile to European interests, and that Natives will primarily vote *native* and not on the party lines prevailing at the time of the election. The danger to be guarded against lies in the growth of a conviction in the Native’s mind that there is nothing for him in European civilization, and that it would be to his interest to destroy it. Neither a common representation nor a differentiated franchise will save South Africa if racial fears and hatreds are fostered.

- (5) *No Native can be given the right to sit in Parliament.*

The refusal to permit Natives to sit in Parliament is a minor question as compared with the fundamental question as to whether they shall have adequate political representation or not.

- (6) *The large majority of the European population of the Cape and also a large number in the other Provinces will oppose the abolition of the Cape franchise unless another form of Native representation in Parliament takes its place.*

So far as we have been able to observe, this is the only justification yet put forward by the Prime Minister for any political consideration whatever being offered to the Natives. The whole basis of Native representation—including the present proposals—appears to rest upon mere expediency, a very insecure foundation. If expediency is to be the only

motive for granting a modicum of Native representation expediency may also sweep it away. In addition we do not believe that the Bills under consideration will satisfy any of those persons to whom the Prime Minister refers.

Fundamental Differences.

30. We have dealt with these points because they seem to show that there are fundamental differences between the Prime Minister's attitude towards the political rights of the Native people and ours. Party-political considerations (with which this Joint Council has nothing to do) have no doubt played their part in the past and present discussions on this subject, and we quite recognise the Prime Minister's practical difficulties. Nevertheless with a feeling of profound regret and disappointment we are compelled to oppose these measures.

Born of Fear.

31. It is deplorable (if we may judge from these quotations and from other speeches) that these measures have been born of fear—fear of the “ruin of the white population of the Union, and of European civilisation in South Africa.” We sympathise with the solicitude which causes this nervous apprehension, but our own anxiety arises from the dangers which will confront this country if the Prime Minister's measures are passed. Fear and injustice can no more exist apart than the two sides of the same coin.

Inherent Rights.

32. While the note of fear prevails throughout the Prime Minister's speech we miss any recognition on his part that the Native population has inherent political rights apart altogether from temporary political considerations. In criticising his speech and these measures we are therefore handicapped by the absence of any definite principles. We are compelled to examine his statements and these measures—not in the light of any principles enunciated by the Prime Minister, but under the searchlight of the political principles current in “modern European civilisation.” For if “European civilisation” is to survive in South Africa* it must do so under conditions favourable to its own growth. The acid test for these measures should therefore be political justice as known to “European civilisation.”

Grounds of Dissent.

33. Apart from details we find that we cannot accept these Bills on the following grounds:—

(1) We see in them no recognition of the fact that the Native people—no less than any other section of the community—form an *integral part of the Union*. The Bills regard them as creatures apart. Even as the Prime Minister's policy seems

* The adjective “European” appears to be acquiring a significance in South Africa which we cannot accept, *viz.*, that this civilisation is an attribute of the white man only and cannot be acquired by non-Europeans. The words are understood to mean “a civilisation confined to Europeans” and not “a civilisation of European type in which all sections of the community are included.”

to follow no definite principles, so the franchise proposals are arbitrary and bear no relation either to the place which the Natives should occupy in the body politic, or to their actual needs. And just as the franchise is to be arbitrarily fixed, so may it be as arbitrarily removed.

- (2) The Bills contain no inducements to the Native either to advance towards civilisation or to bear his share of the government of the country. No encouragement is given him to develop as a citizen of South Africa, and no hope is held out to him of attaining citizenship. He is made to feel that whatever progress he makes in civilised ways, is unwelcome to Europeans. One of the few inducements to progress that he had as an individual (the civilised vote in the Cape), is withdrawn.

By discouraging the civilised Native, the Bills tend to "the ruin of European civilisation in South Africa," as they turn the Native back into barbarism and a dangerously primitive economic condition.

- (3) We cannot accept the view that Native interests are inimical to the welfare of the country and that the interests of the European must be safeguarded by the withdrawal of the Cape Native franchise. There is nothing to support such a view in the history of the use made by the Cape Native of his vote. Wisdom demands that the Native people should be actively encouraged to believe that their interests are identical with those of South Africa generally.
- (4) Whatever may be the legal bearing of Sections 35 and 152 of the Act of Union, nothing that the Native voter has done in the past justifies what will be regarded by him as a punishment and a breach of faith. Is there any precedent under democratic rule for the withdrawal of the franchise from a people who have not only not abused it but who regard the privilege as a sacred one?

The Cape Native franchise is something more than the Parliamentary representation of the Cape Native. The Natives of the other Provinces regard it as in some degree a protection for themselves also. By their removal of the Cape Franchise would be looked upon as a catastrophe.

NOTE.

The Johannesburg Joint Council of Europeans and Natives has now published two pamphlets—the first on the Land Bill and the present one. The “ Coloured Persons’ Rights Bill ” has not been dealt with in this way because, up to the present, the Joint Council has been formed of Europeans and Natives only.

The Joint Council believes it has done a public duty in responding to the Prime Minister’s general invitation of criticisms of his Bills. Before further steps are taken, it will await the Conference of Europeans and Natives which the Federal Council of Dutch Reformed Churches is about to call for the discussion of these measures.

Meanwhile the Joint Council invites observations on the two pamphlets issued and any other contribution to the discussion.

Communications should be addressed to the HON. SECRETARY,
P.O. Box 854, JOHANNESBURG.

JOHANNESBURG JOINT COUNCIL
of
EUROPEANS AND NATIVES

IN DEFENCE
OF THE
CAPE FRANCHISE

MEMORANDUM No. 4.

“ There shall not be in the eye of the law any distinction or disqualification whatever founded upon mere distinction of colour, origin, language, or creed, but the protection of the law in letter and in substance shall be extended impartially to all alike.”

Natal. Proclamation of 1843 by Her Majesty's Government.

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IN DEFENCE OF THE CAPE FRANCHISE

1. It would seem a truism to say that the Cape Franchise must be understood before it is debated. But we have nowhere seen either its nature, or the extent to which it has been availed of by Natives adequately discussed, and undoubtedly great ignorance exists on these matters among all sections of our population.

NATURE OF THE FRANCHISE.

2. In the Cape Province no distinction is made as regards race or colour so far as the franchise is concerned. (Year Book 8, page 116) and the universal qualification for a vote is based:—

- (a) On education, and
- (b) On occupation of property or on income.
- (a) No person may be registered as a voter unless he can sign his name and write his address and occupation.
- (b) Any applicant for a vote must prove:
 - (1) Occupation of a building and/or land worth £75 within the Cape Province for twelve months before the registration commenced, and for the last three months within the electoral division for which the vote is claimed.

If there are joint occupiers who claim votes the share of each must exceed £75.

- (2) Wages of not less than £50 per annum earned within the Cape Province for twelve months before the registration commenced, and in addition that this shall have been earned for the last three months within the electoral division for which he claims to be registered, or that for the last three months he shall have resided within the division, or that when the registration commenced he was resident in the division.

EXTENT TO WHICH NATIVES HAVE QUALIFIED.

3. Particulars of the Cape Native vote are given in Appendix B. of the Report of the Select Committee on the Prime Minister's Native Bills. (A letter to the Committee from the Secretary for the Interior dated 16th June, 1927). It shows that during the twenty-three years from 1903 to December 31st, 1926, the Cape Native vote increased from 8,117 to 14,912 or 6,795 votes equal to 295 per annum.

During the same period the Cape European vote increased from 114,450 to 162,323, or 47,873 votes, equal to 2,081 per annum.

4. The nett increase of European over Native votes in the Cape Province was therefore 1,786 per annum, and the total European gain during the twenty-three years 41,078. On the 31st December, 1926, the excess of European over Native votes in the Cape Province was 147,411. In his speeches the Prime Minister lays stress upon the increase in the Native vote, but nowhere mentions the increase in the European votes **seven times as great**. One of his statements is worth quoting:—

“ According to expert judgment it will not be long before the number of enfranchised Natives in the Cape exceeds the number of white voters. This contention may appear exciting to more than one of you, but there is not a single ground for contesting it; everything points to this being a correct deduction from facts and figures.” (Smithfield.)

When the Prime Minister made this statement he could not have been aware either of the facts or the figures.

ESTIMATE OF TOTAL UNION VOTING POPULATION.

5. The Official Year Book, No. 8, pages 118/21, gives the 1923 total of 407,090 voters for the Union, of whom 38,532 were non-European. According to the letter above mentioned, the number of Native voters in this year was 13,848, so that there were 24,684 other non-European voters.

6. With the help of the 1925 figure, we therefore estimate the total voting population at the end of 1926 at 435,000, made up as follows:—

European Voters:

Cape	...	...	...	...	162,300
Natal	...	...	...	...	40,500
Transvaal	...	...	...	...	143,200
O.F.S.	...	...	...	...	49,000
					<hr/>
Forward	...	...	...	...	395,000

Forward	...	...	...	395,000
Non-Europeans:				
Coloured	...	...	25,100	
Natives	...	...	14,900	
			<u>40,000</u>	
				<u>435,000</u>

and we have for the Union in 1926 (Year Book No. 8, page 852):—

A European population of 1,679,900 with 395,000 votes.

A Coloured population of 568,200 with 25,100 votes.

A Native population of ... 5,115,400 with 14,900 votes.

(Cape, 1925=1,722,800—Year Book, No. 8, page 853.)

An Indian population of... 174,200 with — votes.

Cape Indian votes are included in the total of Coloured votes.

7. As Cape Natives who obtain votes do so on individual education and property qualifications, the total of Native votes has no direct connection with the figures of the Native population, and it should also be remembered that (a) while the educational qualification is not a high one it is sufficient to exclude the bulk of adult males, (b) Native wages in the Cape are low. (c) Limited as the obtaining of the property or wages qualification is to the Cape Province, the difficulty of any Cape Native employed outside the Cape Province becoming a voter is manifest.

8. In order that the position may be more easily grasped, we attach two diagrams:—

(a) Showing all the Cape figures contained in the letter above mentioned, and also particulars of the European voters in the other three Provinces for the years 1917/25. (Year Book, pages 118/121.)

(b) On a smaller scale, a proportional division of all voters as on the 31st December, 1926, tabulating the figures given in paragraph 6.

9. Faced by these figures and diagrams it is difficult to accept the Prime Minister's contention that the "Cape Native franchise must be fundamentally altered, unless we want to see either civil war, or the white man's ruin and that of European civilisation in South Africa" (Smithfield).

RESULTS OF EDUCATION.

10. It is alleged, however, that as the result of education the increase of Cape Native voters in the future will be much more rapid

than in the past, and the Prime Minister definitely raised this point at Malmesbury. He is reported as saying:—"When we consider the fact that the census of 1922 showed that there were at that time 235,000 Native children in the schools in the Cape Province and only 137,000 white children, we must realise at once what that awakening must mean to the country, namely, the handing over of white civilisation to the tender mercies of barbarism." These figures were again quoted by the Prime Minister in the Women's Suffrage Debate.

11. We are unable to verify this Native figure of 235,000, but have reason to suppose it is an estimate of the total enrolment of all non-European children—native, coloured and Indian—at school in the Union in 1922. It is clear how the European figure has been arrived at, for Year Book 8, page 176, Table II gives; for the Cape State and State aided schools in 1922, 137,581 European and 160,085 non-European children.

12. We have obtained the latest figures prepared by the Provincial Education Departments. They are as follows:—

Native Children in School, 31st December, 1927.

CAPE	...	...	...	...	...	...	120,000
NATAL	...	...	...	...	...	...	45,000
TRANSVAAL	...	...	...	...	...	...	42,000
O.F.S.	...	...	...	...	...	...	19,000
							226,000

So this Union total of 226,000 at the end of 1927 is 9,000 less than the Prime Minister's total of 235,000 for the Cape alone in 1922.

13. We are not clear as to whether the above mentioned 1927 total of Native children in school—226,000—does or does not include those in private schools. But either way our point is not affected, for the numbers in private schools throughout the Union for the last quarter of 1924 were 20,490 European and 16,892 Native children (Year Book 8, pages 189 and 191, Table VI). Indeed, we may go further and state that the figures upon which the Prime Minister's reasoning is based in regard to the effect of native education on the Voters' Roll are so entirely at variance with the official figures that it is impossible to attach serious weight to his reasoning.

14. We therefore find that the Prime Minister's statement of the position as regards the Cape Franchise is defective because—

1. While mentioning the small increase in the Native vote he omits to mention the **seven times greater** increase in the European vote.
2. He assumes that any given number of European and Native children in school will produce an equal number of voters, leaving out of account the difficulty the Cape Native has and will continue to have in obtaining the necessary property or wages qualification **within the boundaries of the Cape Province.**
3. His figures of Native children in school are incorrect.

INFLUENCE OF VOTES AND USE MADE OF THEM.

15. The Prime Minister also points out that in certain Cape Constituencies the Native vote is strong enough to require attention to be paid to Native opinion. This is as it should be. What is the value of a vote otherwise? Native lives and interests are bound up in this their country, and the constitutional expression of their views on public questions should be welcomed and respected especially in view of the manner in which they have used their franchise throughout its history. "In the Cape Colony," Mr. Tielman Roos told the Pretoria Native Conference in 1926, "it may fairly be said that the Native voice has *never yet been able to raise* an issue of purely native concern." It would be more correct to say the Native voice *has never sought to raise* an issue of purely native concern. No such attempt has ever been made. Native votes have been used, as such a privilege should be used, for the benefit of the whole population of the Union.

16. For many years to come, if not for always, native voters will only form a small minority of the voting population, so that if they make any attempt to misuse their franchise it can be promptly checked. So far there has been no sign of misuse, and for this native voters should receive full credit. Having proved that they understand the use of this privilege and its limitations there is no justification whatever for cancelling it.

REAL BASIS ON WHICH PRIME MINISTER'S ATTITUDE RESTS.

17. The absurdity of arguments against this franchise based on "fear" must now be patent to everyone, and the Prime Minister cannot escape this conclusion by saying that this "fear" has its

“origin in reason and prudence, and not in cowardice” (Native Affairs Commission Report, 1925/6, page 20). His policy really rests not on “reason and prudence” but upon the dogma enunciated in the early Transvaal constitution: “There shall be no equality between white and black either in Church or State.” In a previous Memorandum we pointed out that fear and injustice can no more exist apart than the two sides of the same coin. In this case arguments based on “fear” are used in the name of reason and prudence to justify injustice.

THE NATIVE VIEW.

18. Fortunately we can state the Native view authoritatively in terms of the Resolution passed by the Government Native Conference in Pretoria, on the 3rd November, 1926, to which there were only three dissentients out of forty-four delegates nominated by the Government. (Native Affairs Commission Report 1925/6, page 68.) The resolution reads as follows:—

“In view of the strong and unanimous feeling expressed by the Transvaal, Free State and Natal representatives against the abolition of the Cape Native franchise as proposed under the Representation of Natives in Parliament Bill; and

“In view also of the fact that the proposed Native legislation affecting franchise emanates not from a desire to grant franchise to Natives in the Northern Provinces, but rather from the mistaken fear on the part of the European public that white civilisation and white supremacy will be endangered.

“This Conference finds itself unable to consent to this measure which is directed against the future political rights of the people of the Union.

“It rejects the Representation of Natives in Parliament Bill.

“Alternatively it asks the Government to initiate a small beginning of a grant of franchise rights to the Northern Provinces’ Natives, but leave the Cape Native franchise untouched.”

Similar views are expressed in the evidence given by the Johannesburg Joint Council of Europeans and Natives before the Select Committee (S.C. Report, pages 176/190). The principle underlying these statements is that of “equal rights for all civilised men.”

19. We have shown that the Cape franchise in no way "endangers white civilisation and white supremacy." It was granted more than 70 years ago and has never been abused. Indeed, we consider it to be the very thing that the Prime Minister is seeking:— "The necessary provision for the transition period, the bridge for the Native leading across the state of semi-barbarism on the one hand to civilisation on the other, a bridge that the Native can cross during his period of development" (Malmesbury).

TWO POLICIES.

20. Before us we have two policies, the one laying down that "there shall be no equality between white and black either in church or state," and the other demanding "equal rights for all civilised men." the first based upon a permanent colour bar, the second postulating that this barrier may be overcome by "civilisation." What is the meaning of the word "civilisation" in this connection?

21. All applicants for votes have to prove their possession of the necessary qualifications by an objective and measurable test. It matters not what this test is so long as it is definitely measurable and is applied to all those who claim votes. It is for Parliament to decide what qualifications are necessary for full citizenship in a civilised community, and everyone, irrespective of race or colour, should be free to qualify.

22. In this case of the Cape Franchise certain Natives have qualified for citizenship, and, having succeeded, it is clear that they conform to the standards required of "civilised" men. The grossest injustice would be done if they were deprived of their votes, or if the path by which they have reached "civilisation" were closed to their brothers and sons. The bridge is there and all qualified men should have the right to use it.

NATIVE OPINION ON THE CAPE FRANCHISE.

23. The Report of the 1926 Native Conference, published by the Native Affairs Commission, shows how definite Native opinion is on this matter. (N.A.C. Report, 1926, pp. 56/68.)

Cape—Councillor Sakwe: "It would take too long to recapitulate the privileges due to the franchise. Their progress was largely due to this. They told their children to learn to build better houses and to be thrifty, all with the object of getting the vote so as to escape

the curfew regulations, be able to walk on pavements and gain the respect of others. The Bill would kill all these incentives to progress. . . .

“ As a man from the Cape he was glad that the delegates from the other Provinces had expressed themselves against taking away the Cape franchise.”

Professor Jabavu: “ They could not compromise on the Cape franchise. . . . The Cape Native feels a sense of injury from the Prime Minister’s proposals. The obvious application is that he does not wish the Natives of a lower status to rise to the higher status of the Cape, but to bring the latter down to the lower. . . . The policy is to bring down the best to the level of the worst. . . . The Cape Natives had to defend that heritage, for it was held by them not for themselves alone but for their children, and for the future development of the other Provinces. . . . If the Natives were driven to believe that injustice was being meted out to them then they might be a real danger to the whites. . . . The safest policy was to prove and convince the Natives of the justice of every proposal and to give them liberty to develop to the best of their ability. . . . If injustice were committed to-day it would result in a legacy of discomfort, suspicion and ill-will.”

Transvaal—R. Y. S. Thema: “ If it were true that the Natives in the Transvaal would get the Native vote in fifty years then the Natives in the north were prepared to wait that length of time. They could not in justice agree that the right given to the Cape should be taken away.

“ The Conference was asked to help the Government to violate the Constitution of the country. . . . In this particular case they were **not** going to concur. . . . Everything revolved on the fact that the Government wished to take away the Cape vote. There can be no compromise on the Cape vote.”

Transvaal—Chief Zibi: “ Mr. Thema had voiced the views of the Transvaal Natives by saying they would wait fifty years. They rejected the Bill, for they were asked to take a retrograde step.”

Natal—Chief Tombela: “ The Natives looked upon the Cape as the most enlightened Province. It was the hope of Natal and the Natives there did not want the franchise taken away from the Cape. The seven members would be useless. They would be knee-haltered dummies and mummies. The Cape franchise should remain and the vote extended to Natal, the Transvaal and the Orange Free State.”

Natal—Rev. Kuzwayo: “ He did not want the Cape Natives to be deprived of their franchise, which they regarded as a ladder for the Natives’ success.”

Orange Free State—Gonyane: “ The principle of the Bill was bad. The Cape franchise should remain and the franchise in some shape be extended to the north. No Native outside a lunatic asylum would agree to the Cape vote being taken away.”

Orange Free State—Chief Fenyang: “ The Orange Free State Natives had always looked forward to the time when they would get the same vote as the Cape, and they were not prepared to agree to anything which would result in the Cape franchise being abolished.”

SEPARATE NATIVE FRANCHISE.

24. We view the Prime Minister’s proposal for a separate Native franchise with alarm and regret. In our opinion the Cape franchise as it exists to-day embodies a vital principle, namely, that the interests of all sections of the community should be regarded as identical, and that the more these interests are correlated the better for the State.

25. We are convinced that any dual franchise will increase racial antagonism and that the longer it lasts the more powerful for evil it will become and the wider will be the cleavage between Europeans and Natives.

Not merely in the country but also in Parliament it will foster the belief that the two races are in opposition to one another, and the co-operation that is essential to the progress of South Africa will become impossible. If the proposals of the Prime Minister become law the steadying influence of the Cape vote will be lost. Instead, we shall find that the country will become more and more inclined towards one-sided and exclusive legislation. European interests will be more and more dominate Parliament. The interests of non-Europeans will be isolated from those of the country as a whole. Native representatives will be driven to take undue advantage of party differences to snatch benefits for their constituents and will be unable to regard vital issues from a national standpoint. It will be fatal if European interests and Native interests are separately represented. Every member of Parliament should have the interests of all South Africa as his province, and these interests can only be protected by representatives elected on a franchise that knows neither race nor colour.

NOTES ON DIAGRAMS.

1. This diagram plots all the figures given in Appendix B to the Select Committee's Report and shows to scale the totals of European and Native votes.

2. The distance between the curves on any vertical line gives the majority of European over Native votes in any year from 1903 to 1926, and it is obvious that this majority is steadily increasing.

3. The shape of the European curve (black) justifies the belief that the dotted line gives with some accuracy the rate of increase of European voters for future years as well as for the past; and the Native curve indicates that the rate of increase denoted by the Native line is not likely to be exceeded. It is therefore probable that the influence of the Native vote will be a diminishing factor in South African politics. The lower rate of increase for 1923/1926 is significant.

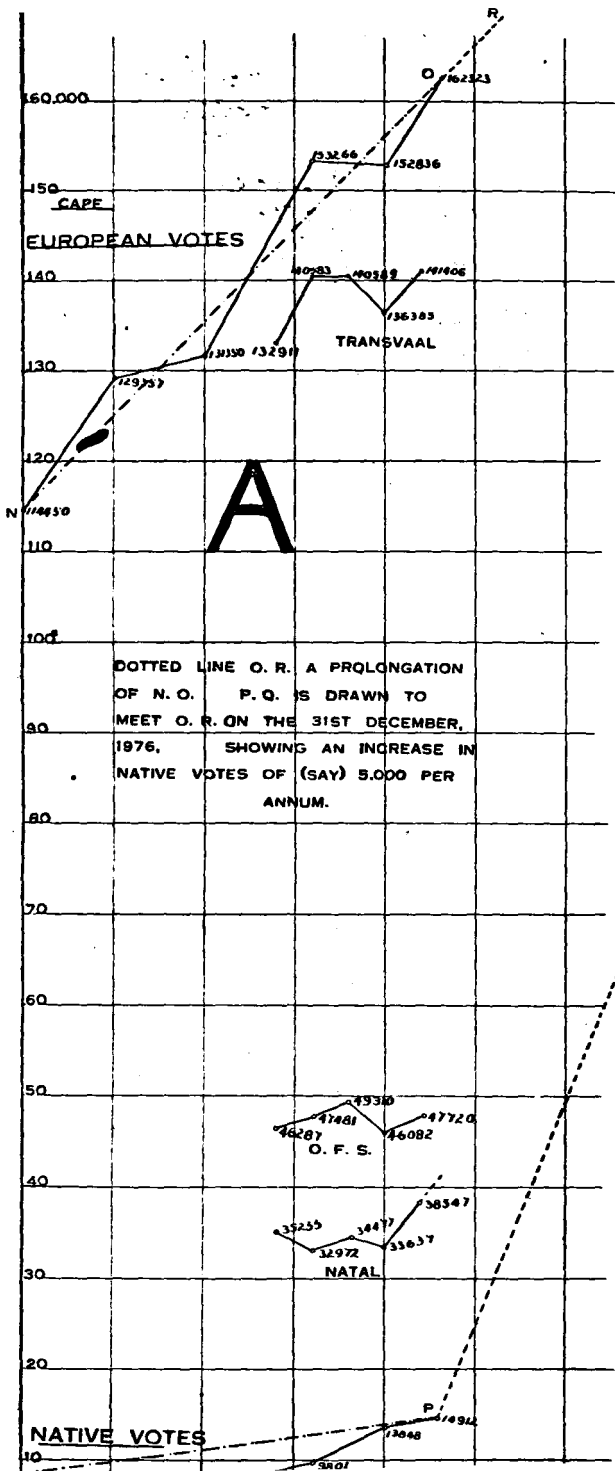
4. The European dotted line is produced and the Native dotted line is drawn so as to meet the European line on the 31st December, 1976. It shows that, supposing to-day's increase of European votes continues for fifty years, native votes will have to increase at the net rate of 5,000 a year to overtake it in fifty years' time, as against the present rate of increase of 295 per annum.

5. The Native curve is a curious one, and appears to indicate that some marked change took place in the conditions of Native life during the period 1903/26. About the year first mentioned, economic pressure made itself felt in the Cape Province, and we suggest that this curve may be the result of Cape Natives coming to work in large numbers in the Transvaal Gold Mines.

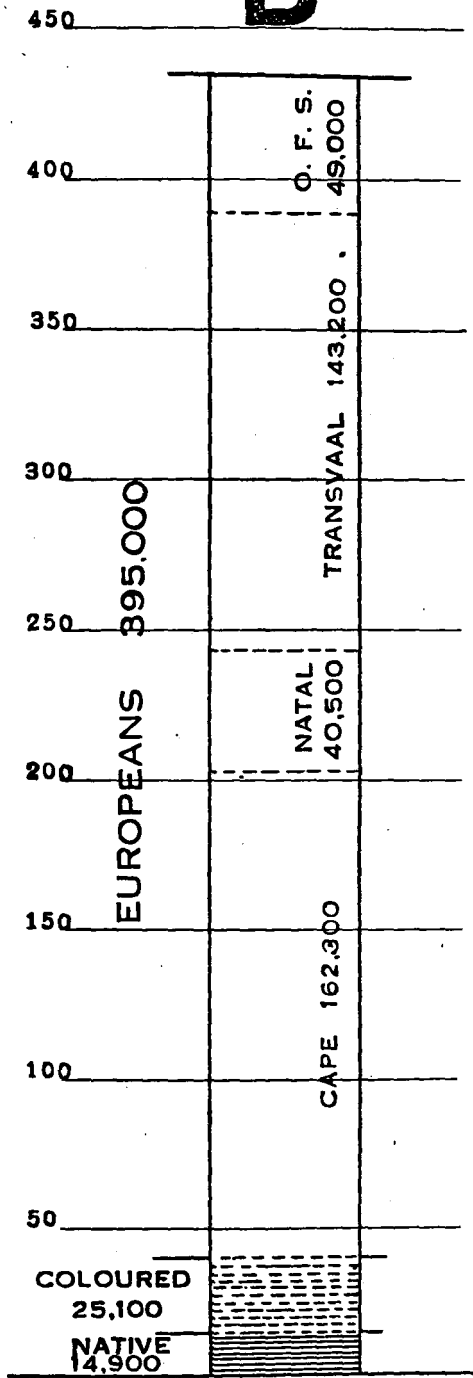
6. The figures for the Transvaal, Free State, and Natal appear in Year Book 8, pages 119/21.

B.

This diagram on a smaller scale is paragraph 6 of the Memorandum in tabular form.



B



SHOWING RELATIVE PROPORTIONS OF
COLOURED AND NATIVE

CHECKED
2003-04