

The History of Native Policy in South Africa

from 1830 to the Present Day.

BY

EDGAR H. BROOKES, M.A., D.Litt.

Second Revised Edition.

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History of Native Policy in
South Africa.

To the
Rev. Charles Bourquin,
of the
Mission Suisse Romande, Pretoria,
this book,
with which, where he differs, he will differ in charity,
is respectfully and affectionately dedicated.

“Les grands génies ont leur empire, leur éclat, leur grandeur, leurs victoires. . . . Ils sont vus des esprits, non des yeux; mais c'est assez Mais tous les esprits ensemble. . . . ne valent pas le moindre mouvement de la charité; car elle est d'un ordre infiniment plus élevé.”

PREFACE TO THE SECOND EDITION.

The First Edition of this book having been for nearly a year out of print, the need for a Second Edition has become urgent. The demand for the book has been constant, and I would express my appreciation of the way in which the press and the public have received it.

This Second Edition, while built on the same skeleton structure as the First has been thoroughly revised, scarcely two pages together having been passed without some alteration. The reasons for these changes are four in number.

In the first place, some minor inaccuracies have called for correction. I am glad to say that these are very few in number.

Secondly, a few points required further amplification and explanation in the light of subsequent research. Particularly was this the case as regards the custom of *lobola*.

The third group of changes is a larger one. Perhaps it may be characterised as one of style and taste. The book as first published was over-full of the facile and rather hard dogmatism of youth. I have felt myself sufficiently older and wiser to tone down some too confident conclusions and condemnations. Yet, while I realise much more than when I first wrote the book the strength of the arguments for the policy of identity and the honesty of those who hold them, I have not been able to change my main ground. The policy of differentiation, though I have endeavoured to put it forward with less dogmatism and more moderation, still seems to me, all the circumstances considered, the best for South Africa. I have tried to go a long way with my many friends who feel that in the political and economic fields there should be no differentiation based on race or colour. At times my heart has been with them, but never my head. Ultimately I have come to the conclusion that their policy carries

within it the seeds of strife rather than of peace, and that in the practical circumstances of South Africa to attempt to press it for many generations to come would do the Native more harm than good. In the sincere conviction that a generous policy of parallel development, justly interpreted, is the way out for South Africa, I have left the main argument of the First Edition, the basis of the book, untouched.

The First Edition contained a good many passages which gave offence to critics more imperialistically inclined than myself. I was criticised severely in many of the reviews of the book for this, and I hope I have the manliness to own that the reviews were correct. Whether or not the passages objected to were just—and I believe some of them were—most of them were unnecessary to the main argument of the book. In a country like South Africa, with its divisions of race as well as colour, the virtue of Christian charity is especially needed, and ought to prevail over the desire to score an occasional brilliant "hit." I have tried in this Second Edition to excise every passage which could give offence to the most sensitive critic, unless it was an essential part of the argument of the book, when it would naturally have been fatuous to have interfered with it.

The fourth group of changes is due to legislation, actual or projected, since the publication of the First Edition. No attempt has been made to give a connected account on criticism of General Hertzog's four Bills for the settlement of the Native question, for the good and sufficient reason that at the time of publication these Bills are still in a fluid state, and their final fate is quite uncertain. The Coloured Persons' Rights Bill falls outside the scope of the book. Appropriate references in the text and in foot-notes have been made to the Union Native Council Bill (Chapter XII) and to the Natives' Land Act 1913 Amendment Bill (Chapter XV). The most controversial Bill, however, is the Representation of Natives in Parliament Bill, which as published at the end of 1926, proposed, briefly, to abolish the Cape Native

Franchise and to permit the Natives of the whole Union, in place thereof, to elect seven European representatives in the House of Assembly, with very limited voting powers. To this Bill in the form described above, I cannot give my adhesion for several reasons, the most important being the limitation of the voting powers of the seven members. But the principle of replacing the Cape Native Franchise gradually with a system of parallel institutions and representation was set forth in the First Edition of this book, and to that principle I fully adhere.

I have left my original proposals for the working out of this principle (Chapter XIV) virtually unaltered; but there is one point in which circumstances may demand their alteration. They turn largely on the use of the Senate as the specialist House in Native Affairs. But the powers of the Senate have been limited, and the tenure of office of the Senators nominated to represent Native interests made to depend on the will of the Government, by legislation of 1926. In these circumstances the proposal of General Hertzog to place the seven representatives of the Natives in the House of Assembly would probably be preferable to-day.

I desire here to record my protest against this change in the constitution of the Senate. It arose from the Senate's repeated rejection of the Colour Bar Bill—a rejection which, in my opinion, was not only justifiable, but a matter of duty. Exaggerated as has been the language used by the opponents of the Colour Bar Bill, and little indeed as has been its practical effect, I would yet record here my complete dissent from its principle, and would say that nothing in this book as originally published supported it. Psychologically its effect on the Native population has been disastrous, and it has made the task of evolving an acceptable Native Policy immeasurably more difficult—all for nothing.

While I have ventured to criticise some of the actions of the Hertzog Government, I desire to record here my admiration of the courage, sincerity and statesmanship underlying the later proposals of General Hertzog, as out-

lined in his famous "Smithfield Speech" of 13th November, 1925. General Hertzog has done South Africa a great service in compelling the electorate to face the tremendous issues of Native Policy frankly and fully—one of many great services to his country.

Finally I wish to thank my friends Mr. F. W. Mullan, M.Econ., Mr. H. A. J. de Bruyn, M.A., Mr. A. G. Gladwin and Mr. B. C. Mullan for their kindness in correcting the proofs of this edition during my unavoidable absence in Europe.

EDGAR H. BROOKES.

Dingaan's Day,
16th December, 1926.

PREFACE TO THE FIRST EDITION.

To combine a University Thesis with a popular exposition, a piece of historical research with a constructive examination of a practical political problem, is, perhaps, to run a great risk of failing in both tasks. Between the somewhat snobbish pedantry of research and the defects which serve to win popularity, the way of success is narrow and hard to attain. The hardened researcher wants evidence without conclusions; the journalistically trained "man in the street", conclusions without evidence. Probably both will be disappointed in this book.

The writer can but plead that he has striven to give of his best without partiality, fear or favour, and express the hope that the results of some years of patient study may be of help to his countrymen in assisting in the solution of their greatest problem.

He cannot but realise the force of those quaintly-worded sentiments to which Sir Walter Raleigh gives expression in the Preface to his "History of the World": "Whosoever in writing a modern history shall follow truth too near the heels, it may haply strike out his teeth: there is no mistress or guide that hath led her followers and servants into greater miseries." Yet he has ventured to court the dangerous honour of truth's service.

To those pedantic souls who may feel disposed to censure the intrusion of conclusions of legal and political science into the strict domain of history, the author would plead the urgency of the problem, and the presumptive value of the application to it of an impartial historical research.

One of the more pleasant tasks of a Preface is to record the obligations under which the author has been placed by his friends. In the first place, he desires to record his thanks to the Hon. the Prime Minister (General J. B. M. Hertzog) and to Senator the Hon.

W. J. C. Brebner, whose liberality has endowed this book and made its publication possible. It is especially gratifying to be able to place on record the broad-mindedness with which the Prime Minister has insisted that this book, an independent scientific research, shall not be modified to meet the exigencies of practical politics in any particular. The personal encouragement which he has given while the book has been awaiting publication will always be remembered by the author with grateful appreciation.

Next he would wish to thank the officials of the Archives, especially Messrs. Goldman and Morkel, for their prompt and courteous assistance; Mrs. S. O. Samuelson and Mr. H. S. Walker for access to a large number of valuable official and personal papers of the late Mr. S. O. Samuelson; Messrs. P. A. Linington and W. P. E. Stokes-Waller, F.I.S.A., B.Econ., of the Native Affairs Department, the latter now a colleague at the Transvaal University College, for the loan of many valuable books and pamphlets and for other generous help; Mr. J. Frank Clark, of Durban, for access to certain Zulu publications and the loan of some most useful printed matter; Dr. S. P. Engelbrecht, of the Transvaal University College, for the loan of several books bearing on Sir T. Shepstone; and the Rev. R. W. Loffhagen, formerly of the Diocese of Lebombo, for some useful information regarding Portuguese East Africa. Finally to his many Native friends, and perhaps he may be allowed specially to mention Mr. I. Bud-M'belle, of the Native Affairs Department, and the Rev. H. D. Hlabangane, of the Wesleyan Methodist Mission, Pretoria, the author must express his thanks for the help they have given him from time to time, greater perhaps than they sometimes realised, in his efforts for the advancement of their race, which he has learned to regard with an affection and loyalty second only to that which he feels for his own young nation.

In conclusion, it should be said that this work is based upon, and in large part identical with, a Thesis

presented to, and accepted by, the University of South Africa for its D.Litt. Degree. In the final editing of the manuscript, however, a few changes have been made from the wording of the original Thesis—mainly due to the legislative and administrative changes which have taken place since 1922, such as the Urban Areas Act, the Administrative reconstruction of the Department in the Transvaal, etc.—and the book as now issued does not therefore bear the *imprimatur* of the University in every particular.

E.H.B.

NOTE.—Since this book was first prepared in MS. form, a great National Conference on Native Affairs, organised by the Dutch Reformed Churches of South Africa, has met and passed a series of resolutions, now published in pamphlet form, embodying a constructive Native Policy. It is gratifying to note that, on nearly every point, they confirm the conclusions of this book.

E.H.B.

CHAPTER I.

INTRODUCTORY.

From the very dawn of history, the greatest historians have fully realised that there is an object in investigating the past beyond any antiquarian interest it may hold. From the pages of Thucydides and Livy we carry away the clear lesson that the work of the present is so to examine the past as to discover the best and wisest paths for the future. And although we are living in days when a handful of original documents is thought to make a history, there are signs that the cult of a dead research is coming to an end. The new movements in history have taught us the duty of an absolute verification of facts from primary sources: carrying that firmly in our minds, we can now venture to apply it to, and to re-awaken, the old classical conception that history, while impartial, should be purposeful.

Thus there is a very close connection between history and political science. Any conclusions of theoretical politics can only be valuable by accident if they do not build the solid foundation of an accurate historical research. As Seeley has reminded us in his jingling *épigram*: "History without political science has no fruit; political science without history has no root."¹

The study which is here presented, is, thus, twofold. It is an attempt to make an accurate and impartial investigation of the past Native Policy of South Africa from primary sources, and so far it is a work of history. But it is also an attempt to deduce scientifically from the failures and successes of the past the direction which future policy ought to take, and in this respect it is a work of political science. The two elements of the

¹ "Introduction to Political Science," page 4.

study are really inseparable; nor would anything but the merest pedantry argue for their separation. If history is in any sense a science, if it is anything more than romance, with the bloom of life replaced by "dead Archive-dust," the past must serve as a guide for the future.

The work which is thus undertaken is an investigation of Native Policy; and it is best to set bounds to its scope at once. It is not an anthropological or a psychological study, except so far as all political science must presuppose a practical acquaintance with the habits of thought of the people concerned. That the writer can claim to have; but to present conclusions valuable to theoretical psychology is a work which awaits an abler and more learned pen than his.

It is the institutional side of history which, then, claims our attention; but the bounds must be set narrower even than that. Much fascinating and useful research is being carried on at the present time, in particular by that eminent scholar the Rev. Father Bryant, Research Fellow of the Witwatersrand University, regarding the history of the various Native tribes prior to the date when they came under European Government. But what is attempted in this book is something quite different—a subject in itself—namely the manner in which Europeans have striven to rule the Bantu, since the first date that they came directly under European control. The influence of an advanced on an archaic civilisation is always an interesting topic for study and thought. In South Africa we have the rare phenomenon of the less advanced people progressing numerically at a rate faster than those with whom they have come into contact. The fate of the American Indian, of the Maori or of the Australian Black-fellow is not going to be the fate of the Bantu peoples of South Africa.

The way in which white has governed black in South Africa during approximately the past century is the subject for investigation. The spectacular wars and battles which illumine the pages of Theal and Cory, interesting and picturesque though they may be, form no part of this

research. It is the less dramatic, but more permanent, victories of peace which both demand inquiry and have hitherto failed to receive it.

It was, in the first place, the writer's intention to take South Africa as a whole as a field for study. But, after some considerable time spent in preliminary research, he has realised that an investigation extending outside the borders of the Union would swell this book to unmanageable and terrifying proportions. It would moreover delay for some further years the publication of a work which it is not unreasonable to suppose may be of some use to the Union in the present perplexed and confused state of its Native Policy. At the same time, the investigation actually carried out with regard to those portions of South Africa outside the Union has convinced the writer that a fuller research into their Native Policy, while it would add to the sum of historical facts, would not alter the conclusions arrived at here.

Nevertheless, this book must be regarded as only the first of a series of investigations on the subject of Native Policy. Extensively and intensively it can be added to: Not only do the Protectorates of Basutoland, Bechuanaland and Swaziland, the two Rhodesias and the Territory of South-West Africa call for study, as being potentially part of the Union of South Africa; but also there is scarcely a subject-head of this work on which a complete volume might not be written. As a pioneer work, seeking to lay down the main lines of future research, this book, by suitable discrimination and a good deal of regrettable excision, has been reduced to a size which renders not altogether ludicrous the hope that it may be read; but the writer hopes that, with the constant and encouraging growth of the Faculty of Public Administration at the Transvaal University College, Pretoria, he will find able co-operation in the work of investigation which he himself does not propose to relinquish with this volume.

In dealing with a problem like Native Policy, we must confine ourselves to verifiable facts. Rhetorical phrases about the "rights of man," "the white man's burden" or the "dignity of labour" are better suited to

the habitudes, and perhaps to the mental capacity, of party politicians than to those of scientific students of history and statecraft. Generalisations are useful and necessary, but only as a final summing up of particular conclusions arrived at on empirical lines. They are, therefore, mostly reserved for the concluding Chapters of this book where they can be taken or left as the reader prefers. Let us try to start, if possible, without theories and without prepossessions, in a scientific spirit. Fortunately, 'unlike more practical politicians, we have no votes to catch. Let us assume nothing, therefore, unless and until we have a basis of historical facts to work on.

We shall begin by a simple historical study ²—first of the beginning of Native Policy in South Africa, from 1830 up to approximately 1847-8, the years which mark the settlement of the land question in Natal, the reversal of the treaty policy in the Cape and the exodus of the Voortrekkers from Northern Natal to the future South African Republic, there to form a policy of their own. Thereafter it becomes necessary to pursue three separate lines of development—those of Natal, the Native Territories of the Cape, and the Transvaal—until Union, and finally, as a brief Chapter, to discuss the Native Policy of the Union and to attempt to relate it with the various Colonial or Republican policies.

We are then in a position to benefit by a more analytical treatment, still based on history. The first, and at present the most important, sub-division of Native policy is Administration. A full analysis of the existing systems, and of their historical evolution, is given and suggestions made for future policy.³

A point of perhaps wider interest is Native Law.⁴

The nature of this much misunderstood body of institutional morality is a subject for study which should appeal to all those interested in ancient legal systems and in theoretical jurisprudence as well as to students of Native Policy proper. The history of the recogni-

² Chapters II—IV.

³ Chapter VII.

⁴ Chapters VIII—XI.

tion or non-recognition of Native Law by the South African Legislatures and Courts throws much light on the legal principles prevalent in the later nineteenth century when Bentham and Austin spiritually "flourished" in our midst. A controversy still continuing adds zest to what might otherwise seem the somewhat recondite subject of codification, whilst a detailed examination of two cardinal ideas of Native Law—polygamy and *lobola*—throws much light on Native mentality and the state of Native sociological development.

Leaving Native Law, we come to the central problem of Native Policy—the political question.⁵ Here a full historical investigation is made of the working of the Council system, its present state and its future possibilities; of the various forms of Native franchise hitherto adopted in or suggested for South Africa; of the Senate as a guardian of Native interests; of the system, half-a-century old, of legislation by proclamation; of the Natal Advisory Board scheme, and its recrudescence in 1920; of Native Pitsos and Conferences and their possibilities. As in every other case, a beginning is made by examining briefly the condition of the Natives before their contact with European administration; and the examination is concluded with certain constructive suggestions for the future.

No disease exists without a nostrum. For the difficulties of Native policy, that miraculous medicine is segregation. An examination of residential and possessory segregation is therefore made, on historical lines, and followed by a general preliminary study of the land question⁶ and a detailed discussion of forms of land tenure.⁷

The subject of land tenure is intimately bound up with that of agriculture. The progress of Native agriculture, though far less rapid or complete than it might have been is one of the more pleasing features of the history of Native Policy in South Africa.⁸

⁵ Chapters XII—XIV.

⁶ Chapter XV.

⁷ Chapter XVI.

⁸ Chapter XVII.

Agriculture gives us only one side of the economic problem arising from the juxtaposition of white and black in the Union. As compared with its brilliant record of steady progress, the chaotic and perplexed history of Native labour in industries is a significant contrast.⁹ The one can certainly not be fully understood without the other.

Even if man were able to live by bread alone, the subject of religious instruction and missionary activity would have to be discussed at this stage. For it is to the missionaries that the Bantu owe their first systematic training in agriculture and industry. But the writer would go further and say that of all the forces which are at work to assist in the evolution of the Bantu towards a higher and broader life, the Christian religion is the greatest. In spite of the many mistakes of the past and even of the present, the work of the missionaries is of the utmost value to South Africa as a whole, and to its Native races in particular: hence religion¹⁰ and education¹¹—the latter very largely missionary even to-day—demand special inquiry.

This exhausts the main heads of treatment; but there are various minor grievances and difficulties which should not be passed without mention. Little things often cause more discontent in Native areas and among Native people than really important ones. And a discussion of these practical grievances¹² cannot but help to make the whole problem more vivid and real to the student.

It is only after this complete historic-analytical treatment has been added to the purely historical inquiry of the earlier Chapters that we are able to come to definite general conclusions as to future Native policy.¹³ Appended to these is a short final Chapter¹⁴ summing up,

⁹ Chapter XVIII.

¹⁰ Chapter XIX.

¹¹ Chapter XX.

¹² Chapter XXI.

¹³ Chapter XXII.

¹⁴ Chapter XXIII.

for convenience of reference, the detailed recommendations made in the course of the book.

The study of Native Policy is of the utmost importance to every South African, whether he aspires to be a specialist in the subject or not. For it is on its Native Policy that South Africa will be judged in the international world. It is the acid test of South African nationhood. Hence—although enthusiasms of this kind are supposed to be discarded by historians, small as well as great—the writer must confess that a zeal for the honour of South Africa, for the recognition elsewhere of all she has done in this matter, for the dispelling of the slanders which have wounded her good name, and for the impartial pointing out of where she has failed, not to censure her but to help her to avoid censure, has been his chief inspiration, to which he must add a genuine affection for the simple-hearted, lovable Native folk, among whom he can number not a few friends.

To a South African patriot, the evolution of a fully satisfactory Native policy is an end worth striving for, even if he is not immediately interested in it. The administration of the Mandated Territory of South West Africa, and the government of its Native people are tests which the world-forum of the League of Nations Assembly will apply to our country. That country must one day take charge of the "islands" of Basutoland, Bechuanaland and Swaziland now ruled directly by Great Britain. The willingness for change on the part of the Native populations concerned will be proportionate to the happiness and content of the existing Native population of the Union with its government. The man who would work for the advance of the Union to a fuller international prestige can thus hardly serve his ideals better than by devoting himself to the realisation of a thoroughly satisfactory Union Native policy.

There are many outside South Africa, particularly within that mighty Commonwealth of Nations of which South Africa forms a part, who will be interested in the methods with which South Africa has endeavoured to solve her Native problem. For though that problem is

unique, in that no other country has a settled and increasing white population of all and every social status and at the same time a larger and increasing black population, yet there are points of similarity which will doubtless be of intense interest.

To students of political science and of jurisprudence, whatever their country may be, the study of the early Native policy and law and of European treatment thereof, cannot fail to offer suggestions of value.

Though much remains to be done, yet much has been done by the white races for the black. Undoubtedly it has been a blessing, not a curse, for the Bantu of South Africa that they have gradually come under European control. Here we cannot do better, in concluding, than quote the striking words of the South African Native Affairs Commission of 1903-5¹⁵ :—

“It is sometimes said that civilisation, or the beginnings of it, have not tended to make the Native happier, more trustworthy, more civil, courteous and obedient, and stronger physically and morally; and at the first glance there is some excuse for forming this opinion. True it is that the advent of civilisation has weakened the power of what long ages had taught the Natives to regard as most necessary to their social and commercial life, that it has tended to loosen tribal ties, to undermine wholesome patriarchal control, and has let loose in the midst of the resultant disorganisation all the temptations and vices which dog the steps of civilised advance. But where it has destroyed it will again construct; it has not taken away without offering something in return. The great powers of Christianity and education are at work. There has been, and there continues, a great struggle between the powers of good and evil, of light and darkness, of enlightenment and ignorance, of progress and tradition, of Christianity and heathenism. Is it, therefore, surprising that much that was picturesque, attractive, and even admirable in the Native when untouched by European influences

¹⁵ Report, Para. 272.

has been swept away? The final outcome of a righteous war is not to be judged by the devastation of opposing armies or by the scenes of slaughter and bloodshed in the field of battle. No less fallacious would be the attempt to gauge the eventual issues of the civilisation of the Natives by the many unfortunate features of the struggle which still prevail."

* * * * *

Sources. The author has confined himself almost entirely to primary sources, of which the quantity is simply bewildering, and yet hardly touched. This has involved an amount of labour which can better be imagined than described. To read—as the writer has done—through every scrap of printed matter relating to Native Affairs in the Cape Archives is in itself a Herculean task, especially when one recollects the arid tracts in that vast expanse, reminiscent of nothing so much as of Chaucer's Poor Parson's Tale. To wade, again, through the quaint spelling, and more than quaint writing of the Archives of the Republic of Lydenburg is in itself a liberal education. But the general content and distribution of the various Archives are sufficiently well-known to historical students to render it unnecessary to mention in more detail more than a few specially interesting, and hitherto little-utilised, sources.

The Archives of the Province of the Transvaal (1887-81) are of special value to any investigator of the Shepstone system, as showing the Shepstones (Sir Theophilus and Mr. Henrique) with a free hand deliberately and consciously introducing that system into the Transvaal. No study of Natal records can be complete without them.

Light is thrown on both the Transvaal and Natal by a study of the Archives of the New Republic (1884-7). They are better arranged (and better written) than other early Republican documents; and throw much light on the cross-currents of Transvaal-Natal-Zululand policy in a very obscure and confused period. The writer cannot refrain from mentioning that among these documents he found a

neatly-written Memorandum accompanying a Map drawn to illustrate the New Republic-Zululand boundary question (1884). In the bottom lefthand corner of the map is the familiar and honoured signature "Louis Botha"—probably the first of many official documents bearing that name.

In the Cape and Natal there is, for part of the period, a series of publications to which no parallel exists in the other Provinces. The Cape Native Blue Books were commenced in 1874 as the result of a resolution of the Cape House of Assembly of 10th June, 1873, and the Natal Native Blue Books at the instance of Governor Sir Henry Bulwer in 1878. From 1890 both sets tend to become the typical Government Blue Book, than which perhaps no more need be said. Up to that date they furnish not only a most valuable but also a most interesting and easily accessible source. Containing the original reports of the Magistrates of the two most thickly-populated Native areas in the Union over a considerable period of years, they are invaluable. In the earlier years, too, Magistrates "spread themselves" in a quaint but interesting way, even to the extent of quoting Horace—an anfractuosity perhaps less common now than then.

As regards Natal, the writer had the additional advantage of the loan (through the courtesy of Mrs. S. O. Samuelson and Mr. H. S. Walker) of a large quantity of official and personal papers of the late Mr. S. O. Samuelson, Under Secretary for Native Affairs in Natal from 1893 to 1909—material of the very highest historical value, and hitherto inaccessible to researchers.

The Transvaal offered no such adventitious aids. Here it was a case of written documents not merely first or last, but all the time. For the benefit of subsequent researchers, the author would mention that the State-Attorney's papers may, with advantage, be consulted in addition to the Superintendent of Natives'.

Reference must be made here to Commission Reports. The most valuable and interesting are those of the Commons Select Committees of 1836 and 1851, the Cape Native Laws and Customs Commission of 1884, the historic Natal

Commissions of 1846-7, 1852-3, 1881-2 and 1906-7, and the South African Native Laws and Customs Commission of 1903-5.

It would be to little purpose to quote here the numerous secondary authorities employed. Many of them—small pamphlets, etc.—are out of print. In every case, foot-note acknowledgements of sources have been given, and all information of importance is thus verifiable to its source. Most of the better-known secondary authorities have deliberately not been used where other and primary sources were available.

No book on any aspect or period of South African history can fitly close without a tribute of thanks to that Nestor of research, now alas! passed from us, Dr. Theal. It is due to his extraordinarily indefatigable and discriminating labours that it is possible to-day to prosecute historical research under conditions, which, if not perfect, are at least infinitely better than when he undertook his great life-work. All honour to his name.

CHAPTER II.

THE BEGINNINGS OF NATIVE POLICY IN SOUTH AFRICA.

It is a matter of great difficulty to fix on a date which marks the beginnings of the Native question as we understand it in South Africa to-day—that is, the permanent submission of Bantu tribes in appreciable numbers to European Government. But probably we shall be near enough to accuracy if we take the Despatch of Sir Lowry Cole dated the 2nd January, 1830, and the reply of the Colonial Secretary, Sir George Murray, dated the 6th May of the same year, as a suitable starting point. Sir George Murray's Despatch is so important and illuminating that it deserves to be quoted *in extenso* :—

"I have received your despatch of the 2nd January last, in which you report the results of your recent visit to the eastern frontier of the Colony under your government, and I am happy to learn that all serious apprehension of an invasion from Caffraria has subsided.

"I concur with you however in regretting that *a portion of the ceded Territory continues to be occupied by bodies of Caffres,*¹ whose numbers I collect, from the tenor of your despatch to be very considerable. This is undoubtedly a great evil; for while on the one hand, it is not to be expected that these people will ever voluntarily evacuate the Colonial territory, I am not, on the other hand, prepared to authorise you to expel them by force of arms from the land of their birth.

"At the same time it is clear that, without entirely abandoning the policy which sought to set up a bar of separation between the Caffres and the Colonists, the former cannot be allowed to remain as owners of the soil in permanent occupation of the Colonial territory. That

¹ The italics are mine.

policy which embraces the interest of the Caffres themselves should not be lost sight of. It was a wise measure to remove them from temptations which must attach to their close proximity to the borders of the Colony; and it would be not only sacrificing the ultimate hope of their civilisation, but the immediate welfare of an extensive district of the colony, to allow the Caffres to retain their present locations without some effectual guarantee that they will not abuse the temporary indulgence which you have felt yourself induced to continue to them. That guarantee should be their peaceable conduct; and it must be fully understood that every attempt which they shall make to plunder the farms or property of the colonists, will, as in the case of Makomo, be visited by the immediate expulsion of the whole tribe to which the plunderers shall belong. I confess I see no other course which can be followed, consistently with the safety of the Colony, for leading these people to adopt the habits of civilised life; and this should be not only fully explained to them, but arrangements should be made and promulgated by proclamation for enforcing their expulsion from the Colony simultaneously with the occurrence of any gross misconduct on their part.

“I need not, of course, impress upon you the necessity of taking effectual measures for preventing any of the tribes beyond the boundary from locating themselves in the Ceded Territory.”

It will be noticed that the British Government approached the problem of ruling Natives with extreme distaste. The history of the next seventeen years in the Cape is merely a record of the efforts of Great Britain to evade all responsibility in this direction; and it is not until the closing weeks of the year 1847 that we find this hesitating policy ended by the masterful hand of Sir Harry Smith.

Combined with the distaste for ruling Natives directly was a strong wish to control the tribes through treaties with their Chiefs—a policy which the history of India during the preceding fifty years doubtless recommended to the Colonial Office, ignorant of the difference in civilisation

between an Indian Rajah or Nawab and a Bantu Chief. In this the heads of the Colonial Office were doubtless misled by people on the spot to whom it was not unnatural to look for impartial guidance. The famous Dr. Philip, for example, told the Commons Select Committee of 1836 that in his opinion "the Caffres were quite capable of understanding a system of international law, and of appreciating it."²

The beginnings of the Treaty System are to be observed as early as 1833. On 27th November of that year, a Colonial Office Despatch was addressed to Sir Benjamin D'Urban calling his attention to the propriety of "cultivating an intercourse with the Chiefs of the Caffre tribes" by stationing "prudent and intelligent" men among them as Government Agents. The Colonial Secretary expressed the view that many, if not all, of these Chiefs might be gradually induced, in return for small annual presents, to become responsible for the peaceable conduct of their clans. In accordance with these instructions, Sir Benjamin D'Urban concluded the first of a series of treaties—that with the Griqua Captain Andries Waterboer³—on the 11th December, 1834.

The reply of the Colonial Office⁴ was almost embarrassingly cordial: "I not only approve in the fullest manner," wrote Lord Aberdeen, "of the object and terms of this agreement, but I am desirous of expressing the high satisfaction which it has afforded to His Majesty's Government to learn that you have, even in one instance, succeeded so completely to realise the view which the King's Government entertain of the only policy which it becomes this country to observe and steadfastly to pursue in regard to the native tribes by which the colony under your Government is in a great measure encompassed."

It must be perfectly clear that the policy of the British Government was definitely laid down in unmistakeable

² Commons Select Committee on Aborigines (British Settlements), 1836; *Evidence*, p. 677.

³ Subsequently infamous as a pretext for the Diamond Fields Annexation of 1871.

⁴ Despatch of Lord Aberdeen, dated the 11th April, 1835.

terms before the conclusion of the Sixth Kaffir War,⁵ and before the accession of Lord Glenelg to office. That policy was (1) to avoid assuming the direct rule of Native tribes, (2) to enter into treaties with the various Native chiefs on the basis of their independent sovereignty. Lord Glenelg in 1836 introduced no new policy: he simply carried out the previously defined policies of his predecessors. It is most unfair to associate his name exclusively with the Treaty system and its failures.

Not Lord Glenelg, but Sir Benjamin D'Urban, was the apostle of change. Before the commencement of the Sixth Kaffir War he had informed Mr. Spring Rice, then Colonial Secretary, that "a complete and effectual reformation of our system of dealing with the native tribes (if that may be called a system which seems to have been guided by no fixed principle, certainly by no just one) has become absolutely necessary." His criticism was as unfair as his own earlier policy was conspicuously lacking in constructive elements. Unjust or unwise the Colonial Office policy may have been: unprincipled it certainly was not.

In the last weeks of the year 1834 broke out, as is well known, what is commonly called the Sixth Kaffir War. Into its romantic details and stirring military history it is no part of the plan of this work to enter.

On the 10th May, 1835, the tract of land between the Keiskama and the Kei Rivers was proclaimed British Territory under the designation of the "Province of Queen Adelaide." This Proclamation which may be assumed to reflect Sir Benjamin D'Urban's own unbiassed policy did not, as is often incorrectly assumed, involve the proclamation of direct British sovereignty over the tribes previously resident in that area. On the contrary it declared that "'Tyali, Macomo, Eno, Botma, T'Slambie, Dushanie, etc.," were "for ever expelled" from the Territory of Queen Adelaide and would be treated as enemies if found therein. At the same time the intention was to treat these Chiefs, even in their new homes beyond the Kei, as British subjects.

⁵ Vide infra.

⁶ I follow the spelling of the proclamation.

Had Sir Benjamin D'Urban's policy been carried out, the only result would have been furious intestine wars between the tribes thus thrust back over the Kei and those at that time occupying land in the Transkeian districts. These conflicts would have resulted inevitably in a further inroad into the European area—an area which would have been more sparsely populated than that which the Bantu had just overrun. The only argument in favour of the change was that the Kei was a better military frontier than the Keiskama. It will be argued that Sir Benjamin D'Urban was well-meaning. Exactly. So was Lord Glenelg. A modern novelist has told us that, short of grave moral crime, the accusation of being well-meaning is the worst that can be brought against a man in a position of responsibility.

We shall see, in a moment, that Sir Benjamin D'Urban, in the concluding months of 1835, entirely reversed his previous policy; but the news of this reversal had not reached Lord Glenelg when he penned his notorious Despatch of the 26th December, 1835. In the circumstances, it is difficult to maintain that Sir Benjamin D'Urban was entirely in the right or Lord Glenelg entirely in the wrong. The issues have been so confused by the false witness of Sir Andries Stockenström and the commencement of the Great Trek immediately after the retrocession of Queen Adelaide, that it is difficult to see the problem in its proper perspective as a minor incident of frontier Native Policy. More eloquent misrepresentation—from both sides—has been wasted on the Glenelg Despatch and the Treaty System than on any other part of South African Native Policy. Even from the severely impartial pages of Theal, one carries away the strong impression⁷ that Dr. Philip was in favour of the retrocession of Queen Adelaide. As a matter of fact Dr. Philip's own evidence on the subject, given before the Commons Select Committee on the 4th July, 1836, was as follows⁸:—

⁷ History of South Africa since 1795, Chapt. XXVII.

⁸ Commons Select Committee on Aborigines (British Settlements), 1836; page 625

"I think it will be a matter to be regretted if the new province shall be again dissevered from the Colony. Had I been consulted before the Caffre war on the propriety of annexing the country between the Keiskama and the Kye (sic) to the Colony, I should have said, let the Caffres alone, the work of civilisation is going forward among them, and in a little time what you wish for will come about of itself without any violent means being necessary to bring it about; but, now that the thing has been done, there are many considerations which make it desirable that the recent treaty, with such modifications as may be deemed necessary, should be confirmed by the British Government."

Dr. Philip refers to the "recent treaty." What was this treaty? It becomes necessary to go back and explain that Sir Benjamin D'Urban's Proclamation of 10th May, 1835, never became fully operative, one excellent reason being that the "expelled" tribes refused to cross the Kei, and it was found that immense loss of life and heavy expenditure would have to be incurred to shift them. Accordingly on the 17th September a treaty was signed with the leading Chiefs concerned, by which they agreed to become British subjects and, while retaining their own laws and customs, to come generally under the control of the Cape Government. It is obvious to us now, with our knowledge of Native ideas, that this was a far more satisfactory solution than the expulsion of the tribes over the new boundary line. By this arrangement approximately 72,000 Bantu came under European rule. The Governor proceeded to appoint an Agent-General and tribal Agents to supervise the subject tribes. For these two points—the extension of civilised control to the Bantu, and the beginning of European administration among them—Sir Benjamin D'Urban deserves the utmost credit.

Unfortunately his despatches announcing the treaty and these appointments crossed Lord Glenelg's Despatch of the 26th December. There can be no doubt that Lord Glenelg's plain duty, on receiving the new information, would have been to cancel his previous Despatch and to

make further inquiries. In any case, he might have waited until the Commons Select Committee, which had begun to take evidence early in 1836, had issued its Report. The arrangements for the retrocession were, however, proceeded with and concluded at King William's Town on the 5th December, 1836.

Looking at these events with our present knowledge of the Native problem, it is easy to see that Sir Benjamin D'Urban's later policy was right, and that his own earlier policy and Lord Glenelg's policy throughout were both wrong. But, when we consider that Lord Glenelg was simply carrying on a policy of some years' standing, the policy of predecessors of both parties at the Colonial Office, and that he had the strong support not merely of missionaries like Dr. Philip but of a South African born administrator lately resident in the Eastern Districts—Andries Stockenström—it is impossible to censure him. To judge a man's actions by their results is, surely, unfair. Had there been no Great Trek—a thing which no individual could possibly have foreseen—Lord Glenelg's Despatch of 1836 would have appeared no more and no less foolish than Sir Harry Smith's solemn exhortation to the Chiefs at King William's Town on 7th January, 1848 to "abolish the sin of buying wives"⁹ and "to acknowledge no Chief but the Queen of England and her representatives."

Whether we can or cannot blame Lord Glenelg subjectively, there can be no doubt that, objectively, the retrocession of 1836 was a most unfortunate event, deferring all progress in the task of civilising the Native tribes for eleven years and merely postponing the inevitable task which all South African Administrators have had to face.

Mention has been made of the Commons Select Committee of 1836-7. It consisted of Mr. Fowell Buxton (Chairman), Sir Rufane Donkin, Sir George Grey, Col. Thompson and Messrs. Hawes, Bagshaw, Holland, Lushington, Pease, Baines, Johnston, Hindley, Plumtre, Wil-

⁹ For the correct view of the *ukulobola* custom, see Chapter XI.

son and Hardy, the last-named being subsequently replaced by Mr. W. E. Gladstone. Of these gentlemen only Sir Rufane Donkin, Mr. Bagshaw, Mr. Holland and Mr. Gladstone manifested any open sympathy with the Colonists. So far as Sir George Grey was not a mere silent voter, his sympathies appear to have been with the Chairman's party.

Many of the incidents of the Evidence led before this Committee, and a few points in its Report, are well known to the student of South African history in the pages of Theal. What we are chiefly concerned with here are the conclusions which had a practical effect in the shaping of South African Native Policy. It is commonly supposed that the Committee reported wholeheartedly in favour of the Treaty System. On the contrary, the Committee speaks with a double voice. In theory, it is against Treaties: in practice, it recommends for the Cape a series of Treaties embracing most of the tribes then known to Europeans.

On page 80 of the Committee's Report we read:—

"Treaties with Natives inexpedient."

• "As a general rule . . . it is inexpedient that treaties should be frequently entered into between the local Government and the tribes in their vicinity. Compacts between parties negotiating on terms of such entire disparity are rather the preparatives and the apology for disputes than securities for peace: as often as the resentment or cupidity of the more powerful body may be excited, a ready pretext for complaint will be found in the ambiguity of the language in which these agreements must be drawn up, and in the superior sagacity which the Europeans will exercise in framing, in interpreting and in evading them. The safety and welfare of an uncivilised race require that their relations with their more cultivated neighbours should be diminished rather than multiplied."

But on page 81 we find the following:—

"Cape of Good Hope."

"It may be concluded that the territory called Adelaide has in fact been surrendered to the Caffres and that Lieutenant-Governor Stockenström is proceeding to

execute Lord Glenelg's instructions. Your Committee will therefore transcribe them in this place . . .

"1. A treaty, fixing the boundaries of the Colony, must be made in writing, in English and in the Caffre language, and, being explained to each border Chief, must be signed or attested by each. Copies of this treaty must be delivered to each of the contracting Chiefs.

"2. A separate treaty must be made in the English and in the Native languages, with the Chief of every tribe to which a portion of territory is assigned within the British Dominions: defining the limits of his allocation, the degree of his responsibility, and the nature of his relations with the British Government, and all other matters admitting of specification. A copy of this treaty in the native tongue must be preserved by the Chief.

"3. A separate treaty must be made in the Native and English languages with the Chief of every tribe in alliance with us, or in any degree under our protection, defining also in each case all that can be specified in such an instrument. A copy of the treaty must be preserved by each Chief.

* * * * *

Your Committee would strongly impress upon His Majesty's Government the propriety of a strict adherence to these Regulations."

Thus ambiguously fortified, the Colonial Office proceeded to work out its previously adopted Treaty System more fully. Treaties were signed with Umsilikazi (Moselekatse) on 3rd March, 1836; with the Fingo Captains Umhlambiso and Jokweni on 10th December, 1836; with the Emigrant Tembu Chief Mapasa on the 18th January 1837 and on the 28th January, 1841; with the Gunukwebe clans on the 19th June, 1838; with the Gaika clans on the 2nd December, 1840; with the Fingo Captains on the 29th December, 1840; with the Ndlambe clans on the 31st December, 1840; with Mpande on 15th October, 1843; with Adam Kok in November, 1843, and in February, 1846; with Moshesh on the 13th December, 1843; with Faku on the 7th October, 1844¹⁰; with Kreli on the 4th

¹⁰ Informal engagements were entered into in 1839 and 1841.

November, 1844; with the Rarabe and Fingo Chiefs in January, 1845.¹¹

By a series of coincidences, unfortunate for British reputation, while most of these Treaties were repudiated when Britain subsequently came into collision with the tribes concerned, the engagements with Faku were made the basis of the attack on the Republic of Natal, the treaty with Moshesh was used as an argument for the annexation of Basutoland at the expense of the Orange Free State, and the treaty with Andries Waterboer was employed, in a manner worthy of the severest condemnation for bolstering up the annexation of the Diamond Fields. It is advisable to mention this chain of unfortunate coincidences as explaining, to some extent, the strong criticisms subsequently made of the Treaty system. But the events of later years after all have only an accidental connection with the Treaty System as such; and we should hesitate to give it our whole-hearted condemnation. Doubtless the actual documents themselves—e.g., “There shall be henceforward and forever peace and friendship between the undersigned King Panda and his subjects and Her Majesty Queen Victoria, and all Her Majesty’s Subjects”—were ridiculous enough, but the principle of territorial segregation which they embodied is not one to be condemned lightly. Totally impracticable to-day, it was practicable in 1836 and it might well be argued to have been desirable. At any rate the policy of the very Voortrekkers who began to quit the Eastern Province as the Treaties came into effect was also based on the principle of territorial segregation, with some modifications and also bound up with certain very famous Treaties.

For the ten years after the retrocession of Queen Adelaide the Native question in the Cape Colony remained very much *in statu quo*; and the interest shifts

¹¹ Most of these treaties and several additional ones are to be found in Blue Book: “Return of Copies or Extracts of any Engagements subsisting between this Country and any States or Native Tribes in South Africa,” presented to the House of Lords on the address of Lord Carnarvon and ordered to be printed 25th March, 1884.

northwards with the Voortrekkers. Where the Native problem was really important during this period was in Natal—the only Republican centre by the way, for which we have much in the way of documents covering the period—and it becomes necessary, therefore, to try to examine the Native Policy of Natal from 1836 to 1847.

The romantic and troubled origins of Natal make a strong appeal to the historian's art. But we must ruthlessly sacrifice those facts which are merely picturesque—the early British settlers, Piet Retief and Dingaan, the Massacre of Weenen, Blood River and the like. Fortunately these are the best-known events, probably, in the whole history of Natal; and they do not, therefore, call for comment in any case. The point is that the victory of 16th December, 1838, definitely established, in the Republic of Natal, the settled government of approximately 6,000 Europeans over approximately 25,000¹² Natives. What is of even greater interest is that here for the first time we have a body of South Africans in a position to frame their own Native policy.

Let it be said at once that, much, as there was left to be desired in the Native Policy of the Republic of Natal, a careful reading of the relative Archives leaves us in no doubt as to its superiority over the Republic of Lydenburg, the South African Republic prior to 1877, the still later New Republic and the Orange Free State. The Volksraad of Natal set to work definitely and carefully to deal with a real problem, and, considering the inexperience of its members and the fact that the Native population could not but appear somewhat in the light of a menace, its efforts were not unsuccessful.

From the very day that the Zulu Military Empire was crushed at Blood River, the Republic was faced with the difficulty of an influx of Natives from Zululand, who preferred the mild rule of the white man to that of even so unwarlike a monarch as Mpande. From the commencement of 1840, scarcely a session of the Volksraad was allowed to pass without the discussion of this subject, and members were repeatedly urged to the effectual

¹² Report of Natal Native Affairs Commission, 1852—3; page 8.

suppression of the evil.¹³ It must be pointed out that the emancipation of these tribes, until recently under the grievous bondage of the Zulu monarchy, and the mild and just nature of the Natal Government's rule, rendered the Natives concerned exceedingly amenable to control, at any rate for many years.¹⁴ They were submissive, orderly and respectful towards the white population.¹⁵ Proposals to move them, provided they were not sent back to Zululand, would probably not have been raised by force.

In dealing with the problem of the Native influx, the Government was much assisted by its independent position which enabled it to act with promptitude and decision in every emergency without the necessity of applying to a distant authority.

Generally speaking the policy of the Republic was to mark off an area for predominantly white occupation, to retain sufficient Natives therein for agricultural labour purposes, to secure an equitable distribution of this labour supply, to segregate the remaining part of the Native population, and to rule such Natives as remained in the white area paternally, justly and kindly, but retaining them in a position of entire subordination—social, religious, political and economic. There was to be no attempt to break down the tribal system except so far as the families living on farms were concerned. It was not intended to force Natives to stay within the white area and work—not intended, because it was not necessary. The Natives wanted to remain within the white area. Those who were refugees had temporarily broken away from tribal ties, and, if the Volksraad's policy were right, the opportunity of securing labour before the tribal system should be resuscitated was a golden one. This only must be said—that the members of the Volksraad, like Shepstone a few years later, were suiting a practical policy to practical ends. Like him, they were not concerned whether their

¹³ Natal Native Commission, 1852—3. Report, page 8.

¹⁴ See remarks of Mr. C. Brownlee in Cape Native Blue Book, 1875; page 123.

¹⁵ Natal Native Commission, 1852—3. Report, p.p. 8—9.

system would be a satisfactory one for a South Africa embracing all the Bantu tribes eighty years ahead. Unlike him, they deliberately shirked the problem of how to govern an overwhelming Native population at the time.

A "Plakkers Wet" ¹⁶ was passed early in 1839 and on the 5th August, 1840, the Volksraad passed a resolution ¹⁷ to the effect that the Commandant-General alone should be permitted to have more than five families of "Zolas" on his farm. ¹⁸ The objects of this legislation appear to have been, first to limit the total number of natives in the white area, second to secure an equitable distribution of the labour supply, and third to prevent the practice of "kaffir-farming." On the 3rd January, 1842, another resolution was passed authorising the Commandants to supervise distribution "according to law." On the 4th September, 1843, the original law was confirmed, the general limitation to five families being expressly mentioned.

In August, 1841, was passed the famous resolution which proposed to dispose of the surplus Native population by placing it on a tract of land between the Umtamvuma and Umzimbuvu Rivers, to the south of the Republic—a proposal repeated more than once afterwards. It was this resolution, and the unfounded complaints of Faku regarding it, which gave the British Government a pretext for definitely interfering in the Republic's affairs once again. ¹⁹ The Volksraad was never actually able to carry it out, though it was confirmed in the above-mentioned resolution of 4th September, 1843.

On the 10th May, 1843, Natal was formally annexed to the British Empire, the Volksraad giving its formal consent in the following August. But for the next two years and a half the Territory was in a curious transition. The Cape Government was represented during part of that time by a Commissioner, Dr. Henry Cloete; and a

¹⁶ "Squatters' Law."

¹⁷ In Volume A1/2 in Union Archives, Pretoria.

¹⁸ We find this limitation to five families later on in the Orange Free State and in the South African Republic.

¹⁹ It had already sent a small expedition in 1838—9.

small garrison under Major Smith held Durban. Meanwhile the Volksraad continued to function at Pietermaritzburg and to pass important resolutions. It was not until December, 1845, that the future government of Natal was settled, the Volksraad abolished and a number of new officials unacquainted with the language or traditions of the majority of the colonists introduced.

This transition period had very important effects with regard to the future Native policy of Natal. The spectacle, first of white men fighting among themselves, and second of two weak Governments functioning in the same Territory, served to convince the discontented Natives in Zululand—most of them, it is true, sons of those who had resided in Natal proper before Tshaka's day—that there was nothing to fear from anybody in Natal. Anxious as they were to return to their ancestral homes, they poured over the Buffalo and Tugela Rivers in ever-increasing numbers. It is estimated that, during the transition period, not less than 80,000 Natives entered Natal and subsequently became permanent residents in the Colony. Disunion of the whites prevented any action until it was too late, the various resolutions of the Volksraad in favour of forcing the immigrants back into Zululand, or locating them elsewhere, being thwarted by Major Smith. It is, perhaps, useless to speculate now as to the possibility and advisability of checking this influx. All that concerns us at the moment is that, when the new Government entered into office at the end of 1845, it was faced with the problem of ruling not 20,000 but 100,000 Natives; and that it found the European population absolutely decreasing, the majority of the Dutch-speaking settlers, disgusted with the way in which the British Government had dealt with them, having quitted the Colony by the end of 1848. The new Administration thus had to face an entirely new position; Natal had once again become largely a Native Territory; and the problem now was how to rule and control the vast Native population without police, without money and with but a small military garrison.

The hour brought the man. Theophilus Shepstone was the son of the Reverend William Shepstone one of the first Wesleyan Missionaries to labour in the Cape Colony. He grew up at Wesleyville among the Xosa boys who were attracted to the Mission Station; he was encouraged by his parents to pick up the language; and while still a boy could understand and speak it perfectly: Xosa and Zulu are so similar in construction, sound and vocabulary that he had no difficulty at a later date in acquiring Zulu which he spoke fluently and eloquently. As a youth he was employed at the missionary press in supervising the printing of a Xosa Grammar and parts of the Xosa Bible. At the age of nineteen, he acted as Interpreter for Sir Benjamin D'Urban during the sixth Kaffir War, in which capacity he distinguished himself greatly.²⁰ When the little expedition of Captain Jervis occupied Durban (1838—9), Theophilus Shepstone—already known to the Natives in the Peddie District as "Somtseu"²¹—accompanied it as Interpreter. This was his first visit to the land of which he was to be the ruler in everything but name for thirty years (1845—75). When he arrived as "Diplomatic Agent to the Native Tribes" in 1845, he was still under thirty years of age.

The military despotism of Tshaka and Dingaan had apparently succeeded within a generation in making a dangerous individual out of the Natal Native. Even when well-disposed to the European Government—"Holmen,"²² as he called it—he was not to be relied on. The Natal Native Commission of 1846—7 describes the character of the Bantu as under: "Their universal character, as formed by their education, habits and associations is at once superstitious and warlike; their estimate of the value of

²⁰ Some of the information in this Paragraph is derived from the evidence of Thomas Phillips (an 1820 settler) before the Commons Select Committee of 1836. Evidence, page 36.

²¹ A Nimrod, a mighty hunter.

²² *Holmen* or *Humuleni* is a native corruption of the Afrikaans word Goewerment (Government). The natives caught the aspirate from the Afrikaans g and changed the r, which to them is unpronounceable to l, and applied it to the British Lieutenant-Governor when appointed. The word is in use to-day. (Information from note on page 6 of Charles Barter's "Stray Memories of Natal and Zululand.")

human life is very low; war and bloodshed are engagements with which their circumstances have rendered them familiar since their childhood and from which they can be restrained only by the strong arm of power; their passions are easily inflamed, while at the same time they have grown up in habits of such servile compliance with the wills of their despotic rulers that they will still show ready obedience to constituted authority." Shepstone himself was a member of this Commission, and its evidence is reinforced by the fact that the 1852-3 Commission, which was hostile to Shepstone's policy, repeats the description of Native Character almost word for word, adding however that the Natives were "crafty and cunning . . . averse to labour and their general habits debased and sensual to the last degree."²³ Can these horrible monsters be the kindly, faithful, decent—if admittedly lazy—Natal Natives among whom some of us have grown up? The change occurred before the present generation, however. One has only to read the two badly-printed and ill-arranged volumes of Evidence of the Natal Native Commission of 1881-2 to discover that thirty years of Shepstone's paternal rule had wrought a transformation. He had saved the soul of a people—black people though they be. As one heathen Native after another gets up to bear witness to "Somtseu's" love of the "black house," and to soliloquise, in true Bantu fashion over the good old days when "Somtseu" used to bring his chair out under the spreading tree and talk heart to heart with his people, instead of using one of the new-fangled Interpreters who "eat up the people's words," we feel that there is the vindication and the panegyric which no European commentator can give.

But in 1846 this change was not to be foreseen except by a few patient enthusiasts like Shepstone himself, and the new Government was consequently much perplexed as to what it was to do with its vast and apparently dangerous Native population. Lieutenant-Governor Mar-

²³ Native Affairs Commission (Natal), 1852-3. Report, page 26.

tin West—one of South Africa's very forgotten worthies—accordingly appointed on 31st March of that year a Commission to report on the subject and on Native Affairs generally. The Commission consisted of Dr. Stanger, Surveyor-General, Mr. Theophilus Shepstone, Lieutenant C. J. Gibbs, R.E., and Dr. Adams and Rev. D. Lindley, American Missionaries. It combined two qualities, not infrequently found in harness together—ability and unpopularity. Of the latter there can be little doubt. Its successor, the Commission of 1852—3, described it, in an explosive and exceedingly Anglo-Saxon paragraph,²⁴ as consisting “entirely of officials and foreigners, namely one military man, two Government officials and two foreign Missionaries.” The ability of the Report is to-day, by those who have read it, very generally admitted. Earl Grey, in a Despatch dated 10th December, 1847, describes it as a “very able document,” a very large proportion of the recommendations of which “he would be prepared to sanction but for the many heavy demands from all quarters made on the Treasury.” “It is my duty,” he goes on, “at once and distinctly to discountenance the expectation that any plans . . . which would involve large expense can be adopted”—phrases which in these post-war days have a very familiar ring.²⁵

Lieutenant-Governor West, in his instructions to the Commission dated Pietermaritzburg, 31st March, 1846, had discountenanced the scheme of more or less absolute segregation recommended by the Volksraad of the Republic and supported by Shepstone himself even as late as 1854 but always successfully opposed by authority. In its place, Governor West suggested “separate locations in the best disposable situations, to be hereafter conveniently superintended by one Magistrate (each) and placed under the pastoral care of one or two Missionaries each.” The Report followed closely on these

²⁴ Report, page 14.

²⁵ For a further upholding of the Work of the 1846—7 Commission, as against the criticisms of the 1852—3 Commission, see the views of Rev. C. L. Dohne and Rev. Lewis Grout in 2nd. and 3rd Supplements to Natal Government Gazette, 18th January, 1853.

lines, for Shepstone was too wise to oppose in practice the good, because he could not get what he thought the better. In recommending the Location system it made several additional recommendations, and these must be considered before we approve or condemn the scheme as a whole.

(1) Each Location was to be governed by a superintendent or resident agent of the Government who was to be furnished with one or more assistants according to the size of the Location.

(2) Order was to be maintained by a Native police force officered by Europeans.²⁶

(3) In each Location a "model mechanical school" was to be instituted, where (I quote the Report) "the useful arts should be taught and practically illustrated."

(4) In each Location, systematic agricultural instruction was to be given by the Superintendent.

As we have already seen, on the miserable pretext of economy, nearly all the constructive suggestions of the Report were turned down by the Colonial Office. All that could be done was to lay out the Locations and induce the Natives to move into them. This in itself was a formidable task, as there was no military force to back up the Government. Nevertheless by judicious and tactful methods, Shepstone — on whom the whole of the burden fell — was able to place the 80,000 refugees in fixed homes in different parts of the country, without the use of a single Trooper, and without the loss of a single life — white or black. It is one of the most brilliant pieces of purely administrative work recorded in South African history. It may be said that the whole operation was carried out in direct opposition to the instructions of Earl Grey, who was not unnaturally afraid of the result of moving large masses of tribal Natives. He recommended that the actual construction of the Locations should wait

²⁶ This may have been to some extent a sop to Earl Grey, who was at the time obsessed with the idea of forming a huge "Sepoy" army out of the Bantu of Natal, and had to be politely snubbed by Lieut. Governor West, a process for which the latter is entitled to the thanks of posterity. (Earl Grey to Sir Henry Pottinger; 4th December. 1846; Martin West to Sir Henry Pottinger, 22nd April, 1847.)

until the "Executive Government was armed with military power sufficient to render all resistance to its authority hopeless." Lieutenant-Governor Martin West rightly pointed out that further delay would be "equivalent to the abandonment of the whole country of the Natives." The Location system was not as the 1852-3 Commission suggested, a negrophilist scheme to hand great tracts of Natal over to the Natives; but an insurance to save some parts of Natal for Europeans—an insurance which, it is true, would have been unnecessary had the Republic and the original population of Natal been suffered to continue in possession, but that possibility had already been precluded by the British Government: Martin-West and Theophilus Shepstone had done nothing to create the situation of 1845; but, once it was created, they coped with it with distinguished ability.²⁷

Of the hordes of Natives who had to be placed in the Locations, it is estimated²⁸ that more than two-thirds were, as a result of the Zulu tyranny, without Chiefs and without tribal organisation. As far as the available Records go, there appears to have been no definite wish on Shepstone's or any one else's part to resuscitate the tribal system and the Commission of 1846-7 made the appointment of a white Superintendent to each Location an integral part of its recommendations. But when the Colonial Office expressed its inability to find funds for these posts, what was to be done? Undoubtedly West and Shepstone desired both to control and to civilise. Denied the facilities for civilising, they had in the meantime to control, in the interests of a small and scattered white population, and of European prestige generally. The only method of control—and it is an instance of Shepstone's peculiarly administrative genius that he grasped the point and acted so speedily—was to recreate the tribal system artificially. The tribal ties had not disappeared for more than a generation. It was

²⁷ See Despatch of Lieutenant-Governor West to the Secretary to Government, Cape Town, dated 16th May, 1847.

²⁸ See Report of Native Affairs Commission (Natal), 1852-3; pages 19-23.

found possible by Shepstone to gather the scattered members of the tribes together, and even in some cases to find a scion of the old "royal" house. In other cases, purely appointed Chiefs had to be given jurisdiction. The policy was a complete success for the time being. Whether Shepstone kept it up when it had become unnecessary, whether in controlling so admirably as he did he gradually forgot the second duty of civilising—these are moot points which we must reserve for discussion in the succeeding Chapter. But in 1847, no able man, in the peculiar circumstances then existing, could possibly have advocated or adopted any other system. It was wrung from Shepstone by the practical exigencies of the position. He cannot justly be either praised or blamed for his policy in this respect. For the administrative skill with which he carried it out, he deserves our very warmest praises.

The measures of 1846—7 in Natal have been very vehemently attacked; but they were undoubtedly the best way out of a difficult position, remembering that the British Colonial Office would not countenance any segregation scheme. As for the excessive size of the Locations,²⁹ it must be remembered that they are often the most barren, wild and broken parts of an exceedingly rugged and picturesque division of South Africa. "Only small portions here and there are adapted for cultivation and much of the land is not even fitted for pasturage, but only for the habitation of the eagle and the baboon."³⁰ Even to-day the Locations do not form more than about one-tenth of the area of the Province. The Commission, while it undoubtedly gave the Native population of 1847, more than enough land for subsistence, did not err on the side of generosity when future generations were borne in mind; and, after all, nine-tenths of Natal, including most of the best farming land, was still left open for a population of not more than 10,000 Europeans. That the Native population has so greatly overflowed the Locations and "squatted" on

²⁹ The chief criticism of the 1852—3 Commission.

³⁰ Russell: "Natal, The Land and Its Story"; page 203.

Crown Lands and private farms may be a matter for regret; but it is not a fair article of charge against the West-Shepstone scheme of 1847.

While the foundations of the Natal Native system were being thus painfully laid, stirring events were taking place in the Cape. The refusal of the British Government to undertake the responsibility for the rule of Natives had only deferred, and perhaps aggravated, a grave problem. Treaty after treaty had been entered into, and still marauding and plundering continued, and the eastern frontier remained the weak spot in the Colony's administration. A series of unexpected developments had, as we have seen, resulted in Great Britain becoming responsible for the rule of 100,000 Natives in Natal in 1845. Could there be any logical objection to similar responsibilities being assumed in the Cape?

In this confused and difficult situation, there broke out the Seventh Kaffir War, commonly known as the War of the Axe (16th March 1846). The result of this sanguinary conflict was the complete reversal of the previous official policy, and a return to the later policy of Sir Benjamin D'Urban; and this we owe almost entirely to one man—Sir Harry Smith. Though Sir Harry only assumed duty as Governor on the 1st December, 1847, he proceeded with his usual impetuous and sanguine haste to the settlement of the whole boundary question and to the dictating of terms of peace to the already defeated clans within a few weeks. The territory between the Keiskama and the Kei Rivers, nearly but not quite identical with the old Province of Queen Alelaide, was annexed, not to the Cape Colony but to Great Britain direct, under the name of British Kaffraria. Further north round the headwaters of the Keiskama River the Colonial boundary itself was pushed eastward. British Kaffraria was to be regarded as a reserve for the Native people, over whom the High Commissioner was to assume the position of a Paramount Chief. Able officials, among whom Captain (later Colonel) Maclean and Mr. Charles Brownlee should receive special mention, were appointed to office in the Province.

On the 7th January, 1848 a great meeting of Chiefs and others was called to hear what their new position would be as subjects of the Queen. It is necessary, if we are to understand the foundations of Cape Native policy, to follow the terms of this settlement. Unfortunately for the subsequent historian, Dr. Theal has described this historic meeting so vividly that it seems almost a duty to quote him rather than refer to the original documents³¹:—

"After a prayer by the reverend Mr. Dugmore, Wesleyan Missionary, Sir Harry Smith addressed the Kaffirs upon their position. The Chiefs then made oath:—

1. To obey the laws and commands of the high Commissioner as great chief and representative of the Queen of England;

2. To compel their people to do the same;

3. To disbelieve in and cease to tolerate or practice witchcraft in any shape;

4. To prevent the violation of women;

5. To abhor murder, and to put to death every murderer;

6. To make their people honest and peaceable, and never to rob from the colony or from one another;

7. To acknowledge that their lands were held from the Queen of England;

8. To acknowledge no chief but the Queen of England and her representatives;

9. To abolish the sin of buying wives;

10. To listen to the missionaries and make their people do so;

11. On every anniversary of that day to bring to King William's Town a fat ox in acknowledgement of holding their lands from the Queen.

"Some of these conditions were subversive of the

³¹ The succeeding passage is from Theal: "History of South Africa since 1795," Chapter XLIV. The original Despatch describing the meeting, is bound up in the Native Affairs Blue Books for the year 1848 in the Cape Town Archives.

whole framework of the Kaffir society,³² nevertheless the chiefs took the oath in the name of the Great Spirit without any compunction. Few of them had any intention of keeping it.

"Sandile and Kona represented that the ground on which their people were then living was too limited in extent for their needs, and wanted the high commissioner to give them also the territory between the Keiskama and Fish Rivers. They were informed that there was plenty of vacant land towards the Kei on which they could build kraals and make gardens. None of the others had any request to make; and all were profuse of thanks.

"Sir Harry Smith then addressed them again, telling them what would happen if they were not faithful. 'Look at that wagon,' said he, pointing to one, at a distance which had been prepared for an explosion, 'and hear me give the word Fire!' The train was lit and the wagon was sent skyward in a thousand pieces. 'That is what I shall do for you,' he continued, 'if you do not behave yourselves.' Taking a sheet of paper in his hand: 'Do you see this?' said he. Tearing it and throwing the pieces to the wind, 'There go the treaties,' he exclaimed. 'Do you hear? No more treaties!'"

In this dramatic manner, the policy of 1830—47 in the Cape went sky-high with Sir Harry Smith's wagon. As in Natal, circumstances had proved too strong for mere abstract reasonings. When the British Government ratified the new arrangements on the 31st March, 1848, it could definitely be said that the European races of South Africa had begun the long process of accepting the responsibility for the governance and civilisation of the Bantu races, the exercise of which it is the object of this volume to examine. The generous, masterful,

³² For example, conditions 3, 8 and 9 display a ludicrous ignorance of the simplest points of Bantu sociology. The fifth condition would have needed a long explanation (such as that given by Shepstone in Natal in 1850), to make it intelligible to those concerned. It is impossible to think of Shepstone drawing up rules like these. But Sir Harry Smith's virtues were always those of the heart rather than of the head.

absurd, lovable old veteran had done more in six weeks to solve the Native problem than the best brains of the Colonial Office had done in seventeen years. So much good-heartedness can accomplish. Unfortunately, it has its limitations; and it was some years more before the British Kaffrarian settlement, shorn of some of the more glaring absurdities of Sir Harry's original conditions assumed its final shape.

APPENDIX TO CHAPTER II—THE TREATY SYSTEM.

*Copies of the Treaties with Umsilikazi (Moselekatshe)
Mpande (Panda) and Moshesh.*

A.

Articles of Agreement between the Governor of the Colony of the Cape of Good Hope, on the one part, and Umsiligas (by his representative and Chief Councillor Um'nonbate, specially appointed for the purpose of treating) on the other part.

1. The King of the Abaqua Zooloo or Qua Machaban, Umsiligas, engages to be a faithful friend and ally of the Colony.

2. He engages to preserve order in his territory and to abstain from war unless forced thereto in self-defence.

3. He engages to protect all white men who may visit his country, and to defend and treat in a friendly manner, all missionaries or other persons who may, with his consent, settle and reside in his territory so long as they act in accordance with justice.

4. He engages to defend and assist all travellers or traders who may reach his country either with the object of extending knowledge or otherwise benefiting mankind.

5. He engages not to interfere with the remnants of tribes, resident in the vicinity of his country, unless in self-defence, and promises to permit them to enjoy, undisturbed, the advantages of religious instructors, should any such be disposed to settle among them.

6. And generally, he engages to cultivate and encourage peace, and apprise the Colonial Government

of any intended or actual hostile movements in the interior, and to act in concert with the said government in subduing whatever may be calculated to disturb the general peace, or retard the civilisation and prosperity of the native tribes of South Africa.

In consequence of the above engagements, the Governor, upon his part, engages:—

1. That he will regard Umsiligas and his subjects as friends, and will receive any of them as such when they visit the Colony.

2. That he will grant, in the first instance, as presents for Umsiligas, a variety of articles suitable to his present condition, and will continue supplies of this kind from time to time so long as the terms agreed upon should be strictly observed.

And in order to facilitate intercourse hereafter, between Umsiligas and the Colony, the Governor will duly consider the request made for an individual of the Colony to be resident with the Abaqua Zooloo or Qua Machaban, and endeavour to obtain a missionary for that purpose, who will be most calculated, under circumstances, to forward the views of the contracting parties.

Thus done at the Government House in Cape Town this third day of March, in the year of Our Lord One thousand eight hundred and thirty-six. /

B. D'URBAN, Governor. (L.S.)

UM'NOMBATE his X mark. (L.S.)

Signed and sealed in our presence :

ANDREW SMITH, M.D.

JAS. EDW. ALEXANDER, A.D.C.

B.

Articles of a Treaty made and entered into between and Signed by the undersigned PANDA, King of the Zoolah Nation, on the one part, and the undersigned, the Honourable HENRY CLOETE, Esq., L.L., LL.D., in his capacity as Her Majesty's Commissioner for the Territory of Natal, on the other part.

Article 1. There shall be henceforth and forever peace and friendship between the undersigned King Panda and his subjects, and Her Majesty Queen Victoria, and all Her Majesty's subjects.

Article 2. It is hereby agreed between the undersigned that the respective boundaries between the Territory of Natal and the Zoolah Nation, shall be defined at the sea-line by the mouth of the River Tugela, and from thence upwards until the junction of that stream with the river Umsinyatee (or Buffalo River), from thence upwards by the said river Umsinyatee (or Buffalo River); or such other boundary line along or near its banks, as may, at any time hereafter, be fixed upon by the undersigned, Her Majesty's Commissioner for the Territory of Natal, or such other Commissioner as Her Majesty may appoint, and by any two Indunas or Commissioners, whom the undersigned Panda, King of the Zoolah nation, may appoint for that purpose, and from thence northward to the foot of the Quathlamba (or Drakensberg) Mountains.

Article 3. The undersigned Panda, King of the Zoolah nation, hereby agrees and binds himself to direct Koedoe, the captain of certain kraals placed by the late King Dingaan on the right bank of the Tugela, and all such other captains or Chiefs of kraals as may be found to come within the boundaries of the territory of Natal, hereby fixed and determined, to be removed from their respective stations.

The undersigned, Her Majesty's Commissioner, for and on behalf of Her Majesty hereby agreeing and consenting to allow them to remain until their crops shall have been reaped, and then to take with them all their effects and lawful property.

Thus done and agreed upon, and confirmed by the signature and marks of the undersigned King Panda, and the undersigned, Her Majesty's Commissioner, at the chief town of Elapeen, on this the 5th day of October, 1843, in the presence of the undermentioned witnesses.

This is the mark of the King X.
Panda, made by himself.

This is the mark of the Induna X
Umsinhlaan, made by himself.

This is the mark of the Induna X
Umkondasi, made by himself.

H. Cloete, L.L.

Her Majesty's High Commissioner.

Witnesses :—

D. C. TOOKEY.

C. J. BUISSINE.

This document has been faithfully interpreted from word to word by me, to the King Panda, who declared fully to understand and approve of the contents thereof.

J. KIRKMAN.

I, the undersigned, Chief and King of the Zoolah nation, do hereby declare to cede all right and title, which I heretofore had to the mouth of the River Umvolosi; and to the bay there situate, to, and in favour of Her Majesty Queen Victoria, or the lawful sovereign of Great Britain for the time being, for ever, with full liberty to visit, land upon, and occupy, the shores along the said bay, and mouth of the said River Umvolosi, the undersigned hereby agreeing and consenting to appoint whenever he shall be thereto requested, two indunas or Commissioners for the purpose of defining, and proving the limits and extent, of the sea shore so ceded and given up to Her Majesty Queen Victoria, or the lawful sovereign of Great Britain for the time being.

In witness hereof I have hereto affixed my mark at my chief town of Elapeen, on the 5th day of October, 1843, in the presence of the undersigned witnesses.

This is the mark of the King PANDA X
made by himself.

X the mark of the Induna UMVANKLAMA.

X the mark of the Induna UMKONDANE.

Witnesses :

D. C. TOOKEY.

C. J. BUISSINE.

This document has been faithfully interpreted from word to word by me, to the King Panda, who declared fully to understand and approve of the contents thereof.

J. KIRKMAN.

C.

Articles of Treaty and Agreement between the Governor of the Colony of the Cape of Good Hope, on the one part, and Moshesh, Chief of the Basutos, on the other part.

1. The Chief of the Basutos engages to be the faithful friend and ally of the Colony.

2. He engages to preserve order in his territory, to restrain and punish any attempt to violate the peace of the frontier of the Colony by any people being within his country, or by any people from the interior who may attempt to pass through the territory for that purpose; and to seize, and send back to the Colonial authorities, any criminals or fugitives from the Colony.

3. The territory of the chief Moshesh is bounded from the west, from the junction of the Caledon with the Gariiep Rivers, by the Gariiep river from the junction aforesaid; and the north, by a line extending from about 25 to 30 miles north of the Caledon River, excepting near to its source, and at its junction with the Gariiep, where the lands of Bethulia and the territory of Sikon-yella come close upon its northern bank.

4. He also engages to assist the colonial authorities in any enterprise which they may find it necessary to undertake for the recovery of property, or the apprehension of banditti, who, having been pursued from the Colony, may have taken refuge in any part of the Country under his jurisdiction.

5. And, generally, he engages to apprise the Colonial authorities of any intended predatory or hostile attempt against the Colony which may come to his knowledge, and to co-operate, cordially and in all good faith, with

the Colonial Government, in preserving peace and extending civilisation among the native tribes.

In consequence of the above agreement, the Governor, upon his part, engages :—

To make the chief a present from the colonial treasury of not less than 75*l.* annually, either in money or in arms and ammunition, as the Chief may desire.

And in order to facilitate a due observance of these mutual engagements, and to secure the benefits which they are intended to afford to both parties, the Chief Moshesh will correspond direct with the Government on all subjects mutually concerning his territory and the Colony; and he also engages to receive and protect any agent whom the Government, in course of time, may think necessary to appoint, at his residence, and confidentially communicate with usual agent upon all matters concerning his territory and the Colony.

Thus done at Government House in Cape Town, this fifth day of October in the year of our Lord, one thousand eight hundred and forty-three.

(L.S.) GEO. NAPIER,
Governor.

Signed and sealed in our presence :

JOHN MONTAGU, Secretary to Government.
JOHN PHILIP, D.D.

Thus done at Thaba Bossi, on the 13th day of December, in the year of our Lord one thousand eight hundred and forty-three.

(L.S.) mark of X MOSHESH.

Signed and sealed in our presence :

T. E. CASSALIS.
JEAN THOMAS ARBOUSSET.
JAMES WALKER.
PAULUS MANTATEE, Mark O of.
JOSHUA MAKOANYANE, Mark X of.
HAMILTON MOORE DYKE.

CHAPTER III.

THE SHEPSTONE POLICY AND ITS
AFTERMATH.

"The Natal Native Policy," said Mr. J. X. Merriman in 1871¹ "is summed up in one word—Shepstone." This is so literally true of the period 1845 to 1875 as to justify an examination of personal character such as would, normally speaking, be out of place in a work of this nature. More than that. After Shepstone's guiding hand was withdrawn, even after his death, to the present day, the whole fabric of Native institutions and laws in Natal remains a monument to his great life-work. The breath of the living personality has gone out of the system: it has become cold and lifeless and stereotyped until there is to-day, perhaps, more to criticise than to praise in it. But, good or bad, it is one of the most potent factors in the present Native situation.

The life of Shepstone is not an unworthy subject for romance. There are few stranger stories in history than that of how a single white man, with no military force, and generally unaided by police, ruled from 100,000 to 200,000 Natives within Natal, and for thirty-six years kept the peace among the still vaster hordes in Zululand, by moral force alone. When we add the unfortunate and questionable, but daring, episode of 1877, we are bound to say of Sir Theophilus Shepstone's life—to plagiarise—that it was stranger than most men's dreams. Few figures of South African history are more baffling enigmas. Shepstone and President Burgers are the two most puzzling characters of our nineteenth century story, far more interesting than Cecil John Rhodes or Paul Kruger.

Without the fullest research into all available documents, private as well as public, it seems all but im-

¹ Report of Select Committee of Cape Legislative Council on the Basutoland Annexation Bill, 1871; page 27.

possible to reach a correct characterisation of the great Natalian; yet the attempt must be made if we are to understand a policy in which personality played so overwhelming a part. If the noble lineaments can only be seen, as through a glass darkly, that represents the writer's state of mind. Yet he believes that the outline, if blurred, is not misleading; and at least it represents the best that a genuinely impartial criticism can produce.

Had we only the Natal part of Shepstone's life to consider, the task would be easier. The critic would be lost in the panegyrist. But to reconcile the Shepstone of the 1877 Annexation with the Shepstone of early Natal history is a distressing and elusive problem. How a man who appears in Natal the soul of honour, faithful, just and upright, could have been responsible for the apparently mean trickery of the expedition of 1877 baffles comprehension. What were his motives in becoming Lord Carnarvon's agent in destroying the liberty of the South African Republic? As we strive to answer that question, new light is thrown on the episodes of Natal history and on the evolution of the Natal Native policy; and we seem at last to catch glimpses of the real Shepstone—neither a spotless knight nor a lying trickster; neither a genius nor an overrated dullard; but a shrewd, patient, laborious, courageous and ambitious administrator, the shadow of whose great name lies across half-a-century of South African history, and whose career is redeemed from the merely intellectual by his genuine love of and sympathy for the "black house," which reciprocated it with a passionate and unswerving loyalty to him and his.

Of his insight into the Native mind, and of his love for the Native people, there can be no doubt whatever. Mr. Charles Brownlee, than whom there could be no more competent judge, tells² us that he was thoroughly conversant with the laws, customs and prejudices of the Natives and that his thirty years of constant toil among them and for them had won their entire affection and

² Report of the Secretary for Native Affairs in Cape Native Blue Book, 1875; page 123.

sympathy. This is the evidence of a contemporary, and of a contemporary who, as Secretary for Native Affairs of the Cape Colony, had no temptation to magnify the abilities of his greatest rival. And yet there is no doubt that while Shepstone controlled, adjudicated, kept the peace, he failed conspicuously to civilise.

The truth is that he was rather a magnificent administrator than a great framer of policy. All the requisites of a good Native administrator—patience, thoroughness, tact, sympathy, self-reliance, a commanding presence, a full acquaintance with the language and customs of his people and a genuine respect for their traditions—were his in a pre-eminent degree. But there is no doubt that he failed, after his first brilliant measures, to adapt his policy to changing conditions and to give it a direction which would allow of future development.

There is no doubt that he was greatly assisted by circumstances. Few men have had better opportunities of distinction. But few men have used their opportunities better. The view that Shepstone was a very mediocre man who became famous simply because there was no one to compete with him, cannot commend itself to those familiar with the written Archives and printed literature contemporaneous with his life.

His good qualities were many. Of his courage there can be no doubt. Charles Barter, a contemporary, relates a striking instance of this in his rhyming chronicle "Stray Memories of Natal and Zululand"³ :—

"Else had I told the thrilling tale
I heard in Hlabatini's vale
What time at Lambongwenye Kraal
With Dunn I held high festival;
How, when his successor to name

³ Pages 11—13. The whole expedition to crown Ketswayo was one of the greatest peril. Every member took his life in his hands, as is shown by the fact that the Natal Government twice excused itself from sending such an expedition until Shepstone volunteered to go. The expedition consisted of 110 mounted volunteers, with two field pieces and 300 friendly Natives. The Zulu nation numbered about 600,000. (Russel: "Natal, The Land and Its Story," p. 222).

To Panda's Court the hero came,
 And when, the business fairly o'er,
 Dunn's band had started for the shore,
 A rabble rout by frenzy fired
 Or by the chosen heir inspir'd
 Round Shepstone closed, with fell intent,
 Their murderous eyes upon him bent,
 And assegays in air that gleamed—
 No nearer death impending seem'd
 When sooth it came in after years
 Than then among the Zulu spears.
 Yet calm, with arm extended, he
 Points eastward to the shining sea:
 And "Yes!" he cries, "your spears may kill,
 But for each drop of blood they spill
 A host from out yon sea shall come,
 From England sent my native home,
 And ample vengeance shall they take
 On you and yours, for Somtseu's sake."
 Clear rang his voice upon the air;
 The lawless rabble crouch and stare;
 Down drop the spears and hark! a cry
 Inkos! Inkosi! ⁴ rends the sky."

Courage again, if not of the most respectable kind, was demanded for the Transvaal expedition of 1877. The Republic was annexed, when all concealing verbiage is removed, by Shepstone himself, eight Civil Servants and twenty-five Police. And Shepstone must have known that he ran the risk of being disavowed. As Dr. E. J. P. Jorissen says ⁵: "Het is duidelijk, Lord Carnarvon zou Shepstone overboord geworpen hebben, als zijn roeklooze daad ware mislukt en misschien eene botsing met de Boeren had uitgelokt Sir Theophilus Shepstone heeft hoog-spel gespeeld, en, gelukkiger dan Dr. Jameson, gewonnen; daarbij den dank van een erkentelijk Gouvernement gekregen. Maar in den grond der zaak waren beide struikroovers." ("It is clear that Lord Carnarvon

⁴ Prince (Sahib)—a salutation of respect.

⁵ "Transvaalsche Herinneringen, 1876-1896," pp. 26-27.

would have thrown Shepstone overboard had his reckless deed miscarried and possibly even had it elicited a collision with the Boers . . . Sir Theophilus Shepstone had played for high stakes, and more fortunate than Dr. Jameson, had won; thereby he obtained the thanks and recognition of the Government. But at rockbottom both of them were freebooters.")

The patience of Shepstone was as pronounced as his courage. Let him who doubts this, read through the Legislative Council Debates of Natal in the 1860's, and he will doubt no more. And, rarer still, Shepstone possessed a cold magnanimity which refused to take offence at ignorant or malicious criticism. It is safe to say that, in ten years of constant Parliamentary strife from 1865 to 1875, Shepstone never lost his temper and never said an unkind word. When the British Government disannexed the Transvaal in 1881 and Shepstone fell into disfavour, not a word of public complaint passed his lips. He bore the reverses of fortune with a simple dignity that almost makes one forget that he had deserved them.

Yet with these clear-cut virtues he had the temperament of a trained diplomatist. Sir Bartle Frere describes him, in a Despatch dated 3rd February, 1879, as "a singular type of an Africander Talleyrand, shrewd, observant, silent, self-controlled, immobile." "Forty years ago," Sir Bartle continues, "he might have been great in Continental diplomacy." It was not without a certain appropriateness that his first official designation in Natal was that of "Diplomatic Agent to the Native Tribes." If we are to believe the population of the annexed Transvaal, he possessed some of the less desirable qualities which are customarily associated with the diplomatic calling. In their memorial to Queen Victoria of the 12th April, 1879, they say: "How was Sir Theophilus Shepstone able to annex the country without the burghers offering any armed resistance to it? Your Majesty, it grieves us deeply to have to say it, but we cannot do otherwise than speak the truth: he did it by craft, deceit and threats." Only very careful research, and perhaps

not even that, can tell us how far Shepstone was deceived and how far deceiving, but Metternich himself could hardly have carried through the annexation with more diplomatic *finesse*.

He was fond of secrecy. Barter, whose testimony as a friend and a contemporary is of the utmost value, tells us :—

“When hostile or intruding eye
Menaced his native policy,
(Which like the priests of Isis old,
He chose in shrouded veil to fold
Unknown alike to friend or foe—
Ignotum pro magnifico)

And Frere, in the Despatch already quoted, says :—

“He has been driven, more and more, to trust to his naturally excellent memory, and to shut himself up in an irresponsible isolation, as the only man who knew anything about Native Affairs.

“Like many of his countrymen he is inclined to resent inquiry or control, and to treat in a hostile spirit all the information and all the suggestions about his department which do not come from himself. Hence it is not easy to help him, and his reticent habits make him very dangerous in troublous times . . . One never feels sure that one has got his whole and his real opinion and all the information he can give one He has, of course, a vast fund of useful information, if one could get at it; but he is apt to regard it as his own private armoury, and not as belonging to the State. And I always feel, when I think he has gone entirely with me, that he may have said nothing about some fact or opinion which would have entirely altered my view.”

There certainly was throughout his ascendancy in Natal a disposition of secretiveness. Native policy was one of the *arcana sacra imperii*, with which it was impious for the average man to meddle. Shepstone did not possess the “divine oil of delegation.” He trained up, outside his own family, no great administrators: in his own family he had a pathetic confidence, forgetting

that two Somtseus in a century is a rare phenomenon in any one family. Both in his native policy in Natal, and also in the Transvaal, he made no attempt to carry public opinion with him, shrouding himself and his schemes in impenetrable and unnecessary mystery. Reserved and self-contained by nature, a generation of contact with a people the least garrulous in the world as far as government is concerned had doubtless confirmed him tenfold in his habit of diplomatic secrecy.

Undoubtedly his temperament was conservative. The policy of *laissez-faire* held many attractions for him. Frere in a letter to Sir Michael Hicks Beach dated 2nd May, 1879,⁶ describing the then condition of the Transvaal, says: "Nothing save lifelong habits of trusting that 'something would turn up' can explain to my mind the apparent absence of all effort to devise or substitute a better system When you come to talk to him you find him full of good sense as well as of information, but it never seems to occur to him that he has any duty but to sit still and let things slide . . . He will doubtless give you many intelligent reasons for the whole machinery of administration being in abeyance, but I shall be surprised if he suggests any means of setting it going again." This particular criticism is not entirely fair, for, as I shall try to show in Chapter V, Shepstone did introduce several definite reforms in Native Policy during his occupation of the Transvaal; but in many respects it is illuminating and true. There is a sting of justice in the criticism made by Mr. John X. Merriman before the Inter-Colonial Commission of 1903-5⁷: "You have not elevated the Natives in Natal; you have not raised them; you have not educated them; they are barbarians and you have designedly left them in a state of barbarism."

That Shepstone was ambitious is a statement for which no evidence can be quoted. So far as a personal impression and a personal opinion can be allowed to find a place in an historical work, I should give my

⁶ Quoted in Martineau: "The Transvaal Trouble. How it Arose"; p. 142.

⁷ Evidence, Vol. II, p. 398.

opinion that there was a distinct vein of ambition in him, and that the pride of being the arbiter of the destinies of South Africa weighed as much as anything with him in the episode of 1877.

Good and bad, he was all our own. A true South African, he never appeared to his English colleagues as an Englishman. "Hij sprak het platte Afrikaansche Hollandsch; in gewoonten, manieren, spraak—behalve dat hij Engelsch sprak—kon hij als Boer optreden, en feitelijk was hij er een." ⁸ ("He could speak the Afrikaans dialect of Dutch. In habits, manner and speech—except that he (usually) spoke English,—he could pass as a Boer, and in fact he was one.") And in the generous conclusion to his character-sketch of Shepstone, Jorissen adds ⁹:—"Het is mij onmogelijk, na zoovele jaren niet een woord van waardeering uit te spreken voor een man, die nu misschien, 20, 30 jaar later, een der leidende staatsmannen van Zuid-Afrika zou zijn geweest, om tot stand te brengen wat wij allen verlangen: een vereenigd Zuid-Afrika, vrij van elken Europeeschen invloed. Als Transvaaler vergeef ik hem wat hij in April 1877 heeft verricht. Ik heb de overtuiging dat hij het wel meende met ons arme Transvalers omdat hij een onzer was. . . . Sir Theophilus Shepstone en Sir Bartle Frere: een Afrikaner tegenover een Jingo!" ("It is impossible for me after so many years not to speak one word of appreciation of a man who now perhaps, twenty or thirty years later, would have been (had he been living) one of the leading statesmen of South Africa, to bring into being what we all long for—a united South Africa, free from all European influence. As a Transvaaler, I forgive him his exploit of April, 1877. I have the conviction that he meant well by us poor Transvaalers, for he was one of us. . . . Sir Theophilus Shepstone and Sir Bartle Frere: a South African contrasted with a Jingo.")

And yet . . . and yet . . . while one would like to end on this generous note, there is a feeling that Shepstone wore his South African patriotism with a difference. In—

⁸ Jorissen: "Transvaalsche Herinneringen," p. 23.

⁹ Op cit., pp. 27—28.

the writer's opinion, the explanation is that he was, first and foremost, a Natalian. What makes the annexation of the Transvaal and its administration during the years 1877-81 so unreal, so artificial a thing—and that it was such, anyone who, like the writer, has gone carefully through its Archives during that period, will admit—was that, in reality, it was an annexation not to the British Empire but to Natal, by Natal's uncrowned king. Nearly every Head of Department during the four years was a Natalian. Shepstone's success was felt in Natal as a Natal triumph; the retrocession was far more deeply mourned in Natal than in Great Britain. Such passion as Shepstone had outside his love for the Bantu people was rather for Natal than for either South Africa as a whole or the Empire.

Baffling enigma as he is to the historian, difficult as it is to know what construction to put on so many of his actions, he is, good or bad, beyond all doubt one of the first half-dozen names of South African history.

Such was the man to whom the despotic and all but irresponsible control of the Natal Natives passed during the years 1845-47. The force of his natural ability was such that before long both the British Government and its local representatives became content to leave all administration and all framing of policy in his hands. He had, of course, his preliminary difficulties. Dr. Henry Cloete, the former Special Commissioner, an amiable, but vain and pedantic, man, had been appointed Recorder of Natal under the new Government; and he was soon engaged in an acrimonious controversy with Shepstone, which lasted all through the year 1848, and which attained such proportions that Mrs. Cloete and Mrs. Shepstone cut one another in the streets of Pietermaritzburg, to the no small discomfort of the tiny official community, which was unable, for a time, to hold any social function at which both ladies were present.¹⁰ Cloete maintained that the whole Native population of Natal must be treated

¹⁰ I regret that it is impossible for me to quote my authority here; but I can assure the reader that it is unimpeachable.

as subject to Roman-Dutch law—a theory which it was impossible to put into practice; and which had it been possible to apply it, would very likely have provoked disturbances all over the country, even in the cowed state of the refugee population. It would have involved, *inter alia*, the treating of a polygamous marriage as a crime, and the alteration of the Native law of inheritance by primogeniture to that of equal division among heirs. Shepstone took the view, preferable on both theoretical and practical grounds, that the system of Native customary law must be taken over *en bloc*, recognised and administered by the Courts; and that he, as representing the Lieutenant-Governor, should have some of the jurisdiction previously exercised by the Zulu monarch as Paramount Chief. As he proceeded to act on his theory, Cloete felt it his duty to refer to the doings of the Diplomatic Agent in no measured terms in open Court. Ultimately Shepstone prevailed in the contest and an Ordinance of the 23rd June, 1849, abrogated Roman-Dutch Law in so far as the Native population was concerned and recognised the Native Customary Law, except so far as it was not repugnant to the general principles of humanity observed throughout the civilised world—in other words to the *jus naturale*.” This Ordinance was the precursor of many similar pieces of legislation in various parts of South Africa. It was largely pioneer work; and Shepstone deserves every credit for it as an original proposal, carried through in the teeth of judicial opposition. Three years later, in 1852, Sir George Cathcart found himself unable to solve the legal difficulty as regards British Kaffraria except by continuing Martial Law indefinitely in time of peace, and thus enabling each Magistrate to do what he liked unhampered by the inappropriate provisions of the Roman-Dutch Law, which it apparently never occurred to him to abrogate.

Shepstone was at this time making a very brilliant attempt to reconcile the old Native system of govern-

¹¹ For a full discussion of Native Law see Chapters VIII to XI.

ment with the existence of a European administration. The recognition of Native Law and the appointment of Chiefs as officers for the Government were great steps in this direction. In 1850 a spectacular change was made by the proclamation of the Lieutenant-Governor of Natal as Supreme Chief of the Native population (replacing the Zulu monarch). This again was at the time an unparalleled enactment, to be imitated later by various parts of South Africa, concluding in 1885 with the South African Republic.

The framework of the system having been thus laid, a Memorandum of instructions was next sent out to all Magistrates on the 29th October, 1850, from which the following is an extract:—

“Whilst humanity, and especially the injunctions of our religion, compel us to recognise in the Natives the capability of being elevated to perfect equality, social and political, with the White man, yet it is as untrue as it would be unwise to say that the Native is even now in this position, or that he is in his present state capable of enjoying or even understanding the civil and political rights of the White man.

“Her Majesty’s Government has most wisely recognised and acted upon these principles by providing a form of government for the Natives in this District, which, *while adapted to their present position, is capable of being so modified as to advance their progress towards a higher and better civilisation.*

“Magistrates are carefully to bear these principles in mind in all their intercourse with the Natives.”

This Memorandum is of great interest, in that it exhibits Shepstone to us as not merely a great ruler, but also as a potential civiliser. It is a matter of great regret that the *laissez-faire* which crept upon him in middle age should have stamped itself on present-day Natal policy quite as much as the brilliant experiments of his youth.

While Native law as a whole was recognised, certain of its less desirable features—e.g., punishments for alleged “witchcraft”—were never adopted into our system, and

actively discouraged from the beginning. At the same time some European ideas were skilfully introduced, and the manner of their introduction is a lesson to all rulers of child-races and a strong contrast to the wholesale and unexplained introduction of European Criminal Law by the Cape Government. Let us take, for example, the grafting into Native legal conceptions of the imposition of the death-penalty for murder. That a murderer should necessarily suffer death was a conception foreign to the Native mind which was still in the *weregild* stage. Shepstone introduced the European ideas on the subject by the argument that a man's life was the property of the Supreme Chief, and that the Lieutenant-Governor was Supreme Chief, and that he would not, in future, be satisfied with cattle compensation for property lost by murder. Thus, by a series of typical Bantu ideas, he gave to the Native mind the conception, now well understood, that the appropriate punishment for murder is death, unless the Supreme Chief is pleased to remit it.

I give, in illustration, a full translation from the Zulu of the circular introducing the death penalty. It is dated from Pietermaritzburg the 25th November, 1850, and signed by "T. Shepstone, Diplomatic Agent":—

"To all Native Chiefs, Petty Chieftains, Heads of Kraals and Common Native people in the District of Natal.

"Hear ye and listen with both ears. Where as from your youth up you have been taught to consider a man's life to be the property of the Supreme Chief, and that it is unlawful to destroy such life without his consent; and whereas the Supreme Chief in this District is the Lieutenant-Governor, representing the Queen of England; and whereas several lives have been destroyed without trial, and without his knowledge or consent :

"Know ye, therefore, all Chiefs, Petty Chieftains, Heads of Kraals, and Common People, *a man's life has no price : no cattle can pay for it*. He who intentionally kills another, whether for Witchcraft or otherwise, shall die himself; and whether he be a Chief, a Petty Chief-

tain, or Head of a Kraal, who kills another, he shall follow his murdered brother; his children shall be fatherless and his wives widows, and his cattle and all other property shall become forfeited.

'Let this be proclaimed in every kraal and on every hill, so that none may say 'I knew it not.'"¹²

The process took some little time, but an interesting Government Notice (No. 45 of 31st August, 1853) shews that executions did take place in the interval—and public executions, too, to impress the Natives with the new law as graphically as possible. "The two men of the Inanda," the Notice reads, "he of the Umpanza, and the five persons of D'Urban were all hung (sic) by the neck, before the eyes of the people, and in the face of the sun; their guilt had been manifest—their punishment all might see." The Notice proceeds to remit the death penalty in the case of a Hlubi who had attempted to poison a whole family, stating, however, that in any similar case in future the death penalty would assuredly be imposed.

All that was wanted to seal the policy was the benediction of the Colonial Office, and this was fully and warmly given by Earl Grey in his Despatches Nos. 566 and 567 of the 7th and 11th January, 1851.

Shepstone was, however, not yet out of the wood. His work, especially the laying out of the Locations, had not been popular in Natal; and before he was allowed to settle down to a period of quiet administration, it was determined that the Colonists, the practical men who "knew how to handle Kaffirs," should be given a chance of showing what they could do. On their own claims they should have succeeded far better than a scientific student of the problem, and a Government official at that! It is these magniloquent pretensions which give such a special interest to the Natal Commissions of 1852-3. The officials—Messrs. W. Harding, John Bird, Charles Barter and Theophilus Shepstone—were swamped by an overwhelming majority of land-owning Colonists, namely:

¹² It is interesting to notice that this Circular was re-issued *word for word* by Col. Griffith, Governor's Agent, Basutoland, on 17th December, 1872.

Messrs. J. N. Boshoff, R. R. Ryley, P. A. R. Otto, H. Milner, J. Henderson, G. C. Cato, F. Scheepers, S. Maritz, T. Nel, C. Landman, E. Potgieter, E. Morewood, Dirk Uys, A. Spies, C. Labuschagne, W. Macfarlane, J. Moreland, Dr. Addison and Capt. Struben. Mr. E. Tatham acted as Secretary and Mr. A. F. Fynn as Interpreter.

The Commission began by falling tooth and nail on the work of its predecessor. Its vigorous criticism of the personnel of the 1846-7 Commission¹³ was followed by an equally vigorous and very illuminating onslaught on the recommendations. "They failed"—so the Report of the 1852-3 body runs—"chiefly owing to the size of the locations it recommended, which led it to trespass largely on the private rights of proprietors of farms—and also *dried up the source whereby an abundant and continuous supply of Kaffir labour for wages might have been procured.*"¹⁴

The next object of attack was the resuscitation of the tribal system by Shepstone, which was met with the most vehement protests. The Commission considered, as Shepstone had done, that Magistrates should have been appointed for each Location; but they did not suggest what other means of keeping order might be adopted under the unfortunate circumstances that neither men nor money were obtainable for the posts. Then, with that eternal tendency of man to idealise the past, they recurred, with a frankness which is surprising when we remember that the majority of the members were of English descent, and some recent immigrants, to the Golden Age of the Republic ten years before. "The Kaffirs," they said, "have never felt or acted submissively under British Government either here or in the Cape Colony; and until such habits can be re-established, civilisation will make no progress, and the generally unfortunate effect of British rule on the Coloured races in South Africa

¹³ Quoted in Chapter II.

¹⁴ Report, p. 4. The italics are mine.

will continue unaltered. The leading features in the policy of the Volksraad seem to have been :—

1st. The encouragement of white immigration by every legitimate means, and

2nd. Keeping the uncivilised Kaffir population in the District (chiefly foreigners) within due bounds as regards numbers, and in strict subordination, in both of which respects that Government deserves our imitation."

They then proceeded to sketch out a constructive programme, parts of which are irresistibly funny. We can quite follow, not without a half-penitent, half-sympathetic fellow-feeling, the kernel of their policy. All that they were concerned with, as land-owners, was, to requote their own words, "an abundant and continuous supply of Kaffir labour for wages." With this object in view they recommended agricultural education of an elementary type for the Natives, and economic pressure, by means of hut or other taxation, and by introducing individual tenure of land in the Locations with consequent necessity of earning money to purchase a holding, which might constrain the Native to come out and work as an agricultural labourer on a European farm. The Kaffirs should be taught to respect the white man (as if respect can ever be "taught" unless it is deserved, or needs "teaching" when it is deserved) and realise their own immense inferiority. In order apparently to assist in achieving this desirable end, the Commission recommended¹⁵ that *immigration from England should be encouraged of unskilled agricultural labour, of which the ragged schools would be a useful recruiting ground!*

Some points of the Report will be read with more appreciative feelings :—"There should be," it says,¹⁶ "a Government Industrial School in each village in which the elements of gardening and agriculture, as well as some of the more easy and useful trades, should be taught. This building can also serve as a Chapel.

¹⁵ Report, page 64.

¹⁶ Ibid, page 53.

“The attendance at school of all young Kaffirs of both sexes in the locations for three years between the ages of seven and twelve years should be compulsory and not left to the caprice of their uncivilised parents.

“The English and Dutch languages should be taught in these schools.”

Though the Report does not face the question of subsequent industrial competition between the Natives so trained and European artisans, of whom there were indeed but few in the Colony at the time, and though there is a very intelligible hint that the Zulu language, one of the finest and most melodious in the world, is to be allowed to die out, the main principle of industrial and agricultural education of a compulsory nature will commend itself to many South Africans to-day; and it certainly is a very grave omission in the Shepstone policy that systematic agricultural training, in particular, was never undertaken.

Good and bad alike, however, the recommendations of the 1852-3 Commission were quietly and quite definitively shelved. A not unsympathetic Magistrate sums up the matter neatly in a Report written twenty-five years later. “The Commission of 1852-3,” he wrote “thoroughly exhausted the subject of how the Natives should be governed and taught, and suggested plans for their civilisation and education, but nothing came of the labours of the Commission.”¹⁷

In many ways this was a good thing; for Shepstone's unhindered administration was considerably wiser than the Commission's suggestions. That its really useful recommendations which Shepstone's Commission had already recommended in 1847 (e.g., Industrial Schools) were never carried out, was to a large extent due to lack of funds. While we blame Shepstone for his *laissez-faire* tendencies, we must be generous enough to judge

¹⁷ Natal Native Blue Book, 1878; p. 15. A very unfavourable view of the work of the 1852-3, as against the 1846-7 Commission is given in a Despatch of Lieut.-Governor John Scott to the Duke of Newcastle (Colonial Secretary), dated 26th February, 1864.

the article he produced remembering that he had to work without tools. He never had money enough to carry out his schemes. If Brown has to use an axehead for a hammer and packing-cases for material, borrow a plane from his neighbour and hammer rusty old nails straight before he drives them in, the wonder is not that he produces a rickety table, but that he produces a table at all. Jones, who comes to comfort him, like Job's friends of old, may make some excellent suggestions. New nails should be bought, a proper hammer should be secured, and a table ought to be made of really good wood. But we—who are mostly Browns—have learned to appreciate Jones at his true value. He is always with us in this matter of Native policy. His suggestions are frequently admirable, but he does not propose—as the Commission of 1852-3 did not—himself to supply the wherewithal to carry them out. So we, like Shepstone, have to carry on, under a running fire of exasperating criticism, our job of work with what patience we can, and with such materials as we find to hand, and we think we are pretty good fellows in the circumstances: so was Shepstone.

The ten years after the Report of the Commission of 1852-3 were devoted mainly to quiet administration. But steps were being taken, in a gradual and experimental way, towards the legal securing of the Location lands to the tribes inhabiting them. The first scheme which Shepstone had evolved was the granting of separate titles for each tribal location, the land to be alienated by the Crown, to separate Boards of Trustees one of whom was to be in each case the Chief of the tribe. Such a Trust was created by Indenture of the 27th May, 1858, in respect of the tribe (the Amatuli) occupying the Umnini Location; under the name of the Umnini Trust it still exists. The first Trustees were the Secretary for Native Affairs *ex officio*, the Chief of the Amatuli Tribe *ex officio* and one non-official member. But, on maturer consideration, it was decided not to proceed with this scheme, which would have taken away from Government the power of re-allocating lands between tribes,

and instead by Letters Patent of the 27th April, 1864, promulgated in Natal by Government Notice No. 57 of 27th June, 1864, the Natal Native Trust was created, the Crown alienating to it all the unalienated Location Land in Natal in trust for the Native population as a whole. The Trust was simply the Executive Council of Natal acting in a particular capacity. It controls to-day over 2,000,000 acres of land. ¹⁸

In the same year that the Natal Native Trust was founded, was introduced the famous system of Exemption from Native Law (Law 11 of 1864, amended by Law 28 of 1865). With definite Missionary activity largely at work in the Colony many Natives were becoming detribalised and it was deemed necessary to bring law into line with the facts of the case. It was undesirable that a really detribalised Native should be under the control of his nominal Chief, usually a raw barbarian. The full legal recognition of this distinction between tribal and detribalised Natives, and the providing of a bridge, difficult but capable of being crossed, between the two classes is a very important part of the Natal system. The principle underlying the Exemption laws is a sound one: in practical detail, they are full of difficulties, badly drawn up, and provocative of much administrative difficulty. ¹⁹

The applicant for exemption (who could be any male or any unmarried female) had to petition the Governor stating particulars of his family, property, Chief, etc., and furnishing proof of his ability to read and write. An unmarried female had, in addition, to produce a European of good standing as guardian. The applicant had then to take the Oath of Allegiance, and the Governor could either grant or refuse the Petition in his discretion.

Exemption in the case of a married Native extended to his wife and children under sixteen years of age.

¹⁸ For much of the information in this paragraph I am indebted to a Memorandum of Mr. (later Sir) Michael Gallwey, Attorney-General of Natal, dated 12th April, 1882 (Papers N.N.T., 32/1896)—see also Chapter XVI (Land Tenure).

¹⁹ See Chapter IX (The Recognition of Native Law).

No married Native who had more than one wife living was to be exempted.

The exempted Native was not in the exact political and legal position of a white man, being a *tertium quid*. As regards civil rights and obligations, however, he was entirely under the Roman-Dutch Law. Once exemption was granted, this was strictly applied. An exempted Native, for example, taking a second wife during the lifetime of the first, could be tried and punished for bigamy, though, had he not been exempted, such an action would have been no crime.

Natal Natives have not availed themselves largely of the privilege of exemption. It has never been thrust upon them, and at times the Government has actually discouraged it. It is quite probable that Shepstone himself was not in favour of applying the Law until a definite movement in the direction of exemption had set in spontaneously among the Natives. It is, at any rate, significant that from 1864 to 1876 not a single application for exemption was received. Between 1876 and 1880, when Sir Theophilus had been replaced by his brother, Mr. John Wesley Shepstone, one hundred and forty-nine Letters of Exemption were granted.²⁰ It is doubtful, therefore, whether either the merits or defects of the system of exemption can be ascribed to Sir Theophilus Shepstone.²¹

A further step, again more theoretical than practical, was the granting under certain restrictions of the franchise to Natives (Law 11 of 1865).²² Only exempted Natives could get the franchise, but not every exempted Native got it.

Giving the kindest explanation possible of Law 11 of 1865, we may say that its underlying principle was that, after a Native had been exempted from the provisions of Native Law and from tribal restraint, a certain time

²⁰ Papers relating to Native Customs in Natal, 1881.

²¹ It has even been suggested that the original Exemption Law was drawn up only to throw dust into the eyes of the philanthropic party in England, and that the exemptions of 1879-80 were rushed through in anticipation of a British Parliamentary inquiry.

²² See Chapter XII (The Political Problem). Further research has led me to believe that this was in reality a Disfranchisement measure as there was no "Colour bar" in the Charter of Natal (1856).

should elapse as a kind of probationary period under the new conditions before the franchise could be granted. The qualifications were stringent. A Native had to be a resident of Natal for twelve years, the holder of Letters of Exemption for seven years, and to produce a certificate of recommendation signed by three duly qualified European residents and endorsed by a Magistrate or Justice of the Peace. The grant of the franchise was not automatic but lay in the discretion of the Governor, which has frequently been exercised adversely. When the Inter-Colonial Commission of 1903-5 was sitting, it was discovered that, after thirty-nine years only three Natives in Natal and Zululand had the vote.

The franchise is not hereditary: the son of an exempted and franchised Native has to apply for Special Letters of Exemption and submit his case to the Governor before he can get the vote. It is a privilege, not a right.

While the Natal franchise is criticised more fully elsewhere it seems right to say here that it can lay no claim to praise or recognition as part of a scientific scheme. It admits the principle of the identity of black and white, without realising the end which the grant of a Native franchise has in view—the constitutional expression of Native public opinion.

The unkindest explanation of the Natal franchise law—and probably the true one—is that it was a skilful and disingenuous attempt to maintain a political colour bar without saying so. Subsequent legislation ran on similar lines for the purpose of excluding Indians. Whether the amount of skill expended in these intricacies of *la haute politique* is worth the result, is open to question. With Cicero, the writer is old-fashioned enough to believe that honesty is the truest expediency. If we do not believe in giving Natives the vote, let us say so; and say why.

At any rate Shepstone cannot be saddled with the franchise policy as a practical one. It was long after he had retired from office that the first Native was enfranchised.

In the year 1856 Natal had received Representative

Government. This meant that, in the mainly elective Legislative Council, Shepstone had a kind of permanent 1852-3 Commission to deal with. From time to time violent criticisms were launched against his policy, and ultimately Law 26 of 1875, some of the more important provisions of which ran counter to his wishes, marks the end of his "benevolent despotism" over the Natal Natives. His visit to England late in 1876, marked by the conferment of a well-earned Knighthood, involved his resignation of the office of Secretary for Native Affairs. From the beginning of 1877 he was concerned exclusively with the affairs of the Transvaal. The Zulu War and the Transvaal War of Independence followed in rapid succession. After 1881 until his death in 1893, Sir Theophilus Shepstone resided permanently in Natal, but he never again took a leading position in public affairs, though venerated in his retirement by men of all shades of opinion. He had been succeeded in the office of Secretary for Native Affairs by his brother, Mr. John W. Shepstone, C.M.G., who was replaced after the retrocession of the Transvaal, by Sir Theophilus' son, Mr. Henrique C. Shepstone, C.M.G., who held office until the introduction of Responsible Government in 1893. It must be said, however invidious the comparison, that neither of these gentlemen could be said to come up to the standard of the great "Somtseu." It is a pity that he did not look outside his own family for his successor.

It will be seen that the period of 1875-93 is a time of transition between the pure and undiluted Shepstone Policy of 1845-75 and the definite Responsible Government era subsequent to 1893. But it would not be right to carry on the story to 1893 before attempting to estimate the true value of the work of Sir Theophilus Shepstone. Many of the Governmental acts of the period 1875-93 were acts of which he could not have approved had he been in office. Take the Code of 1891 for example. The Shepstone Policy is often saddled with Codification. However strong the arguments for or against the Code, Sir Theophilus Shepstone is not fairly chargeable with it,

having expressed himself quite clearly against the Codification of Native Law before the Cape Native Laws and Customs Commission of 1883.²³ We, therefore, in attempting to arrive at Sir Theophilus Shepstone's place in the history of Native Policy, must confine ourselves to the thirty years ending with Law 26 of 1875.

Probably the most important point in the whole Shepstone Policy, and what makes it so valuable, in spite of its defects in details and its *laissez-faire*, to the Native Administrator of to-day, is the realisation that differentiation between white and black does not necessarily mean the subordination of the latter. Broadly speaking, most modern thinkers on the Native question argue as if there were no *via media* between the principle which refuses to acknowledge any real difference between Europeans and Natives, the policy of identity as we may call it, which has dominated many aspects of Cape policy, and the principle which insists on the subordinate position of the Native in the body politic, the policy of subordination, which is the key-note of Orange Free State and much of Transvaal legislation and administration. Between the policy of identity and the policy of subordination lies what in the writer's opinion is the way out of the difficulty, the policy of differentiation, with which it is only fair that the name of Sir Theophilus Shepstone should be permanently associated. This policy is based on a full and frank devotion to the interests of Europeans and natives alike. It does not propose to give an answer to the problem of whether the Native is inferior to the European, or equal to the European, or whether he is now inferior, but will one day be equal. These interminable and irrelevant discussions it leaves to editors of daily papers and stump orators. All that it asks us to accept is that the Native is different from the white man, and that his development must not be diverted into unnatural and unsatisfactory channels.

From an idealistic point of view, what is involved in this central doctrine of the Shepstone system is the belief

²³ See *Minutes of Evidence* Questions 151, 259, 326, 435, 436, 437. (Pages 9, 14, 18 and 24).

that we should not attempt to Europeanise the Bantu (except so far as their progress to civilisation embraces such changes as are common to all civilisations, European included) but to develop their own distinctive characteristics through the infusion of all that is best in our own civilisation to the highest possible point. Here is a conception on which Europeans and Natives can join hands. Neither they nor we would wish to see second-grade Europeans made out of the Bantu: both they and (one trusts) we, wish to see first grade Bantu. Never let us forget that it would be far less criminal to murder the body, so to speak, of the Native people than to murder their soul. Were we to exterminate them physically we should, to paraphrase Milton, be slaying only lives: but to destroy their spiritual and mental identity—poor as that may seem to many Europeans—would be slaying an immortality. For the Bantu ethos is not without its value to humanity: it is one brick of the City of God. Our tribal Natives should not be torn rudely out of their tribal system: our detribalised Natives must be taught to be proud of, not apologetic for, their colour, to become not hangers-on of European society, but recognised and responsible leaders of their less advanced kinsfolk. Everything of value—the communal spirit, the reverence for ancestors and elders, the kindly hospitality to strangers, the absence of a greed for gain—should be preserved. While we try—as we must try—gradually to eradicate the darker qualities—superstition, sensuality and laziness typified by witchcraft, polygamy and the poor quality of Native agriculture and industry—let us beware lest we pull up the wheat with the tares. Prof. Tengo Jabavu in his book "The Black Problem,"²⁴ says: "The early missionaries razed everything of our people to the ground, and the consequence is that in our transition stage we now often sigh for some of the valuable and moral tenets of our tribal and communistic life that served to secure discipline in those days." And in trenchant words Mr. L. T. Hobhouse tells²⁵ us:—"A specious extension of

²⁴ Page 3.

²⁵ "Liberalism," page 43.

the white man's rights may be the best way of ruining the black. To destroy tribal custom by introducing conceptions of individual property, the free disposal of land and the free purchase of gin may be the handiest method for the expropriator." These are no negrophobe critics.

In saying this we do not mean to argue that detribalisation should be opposed, or the tribal system maintained to-day by artificial means. So far as we can see, every people has to go through and come out of the tribal stage. But there is no need to replace the kindly communal spirit which should be of the essence of Christianity with the selfish individualism of modern capitalistic industry.

Such are the considerations prompted by a careful study of the thirty years of Sir Theophilus Shepstone's Native administration. As we have seen, that administration received a serious check by the passing of Law 26 of 1875, which set out to bring into being a full and separate Native Judiciary. In some ways its conceptions were sound; but its provisions contained one change of vital import—the creation of the Native High Court, a Supreme Court of appeal for all civil and most criminal cases in which Natives were concerned—which was open to grave criticism.

The jurisdiction allotted by the Law to the Native High Court had previously been exercised by the Secretary for Native Affairs, he, as representing the Supreme Chief, hearing all appeals from Magistrates' decisions. This fusion of administrative and judicial powers may seem strange and even dangerous to those acquainted only with European politics; but in practice it works well—as in the case of the Chief Magistrate of the Transkeian Territories—and it is theoretically sound, as reproducing absolutely in the Governor, through the Secretary for Native Affairs, the powers of a Paramount Chief exercised through his principal Induna. It must be remembered that, even to this day, the fusion of administrative and judicial power is complete in the local officer—the Magistrate—and Law 26 of 1875 made no

difference in this respect. It was only at the top of the tree that it made this unfortunate division, striking a great blow at the pure Shepstone system, and arousing discontent and dissatisfaction among the Natives themselves, who could not understand this diminution of the Secretary for Native Affairs' powers.²⁶ Thus came into being the Native High Court—a Court which Sir Bartle Frere describes (for what his testimony is worth) early in 1879 as a "most absurd and mischievous High Court."²⁷ It would be, of course, ridiculous to impute the decline of Natal Native Policy wholly to this division of authority, but such was undoubtedly a potent factor in the process of degeneration. The evidence of the Cape Native Laws and Customs Commission of 1883 shews us that Sir Theophilus Shepstone was definitely opposed to the change.

At the same time a Commission was appointed to draw up a uniform Code to be administered by the various Courts including the Native High Court. The Code was not promulgated until the 28th February, 1878. It differed from the Code of 1891 in being a guide to the unwritten Bantu law and not a statutory enactment binding on the Courts. In this form, there can be little doubt that it was a useful reform; for, unless Magistrates were appointed purely for Native cases and specially trained for their work, there was grave risk of miscarriage of justice. Unfortunately the difference between the earlier and the later Codes was one rather of theory than of practice; for few Magistrates departed from the terms of the 1878 Code, even though it was not legally binding.

A Board of Native Administration was set up, which was expected to revise the Code from time to time, and thus prevent it from becoming stereotyped and from being a rigid barrier to Native advance. This was an admirable provision; but unfortunately the powers of

²⁶ See Evidence of the Natal 1881—2 Commission, and further Chapter VII (Administration).

²⁷ Martineau: "The Transvaal Trouble; How it Arose"; p. 78.

the Board were so hampered with restrictions and impediments that no amendments proposed by it were carried into effect, and, until the Native Administration Law of 1887, legislation regarding Natives remained in abeyance. Some amendments proposed by the Board were considered by the Legislative Council, and certain alterations made in those amendments by the Council, but the Board declined to concur, and there was no way out of the deadlock.²⁸

All the Magistrates in Natal were styled, at the same time, Administrators of Native Law—a nomenclature which was dropped by the Magistrates' Court Act of 1896—but this made no difference in their powers or duties. A very good point was the appointment of separate Administrators of Native Law, subordinate to the Magistrates, in some densely-populated Native Districts. These posts, which were similar in character to the later sub-Native-Commissionerships of the Transvaal, were unfortunately abolished by the Act above referred to.

Theal describes some of these changes under the caption "Improved Treatment of the Bantu" ("History of South Africa, 1873-84, Vol. I, pp. 242-243)—a view which is, perhaps, of equal value to that expressed on the following page that Natal is not a farming country and offers no inducement to people to settle on the land. One always feels, in reading Theal's references to Natal history, that in some mysterious manner the Colony had done him an injury in the past, which still rankled when he wrote. It is a distinct loss to South Africa that he had not more sympathy with, or understanding of, Natal and its peculiar problems.

The Code had hardly come into force when the Colony had to face a more spectacular crisis in Native Affairs in the Zulu War of 1879. The Zulu military power had been gradually revived until it was as formidable as on the day of Blood River. Under no circumstances

²⁸ Memorandum of Mr. (later Sir) Michael H. Gallwey, Attorney-General of Natal, dated 12th April, 1882 in Papers N.N.T. 32/1896 (Samuelson papers).

could a conflict have been avoided. The result of the war was the definite and final destruction of the Zulu military system, and, in the course of the next eighteen years, the extinction of Zulu independence, the annexation of Zululand to Natal, and—this, of course, being the really important thing from our point of view—the extension of Natal Native Policy *en bloc* to Zululand.

These political results did not follow immediately on the ending of the war and the dethronement of Ketswayo. The British Government was unwilling to annex Zululand directly, and the principles of the resettlement were profoundly affected by this fact. Though the scheme of reconstruction bears the name of Sir Garnet Wolseley, it is possible to trace the hand of the veteran Shepstone in all its details. Its weak point—the absence of a controlling European authority, which caused the breakdown of the scheme—was the fault neither of Wolseley nor of Shepstone, but of the British Cabinet.

Apart from this one vital defect, the new arrangements were made with great skill. Zululand, as such, ceased to exist; and was split up into thirteen independent Native Territories. In selecting the Chiefs of these Territories, recourse was had to the principle of trying to resuscitate the separate tribes which had existed before Tshaka had welded the peoples together into one Zulu nation. It was a policy of "divide et impera." Two of these tribal resuscitations were of great interest.

Students of South African history will not need to be reminded of the fact that the Amazulu were originally a mere tributary clan of the Abatetwa, and that Dingiswayo, Tshaka's predecessor, had been a Tetwa, not a Zulu, Chief. The Abatetwa were now gathered together and placed under Mlandela, a direct descendant of Dingiswayo, in that part of the country where Dingiswayo's Great Kraal had been.

In the days of Dingiswayo and Tshaka, had flourished a powerful Chief by the name of Zwide, head of the Ndwandwe tribe. He had been the implacable enemy

of Dingiswayo, whom he had ultimately murdered under circumstances amounting to a grave breach of the Bantu customs of hospitality, and later of Tshaka. The Ndwandwe were now organised as a separate tribe under Mgojana, a direct descendant of Zwide. It was hoped that they would be blood enemies not only of the Amazulu and Ketswayo's dynasty, but also of the reconstituted Abatetwa. Both these hopes proved abortive.

Three of the other Chiefs were of more than passing interest. Uhama (Ohom or Hamu) Ketswayo's brother who had turned traitor in the Zulu war was one of them. John Dunn, a degenerate European who had become a great Native Chief, was another. Ketswayo's brothers and near relatives were sent to reside under him, because it was felt that under a "white" chief they would feel the change in their position less acutely, and be less of a nuisance to the Government. Hlubi, Chief of the Bathlokua, a migrant from the Orange Free State, received a third district. He proved, somewhat unexpectedly, a great success, until he went mad some few years later.

The other eight Chiefs were Usibepu—subsequently involved in the quarrels of the New Republic,—Somkele, Mfanawendhlala, Tsingwayo, Seketwayo, Faku, Sucrenguza and Myetshwa.²⁹

Ketswayo was banished to the Cape: and the thirteen kinglets were left with no Paramount Chief. A "British Resident" was, indeed, sent to reside in Zululand and to be the "eyes and ears" of the Government, but he had no power of any kind.

The absence of a central control ruined an otherwise excellently conceived scheme. The "Kilkenny Cats" as they were popularly referred to in the Natal press of the day, soon went to war with one another and with their own subjects to such an extent that the situation became impossible. So in 1882 the British Government

²⁹ I must apologise for the fact that the information on this page is largely a "re-hash" of Theal: "History of South Africa, 1873—84," Vol. I, pp. 350—2, with a few corrections and amplifications. It is impossible to avoid a direct borrowing from Theal sometimes, but I have acknowledged it in every case.

resolved to restore Ketswayo to the rule of part of Zululand under stringent conditions.³⁰ Of the thirteen "Kilkenny Cats", only Usibepu was left entirely independent, but the two largest divisions—John Dunn's and Hlubi's—bordering closely on Natal—were created a "Zulu Native Reserve" where anybody who did not wish to live under Ketswayo might betake himself. It was to be ruled by the British Resident.

Ketswayo never regained his power, however, and the Military system was not resuscitated. By the irony of fate, in 1883 he had to flee for refuge to the Zulu Native Reserve and in 1884 died and was buried there.

The "settlement" of 1882 was as abortive as that of 1879. The restoration of Ketswayo was a grave error. What should have been done in 1882 was to have endowed the "British Resident" with the powers of a Paramount Chief and retained the Chiefs of 1879 as subordinate officers. Such virtually was the final solution of 1887 when Zululand—except that portion which had in the meantime fallen to the New Republic, and thence to the South African Republic³¹—was annexed to the British Crown, the Governor of Natal made Governor of Zululand also, and a representative of the Crown sent to reside there with full powers of control. On the 30th November, 1897, Zululand became part of Natal, and to-day its system of administration is identical with the Natal system in practically every respect. The 1891 Code is, it is true, not legally in force there; but an earlier and not very different Code prevails.

The examination of the Zululand question has carried us beyond the point we had reached in studying the internal development of Natal. The third, and perhaps the least important, of the four great Natal Commissions sat during the years 1881-2. Its members were the Chief Justice of Natal (Sir Henry Connor); the Bishop of Natal (Dr. J. W. Colenso); Mr. J. W. Ackerman.

³⁰ These conditions are given in full in an appendix to this Chapter.

³¹ Thence back to Natal as the District of Vryheid, in 1903.

Speaker of the Legislative Council; Dean Green; Messrs J. V. Walton, M.L.A., T. Reynolds, M.L.A., R. A. Green, M.L.A., G. M. Rudolph, G. C. Cato, J.P., P. A. R. Otto, J.P., P. R. Botha, J.P., W. H. Campbell, J. E. Fannin, J.P., G. Turner, J.P., and D. L. W. Stainbank. It confined itself entirely to the internal administration of Natal and did not touch on the Zululand question. It is chiefly interesting as providing a remarkable commendation of the main lines of the Shepstone system—doubtless aided by the great and touching confidence of all the heathen Native witnesses in "Somtseu"—but on two points it made original recommendations.

The body of the Report recommends³² that Natives not exempted from Native Law, should be allowed to purchase land on individual, freehold tenure. A careful study of the Minority Reports—of which there were eight, surely a record!—shows that all of them were opposed to this recommendation. As the total membership of the Commission was only fifteen, it remains a mystery how the recommendation of the Main Report could have been carried. It has never been acted on. Mr. G. C. Cato says, in his Minority Report,* with characteristic bluntness and shrewdness: "I oppose strongly Natives having Freehold Title to land while under Native law. There is a great deal of fuss made about *ukulobola* and polygamy, which cannot be touched direct, but which can be bombarded all to smash through this wish for land."

With regard to the franchise, or rather to representation, the Native witnesses (whose evidence is one of the most interesting features) are unanimous in desiring a representative or representatives as advisory members of the Legislative Council. They are quite willing to have a European as a representative, and entirely agreeable to his being nominated by the Government. This is the gist of the evidence of Chiefs Teteluku and Faku; and also of Nambula and Makulula, Christian Natives. But they do want someone definitely to speak their

³² Para. 26.

views, and to expound the Legislature's views to them. In other words they want another "Somtseu"; but "Somtseus" do not grow on every bush. There is no difference really between the measures contemplated in this request and Shepstone's earlier system, and it is interesting to note³³ that Shepstone himself supported their request.

"One touch of Nature makes the whole world kin"; and before leaving the 1881-2 Report, I must digress to quote one very amusing piece of Native evidence³⁴:—

"Chief Umnini and followers.

Q. "Is there much drinking of *ishimyana*?"³⁵

A. "That is the food we eat."

Q. "Is it food or poison?"

A. "It is neither: it is the devil. Stealing, fighting and adultery all arise out of *ishimyana*. I complain of it greatly. The consumption of it has always gone on since the mills started. I cannot check it."

Q. "Would you advise that treacle should not be sold?"

A. (in alarm): "I must qualify what I have said about *ishimyana*. I do not wish it to be understood that this is a very great grievance. *I use it myself when I have any work to be done.*"

Such progress as was made during the next few years was in the direction of the greater rigidity of Native Law. Law 44 of 1887 delegated to the Executive the power of codifying Native Law and keeping it up-to-date. Accordingly a definitive Code was prepared which it was proposed to make of binding force and this was carried through the Legislature as Law 19 of 1891 being passed *en bloc* without any legislative criticism whatever.³⁶ Unfortunately, in replacing the earlier Law, it omitted to give the Executive power to revise the

³³ *Evidence*, page 289.

³⁴ Report, Vol. II, p. 193.

³⁵ i.e., fermented treacle from sugar cane.

³⁶ Memorandum of Mr. (later Sir) Harry Escombe, Attorney-General of Natal, dated 5th April, 1895.

newly enacted Code, so that the position was—and is—that Parliament only can amend it. This is a grave error, for Parliament has neither the time, the interest nor the expert knowledge to do so. Codification is of value when the Code can be constantly revised—otherwise its defects tend to outweigh its merits. The Natal Native Commission of 1906—7 rightly drew attention to, and criticised, this change of 1891.³⁷

The saddest features of the whole period 1875-93 are (1) the perpetuation of the policy of *laissez-faire* in Native matters, (2) the loss of touch with the Native people and the replacement of paternal government by officialdom. As Mr. Stainbank said in the Legislative Council of 1889³⁸: "I have no doubt the Government will repeat their stock assertion: 'See how loyal and obedient and peaceful the Natives have been during that forty years—see how easily we have collected taxes,' *as if the end and aim of good Government is merely to keep people from rebellion and get as much money as it can out of them. That is not the end of good Government.*"

Undoubtedly, too, not only the Magistrates, but also the Secretary for Native Affairs, had become much less accessible to the people than in the good old days when "Somtseu" used to bring his chair under the great tree and speak heart to heart with them. It is pitiful to think of the son and successor of the great "Somtseu" admitting, and defending the admission, that he rarely or never visited the Locations. Whoever reads the Legislative Council Debates of the years immediately before the introduction of Responsible Government will not wonder that there was a desire for change. There was much talk of a certain wagon which the Secretary for Native Affairs insisted on having built to carry him about before he could visit the Natives in the Locations. Members made merry over this vehicle, which indeed seems to have had at least one of the qualities of Van

³⁷ Report, Para. 41, page 14.

³⁸ Debates, p. 382.

der Decken's ship—that it never got there. Unfortunately their constructive ability was less than their gift for destructive criticism.

Before passing on to the Responsible Government era, it may be as well to quote one or two extracts from Legislative Council Debates in illustration of these statements :—

Mr. Yonge: "It will be remembered that on a former occasion this House expressed a wish that the Secretary for Native Affairs should visit these Native Locations. When, in furtherance of that view, the question was put to the Hon. gentlemen, the questioner was told he could not really carry out this desire by the Council because a peculiarly cumbersome, unworkable, untrustworthy and frightful-looking wagon was not provided. That is the sort of answer with which he puts you off projects of that description. He puts you off by saying that the transport to carry him about this beautiful portion of the country is not ready. That does give many of us a feeling that the hon. gentleman is not so capable of looking after and representing in this House the Natives as we should wish him." (Debates, p. 334, Vol. XIV, 1889).

Sir J. Robinson: "I maintain that the Administration of Native Affairs such as now exists does not help the Government of this country apart from the Native population of the Colony. We have had it from the hon. gentlemen's own lips that he never or rarely visits the Natives in their locations. We have it on record that the Magistrates of this Colony do not confer regularly with the Chiefs with whom they are brought into contact. We know also that the Magistrates of the Colony do not confer periodically, as they ought to do, with the hon. member.³⁹ The Native Department is like a body with a wooden head, and in making that remark I do not desire to be personally offensive to the hon. member. I say the Department is a body with a wooden head." (Debates, page 354, Vol. XIV, 1890).

³⁹ i.e., the Secretary for Native Affairs, who was an *ex officio* member of the Legislative Council.

Mr. Binns: "And here I have a more serious charge still to bring against the hon. member. He is entirely out of touch with the Native population of this Colony. There was a time in those good old days under the trees here when that could not be said of the Native Department of Natal, because, however primitive it might have been, there was a close touch between the Secretary for Native Affairs at the time and the Native Chiefs of this Colony. That cannot be said at the present time." (Debates, page 402, Vol. XIV, 1890).

At the same time, it is only fair to add the following complaint of one of the early Responsible Government Secretaries for Native Affairs (Debates, page 49, Vol. XXVIII, 1899): "I do not know whether my hon. predecessor found the office that he held to be one that was a bed of roses. I can tell him distinctly that I have found it anything but that, but rather a bed of thorns. The public can have but little appreciation of the labour that falls upon the Native office. And whatever is attempted in the Native Department seems to receive severe criticism all round on account of every individual believing in his own soul that he is able to solve the Native question."

* * * * *

Shepstone had controlled, but failed to civilise. The political leaders of the Responsible Government era lost control, while still neglecting the task of civilising. The policy of the permanent Department, as stated in a Memorandum of Mr. S. O. Samuelson, Under-Secretary, dated September, 1907, was "to maintain and strengthen the tribal system in the interests of the Colony." That is to say, the principles which Shepstone had adopted in the peculiar early circumstances of the Colony—with neither money, Magistrates or Police available in sufficient quantity—were to be perpetuated under entirely different conditions. A spirit of rigid conservatism and *laissez-faire* seems to have settled on the permanent Department before 1893, and

the fact that so many of the changes made by political heads after that date were ill-considered doubtless did much to confirm the permanent heads in their attitude. Yet only a few years before the laying down of the maintenance of tribalism as the essence of Natal Policy, the beginnings of tribal disintegration were apparent to an observant eye in the fact that Government had to issue instructions to prevent the permanent movement of individual tribesmen away from their hereditary homes and the control of their hereditary chiefs.⁴⁰

At the same time, while the permanent Department was undoubtedly too conservative to recognise the signs of the times, it did draft several remarkable and interesting Bills which would have ameliorated certain aspects of Native life had they been passed. But these Bills never became Acts. In justification, to some extent, of this legislative sterility, it must be pointed out that the South African War of 1899-1902 held up all domestic legislation to a marked extent. Immediately thereafter, the Inter-Colonial Commission was formed to report on every aspect of the Native question. Its Report did not appear until 1905. In 1906 the Natal Native Rebellion had broken out.

What were the causes of that Rebellion? Partly, no doubt, unwise legislation. We have remarked on the legislative sterility with regard to measures for the amelioration of the Natives. But time was found to pass *inter alia* Act 40 of 1894, regulating the relations between European Masters and Native Servants, Act 15 of 1899, dealing with stock theft by Natives, Act 28 of 1902 providing for "togt" or day labour in Boroughs and Act 48 of 1903 raising the squatters' tax. Anything that affected the interests of the European farming community was sure to receive attention. These rapid changes did not all make for the good of the Native. The frequent breaks in continuity of policy irritated and perplexed them, used as they had been for half-a-century to the rule of

⁴⁰ See Secretary for Native Affairs Circular No. 2, dated 6th January, 1898, and Government Notice 49 of 1902, dated 18th January, 1902.

"Somtseu" or some scion of his house under unvarying principles. Finally a very ill-considered Poll Tax, levied in addition to the existing Hut Tax, precipitated matters.

Secondly, it must be said that the Government was not sufficiently in touch with Native opinion. When Mr. S. O. Samuelson succeeded to the permanent Under-Secretaryship in 1893, it might have been thought that this would have been remedied; for few Natalians knew the Native better, and few were more accessible. But at the very moment that he succeeded to office, that office, under the conditions of Responsible Government, was shorn of much of its power by the creation of a political Secretary with a seat in the Cabinet. The usual results of the divorce of knowledge from responsibility—the normal state of affairs under the Cabinet system—were apparent in this case also. The political Secretary who, comparatively speaking, knew nothing, controlled policy. The permanent Under-Secretary, who, comparatively speaking, knew everything, was reduced virtually to the position of a Chief Clerk.

But the cause of the Natal Rebellion goes deeper than this. It was essentially the result of omissions rather than of hurtful acts. In the writer's opinion it was due ultimately to the fact that the Natives had been left alone in their Locations for half-a-century, free from all economic pressure and from all danger of inter-tribal warfare, without any attempt having been made to provide safe channels into which their energies might be directed. Untrained in agriculture or local government, without the compelling influences of competition, what more natural than that the discontent so fundamental in human nature should have combined with their hereditary proclivities to make them anxious once again to "wash their spears"? The Poll Tax doubtless kindled the spark, but the train had been laid by many years of *laissez-faire*.

One thing must, of course, not be overlooked. Even with all these contributory causes, the Rebellion did not spread. The majority of the Natives were quiet:

many were actively loyal. The worst of the trouble was in, or adjacent to, the recently-annexed Zululand. But the Native evidence before the Commission of 1906-7⁴¹ shews how wide-spread was the discontent that had burst into flame in so few cases.

The fourth of the great Natal Commissions assembled late in the year 1906, and presented its Report on the 25th July, 1907. The Commission consisted of Justice H. C. Campbell, I.S.O., President of the Native High Court (Chairman), the Hon. Sir T. K. Murray, K.C.M.G., J.P., the Hon. Sir J. Leige Hulett, K.B., M.L.A., J.P., the Hon. C. J. Birkenstock, M.L.C., Col. H. E. Rawson, R.E., C.B., Rev. Jas. Scott and Mr. Maurice S. Evans. C.M.G., M.L.A., J.P.⁴² Messrs J. Stuart and A. Canham⁴³ acted as Secretaries.

The Report is a curiously unequal document. Its list of detailed recommendations for administrative reform is so useful, sensible and interesting that it seems best to quote it in full; and it therefore appears as the Second Appendix to this Chapter. Its proposals for a new general framework of government were, however, of but dubious value.

The Commission considered that there was a "striking syncretism"⁴⁴ between the Shepstone system and Parliamentary Control. Parliament was an oligarchy as far as the Natives were concerned.⁴⁵ The frequent changing of the political headship of the Native Affairs Department was misunderstood.⁴⁶ The ordinary Minister, with his uncertain tenure of office, when faced by the many aspects of the Native problem was content to tide over difficulties and maintain the status quo.⁴⁷

It was therefore proposed that Native Administration

⁴¹ Approximately 5,500 Native Witnesses appeared before the Commission.

⁴² The celebrated author of "Black and White in South East Africa" and "Black and White in the Southern States of America."

⁴³ Subsequently Union Trades Commissioner in London.

⁴⁴ Report, Para. 34.

⁴⁵ Ibid, para. 33.

⁴⁶ Ibid, Para. 39.

⁴⁷ Report, Para. 23.

should have a self-contained constitution⁴⁸ and that Parliament should grant a Charter to the Administration,⁴⁹ empowering it to govern the Natives without the necessity of a frequent intervention of either the Legislature itself or the responsible Minister, who was only to concern himself with the final approval of policy.⁵⁰

The chief features of the proposed new scheme were⁵¹ :—

(1) The Governor to retain the title of Supreme Chief and to remain, as a figurehead, at the head of all Native administration.

(2) The office of Minister for Native Affairs to be abolished and the Prime Minister to be the political head of the Native Affairs Department (the existing Cape system).

(3) As a permanent head, the Under-Secretary for Native Affairs (henceforth to be termed Secretary) assisted by the Board.

(4) This Board or Native Council, to consist partly of the four Native Commissioners referred to in Para. (5) and of four non-official members, all nominated. The Secretary for Native Affairs to be Secretary of the Board. The Board to have legislative powers, subject to the veto of Parliament (on the lines of Law 44 of 1887, repealed in 1891).

(5) As executive officers of the Department, four Native Commissioners, one of whom was to be Chief Native Commissioner, were to be appointed. They were to undertake purely administrative duties, judicial duties being still left to the Magistrates.

About the first of these points there was, and is, no criticism.

The second was vigorously opposed by the Hon. W. H. (later Sir William) Beaumont⁵² who happened to be Administrator of Natal at the time the Report was sub-

⁴⁸ Ibid, Para. 35.

⁴⁹ Ibid, Para. 40.

⁵⁰ Ibid, Para. 24.

⁵¹ Extracted from Paras. 41 to 52 of the Report.

⁵² Minute dated 28/8/07, in Papers S.N.A. 14/08.

mitted. His opposition was successful and the Native Administration Act of 1909 which introduced most of the changes recommended by the Commission, left the Ministry of Native Affairs a separate portfolio.

The remaining points were enacted by the Native Administration Act of 1909 in spite of strong opposition from those most competent to criticise. The chief points of opposition were (1) the general division of authority (2) the untenable position assigned to the Secretary for Native Affairs (3) the separation of administration from judicature in local areas.

(1) On this point it is best to quote from the actual Minute⁵³ of Sir William Beaumont:

"There does not appear from the scheme to be any permanent and distinct personality who can be regarded by the Natives as the Chief Administrative Officer. The Natives quite well understand that the powers and functions of such an officer are limited and controlled by "the Government" but "the Government" is to them impersonal and they require some Chief over all, to whom they can make a final appeal in all administrative matters..... Under the Scheme there is no one who can co-ordinate the policy and the actions of the several District Commissioners and the Native Council, unless it be the Prime Minister, and that is not practicable. There must be a continuity and uniformity of policy based on definite principles throughout the land, and to ensure this there must be a clearly defined chain of authority from the lowest to the highest."

Such a chain of authority is described very effectively, and the best that can be said for the Shepstone Administrative system is said, in a Report by Mr. S. O. Samuelson, appearing in the Government Gazette of January 22nd, 1908, an extract from which is printed as Appendix III to this Chapter.

(2) The position allocated to the Secretary for Native Affairs was such that Mr. S. O. Samuelson refused to accept it, and resigned in 1909, being succeeded by Mr.

⁵³ Minutes dated 28/8/07 in Papers S.N.A. 14/08.

A. J. Shepstone, C.M.G. Sir William Beaumont, in the Minute already quoted had expressed his conviction that the Secretary for Native Affairs should be Chairman, not Secretary of the Council for Native Affairs. This, which was a distinct improvement, was adopted in the Act of 1909; but even so, what with the Minister, the Council and the Chief Native Commissioner, the unfortunate Secretary was more or less crowded out.

(3) As regards the District Commissioners, nearly everyone of expert authority outside the Commission was opposed to the fatal division of authority involved in their appointment. Justice Chadwick of the Native High Court vigorously opposed the change as being derogatory to Magisterial authority which needed strengthening instead of weakening⁵⁴ and Mr. Samuelson rightly insisted that the proper separation was not between Administration and Judiciary, but between officers for Europeans and officers for Natives. His view was that, as far as possible, separate Magistrates should be appointed for Native Affairs⁵⁵—a view recommended by the writer in Chapter VII. In the Senate debate of 14th February, 1912, on the Bill which repealed most of the provisions of the Native Administration Act of 1909, the Minister for Native Affairs said: "The specific functions of the Commissioners will not be carried out by any one in future. These special functions have been found not to work out. The officials have no scope."

Less than three years sufficed for the discrediting of the rearrangements of 1909. By Act 1 of 1912, the Council for Native Affairs and the District Commissionerships were abolished. The Chief Native Commissioner was left alone, high and dry, without any judicial authority, without any direct control over the Magistrates, and without any subordinate officers of high status immediately under him. Where the present situation in Natal differs from that of 1906, it differs mainly for the worse.

⁵⁴ Minute undated in papers S.N.A., 3394/07 (Samuelson Papers).

⁵⁵ Report No. S.N.A. 2958/07, published under Government Notice No. 39 of the 23rd January, 1908.

In one respect, the recommendations of the Native Affairs Commission of 1906-7 were of considerable value. The Permanent Board set up as a result thereof was the prototype of the Native Affairs Commission. The principle of modifying our Preliminary system in regard to Native Affairs by the existence of a Permanent Board of this type is a most valuable one, and represents a distinct contribution by Natal to South African Native Policy.

APPENDIX I. TERMS, CONDITIONS AND LIMITATIONS OF
KETSHWAYO'S RESTORATION, 1882.

Terms, Conditions and Limitations of Cetuywayo's Restoration, assented to by him after they had been explained to him by the Earl of Kimberley and subsequently by Mr. H. Shepstone. (Agreed to by Cetuywayo while in England in August, 1882).

1. I will observe and respect the boundaries assigned to my territory by the British Government.

2. I will not permit the existence of the Zulu military system, or the existence of any military system or organisation whatever, within my territory; and I will proclaim and make it a rule that all men shall be allowed to marry whom they choose, and as they choose, according to the good and ancient customs of my people, known and followed in the days preceding the establishment by Chaka of the system known as the military system; and I will allow and encourage all men living within my territory to go and come freely for peaceful purposes, and to work in Natal or the Transvaal or elsewhere, for themselves or for hire.

3. I will not import or allow to be imported into my territory, by any person upon any pretence or for any object whatsoever, any arms or ammunition from any part whatsoever, or any goods or merchandise by the sea-coast of Zululand, without the express sanction of the British Resident, and I will not encourage, or promote,

or take part in, or countenance in any way whatsoever, the importation into any part of Zululand of arms or ammunition from any part whatsoever, or of goods or merchandise by the seacoast of Zululand, without such sanction, and I will confiscate and hand over to the Natal Government all arms and ammunition and goods and merchandise so imported into my Territory, and I will punish by fine or other sufficient punishment any person guilty of, or concerned in, such unsanctioned importation, and any person found possessing arms, or ammunition, or goods or merchandise knowingly obtained thereby.

4. I will not allow the life of any of my people to be taken for any cause, except after sentence passed in a council of the chief men of my territory, and after fair and impartial trial in my presence, and after the hearing of witnesses; and I will not tolerate the employment of witch-doctors, or the practice known as "smelling out" or any practices of witchcraft.

5. The surrender of all persons fugitives in my territory from justice, when demanded by the Government of any British colony, territory or province, in the interests of justice, shall be readily and promptly made to such Government; and the escape into my territory of persons accused or convicted of offences against British laws shall be prevented by all possible means, and every exertion shall be used to seize and deliver up such persons to British authority.

6. I will not make any treaty or agreement with any Chief, people or Government outside my territory without the consent and approval of the British Government. I will not make war upon any Chief, or Chiefs, or people, without the sanction of the British Government and in any unsettled dispute with any Chief, people or government, I will appeal to the arbitration of the British Government, through the British Resident.

7. The nomination of my successor, and of all future successors, shall be according to the ancient laws and customs of my people, and shall be subject to the approval of the British Government.

8. I will not sell, or in any way alienate, or permit or countenance any sale or alienation of any part of the land in my territory.

9. I will permit all people now residing within my territory to there remain upon the condition that they recognise my authority, and any persons not wishing to recognise my authority and desiring to quit my territory, I will permit to quit it, and to pass unmolested elsewhere.

10. In all cases of dispute in which British subjects are involved, I will appeal to, and abide by, the decisions of the British Resident; and in all cases where accusations of offences or crimes committed in my territory are brought against British Subjects, or against my people in relation to British Subjects, I will hold no trial and pass no sentence without the approval of such British Resident.

11. In all matters not included within these terms, conditions and limitations, and in all cases unprovided for herein, and in all cases where there may be doubt or uncertainty as to the laws, rules or stipulations applicable to matters to be dealt with, I will govern, order and decide in accordance with the ancient laws and usage of my people.

These terms, conditions and limitations I engage, and I solemnly pledge my faith, to abide by and respect in letter and in spirit, without qualification or reserve,

APPENDIX II. DETAILED ADMINISTRATIVE REFORMS
RECOMMENDED BY THE NATAL NATIVE AFFAIRS
COMMISSION OF 1906—7.

(See Para. 122 of the Report).

(1) The advisability of creating more Magistracies with special regard to distance and population.

(2) More attention and consideration at all offices. All business (Court-work excepted) should be disposed of as it arises at Magistrates' Offices.

(3) The use and abuse of the salute of "Bayete" ¹

¹ The Royal Salute.

and the issue of instructions forbidding its general application beyond the provisions of the Code.

(4) Where deprivation of rights or position may be intended as a result of administrative action, the desirability of not deciding thereon except after open inquiry or trial.

(5) The reference to the Native Department of all Borough By-Laws before confirmation.

(6) Directions to Magistrates to be guided by the spirit of Section 76 of the Code in maintaining discipline at kraals.

(7) Pending legislation, Magistrates, as public officers, to be urged when attesting promissory notes for money lent to Natives, to enquire into the amount, circumstances of loan, and rate of interest, as a means of affording them some protection.

(8) Arranging for Magistrates' Officers receiving, remitting, and paying out wages (subject to a small commission, say, 3d. per £) as a simple and safe means of earnings of sons reaching kraal heads in distant places, thus helping to increase the supply of labour.

(9) Adequate means for acquainting Natives with contemplated and completed legislation.

(10) The publication in the Zulu language of Laws and Regulations specially applicable to the Natives.

(11) Police out-stations—the advisability of withdrawing them from Locations, Native districts and Mission Reserves.

(12) Police methods—unnecessary arrests and handcuffing of kraal heads should be avoided. Notifying attendances to and through Chiefs, where practicable, should be resorted to.

(13) The employment of educated Natives as Interpreters and Policemen, and at the principal Railway Stations.

(14) Official notification to tenants of intended and completed sale of Crown Lands.

(15) Inquiry into the ability of kraal Natives and others complying with the Crown Lands buildings clause, its

feasibility and comparison with the advantages of cultivation as a more practical condition.

(16) Consideration of joint action with neighbouring Colonies in connection with Inward and Outward Passes, and immediate revision of the existing rules and forms to remove doubts.

(17) Reserve for the education and welfare of the Natives.² The desirability of increasing the sum of £10,000, as by natural increase and the incorporation of Zululand and the Northern Districts, the Native population has increased by 100 per cent. since 1893.

(18) The application of the rents collected from Natives on Mission Reserves.

(19) The position and claim of the Native Mission at Impapala, Zululand, to special consideration and compensation. (See evidence of Sir Charles Saunders, Mr. C. R. Glynn, the Rev. J. D. Taylor, the Rev. H. D. Goode-nough and Plant Makanya; also the report of the Zululand Delimitation Commission, 1902—4).

(20) The reconsideration of the action of the Native Trust in dismantling buildings used for worship, where at a distance from the Station of the Superintendent Missionary.

(21) Repeal of the Act requiring registration of Births and Deaths, having regard to Native feeling thereon, the incompleteness of records, the exclusion of Zululand from its operation, and the cost of such registration.

APPENDIX III. MR. SAMUELSON'S DESCRIPTION OF THE SHEPSTONE ADMINISTRATIVE SYSTEM.

(Extracted from Report by Mr. S. O. Samuelson, Under Secretary for Native Affairs, No. S.N.A. 2958/07, published under Government Notice No. 39 of 20th January, 1908).

The patriarchal or tribal system was reduced to a concrete legal form by the Code of 1891, and has been

² A sum of £10,000 per annum was specially secured for this purpose in the Constitution Law of 1893, introducing Responsible Government.

brought under statutory control by that law and subsequent legislation. It was taken over from the Natives and is peculiarly suitable and adapted to their social conditions and circumstances. It is essentially a representative form of government. If the kraal-heads and councillors, the district Chiefs and councillors, the paramount Chief and councillors, each in effect elected, have not embodied a form of representative government, what did they embody? The tribal organisation has been used as a vehicle of administration, and has provided machinery of government in this Colony for more than half-a-century. By this system all the efficient machinery of the Native form of government was brought into play, adapted and made available by the Government of this Colony. The Secretary for Native Affairs in this system answers to the Principal Induna or Prime Minister, and the Magistrates to the Indunas or rulers of districts, to whom are transmitted all the orders of the Supreme Chief through the principal Induna and by whom all these orders are transmitted to the Native Chiefs and minor Native authorities residing within their respective jurisdiction.

The detail of the authorities in the system is as follows, commencing from the lowest in regular gradation upwards, each being responsible in the first instance to the authority next above him :—

1. The head of a family.
2. The head of a kraal or kraals, a collection of families.
3. The headman or induna of a territorial division or district.
4. The principal headman or induna.
5. The Chief of the tribe.
6. The Magistrate of the Division in his capacity as Native Officer.
7. The Secretary for Native Affairs.
8. The Supreme Chief, being the Governor of the Colony for the time being.

The Native population fully understand the several links which connect them with the same head as that which is acknowledged by their white fellow-subjects.

Into the system which has served us so well in the past it is now proposed to introduce a dry-rot fungus in the shape of a new and unfamiliar set of officials.

CHAPTER IV.

THE EVOLUTION OF THE TRANSKEIAN SYSTEM.

The Government of the new Province of British Kaffraria, from the very first, showed signs of a greater reliance on the European Magistrate and a more definite attempt to civilize than the contemporary Natal policy. The Chiefs still ruled their people according to Native customary law, but their decisions were liable to be reviewed by the Magistrate, and if found "inconsistent with justice and humanity" they might be reversed.¹

Roman-Dutch common law was clearly inapplicable, and the idea of recognising Native Law as such was not entertained: so for some years the territory was kept under Martial Law and the Magistrates adjudicated as Martial Law officers, being thus left free to use their discretion.² This failure to recognise Native Law can apparently be explained only by Sir Harry Smith's absence in the Orange River Sovereignty and Natal: for Sir Harry Smith had been one of the first men in South Africa to advocate a Code of Native Law.³

Immediately adjoining British Kaffraria was the recently-constituted Magisterial Division of Victoria East. In this area it was proposed to settle in Locations a large number of the Fingos who had assisted the Government in the War of the Axe. This important duty was entrusted to the Rev. Henry Calderwood, who was nominated Civil Commissioner for the Division. The scheme of settlement

¹ Report of Native Laws and Customs Commission (Cape), 1883; page 16.

² Governor Sir Geo. Cathcart to Sir G. A. Pakington, Despatch No. 3 of 20th May, 1862.

³ Col. Harry Smith to Sir Benjamin D'Urban, 18th April, 1836.

for which Mr. Calderwood was chiefly responsible, but which owed its success very largely to Sir Harry Smith's prompt and generous support, was not only highly successful in itself, but also the precursor of many similar schemes in the Ciskei and Transkei.

The Natives were placed in Locations and allocated individual holdings on which a quit-rent of £1 per annum (reduced for the first year to 10/-) was payable. No difficulty was found in collecting this money from the Fingos,—who, indeed, were better off than they had ever been in their lives—and in the very first year, while the scheme was still in an experimental stage, a revenue of £475 10s. 0d. (being 951 quit-rents at 10/- each) was collected. Thus, from the very beginning, the Cape aimed at making its Native population self-supporting. We may compare this with the early Natal hut-tax introduced and collected without difficulty by Shepstone. The quit-rent, however (so it was argued) was an inducement to industry and tended to tie the Native down to his plot and prevent vagrancy. From the very beginning the money collected from the Locations was ear-marked for expenditure on them.

The superintendence of the Locations was made extremely simple, they being managed principally by Native headmen, under the direction of white superintendents, who corresponded with the Government through Mr. Calderwood, in his capacity of Civil Commissioner.

Fingos and others found in the Division, not attached to any Location, were made liable to punishment: and any incipient vagrancy was thus nipped in the bud.

Prizes were offered for the best and largest quantity of cultivated ground, the best fencing, the best crop of wheat or other "European produce" and the best stock of poultry in each Location. Under this inducement, and aided by the zealous and able supervision of Mr. Calderwood, the Fingos progressed rapidly in civilization and material wealth, and the Government was able definitely to use them as a civilizing agency by transplanting some of them to the Transkei in 1865. It is well, therefore.

that we have begun the study of the Transkeian system and its evolution by examining in this way the agricultural and political education of the Fingos. Of all Bantu peoples they have proved the most easily adaptable to European methods and the most amenable to the influences of civilization. ⁴

In British Kaffraria itself, Sir Harry Smith instituted the practice of distributing presents amongst Chiefs, increasing the quantity and value for good conduct and reducing, or in aggravated cases entirely suspending, them for misconduct. Sir Harry designedly used this system as a civilising agency, by introducing agricultural and other implements among the presents. For the year 1849 the gifts included cloth and moleskin jackets, corduroy and moleskin trousers, check shirts, neckerchiefs, Glengarry caps(!), "female dresses," shawls, blankets, saddles, bridles, spades, sickles, files, steel polled axes, felling axes, pick-axes, cooking pots, "basting spoons," hand-saws, ploughs, sledge-hammers, crowbars, augurs, adzes, drawing knives, gimlets, vices and bags of nails. The Abortives' Protection Society contributed one hundred spades and twelve ploughs. ⁵

Unfortunately, in British Kaffraria as elsewhere, Sir Harry Smith's sanguine and impetuous temperament made him proceed with the walls before the foundations were properly laid. The great meeting of 7th January, 1848, had been spectacular and impressive for the moment: but the Chiefs were very far from being thoroughly subdued. On Christmas Eve, 1850, broke out what is usually known as the Eighth Kaffir War, a desperate struggle which was prolonged to the Autumn of 1853. In the course of the War, Sir Harry Smith was recalled, by the irony of fate on the pretext that his prosecution of hostilities was

⁴ For the Smith-Calderwood Location Scheme see Sir Henry Smith to Earl Grey, 15th March 1849, and 24th May, 1849. Blue-Book, "Correspondence relative to Kafir Tribes," 1850 *passim*. The Locations were thoroughly inspected and reported on by Mr. Calderwood on 22nd January, 1855.

⁵ Blue Book—Eastern Frontier: Kafir Tribes, 1850—51; page 7.

not vigorous enough! He was replaced early in 1852 by Sir George Cathcart.

With the new Governor came a new policy. Under the terms of settlement of 1853, the people were to be governed by their own Chiefs according to their existing laws and usages in regard to matters of internal discipline. Magistrates ceased to have any administrative or judicial authority and became "Political Agents." * So strongly was this new system adhered to, that the Governor would not even intervene to prevent judicial murders for alleged witchcraft.

The territorial reconstruction of 1853 involved the reservation of land for Natives as purely Native territory under the rule of the Chiefs. This was not a reaction towards what is generally called the Glenelg policy, for the Chiefs were definitely treated as subjects of the Crown and not as independent potentates.

It is only fair to say that Sir George Cathcart himself did not at first advocate this scheme of segregation as a general Native Policy, but merely as an expedient, by precluding European Colonization, for placing a barrier between the Colony and the tribes beyond the Kei. † As regards others, however, the case is different. There can be little doubt that the whole scheme represents the considered and deliberate policy of Earl Grey. For, in essence, it was the contemporaneous Shepstone policy applied to the Cape, and the Shepstone Policy had been approved by Earl Grey with almost embarrassing cordiality. ‡ That policy had been advocated—in a somewhat senile manner, it is true—before the Commons Select Committee § of 1851 by Sir George Napier, and the conflicting recommendations of Sir Peregrine Maitland ¶ had not been able to remove the impression made by the

* Native Laws and Customs Commission (Cape), 1883. Report, page 16.

† Lieut.-Gen. Cathcart to Sir G. A. Pakington, Bart., 20th May, 1852.

‡ See his Despatches, Nos. 566 and 567 of 7th and 11th January, 1851.

§ Evidence, p. 213.

¶ Evidence, p. 359.

concrete success of the policy of recognising the Chiefs in Natal. When we consider the way in which Sir George Cathcart dealt with Moshesh and the Basuto problem, we are forced to the conclusion that a year or two's experience had converted him to the Colonial Office's views.

It is interesting to note, in passing, that that veteran quibbler, Sir Andries Stockenström, appeared before the Select Committee of 1851 and informed its members ¹¹ that he adhered to the opinions expressed by him before the Select Committee of 1836. Having thus put the matter of his consistency right with posterity, he proceeded immediately to differ from those opinions on a large number of points!

The system of 1853 never had time to work itself out. Before any results, good or bad, could be seen, it came under the control of a great constructive statesman, who did not hesitate to "scrap" it and return to a more skilful elaboration of the policy of Sir Harry Smith. There may have been wiser South African statesmen than Sir George Grey, but none with a more singlehearted devotion to the interests of his people, or with a more active philanthropy. He assumed duty on the 5th December, 1854. Less than three weeks later he was writing ¹² to his namesake at the Colonial Office as follows:—

"The plan I propose to pursue . . . is to attempt to gain an influence *over all the tribes included between the present north-eastern boundary of this Colony and Natal* ¹³ by employing them upon public works which will tend to open up their country; by establishing institutions for the education of their children and the relief of their sick; by introducing among them institutions of a civil character suited to their present condition; and by these and other means to attempt gradually to win them to civilization and Christianity, and thus to change by degrees our at

¹¹ Question 1255, pp. 164—5.

¹² Governor Sir George Grey to the Right Hon. Sir George Grey, Bart, December 22nd, 1854.

¹³ The italics are mine.

present unconquered and apparently irreclaimable foes into friends who may have common interests with ourselves."

The direction thus given to the Native Policy of the Cape towards its eastern territories has determined its course ever since. Less of a great man than Shepstone, Grey was more of a good man. With less permanence of tenure, he had, while he was in office, funds not entirely inadequate for his schemes. A less striking personality, he was content to create a system and to delegate freely to others: thus, when he was withdrawn, his policy survived him.

It will be noticed from the passage quoted above that Sir George Grey had definitely decided no longer to treat the Native question as a mere problem of frontiers. He had definitely decided to extend European rule, in the interests of the Natives themselves, to all the Native tribes of South Africa, as occasion permitted. It is not without a certain dramatic justice that the first public announcement of the new policy was made in the Speech from the Throne to the first Parliament¹⁴ of the Cape Colony on the 15th March, 1855. From that date the gradual process of annexation continued until in March 1894 the Governor's dream was realised, and the Cape reached, at all points, the southern frontiers of Natal.

Sir George Grey had contemplated the introduction among the Natives of "institutions of a civil character suited to their present condition." The meaning of this phrase soon became apparent. The chief was to be gradually replaced by the white Magistrate¹⁵—a complete reversal of the policy pursued under Sir George Cathcart. The first tentative steps in this direction were made in 1855.

Sir George Grey rightly saw that the great obstacle

¹⁴ Unlucky for the drama of the text at the commencement of its second Session.

¹⁵ Native Laws and Customs Commission (Cape), 1883, Report. Where no other reference is made in the succeeding paragraphs, my authority is Sir George Grey's Despatch No. 46 (High Commissioner) to Sir William Molesworth, and the latter's reply, No. 45 of 20th March, 1856.

to the introduction of a European judicature was the fact that the fines levied by the Chief's Court formed a major portion of his revenue. If the Chiefs could only be assured that they would not be material losers, the initiation of a new order of things would not be so formidable a task after all. The cattle-sickness prevailing in the year 1855, by drying up the source from which fines might be levied, furnished an excellent opportunity for a change.

An estimate was therefore made of the approximate annual value of the fines received by the several Chiefs under the existing system, taking into account the uncertain nature of the revenue raised from such a source, the difficulty and unpopularity of levying it, and other similar circumstances; and the Chiefs were then offered a monthly stipend, at an equivalent rate, payable by the Government, together with an allowance of so much a head for so many Councillors to be paid to the individuals performing the duties of that office, at the stipulated rate, for the number of days they performed such duties.

"Under such a plan," Sir George Grey himself writes, "the worst part of the Kaffir polity is broken down. Every Chief of importance will receive a certain regular income, for which he will be dependent upon the Government of the Country and will therefore have the strongest interest in its maintenance and success. European laws will, by imperceptible degrees, take the place of their own barbarous customs, and any Kaffir Chief of importance will be daily brought into contact with a talented and honourable European gentleman, who will hourly interest himself in the advance and improvement of the entire tribe, and must in process of time gain an influence over the Native races which will produce very beneficial effects."

It will be gathered that the introduction of the Magisterial system took the form of Magistrates being selected to "assist" the Chiefs. An illustration of the manner in which they acted will be seen from the sub-joined report of Capt. J. Reeve, 73rd Regiment, Special Magistrate with Chief Kama, dated Middledrift, 7th March, 1856:—

"It is with the greatest satisfaction that I have to acquaint you, that the system of His Excellency with regard to this district seems to have given general satisfaction both to the Chief and his people.

"In all cases which have been brought before Kama, I have been present, and have done my utmost to keep in view His Excellency's wish as to my position as adviser and assessor with the Chief-in-Council.

"I have found in every case in which I have expressed an opinion, or asked a question, that the greatest respect has been shown me respecting it.

"I have carefully explained to Kama that I have to act as his friend and *not* as the Chief of his tribe, and I am convinced that he sees that now in its proper light, and feel sure that this feeling will soon obtain throughout the tribe, though I am aware, from some of the questions asked me by headmen whom I have visited, that a general feeling obtained among the people at first, that it was the intention of the Government to give them white men as Chiefs. I need scarcely say that I have laboured to correct this impression.

"I am confident that Kama and those of his people with whom I have been much in contact, look upon me as their friend, as they have, on several occasions, come to me for advice and assistance when misunderstood by white men, and I am glad on several occasions to have removed difficulties, and corrected errors to the satisfaction of both parties.

* * * * *

"I have succeeded on one occasion in levying a fine in money by the decision of Kama and his Council: it was a trifling case, and the fine at my request was small, but I conceive that his Excellency would desire to have money fines to be gradually introduced, as it seems to have many advantages on the old system. In this instance, the fine was paid at once to me in the presence of the Chief and Council, its justice acknowledged, and being small, thankfully paid."

Utilising consummate cunning, or aided by extraordinary luck, Sir George Grey had struck a vital blow at the power of the chiefs under the mask of these innocuous regulations. For, while the Chief was legally entitled to be present at all trials, he no longer had any pecuniary interest in the bulk of them. His subsidy came in monthly, whether he did much or whether he did little. It is not surprising, then, that in a very few years the Ciskeian Chiefs had ceased to adjudicate in criminal cases, being replaced entirely by the Magistrates. In civil cases, however, they continued for many years to arbitrate privately, although they had no legal power to enforce their decisions, and this action was generally popular with the people.

There is no doubt that Sir George Grey is entitled personally to the whole credit of the conception of this scheme. Colonel Maclean, the Commissioner for British Kaffraria, was much adverse to its being put into execution and wrote at length against it. Both he and the Governor felt that the embers of war were still smouldering in British Kaffraria—a belief confirmed by the strange episode of Umhlakaza and Nongquasi (1857) and the self-destruction of so many thousands of the Xosa people by starvation.¹⁶ After this terrible time, however, peace reigned in Kaffraria; and the situation was such that the Colonial Office confirmed all that Grey had done and definitely took over British Kaffraria (1860) as a separate dependency of the Crown.

Doubtless the fact that the Grey System was financially self-supporting weighed heavily in its favour at the Colonial Office. The payments to Chiefs and Headmen were met out in the annual Hut Tax levied in imitation of the similar impost in Natal. A "Horse Tax" at 2/- per animal was suggested in 1861, but never actually levied. The financial autonomy of the Native Territories

¹⁶ *Vide* Theal: "History of South Africa since 1795," Chap. L. Sir George Grey's views changed rapidly. Late in 1855 he wrote that "all the Kaffrarian authorities admitted that..... another war must inevitably come." On 20th September 1856, he informed the Colonial Office that Kaffraria was in a state of complete tranquillity and content.

was not the least important feature of the Grey Policy.¹⁷

The Courts constituted in British Kaffraria were at a loss to know exactly what system of law to administer. It was many years before proper arrangements were made. For a short while during the year 1860 the Courts actually refused to take cognisance of *ikazi* (*ukulobola*) cases,—an anomaly which persists to-day in some parts of the Union, e.g., in Transvaal—but this absurd attitude was reversed in the same year.¹⁸

While these political and legal changes were taking place, attention was also paid to the amelioration of Native life. Medical treatment and hospitals were provided. As early as 1856 it was estimated that in one quarter 1,679 Xosas, 495 Fingos and 204 Hottentots received treatment in British Kaffraria.¹⁹ The splendid work of Dr. J. P. Fitzgerald at the King William's Town Hospital must never be forgotten. An early instance of the gratitude felt for this treatment is evidenced by a letter to Queen Victoria, dated King William's Town, 23rd June, 1856, and dictated by one Mahlati Zikali through Lot Hrayi, the Hospital Interpreter. Mahlati Zikali had been cured, by operation at the King William's Town Hospital, of blindness after sixteen years:—

"I am very thankful to you, dearest Queen Victoria, because you have sent for me a good doctor, a clever man. I was sixteen years blind, Mother and Queen, now I see perfectly. I see everything. I can see the stars, and the moon, and the sun. I used to be led before, but now, Mother O Queen, I am able to walk myself. Let God bless you as long as you live on earth. Let God bless Mother. Thou must not be tired to bear our infirmities, O Queen Victoria."

It must not be thought that tribalism was destroyed during the few years of Sir George Grey's rule. The Chiefs retained their old influence for a time almost as

¹⁷ The Duke of Newcastle to Sir George Grey, 4th May, 1861.

¹⁸ Native Laws and Customs Commission (Cape), 1883. Report, p. 17.

¹⁹ Sir George Grey to the Right Hon. H. Labouchere, 18th August, 1856.

strongly as ever.²⁰ But much of their political power was gone, while—one of the beauties of the Grey system—the communal spirit was still to a large extent undisturbed.

On the 17th April, 1866, British Kaffraria was definitely annexed to the Cape Colony—in spite of bitter opposition to the annexing Act (No. 3 of 1865). It is an extraordinary thing—as we shall see later in our examination of the Basutoland episode—how the people of the Cape, and their political leaders, time after time failed to appreciate their responsibilities as the rightful guardians of the adjoining Bantu races. They wished to throw the whole responsibility on Great Britain: yet they vehemently—and rightly—resented British interference in their internal affairs.

Against their will, then, and only as a direct result of the Governor's personal activities, the electorate of the Cape—including a few Natives already²¹—became responsible for the government of British Kaffraria. Most unfortunately, the enlightened plan of governments subsequently adopted for the Transkeian Territories was not applied to the Ciskei, which has only begun to experience such a policy twelve years after Union. The Ciskei—British Kaffraria—became an integral part of the Colony. Colonial Law applied to it, though the Magistrates shrank from the crowning absurdity of administering it and, without any authority, continued to be guided by Native Law in most civil cases.²² The autonomous system of the Transkei—Chief Magistrate, Government by Proclamation and so on—was not thought of.

On the 28th November, 1872, the Constitution Ordinance Amendment Act (No. 1 of 1872) received the Royal Assent. By this Ordinance the Cape Colony received full responsible Government, and was thus, for

²⁰ For some striking instances of this, see the Evidence of Sir Walter Currie before the Select Committee of the Cape Legislative Council on Kafir Passes, 1862, page 6.

²¹ As is well known, the Cape of Good Hope Constitution Ordinance (1852) contained no political colour bar.

²² Native Laws and Customs Commission (Cape), 1883, page 17.

the first time, mistress of her own fortunes and unfettered ruler of large numbers of Bantu. ²³

It becomes our duty now to examine how she fulfilled her trust; but before doing so, it is well to ask how far the salient features of what is usually termed the Transkeian system had been worked out in the Native areas (not, of course, including the Transkei itself) in the hands of the Colony in 1872.

Three cardinal points had already been adopted and applied with success—namely, the gradual replacing of the Chiefs, as political officers, by Magistrates; the definite encouragement of civilisation among the Bantu, even where such encouragement meant the accelerating of the process of detribalisation; and the rendering of Native Territories financially autonomous and self-supporting. The political and administrative separation, so characteristic of the Transkeian system to-day, and illustrated by the Chief Magistracy of the Transkei and the system of Government by Proclamation, had not been adopted as a principle nor worked out in practice. Up to 1879, Cape policy as a whole had been definitely one of identity. Reference to colour in legislation, recognition of Native Law as a separate system applying to Natives only, were exceptional. Up to Union this remained the formal principle of Cape policy; but from 1879 to 1910 the Transkeian Territories were developed on a system which, while it purported to be consistent with the Grey Policy of Identity, was really an improved variant of the Shepstone Policy of Differentiation. Thus, to-day, ²⁴ in the Cape Province, we have the Transkeian Territories, really governed as an autonomous Native area; the Cape Province proper where no difference whatever is made between white and black, and there is no separate administrative machinery provided for Natives; and the Ciskeian Territories (the nucleus of which is old British Kaffraria) which occupy an intermediate position. ²⁵ The secret of the success

²³ Including the Basuto annexed in 1871 *vide infra*.

²⁴ 1927.

²⁵ See Note at the end of this Chapter.

of Transkeian administration to-day is the discriminating skill whereby the good features of the Grey system have been maintained, and the bad ones eliminated.

Before the annexation of the Transkei, however, the Cape Colony had become responsible for the rule of a territory of at least equal importance—namely, Basutoland. The Basutoland episode (1871—84) is of intense interest, as showing clearly the good and bad points of Cape administration of that date. Disgraceful and humiliating for South Africa as its termination was, yet it has its bright side in showing in its early stages the application of those sound rules of administration better known later in the Transkei; and undoubtedly it was a most salutary, if most severe, lesson to the early responsible ministers in Native Administration.

The Cape Legislature had been decidedly averse to incurring the responsibility of Basutoland when the subject first came up for discussion; but when a possibility of Natal being entrusted with its rule became apparent, a Select Committee of the Legislative Council (of which Mr. J. X. Merriman was a leading member) reported strongly in favour of annexation, and a Bill providing therefor passed its third reading on the 10th August 1871. In view of the sequel, it is a pity that the Lesuto was not annexed to Natal rather than to the Cape. Civilisation might have proceeded by slower stages, but at least the Lesuto to-day would have been part of the Union of South Africa and not an "island" within it under extraneous control.

The permanent interest of the annexation of 1871 is the precedent it subsequently furnished for the Government of the Transkei. Contrary to the principles of the British Kaffrarian annexation, Basutoland was not incorporated with the Colony but treated as an autonomous territory. Colonial Law did not apply within it. The Legislative authority was the Governor (later the Governor-in-Council) subject to the veto of Parliament. Acts of the Cape Parliament were not to apply to Basutoland unless expressly declared so to apply by the terms of the

Act itself or by a subsequent Proclamation of the Governor.

The Administration was entrusted to Magistrates, of whom there were four, one of these being also Chief Magistrate and Governor's Agent. Supreme judicial as well as administrative powers vested in him, with only an appeal to the Governor in certain serious cases. Thus the whole framework of the subsequent Transkeian political and administrative system was already adopted for Basutoland in 1871; and the very greatest credit is due to those responsible for it,—included among whom must be Mr. J. X. Merriman, Mr. Charles Brownlee and Col. C. D. Griffith the first Governor's Agent—as the discoverers of what has subsequently proved to be the best system for Native Administration in South Africa. It failed in the Lesuto partly owing to Magisterial errors on the spot, mainly owing to the ignorance and perversity of politicians in the Cape Parliament, to changes of Government and to the rise of the Native problem as a party cry. Taught by their mistakes, the Cape Government after 1884 avoided these pitfalls in their administration of the Transkei.

What was of more questionable wisdom was the rapid extension to the Magistrates of authority which had hitherto belonged entirely to the Chiefs. The general principles of replacing the Chief by the Magistrate may have been better than the principle of educating Chiefs until they are fit for their position: to-day inside the Union it has undoubtedly won the day. But such a change requires time. In Native Policy we must build to a definite plan, not merely drift; but at the same time we must not be in too much of a hurry. The Cape Government failed to take this excellent rule into account, forgetting that they were dealing not with the tractable Fingos or the conquered Xosas, but with the invincible and obstinately conservative Basuto.

From the beginning the Magistrates were given jurisdiction over all criminal cases (except those punishable with death, reserved for the Chief Magistrate) and all civil cases. The Chiefs were allowed to adjudicate on

petty criminal cases and on all civil cases, but any judgment could be reviewed on appeal by the Magistrate. As a matter of fact, the overwhelming majority of cases went to the Chiefs and public opinion was so strongly in their favour that it was unusual to appeal. Even if an appeal was lodged, the appellant ran the danger of being "eaten up"²⁶ by the Chief, and the Magistrates had not always enough force at their disposal to redress the wrong.²⁷

A series of extraordinary rules came into force at the end of 1871. "Eating up" became a crime,—a rule absolutely unenforceable—it was forbidden to compel a woman to marry against her will, and—most ridiculous of all—all marriages had to be registered with the Magistrate and a small registration fee paid. The *bohadi* (*ukulobola*) cattle had also to be registered, otherwise the Magistrate's Court would not entertain litigation regarding them. A widow was granted rights of guardianship over her children.

The fact that these reforms appear to us liberal and enlightened, must not prevent us from realising that they were subversive of the whole legal and social structure of Bantu society, which was still in the agnatic stage, and that they were introduced hastily, without any genuine effort to conciliate public opinion regarding them, and so soon after the annexation as to arouse the deepest suspicion of the Basuto relative to their new position. They were thus in the highest degree inexpedient and impolitic, though without any doubt some of them ought to have been accepted as ideals to be gradually introduced by the Government as public opinion permitted. Even this might hardly apply to the compulsory registration of marriages and of *bohadi* cattle. An even more judicious step was the nominal suppression of *letsima* (*isibalo*), i.e., forced labour for the Chiefs, an old Bantu custom far less

²⁶ i.e., of course, of losing all his movable property, usually cattle and sheep.

²⁷ Report of W. A. Surmon, Magistrate, Kornet Spruit, Basutoland, dated 31st December, 1883; Cape Native Blue Book, 1884, p. 85.

reprehensible than our civilised custom of conscripting thousands of young men to be shot in national quarrels in which they have no interest. As might have been expected, the "suppression" of *letsima* merely caused open defiance of the Government; for the common Mosuto was even more attached to his Chief than averse to work.

After these rules had been promulgated, a Commission was appointed which drew up a handbook of Basuto Customs²⁸ used from 1873 as a guide to Magistrates. The work of the Commission was hurried and imperfect, its conclusions were sometimes incorrect and sometimes hampered by the regulations already in force and above adverted to: but it is of interest as being the forerunner of the historic Native Laws and Customs Commission of 1883.

For some time, the position of the Government, though precarious, did not appear to be dangerous. A distinct tendency was apparent towards bringing cases to the Magistrate instead of the Chief,²⁹ but experienced observers realised that this could not have been done but for the tacit consent of the Chiefs who found themselves freed from the routine work involved and that in the event of a real conflict between the Chiefs and the Government, the mass of the people would follow the Chiefs almost to a man.³⁰

From the beginning a hut tax of 10/- per annum was imposed, and collected with little difficulty, owing to the fact that Chiefs were allowed to retain a large commission on the tax collection. No further salary was paid to the Chiefs, but this commission proved adequate for their remuneration and assisted in reconciling them to European Magisterial jurisdiction. We see, thus, in Basutoland the characteristic Transkeian feature of financial independence, with detailed variations skilfully adapted to local

²⁸ *Vide* Chapters IX and X.

²⁹ *Vide* Cape Native Blue Book, 1877; pages 3 and 8.

³⁰ Despatch of J. H. Bowker, Governor's Agent, Basutoland, to Secretary for Native Affairs, Cape Town, dated Mohale's Hoek, 18th April, 1878. (Copies of correspondence, telegrams, etc., in re Morosi's Rebellion, Basutoland, 1879, pages 30-31.)

conditions. Unfortunately this hut tax was raised later to £1 per annum probably at too early a date.

Nevertheless it seems as if the Cape Government would still have had a sporting chance of success had it not been for the crowning folly of the Disarmament Act of 1878. The motives and effects of this Act have been eloquently described by Dr. Theal,³¹ and it only remained to draw attention to some of the surrounding influences at work and to some details peculiar to Basotuland.

One cannot help being struck at the undignified and unworthy partisanship which surrounded the whole disarmament question. Reading through the voluminous official correspondence of the period, the writer could not but carry away the impression that both the Cape Parliamentary parties were "playing to the gallery" rather than working in single-hearted love of their country. Such an attitude in practical politics is so common to-day that we tend to regard it as excusable: yet surely it is inexcusable in the field of Native Policy. Whoever reads the speeches of Mr. J. Gordon Sprigg and Mr. J. W. Sauer at succeeding Pitso's, must blush to feel that these were the representatives of White South Africa vis-a-vis a dignified and unconquered people.

The tactlessness of Mr. Sprigg at the Pitso of 1879 when the Basuto were first definitely asked to surrender their arms is as amazing as it was doubtless disastrous.³² One tries to picture Mr. Charles Brownlee under the same circumstances, and comes to the conclusion that the transformation of the supreme Headship of the Native Affairs Department into a partisan office held by brilliant and other amateurs, has been an untoward development of South African politics.

The time selected for pronouncing on Disarmament was singularly unhappy. It was in the year of Isandhlwana, too soon after Ulundi for the news of that victory to have sunk into the Native mind, and must have created the impression—perhaps true—that the white men were afraid!

³¹ History of South Africa, 1873—1884, Vol. II, pp. 55—56.

³² Report of Pitso of 16th and 17th October, 1879 (White book).

As is well known, the appeal to the Basuto to surrender their arms, voluntarily failed. The majority who had defied the Government turned on the obedient minority, maltreated and plundered them. The white man's government had become an object of contempt. The Sprigg Ministry had made war inevitable; and the only right course of action to pursue under the unfortunate circumstances, was to vindicate law and authority as vigorously as possible.

Instead of this Mr. Sprigg, with Mr. J. M. Orpen, first made an ineffectual attempt to parley with the Basuto. An inadequate number of troops were sent, the difficulties of which added to the Natives' selfconfidence. When the war was in full train (early in 1881) an event took place for which the Sprigg Ministry, which had blunders enough to its discredit, was not responsible. This was the desertion of a large proportion of the burgher forces in the face of the enemy. Not all the special pleading of Theal³³ can justify this act of disgraceful cowardice and bad citizenship. It was, and it remains, a blot on the scutcheon of European prestige, for which South Africans can only blush and stammer out inadequate excuses.

The Legislature at home proceeded to rival the forces in the field. The Sprigg Ministry was turned out of office—in itself not altogether a matter for regret—and replaced by a Ministry under Mr. (later Sir) T. C. Scanlen with Mr. J. W. Sauer as Minister of Native Affairs. The avowed object of this Ministry was the disannexation of Basutoland. With its assumption of office on the 9th May, 1881, the war was at an end. The Basuto had defeated the Cape Colony. The next three years up to the date of the disannexation were a period of humiliation and shame. Colonel Griffith, who had done so much for the Basuto, found his health conveniently bad and retired in August, 1881, to be succeeded by Mr. J. M. Orpen. On the 6th April, 1882, the proclamation applying the Disarmament Act to Basutoland was repealed.

³³ History of South Africa, 1873—84, Vol. II, pp. 67, 68 and 89.

South African history is never dull, whatever its faults may be. Into the blackness of this period of shame and anarchy came the meteoric presence of Charles George Gordon. The "official" (if the term "official" may be used) correspondence between him and the Government in the six weeks while he was in Basutoland gave the writer a couple of hours' hearty amusement in the dusty precincts of the Archives little used to such irreverence; and it is much to be regretted that Mr. Lytton Strachey had not this matter before him when writing his brilliant monograph of Gordon.³⁴ Gordon's Plan of reconstruction—characteristically drafted *before* he had visited the Lesuto³⁵—was the withdrawal of the military forces and the existing Magisterial administration and the appointment by the Colonial Government of a Resident and two sub-Residents as advisers to the Paramount and lesser Chiefs.

The Government compromised. At a great Pitso held from the 16th March to the 2nd April, 1883, the new scheme was propounded and discussed with the Chiefs. The Governor's Agent or "other officer"—the term Magistrate was not used—was to try all cases in which Europeans were concerned and to sit with the Chiefs to try all purely Native cases, except those of treason or sedition, to be reserved for the Governor's Agent alone. A Native Council of Advice was to assist the Governor's Agent in Administration. Mr. Orpen had meanwhile been replaced by Captain Matthew Blyth, an officer who deserved a less unpleasant position. On the 24th April Captain Blyth called a meeting of the Basuto nation to discuss the scheme propounded at the Great Pitso. Not a Chief of importance was present. The cup of humiliation was almost full.

The crowning infamy was, however, yet to come. The Cape Ministry had sent Mr. John X. Merriman to

³⁴ "Eminent Victorians." The "pidgin" English in which Gordon addresses Masupha and which is solemnly reported in full, is excruciatingly funny when one realises that it all had to be interpreted into Sesuto.

³⁵ Report of Interview between the Premier and the Secretary for Native Affairs and certain Basuto Chiefs, Councillors and Headmen, 16th March—2nd April, 1883; pages 108 and 109.

England to lay its needs before the Colonial Office. On the 29th May, 1883, he placed before the Earl of Derby, on behalf of his Colleagues, a proposal that the Cape—in other words the nucleus of self-governing South Africa—should abandon almost all its responsibilities with regard to Native Affairs to the Government of the United Kingdom. Whoever was really responsible for this document was guilty of nothing short of high treason against South African nationhood. The native problem is our acid test. To confess ourselves unable to deal with it, is to deny our claim to any local autonomy, and *a fortiori* to full sovereign status. "The best solution," the Memorandum reads (Par. 36) "from a Colonial, and also from an Imperial, point of view would be found in the assumption by Her Majesty's Government of the control of all the Native Dependencies of the Colony including Basutoland, Fingoland, Tembuland, East Griqualand and St. John's. These together would form a tolerably homogeneous and self-supporting territory with a seaboard, independent of the Colony proper, who (sic) would be by such an arrangement placed in a position to contribute liberally towards the support of such a scheme, while Natal, who (sic) derives a considerable amount from the Customs dues of East Griqualand might also be fairly called upon for a contribution. These amounts, with those raised by taxation, would supply a revenue amply sufficient for administration on the most efficient scale, while to South Africa and to the cause of law and order generally such a step would be of incalculable advantage."

Fortunately for South Africa, this suggestion was received coldly and only Basutoland was detached from the Cape Colony. The Disannexation Act passed the Cape Parliament in September, 1883. On the 18th March, 1884, it received the royal assent, and Captain Blyth handed over his duties to Colonel Marshall Clarke, the Resident Commissioner of the British Government.

The new régime has preserved order perfectly among the Basuto. It has done little directly to civilise. The

Chief's Courts are to-day a crying grievance, and commoners have at last begun to organise against them. But the peace has been preserved and white prestige has been largely restored. The work of Sir Marshall Clarke, under the most difficult circumstances, proved markedly successful.³⁶ At Sir H. B. Loch's visit to Basutoland in 1890 every Chief, except Letsie, incapacitated by age, attended the Pitso³⁷—a contrast indeed to the last Pitso under Colonial auspices in 1883. Since then, respect for authority has been maintained outwardly at any rate. Economically the Territory is stagnating, if not actually going backward. Civilising activity is almost entirely confined to the Missions. It is, however, not so much from the point of view of the Basuto, as from the point of view of the future Union of South Africa that the retrocession of Basutoland is to be regretted. It is a pity that the question of annexation to Natal was not re-introduced in the discussions of 1883. If "Somtseu" could have been persuaded to leave his retirement, the last ten years of his life might have been the most brilliant, and the most useful.

• While the Cape politicians were bungling the Basutoland question, the Cape statesmen—in other words the permanent Civil Service—were successfully coping with the problem of the Transkeian Territories which had been annexed in 1877 as a result of the Ninth (and last) Kaffir War.

The man to whom, above all others, credit is due for the inception of the Transkeian system is Charles Brownlee, permanent Secretary for Native Affairs. His report for the year 1875 is a magnificent document. Its high note of moral obligation and idealism, combined with sturdy common-sense and expert personal knowledge of the Bantu, strikes the right key-note for Native Policy in South Africa. We know beyond all doubt that the lines of Transkeian Native policy did not grow

³⁶ See especially Imperial Blue Book C. 5238 (1887) *passim*

³⁷ Imperial Blue Book, Basutoland Papers C. 5896 (1890), page 1.

up accidentally but were deliberately and designedly laid down from the beginning by Brownlee himself.³⁸ In spite of the attacks on his system by such people as Mr. P. M. Orpen,³⁹ who accused him of unduly hastening detribalisation, we have the outstanding fact that the Transkeian Native under the system laid down by Brownlee, has become the most prosperous, the most advanced and (with the exception of the tribal Natal Native) perhaps the most contented Native in South Africa to-day. With exemplary public spirit, after his laying down the lines of policy, Brownlee quitted his Secretaryship, and, as the first Chief Magistrate of Griqualand East, gave his colleagues a lesson as to the putting of theory into practice, which was invaluable in assisting to build up the present high tradition of Transkeian administration.

The Transkeian Native Policy was well described as being from the beginning an "unique progressive policy adapting itself to the various stages of advancing civilization."⁴⁰ Its farmers realised that to treat all the natives (including the progressive Fingos removed to the Transkei in 1865) as being on one dead level of barbarism, would be the height of folly. "It is most wise and proper," wrote Captain Matthew Blyth, the first and perhaps the best Chief Magistrate of the Transkei, in 1881⁴¹ "to hedge these people on either side with strict laws and regulations, *but the road forward should never be blocked* and there should be no bar placed to their advancement." From 1881 Mr. Sauer, the Minister of Native Affairs in the Scanlen Ministry, instituted the practice of constant public consultation with the Natives—a practice which has taken regular and institutional form in the Council system first brought into being in 1894—5. The whole lines of the Glen Grey system were clearly sketched out by Captain Blyth in a Memorandum dated the 13th January,

³⁸ Report of Secretary for Native Affairs, 1878—9 *passim*; especially pp. 11—12.

³⁹ In 1880, after Brownlee's resignation of the Secretaryship.

⁴⁰ Report of Wm. Girdwood, R. M. Tsomo, dated 31st December, 1881 (Cape Native Blue Book, 1882, page 19).

⁴¹ Cape Native Blue Book, 1881, page 39.

1882,⁴² Thus, from the beginning, the Transkeian administrators pursued a definite course and Transkeian policy presents itself to the student as a coherent, intelligible, progressive and conscious evolution. The Ministers at far-off Cape Town had the good sense to leave men who knew something about their subject a free hand in policy. Great credit is due to Mr. Sauer for the precedent which he set in this direction. Every one knows that the Transkeian experiment has succeeded, as far as Europeans are concerned, owing purely and simply to the permanent staff of the Native Affairs Department and particularly to the Resident Magistrates. It may be convenient for panegyrists and other garblers of history to credit Cecil John Rhodes with the Glen Grey Policy and to suggest to us that it sprang full-grown from his brain as Pallas Athene from the head of Zeus. Sober and accurate history must step in with regret and destroy this legend, in the interests of the just fame of the great Administrators who really deserve the credit—in particular Charles Brownlee, Matthew Blyth, H.G. (later Sir Henry) Elliott and W. E. (later Sir Walter) Stanford.

The main points of the Transkeian policy have already been maintained in discussing the Government's early policy in Basutoland. The Magisterial system—Magistrates definitely replacing Chiefs, of course gradually—was from the first adopted. There were three Chief Magistrates—of the Transkei, of Tembuland and of Griqualand East—later amalgamated. Parliament was persuaded at the date of the annexation to grant a charter to the Administration. The Governor-in-Council (in practice, the permanent Native Affairs Department) became the normal legislative authority. Parliament retained a right of veto over his Proclamations, and a theoretical right to legislate for the Territories; but Acts of Parliament were not to apply unless expressly extended by the Acts themselves or subsequent Proclamations.⁴³ It is a pity that the Ciskei was not at this date brought under the same

⁴² Cape Native Blue Book, 1882, page 6.

⁴³ *Vide* Chapters XII and XIII.

system. From the first, care was taken to co-operate with the Natives and a Council system discussed favourably, though the time was not considered ripe for its adoption.

The essence of the Grey policy—to civilise and not merely to preserve peace and the *status quo*—was a feature of Transkeian life from the first. But the faults of the Grey policy were avoided; and there was no attempt to treat the Natives as being identical with Europeans. The Transkeian Magistrates were too practical to deal in legal fictions, and too kindly to wish to extend liquor and the vote to their people. From the very first they tried to teach them to govern themselves, rather than to assist in governing Europeans. Their material progress was fostered and ensured. The Government at Cape Town, taught by the bitter lesson of Basutoland, refrained from oppressive legislation.

Native Law was administered from the first. But in some parts of the Territories it had a legal standing and in others not. It was, therefore, considered advisable to appoint a Commission to go into the whole question of Native Laws and Customs and to report. Thus we get the famous Cape Native Laws and Customs Commission of 1883—probably the most useful Commission that has ever reported on Native Administration in South Africa.

The Commission consisted of Sir Jacob Dirk Barry, Judge President of the Eastern Districts Court (Chairman), Mr. Charles Brownlee, Chief Magistrate of Griqualand East, Mr. (later Sir) W. E. Stanford, Chief Magistrate of Tembuland, Dr. James Stewart, Principal of Lovedale, Dr. (later Sir) W. Bisset Berry and Messrs W. B. Chalmers, Thos. Upington, Jonathan Ayliff, Emile S. Rolland and Richard Solomon. Mr. John Noble acted as Secretary. Very unfortunately Mr. Brownlee was unable to attend the sittings of the Commission, though he forwarded his views in writing; and Mr. Chalmers had to retire early in the life of the Commission. These vacancies were not filled.

The Commission was of great value, first by reason

of the material that it collected. All its witnesses were experts⁴⁴—a strong contrast to the Inter-Colonial Commission of 1903—5—and beside their evidence the Commission collected and printed or re-printed much useful matter. Among other things there was the first draft of the Transkeian Penal Code, draft Bills relating to Native Marriages and Succession, a monograph by Sir T. Shepstone on the Native tribes of Natal, an epitome of Maclean's Compendium of Native Law, Hammond Took's genealogy of the Native Chiefs, and the first Natal Native Code. It remains to-day the best single volume to put into the hands of a student anxious to learn something of Native administration.

Secondly, the Commission merits attention by reason of the manner in which it dealt with Native Law.⁴⁵ The result of its labours is the characteristic Transkeian method of fully recognising and administering Native Civil Law without codifying it. Native Criminal Law (which, strictly speaking, is really a branch of Native Civil Law) was abandoned, and a Code—the Transkeian Penal Code—drawn up, which expounded the existing Criminal Law of the Colony, with a few absolutely essential modifications, very lucidly and simply. It was obviously drawn up for Natives only, but in order to save Parliamentary susceptibilities, it was enacted⁴⁶ for the Territories as a whole, including the small European population—i.e., on a territorial instead of a personal basis.

Beyond these two points—the collection of information, and the putting of legal matters on a satisfactory basis—it cannot be said that the Report of the Commission was brilliantly successful. It recommended,⁴⁷ for example, a Chief Executive Officer for the Territories distinct from the Chief Magistrate—a division of authority

⁴⁴ Among the most interesting portions of the Volume must be classed the evidence of Sir Theophilus Shepstone (which, to my reading at any rate, carried more weight than that of any other witness), of Mr. J. M. Orpen and of Ketshwayo.

⁴⁵ For details see Chapters IX and X.

⁴⁶ As Act 24 of 1886.

⁴⁷ Report, Para. 119, p. 44.

the antithesis of the present successful administrative system of the Transkei.

It also recommended the erection of a Native Council. This body in the form of a Council of Chiefs had been strongly and distinctly advocated before the Commission by Sir Theophilus Shepstone.⁴⁸ The Commission's own proposal, however, contemplated an informally elected body.⁴⁹ Natives exercising the ordinary Parliamentary franchise were to be debarred from voting for the Native Council though they would still be eligible for election thereto.⁵⁰ Neither Shepstone's nor the Commission's scheme was actually put into practice; and when a Council system was actually introduced a decade later, it took a definitely original form.

The ten years after the issue of the Report of the Native Laws and Customs Commission were years of steady material progress and advance in civilisation. With these desirable features, however, it is sad to compare the constant references in the annual Departmental Blue Books from 1884 onwards to the spread of drunkenness and venereal diseases. In spite of all the activities of Magistrates and Missionaries it was impossible to prevent the tares of civilisation from growing up with the wheat. An interesting feature is the beginning of systematic historical and ethnological research relative to the tribes inhabiting the Territories and a special interest attaches to the valuable reports of this nature appearing in the Blue Books of 1886 and 1887 over the signature of "Geo. M. Theal, First Clerk, Native Affairs Department."

In 1889 passed away Captain Matthew Blyth, one of the finest Native administrators South Africa has known. "To commemorate his memory the people of the six Districts over which he ruled so well have voluntarily raised a large sum of money to be expended in erecting a monument over his grave."⁵¹ Blythwood Industrial

⁴⁸ *Ibid*, Para. 121, p. 45.

⁴⁹ *Ibid*, Para. 122, pp. 45—6.

⁵⁰ *Ibid*, Para. 125, pp. 46—7.

⁵¹ Cape Native Blue Book, 1890, p. 27.

Institution also commemorates his name; but his best monument is the prosperity and advancement of his people.

The Parliamentary franchise was extended to such Natives (not many) in the Transkei as were able to qualify for it by Act 30 of 1887. But Act 9 of 1892 instituted a restriction on the franchise which assisted in preventing this measure from materially affecting the Transkeian position. Col. C. D. Griffith, C.M.G., formerly Governor's Agent for Basutoland, was the first member for the Tembuland constituency.

Annexations proceeded apace, the last being that of Pondoland in 1894. The simplification of administration which began with the amalgamation of the Transkeian and Tembuland Chief Magistracies in 1891—a change which was well received by the people⁵²—progressed until there was but one Chief Magistrate for all the Territories east of the Kei. Control, peace and order were secured, and it became possible to devote more direct Governmental attention to civilising and educative measures—measures which had been gradually prepared for ever since the first annexation.

Of these measures by far the most important was the Glen Grey Act (No. 25 of 1894). Its details are fully discussed in the appropriate chapters⁵³ later; but it seems advisable to give a brief resume of its general effect here.

Briefly, then, the Glen Grey System combined an improved form of land tenure with a measure of partial self-government intended to have an educative effect and to lead up to better things. Quit-rent tenure had, of course, been known since the days of Sir Harry Smith; but the Glen Grey tenure was far in advance of any previous scheme in its details. The quit-rent furnished a useful revenue, and the necessity for its payment an incentive to work, while the clauses providing for forfeiture of title on conviction for treason or stock-theft or

⁵² Cape Native Blue Book, 1892, page 37.

⁵³ XII (The Council System); XVI (Land Tenure.)

an proof of non-beneficial occupation provided most admirable safeguards against the abuse of the new privileges. At the same time adherence to the principles of "one man, one lot" and of following the existing lines of occupation ensured that nothing of permanent value in primitive Bantu Society would be lost under the new state of affairs.

The Councils were intended to provide a limited right of local self-government, to train the Natives in administration, to give them a sense of responsibility in raising and expending money for their own benefit and to teach them to remedy their grievances instead of deploring them.

Introduced into the District of Glen Grey in the Ciskei first of all, the system was almost immediately extended to the Transkeian Districts of Butterworth, Idutywa, Nqamakwe and Tsomo by Proclamation No. 352 of 1894. The General Council came into being in 1895, and has rapidly become one of the most important Native bodies in South Africa. A general extension and reconstruction of the Councils took place in 1903. To-day the Council part of the Glen Grey system has been extended to each of the eighteen Districts of the Transkeian Territories. The Native Affairs Commission describes it as undoubtedly successful and a most valuable means of ascertaining representative Native opinion.⁵⁴ The best proof of its success is that Act 23 of 1920, making a similar Council system permissive for the whole Union, passed the House of Assembly without a division.

The Tenure part of the system has not kept pace with the Council part; but it is being gradually extended. While the political provisions meet with some Native criticism, there has been only one opinion as to the agrarian reform.

Of course, the change was greeted at first with vigorous opposition, as reforms always are. The Natives themselves, with characteristic conservatism, were suspicious of the new arrangements and Magistrates were

⁵⁴ Report, 1921, page 30.

for a time apprehensive of trouble.⁵⁵ But in a year or two all was calm. The highest encomiums were passed on the newly-appointed Councils.⁵⁶ The Labour Tax—the only really unpopular feature of the Act—was quietly allowed to drop.⁵⁷ The end of the century saw the Territories in a state of great tranquillity and prosperity⁵⁸ and there was a unanimous consensus of Magisterial opinion in favour of the Act as it had proved itself at the end of 1899.⁵⁹ One District—Kentani—came under the Act voluntarily in that year.⁶⁰ Before the Commission of 1903—5, the Chief Clerk of the Native Affairs Department, Mr. E. E. Dower, repeatedly expressed his opinion that the Act had proved most beneficial in working.⁶¹ The only real criticism came from other officials, Messrs Job Scott and W. Power Leary, who expressed the fear that the General Council, by combining the Natives, had been a strategical error of policy.⁶² If our proper attitude towards the Native population be one of intense fear, there is point in this criticism; otherwise, not.

Pondoland, though progressing favourably, was as yet far behind the rest of the Territories in general advancement, and it was thought impracticable to extend the Transkeian Council System (much less the quit-rent tenure) thereto. In 1911, however, just after Union, a modified scheme was introduced. The delegates are nominees of the Chiefs, not elected.

That there is criticism on the subject of the Transkeian Council system on the part of Natives is true, but only on the grounds that it does not go far enough.

⁵⁵ Cape Native Blue Book, 1896, pp. 88—9, 91 and 95.

⁵⁶ Cape Native Blue Book, 1897, pp. 23, 83, 85 and 90.

⁵⁷ *Vide* Report of Select Committee of Cape House of Assembly on Glen Grey Act, 1898, page 2.

⁵⁸ *Vide* Cape Native Blue Book, 1899, *passim*.

⁵⁹ Cape Native Blue Book, 1900, pp. 72—74.

⁶⁰ Cape Native Blue Book, 1899, pp. 72 and 81.

⁶¹ e.g. Questions 178, 637, 652 (Evidence Vol. II, pp. 19 and 64.)

⁶² S.A. Native Affairs Commission, 1903—5. Evidence, Questions 14500 (Vol. II, pp. 1060—1) and 16442—16449 (Vol. II, pp. 1195—6).

We have now traced briefly, and in anticipation of a further discussion in the analytical part of this work, the history of the evolution of what is undoubtedly the most successful Native Administration in South Africa to-day. We have seen how the Smith-Calderwood policy contributed the ideas of individual tenure on quit-rent and the encouragement of agricultural and industrial progress; how the Grey policy set up the positive encouragement of civilisation as the end and the Magisterial system as the means of an ideal Native administration; how the Brownlee policy of legislation by proclamation the recognition of Native Law, and the commanding position of the Chief Magistrate, first applied in Basutoland in 1870—2 won its way into the Transkei and saved it from the nebulous position of the Ciskei; how, finally, from the Basutoland disaster, the Government learned the lessons that reforms must proceed by gradual stages, that oppressive legislation must not be enacted, that Native Policy must be lifted above party considerations, and that the Cabinet and the Legislature must give as free a hand as possible to the permanent Administration. We have seen how, armed with this knowledge and with a good will, the Government did actually carry out from 1879 what has been correctly termed "an unique progressive policy"—a policy which has won the loyalty and confidence of the Native people.

It would be idle to pretend that the Transkei is free from all ills, or that its government is absolutely perfect. Yet during a period within which the European peoples of South Africa have thrice been engaged in fratricidal strife it has experienced profound peace. Its people have advanced not merely in material wealth, but in civilisation, in the sense of responsibility and in the power of managing their own affairs. A century of Missionary endeavour has assisted even the heathen majority in their progress in the scale of evolution. And all this has been done without the slightest danger to European identity or European supremacy in South Africa. If there, why not elsewhere? Why can we not

find applicable to all our other Native areas those majestic words of the hundred and forty fourth Psalm :—

. . . "That our sons may grow up as the young plants : and that our daughters may be as the polished corners of the temple.

"That our garners may be full and plenteous with all manner of store : that our sheep may bring forth thousands and ten thousands in our streets.

"That our oxen may be strong to labour, that there be no decay : no leading into captivity, and no complaining in our streets."

or that burst of eloquence of the world's most eloquent poet :—

"Agricola incurvo terram dimovit aratro :
Hinc anni labor, hinc patriam parvosque nepotes
Sustinet hinc armenta boum meritosque iuvenços,
Nec Requies, quin aut pomis exuberet annus
Aut fetu perorum aut Cerealis mergite culmi,
Proventuque oneret sulcos atque horrea vincat."

More than to anything else, this cycle of progress and this happy result must be attributed to the permanent administrators of the Native Affairs Department. It is to South Africans, but not to South African legislators and politicians, that the credit is due. That must give us room for pride and room also for self-examination and humility. Perhaps Hamlet's definition of a politician is not out of date yet—"one that would circumvent God." Our permanent administrators have not, perhaps, these gifts of subtle cunning, of polished and practised ambiguity, of dexterous tactical skill and of profitable anticipation of public opinion. They are merely just, upright, clean honourable South African gentlemen,—not always perhaps very clever, certainly not possessed of the Baconian "wisdom for a man's self," labouring without much hope of recognition and reward, but exhibiting a single-hearted loyalty to the good of their people which is the essence of a practical Christianity. To them, South Africa, white and black, owes a debt which it can hardly hope to repay.

If these words may serve to bring a little more honour and recognition to the living, the writer will be amply rewarded. May he also bespeak a due need of admiration and gratitude to the honoured dead, and especially to Matthew Blyth, the "noblest Roman of them all."

NOTE: *On the difference between the Transkeian, Ciskeian and Colonial Systems.*

(1) Only the Transkei has a separate administration: the Ciskei is included in the Colony proper. The Ciskeian and Colonial Magistrates are not Native Affairs Officers, except in the Districts of Herschel and Glen Grey.

In the Colony proper, there is no executive officer to supervise Native Affairs, corresponding to the Chief Magistrate of the Transkei. In the Ciskei a Chief Native Commissioner was appointed early in 1922, and his powers will probably be increased as time goes on.

(2) Councils exist in the Transkei only. Their introduction into the Ciskei is contemplated, but apparently not in the Colony.

(3) Native (Civil) Law is fully recognised in the Transkei. Legally, except on a few points (e.g. intestate succession) it is not recognised in the Ciskei or in the Colony. Practically, the Ciskeian Courts take cognisance of much of the Native legal system, and the authority for some of their decisions would not bear too pedantic an examination.

(4) The franchise applies to all three divisions. But as tenure under the Glen Grey Act is not considered ownership of property for franchise purposes, the voters in the Transkei must always be only a very small proportion of the population.

(5) Summing up, and speaking very broadly, the Native in the Colony proper is treated as identical with the European. He has neither special privileges nor special restrictions. The vote, for what it is worth, is his only safeguard. In the Transkei, there is virtually an autonomous Native Administration—the policy of differentiation. The Ciskei occupies an intermediate position and is obviously now (1927) in a transition stage.

CHAPTER V.

TRANSVAAL NATIVE POLICY.

We have already ¹ followed the Native policy of the Voortrekkers up to the annexation of Natal in 1843, and have seen that its chief points were to mark off areas for predominantly white occupation, to retain sufficient Natives therein for agricultural labour purposes and to ensure that this labour should be fairly divided, to segregate the balance of the Native population and interfere with them as little as possible: and finally to rule such of the Natives as were employed in the white area paternally, justly and kindly, but keeping them in a position of complete subordination.

The Republic of Natal had, so far as time had permitted it, carried out this policy consistently, and creditably. On the whole its rule had been kind and not oppressive. It had made a definite endeavour to legislate on the more important points. It is disappointing to find in the other independent States so long an interval with nothing like the constructive policy which marks the early days of Natal.

The Winburg area, for example, neither in its most primitive days, nor as the Orange River Sovereignty, nor after 1854 as the Orange Free State, furnishes us with any suggestions of real value in the formation of a South African Native policy. Had it really been left alone to deal with Moshesh, and had it subdued him as it very likely would have done, its methods of ruling the Basuto would have formed a fascinating study. Probably the Free State would to-day occupy a high place in the history of Native Policy. As it is, it occupies a relatively low one—not because its policy is bad, but because it has no policy and needs none. Its Native population is really an overflow from adjacent Territories and it has no large surplus population to rule

¹ Chapter II.

apart from Natives in European employ. So far as it has a policy, it follows the traditional policy first laid down in the Republic of Natal.

Similarly with many of the independent areas subsequently incorporated in the South African Republic. Reading through the archives of the Republic of Lydenburg before its union with the larger state, one is struck at the lack of policy they display; and is reminded at every turn that no attempt was really being made to rule the Native population.² The New Republic (1884--7) resolved indeed to have no Locations whatever within its territory.³ In the next year we find it bowing to the inevitable and tacitly acknowledging existing Locations by collecting a Hut Tax of 2/6 from all Natives within the Republic.⁴ But its general lack of constructive policy is well exemplified by the Wilhelm Correspondence, too long, unfortunately for quotation *in extenso* in this volume. Wilhelm was placed by the Republic as Native Commissioner at "Kwamagwasie" in a position of great delicacy and responsibility—and then left there entirely unsupported and only with difficulty obtaining acknowledgement of his letters.⁵

So it was in the early days of the South African Republic. For many years its government was unrecognised. Even after the Sand River Convention of 1852 it was, as is well known, weak and almost anarchic. It cannot be said to have attained even the semblance of rational cohesion until the fateful presidential election

² For an attempt at maintaining existing Native rights of occupation, see Volksraadsbesluit No. 44 of 30th March 1860 (Archives D 4/2).

³ Uitvoerende Raadsbesluit of 11th September, 1884. This important resolution, authenticated by D. J. Esselen, Acting State Secretary, appears as an endorsement on the back of an application from Rev. Jas. Dalzell, Free Church of Scotland, to commence missionary work in the Republic: (Archives F M/7).

⁴ Volksraadsbesluit of 12/6/1885.

⁵ He was almost certainly playing a double game; and appears to have been "well in with" Mr. Melmofā Osborne, British Resident in the Zulu Native Reserve, who expressed considerable regret when the Government of the New Republic dismissed him. But from the Archives, the Government seem to have had no knowledge of these facts.

of 1872, which placed the Rev. Thomas Francois Burgers at the head of the State.

In these circumstances it is not surprising that, for many years, little or nothing was done even on paper. The Republic was ill-organised, poor, and destitute of trained administrators. It could not undertake to rule, with any real control, large masses of Bantu. It was much if it could prevent them from attacking the European population and safeguard the territories of the State. And so in the first part of the Republic's history the Native problem presented itself as mainly an external one, needing, unfortunately, defensive military measures; and the most appropriate Department to deal with Native Affairs was that of the Commandant General.

Moreover, while much was done by way of legislation, especially between 1870 and 1877, very little of this legislation was carried into effect. The reasons for this inactivity are not easy to pronounce on with any finality; but it must be said that, while it was probably the Burgers regime and not the Republic as such which had broken down, the South African Republic was certainly the weak spot in South African Native Administration in 1877—not because it could not control its Natives, for there is every reason to believe that, in spite of the Sekukuni episode it could; not because of any grave acts of oppression or cruelty; but because of the absence of an effective constructive policy, the need for which day by day was becoming more urgent.

Take, for example, the taxation policy of the Republic. Introduced by Law. No. 9 of 1870, it was a carefully thought out and definitely constructive scheme. Natives acting as servants were to pay an annual tax of 2/6 per hut; those in service but not living on the farm of their masters had to pay 5/-, per hut; and those who were not in service, 10/- per hut.⁶ Whether we agree with this taxation policy matters little for the purpose

⁶ *Vide. inter alia.* Leyds "First Annexation of the Transvaal," p. 136.

of this argument; the point is that it was a definite policy. But it was found next to impossible to carry it out. Ten years later a careful examination of revenue receipts had shown that the Natives had during that period contributed little or nothing to the general revenue.⁸

The land question was also one urgently demanding treatment. The demarcation of farms had frequently ignored existing lines of Native occupation: this was an administrative act contrary to a definite Volksraad resolution to the effect that no land should be inspected for a farm on which a kaffir chief was residing. As the matter grew more and more urgent, a Law was passed (No. 3 of 1876) providing for the establishment of Locations, but at the date of the Annexation this had not been acted on.

It might, however, be mentioned that, in one or two instances, the Government of the Republic had bought farms for the occupation of various Natives.⁹ The ownership remained vested in the State; for the Republic did not permit Native ownership of land.

Several laws and resolutions limited and regulated the supply of Native Labour—precursors of the Plackers' Wet (Squatters' Law) of the restored Republic.

One of the defects of the early Republican system was the failure to recognise Native (Civil) Law in the Courts: legally the Roman-Dutch Law plus the Statutes and Resolutions of the Volksraad applied, but on some matters was absolutely inapplicable (e.g. inheritance, marriage). As the general policy of the Republic was to make the natives amenable to European control, it would have seemed a consistent step to encourage the Natives to bring their cases for adjudication to the Landdrost rather than to the Chief. This, however, was not done.

⁷ For its application in later years, *vide* Sec. 3, Law 24 of 1895 and Staatsprokureur's Minutes 370/96 and 739/96 of 1896.

⁸ Speech of the Administrator (Sir Owen Lanyon) in opening the first Legislative Assembly of the "Province of the Transvaal," 10th March, 1880.

⁹ Memorandum of the Secretary for Native Affairs, Province of the Transvaal, dated 25th November, 1879. (Transvaal Archives G 1200/1.)

With this exception, the Republic had a consistent and a real policy. To a large extent it was merely a paper policy; but it must be remembered that the Republic had not a large staff of administrative officials, nor could it afford to carry on the Government with a recurring annual deficit as was done during the occupation of 1877—81. It is important to notice these points, for the occupation is often referred to as a turning-point of Transvaal Native Policy. This is too strong a phrase. The British—or rather the Natal—Administration introduced certain new conceptions, some of which were improvements; but up to the retrocession it had, in point of fact, done no more to put them into practice than had the Republic before 1877. If there were excuses in the one case, there were excuses also in the other. The real working Native policy of the Transvaal dates from Law 4 of 1885. The effect of the occupation was not to accelerate Native policy, but rather to give it a Natal tinge which has coloured the early Republican policy ever since and placed the Transvaal in a curiously composite position, midway between the Free State and Natal—and perhaps a microcosm of South Africa as a whole more than any other territory in this matter.

It is important to insist that the annexation of 1877 did not involve the deliverance of multitudes of oppressed Natives from cruelty and semi-slavery. It is a legend which ought to be exploded to-day. There is little that can be said in defence of the 1877 annexation. However, well meaning its authors may have been, they were guilty of an action as dishonest and unworthy as it was ill-judged and inexpedient. To the student of Native policy its interest must be a very sad one—that mixed up in all the chicanery and hypocrisy of it was the greatest of South African Native administrators, Sir Theophilus Shepstone. It is well known that the War with Sekukuni which had been the most picturesque pretext for the annexation had to be resumed after the occupation, at a greater loss of life (on both sides) and of money than had been incurred in the Republic's War. British soldiers

were shot down in large numbers by rifles which Sekukuni's men had purchased at the Diamond Fields, under the Administration of that very Owen Lanyon who was the last Administrator of the Transvaal, against the heated protests of the Republics and also of Natal.¹⁰

One of the very first acts of the British Government in 1877 was to set up a special Department of Native Affairs—an entirely admirable departure and one to the credit of the new Administration. This was retained, too, after the retrocession. The newly appointed Secretary for Native Affairs was Mr. Henrique C. Shepstone, C.M.G., son of Sir Theophilus Shepstone. It is not surprising, therefore, to find many characteristic points of Natal policy introduced during his term of office. At the same time, he moved slowly, and his work was therefore only half finished when the retrocession took place.

On the 25th November, 1879, a memorandum was prepared by him setting forth the general condition of Native affairs at that date—based on information derived

¹⁰ See the authorities (mainly British) quoted in Leyds: "First Annexation of the Transvaal," pp. 158—9.

The following official Minute was found by the writer in the Archives, dated Kimberley Diamond Fields, 4th August, 1874—two years after Sir Henry Barkly had deliberately refused to stop the Gun trade. It had apparently been intercepted by the Republican Government.

"To the Chief Sekukune.

"From the Lieut.-Governor of Griqualand West.

"The Lieutenant-Governor avails himself of the return of Mamaree from the Diamond Fields to his own country and to his Chief Sekukune, to write to the Chief and to send his greeting.

"Mamaree will be able to tell Sekukune how his people who came here for work have been treated, and he will, the Lieutenant Governor feels assured, speak favourably on that subject and say that the people are well treated.

"The Lieut.-Governor will, in so far as he can, cause this good treatment to be continued towards all who come here to earn money and to work in the Mines.

"The Lieut.-Governor will be glad to hear from Sekukune in return."

In the Annexing Proclamation of the 12th April, 1877, Sir T. Shepstone gives as one reason for annexation: "That the Siccocoeni War..... has..... proved suddenly fatal to the resources and reputation of the Republic." Sir T. Shepstone is not to blame; he had always been against the sale of guns. But what of the Government which authorised the traffic in arms and then used its inevitable results as a pretext for annexation?

from the various Landdrosts as the result of a *questionnaire* sent out a few months earlier, the replies to which (preserved in the Archives ¹¹) are to-day very interesting reading. After dealing with various other matters, Mr. Shepstone comes to the question of Native Law. His remarks shed such light on the Shepstone policy generally that it is perhaps better to quote than to paraphrase them:—

“The government of the Natives cannot be carried on under the common law of the country. They are not yet sufficiently advanced in civilization to understand or be ruled by it. It is essential that they should for some time to come be governed under and by their own laws and customs, and for this purpose it will be necessary to pass a law authorising such government, and that the Governor or Administrator should be appointed Supreme Chief with the power of appointing Administrators of Native Law to govern the Natives in accordance with their laws and customs, subject to appeal to him as Supreme Chief. This was contemplated by Sir T. Shepstone as will be seen by a reference to the High Court Proclamation which withholds from that Court all jurisdiction in cases between Native and Native except such heinous offences as murder, etc., and proceeds to state that a proclamation will be issued regulating Native management.”

After long delay an Ordinance was at last passed (No. 11 of 1881) on the 14th July 1881, four months after the Preliminaries of Peace had been signed and only three weeks before the autonomous Transvaal State came into being, creating the Administrator Supreme Chief and all the Landdrosts Administrators of Native Law; and recognising Native Law (uncodified) in all the Courts of the Transvaal. On the 8th August the Triumvirate took over the government on behalf of the Transvaal State. This Ordinance of the moribund “Legislative Assembly of the Province of the Transvaal” was treated as having no valid force and effect. But many of its provisions were

¹¹ G. 1200/1.

embodied in Law 4 of 1885 of the restored South African Republic.

It is interesting, as a further confirmation of what has been said in Chapter III regarding Shepstone's antipathy to the Native High Court, to note that this Ordinance of 1881 did not set up a Native High Court in the Transvaal but left a right of appeal to, and review by, the Executive Government—a provision confirmed by Law 4 of 1885, and remaining in force until withdrawn by Act 29 of 1907 of the Transvaal Colony, leaving the Supreme Court the only Court of Appeal.

A new Hut Tax Ordinance imposing a tax at the rate of 10/- per annum was enacted in 1880. The Administrator of the Province expressed the view, in introducing the Ordinance, that "it would be the duty of the Government to institute measures to improve the condition (of the Natives) and bring them more closely under the humanizing influence of civilised law and customs. The promotion of education, and the encouragement of useful and industrial pursuits will greatly tend to effect this object."¹² Nothing was done in these directions before or after the retrocession; but a beginning was made successfully with the actual collection of the Hut Tax.

With regard to the Location question there was an inexcusable delay in applying the provisions of Law 3 of 1876. Towards the end of 1879, the urgency of the agrarian problem was pressed on the Administrator by the Secretary for Native Affairs, but to no purpose. Not a Location had been properly surveyed and laid out when the War of Independence began. The British Government accordingly considered it necessary to incorporate provisions in the Pretoria Convention of 1881 for the setting up of a permanent Location Commission. This Location Commission was to have two duties. The first was to demarcate Locations. The second was to receive transfers of land bought privately by Natives in trust for

¹² Administrator's Speech in opening the first Legislative Assembly of the Province of the Transvaal, 10th March, 1880.

such Natives. As has already been stated, the laws of the Republic did not permit ownership of land by a Native in his own name. But in 1880 Mr. H. C. Shepstone introduced the system of permitting such transfer to the Secretary for Native Affairs in trust, thereby practically admitting such ownership while retaining, theoretically the prohibition against it. The powers of the Location Commission, in this connection, passed by Executive Council resolution of the 4th January 1886, to the Superintendent of Natives, and thence, under Crown Colony Government to the Commissioner for Native Affairs and in 1907 to the Minister for Native Affairs. Though in 1905 the case of *Tsewu vs. Registrar of Deeds* established the principle that a Native may own his land directly (subject now to the provisions of the Natives' Land Act of 1913), the bulk of Native-owned land other than Government Locations in the Transvaal is, strictly speaking, owned by the Minister in trust.

The duties of the Commission were clearly laid down in an address delivered by the Royal Commission in the presence of the Triumvirate at a great Pitso at Pretoria and printed for circulation among the Landdrosts and communication by them to the Natives of their districts shortly after the retrocession:¹³

"Aan de Opperhoofden, Hoofden, en Inboorlingen van de Transvaal

"Het zal U toegestaan zijn land te koopen of op de eene of andere wijze te verkrijgen, maar het transport zal in uwen naam geregistreerd worden op naam van drie heeren, die zullen uitmaken eene Inboorlingen-Location-Commissie. De Commissie zal inboorlingenlocaties uitmeten, welke de groote inboorlingen-stammen in vrede mogen bezetten. Bij het opmeten van zulke locaties zullen bestaande regten stipt gehandhaafd worden; en het Transvaalsche Gouvernement aan de eene en de inboorlingen-stammen aan de andere zijde zullen de alzo bepaalde grenzen steeds moeten eerbiedigen. Op dezelfde

¹³ Undated, but apparently printed towards the end of 1881. Archives T. 1/1235.

wijze zullen de verschillende stammen elkanders locaties moeten eerbiedigen, en waar zulks niet gedaan is, zal de beledigde stam zijn klage voor het Gouvernement van het land brengen." ¹⁴

The Commission as originally constituted, consisted of His Honour S. J. P. Kruger, Vice President of the Transvaal State (Chairman), His Honour George Hudson, British Resident, and Mr. H. J. Schoeman, Native Commissioner ¹⁵ for Pretoria and Heidelberg. Its first meeting was held on the 9th May, 1882. On the whole, during its not very lengthy existence, it proved a useful body, and many existing Locations were delimited by it. But a number of tribes to whom land had been promised at one time or another never had their Locations beacons off. ¹⁶ No Transvaal Government up to the time of Union ever honestly faced the Native land question. Here the Republic failed badly. This is the reason why in the Transvaal to-day so many Natives live on private farms and even on Crown lands. The Natives themselves have taken the initiative and bought farms for communal occupation, to be held by the Native Affairs Department in trust, in very many instances. It will be seen that the land problem in the Transvaal is by no means so simple as in the other three Provinces, and the above facts furnish the historical background of this state of affairs.

¹⁴ "To all Paramount Chiefs, Chiefs and Natives of the Transvaal.

"You will be permitted to buy land or to acquire it in any manner, but the transfer will be registered in your behalf in the name of three gentlemen who will compose a Native Location Commission. The Commission will delimit Native Locations which the great Native tribes will be able to occupy in peace. In the delimitation of these Locations, existing rights will be strictly preserved; and the Transvaal Government on the one hand, and the Native tribes on the other, shall respect on all occasions the boundaries so determined. In the same way the various tribes shall respect each others' locations; and where this is not done, the injured tribe shall be able to lay its complaints before the Government of the Country."

¹⁵ The early existence of Native Commissionerships in anticipation of Law 4 of 1885 may be noticed.

¹⁶ Evidence of W. Windham, Secretary for Native Affairs, Transvaal Colony, before the S.A. Native Affairs Commission of 1903-5. Questions 39, 745-39, 755 (Vol. 1V, pp. 427-8).

The Pretoria Convention of 1881 had contained, among other vexatious provisions, an Article ¹⁷ retaining a right of veto for the Suzerain over legislation differentially affecting Natives. After prolonged efforts, this, with most other restrictions on the sovereignty of the State, was removed by the London Convention of 1884. It is remarkable that legislation on Native Affairs lay dormant between the two Conventions; and this is almost certainly to be explained by the desire of the Transvaal State not to give the British Government the opportunity of exercising a vexatious and disputed right. The restored South African Republic was, however, active from the very first in constructive Native legislation; and of such legislation the earliest and best example is Law 4 of 1885.

The primary object of this celebrated Law was to provide a more satisfactory administration of justice for the Natives, while at the same time bringing them more under Government Control as opposed to the unchecked rule of the Chiefs. The preamble recognises that the time is not ripe for bringing the Native population under the general laws of the Republic; and in accordance with this principle, Section 2 enacts that the laws, habits and customs hitherto observed among the Natives shall continue to remain in force in the Republic except in so far as they are not inconsistent with the general principles of humanity recognised throughout the civilised world; while Section 5 provides that all civil disputes between Natives shall be dealt with in accordance with Native Law for the time being in force.

It must be added that from the beginning the Government took the view that *lobola* formed a practice inconsistent with the general principles of civilisation; and the Courts refused therefore to undertake *lobola* cases—a practice confirmed by Law 3 of 1897. This was not only a display of ignorance of the real nature of *lobola*; but also assisted to defeat one of the main ends of the legislation—the weaning of the Natives from the tribal Courts to those of the Government. The non-recognition of

¹⁷ No. III.

lobola has long remained a defect in the Transvaal system, and a gathering of all the Native Sub-Commissioners of the Province recommended its recognition unanimously in 1922.

At the head of the whole system set up by Law 4 of 1885 stood the President, who was recognised Paramount Chief over all Natives in the Republic, exercising as such all powers and authorities customarily vested in a Paramount Chief by Native Law. He was authorised to depose Chiefs for treasonable conduct, to remove them from the places in which they had resided, to place them under supervision, or in safe custody, and to replace them by suitable persons. These powers were to be exercised in conjunction with the Executive Council, but were not to be subject to revision in any Court of the Republic (Sec. 13). The President had the right to review any decisions of Courts affecting Natives and might also fine a tribe (Secs. 7 and 10). These judicial powers of the Executive were withdrawn by Act 29 of 1907.

Below the President stood the Superintendent of Natives, the chief executive officer of the Administration, who was also (Sec. 4) the Court of Appeal from the decisions of inferior Courts. This power also disappeared by virtue of Act 29 of 1907.

A special system of administration was provided for, embodying the germ of the principle that Natives must be dealt with only through specially qualified Native Affairs officers. Commissioners were appointed over Natives in Districts where the Volksraad, owing to the density of the Native population, considered such a step necessary, the Landdrost serving in other areas. Provision was also made for the appointment of Sub-Commissioners. The duties of these Officers were redefined and the system brought into its present form by Ordinances 3 and 44 of 1902.

Chiefs "appointed by the Government" were to exercise primary jurisdiction in civil cases, concurrently with the Government Courts. No Chiefs were "appointed" till long after Union, but, as a special proviso to Law 4 of 1885 continued the powers of existing Chiefs pending

appointment, the real objects of the Law have been achieved in this connection.

Altogether, then, the policy of the Republican Government in this connection ran on wise and statesmanlike lines. Moreover it must be said that the actual carrying out of the policy was, on the whole, kindly and not unduly oppressive. A somewhat stringent Pass Law might be felt as a grievance by a few advanced Natives. Provision for their exemption was rightly made by an Ordinance of 1902.

Where the policy of the South African Republic might really be open to question was on the economic side. Coupled with wise provisions against "squatting" and "kaffir farming"¹⁸ ran the rule that Natives could not acquire land in their own name—a rule justifiable, surely, only if the Location system had been fully worked out, which was not the case. Adequate land was never provided for the Native tribes and no effort was made to assist Native agricultural development in tribal areas. At the same time, after the opening up of the Reef, the Superintendent of Natives officially exhorted Natives to go and work on the Mines and so earn their Hut Tax money. That may have been a wise policy at the moment; but by diverting Natives unnaturally from agriculture to industry, and closing doors of remunerative activity to the surplus "poor white" agricultural population, it involved a heavy mortgaging of the future for the present. The Crown Colony Government accelerated this unwholesome development, and it has been one of the less satisfactory features of the Transvaal under Union.

No barriers were placed in the way of Natives who wished to exercise trades or carry on business among their own people.¹⁹ Such barriers as existed were against

¹⁸ Not more than five families were allowed to reside on any farm occupied by a European nor more than two on a farm not occupied by a European (Law of 1887—Staat-Prokureur's Interpretation of 1894). The first limitation removed by Section 8, Act 27 of 1913 (Natives Land Act).

¹⁹ See eg. S.P. 396/96 "Geen bepaling in de Wet bekend is waardoor het verboden zou zijn aan een Kaffer een Winkellicentie te geven in zijne Locatie. Te Pretoria worden dergelijke licenties reeds verleend."

Natives carrying on businesses for a white clientèle—a principle worthy of commendation rather than criticism.

Such was the state of affairs when the South African War of 1899—1902 broke out. Heaven being apparently on the side of the big battalions, that War, as is well known, resulted in the entire suppression of the Republic, and its emergence as a Crown Colony under the rule of Lord Milner.

It is well known that the Milner policy was to procure an early federation of the South African States, while the Transvaal and O.R.C. were still under Crown Colony Government. It was his hope that some common Native policy might be worked out, by the various South African Governments prior to that federation²⁰; and in particular that the Transvaal, whose policy, as we have seen, was of a somewhat mixed and inconsistent character, should receive some guidance from experts in the other Colonies. Accordingly on the 29th September, 1903, there met together at Cape Town one of the most brilliant gatherings of Native Administrators ever brought together in South Africa. The only defect of the Commission—but a vital one—was the inadequate representation of the Dutch-speaking population. Sir Godfrey Lagden was Chairman. The Cape Colony was represented by Col. (later Sir Walter) Stanford and Mr. F. R. Thompson; Natal by Mr. S. O. Samuelson, Under Secretary for Native Affairs, and the Hon. Marshall Campbell, M.L.C.; the Orange River Colony by Capt. Quayle Dickson and Mr. Johan Bestandig de la Harpe; the Transvaal by Messrs. J. C. Krogh and J. A. Hamilton; Rhodesia by Sir Thomas Scanlen; and Basutoland by Mr. H. C. (later Sir Herbert) Sloley. Mr. H. M. Taberer acted as Secretary and Mr. G. A. Godley (subsequently Union Under Secretary for Native Affairs) as Chief Clerk. After hearing a vast number of witnesses—some qualified and many otherwise—during the years 1903 and 1904, the Commission produced its Report bearing date the 30th January 1905.

²⁰ Report of the S. A. Native Affairs Commission, 1903—5, para. 2.

As the Report of this Commission is referred to constantly in the succeeding Chapters, it is unnecessary to do more at this stage than refer to some of its most salient points and to endeavour to explain why it had, in the event, so little effect on South African Native Policy in general and Transvaal Native Policy in particular.

The three sections of the Report which were of most importance to the Transvaal, were those relating to Land Tenure, Labour and Representation.

The Commission was not in favour of any compulsory introduction of individual tenure, but recommended the encouragement of any Native movement in that direction on the general lines of the Glen Grey Act.²¹

With regard to the distribution of land between Europeans and Natives, the Commission made a series of recommendations,²² which form the ground-work and basis of the Natives' Land Act of 1913. It recommended that the evil of unrestrained squatting should be checked, and that Natives should not be permitted to live on farms, except as labourers, unless Government sanction had been given on proof that such residence was necessary and desirable. The Commission proceeds to say (Paras. 192 and 193):—

“If this process” (the purchase of land by Natives) “goes on, while at the same time restrictions exclude Europeans from purchasing within Native areas, it is inevitable that at no very distant date the amount of land in Native occupation will be undesirably extended. Native wages and earnings are greater than they used to be, their wants are few, and their necessary expenses small. They will buy land at prices above its otherwise market value, as their habits and standard of living enable them to exist on land that it is impossible for Europeans to farm on a small scale. There will be many administrative and social difficulties created by the multiplication of a number of Native units scattered throughout a white population and owning the land equally with them. Such a situation

²¹ Report, Paras. 147 and 154—164.

²² Ibid., Paras. 181 and 184—197.

cannot fail to accentuate feelings of race prejudice and animosity, with unhappy results. It will be far more difficult to preserve the absolutely necessary political and social distinctions if the growth of a mixed rural population of landowners is not discouraged.

"The Commission has arrived almost unanimously ²³ at the conclusion that it is necessary to safeguard what is conceived to be the interests of the Europeans of this country, but that in doing so the door should not be entirely closed to deserving and progressive individuals among the Natives acquiring land, and has resolved as follows:—

"That certain restrictions upon the purchase of land by Natives are necessary, and recommends:

"(1) That purchase by Natives should in future be limited to certain areas to be defined by legislative enactment.

"(2) That purchase of land which may lead to tribal, communal or collective possession or occupation by Natives, should not be permitted." ²⁴

The Natives' Land Act was obviously a result of these recommendations. This, however, was a Union Act. As far as the Transvaal was concerned, the land recommendations of the Commission produced no result; partly because the question was immediately overshadowed by the more spectacular Chinese Labour and Responsible Government questions, partly doubtless because the new Responsible Ministry of the Transvaal wished to avoid for a time any legislation which might, by arousing the wrath of the ruling Liberal Party in Great Britain, bring into play the formal veto of the Crown.

On the subject of Labour, the Report of the Commission is inadequate and disappointing. The members, from the pages of the Report, would appear to have been

²³ The dissentients were Col. Stanford (Cape), Mr. Samuelson (Natal) and Mr. Marshall Campbell (Natal).

²⁴ The Commission further recommended (para. 197) that whatever principles governed, the settlement of the question of the purchase of land by Natives should apply equally to the leasing of land by Natives. The same three gentlemen dissented (viz. Col. Stanford, Mr. Samuelson and Mr. Marshall Campbell).

unaware of the existence of a Poor White problem and its economic bearing on the question of Native Labour. Further, there is a significant *petitio principii* on the subject of the proper sphere of Native Labour, the main recommendation of the Report having regard chiefly to mining and large industrial concerns without the consideration of the question whether the employment of Natives in these spheres is really for their good or that of South Africa as a whole. We must, however, remember that tens of thousands of lives had just been lost on questions mainly concerned with Mines, and naturally they loomed large in the public eye at the time.

The concrete recommendations of the Commission with regard to Labour are contained in Paragraph 383 of the Report (The sub-paragraphs have been numbered here, for convenience of reference). It may be said that the only one which had any effect in the Transvaal was the fifth; but since Union, the seventh recommendation has been partially met by Act 15 of 1911 (Native Labour Regulation Act) and the Regulations thereunder, while the third finds a place in the recent legislation relative to Urban Areas.

Paragraph 383 reads as follows:—

• “The following are the recommendations made with a view to stimulate industry among the Natives.

“(1) The checking of the practice of squatting by refusal to license all but necessary or desirable private locations, and the imposition of a tax on such locations as may be authorised, based on the number of ablebodied Natives domiciled thereon.

“(2) The imposition of a rent on Natives living on Crown Lands, as distinct from recognised reserves or locations, such rent to be based upon the value of such land and to be regularly and punctually collected.

“(3) The enforcement of laws against vagrancy in municipal areas and Native labour locations, whereby idle persons should be expelled.

“(4) The encouragement of a higher standard among Natives by support given to education with a view to increase their efficiency and wants.

"(5) The encouragement of industrial and manual training in schools.

"(6) The protection of the Native worker in his health, his comfort, his safety, and his interests, by provision for his accommodation and transport when travelling by rail or road to and from his work.

"(7) The enactment of regulations which will so far as possible secure that while at the larger labour centres his food, his housing, his sanitation, and his medical treatment, should be satisfactory. In this respect the Commission recognises that very much has already been done at Cape Town, Kimberley, Johannesburg and other centres.

"(8) The abolition of all taxes or charges upon passes when travelling."

The recommendations of the Commission with reference to the franchise are dealt with more fully in later Chapters. Briefly they involved the creation of an indeterminate number (one or more) of special Native Constituencies in each Colony, returning members to one or both Houses of Parliament. Natives were to be restrained from voting at the ordinary elections. The qualification of the Native representatives (i.e. whether they should be Natives or Europeans) was left to be determined by each separate Colony.

This proposal was still-born. In the National Convention it failed to act as an eirenicon among warring parties, and the only recourse was to preserve the *status quo* (see Sections 35 and 152, S. A. Act). Nothing is more convincing of the unrepresentative character of the 1903-5 Commission than this fact—that the representative National Convention only five years later failed to approve its most important political recommendation. In the Transvaal, under the terms of the Vereeniging Treaty, nothing could be done until the introduction of Responsible Government. It was understood that the authorities under the new régime would take action on the lines indicated. The first Responsible Ministry, however, was not enthusiastic for the Commission's scheme, and it had

hardly got into office before the Closer Union question absorbed all others.

It will thus be clear that the Report of the 1903—5 Commission produced but few results in South African Native Policy. Why was this?

Really because—to go to the heart of things—it produced no true South African Policy. It became very evident, as the Commission deliberated in Committee on the Report, that the Natal delegates were unwilling to sacrifice the essentials of their system, which indeed received insufficient attention and respect from their colleagues. Time after time they were left in a minority of two in the voting. On many points, their dissent is recorded in the body of the Report.

This unfortunate fact left the Republics vis-a-vis the Cape with its policy of identity, expressed in the franchise. The contrast was too striking to make a compromise practicable. As we have seen, a paper compromise was arrived at; but it went too far in the direction of differentiation to satisfy public opinion in the Cape, and too far in the direction of identification to satisfy public opinion in the Transvaal.

It became clear at an early date that the Cape Government did not propose to abolish its existing franchise scheme, nor to restrict the rights of Natives in respect of the purchase of land. What motive was there for the Transvaal Government, representing from 1907 mainly the older population smarting under the sense of injuries received and not ready to undertake experiments against traditional policy, to create a special Native franchise, or participate in any of the other charges recommended by the Commission? The Cape had not budged. Could the Transvaal be expected to move?

The Commission, then, failed because it did not evolve a real, practicable South African policy. It failed also because it was not fully representative of South African public opinion, because it did not go to the heart of things from the economic side, because it ignored in its Report the existence of a "Poor White" question,

and lastly because none of its members (from the Colonies which ultimately made up the Union, at any rate) had had practical experience of more than one system. Had a wide interchange of Officers been undertaken in 1903, instead of the appointment of a Commission, more good would have resulted than was actually the case.

It would be ungenerous to deny the real usefulness of the Commission. Its evidence is of great interest (though marred by the admission of many incompetent and unqualified witnesses). The Annexures to its Report are of very much greater value than the Report itself, and furnish the student with a mine of information. Yet the whole work of the Commission falls just short of greatness.

On the Transvaal it left no impression whatever—a crucial test, since it was the Transvaal only whose policy was plastic enough to be moulded. Up to the date of Union, Transvaal Native Policy remained a curious combination of the old ideas of the Republics, some valuable conceptions borrowed from Natal, but insufficiently worked out, and a little not very skilful tinkering with the problem by the Milner Administration. The Transvaal has yet to mould its Native policy, and herein it is South Africa in miniature. It cannot be expected that the Cape or Natal systems will, entirely as they stand, find general acceptance. The policy which replaces them for the Union as a whole will incidentally be the undiscovered policy of the Transvaal.

CHAPTER VI.

UNION NATIVE POLICY.

In dealing with the subject of the Native Policy of the Union, it is essential to remember that our method of treatment will necessarily differ from that hitherto adopted. The history of the Union is so generally familiar that it might perhaps be felt unnecessary to deal with it; for the historian can, in face of the fact that access to Archives is here impossible, know little more than the average well-informed newspaper-reader. Nevertheless the bringing out of the significance of known facts is not beneath the dignity of history; and it is from this standpoint that we must endeavour to make a brief appraisal of the Native Administration of the Union.

As far as Native Policy was concerned, the general effect of the South Africa Act was to maintain the *status quo*—the classic instance being of course Section 35 which maintains the Cape Native Vote and places certain restrictions on the power of Parliament to remove it, while not extending it to the other Provinces. There were, however, certain new departures. Sections 26 and 44 withdrew from Natives the right to be elected as members of the Union Parliament—a right previously in nominal existence in the Cape. While there is a great deal of logical argument for replacing the whole Cape franchise system with some more suitable political organisation for the Natives, there appears to be no good reason at all why, if a Native may still be a voter, he may not be a Parliamentary candidate. Clearly then the new restriction was the product of a compromise in the National Convention rather than part of an harmonious system.

As a return for the slight loss of political power, the Act provided in Section 24 that four of the eight nominated Senators should be selected "on the ground mainly of their thorough acquaintance, by reason of their official experience or otherwise, with the reasonable wants

and wishes of the coloured races in South Africa." In practice, as will be shown more fully in later Chapters, this safeguard has proved inadequate and unsatisfactory, and is altogether one of the most disappointing experiments of the South Africa Act.

Section 147 of the Act transfers to the Governor-General-in-Council "all special powers in regard to native administration hitherto vested in the Governors of any of the Colonies or exercised by them as supreme chiefs." The point in this resolution is that all powers exercised by the Governor are transferred not to the Governor-General, but to the Governor-General-in-Council. This mainly affected Natal, where the Governor held certain powers personally as the representative of the British Government, and not merely as a member of the Executive Council of the Colony. The change was a trivial one, but it marks conveniently the assumption by the Union of full responsibility for its Native population.

Section 151 reminds us, however, that the Union is not yet the only power in South Africa moulding Native Policy. The South Africa Act did not entrust the Union, with Basutoland, Bechuanaland and Swaziland, but merely made provision for the transference of their government to the Union (on conditions laid down in the Schedule to the Act) at some future, unspecified date. Such were the conditions under which the Union began its existence as a ruler of the Native population. How has it discharged its responsibilities? In the first place, it has failed even to enact the consolidating legislation, which seems the least it should have done. While one realises that there is no advantage in a dull uniformity *per se*, and would deprecate the alteration of laws which work well and occasion no complaint merely for the sake of a doctrinaire unity, one would feel that there was much scope in the Union for consolidating legislation. The output of this has, however, been disappointingly small. This may be explained to some extent by the War Period (1914—9) and the disturbed political situation thereafter. But time was found during the worst days of 1916 to pass the

Patents, Designs, Trade Marks and Copyright Act, the Insolvency Act and even the Payment of Members of Parliament Act; while, as to the disturbed political situation, the one great constructive Union Measure—the Native Affairs Act of 1920—was carried through when the Party in power held less than one-third of the total number of seats in the House of Assembly. It is necessary, therefore, to look further afield for an explanation of our legislative inertness. To a very large extent it is due to the defects of our national character. For us it is but too true that “môre is ook ’n dag.” The unsavoury manoeuvres of political parties furnish a second explanation. Most Governments in most countries will sacrifice principles rather than votes. But there is a more particular reason, and it is the fact that the permanent administration of the Native Affairs Department has, ever since Union, been composed mainly of Cape officials. Unwilling to support any measure which meant a departure from the Cape system, and knowing that the assimilation of the other Provinces to the Cape was a political impossibility, they have been content to preserve the rights of the Cape Native and let matters drift, apparently hoping, Micawber-wise, that something would turn up which would convert the majority of electorate and legislature to the Cape views. A Party Government in South Africa or elsewhere is not likely to initiate prosaic consolidating legislation except when pushed on from behind by the permanent Department concerned, furnished with draft Bills.

Inaction itself would have been preferable to the spasm of activity which in 1913 produced the Natives' Land Act. This celebrated Act¹ has perhaps been unduly attacked. Some of its supporters honestly intended to benefit the Natives by the Act. It was introduced by Mr. J. W. Sauer, a life-long friend of the Natives. Save for a few provisions, it cannot justly be called—as it has been called—criminal and iniquitous. Administered as moderately and sympathetically as it has been, it has in

¹ For a full discussion of which see Chapter XV.

point of fact produced more suffering in theory than in practice. But though it was not an iniquitous Act, it was a slipshod, hurried, ill-considered and most impolitic one—impolitic because it revived, before the world at large, and unfortunately with just a spark of justification, the old legend that South Africans were a race of brutal oppressors, treating the Native population with wanton cruelty and injustice. It will be remembered that the Act prohibited, subject to the Governor-General's right of dispensation in the Cape, the Transvaal and Natal, land transactions (purchase or lease) between Natives and non-Natives in all parts of the Union (except certain scheduled Areas, covering all recognised Locations which were in any case secured to Natives alone) pending the Report of a Land Commission. Clearly, what ought to have been done was to appoint the Commission first, and on its Report draw up the Act if the Report showed that such an Act were workable. As it is, Commission after Commission has reported; and the land question is no nearer finality. The Land Act which purports to be a temporary measure bids fair to become a permanent one; and, in theory at any rate, the distribution of land it makes is, *if it is to be regarded as permanent*, iniquitous. In practice, the position has been greatly eased by a judicial decision, which has interpreted a technical saving Clause in the Act in such a way as to render the restrictive clauses inoperative in the Cape Province, and by the very wide use of the Governor-General's (in practice the Secretary for Native Affairs') power of dispensation. None the less, the Land Act calls for drastic modification if not for repeal. If the new Land proposals of General Hertzog are not accepted by Parliament, then the Land Act must be repealed, as a matter of bare honesty and justice until white South Africa has made up its mind as to what additional land it is prepared to give. The dark and guilty history of its conception will not be known for many years—until the private papers of 1912—3 are available to historians—if then; but the temptation to speculate on such a subject is irresistible, and indeed there seems

little doubt that, while agrarian legislation of some such kind was necessary and had even been recommended by the 1903—5 Commission, the haste with which the Act of 1913 was carried through, and the nature of its detailed provisions, can only be explained as the result of a nefarious sacrificing of Native interests to European political exigencies by those on whom the responsibilities of Native Administration had been placed. The fact that the Act was in form temporary furnished an excellent reply to critics, who were advised to await the Report of the Commission to be set up under the Act. Now that it has become apparent that nothing will come of these various Commission Reports, it is rather late to begin working up an agitation against an Act of 1913.

The Land Act definitely embodied one principle—that of territorial segregation, on the basis not of residence but of ownership. After some four years' delay, the Government proceeded to introduce further legislation in pursuance of this policy and thus the Native Affairs Administration Bill of 1917 saw the light of day.

The Native Affairs Administration Bill set out to introduce a scheme of Native government based entirely on the principle of separate Native Areas which the Government sought to extend beyond the limits of the Natives' Land Act Schedule, and in accordance with the Report presented by the Commission of Inquiry, commonly known as the Beaumont Commission. Provision was made for the setting up of Councils for local government in such areas to some extent for the appointment of special administrative and judicial officers therefor; and lastly for the creation of a Native Affairs Commission, a powerful extra-Parliamentary body to advise the Government on all matters connected with Native areas.

The Bill foundered on the rock of its land distribution provisions. Had they been applied as they stood, a dislocation of the property market would have resulted all over the Union. White South Africa, while rendering lip service to segregation, was not in reality ready for such a sacrifice. Protests were aroused from all directions; and

the Schedule shewing the new Native Areas was referred to a number of Local Committees, whose Reports were issued in 1918.

The Reports of the Local Committees were not such as to reassure the Government in its policy; and this breakdown on the land question obviously involved a breakdown in the administrative policy outlined in the Bill of 1917, too. The Government was clearly perplexed as to what step should be taken next. In the meantime Native discontent with the whole situation was alarming. Even the permanent heads of the Native Affairs Department felt constrained to press on the Government the necessity of some constructive legislation. As a result, such of the provisions of the Native Affairs Administration Bill as were not bound up with the territorial segregation policy were, with some alterations and one important addition re-introduced in 1920, and ultimately became law as the Native Affairs Act, No. 23 of that year.

That this is the real history of the conception of Act 23 of 1920 admits to-day of little doubt. Isolated from its chronological context, the Act appeals to us clearly as a piece of magnificent and statesmanlike legislation. Viewed in relation to preceding events, it becomes a legislative "stop-gap."

In introducing the Bill in the House of Assembly, the Prime Minister stated that segregation was still the law of the land, and that the new Bill was not against it. This is only true in a very modified sense. The Native Affairs Commission constituted under Act 23 of 1920 is to advise on all matters affecting the Native population—as against all matters affecting Native areas. The special administrative arrangements sketched in the Bill of 1917 disappear entirely from the Act of 1920. The Native Councils are indeed still confined to Native Areas; but a new Section (No. 16) provides for the summoning of Native Conferences which have already been evolved into institutions which will represent Natives as a whole rather than the inhabitants of Native Areas. Segregation has really been dropped as a practical

policy; and while there is still much lip-loyalty to it, it has become evident that any segregation which involves a depreciation in European land values stands little chance of support from those who are loudest in their advocacy of the abstract principle of separation.

Has the Act of 1920 worked well? It is, perhaps, too early to reply. The new Councils have not at the time of writing, begun to function even in the Ciskei; though possibly before these words appear in print some sort of a beginning will have been made. Four General Conferences, under Section 16 of the Act, have met and have proved markedly successful. Signal ability has been displayed by the Native leaders summoned to these conferences. They have amply proved that the Natives are fully competent to take a share in the government of the country. The brightest feature of the Act, however, is the Native Affairs Commission. Its scope is restricted, and its independence limited, in comparison with the Commission contemplated by the 1917 Bill, and unfortunately it has not entirely succeeded in capturing Native confidence. But to the impartial observer its work since 1921 has been of immeasurable value.

We must not forget, in our brief consideration of Union Native Policy, the Mandate issued to the Union at the conclusion of the Great War over South-West Africa. It is, to the writer's mind, a matter of regret that the Entente should have deprived Germany of all her Colonies. They ought to have been handed back to her under a stringently supervised Mandate. But Imperialism has its way. The dubious method of acquisition must not prevent us from realising that, unless miracles occur in State morality, the Entente powers will never consent to the retrocession of South-West Africa to Germany, and therefore that the Union is likely to have to administer it for an indefinite period. Has that administration been satisfactory hitherto?

The answer is quite clearly in the negative. The Report of the Committee of Inquiry on the Bondelswarts Rising makes sad reading. In the first ten years after

the military occupation of South-West Africa, little has been done to ameliorate Native conditions. While South-West Africa ought certainly, as Mandated territory, to have an autonomous administration, yet there ought to be a very close *liaison* between the Native Affairs Department of South West Africa and that of the Union, and Native Policy ought to proceed on uniform lines as far as practicable. This has not been done. Looking at what might have been done and at what has been done in South-West Africa, it is impossible to acquit the Administration of the Territory of serious sins of omission.

Up to General Hertzog's historic speech at Smithfield on 13th November, 1925, it is safe to say that there was no such thing as a distinct Union Native Policy—as against the politics of the various Colonies before Union. Those in a position to produce such a policy failed to do so; and there was a most lamentable tendency to drift. The virtues of Union Native Administration have been mostly negative. It has not—except in the case of the Land Act as applied in the O.F.S.—been oppressive or unjust. But, faced with tremendous and pregnant issues, it has displayed an amazing lack of courageous and constructive imagination. For fear of doing wrong, it has done nothing.

One reason for this inaction lies in the difficulty of persuading our really capable and excellent administrators to take a South African view of Native questions, as against a Cape or Natal or Transvaal view. One could go almost further and say the failure to take a world view, realising that on South Africa more than almost any other country in the world rests the responsibility of discovering how European and non-European races can solve the grave problems of race contact. But recurring to the concrete problem of the Union, there is need of a genuine Union Native Policy. The first really constructive attempt to provide such a policy has been made by General Hertzog, the detailed lines of whose solution have been referred to elsewhere in this volume. The attitude of most of those who have opposed him has been to

support the indefinite maintenance of the *status quo*, as regards both the franchise and the land questions.

If the underlying object of this attitude is the extension by Fabian methods of the Cape view of the land and the franchise problems to the whole Union, it may represent statesmanship of a high order. If this is not the underlying object, and the whole policy is merely one of "drift," it is a matter for deep regret that such should be the response to the courageous and sincere attempt of General Hertzog to make South Africa face the issue of framing a Union Native policy. It is a thousand pities that the formulation of that policy should have been preceded by the ineffective and meaningless, but irritating and ill-advised Colour Bar Act—an Act which has alienated the black population, without helping the white. That Act must sooner or later be repealed if a Union Native Policy worthy of the name is ultimately to be evolved.

CHAPTER VII.

ADMINISTRATION.¹

When we come to analyse administration at the present time we are at once brought up against the fact that there is no Union system of Native Administration. There are various systems in the Union—that is a different thing. They are the old pre-Union forms of government: that they have not been brought into some kind of unity is a serious charge against the Government of the Union. The difficulties of administrative co-ordination are not comparable with those of political or economic co-ordination.

Be that as it may, the fact remains that uniformity has not been introduced, and we are, therefore, forced to examine each of the different systems separately.

The Natal system at the present time presents a somewhat pitiable spectacle. It is "the shadow of a great name." If we examine it merely as it stands, we shall probably indulge in unrestrained criticism. If, however, we examine the historical antecedents, we shall realise that its deterioration has been a matter of the last fifty years, and in some respects of the last fifteen years.

The present position, briefly summarised, is as follows. The Governor-General is recognised officially as Supreme Chief of the Native population, having powers as such which are detailed in the Code. The Supreme Chief acts administratively through the Department of Native Affairs, the representative of which in Natal is the Chief Native Commissioner, an officer of the Department.

The most important local officers dealing with natives are, of course, the Magistrates, who have multifarious

¹ Little reference is made in this Chapter to original sources, for which the student is referred to the previous historical chapters (II-VI). The present treatment is merely an analytical one, based on the facts elicited in those chapters.

administrative and judicial points of contact with the Native population. But in all districts—even in the purely Native districts of Northern Zululand—the Magistrates are officers of the Department of Justice, unlike the Transkeian Magistrates who are officers of the Department of Native Affairs. A remedy might well be found in interchangeability as between Departments; this is a power legally in the hands of the Government, but has been used rarely, if ever, in recent years, except in the ill-advised changes of 1923. This, from a Native Affairs point of view, is the most unsatisfactory feature of what is today a most unsatisfactory administrative system.

The only officers under the direct control of the Chief Native Commissioner are a number of Superintendents of Locations, Dipping Supervisors and Forest officials.

The land is owned by the Natal and Zululand Native Trusts² which, however, have no separate administrative machinery.

The Chief Native Commissioner is a member of the Statutory Advisory Board of Native Education, and keeps in touch in this connection with the Provincial Administration.

The Chiefs remain subordinate executive and judicial³ officers of the Department of Native Affairs. Their power of independent action is to-day very small.

At the apex of the judicial organisation, above the Courts of Chiefs and Magistrates, stands the Native High Court. It is to be noted that the Judges are members of the Department of Justice and not of the Department of Native Affairs—a glaring anomaly.

The foundations of Native Affairs Administration in Natal were very ably laid by that extraordinary man, Sir Theophilus Shepstone.⁴ The time of his unrestrained ascendancy (1845—75) was responsible for a series of statesmanlike measures, unparalleled during that period elsewhere in South Africa. The changes made since have

² See Chapter XVI.

³ With limited civil jurisdiction only.

⁴ A certain amount of repetition of Chapter III is inevitable here, to explain the present system of Natal Administration.

destroyed most of the valuable features of his system and failed to bring up-to-date its temporary provisions, leaving the whole system lifeless, stereotyped, clumsy and generally unsatisfactory.

Briefly Shepstone's policy was, in matters of administration, to preserve as far as possible the existing Native system of government and to give it a legal standing in our own system. The kernel of the plan was the proclamation of the Lieutenant-Governor of Natal as Supreme Chief (1849) and the installation of himself as Secretary for Native Affairs, through whom the whole activities of the State as regards natives—legislative, administrative and judicial—should be carried on in the Supreme Chief's name. This was a faithful reproduction of Native Government under Tshaka, Dingaan or Mpande, the white man's Government replacing the Zulu monarch as Paramount Chief and Shepstone (as he put it himself) occupying the position of the Supreme Chief's principal Induna, through whom everything was done. The powers of the Chiefs were not only retained but in some respects strengthened. A close *liaison* was kept up between the Magistratés and the Secretary for Native Affairs. Native Law was fully recognised and administered but not codified, Shepstone himself being against codification.⁵

Why did the system break down? It may be said that its strength—the personality of Shepstone himself—was also its weakness. He could not be replaced when he began, unfortunately for his fame, to busy himself in the affairs of the South African Republic, and again when old age crept upon him.

From 1875 to 1893 he was fighting a losing battle when through his brother and his son, who in turn became Secretaries for Native Affairs, he tried to influence Native Policy. Further, Shepstone had never bothered about carrying European public opinion with him in his policy; and as the numbers and power of the elected members of the Legislative Council increased, he found

⁵ *Vide* his evidence before the Native Laws and Customs Commission (Cape), 1883—5.

himself liable to attack from persons both obstinate and ignorant whom he had never troubled to conciliate.⁶ Perhaps, too, the failure of his Transvaal scheme (1877—81) reacted on his hope and mental vigour, as it did on his health.

The period 1875—93 marks the first stage of decline. In the year 1875, against Shepstone's strong opposition, was established the Native High Court. This involved the separation of the judicial and administrative functions of Native Government—a separation for which Native law offered no parallel. It meant that the Natives saw authority divided, and no single person to whom they might turn, as they had been accustomed to turn. The Chief Magistrate of the Transkeian Territories to-day occupies there the position which Shepstone would have wished the Secretary for Native Affairs to occupy in Natal. At the same time the Code first appeared, though not yet of binding statutory force. The Magistrates were all appointed Administrators of Native Law and special Administrators of Native Law; not being Magistrates, appointed in some Districts—good provisions, which, however, were annulled

⁶ I cannot refrain from quoting the following passage from an old book long out of print: "Stray Memories of Natal and Zululand." A Poem by Charles Barter, B.U.L. (Pietermaritzburg. 1897):—

"I have seen the keen debate
The dullest spirits animate,
While eager eyes would kindle bright
Anticipating fiercer fight.
Then bitter taunts and tart reply
Like darts across the chamber fly;
And wounds on either side are dealt,
Which, though unseen, are keenly felt,
And rankle in the brooding mind
And leave a fest'ring sore behind.
For ten long years this war was wag'd,
Night after night the conflict rag'd!
Anon, like moons, it wax'd or wan'd:
And now a point was lost, now gain'd:
Yet never once in Shepstone's eye
Blaz'd ought of spite or enmity,
And never once in Shepstone's face
Could friend or foe the shadow trace
Of malice, jealousy, or fear;
Or on his lip the curl of sneer;
And ne'er from Shepstone's lips was heard
Disdainful or injurious word."

in 1891. In 1891 the Code was made binding by Statute.

The second stage of decline is the period 1893—1906. During this period the Code, instead of being kept up-to-date was allowed to become fixed and rigid. The powers of the Chiefs visibly declined. The Magistrates, more and more burdened with multifarious duties, became less and less accessible to the people. On the introduction of Responsible Government in 1893, the Secretaryship for Native Affairs became a political Parliamentary office. The Under-Secretary (Mr. S. O. Samuelson) one of the most single-minded and painstaking Native Administrators in South African history was reduced largely to the position of a superior clerk. The Secretaries—mostly unable and unsympathetic—constantly changed policy, carried through vexatious legislation, neglected sound rules of political science, and ultimately precipitated a Rebellion in 1906.

The result of the Rebellion was the appointment of a very famous Commission which sat during the years 1906—7. The Commission set to work to reverse all the past policy of the Colony which it condemned in a sweeping manner.⁷ The chief constructive suggestion made was the division of Natal, (including Zululand) into four Districts, at the head of which should be four Native Commissioners one of whom should be Chief Native Commissioner for the Colony. This recommendation was enacted in the Native Administration Act of 1909. It was clearly inadvisable, in view of the fact that the Magistrates remained, as before, the only District Officers for all judicial and most administrative purposes and were not under the control of the Commissioners. Objections were raised on all sides to the scheme, and Mr. Samuelson resigned in 1909 as a protest against it.

So unworkable did the new system prove that even the lethargic Union Government set to work and carried through an Act⁸ in 1912 repealing large sections of the Native Administration Act after less than three years trial.

⁷ *Vide*, Para. 25 of its Report.

⁸ Act 1 of 1912.

The District Commissioners disappeared, being replaced by seven Superintendents of Locations with very limited powers. The Chief Commissioner was retained, although his office had become almost meaningless and although nothing was done to facilitate co-ordination between him and the Magistrates. Since 1912 the whole unsatisfactory system has, by an unaccountable neglect, been left, so to speak, to "stew in its own juice"—a melancholy fate for what was once the model Native Administration of South Africa.

The basis of the Transkeian system to-day is undoubtedly the Magistrate. The importance of Magistrates from the Native Affairs point of view is recognised by the fact that they are officers of the Department of Native Affairs as are all their staffs⁹—a striking contrast to Natal.

At the head of the system stands the Chief Magistrate, an officer of the Native Affairs Department, possessing wide administrative and judicial powers. In addition to being Chief Magistrate, he is President of the Native Territories Appeal Court and Chairman of the Transkeian Territories General Council. He therefore occupies—as no single officer does to-day in Natal—the position of a Paramount Chief, all executive and nearly all judicial¹⁰ power being concentrated in his hands, and a good deal of legislative or quasi-legislative authority also vesting in him. This concentration of administrative and judicial powers is perhaps the most admirable feature of the Transkeian system.¹¹

In regard to details of practical administration the Chief Magistrate and Magistrates respectively are assisted considerably by the General and District Councils

⁹ The Districts of Elliot and Maclear form an exception to this rule.

¹⁰ There is an appeal in certain cases to the Eastern Districts Local Division of the Supreme Court of South Africa.

¹¹ Of late years, a movement has set in for separating the administrative and judicial functions of the Transkeian Chief Magistrate, on the ground of increasing pressure of work on the occupant of the post. It is suggested that the appointment of a Deputy Chief Magistrate would be the wiser course to follow.

of the Territories,¹² which are wholly native except for the official Chairman.

It is unnecessary to recapitulate the historical antecedents of the present Transkeian system as in the case of Natal; for the Transkeian system is a result of a progressive and logical evolution. While there has been no such outstanding figure as that of Sir Theophilus Shepstone in Natal, the Territories possessed—and still possess—numerous capable, sympathetic and disinterested administrators, so that success was not, and is not, dependent on the life and health of one man. The only really startling change in the Territories since the Cape Colony first became responsible for them is the introduction of the Glen Grey system of land tenure, and with it the Council system, beginning in 1895.

When one comes to compare the Natal and Transkeian methods, the first thing that strikes one's attention is the unfortunate fact that Magistrates are in the Transkeian Territories officials of the Native Affairs Department and in Natal of the Department of Justice; and that, in practice these Magisterial appointments are not interchangeable. This leads to two undesirable results.

Firstly, the Department's staff in Natal being small and relatively unimportant, it is possible that the Natal point of view, and the peculiar Natal difficulties do not receive the amount of attention which they might. For example, the Code stands in need of a searching scrutiny in the light of present-day experience. But the only people who have a practical knowledge of the judicial working of the Code—the Natal Magistrates—are not officers of the Department.

Secondly, the absence of interchange of officers from one system of law and administration to another tends to narrow their views and make each officer terribly sure—often with a limited theoretical acquaintance with other systems—that the system which *he* administers is undoubtedly the best. It is suggested, too, that the present system

¹² A full description of the Council system is given in Chapters XII and XIII.

will, in future, tend to ear-mark the higher posts in Union Native Administration for persons with practical experience only in the Transkeian system.

The difficulty of placing a Magistrate departmentally is acknowledged. Subject to many modifications and exceptions we may say that the Cape (Transkeian and Ciskeian) Method is to make the Magistrate a Native Affairs Officer in Districts where the overwhelming majority of the population is Native, and a Justice Officer in Districts where the majority, or a very strong minority, of the population is European. In a rough kind of way this seems to average out fairly, and it has the support of the Union Native Affairs Commission¹³; but is it the sort of problem to which the conception of numerical average can be rightly applied? Is it not possible that the minority, European or Native, may suffer in each case? And is the scheme one which would admit of the subsequent use of trained Natives in Native Administration? We must realise that public opinion in South Africa will never permit Natives to have jurisdiction over Europeans, though it will probably welcome, in due course, the granting to Natives of jurisdiction over Natives. Obviously the Natal system of making all Magistrates officers of the Department of Justice will not help us. It is evident that we still have to evolve an ideal system, and it is suggested that the Transvaal system, though imperfect in itself, may put us on the right track.

Before, however, proceeding to the discussion of the Transvaal organisation, there are one or two further points calling for discussion, which arise from the comparison of the Transkeian Territories and Natal. The feature of present Natal administration and the success of present Transkeian and past Natal administration demonstrate conclusively the advisability of fusing the administrative and judicial functions of Government as regards Natives—that is to say, reproducing in the chief executive officers of a District or group of tribes the full powers of a Paramount Chief according to Native custom.

¹³ Vide its 1921 Report, page 14.

There is much room for discussion when we compare the Natal (and Pondoland) practice of reserving considerable functions to the Chief with the Transkeian method of making the whole administration hinge on the Magistrate. Perhaps this is an academic question to-day in many Districts of the Transkei, but it is an important practical one in Pondoland and in Natal, where the Native Affairs Commission is considering¹⁴ an extension of the Pondoland Council system—a system which rests absolutely on recognition of the Chief.

Where tribalism is still strong, it would seem unwise to destroy the Chief's powers. Any Council system must, like the customary *amapaqati*,¹⁵ group itself about the Chief. The powers of the Council could then be extended until the Chief's function is purely nominal. Hereditary Chieftainship has in any case many points of danger and inefficiency, but these might be met in two ways, failing which the Magistrate must gradually replace the Chief. First, the principle of educating sons of Chiefs, should be extended. A really first-class institution, or group of institutions, should be brought into being—perhaps a special Faculty of the South African Native College at Fort Hare, might be established with this end in view—and the education should include an elementary legal and administrative training. Secondly, the Chief's successor should be selected by the Governor-General, as Supreme Chief, from the Chief's family, not being necessarily the eldest son of the Great House, and in such selection members of the family who have received the training referred to above, should have preference.

This enlightened policy has been followed in the Netherlands East Indies¹⁶ for years. A Training School for Native Magistrates was opened in 1909, a Training School for Native Doctors in 1913, a Native Agricultural College in 1917. In the Law School, a course of six years training is given, of which the last three

¹⁴ *Vide* its 1921 Report, page 32.

¹⁵ "Counsellors."

¹⁶ *Vide, inter alia*, Official Year Book of the East Indies, 1920, 1921, 1922.

specialise in Law and particularly Native Law. Moral education and the formation of character receive special attention. The successful candidates may rise in time, to the position of President of a Landraad—roughly equivalent to that of a Magistrate in any of our predominantly Native areas.

From the European official's point of view a very interesting thought which the comparison of the Transkei and Natal brings out is the place of personality in Native administration. In one way it can hardly be overestimated; the minute that the personality of Shepstone was removed the Natal system ceased to function successfully. But, from another aspect, there is a danger in relying solely on personality. Many South African writers on Native policy¹⁷ argue as if sympathetic Magistrates were the only requisite for success. It must not be forgotten that the Transkeian system has had an evolutionary, and the Natal system a catastrophic, history, solely because the Transkeian system was good in itself and less dependent on the presence or absence of remarkable personalities. Sympathetic administrators and a good system are both necessary; neither alone will give us success.

The dominating principle of the Transvaal system is the provision of separate local officers for all Native work as far as practicable. Every Magistrate is *ex officio* a Native Commissioner, and, as such, has nominal administrative and judicial control of the Natives in his area. In some cases where the Native population is

¹⁷ e.g., an anonymous writer "Caveat Natalia": "The Native Question: Only a Few Copies, Price 1/- at Josiah Jones, 235, Pine Street, Durban, (1903)." The copy lent me was addressed "Hon. Merriman, Cape Premier, Pretoria," but "Hon. Merriman" had apparently thought it unworthy of retention:—

"To me the Kafirs are big, interesting children; and I would deal justly and sympathetically with them as such: would teach them the Bible, which inculcates not only habits of industry, but the goodness and good fellowship on which hang all the law and the prophets. Especially I would show them a good example, to the extent that it is possible for a whole people to be exemplary — would do my best to protect them from certain rampant influences—and for the most would leave them to the workings of evolution..... What does this amount to? Doing right and leaving results to God's hands; indeed it seems almost to reduce the thing to an *affaire de coeur*." (P. 4).

comparatively sparse, his nominal control becomes actual. All Magistrates in Transvaal are officers of the Department of Justice. In certain districts where there is a substantial native population, officers known as Native Sub-Commissioners¹⁸ are stationed. The Native Sub-Commissioner is theoretically, of course, an assistant to the Magistrate (Native Commissioner) but practically he deals with most of the Native work of his District. His activities are both administrative and judicial, and he deals with Natives only. All Native Sub-Commissioners are officers of the Department of Native Affairs.¹⁹

Owing to the presence of the Head Office of the Department at Pretoria there is no Officer specially for the Transvaal corresponding to the Chief Native Commissioner, Natal, or the Chief Magistrate of the Transkeian Territories.

Though the Transvaal system is fruitful in suggestion, it is open to one or two criticisms. If the principle of one set of officers for Europeans and one for Natives be adopted at all, why not carry it out in its entirety? Could not some of the less densely-populated Native areas be combined, two or more into one Native Sub-Commissionership; and the expense of the additional posts be counterbalanced by the combination in the same way of two or more areas with a sparse European population into a single Magistracy? At the present time there is the distinct defect, as in Natal, that Officers with direct responsibility for Natives are in some cases not Officers of the Native Affairs Department.

Secondly—though this may be chiefly a theoretical objection—why the suggestion of subordination in the case of the Native Affairs Officer? Why not define his jurisdiction and make him independent of the Magistrate?

The Courts of Native Commissioners and Sub-Com-

¹⁸ Frequently, but indefensibly from a linguistic point of view referred to as "Sub-Native Commissioners."

¹⁹ Most of these posts were abolished on the ground of economy in 1923—a measure on which I cannot trust myself to comment.

missioners are the kernel of the judicial system. But Chiefs "appointed by the Government" have petty civil jurisdiction over their own tribes.²⁰

The policy of the Republican Government—doubtless influenced by the work of Mr. Henrique Shepstone as Secretary for Native Affairs during the British Occupation (1877—81) as it bears the strong impress of the original Shepstone system—was to concentrate all functions of Native government nominally in the President as Paramount Chief, actually in the Superintendent of Natives, the permanent head of the Native Affairs Department. An appeal lay to the Superintendent of Natives from all Commissioners', Sub-Commissioners' and Chiefs' decisions. The President had a general power to review decisions and might also fine a tribe. (Law 4 of 1885, sections 4, 7 and 10). These powers descended to the Governor and Commissioner of Native Affairs respectively after the annexation of 1900. By Act 29 of 1907, however, they were abolished, and appeal now lies to the Supreme Court of the Province.

No Courts—not even the specially Native Courts of the Native Sub-Commissioners—recognise *lobola*. A large part of the litigation common in the Transkei and Natal is, therefore, unknown in Transvaal.

The history of the evolution of Transvaal Native Administration is full of interest. In the early days of struggle, there was no special Native Affairs Department. The concern of the Republic with Native tribes was chiefly its defence against them: naturally enough, one has to look for archives dealing with Native policy among the papers of the Commandant-General. Locally, so far as jurisdiction was extended to Natives, the Landdrost (Magistrate) was the responsible officer.

The years 1877-81 are of great importance in the history of Native Administration in Transvaal. The British Government, on the annexation, created a De-

²⁰ Law 4 of 1885 (S. A. Republic) Sec. 4. Appointments, as contemplated by the Law, were only made for the first time some years after Chiefs had exercised temporary jurisdiction in the interval under Section 1 of the Law.

partment of Native Affairs and staffed it entirely with Natal Officers, Mr. Henrique Shepstone, C.M.G., being the first Secretary. This Department did much useful spade-work and drew up draft legislation, some of which, improved upon or otherwise altered, was enacted by the restored South African Republic (1884—1900).

On the retrocession (1881) the principle of a separate Department was retained, and shortly afterwards a Superintendent of Native Affairs (later termed Superintendent of Natives) was appointed as its head. By Law 4 of 1885, a definite system was introduced. Some of its most useful features have disappeared, but the idea of separate Officers for Natives can be traced to it. Under its provisions, Commissioners were to be appointed over Natives in Districts where the Volksraad considered such a step necessary, the Landdrost serving in other Districts. Ordinance 3 of 1902 modified this provision, not altogether happily, into the present administrative system. A reorganisation of the Native Affairs Department in 1923 involved the abolition of several Sub-Native-Commissioner-ships, and materially impaired the efficiency of the Transvaal system.

In the Cape Province proper (i.e. excluding the Transkeian Territories) the Magistrate is the officer nominally in charge of Native Administration and jurisdiction in each District. In every District except Herschel and Glen Grey the Magistrate is an official of the Department of Justice; in Herschel and Glen Grey he is an official of the Department of Native Affairs. In certain mixed, but preponderatingly Native Districts (e.g. King William's Town) the Magistrate is assisted by subordinate officers termed Superintendents of Natives. These are officers of the Native Affairs Department, but are attached to the staff of the Magistrate, through whom they correspond with their Department. They are somewhat analogous to the Sub-Native Commissioners of the Transvaal.

Prior to Union co-ordination was attained through the Secretary for Native Affairs, Cape Town. With the

removal of Headquarters to Pretoria (1910) this element of control became less particular and more remote.

The necessity for having a Native Affairs controlling Officer in charge of the more populous Native areas of the eastern part of the Cape Province led in 1921 to the appointment on the recommendation of the Native Affairs Commission²¹ of a Chief Native Commissioner for the Ciskeian Territories, subsequently termed Chief Native Commissioner, Cape—an officer of the Native Affairs Department, whose position, on first appointment, was analogous to that of the Chief Native Commissioner, Natal. His jurisdiction which is administrative only, not judicial, extends to the Magisterial Districts of Cathcart, East London; Fort Beaufort, Glen Grey, Herschel, Indwe, King William's Town, Komgha, Peddié, Queenstown, Stutterheim and Victoria East. On first appointment he was entrusted with the following duties:—

1. Making an assessment of the position and reporting as to how the essential requirements of Native Administration in the area can best be met.
2. Assisting in the establishment and control of Councils under Act 23 of 1920.²²
3. Arranging for the proper management and control of locations and Crown lands occupied by Natives.
4. Co-ordinating and defining duties to be performed by Native Affairs officials within the area.
5. Examining the question of the collection of Native revenue.
6. Generally guiding and directing Magistrates in the administration of Native Affairs.

Obviously the Native Commissionership of the Ciskei has not yet assumed its final form. From the fact that the Native Affairs Commission has been definitely endeavouring to introduce the Council system in parts of the Ciskei, it would seem probable that, as far as Natives are

²¹ *Vide* their 1921 Report, pp. 14—15

²² *Vide* Chapter XIII.

concerned, the whole Transkeian administrative system will be introduced into the Ciskei; and possibly later the Ciskeian Native Commissionership may become a Chief Magistracy. This is a most pregnant possibility. For, while Europeans in the Transkei are in a negligible minority, Europeans in the Ciskei are a large and vigorous part of the population; and they will obviously not fall into the Native government scheme. In other words, the Ciskei would probably reveal to us a political and administrative differentiation personal instead of territorial and arising practically as a result of natural evolution. If this can be done in the Ciskei, why not in South Africa as a whole ²³?

This would leave the Natives outside the "Ciskei" in the same position as before—on the principle apparently that, just as when Natives are considerably in excess of Europeans, the European minority must be under a Native Affairs Officer, so themselves the Natives must be under a Justice Department Officer. The control of the Native Affairs Department over such Natives would be of the slightest.

Judicially, there are no separate Courts for Natives throughout the Cape Province, though of course the Transkeian Courts are predominantly Native. Still there is no Court in the Cape Province which does not deal with both Europeans and Natives if and when required.

The Orange Free State has no system. The Magistrates are all officers of the Department of Justice. There is no general representative of the Department of Native Affairs for the Province. The only officers of the Department are those stationed at mining centres, at Thaba 'Nchu (Supervisors) and at Witziesshoek (Commandant). The Commandant of Witziesshoek is vested with judicial powers in respect of the Witziesshoek Reserve. He is Chairman of the Reserve Board and responsible, under the Magistrate, for the administration of the Reserve.

In criticising the lack of administrative machinery in the Orange Free State, we must remember that it really

²³ For the further working out of this argument, see Chapter XIV.

has only the overflow population of the surrounding Native areas to deal with,²⁴ and that the proportion of Natives to total population is less in the Free State than in any other Province of the Union.

Since the date of Union the one weak attempt at bringing these various forms of administration into harmony has been the Native Affairs Administration Bill of 1917, which was never carried through Parliament. In spite of its title, the Native Affairs Administration Bill had little really to say on the topic of Administration. It made an attempt finally to solve the land question; it laid down, as the precursor of the Native Affairs Act of 1920, the principles of an advisory Native Affairs Commission and of Native Councils: it made an effort to convert the principle of legislation by proclamation²⁵ into a general Union rule; but in pure administration its work was small.

It must be noticed, to begin with, that all the institutional arrangements of the Bill hang on the principle of territorial segregation—a principle definitely ignored by the Native Affairs Act of 1920. The contrast between the two measures is best seen by examining the functions allotted by each of the Native Affairs Commission:—

“It shall be the duty of the Commission to advise the Minister upon all matters relating to *legislation for Native Areas* and to the general administration, other than native, thereof.” (Native Affairs Administration Bill, Section 5²⁶).

“The functions and duties of the Commission shall include the consideration of any matter relating to the general conduct of administration of native affairs or to *legislation as far as it may affect the Native population* (other than matters of departmental administration) and the submission to the Minister of Native Affairs of its recommendation on any such matter. The Commission shall also consider, and

²⁴ See Evidence of Sir John Fraser before S. A. Native Commission 1903—5, Vol. IV, p. 288, Q. 37909.

²⁵ See Chapters XII and XIII.

²⁶ There is a permissive clause (No. 24) in the Bill which contemplates possible future consultation of the Commission on Native Affairs outside Native areas.

make recommendations with regard to any matter of administrative routine submitted to it by discretion of the Minister."

In these circumstances it is not surprising that the concrete proposals of the Bill ²⁷ relative to the administration of justice among Natives should be confined to Native Areas. These proposals are worded in a studiously vague manner, in order to admit of flexibility in operation, but what they aim at is to set up a complete system of Courts for Native Areas, consisting of inferior Courts of Commissioners and Sub-Commissioners and superior Courts designated by the somewhat meaningless names of "Special Courts." These Special Courts would replace *inter alia* the Native Territories Appeal Court (Transkei) and the Native High Court (Natal). It is impossible to deduce from the actual wording of the Bill whether the personnel of the inferior Courts is to differ from those of the inferior Courts having jurisdiction over Europeans residing in the area. Information is thus lacking on one of the most important points of the administrative problem.

The Bill would, if passed, have destroyed the most valuable features of the Transkeian system—the concentration of judicial and administrative functions in one man, viz., the Chief Magistrate. For the Transkei the passing of the Bill would have been as erroneous as the creation of the Native High Court in 1875 was to the Natal Administrative system.

The Bill also proposed to take away entirely all sole jurisdiction of Chiefs, and to reduce their concurrent jurisdiction.

Our historical exegesis has brought us up to the present day; and it is natural that we should now ask ourselves whether it is possible, in the light of past experience to lay down any general principles guiding future policy. It is suggested that there are three such principles which are worthy of consideration.

The first of these is the principle that, in dealing with Natives, as little separation as possible should be made

²⁷ Section 11.

between the administrative and judicial functions of Government. In the light of Natal and Transkeian experience, this principle is not only justifiable, but thrusts itself upon us.

The second is the principle that, as far as possible, Natives should be dealt with only by officers of the Native Affairs Department. What is advocated here is a fairer, and more thorough and general application of the principle underlying the Transvaal system, viz., separate Magistrates for Europeans and Natives. There would be two sets of Magisterial Divisions throughout the Union, not necessarily agreeing in boundaries, one set for Europeans and one for Natives. The only difficulty as to jurisdiction would be in civil cases where one party is a Native and one a European: with regard to these it is suggested that the status of the defendant should decide which Magistrate has jurisdiction. Appeal beyond the (Native Affairs) Chief Magistrates' Courts should not be permitted except to the Appellate Division of the Supreme Court, with its own consent; and in case of such appeal all Chief Magistrates, except the one from whom appeal is made, should attend as Assessor Members of the Appellate Division.

The third principle recommended is the utilisation to a greater extent of Natives in Native Administration. Very little need be added to what has already been said on the subject. But it may be useful to remind ourselves that to provide a legitimate outlet for Natives' ability and ambition, is wiser than to let it flow into the dubious channel of the political agitator. Further even a Native Affairs Department may permit itself to have ideals. And one of its ideals should surely be that great principle of sound Liberalism—that in dealing with a subject people, the ultimate aim should be to give them not merely good government, but, as soon as they manifest any fitness for it, by gradual processes, self-government.

It may with advantage be added that, if we propose to give Natives, in the future, a chance of holding Magisterial office among their own people, it is imperatively

necessary to base our system of administrative division on personal rather than on territorial lines. It is difficult to imagine a day when European public opinion will tolerate Native Magistrates exercising jurisdiction over Europeans except in the limited sphere of a European prosecuting a civil suit against a Native.

In 1670, His graceless Majesty King Charles II. who, be it remembered, "never said a foolish thing," in his instructions to the Council of Foreign Plantations, laid down two rules for the guidance of administrators who might come into contact with the American Indians: (1) "That the governors do by all ways seek firmly to oblige them"; (2) "That they do employ some person to learn the language of them."

This excellent advice may well serve as a text on which to build a discourse of wise administration. Tactlessness, practical gross discourtesy, ignorance and lack of sympathy have always been more damaging to the peace of South Africa than even bad systems or lack of systems. Bad legislation can to some extent be remedied by good administration: for bad administration there is no remedy. The permanent staff of the Public Service are more important factors in the solution of the Native problem than even Parliament. The majority of district Native Affairs officers have lived up nobly to the tremendous trust imposed on them: with all their faults and foibles, the Transkeian Magistrates, for example, have ever been good friends and faithful guardians of their people. It has not been so with all Magistrates, particularly with those who are not officers of the Native Affairs Department, while large numbers of subordinate public servants—junior clerks, postal and railway officials²⁸ and police—are busy aggravating the race problem every day of their lives. It needs no long argument to point out the contemptible nature of those little-minded folk who are not ashamed to insult those unable to retaliate. They are sowing bitter seed which God grant their posterity need not reap. There is little of the true South African about

²⁸ See D. D. Tengo Jabavu: "The Black Problem," pp. 8—10.

them. Our best men, from either racial stock, have been kindly and courteous to their Native people even if their views on the Native problem have been what we to-day should term illiberal. The administration of the Pass Laws by the police is frequently, from common knowledge, disgraceful. We take discourtesy for granted in dealing with Natives. Ought we to do so? In country districts the police—yes, and unfortunately it sometimes goes higher—have often committed high treason against their colour and white prestige by having immoral relations with Native women. It is not only a question of morality. Supposing we concede the Epicurean rule of life, yet what is the paltry animal pleasure of a few individuals against the whole future of white and black in South Africa? It is necessary to speak strongly²⁹ for public opinion often condones the offence. It should be punishable by imprisonment and lashes. These things can, of course, never be proved: but every one knows that they happen.³⁰

The public servant who has duties in connection with Natives must remember that, for the moment, he is not mere P. Q. Smith or X. Y. van der Merwe, but white South Africa. The whole prestige of the white races—much blown upon since those far-off days when the Zulu termed them "abunlungu" ("The good folk") is in their hands. The strength of the chain is the strength of the weakest link.

Often, of course, gross discourtesy is the result of ignorance rather than perversity. The lower down in the scale of life the white man is, the more desperately he clings to the only thing he can really boast about—his colour—which, after all, is to his parents' credit, not his. Therefore the more he tends in his dealings with Natives to accentuate the huge gulf which he likes to think exists between him and them, Better education of our poorer white folk is the only remedy for this. Our schools ought

²⁹ What is said here is expressed moderately and restrainedly compared with the Report of the Natal Native Affairs Commission, 1907—6, para. 69—70.

³⁰ A good example is found in Colonial Office Blue Book, C. 5070/1887; Correspondence re affairs in Bechuanaland, 1887.

to inculcate the duty of courtesy and restraint in race relations. What Sunday School ever devotes a lesson to such a point?

But it is not only general ignorance which is a difficulty. It is particular ignorance of the Native people, their antecedents, and their present beliefs, customs and traditions, which is responsible for some of the most glaring pieces of maladministration. In the words of Mr. S. O. Samuelson³¹ :—

“We cannot form an opinion on any subject without having previously acquainted ourselves with it. It would be unwise and highly inadvisable to venture to make any amendments in a system of government or belief, to vary or alter any oldstanding laws and customs, to improve the condition of any race or people, until we have some information on the subject and until we are able, by our acquired knowledge, to satisfy those interested of the desirability and wisdom of a change. To lead any people to a higher grade of understanding and civilisation we must, as much as possible, *commence at the points of agreement in their systems and ours* and lead onwards to the truth.”

As an example of the errors which arise from a non-recognition of Native custom and from thoroughly tactless administration, we may perhaps venture to refer to Senator P. J. Wannenburg's able and interesting book “'t Zwarte Gevaar”³² :—

“Bij 'n zekere boer in 't distrikt Wakkerstroom was 'n zekere kaffer woonachtig. Hij was er groot en oud geworden; hij was 'n allerbeste oude kaffer; hij had 'n jong meidje dat in dienst was van z'n baas. Op zekere morgen liet z'n baas hem roepen en zei aan hem dat 't meidje, tezamen met 'n paar anderen, die nacht was weggelopen. Hij moest haar gaan zoeken en terugbrengen. Na 'n hele maand naar

³¹ Paper on “Native Customs and Superstitions” read before the Young Men's Christian Association, Pietermaritzburg, 12th July, 1895 (Samuelson papers). The italics are mine.

³² Published by “De Volkstem” (Pretoria) 1920.

haar gezocht te hebben kwam hij terug en zei aan z'n baas, dat hij z'n kind te Dannhauser, in Natal, gevonden had; dat hij haar terug wou brengen, maar dat zij beslist weigerde zulks te doen; en toen hij haar daartoe trachtte te verplichten, ging zij op de grond liggen en weigerde 'n voet te verzetten. Hij had toen 'n lat genomen en haar 'n pak slagen toegedeeld. Op haar geschreeuw kwam 'n politiemans opdagen en vroeg waarom hij 't meisje aanraakte. 'Wel baas,' zei hij, 'sy is my kind en sy is van my baas weggegaan en ek het haar kom haal; en nou wil sy nie loop nie en daarom slaan ek haar. Waarom wil sy dan nie hoor nie?' Hij word dan en daar gearresteerd en in de gevangenis geplaatst en de volgende morgen met £1 beboet omdat hij z'n kind geslagen had; zo moest hij onverrichterzake terugkeren en z'n kind daar laten. 'Baas,' zei hij, 'watter soorte wette het jul witmense dan wat ons kinders van ons vat en ons daar boonop straf? As ons ouers niks meer te sê het oor ons kinders nie, waar moet dit dan heen?'

"A certain native was residing on the land of a farmer in the Wakkerstroom District. He had grown old and grey there; he was a very fine type of old Native; he had a young daughter who was in his master's service. One morning his master called him and told him that his daughter, together with a few other girls, had run away in the night. He had to go and look for her and bring her back. After a whole month spent in his search he came back and told his master that he had found his child at Dannhauser in Natal; that he wanted to bring her back, but she obstinately refused to come; and when he tried to force her to do so, she went and lay on the ground and refused to budge. Thereupon he took a stick and gave her a thrashing. At her screams a policeman turned up and asked why he was touching the girl. 'Well, baas,' said he, 'she is my child and she has run away from my baas, and I have

come to fetch her; and now she won't come and so I beat her. Why won't she listen to me?' Then and there he was arrested, thrown into gaol, and the next morning fined £1 because he had beaten his child; so he had to go back satisfied and leave his child there. 'Baas,' he said, 'what sort of laws have you white men that take our children from us and punish us into the bargain? If we parents have nothing more to say about our own children where is it going to lead to?'

(Needless to say, parental power over minor sons and over daughters is one of the most marked features in Native Law. The flight of girls from farm or location homes into towns and villages is one of the gravest dangers to Native morality at the present time.)

It has already been suggested that, as far as possible, Native Administrators should all be officers of the Native Affairs Department. The Magistrate, in the instance referred to by Senator Wannenburg, was an officer of the Department of Justice and hence, apparently, unversed in Native custom, for although many Justice Department officers are experts in Native Law, there is no guarantee of this in any particular case.

But even officers of the Native Affairs Department would benefit very much from more systematic training. Native Affairs Magistrates usually do acquire in practice nearly everything that they could be taught; but they themselves would be the first to admit how much they would have been helped by systematic instruction earlier in their careers. The work of the Universities of Cape Town and the Witwatersrand and of the Transvaal University College, Pretoria, in Bantu languages and Sociology and in Native Law and Administration is of great importance in this connection; and the more steps taken to co-ordinate the Native research of these institutions, to make it available to officers of the Department and to reward the efforts of those qualifying themselves by giving priority to them in promotion, the better.

But would not this involve expenditure? Of course it would; yet to attract and retain the best men possible for the Native Affairs Department is a wise economy, even at the cost of a large outlay. We need to remind ourselves of the wise remarks of the Natal Native Affairs Commission of 1852-3³³ :—

“Looking at the importance of the Kaffir Department, and bearing in mind that if it goes wrong all goes wrong, the Commissioners are of opinion, that that is the Department of the public service which should take the precedence of all others, and must be rendered efficient at any cost; that every other branch of the Service must be curtailed to the utmost, rather than that the Kaffir Department should want in efficiency from the lack of pecuniary support.”

After all, it is the truest worldly wisdom, where everything hinges on administration, to make the position of administrator sufficiently free from financial care to be a real profession; and also to make it sufficiently financially attractive to stand against the competitive attractions of the outside world.

That executive officers of the Department should have sufficient linguistic knowledge to communicate freely with their people, seems a truism. Yet too often, even to-day, the Interpreter comes between ruler and ruled, and, in Zulu expression “eats up the people’s words.” The soul of a people is difficult to understand unless the language is also understood. Anything that tends to make the Magistrate an official towards his people, rather than a friend and father, is to be deplored.

CHAPTER VIII.

NATIVE LAW: ITS NATURE AND GENERAL CONTENT.

Native Law is the indigenous system of customary jurisprudence existing among the various Bantu tribes of South Africa.

It must be carefully differentiated from Laws affecting Natives, such as Pass Laws or Laws relating to Christian marriage among Natives. The test is that Native Law, properly so termed, was in existence among the Bantu prior to any European influence or control.

Native Law is customary law, exactly like Roman-Dutch Law or English Common Law, and obviously it is unwritten. Can we distinguish it from mere custom? It is a profitless question, perhaps, for the frontier-line between the two cannot be definitely ascertained and beacons off; and we might very well adopt the usual and question-begging phrase "Native Law and Custom." But there is a danger, if we do this, of creating the false impression that Native Law is not Law in the sense that the unwritten common law of any country is law. Native Law is every whit as valuable, as fixed, and as rational a system (so far as the law of persons is concerned) as Roman-Dutch Law. In primitive times—and that means less than a century ago, for our purposes—Native Law was duly administered by Courts of Chiefs and Counsellors, who possessed power to put their decisions into practice, all over South Africa. It exists *proprio vigore*: our legislation has not created, but merely recognised, it. Our Courts ought, on all principles of sound jurisprudence, to have recognised it without recourse to authorising legislation. But alas! the hand of Bentham and Austin was heavy in all parts of the British Empire during that part of the Nineteenth Century in which the problem of the recognition of Native Law first presented itself for solution. A more insular, a less philoso-

phical and a less historical theory of law it would be impossible to produce.

If, then, we do not draw a hard and fast line between Native Law and Native Custom, this must not be understood as impugning the validity and authority of the Bantu legal system. But many authorities have in the past satisfied themselves that such a distinction could be drawn; and, while the writer is not prepared to dogmatise on the subject, he personally would approve of such a differentiation. In a native marriage, for example, all kinds of ceremonies were customarily observed. Certain visits were made between the kraals concerned. Certain dances and feasting took place. It was most unusual to omit any of these ceremonies; but had they been omitted, there is no doubt that the Chief would, in adjudicating upon succession, nevertheless hold such marriage valid, provided only that the *ukulobola* cattle had been passed. The *ukulobola* cattle affected status; the dances did not. In other words *ukulobola* was Native Law: the dances were merely Native Custom. Consciously or unconsciously this differentiation has been made by all the Courts in South Africa which recognise Native Law at all.

But is it not misleading to speak of "Native Law" as if there were only one system of law among the whole of the South African Bantu? There are, it is true, many differences of detail from tribe to tribe; but the broad principles of law involved are the same. The various Bantu tribal systems are very much closer than the systems of Common Law of those countries which build on the Code of Justinian. They are different legal dialects of the same language. For instance, *ukulobola* among the Amagwamba (Knopneus Kaffers) often took the form of hoes manufactured from Native iron,¹ in the Lesuto of cattle, sheep and goats together,² among the Amatonga

¹ Evidence of Sir T. Shepstone before Native Laws and Customs Commission (Cape) 1883; Q. 596 and 597.

² Evidence of L. Barnett, Asst. Commissioner, Quthing, Basutoland, before S. A. Native Affairs Commission, 1903-5, Vol. V., p. 379.

of Portugese money³; in times of scarcity of baskets of corn⁴ and even of stones, as tokens.⁵ But the institution of *ukulobola* itself and its effect in status and inheritance is exactly the same in every case.

Parts of Native Law are to-day not recognised by our Courts anywhere in the Union—on the ground that they are “repugnant to the general principles of humanity obtaining throughout the civilised world.”⁶ In other words the *Jus Naturale* prevails even over a definite, existing system of jurisprudence. This is in accordance with the highest legal traditions. In these circumstances accusations of witchcraft, which formed a very large part of the litigation of a Chief’s Court in primitive days, are not entertained even in those parts of the Union where the recognition of Native Law is most complete. Similarly the compounding of murder or other criminal offences by a cattle fine has disappeared, though it is open to grave doubt whether European Administrations were justified in regarding the compounding of theft by restitution and fine as being against the *Jus Naturale*. Our philosophic jurists, in whom we have been singularly rich for a small country, have never devoted their talent to Native Law hitherto; and therefore it is natural to discover errors which are juristically inexcusable.

Again parts of Native Law are not recognised everywhere. *Lobola* for instance is recognised in Natal and the Transkeian Territories, but not to any extent in the Cape Province proper, the Transvaal or the Orange Free State. Communal responsibility is recognised in Natal, the Transkeian Territories and the Transvaal, but not in the Orange Free State or the Cape. Hence it must be clear that absolute Native Law and Native Law as recognised by our Courts are two different things, and that the

³ Special Report of Mr. C. C. Foxon, British Resident, Maputaland, 31st August, 1896.

⁴ Evidence of Sir T. Shepstone before Native Laws and Customs Commission (Cape), 1883. Q. 469.

⁵ Evidence of E. Blyth, Asst. Commissioner, Berea, Basutoland, S. A. Native Affairs Commission 1903—5. Vol. V, p. 380.

⁶ Commission 1903—5. Vol. V, p. 380. See Law 4 of 1885 S. A. Republic), etc.

term "Native Law" has different meanings in each Province. For this reason it is necessary to devote a complete Chapter (the succeeding one) to the question of Recognition of Native Law.

"Native Law does not deserve the very grave condemnation with which it is so universally visited by those who are wholly unacquainted with it or who only possess a very limited knowledge of it. It is a law suggested by circumstances, it is essentially just, and has been found effectual for the protection of individuals, and necessary for the good government of men living in a tribal condition..... To those who are intimately acquainted with the Natives there is much indeed to admire both in them individually and in the laws which govern them. Many may think that, because they are barbarous and wholly uneducated in our sense of the word, any laws emanating from them must be worthless; but such is not the case."⁷

The background of all Native Law is the tribal system. "The individual is absorbed in the Commonwealth, the man is lost in the citizen."⁸ The Chief is the embodiment of the tribe, the head and centre of the whole fabric. The system is perfectly understood by the Natives, carrying with it mutual responsibility and suretyship and requiring implicit obedience to authority. It embodies an unbroken chain of responsibility—the responsibility of the headman for his people, of the head of a kraal or family for its members, and of every individual of a tribe to the Chief.

"The followers of the Chief, while in attendance upon him at his kraal are generally designated Amapakati, understood by Europeans to mean Counsellors.... The Chief generally occupies each day with his Amapakati, the topics of the times engage their attention—trials of criminal or civil cases occupy a portion of their

⁷ Memorandum, dated 1880, by Mr. T. Shepstone, Jr., C.M.G., published in "Papers relating to Native Custom in Natal, 1881," p. 5.

⁸ Draft Report of Mr. S. O. Samuelson, Under-Secretary for Native Affairs, Natal, dated 21st December, 1904.

time; these trials may correctly be said to be conducted in open court, for, as there are no professional lawyers, every Umpakati may freely enter into the case under investigation, and from the ridicule which would result from the interference of an Umpakati incompetent to argue in the case, it seldom happens that any display of incompetency occurs; thus the Chief's residence may be appropriately termed the school where law is taught, and its rules transmitted from one generation to another."⁹

Native Criminal Law can hardly be said to have formed a distinct system from Native Civil Law. But all European administrations in South Africa have drawn the distinction and, even where recognising Civil Law, have virtually ignored the Native customary rules regarding crime.

The punishments in Native Law were death and cattle fines. Imprisonment was unknown. Death was the penalty commonly inflicted for murder of a Chief or parent or for desertion from the tribe; and of course for "witchcraft." The main crimes punishable by fine were murder, adultery, rape, arson, theft, maiming or injuring cattle, causing cattle to abort, false witness, speaking disrespectfully of authorities, and using love philtres. The last four were considered deserving of specially heavy fines. Murder, apart from incidents of warfare, was not common.

In many of these cases, particularly theft, the procedure was what we should call a civil, rather than a criminal one. The cattle, or the bulk of them, went to the injured individual; but in the case of murder, all usually went to the Chief.

Of all this mass of public or quasi-public law, all that remains recognised by European Courts to-day is the status of Chiefs, Headmen, Kraal Heads, etc., and the doctrine of communal responsibility—illustrated in the so-called "Spor Law"—a Law based on intimate

⁹ Memorandum of A. F. Fynn, A.R.M., Pietermaritzburg, published in supplement to Natal Government Gazette, 1st March, 1853.

knowledge of Native judicial conceptions—which provides that if the “spoor” of stolen cattle be traced to a certain kraal, and it proves impossible to detect the actual thieves, the whole kraal is responsible.

This chain of mutual responsibility is very fully and admirably worked out in the Natal Code of 1891.

The whole system is strikingly illustrative of Maine's and Vinogradoff's contention that status is the determining factor in all systems of archaic law.

Coming now to that part of Native Law—frequently termed Native Civil Law—which has received more adequate recognition from the various Governments of South Africa, we find ourselves in a region of intense interest to the legal investigator. “The main elements of Native Law hinge on a few leading principles. The subjection of the female sex to the male and of children to their father or the head of their family—Primogeniture among males as the general rule for succession—The incapacity, generally speaking, of women to own property—Polygamy with its accompanying lines of demarcation according to “houses” in parts of the polygamist's property—Adoption or guardianship or other conventional or hypothetical fatherhood.”¹⁰

It will be gathered that Native Law is in the main a law of persons. And as a law of persons it is admirably worked out with exquisite skill, comparing very favourably with early Roman or Germanic Law. Its rules of intestate succession are such as to make professional exponents of Schependomsrecht and Aasdomsrecht grow pale. Parenthetically it may be pointed out that testate succession is unknown—a striking proof of Maine's contention that intestate succession was first in the history of legal development.¹¹ As regards relationship the Bantu are still in the agnatic stage: a mother may, and frequently does, moreover, come under the guardianship of her own son. The most interesting features of the Bantu

¹⁰ “Code of Native Law as at present administered.” Pietermaritzburg, 1878, Preface, page VI.

¹¹ “Ancient Law” (10th Edn.) p. 207.

law of persons to laymen are the institutions of polygamy and of *ukulobola*—the passing of cattle prior to marriage—and these it is proposed to deal with at length in Chapter XI.

The law of property is much less worked out. Individual property in land is unknown in Native Law. All the land at the moment occupied by a tribe is held to vest in the Chief, not in his personal capacity but (to import our ideas into a less advanced system) in trust for the tribe. A Chief could not, e.g., alienate tribal land with any binding effect except by a tribal act, involving full and public discussion with his *amapaḳati*. The tribe is the utmost entity normally conceived of by Native Law. A Paramount had, in practice, no power to adjudicate between tribes as to the ownership of land. A quarrel between tribes would be analogous not to a law-suit but to a war—a matter of “international law” shall we say? The individual tribesman possessed nothing but the right to occupy at the Chief’s good pleasure.

The movable property of the Bantu, under tribal conditions, consisted mostly of livestock. The only normal ways of acquiring this property, under such conditions, were by inheritance, gift or *ukulobola* payment. Sale was absolutely unknown, and barter very uncommon.

Naturally, as the simplest and most rudimentary forms of contract were practically foreign to the Bantu mind, there was no law of contract at all. This provides us with two interesting points of departure. The entire absence of a law of contract suggests to us that, as a legal system, Native Law is more archaic than the oldest extant Roman Law; and a detailed study of it is therefore a matter of intense interest to the scientific investigator of jurisprudence. Secondly—to flog a dead horse—the absence of contract among a people like the Bantu, possessing the rudiments of civilisation, a distinct and effective government and an admirable system of personal law is a very convincing disproof of the suggestion that government is based on contract and a clear indication

that the State has evolved from the family, and is to be explained ultimately by sex, the divine sacrament of Society.

How far is Native Law really law? To-day a slip-school student might be tempted to answer "so far as recognised by the Courts." But this is to evade a very interesting legal question. Native Law is in full operation in many districts where the European Courts do not recognise it. Most Native marriages in the Transvaal involve the passing of *lobola* cattle; yet the institution of *ukulobola* is not recognised by the Transvaal courts. If we adopt the sound and philosophic view of Savigny and deduce all law as springing from the *Volksgeist*, the spirit of the people, undoubtedly Native Law is worthy of the name. Perhaps the whole question may be met by applying to Native Law Lawrence's famous remark on International Law¹²: "The controversy.....is a mere logomachy. If we hold that all laws are commands of superiors, International Law is improperly so called. If we hold that whatever precepts regulate conduct are laws, International Law is properly so called."—If we are to take sides, it is sufficient perhaps to say that one immeasurably greater and wiser than John Austin has told us "Diuturni mores consensu retentium comprobati legem imitantur."¹³

The value of the study of Native Law is thus twofold. It is of assistance to the student of comparative jurisprudence; and it is also a useful avenue by which to approach the problem of concrete Native Policy in South Africa.

To the student of comparative jurisprudence it presents, to summarise what has already been said, an example of custom evolving into law, and of definite law based on custom. It provides him with a worked-out legal system more archaic than those which he is accustomed to study. From its elaborate rules regarding

¹² "Principles of International Law" (6th Ed.) p. 15.

¹³ Institutes, Lib. 1. Tit. 11.

the status of individuals, he is able to reconstruct society as it existed centuries before the preparation of the Twelve Tables. The study of the problem of codification, as applied by Europeans to Native Law¹⁴ suggests many themes of value and utility as to the merits of written and unwritten law, and as to the principles which should guide the philosophic legislator who attempts to reduce a system of common law to writing. To the student who approaches jurisprudence and politics from the institutional side, Native Law presents an acid test which may be applied with advantage to many of the theories enunciated from comfortable studychairs by abstract speculators. The Hobbist theory of the origin of government, the Austinian theory of law, the Marxian doctrine that government is a nefarious institution to protect private property—all these disappear before the simple test of the Bantu customary law. Aristotle is the only political theorist who emerges from the test absolutely unscathed!

It may be added that one vast field of legal science—the *Jus Naturale*—receives valuable illustration from the manner in which Native Law has been recognised in South Africa. Every legislative enactment recognising Native Law has been accompanied by the phrase "so far as compatible with the general principles of humanity obtaining throughout the civilised world," or words to that effect. By examining those parts of primitive Native Law which have been rejected by our Courts and our codifiers, we can get some indication—not much, perhaps, because our best legal theorists have not devoted their full attention to the subject—of modern views of the content of the *Jus Naturale*.

Speculations and enquiries such as these are of interest to jurists and political scientists the world over. But the study of Native Law is also of immense value to the South African, legally-minded or not, who is interested in the practical, concrete Native problem. To arrive at the soul of the Native people is, after all, our ultimate aim. Into that citadel, there are many entrances, and the gateway of Native Law is as useful as any other.

CHAPTER IX.

RECOGNITION OF NATIVE LAW.

Should Native Law be recognised by our Courts? In the mind of the theoretical speculator on questions of jurisprudence, there can be but one answer to such a question as this. Unless Europeans deliberately decide to make their Magistrates mere lay figures and European control over Natives a myth, Native Law must be accorded full recognition. Whether it is a good system of law or a bad one is not in the least to the point; the duty of Courts in any country is to administer the law as it stands. "It is useless to make an improvement of the laws precede improvements in the capacity of those, for whom they are made, to understand them."¹

Unfortunately those charged with the government of the Natives in South Africa have sometimes failed to understand this. Under the impression that Natives were so barbarous that their laws must be worthless, the Orange Free State has failed, with one or two minor exceptions, to recognise Native Law at all. Under the equally mistaken impression that any differentiation between Europeans and Natives in the Law Courts meant oppression for the Natives and an infringement of the principle of equal justice for all the Cape Province has similarly withheld all recognition of Native Law. It is an illuminating comment on the proverb "Extremes meet."

It will perhaps be useful to make an historical analysis of the policies of the various South African Administrations on this point.

Beginning with the Cape Province proper, we find from the very earliest days of European rule an almost inexplicable aversion to any formal recognition of Native Law. From the first the legal authorities held

¹ Earl Grey to Sir Harry Smith, 10th December, 1847.

that Colonial Laws applied to the Natives in default of legislation to the contrary—a principle absolutely indefensible in theory as it was ridiculous in practice. For the Natives, to whom it was considered right that the Roman-Dutch Law of marriage and inheritance should apply, were polygamists; habitually marrying with *lobola* and following habitually the law of primogeniture as regards succession. Thus the effect of not recognising Native Law was not to level up Native social practices to those of Europeans but merely to impair the authority of the European Courts, and of law and government generally.

Practical administrators on the eastern frontier and in British Kaffraria felt themselves unable to follow the instructions of the legal pedants at Cape Town, who with a show of learning, violated all the soundest principles of jurisprudence. As early as 1849, Mr. Calderwood, the Civil Commissioner of Victoria East, found it necessary to recognise the Native Law principle of communal responsibility in connection with stock theft,² the origin of numerous "Spoor Laws" in various parts of South Africa since. In British Kaffraria it was found quite impossible to attempt to apply European law, though, a few practices such as "Tsiko" (the forcible distribution of unmarried girls among the Chief and his principal men) and "eating up" (the forcible sequestration of a man's goods by the Chief) were discountenanced, and, if the Government resources at the moment permitted, punished.³

When it became possible to make permanent rules regarding British Kaffraria, the authorities were in a quandary. The Law Department at Cape Town would not consider the recognition of Native Law; the Magistrates on the spot could not apply any other system, unless indeed they were to refuse to hear ninety-nine per cent. of the cases brought before them. To allow the Magistrates to do what common sense and sound juris-

² Instructions to Superintendents of Fingoes, dated Alice, 29th January, 1849.

³ Col. Mackinnon to Sir Harry Smith, 25th February, 1849; 1st March, 1850.

prudence required them to do, it was thought necessary to retain Martial Law after the conclusion of peace⁴—fully as grave an infringement of Colonial Law as a formal recognition of Native Law would have been. Until 1859 therefore Martial Law prevailed in the territory of British Kaffraria. “No man could complain that we abused our power under Martial Law. The Attorney-General said that it was no law; and that Martial Law amounted to nothing; still I went on because it was necessary for the safety of the country and there was no objection raised.”⁵

The result of the changes of 1859—65 was that the Cape itself and British Kaffraria were both assumed to come under the Colonial Law. For a short period in 1860 the Kaffrarian Courts actually refused to entertain *ikazi* (*lobola*) cases; but this attitude was reversed in the same year.⁶ For years thereafter, even up to the present day indeed, theory and practice have had to be divergent. The Courts of the Ciskei have never ceased to administer certain parts of Native Law from 1860, The theory was brought more into line with practice by the Native Succession Act of 1864 (Cape) and Ordinance of 1864 (Kaffraria). Still there were vast tracts of Native Law which the Colony’s legislature did not recognise while the Colony’s subordinate judiciary did—and had to. Take, for example, the purely Native District of Herschel. The Magistrate (Mr. D. B. Hook) reported to Government on the 26th December, 1882, as follows⁷:—

“Although Herschel is in the Colony and strictly speaking, altogether under the Colonial Law, it has been found absolutely necessary to settle most of what we called Native civil cases, such as dowry, etc., by Native Law and custom. So far there has been no hitch in particular, the Magistrate sitting as arbitrator

⁴ Sir Geo. Cathcart to Sir G. A. Pakington, 20th May, 1852.

⁵ Evidence of Sir Walter Currie before Select Committee of the Cape House of Assembly, 1859; pp. 2—3.

⁶ Native Laws and Customs Commission (Cape), 1883; p. 17.

⁷ Cape Native Blue Book, 1883; p. 9.

generally and having the assistance, in many cases of Headmen. But, of late, Law Agents have come into Court, and caused some difficulty by asserting their dictum in opposition to the judgment of the Magistrate and Headman in Native cases, urging as a last resort that the whole thing is illegal, and every case must be settled by Colonial Law. I need scarcely say that it would be fatal to allow Law Agents to upset a rule that has been found to work so well in the District. As I am responsible to Government for my charge, and in order to prevent confusion in Court, I have intimated that I will hear no Agent who brings a suit into Court other than through the form of Colonial Law, and maintain the right as arbiter in my District for the convenience of the people, to deny the rights of these Agents to dictate unduly or cause confusion, while I am acting reasonably and in the interests of the Government and the people, in the absence of any codes of Native Law like those in the Trans-Colonial Territories."

Mr. Hook's action received the tacit approval of the Colonial Government. In the following year, the Native Laws and Customs Commission issued its Report, in which it, too, pointed out the divergence between theory and practice in this matter.

"It has been fully brought out in evidence," they say⁸ "that in several of the Frontier districts the mass of the inhabitants of the Native Locations, though equally subject to Colonial Law have been only nominally so; and to a very considerable extent they are still actually under their own traditional laws and usages, to which they appear to be attached by habit and familiarity, as well as by the fact that their mode of procedure is simple and inexpensive.

"In the divisions of King William's Town and Queen's Town more particularly, the Special Magistrates and Superintendents of Natives, without any judicial authority under statute, have continued to administer Native customary law, and in some Locations

⁸ Report, pp. 17—18.

and Villages, the Native Headmen deal with petty cases and disputes brought before them for arbitration and settlement, although there is no provision whatever for the enforcement of their decisions. This was the condition of things which the Commission found existing within the Colony at the time of its appointment."

Although the matter was brought to its notice in so official and definite a way, the Government neither interfered to stop the Magistrates' unauthorised action nor adopted, except for the Transkeian Territories, the Commissions' recommendation that Native Law should be recognised as a system of uncodified Common Law. It may be argued that recognition of a system of Law is not a matter for legislation. It exists *proprio vigore*. With this sentiment, the writer is in the very heartiest accord; but unfortunately only the Inferior Courts worked on it. An appeal lay to the Supreme Court of the Colony and the Supreme Court refused to recognise Native Law or any part of it, in the absence of statutory authority for such recognition. Thus in 1893 in the case of *Ngqobela vs. Sihele*,⁹ the Chief Justice stated:—

"Provision is made by Act No. 16 of 1860 for the appointment of marriage officers for solemnizing the marriage of persons professing the Mohamedan faith according to the Mohamedan customs and usages, but *no similar provision exists for marriages according to Native Customs and usages*. The only mode in which a valid marriage can be contracted between Natives in this Colony is before a Minister of Religion, or a lay marriage officer, with previous publications of banns or notice, or failing these by special license. A union, therefore, founded only upon Native customs and usages within the Colony proper is not a marriage, whatever rights may by special legislation¹⁰ have been given to the offspring of such a union in respect of the distribution of property left by their parents upon their death. In the absence of special legislation recognising

⁹ 10, *Juta*, p. 346.

¹⁰ e.g. the Native Succession Act of 1864.

such a union as a valid marriage, the Courts of Law are bound—however much they may regret it—to treat, the intercourse, *I will not say as immoral, but as illicit.*"

This unsatisfactory state of affairs continues in the Cape Colony to-day, in spite of the fact that in the Transkeian Territories a full and frank recognition of Native Law has been in successful operation for more than a generation. The whole thing is inexplicable.

No argument could be stronger for the recognition of Native Law than the fact that, in that part of South Africa where it is theoretically unrecognised, the only methods of satisfactory administration have been nine years Martial Law in time of peace, followed by a deliberate and considered departure from the theory of the Government by the Magistrates—a departure unapproved by Cabinet or Legislature, but reversed by the Supreme Court whenever an appeal is made.¹¹

Coming next to the Transkeian Territories, we may observe that the occupation of Basutoland (1871—84) furnished the Cape Government with the principles and practice which form the groundwork of the Transkeian system to-day. Native Law was fully recognised in Basutoland from the beginning, even before its annexation to the Colony.¹² On the 6th November, 1871,¹³ a set of regulations was promulgated for the Government of British Basutoland, in which marriage by Native Custom was recognised as legal¹⁴ and provision was made for the entertainment of *bohadi (lobola)* suits,¹⁵ while the Native law of succession was also recognised with a very unworkable modification to the effect that a widow should exercise guardianship over her minor children.¹⁶ Many points of Native Law are, however, specifically excluded from recognition.

¹¹ See further Cape Native Affairs Commission 1910, pp. 35—9.

¹² See Sir Philip Wodehouse's Despatch, No. 31 of 2nd May, 1868.

¹³ Proclamation 74 of 1871.

¹⁴ Reg. 1.

¹⁵ Reg. 4.

¹⁶ Reg. 6. It is perhaps unnecessary to remark that the widow herself would be under male guardianship in primitive Native Law.

In March, 1877, a much improved set of Regulations was drawn up¹⁷; and it was this revised scheme which was the basis of the Regulations applied to the Transkeian Territories and Griqualand East by Proclamations 110 and 112 of the 16th and 17th September, 1879. These Proclamations decidedly recognised substantive Native Law—with certain limitations, it is true. The crux of the whole matter is to be found in Section 23 of each Proclamation (the wording being identical), which provides that “where all the parties to the suit; or proceeding are what are commonly called Nativesit may be dealt with according to Native Law, and in case of there being any conflict of Laws by reason of the parties being natives, subject to different laws, the suit or proceedings shall be dealt with according to the laws applicable to the defendant.” It will be noticed that this Section as it stands is permissive only, but in 1900 the Supreme Court of the Cape of Good Hope ruled that in certain classes of actions at least the word “may” must be taken to mean “shall.”¹⁸

Native Law is, however, administered in the Territories subject to the proviso that it be “compatible with the general principles of humanity observed throughout the civilised world.” Before the Native Laws and Customs Commission of 1883, Messrs. W. T. Brownlee and Newton O. Thompson described the system in working variously as “natural law,” “justice” and “equity.” To illustrate some of the changes made, it may be noted that the degrading *Abakweta* and *Intonjane* dances were strictly prohibited as early as 1878.¹⁹ Witchcraft was refused recognition as a legitimate accusation from the first; but it is noteworthy that one Chief had on his own initiative fined the members of one of his kraals for employing a “witch doctor” in 1881.²⁰ Practice varied with regard to *Ukungeni* (the taking over of a deceased brother’s widow by a surviving brother) but in

¹⁷ Proclamation 44 of 1877.

¹⁸ *Sekelini v. Sekelini*, 21 S.C.R., p. 118.

¹⁹ Cape Native Blue Book, 1879, page 109.

²⁰ Cape Native Blue Book, 1883, page 41.

1883 the Native Laws and Customs Commission refused ²¹—with singularly little reason—to recognise this practice in any way whatever. Sentence of death for murder—a further departure from the old ideas—was passed for the first time in 1880. ²² The change was softened by the employment of *amapaḳati* as “jurors” in some areas without authority—under such sympathetic Magistrates as Mr. C. J. Levey. ²³ In the Xesibe Territory, not formally annexed until 1886, a Magistrate resided administering Native Law as early as 1881. ²⁴

The Cape Native Laws and Customs Commission of 1883, which drew up the famous Penal Code for the Territories, approved of the recognition of Native Civil Law, subject to the modifications of the 1879 Proclamations and some fresh ones which it added. Thus the system of the Transkei to-day—recognition of Native Law as an uncodified system, differing in detail occasionally from tribe to tribe and determinable as a matter of fact in each case—was fully established by the year 1883. All evidence points to the satisfactory nature of its working. ²⁵

The Penal Code introduced certain rules of Native Law regarding procedure, e.g. Section 263 allows the examination of an accused person and of his wife or her husband, as the case may be, as an ordinary witness—a common principle in Native trials. It also introduced one great principle of substantive Native Law—communal responsibility, though confined in the code to stock theft. The original section of the Code (No. 200) has been replaced by a slightly different one in Section 1 of Act 41 of 1898, which is quoted here at length. The provision is commonly known as the “Spoor Law” :—

²¹ Report, para. 100, page 38.

²² Cape Native Blue Book, 1880, page 103.

²³ *Ibid.*, page 181.

²⁴ Col. Secretary's (Cape) Minute No. 1851 of 3rd December, 1881.

²⁵ For a general resume of the Transkeian system in this respect, *vide* S. A. Native Affairs Commission, 1903—5. Report, Vol. I. Appendix, p. 6.

"When the spoor of any stolen animals is traced to any kraal or locality responsibility in respect of value of such stolen animals shall be determined as is hereinafter provided, that is to say :—

"(1) The head of any kraal (umninimizi) shall be responsible for the value and damages of any stolen animals, the spoor of which is traced to such kraals.

"(2) The owner of any stolen animals, the spoor of which has become lost or obliterated, has a right of search for any traces of such animals, in any hut, kraal, enclosure or lands in that neighbourhood; any person refusing to permit such search is responsible for the value of the animal stolen.

"(3) When the owner of any animal is on the spoor of such animal, it shall be lawful for the owner to demand from the persons living in the neighbourhood all reasonable assistance in following up such spoor, and whoever neglects or refuses to give such assistance and by such neglect or refusal causes the loss or obliteration of such spoor, or whoever by wilful obstruction or malice causes the obliteration or loss of such spoor, is liable for the value of the animal stolen.

"(4) When such spoor cannot be traced to any specific kraal or kraals, but is lost or becomes obliterated on any lands, then the responsibility for the value of such stolen animal shall devolve upon the heads (abanimizi) of the kraals adjacent to and surrounding the spot where such spoor has been lost or obliterated; and for the purpose of compensating the owner of such stolen animal, it shall be lawful for the Resident Magistrate so to fix such responsibility by an assessment not exceeding two head of cattle (or their money value), to be by such Magistrate levied on each kraal, to make up the whole value, or as near as possible the whole value, of the stolen animal or animals.

"(5) Whenever a spoor is traced to, or within the confines of any locality occupied by any kraal

or kraals, or to or within any area occupied by any community or section of a tribe, if the persons occupying such kraal or kraals, or locality, or constituting such community or such section of a tribe, without lawful excuse, neglect or refuse to receive to take over and follow over such spoor, they are responsible for the value of the stolen animal whose spoor shall have been so traced, and are to be compelled to make good such value to the owner in like manner, as is provided for with reference to "lost spoor" cases in the preceding sub-section."

How do provisions like these work in practice? To us they, perhaps, savour of injustice. But it is a mistake to read our own legal and ethical ideals into the minds of other people. The following report made by Mr. W. E. Stanford, then Resident Magistrate at Engcobo (later Senator Sir Walter Stanford), will furnish a very interesting comment on the Spoor Law ²⁶ :—

"I cite an instance or two. Three horses were stolen in May last from a European farmer on the border. He found the spoor, and I sent a Native policeman to his assistance. It was traced to a locality south of the Yulandudu Mountains, but it was not brought direct to any kraal. I held the owners of the kraals in the neighbourhood of the last point at which the hoof marks of the horses were seen, responsible for their values; and the horses were found at once. A clue to the actual thief was afterwards obtained, and he was arrested. He then told me that he had brought the horses back himself. No doubt the others had intimated to him that they were not prepared to pay for his misdeeds. In another case, five head of cattle were traced to the Chief Umgudhlwa's Location and the spoor lost in the veld, having been obliterated by rain. This to our minds would seem a hard case in which to hold a community responsible. To the Native headman and their own Chief, who sat as assessors in it, there was no

²⁶ See Cape Native Blue Book, 1884; page 127.

injustice. 'Why did they let the thief pass through with the cattle?' they said, 'they must pay,' and accordingly the usual fine was imposed and the farmer was compensated for his loss. Some time afterwards one of the men fined came to me privately and said he could tell me where the cattle were. I sent for the owner and by this means the missing cattle were recovered, the thieves arrested and ten other cattle previously stolen were also found. The cattle paid by Umgudhlwa's people were of course refunded. I could mention other cases where collective responsibility has resulted in the disclosure of thieves and recovery of stolen property. Natives can nearly always prevent thieves from getting through their country with stolen stock if they wish to do so."

If an application of a cardinal principle of Native Law applies in one case, why should it not in others? In the Territories, collective responsibility is only applied in cases of stock theft; but the Natal Code imposes it as a general principle. A hierarchy of persons working up from the head of a family to the Chief of a Tribe is made responsible for an ever-widening circle of dependants and inferiors, who according to Native custom should not do anything of importance without the cognisance of the superior concerned. It is the defect of our administration of Native Law that we have tended constantly to be wiser than Nature, and to cut out points of Native Law not because they are contrary to the *jus naturale* but because they conflict with what Lord Coke called the "artificial and acquired reasoning" of our own advanced legal systems.

In Natal, Native Law is applied to every Native not specifically exempted therefrom under Law 28 of 1865. The full recognition of Native Law is one of the outstanding points of the Shepstone system and was adopted from the very beginning. The 1846—7 Commission recommended that the Diplomatic Agent to the Native Tribes should "adapt his decisions to the usages and customs of the Native law where such accommodation

can be effected without violating the requirements of justice." "We are of opinion," the Commissioners continue, "that it would be productive of no good result suddenly to abrogate the laws and usages they have practised from time immemorial, except such as are connected with their ideas of witchcraft and which affect the lives of the accused." Earl Grey in his Despatch commenting on the Report dated the 10th December, 1847, lays down as a definite principle that Native Law is only to be abrogated where against "the universal principles of humanity and decency." On the 23rd June, 1849, an Ordinance of the Lieutenant-Governor-in-Council formally accorded full recognition to Native Law; but it had been recognised and acted on by the Court of the Diplomatic Agent *proprio vigore* since 1847.

Native Law was given a fuller recognition in Natal than elsewhere; and even the imposition of European criminal law was carried through with great care and as far as possible by steps familiar to the Natives' own conceptions.

It was no part of the Shepstone Policy to codify the Native Law, which up to 1875 was in Natal a matter of fact varying from tribe to tribe, as to-day in the Transkei. But in 1875 the codification commenced culminating in Law 19 of 1891. To-day if one asks "What is Native Law as administered in Natal?" the answer is simple: "The Schedule to Law 19 of 1891, as subsequently amended from time to time."²⁷ And this is true in practice. In Natal, the Government "has not gone so far as to say that the Code of Native Law is to be the entire Native Law on which the Courts are to act. The Native High Court can go outside the Code, and upset the decisions of Magistrates or Chiefs on points of law which are not in the Code."²⁸ But in practice the Code rules.

²⁷ The more important amending enactments are Law 25 of 1892, and Acts 40 of 1896, 8 of 1897, 1 of 1901, 47 of 1903 and 7 of 1910.

²⁸ Evidence of Mr. S. O. Samuelson, Under-Secretary for Native Affairs, Natal, before S. A. Native Affairs Commission, 1903—5. Q. 41315. Vol. IV, p. 569.

The Code applies to Natives generally (not being necessarily domiciled in Natal; so long as they sojourn or reside in Natal (Section 2, Law 19 of 1891).

It will be seen that the Natal system in one sense is the Transkeian system worked out more logically. It has worked well, though with better personnel it could have worked better. An examination of it in working tends to confirm the view that Native Law should be fully recognised. In another sense, the Natal system can be usefully contrasted with the Transkeian system. It is a written Code of Law compared with a body of unwritten common law. This point of comparison is so interesting and important that it has been thought desirable to devote a special chapter—the next—to its consideration. At any rate Natal deserves our thanks as having been the pioneer in recognising Native law frankly. It grieves one to consider that it was a young layman who advocated and a Doctor of Laws who opposed, a step which is in full accord with all the best traditions of legal science.²⁹

In the Transvaal, Native Law has been, and is, recognised "so long as.....not inconsistent with the general principles of civilisation."³⁰ "All matters and disputes of a Civil nature between Natives shall be dealt with according to the provisions of this law and not otherwise, and in accordance with Native laws *at present* in use, and *for the time being* in force." The italicised words bring out one important fact in the Transvaal system—Native Law is not a stereotyped or single system. It is the law of the tribe to which the Native belongs and its determination in the Transvaal becomes an enquiry as to fact at the present day, not (as in Natal) an interpretation of a thirty-year old Code.

In one respect the Transvaal differs tremendously from the Transkeian Territories and Natal. Up to 1911, the Transvaal Courts took no cognisance of *lobola* cases. Before 1897 this was a matter of usage, but Law 3 of 1897 made the non-recognition of *lobola* cases binding on the

²⁹ Theophilus Shepstone and Dr. Henry Cloete (See Chapter III).

³⁰ Law 4 of 1885 (S. A. Republic), Sec. 2.

Courts. The Courts recognised only "lawful" marriages, and a "lawful" marriage was a Christian or civil marriage. "There was absolutely no legal redress for unions entered into by people under their natural and inherited ideas."³¹ The case of *Sigolo vs. Mokau* (May, 1911) afforded some relief in deciding that a marriage may be presumed to be "lawful" in default of evidence to the contrary. But even in the case of a "lawful" marriage there is no real redress. As regards Transvaal Natives the position is *ubi jus ibi non remedium*. This is an anomaly that has been awaiting rectification ever since Union; but apparently the acquiring of sovereignty over ten thousand Germans in a desert is of more importance than the equitable administration of justice to the Union's existing subjects.

In the Orange Free State, Native Law as a system cannot be said to apply at all. In the annexed Baralong Territory (Thaba 'Nchu Reserve) Native marriage is fully recognised.³² Otherwise Native marriages were not recognised, until a modification of the law was introduced by Law 26 of 1899. This provides³³ that the offspring of "heathen marriages" have their right of inheritance recognised as if legitimate children, and the paternal power of the father is recognised also, "when it shall be proved that the parents regard one another as husband and wife."

For Natives outside the Thaba 'Nchu Reserve there is a most absurd law of intestate succession, which, flying in the face of the Native legal conceptions, provides that community of property shall be considered to exist as between husband and wife; and that in the case of polygamy one half should belong to the husband and the other half to the wives jointly!³⁴ This is absolutely inexcusable; for the Native law of intestate succession is better worked out than the Roman-Dutch law itself. In the Orange Free State there is an extraordinary provi-

³¹ S. A. Native Affairs Commission, 1903—5, Evidence Vol. IV, p. 435; Vol. V, p. 297.

³² Wetboek van die Oranje Vrystaat, Hoofstuk IV, I.

³³ Section 28.

³⁴ Wetboek, Hoofstuk IV, Artiekel 3.

sion that, where no provision of law exists, the High Court may order an "equitable" distribution of the estate. So far as the writer knows it has never been acted upon. No Judge who had any vague sense of the rudiments of legal history would or could act upon it. In 1803, Sir Frederick Pollock tells us, the judicial officer of the island of Penang "reported that the Law of Nature was the only law he would find to guide him. He found its guidance *inadequate for determining questions of succession and administering estates*, which, indeed was exactly what any mediaeval doctor (not to say Aristotle) would have told him to expect."³⁵ Yet to the Law of Nature the unfortunate High Court of the Orange Free State was referred for this very class of case!

To what preliminary conclusion can we now come? Surely the preceding inquiry has led us quite irresistibly to the conclusion that practical exigencies combine with sound theory to favour the full recognition of such portions of Native Law as are not repugnant to the *jus naturale*.

There is not an experienced Magistrate in any Native Area of the Union who could give a different opinion. And surely, John Austin's spectre having at least vanished from the haunts of theoretical jurisprudence, there is not a Doctor of Laws in South Africa who could argue against the formal recognition of existing systems of law.

In point of fact, had our Judges the courage to apply their theories, it would seem unnecessary to legislate for the recognition of Native Law. The people have created it immediately: it is of as high value as any mediately created Parliamentary enactment. Still, to avoid all doubt and question, a short Act should be put through, authorising Courts throughout the Union to recognise existing Native Law.

Such a legislative project was brought forward in 1912 in the shape of the Native Disputes Bill. It is open to obvious criticism on one or two points. But, on the whole, it is a very sound, satisfactory measure. Not

³⁵ "The Law of Nature: A preliminary Study" (in *Journal of the Society of Comparative Legislation*, December, 1901).

having got through Parliament in 1912, it has lain dormant until the present day, what time the Legislature has found leisure to pass the Dipping Tanks Further Provision Act, the Prescription Further Amendment (Transvaal) Act, the Fertilisers, Farm Foods, Seeds and Pest Remedies Act, the Agricultural Pests (Citrus Kanker) Act and the Bills of Exchange (Time of Noting) Act Amendment Act. It is a study in values.³⁶

The main argument for the recognition of Native Law is that the Courts should take cognisance of existing facts. But this same principle leads us to the conclusion that in those parts of the Union where Native Law is recognised there are certain Natives to whom it could not in fairness be fully applied—Natives who have become detribalised, monogamists, often town-dwellers, to whom the application of the principle of collective responsibility would be the height of injustice, and the failure to treat polygamous marriage as a crime a condonation of immorality. By all the arguments which support the recognition of Native Law, there must be a system also of exemption from it.

There are, to-day, two systems of exemption from Native Law in force in the Union—the Transkeian and the Natal systems. Elsewhere, while exemption is granted from specific Statutes (e.g. the Pass Laws) there is no provision for exemption from Native Law as a whole.

In the Transkeian Territories, by Act 39 of 1887 (Cape) any duly registered Parliamentary Voter is completely exempted from Native Law and from all Laws differentially affecting Natives. The Parliamentary franchise involves a small property³⁷ or wages qualification, plus ability to sign one's name and write one's address and occupation. Partial exemption—including exemption from the Native Law of marriage and succession—is granted to Natives who (1) hold a certificate from the Education Department of qualification as

³⁶ The full text of the Native Disputes Bill is given as an appendix to this Chapter.

³⁷ Property held on communal tenure or under the Glen Grey system of tenure is not counted for the purposes of the franchise.

elementary teachers, or (2) hold on Inspector's certificate that they have reached the "fourth standard" or any higher education certificate, or (3) Graduates or Under-graduates of a South African University, or (4) are Ministers of the Gospel duly admitted as such into any Christian Church.

Exemption is not heritable, but it flows automatically from the possession of the qualifications above referred to. No special application is necessary. The Government has no discretion.

The first point that strikes one in the Transkeian exemption law is the extreme lowness of the standard set for exemption. But even apart from this it cannot furnish us with any assistance regarding a Union Exemption Act, for full exemption is only obtained as a result of the possession of the franchise.

In Natal, exemption is based on Law 28 of 1865. There is reason to believe that Shepstone was opposed to this Law and omitted to make its terms known to the Natives. From 1865 to 1876 (the date of his retirement) there were no applications for exemption at all. But between 1876 and 1880 there were no fewer than one hundred and forty-nine letters of exemption granted.³⁸

Any male Native or any unmarried female Native may apply for exemption. In the latter case a European of good standing must come forward as guardian. The qualifications are seven years' residence in Natal, monogamy, ability to read and write, and the furnishing of a recommendatory Certificate by a resident (not being a Native) possessing a juryman's qualification. Particulars of the applicant's Chief, family, etc., must be furnished and the Oath of Allegiance must be taken.

All this does not entitle a Native to exemption, but merely to apply for exemption. The Governor-General may or may not grant the application. Exemption has only been granted sparingly hitherto in Natal,³⁹ and the

³⁸ Blue Book: "Papers relating to Native Customs in Natal, 1881."

³⁹ Memorandum of Mr. S. O. Samuelson, Under-Secretary for Native Affairs, Natal, dated September, 1907; Report of Natal Native Commission, 1906-7, paras. 13-14, p. 4.

policy in 1909, on the eve of Union, was strictly to discourage it.⁴⁰

This attitude was due rather to defects in the details of the original Law than to opposition to the principle of exemption. For example, the exemption of a married man carries with it the exemption of his wife and of children beneath the age of sixteen born at the time of exemption. But children born *after* exemption do not take their father's exempted status and must apply for exemption afresh on reaching majority.⁴¹

Every exempted Native is expected to have, and to be able to produce, Letters of Exemption. But there is no provision for the issue of Letters of Exemption to the offspring of Natives, born before their father's exemption, who are, however, automatically exempted.

Once the Letters have been issued, although the holder may revert to barbarous habits or be convicted of a crime, there is no provision for their revocation.

Exemption confers relief from the Code only, not from other Laws differentially affecting Natives. The exempted Native is thus not legally a European, but an unhappy *tertium quid*. "While asking for bread, he has been given a stone by being denied the full privileges of the European."⁴² So generally unsatisfactory was the Law that a critic as restrained as the late Mr. S. O. Samuelson described it as a "blot on the Statute Book" and declared that it "should never have been enacted."⁴³

It is natural to ask why no attempts were made after 1865 to amend this Law. The answer is that attempts were made, but none of them actually became law. A special Bill was drafted in 1905 to amend Law 28 of 1865. It demanded, in addition to the 1865 qualifications, the occupation of a house as distinct from a hut, and the ownership of immovable property to the value of £50, or the hiring of immovable property to the value

⁴⁰ Circular S.N.A. 23/1909, dated 28th April, 1909.

⁴¹ Circular S.N.A. 23/1909 of 28th April, 1909.

⁴² Natal Native Affairs Commission, 1906—7; Report Para.

⁴³ Memorandum dated September, 1907.

of £50, or the hiring of immovable property of the annual value of £10 on a lease of not less than five years. Children of an exempted Native, whether born before or after exemption, were to be exempted automatically up to the age of eighteen years: at any time after reaching the age of sixteen they might formally apply for Letters of Exemption. If these were refused, or if they failed to apply, they reverted at eighteen to Native Law. Provision was made for the revocation of Letters of Exemption in the case of crime or proved reversion to barbarous habits.

This Bill never became Law.

A Bill "to amend the Code of Native Law and to extend the same to the Province of Zululand" of approximately the same date struck at another difficulty by providing that a Chief might receive Letters of Exemption, but, so far as he was a Chief, should be governed by the provisions of the Code in the exercise of his powers. This Bill, too, remains a Bill.

The Natal Native Commission of 1906—7 reported as follows⁴⁴ :—

"The Commission is of opinion that the standard for acquiring the privilege should not be exacting, a reasonable degree of learning, such as reading and writing either in English or Zulu, good character, and conformity to civilised customs, being all that should be necessary and, further, that the benefits conferred should descend to children. The opinion is also expressed that exemption should be granted by operation of law and not depend upon the will of an official, that is, the legal tests should be plain, official interference determining only whether the required standard had been reached. The exempted Natives feel very strongly the position in which children born subsequent to the issue of their parents' Letters have been placed by recent decisions of the Courts, and there is much force in their plea for uniformity in the family. There was some divergence of opinion amongst witnesses with respect to the withdrawal

⁴⁴ Report, Para 64.

of the certificate of exemption for any criminal act or for reversion to Native life and custom. After consideration, it appeared to the Commission that Letters should only be revoked for fraud in their obtaining, leaving the offender upon conviction for any other crime alone answerable to ordinary judicial sentence. To avoid the implication of innocent wives and children, the punishment for any crime (save the fraud mentioned) should be personal to the offender."

Absolutely nothing came of these recommendations; and the Natal exemption Law stands in all its absurdity to-day.

Coming to the general principles underlying the Natal Law, there seems certainly a tendency to make exemption unduly difficult and to place many restrictions in the way. It would appear that exemption should be a comparatively easy, and, so far as may be, an automatic thing, if our main end of recognising facts in our laws is to be attained.

Again, the tendency in Natal has been to widen the gulf between exempted and unexempted Natives. The former are treated as having "come out from the unclean thing," and made themselves separate. It is suggested that a better plan is not to accentuate these differences unduly and to make the transfer from one class to another as easy as possible. *The differentiation is one of legal convenience and must not be used as a political test.*

It will be noticed that there are three great differences between the Transkeian and Natal exemptions. In the first place, exemption in the Transkei flows automatically from the possession of certain qualifications: in Natal it is a matter for the Governor's discretion. It will be remembered that the 1906—7 Commission, in the paragraph quoted above, gave its opinion in favour of the Transkeian system. On the whole, though there are arguments on both sides, the Transkeian system seems the better.

Secondly, exemption in Natal is merely from Native

Law, not from laws differentially effecting Natives. In the Transkei exemption is from both, and here again the Transkeian system is the better.

Thirdly, in the Transkei the franchise is a qualification for exemption, whilst in Natal exemption is a *sine qua non* for (though it does not necessarily confer a right to) the franchise. If a Native franchise is given at all, the Natal system seems here to be the better one.

The qualifications for exemption could be any of those required to confer partial exemption in the Cape. The suggestion of Dean Green⁴⁵ that monogamic marriage by Christian rites should *per se* exempt the Native so marrying is worthy of consideration. The suggestion of Mr. Charles Barter⁴⁶ that all Native urban dwellers should become *ipso facto* exempt is one which, to the writer's mind, goes too far.

To sum up then, an exemption law for the Union is necessary. Exemption should flow automatically from any of the following qualifications:—

(1) Educational qualifications as at present in the Cape.

(2) Habitually living in a house and not in a hut.

(3) Christian marriage.

(4) Holding office as a recognised Marriage Officer.

Exemption being a matter of fact, and determinable by the Courts in every individual case, children of an exempted Native should not carry on their father's exemption past the age of majority, if they are not, in point of fact, living a "civilised" life. At the age of twenty-one therefore, new Letters should be granted to the person concerned. The Government, through the Magistrates, should take the initiative in issuing Letters of Exemption; and the absence of Letters should not bar a Court from recognising Exemption in a clear case. Holders of Letters of Exemption committing an action which in Native Law would be no crime (i.e., a second marriage during the lifetime of the first wife) but which would be crime under

⁴⁵ Minority Report, Natal Native Commission, 1881—2, page 21.

⁴⁶ Natal Native Blue Book, 1881, page 157.

European law, must suffer for that crime. Conviction of a serious criminal offence, or proved reversion to Native habits, should involve the revocation of the Letters of Exemption.

The political use of Letters of Exemption to form Natives into a separate and widely distinct class should be discouraged, though their use as a convenient measure of distinction between tribal and detribalised Natives is permissible, and right.

Natives should not be unduly hurried into qualifying for exemption, but no obstacles should be thrown in their way.

Coming back now to the majority—the Natives who remain subject to Native Law—we naturally ask ourselves: "What is the future of Native Law?" Will it remain stationary, will it ultimately become coincident with European law, or will it develop into a civilised but distinct legal system?

In trying to answer this question, we must bear in mind that a law which does not reproduce the ideas and customs of those to whom it applies is worse than no law at all. The manipulation of Codes and judicial decisions in order to bring about changes in Native life is reprehensible, impolitic and unscientific. Changes in fact must among a primitive people precede changes in law. The proper sphere in which to discourage polygamy is that of the Church and the School, not of the Statute Book. When polygamy has been practically brought to an end, it is the turn of the legislator to step in, bring law into line with fact and round up the defaulting minority who are lagging behind the social progress of the majority.

Unfortunately, ever since Europeans have been responsible for the government of Natives in South Africa, there has been a tendency to use the Statute book as a means of reform, sometimes real, sometimes alleged. And, very frequently, European authorities have expressed their opinion openly that the end to be aimed at is the amalgamation of Native with European law. Thus

the Inter-Colonial Commission of 1903—5 says⁴⁷ “the object of improvement, and, so far as may be, assimilation with the ordinary Colonial law should be kept in view as the ultimate goal.”

Other authorities have, however, realised that, just as the systems of civilised countries such as France, Germany and the Netherlands differ from one another while all alike partaking of civilisation, so the gradual evolution of Native Law to a more civilised status need not and ought not to involve its amalgamation with the Roman-Dutch Law. Thus Mr. John W. Shepstone before the Natal Commission of 1881—2 says: “I think in course of time the Native and Colonial Laws could be assimilated; but I could not say with regard to amalgamation. . . . They should be administered separately and distinctly. . . . I do not see any objection to the continuance of Native Law if it is administered in the pure and simple manner it should be, because there is a great deal of good in it.”⁴⁸ About the same time Sir George Pomeroy Colley writes: “The Native has already discovered that our processes are more complicated, more costly, and more uncertain in results, than our own. It is hardly a matter of surprise, therefore, if these people cling to their own ruder but simpler forms.”⁴⁹ And one of the best known Native leaders of to-day has reminded his people that in their departure from the old they should not fling away everything, but rather examine closely into all things afresh and convince themselves of the soundness of the reasons why they elect to retain or reject this or that custom.⁵⁰

Native Law cannot remain stereotyped in its present state, if we do our judicial work properly, unless Native progress is absolutely checked. Law is the index of civilisation. The day will undoubtedly come when the majority of Natives will look on polygamy as anomalous

⁴⁷ Report, para. 233.

⁴⁸ Natal Native Commission 1881—2; Report and Evidence, Vol. II, p. 93.

⁴⁹ Sir George Pomeroy Colley to the Earl of Kimberley, 16th July, 1880.

⁵⁰ Address of D. D. Tengo Tabavu at the “King Teachers Association” at Debe Nek, C.P., November, 1919.

and abnormal, if not criminal. The day may come—though this is far more doubtful—when they will take up a similar attitude as regards *lobola*. It would be idle to pretend that Native Law is a perfect system, or that Native society will never change from its present state. And even if Government does nothing to encourage change, yet the influence of the missionaries, the example of European institutions and customs, and the slow process of natural growth will undoubtedly effect important changes.

But at the same time, there is no great reason why Native Law should be assimilated in all points to, or amalgamated with, European (i.e. Roman-Dutch) Law. With regard to intestate succession, it is extremely doubtful, whether the Roman-Dutch system is as good as that of Native Law. The law of primogeniture, universally observed among the Bantu, will, as property in land becomes more individualised, be productive of more beneficial results than the equal division of landed estate among all the children. The latter system tends to produce a miserably poor peasantry: the former a class of respectable peasant-proprietors, plus a sufficiency of agricultural labourers. When the 1903—5 Commission therefore tells⁵¹ us that it is of opinion "that in the case of a Native dying intestate, the succession and inheritance to all land in his estate held under title in the form customary in South Africa should, unless otherwise provided in such title, be determined in accordance with ordinary Colonial law," we can only express surprise and disappointment at such an attitude. There appears no good reason why in the most advanced system of Native Law, the making of wills (involving the power to disinherit children) or the acquisition of property in freehold (as against quit-rent) should be permitted.

The conclusion to which we are led is, then, that Native Law will gradually advance as Native social life advances, but that it is quite unnecessary that it should in all points coincide with European law. In the course

⁵¹ Report, para 241.

of generations, there is no reason why it should not be a refined and subtle independent system of law, as good as any other.

Is there not a conflict between this conception of a progressive evolution of Native Law and an exemption system? Many authorities have thought so in the past. Before the Exemption Laws became utterly discredited in Natal, the idea seems to have been to let Native Law alone—the proper channel of escape from it was the claiming of exemption. This explains to some extent the “laissez faire” attitude of Government to Native Law after 1875—an attitude not even *prima facie* reasonable since the exemption laws were admittedly absurd, and exemption was discouraged. But why should there be such a feeling? Native Law to-day is such that an educated and Christian Native gladly claims exemption from it—especially from its tribal obligations. As Native Law advances it may be presumed that exemptions therefrom will grow less and less, until, when it has reached its highest standard, children of exempted parents will, on reaching the age of eighteen, fail to apply for exemption. In other words, exemption is a temporary measure—but a measure likely to be necessary for some few generations—until Native Law is levelled up to the standard of the most advanced Natives.

Of course if, as in Natal, exemption makes the applicant, as regards Civil law, legally a European, it can easily be seen that a class of exempted Native accustomed to European ideas of inheritance and of the acquisition of property might spring up unwilling to accept the fully worked-out Native law. For this reason in future exemptions, we ought to provide that the Native law of succession should apply. With regard to the acquisition of property in freehold, there could be no objection to that being in existence as a permissible, but unusual, tenure in advanced Native Law.

In concluding this study of the recognition of Native Law, it is well to consider that we have been led to the same conclusion as in the previous Chapter (Administra-

tion) viz., that the maintenance of the Bantu as a separate people from the Europeans is the most desirable end. Just as, in discussing administration, we saw the advantage of a special administration and judiciary for Natives, so now we have seen the advantage of a permanently separate system of law. Practically and theoretically we can see the expediency and the justice of preserving, within the unity of humanity, the spiritual lines of demarcation between race and race laid down by the Great Law-giver Himself. There are potent factors making for complete racial admixture—factors which may or may not triumph in the course of centuries—but so long as the races remain separate these conclusions are surely valid.

APPENDIX TO CHAPTER IX.

TEXT OF THE NATIVE DISPUTES BILL, 1912.

(As Read a Third Time).

BILL

to

Facilitate the settlement in accordance with Native Custom, of certain Disputes between Natives.

(Introduced by the Minister of Native Affairs).

BE IT ENACTED by the King's Most Excellent Majesty, the Senate and the House of Assembly of the Union of South Africa, as follows:—

1. The provisions of this Act, with the exceptions of Sections seven and eight, shall come into operation in such portions of the Union as may be declared from time to time by the Governor-General by proclamation in the *Gazette*. Sections seven and eight of this Act shall come into operation on the date of the first publication of this Act as an Act in the *Gazette*. Any law or regulation in force in any portion of the Union shall, so long as this

Act is in operation therein, be suspended in so far as such law or regulation is inconsistent with this Act.

2. In this Act, unless inconsistent with the context, "Native" shall mean any member of an aboriginal tribe of South Africa declared by the Governor-General by proclamation in the *Gazette* to come under the operation of this Act.

"Magistrate" shall mean any magistrate, assistant magistrate, native commissioner, or native sub-commissioner;

"Dispute" shall mean any civil claim made by one native, against another or any dispute between two natives, provided it is comprised within any class of suit which has been declared by the Governor-General by proclamation in the *Gazette*, to be a claim proper for decision in accordance with native custom;

"Native custom" shall mean, in reference to any class of dispute,—

- (a) Such customs or usages as are already defined by law in any Province or portion of a Province within the Union;
- (b) Such rules as may from time to time be declared by the Governor-General, by proclamation in the *Gazette*, to be the customs or usages to be observed in the determination under this Act of any particular class of dispute: Provided that this paragraph shall not apply to the customs or usages referred to in paragraph (a) hereof;
- (c) In the absence of any definition by law or of any proclamation declaratory of any particular class of dispute, the customary usage prevalent amongst the tribe or people to which the parties to the dispute belong; and, when the parties belong to different tribes, the customary usage prevalent amongst the tribe or people amongst whom the defendant is living.

"Prescribed" shall mean prescribed under this Act or any rule made thereunder or under any other law.

3. Upon the intimation to him by either of the parties to any dispute or by the duly authorised representative of such party that he is desirous of having the dispute settled in accordance with native custom, any magistrate may, if he think it expedient in the interests of justice, subject to any prescribed rules,—

- (a) Dispense with the procedure ordinarily required for action at law precedent to the trial of the dispute and substitute therefor such procedure as may be necessary to bring before him the parties to the dispute and their witnesses;
- (b) Enquire into the dispute and, for the purpose of the enquiry, dispense with the procedure, including the manner and form of proceeding and rules of evidence, governing the trial of the dispute by ordinary action at law, and substitute therefor such procedure and rules as may, in his opinion, best assist the determination of the matter in dispute;
- (c) Call to his aid such advisers as he may deem necessary to enable him to determine any question of native custom; and
- (d) Determine, the dispute in accordance with native custom and make such order as may be necessary: Provided that effect be given to native custom only so far as its application to the dispute may, in the opinion of the magistrate, be in accordance with real and substantial justice.

4. (1) For the purpose of any enquiry under the last preceding section a magistrate may administer an oath in due form of law to any person testifying before him, and any person who gives false testimony on oath as to any matter material to any such enquiry, knowing the testimony to be false, shall be guilty of an offence and liable on conviction to the penalties prescribed by law for the crime of perjury.

(2) The law as to contempt of court applicable to the trial of civil cases in magistrates courts shall apply in reference to enquiries under the last preceding section

and any such contempt may be dealt with by any magistrate before whom any such enquiry is held in like manner as if it were committed before him at an ordinary trial.

5. (1) Any order made by any magistrate under section three shall, for all purposes, have the full force and effect of a final judgment of the magistrates court for the district in which such order is given, and subject to the prescribed rules, shall be executed in like manner as any such judgment.

(2) Except in so far as may be prescribed, no such order shall be subject to appeal or review.

6. (1) The Governor-General may, after consultation with the Chief Justice of South Africa, make rules as to all or any of the following matters :—

- (a) The custom or usages to be observed in the determination under this Act of any particular class of disputes;
- (b) Limitations upon the jurisdiction of magistrates under this Act;
- (c) Appeals from the decisions of magistrates under this Act or from specified classes of such decisions to any superior court or to a special court of appeal consisting of three magistrates to be constituted from time to time by the Governor-General as occasion may require;
- (d) The manner in which appeals to any such special court shall be prosecuted;
- (e) The form and manner in which the parties to any dispute and their witnesses shall be brought before any magistrate, the form and manner of proceeding in hearing of disputes, and rules of evidence;
- (f) Fees of office to be imposed for services performed in and about the hearing and determination of any dispute and the issue of any order under this Act;

- (g) The taxation of costs, for the remuneration of witnesses, and the limitation of fees or rewards payable to legal practitioners;
- (h) The manner in which orders issued under section three of this Act shall be executed, and scales of fees for the remuneration of persons putting such orders into execution.

(2) Different rules may be made in respect of different Provinces, districts or areas within the Union.

7. Section thirty-three of British Bechuanaland Proclamation No. 2 of 1885 in so far as it provides for an appeal in civil cases from the decision of any native chiefs, and so much as refers to native chiefs in section three of Act No. 29 of 1907 (Transvaal) shall be and are hereby repealed, and there shall be substituted therefor and be in force in that portion of the Province of the Cape of Good Hope known as British Bechuanaland and in the Province of the Transvaal, the following provisions:—

- (a) An appeal shall lie from every judgment of a native chief to the magistrates court of the district wherein the parties reside or in which the case was first heard.
- (b) The chief shall appear either personally or by deputy before the magistrates court and shall state his reasons for the judgment. A fee of five shillings shall be paid to a chief and a fee of two shillings and sixpence to a deputy appearing for him for each day on which the chief or deputy so attends. Such fee shall be charged as a fee of Court.
- (c) The magistrates court may confirm, alter, amend or set aside the judgment of a chief, and, may take further evidence, or may try the case afresh, or remit the case for retrial, having full power to deal with the case as the interests of justice may require.

8. This Act may be cited for all purposes as the Native Disputes Act, 1912.

CHAPTER X.

CODIFICATION OF NATIVE LAW.

The question of the codification of Native Law is raised in a very practical form by the existence of the Natal Native Code, and less fully by that of the Transkeian Penal Code. In this chapter it is proposed to examine firstly the history of codification in the Cape leading up to the Penal Code, and secondly the history of codification in Natal (Codification is unknown in any form in the two remaining Provinces); then to place our Native Codes against the background of the general history of codification; and lastly to discuss the merits and defects of codification of Native Law as a general policy for the Union.

The idea of codification in the Cape appears to have originated with Sir Benjamin D'Urban and Sir Harry Smith (then Colonel Smith). In a Despatch to Lord Glenelg dated the 7th November, 1835, Sir Benjamin D'Urban writes: "It is sufficiently obvious that, for a considerable time to come, the law martial must continue in force in the new province, acting, with regard to His Majesty's new subjects, upon the basis and principles, and according to the spirit, of the treaty by which they have been received as such, and by the obligations of which both they and the Governor in the King's name are bound; and the Judges of the Colonial Bench may be called upon to prepare drafts of such ordinances, to be proposed by the Governor for the consideration of the Legislative Council, as may be specially adapted to the condition of these people, still keeping in view the principles of the treaties; by which ordinances the law martial may be replaced, when it may become expedient to remove it."

With a perspicacious grasp of the obvious and a pig-headed adherence to principle which form clear comments on His Lordship's personality, Lord Glenelg re

plied on the 17th February, 1836: "I perceive that you intend to frame a detailed Code for the Government of the Caffers; and in the meantime to leave them under martial law. The plan has not been very fully digested, but I fear that it would be found in practice scarcely possible for the legislature of a civilised country to devise and promulgate a Code fit for the government of a barbarous people. If not accommodated to their habits of thought and action, it would be at once unjust and inefficient; and if so accommodated, it must involve a compromise of many principles which we justly regard as sacred."

This reply put an effectual "wet blanket" on Sir Benjamin D'Urban and also on Colonel Harry Smith, who had written to Sir Benjamin on the 18th April, 1836, to the effect that "Magistrates are alone required, and a Code of Laws ably compiled to work progressively from the Caffre up to the British law."¹

While much was done with regard to Native Law in the interim, the question of its codification remained in abeyance until 1856. In that year "Maclean's Compendium," as it was familiarly known, was produced for use in British Kaffraria. It was not a Code, but a handbook for the guidance of Magistrates, specifying conflicting customs and usages where such existed and leaving the Magistrate to decide which was prevalent in his own area, or applicable to the parties to a suit—in short, the kind of handbook we should like to see compiled for the Union to-day. The compiler and editor was Colonel Maclean, Chief Commissioner for British Kaffraria, who had the able assistance of the Rev. H. H. Dugmore, Mr. J. C. Warner, Tambookie Agent, Mr. Charles Brownlee, Gaika Commissioner, Mr. John Ayliff and other less important authorities. This Handbook was approved by Sir George Grey, and guided the decisions of Magistrates in cases tried under Native Law up to the Report of the 1883 Commission and in some points after that date.

¹ Confidential Notes by Col. H. G. Smith on the Treaties of 17th September, 1835, with the Native Tribes.

In 1865 a large number of Fingos, estimated at 40,000, were settled in the present Transkeian Territories. On the 21st August of that year, Sir Walter Currie presented a Memorandum to the Government at Cape Town, in which he stated that "Kafir law was to prevail, in so far as not repugnant to the feelings of humanity. The book published by the British Kaffrarian Government entitled "Kafir Laws and Customs" (i.e. Maclean's Compendium) to be the text-book in law proceedings."

In the same Memorandum Sir Walter Currie included what he terms the "Outline of a Code." It consisted of nine short paragraphs dealing respectively with Magistrate's powers, Native Courts and Council, Stolen Property, General Collective Responsibility, Disputes between different Locations, Duties of Chiefs and Headmen towards Magistrate, "Izzi" (i.e., fines in Civil cases), Strange Live-Stock, Settlement of Strangers in Locations. This "Code" was approved with some slight alterations by Colonial Secretary's Minute of 12th September, 1865. It was concerned mostly, as will be gathered, with jurisdiction and procedure, but embraced some points of substantive law, e.g., the section dealing with Collective Responsibility which reads: "The individual residents of each location and kraal to be held *collectively* responsible for the acts of its individual members (according to Kafir law)."²

It must be realised that Sir Walter Currie's "Code" was not a Code in the ordinary sense of the word—that is, it lacked statutory recognition and decisions of Magistrates under it were liable to be reversed on appeal to the Supreme Court.

When Basutoland was taken over by the Cape in 1871, a set of regulations was drawn up; and this was followed by a revised and more complete compendium drawn up in 1872-3, but not promulgated until 1877.³ This, too, was a Compendium, not a legislative Code—

² Correspondence with reference to the Principles, Conditions and Detailed arrangements in which the Fingo Exodus has been carried out. Cape Town, 1867.

³ See Cape Native Blue Book, 1878, p. 18.

and with the retrocession of Basutoland in 1884 it passes beyond our scope.

Such was the experience on which the Native Laws and Customs Commission of 1883 had to work. The result of its labours was the recognition of Native Civil Law, coupled with a definite refusal to codify⁴ it; and the preparation of a Penal Code specially for the Territories.

That a Penal Code was necessary was agreed upon by all the important witnesses who appeared before the Commission, particularly by Sir Theophilus Shepstone by whom the Commission was "much assisted and guided."⁵ Shepstone, while supporting a Penal Code, was against a Civil Code, fearing sterilisation as a result of it, and his view was adopted by the Commission; which agreed with him that this danger of sterilisation was of little weight with regard to a Criminal Code.⁶

The Transkeian Penal Code is almost entirely the work of Sir J. D. Barry, Chairman of the Commission. It is not Native Law, but Colonial Law with certain modifications.⁷ The Commission gave as its reasons for taking Colonial Law as a basis (i) that the distinction between civil and criminal law in Native Law is very vague; (ii) that such criminal law as there is, is based upon the assumption that all members of the tribe belong to the Chief and that injury to them is injury to him.⁸ On the other hand, Colonial Law alone was insufficient, because (i) it did not concern itself with imputation of witchcraft, with which so much Native crime is bound up; (ii) its law of procedure offended the Native sense of justice by failing to exhaust every source of information, including the examination of the accused and other persons who are able to throw light on the

⁴ Report, para. 61. Certain regulations were, however, drawn up with regard to Marriage, *Lobola* and Inheritance.

⁵ Report, pp. 14 and 20.

⁶ *Ibid.*, p. 20.

⁷ *Ibid.*, p. 23.

⁸ But why not have worked from this basis, substituting the Governor as Supreme Chief, as Sir T. Shepstone did in Natal?

subject under investigation; (iii) it did not recognise the principle of communal responsibility.

The Penal Code deals with witchcraft in Sections 171 to 175 (in the original draft 177 to 181). The imputation of witchcraft is an offence punishable by a fine of forty shillings or in default of payment, imprisonment for fourteen days. The imputation of witchcraft *plus* habitual practice as a witch-finder (*isanusi*) is punishable by imprisonment with or without hard labour, for a term which may extend to two years, or with fine, or flogging, or any two or more of such punishments.

The "illustration" of the last-mentioned crime—one of the many excellent "illustrations" in the original draft—is as follows:— "B. is employed by A., the owner of a kraal in Griqualand East, to tell him why his child C. is suffering from measles. B. accuses D. of having bewitched the child by means of a charm which D. has received from a baboon. B. is proved to be by habit and repute a witch-finder (*isanusi*). B. is liable to imprisonment under this section. Employing a witch-finder and supplying or using 'witch medicine' with intent to injure, are also criminal offences."

The main departure from Colonial Law as regards procedure is to be found in Section 263:— "In any proceeding under this Code the accused person and his wife or husband as the case may be may, if such person thinks fit, be called, sworn, examined and cross-examined as an ordinary witness in the case."

Communal responsibility was recognised by the Code only in respect of stock-theft (Section 200).⁹

One very interesting feature of the Code, as originally drafted, was the excellent "Illustrations" following each Clause, modelled on the famous Indian Penal Code drawn up by Lord Macaulay's Commission. With characteristic distrust of novelty and lack of imagination, the Government dropped these from the Code as ultimately enacted. Two examples are quoted. (The numbers follow the original draft:—

⁹ The section as amended is quoted *in extenso* in the previous Chapter.

"Section 143. Acceleration of death.

"Every one who by an act or omission causes the death of another shall be deemed to kill that person, although the effect of the bodily injury caused to such other person be merely to accelerate his death while labouring under some disorder or disease, arising from some other cause.

Illustration.

"A. strikes B., who is at the time so ill that she could not possibly have lived for more than six weeks had she not been struck. B. dies earlier than she would otherwise have died in consequence. A. has killed B.

"Section 144. Causing death which might have been prevented.

"Every one who by an act or omission causes the death of another shall be deemed to kill that person, although death from that cause might have been prevented by resorting to proper means.

"Illustration.

"A. injures B.'s finger. B. is advised by a surgeon to allow it to be amputated, refuses to do so, and dies of lockjaw. A. has killed B."

The Code is a territorial, not a personal one, i.e., every resident of the Transkeian Territories, Native and European alike, is subject to it—a contrast to the Natal Code which is personal.

A Judicial Commission to revise the Code periodically was suggested by the Commission of 1883,¹⁰ but Government did not accept this excellent suggestion.

The Code, in an amended form was enacted as Act 24 of 1886, and came into force on the 1st January, 1887.¹¹

The Magistrates were asked to comment on the working of the Code in their reports for the year 1887. The following extracts from their reports will assist the student in forming his conclusions:—

Captain Matthew Blyth, Chief Magistrate, Transkei: "The Code seems admirably adapted to the

¹⁰ Report, para. 41.

¹¹ Cape Native Blue Book, 1887, page 55.

conditions existing in these Native Territories." (Cape Native Blue Book, 188, p. 34.)

H. G. Elliott, Chief Magistrate, Tembuland: "The Code and its method of administration is now accepted as being fair and equitable, which is, I think, in no small measure due to the presence of Councillors as Assessors. These men are selected from the most astute and trusted Councillors of the tribes. They watch the proceedings with much interest and intelligence and from their intimate acquaintance with all the wiles and tricks of their people frequently put questions that materially assist the Court in eliciting the truth, and after their work is over they explain to the Chiefs and people at their usual gatherings what took place.

"I attribute the total absence of political unrest and intriguing among my people during the past year to their acquiescence in the Penal Code, and the mode provided for its administration. The Code, in my opinion, works well, and is admirably adapted to the present condition of the people. A more elaborate and intricate Code of Laws would neither be understood nor appreciated by them." (Ibid, p. 45).

W. E. Stanford, Chief Magistrate, Griqualand East: "The Code has worked well. The rules of law laid down for the guidance of Magistrates are instructive, and the procedure is simple and effective. The Natives appreciate highly the privilege of sitting as Assessors." (Ibid, p. 61).

It will be seen that the three Chief Magistrates were in agreement in reporting favourably on the Code. Of the District Magistrates whose Reports are available, those of Engcobo, Umtata, Saint Mark's, Xalanga, Elliotdale and Mqanduli report in favour of the Code, and only those of Umzimkulu and Mount Ayliff against it; the magistrate of Tsolo takes up a non-committal attitude. The Reports for 188 (Blue Book of 1889) were almost unanimously favourable; and there is no general discussion of the Code in subsequent Blue Books.

It is not to be supposed, however, that this consensus of opinion warrants the impartial investigator in recommending the enactment of a similar Code for the Union or of similar Codes for other Native Territories. Reading through the Magisterial Reports carefully, one is led to the conclusion that the system of Assessors (the old *Amapakati*) is what presents itself most favourably to the Magisterial mind. In spite of an overwhelming preponderance of favourable reports on the way in which these Assessors performed their duties, the system was abolished as regards the more important cases in 1889 after only two years' trial and replaced by Circuit Courts and Juries. This was the subject of some adverse Magisterial comment at the time, and shortly afterwards the annual reports show a retrogression towards heathen customs in the Territories. *Post hoc* is not always, of course, *propter hoc*; yet we cannot but feel that the change was ill-advised.

Can we draw any general lessons from the Transkeian Penal Code? At this date, when Natives all over the Union have been subjected to European Criminal Law for practically half a century, it is perhaps merely pedantic to argue with Mr. John Ayliff,¹² that the Code shall have mirrored existing Native practice instead of laying down a foreign system. It is quite impossible to hope that our Legislature and our Courts will be persuaded to substitute for the useless and expensive penalty of imprisonment¹³ the old Native customary penalties of fines, preferably in kind, and, under stringent restrictions of corporal punishment.

Accepting in practice the position that Criminal Law for Natives must be the European Criminal Law, at any rate in the main, we arrive at the position that the Transkeian Penal Code, so far as it is successful is an argument not for Native codification, but for the codifi-

¹² Minority Report to the Report of the Native Laws and Customs Commission (Cape), 1883.

¹³ It is, perhaps, needless to say that this punishment was unknown among the primitive Bantu. (See also the handling of the subject in Richmond Haigh's brilliant little book "Otai.")

cation of European Criminal Law. As such the writer accepts it whole-heartedly. A General Code of Criminal Law would be an inestimable book to Magistrates, and would not be productive of those dangers which threaten societies that codify their Civil Law. Such a Criminal Code could contain, with advantage, certain modifications of substantive law and procedure applicable when the defendant is an unexempted Native.

More than this the history of the Transkeian Code does not prove. It is not a Code of Native Law in any real sense of that term. It is a Code of advanced, refined, to some extent artificial European Law. That it has been on the whole successful does not prove that a Code of primitive law (such as the Natal Code) is desirable.

The Transkeian Code is a territorial one; any Civil Code would, quite obviously, have to be a personal one. The importance of this difference may be exaggerated, but it is well that we should note it.

We are driven, then, to the examination of the Natal Code, as being of more direct value for our purposes.

Codification in Natal was no part of the original Shepstone policy, and its adoption marked the passing of Sir Theophilus Shepstone's rule. We know, from his evidence before the Cape Native Laws and Customs Commission of 1883¹⁴ that Sir Theophilus Shepstone was against codification, though curiously enough, Mr. Henrique Shepstone was a thorough-going believer in it.¹⁵ In the Native Administration Law of 1875 provision was made for the constitution of a Board of Native Administration which *inter alia* was to draw up, for the guidance of Magistrates, a Code of Native Law. This Code, consisting of sixty-eight Clauses, was promulgated on the 28th February, 1878.

Not many years elapsed before it was thought desirable to revise the Code and give it a more definite form. Accordingly, by Law 44 of 1887, the Executive was

¹⁴ Minutes of Evidence. Questions 151, 259, 326, 435, 436, 437. (Pages 9, 14, 18 and 24).

¹⁵ See his Evidence before the S. A. Native Affairs Commission, 1903—5 (Questions 19172—24, Vol. III, p. 86).

given power to issue a Code. Operations were begun at once, a Draft Code being drawn up by Mr. W. Y. Campbell, of Durban, and printed in 1888. This formed the basis of the present Code. As finally worked out, it was presented to Parliament in 1891—the Executive having thus tacitly surrendered its power of legislating¹⁶—and passed *en bloc*¹⁷ as Law 19 of that year. The Law contained no provisions authorising the Executive to amend it. The result is that to-day the Code can only be amended by the Union Legislature, which, to speak frankly, knows very little about it.

In Zululand the 1891 Code was not applied on the annexation of that Province to Natal, except one Section relating to the appointment of Chiefs and another making the Governor of Natal Supreme Chief.¹⁸ Otherwise the earlier Code applies. Natives in Zululand may be exempted from "Native Law as administered therein."

The Code consists mainly of ordinary Civil Law, but a few points of Procedure and of Public Law appear. In addition to permitting an accused person to be examined and cross-examined as an ordinary witness, the Code permits the obtaining of witness by commission and does not necessarily exclude hearsay evidence. The position of the Governor as Supreme Chief is defined and a hierarchy of responsibility is set up—Chiefs are responsible to the Supreme Chief, Heads of Kraals to their Chiefs, Heads of Families to their Kraal-Heads. Communal responsibility is fully established. With regard to property, there is a rule that prescription is not recognised. Any refusal, express or implied, of a Chief to obey a lawful order of the Supreme Chief is treason. The main part of the Code is concerned with Marriage, Lobola and Inheritance; and these are dealt with in great detail. Indeed it has been a peculiarity of the Natal

¹⁶ Report of Natal Native Affairs Commission, 1906—7, par. 41.

¹⁷ Minute of Harry Escombe, Esq., Attorney-General of Natal, dated 5th April, 1895.

¹⁸ Evidence of Mr. (later Sir) Charles Saunders, Chief Magistrate of Zululand, before the S. A. Native Affairs Commission, 1903—5. Questions 30156 and 99. (Vol. III, pp. 754—5).

system to reduce the most minute customs to writing and this is illustrated, even more clearly than in the Code, by subsequent regulatory legislation regarding Beer Drinks, e.g., "The superior position and rank of the men (*amadoda*) must be recognised and respected by the young men (*izinsizwa*) who will be guilty of a contravention of these regulations should they sit down and drink beer in company with the men (*amadoda*) unless specially invited to do so by the principal man of the hut, with the approval of the others present."¹⁹

How has the Natal Code worked and is it possible to get an answer from the experience of its working to the question whether codification is generally desirable?

It is most difficult to answer these questions. We do know that the fixing of the number of *lobola* cattle and the provision that *lobola* must be paid over in its entirety before the marriage have seriously affected the Native view of what in itself is a laudable institution, and tended to emphasise more the conception of barter or sale.²⁰ This, however, is only to argue that a Code should reproduce the actual structure of the Society for which it is enacted, not the structure which the codifier thinks ought to exist—a very elementary point. Most of the Natal evidence before the 1903-5 Commission was in favour of a Code, though not necessarily of the Code. Mr. J. Y. Gibson, the well-known writer on Native Affairs, was in favour of the Code as it stood.²¹ Mr. H. C. Shepstone favoured its extension,²² Mr. Justice Boshoff,²³ Judge President of the Native High Court and Mr. Justice (later Sir William) Beaumont²⁴ were ready to support the principle of codification but wanted to see the existing Code amended. The Natal Commission of 1906-7 reported

¹⁹ Government Notice (Natal) 620 of 1898, dated 23rd October, 1898. See also S.N.A. Circulars of 11th October 1884, and 15th April, 1893, and Government Notice 32 of 1903.

²⁰ See following Chapters. This point is brought out *inter alia* in the Natal Native Affairs Commission of 1906-7. Report, paras. 61 and 62.

²¹ Evidence Vol. III, p. 41.

²² *Ibid*, p. 86.

²³ *Ibid*, p. 348.

²⁴ *Ibid*, pp. 16-17.

that "there was an almost unanimous expression of opinion by Magistrates and others that there should be a Code,"²⁵ but also stated: "That there is need for amendment is abundantly established by the evidence."²⁶ It is noteworthy that the 1903-5 Commission, after duly considering evidence from every part of South Africa, reported: "The weight of the evidence adduced before the Commission is against the enactment of a statutory Code based on Native Law."²⁷

We are therefore left in more or less of an agnostic position. Quite certainly, the Natal Code has not been a complete success: equally certainly, it has not been an utter failure. Whether things are better or worse for its enactment than they would have been otherwise it is not possible to say at all dogmatically on the evidence before us. Most Natal Magistrates swear by the Code, but then Transkeian Magistrates are often equally ardent for their own system of unwritten Native Law. There is always a certain conservatism in people who administer justice. The only verdict we can come to as regards the Natal Code is "not proven," and to arrive at a definite conclusion relative to the problems of codification generally we must pass from the concrete history of Codes in South Africa, to the consideration of the general causes and characteristics of codification.

For a Code to arise naturally among peoples in a primitive state of legal development, Maine has shown us that one or both of two factors must be present, viz. :— (1) The discovery of the art of writing; (2) the desire to take law out of the hands of a professional or oligarchal class, and make it "cognoscible" to the people at large.²⁸ Now neither of these reasons was or is of effect among the Bantu. The art of writing has only been instilled from outside Europeans. The knowledge of law has never been among the Bantu the monopoly of any given class. Trials were always public, and any one not afraid

²⁵ Report, para. 63.

²⁶ Report, para. 61.

²⁷ Report, para. 232.

²⁸ "Ancient Law." Chapter I.

of making a fool of himself might speak as a Councillor. Native Law has not reached into the early stages of codification of which the Law of the Twelve Tables is so excellent an example. Native Codes to-day are not natural but artificial: they are imposed from without, not evolved from within.

Now if the Twelve Tables or the Code of Manu were—as they admittedly were—premature, it must be clear that *a fortiori* the codification of the yet more archaic laws of the Bantu would be premature. It does seem therefore that the *onus* lies in the supporters of a Union Native Code to prove their case. The Code of Manu has been the tragedy of a whole civilisation: it behoves us, then, to look warily on premature codification.

We know that the Romans, with their unerring legal instinct, found a remedy for their too early codification. They—and *a fortiori* the Bantu—had not reached that stage of self-consciousness which produces the modern "legislation-state." The remedy which they discovered was that of legal fiction. Thus, for example, the Code of the Twelve Tables, as is well known, provided for one means only of terminating the *patria potestas*—that is that a father who sells his son thrice into bondage shall be punished by forfeiting his *potestas*. In later days the emancipation of a son on attaining his majority took place as a matter of course by a fictitious sale of the son to a collusive friend thrice in rapid succession, followed by a formal *mancipatio*. In parts of South Africa where the Native Law is not codified legal fiction is often used to meet the necessity of *lobola* payments in a time of scarcity—baskets of corn and even stones being passed as a token in place of the customary cattle.²⁹ But where we have codified this is no longer possible. As our codification of Native Law is not natural, the natural remedy does not come into play.

²⁹ *Vide*, e.g., Bohm's "Institutes of Roman Law" (ed. Led-læe), pp. 482 and 486—7.

³⁰ *Vide infra*, Chapter XIII.

The Courts which administer our Codes have got beyond the "Legal fiction" stages.

At a very much later period of human history, as a result of the French Revolution and the doctrines of Utilitarianism, the "legislation-state" was brought into being and the great Codes of the Nineteenth Century evolved, culminating on the 1st January, 1900, in the greatest of them all, the German Civil Code, which we have replaced in South-West Africa, as thoughtful mandatories, with uncodified Roman-Dutch Law. It is difficult to understand, unless one bears in mind the innate conservatism of lawyers, why any country which has advanced to the stage of conscious and constant legislation should fail to codify its substantive law and to revise that Code, in the light of subsequent legislation from time to time. Codification in the "legislation-state" is definitely a good thing—at least to the layman.

To return to the thread of our argument, then, our Native Codes having been imposed from without, and being incapable of amendment by the natural means of legal fiction, must be amended from without by the method of legislation. Otherwise progress becomes sterilised and the Code is rendered definitely a curse.

Can we rely on the legislative remedy being applied? The experience of the past leads us to a quite distinct negative. Our Legislature, as a whole, have had neither the time, the inclination nor the expert knowledge to revise the existing Codes adequately. No revision of the Natal Code has taken place since 1909, and, as far as the outside world at least is aware, no examination with a view to revision. There is a tendency that this will always be so, with no disparagement to the Legislature, which cannot be expected to consist of trained Native Affairs experts.

If the Legislature would absolutely delegate its powers in this matter to a Judicial Committee on which no Judges or Advocates inexperienced in Native Affairs were permitted to sit, a great deal of the objection to codification would fall away. But such a Judicial Committee

would really have to consist of Judges of the Native High Court, Natal, the Transkeian Chief Magistrate and similar authorities. And as they would be the very people who would administer and mould the unwritten Native Law, why create so artificial a thing as a Code? If they can be trusted to revise a Code, they can be trusted to also administer an uncodified system of law with equity, consistency and ability.

We are now in a position to sum up the pros and cons of Codification of Native Law, and to attempt to arrive, difficult as it is, to do so, at a definite decision.

We are somewhat surprised when we see Transkeian stalwarts such as Mr. A. R. Welsh, Magistrate, Tsolo, or Mr. M. B. Shaw, Magistrate with Umhlonhlo expressing themselves as follows³¹:— "I trust the Government will soon be enabled to furnish the Transkeian Territories with a Code of Laws for their guidance. At present, as far as I am aware, we have no law to guide us. We are a "law unto ourselves" in fact. But this is most unsatisfactory."..... "A carefully collated Compendium of Kafir Laws for the use of Magistrates in the Transkei should be promulgated." But a little reflection shows us that a Compendium or Handbook to assist Magistrates differs from a Code to bind them. Unless we can get Magistrates who are skilled theoretical jurists and also steeped in practical Native custom, it is dangerous to leave them without some guidance. Otherwise, as Mr. A. R. Welsh observes at a later date:³² "Each Magistrate acts as he may think best and frequently lays down a rule which does not obtain in adjacent districts. The result is what might be expected. The Natives say they don't know which is the Government law and become perplexed and dissatisfied."

It is clear from the above that one danger of Unwritten Native Law is its uncertainty and inability. A second danger is, of course, the intrusion of personal caprice or idiosyncrasy, frequently based on ignorance.

³¹ Cape Native Blue Book, 1878; pp. 85 and 96.

³² Cape Native Blue Book, 1879, p. 47.

As Bishop Callaway put it as early as 1879,³³ "As regards British Magistrates placed over the Natives, my judgment is very clear that they should be supplied with definite laws to administer and that they should on no account be allowed to be legislators as well as administrators—extemporisers of law on the judgment seat—a system scarcely separable from personal caprice." It may be argued that Magistrates would not in practice be ignorant or prejudiced. One can only refer to cases like that of the Magistrate of Fort Beaufort who writes in the Cape Native Blue Book of 1880³⁴ as follows:—

"I sincerely hope that a law will be passed before long to put down the state of semi-slavery which exists among the heathen portion of the Natives in this Colony. I allude to the practice which prevails of buying women. I have done what I could to check this barbarous custom, as I look upon it that to this system of buying wives for cattle the great prevalence of stock-stealing is partly to be attributed, just as drunkenness is generally the primary cause of serious assaults."

To speak of *lobola* as "buying wives" and to assert that it produces a state of slavery is ludicrous to any one with even an elementary knowledge of Native Law.

Sir Henry Elliott, Chief Magistrate of the Transkei was definitely in favour of a Code for the Territories,³⁵ but he preferred a Code to a Compendium merely because of the danger of the Supreme Court upsetting a decision based on Native Law—a danger which the arrangements regarding Appellate jurisdiction in Native cases suggested in Chapter VII ought to obviate.

The great argument against codification has already been brought out clearly—the danger of imparting rigidly to an archaic and imperfectly developed system. Here it is perhaps only necessary to requote the opinion

³³ The Bishop of St. John's, Kaffraria, to Sir Bartle Frere, 14th January, 1879) in Imperial Blue Book C. 2316).

³⁴ pp. 184—5.

³⁵ Cape Native Blue Book, 1894, pp. 49—50; S. A. Native Questions 20487, 20714, *Evidence*, Affairs Commission, 1903—5 20718, Vol. III, pp. 192 and 208.

of Sir Theophilus Shepstone expressed before the Cape Native Laws and Customs Commission of 1883³⁶ :—

Q. : "I don't know if I am right in gathering that you are not much in favour of codifying Native Law?"

A. : "I have an objection to making Native Law too technical. I recognise the necessity of having a text book for Magistrates to be guided by and laying down and exemplifying principles to be observed in different cases."

Q. : "Your objection to the proposal to codify the Native Law is based upon the possibility that the very codification of the Native Law will make it too rigid, and so absolutely check the improvement you wish to bring about?" A. : "That is the danger which I fear."

The danger of uncertainty, caprice, ignorance on the one hand—the danger of a society in which all progress is sterilised on the other. Is there no *Via Media*? A mediating solution does exist. It was brought forward by Mr. S. O. Samuelson, in a Memorandum dated the 21st December, 1904, prepared for the Native Affairs Commission of 1903-5, adopted by that body and incorporated in Paragraph 232 of its Report :—

"The weight of the evidence adduced before the Commission is against the enactment of a statutory Code based on Native Law. It has been suggested, and with this the Commission agrees, that a text-book or hand-book for reference only descriptive of Native Law and Custom would be useful as a help towards uniformity in administration."

To this must be added five amplifying clauses.

(1) A short Declaratory Act should be passed stating that the Courts (including the Appellate Division) recognise unwritten Native Law, determinable as a matter of fact in each instance, but based on the Official Compendium in the absence of evidence of the existence of a different custom among the defendant's tribe.

(2) The Compendium should not attempt to idealise Native Law or render it uniform; and should state

³⁶ Questions 435 and 437, p. 24.

clearly the divergent customs in every part of the Union, if such exist and are known, from tribe to tribe.

(3) The Compendium should be raised at stated intervals of from five to ten years by a Committee of qualified persons.

(4) The revision is not to be used for the purpose of altering customs which the revisers think undesirable, but merely to bring the Compendium into line with practice.

(5) A better training of Magistrates in general theoretical jurisprudence and in sociology should be undertaken. A study of Native Law should be obligatory in the Civil Service Higher Law Examination, as it is now optional for the LL.B. Degree of the various South African Universities.

CHAPTER XI.

POLYGAMY AND LOBOLA.

"*Lobola* and polygamy," said Chief Teteluku in his evidence before the Natal Commission of 1881—2 "are the two great questions which divide us from the White man." As such they deserve our serious attention, and the more so as an examination of *lobola* in particular illustrates very clearly the scientific nature of Native Law, and the folly of interfering with it without adequate knowledge and due cause.

Whilst it requires no argument to demonstrate the advanced nature of a monogamic as compared with a polygamic system, yet it is as well to remind ourselves that for man to pass through the polygamic stage is natural if not inevitable. In a system which politically is patriarchal and legally agnatic, polygamy is in perfect keeping. While we must guard against any argument which would express the view that polygamy in the abstract is of equal value with monogamy, we must also realise that polygamy is not *necessarily* worse than monogamy when considered as a concrete institution relative to time and circumstance.

Polygamy is to-day on the decline among the Bantu.¹ This is due partly to missionary influence and the example of Europeans; but probably even more to economic causes. Among the chief of these is the agricultural revolution which replaced the hoe by the plough.² In the days of the hoe agricultural labour was commonly performed by the women; consequently the more wives a man had the greater was his labour supply. Moreover,

¹ See Report of S.A. Native Affairs Commission 1903—5, para. 297 (i) "Polygamy generally is on the decrease throughout South Africa; this is due amongst other things to the increased cost of living, the loss of cattle and the consequent increase of the difficulties in obtaining *lobola* consideration, and the increase in the proportion of men marrying."

² For a further discussion of this topic, *Vide* Chapter XVII *infra*.

his implements cost him next to nothing and he was therefore in a position to meet the *lobola* obligations which each succeeding marriage involved. To-day—at least in all but the most backward parts of the Union—the plough is commonly used. The man drives it himself: he needs less labour but more money, for ploughs are expensive. The result is a perceptible diminution of polygamy and an increased willingness to work—both desirable results. The introduction of the plough is, perhaps, the best service which Europeans have yet rendered to Natives in South Africa.

Yet, though polygamy is waning and though the majority of natives in the Union are monogamists, polygamy still claims a sufficient proportion of the Bantu to make its investigation not merely an academic matter. Its implications are far-reaching. It is one of the chief hindrances to Christian missionary enterprise—largely, it is said, owing to the methods of some Christian missions in the matter. That no convert should be allowed to marry additional wives after baptism is a rule to which—in spite of some doubts regarding the practice of the early Church in this matter—no exception can perhaps be taken. But that a convert who is a polygamist should be required to put away all but one of his wives already married in good faith according to Native Law before baptism, seems, to a layman at least as unjustifiably harsh as it has been manifestly impolitic. “A Native has three or six wives: the missionary comes along and converts him, and he has now to be married to one of his wives according to Christian rites before he can become a member of the Church. Usually he chooses the youngest wife. In any case, whichever he marries, the remainder are put away or sent away: and if they have grown up children they resent the stigma cast upon their Mother, and there is trouble over the property, followed frequently by litigation, which often ruins the whole family.”³ This is the case where a polygamist adopts Christianity. Too

³ Report of Mr. Power Leary, R.M., Mount Frere, in Cape Native Blue Book, 199, page 55.

often he finds the sacrifice above his powers, and the Mission knows him no more.

When we consider that many Missionary bodies allow their converts free access to the whole Bible unexplained, we are apt to wonder what strange and puzzled ideas must float across the mind of the untutored ex-polygamist painfully spelling out Genesis or the First Book of Kings.

The general attitude of Governments in South Africa has been to discourage polygamy by indirect means, while not directly interfering with it. There is, for example, the provision in the Transkeian Marriage Regulations of 1879 that the first marriage—but no other while the first wife survived—might be registered at the Magistrate's office, in which case that marriage was accorded a slightly different legal status, divorce, e.g. being governed by Colonial, and not by Native, law. This device has proved a hopeless failure, only an infinitesimal proportion of Natives registering—apparently, among other things, because the inducement was insufficient.

A much more drastic step was suggested by the Native Laws and Customs Commission of 1883, which recommended that after a fixed date, not less than five years after the promulgation of any regulations issued in consequence of the Commission's Report, recognition should be accorded to the first marriage only, and that after that date any *ikazi* (*lobola*) or other claim relating to any wife other than the first should not be entertained by the Courts.⁴ The old fault is again apparent in this enactment—utilising the machinery of Courts and Codes to change social institutions, which in point of fact will not change. The recommendation was, however, not carried into effect.

It had been anticipated in Natal by the Majority Report of the 1881—2 Commission.⁵ Dean Green in his Minority Report offers a not uninteresting suggestion,⁶

⁴ Report, para. 90.

⁵ pp. 12—13.

⁶ Page 23.

viz., that the law should require the insertion of a Clause in every Title Deed where land is transferred to a polygamist setting forth that he may by testament bequeath such land as he will, but that if he die intestate the law shall treat him as a monogamist."

In 1903 the National Council of Basutoland decided that the eldest son of the *first* wife is the general heir of a Chief or commoner alike.⁷ (It is perhaps needless to say that the eldest son of the Great Wife usually succeeds among Bantu tribes. The Great Wife whose lobola is paid by the tribe is usually married late in life sometimes being the twentieth, thirtieth or even fortieth wife. Hence the prevalence of minorities and regencies in Bantu polity).

It was hoped that this step would discourage polygamy. It was adopted by the Bantu themselves, after being duly explained to their principal men in Council, but undoubtedly such a step by such a method would be the furthest one could go generally at present.

The 1903—5 Commission summed up the position as follows⁸:—"The Commission is satisfied that considerable disadvantages in their advance towards Christianity result to the Natives from Polygamy which, however, is an old-standing and prevailed social institution amongst these people. The Commission does not regard it as among those customs which have to be put down with a strong hand, but looks forward to its gradual extinction by such means as greater spread of Christianity and of civilisation, by the labour of women being more than it is supplanted by that of men, and by the ordinary law being voluntarily adopted; and owing to the absence of any great surplus of women in the Native population without which general polygamy is impossible for any length of time."

We now come to the question of *lobola*.—What is this institution?

⁷ S. A. Native Affairs Commission 1903—5. *Evidence*, Questions 29416—422, 39499—39450.

⁸ Report para. 297(2).

“*Ukalobola (ikazi, bohadi)* may be taken to be a contract between the father and the intending husband of his daughter, by which the father promises his consent to the marriage of his daughter, and to protect her, in case of necessity, either during or after such marriage, and by which in return he obtains from the husband valuable consideration, partly for such consent, and partly as a guarantee by the husband of his good conduct towards his daughter as wife. Such a contract does not imply the compulsory marriage of the woman. The “*ikazi*” may, upon every principle of sound law, be recoverable under such a contract.”⁹

“It is not a contract of purchase and sale. The terms ‘buying and selling’ are scarcely fair terms to apply in describing the transactions referred to. The property given in the case of marriage amongst these people forms a provision for the widow and family in case of the husband’s death which arrangement is held sacred and universally respected by all Fingos and Caffres. Now in this view of the case there is much to be considered, and by hastily and harshly breaking it up, quite as much evil as good may be effected.”¹⁰

The more or less official definition cited above has not found universal acceptance of recent years. Some students of social anthropology have preferred to consider *lobola* as compensation to the bride’s social group rather than to her parents. This explanation may possibly have been the origin of the present *lobola* custom, but the fact that the cattle are invariably hurded over to the bride’s male guardian and never, e.g. to the Chief prevents us from accepting it as an adequate explanation of the state of affairs to-day.

More fruitful is the conception of *lobola* as the purchase not of the woman, nor yet of the *manus* over her, but of her childbearing powers, a conception which explains much that would otherwise be obscure in the

⁹ Native Laws and Customs Commission (Cape) 1883. Report Vol. 1, page 30, taken over *verbatim* by S.A. Native Affairs Commission 1903–5, Vol. I, pp. 59–60.

¹⁰ Report of Rev. H. Calderwood, Special Commissioner to report on Fingo Locations, dated Alice, 22nd January, 1855.

detailed working-out of the custom. Some authorities consider that the *bogadi* of the Basuto is to be explained differently from the *lobola* of the Zulus, the former being correctly characterised as compensation to the father, the latter as purchase of the woman's child-bearing powers. If this is correct, it would to some extent, though not wholly, explain the difference in the attitude of the French missionaries in Basutoland from that of all the reputable Natal authorities.

Personally the writer feels that this differentiation goes too far. He would claim that *lobola* (*ikazi*, *bogadi*) has everywhere a two-fold character, viz., (1) compensation to the father, perhaps developed from a more primitive compensation to the tribe or sib; (2) purchase of the woman's child-bearing powers. In some parts the first, in other the second, of these factors is stressed, but both are present everywhere to a greater or lesser extent.

What is at any rate absolutely clear is that *lobola* (*ikazi*, *bogadi*) is not a purchase of the woman in the sense in which that term would be used by the average European.

As clear indications that *lobola* is not a contract of purchase and sale, we may notice the following points as forming part of the substantive Native Law on the subject among every Bantu tribe in South Africa, exceptions thereto being distinctly felt as breaches of tribal morality. (i) The woman does not become her husband's slave. (ii) He may not kill, injure or maltreat her. (iii) If she leaves him, owing to his misconduct, he does not have a claim against the parents for the *lobola* cattle, thus losing bride and cattle together. (iv) He may not sell her to another man.

These points are well brought out in a Memorandum prepared in 1880 by Mr. T. Shepstone, Junr., C.M.G., which reads as follows¹¹ :—

“Regarding the suggestion ‘to do away with women-selling legislation’ I consider that it is a misapprehension to say that the selling of women among the Natives either

¹¹ Papers relative to Native Custom in Natal 1881, pp. 5—6.

exists or has been legislated for in Natal. It is true that on the occasion of a marriage some consideration more or less valuable—such as cattle where cattle are to be had—passes from the man's family to that of the woman; but this is not a sale of the woman; the husband cannot sell her or in any way dispose of her to another; she does not become his chattel in any sense of the word, nor he her owner in the sense of owning property, and the consideration given to her father at her marriage becomes practically a security for her proper treatment, and a provision for her support should her marriage become dissolved on account of ill treatment; because in that event, the girl returns to her father's family and the consideration is not returned to the husband or his family.

"No doubt it is desirable that feelings of a higher order should answer the purpose accomplished by this material guarantee, but such a result can be effected only after the lapse of time has brought about a great advance in the social conditions of the Natives.

"*Ukulobola* is the Native¹² word exclusively used to describe the handing over of the consideration; and is different from, and does not carry the same meaning as the word "tenga" which is used as exclusively to indicate sale or barter."

To the view thus presented, objections will doubtless be raised by Missionaries some of whom have apparently ineradicable prepossessions against *lobola*, and by others. Take, for example, the written evidence of the Revs. R. M. Dyke, L. Mabile and H. Marzolff of Basutoland before the 1903—5 Commission¹³ :—

"A cattle marriage is a genuine sale . . . Women are transferable as well as heritable . . . Some cases have occurred in which one man has sold his wife to another; and we know of one case in which a man was unable to pay a fine and the Paramount Chief directed that his wife should be sold to pay the balance which was done," or this of Peter Mti, a Native of East London¹⁴ :—

¹² Zulu.

¹³ Vol. V, p. 388.

¹⁴ Vol. V, pp. 63—4.

“ ‘Lobola’ is in vogue even among school Natives. ‘Lobola’ is a good custom in itself, but it is liable to great abuses. Originally it was intended to be a sort of settlement on the wife which was paid over to her father or lawful guardian in trust for herself or her children. But the way in which it is now manipulated by Natives in British Kaffraria, leads the most conservative among Natives to remark that ‘lobola’ has degenerated into a matter of purchase and sale . . . It is often the case in this district for a Native to sell his daughter to this man this year and to the next man next year. These matters have come under my personal observation, and I wish to emphasise them.”

This view is supported by a good deal of evidence. Even as far back as the Natal 1881-2 Commission Dean Green in his Minority Report was constrained to write¹⁵ :—

“Few things were more said, in hearing Natives’ evidence before the Commission than to observe the barefacedness, so to speak, with which they referred to their daughters and sisters as being means of their procuring wealth through the *lobola* on their marriage.” In urban areas in particular this conception of *lobola* is being increasingly adopted, particularly on the Witwatersrand, and a case was recently brought to the writer’s notice where a man “*lobola’d*” a woman for a new pair of trousers!

Is there any way of reconciling these views?
lobola as a contract of great value in a primitive society :
lobola as a matter of sordid purchase and sale of women
. . . . *lobola* as an innocent and even laudable practice :
lobola as contrary to the *Jus Naturale*.

It is suggested that the reconciliation is this : In Native Law proper the transaction was never one of purchase and sale; but European influence has tended to suggest this view to Natives of recent years, partly by the errors of the Codes, partly by the influence of the ideas of European commerce, and partly by the misrepresentation of Missionaries and others.

¹⁵ Report, page 23.

Mr. A. F. Fynn, Resident Magistrate of Pietermaritzburg, one of the finest authorities on early Native Custom of his day gave evidence before the 1852—3 Commission as under ¹⁶ :—

“The bride is not designated as a wife until she has borne a child or has a house under her charge, until which she is called *Umloboqazi*, implying that the cattle given for, have not as yet been delivered to her parents.

“In the evidence which I now give before the Commission, I wish to be understood as showing those Kafir customs as they prevailed prior to Europeans coming among them; if cases ever occurred in the tribes of a stipulated amount of cattle being given by a bridegroom for his bride, it was not a common occurrence. The general mode is that on the ceremony being concluded, the male friends of the bride make their demand for cattle, but not for any particular number: the bridegroom having previously arranged as to the number he will give on that occasion, presents them with apologies for the smallness of the number or as the case may be, and is desired to come on some future occasion. The number of cattle given depends more on the wealth of the bridegroom than on any other circumstance.

“Trade, as implying buying and selling, is understood by Kafirs under the term “tenga,” which originally meant “exchange.” This word is applicable to every description of trading, but the word was never used among themselves in connection with marriages. Such an application of the word would be ridiculed by all who heard it.

“I admit that it is now sometimes used by the Natives who have been in the service of Europeans, and I am bound to conclude that this introduction of the word has been forced upon such Natives by those Europeans who have arrived at the conclusion that women were bought for a stipulated price, and suppose the word “tenga” an appropriate one.”

Practically every authority on *lobola*, great or small, whether for or against *lobola* to-day is agreed that in

¹⁶ Published in Supplement to the “Natal Government Gazette” of 22nd February and 1st March, 1853.

primitive Native Law the *lobola* contract was as above described—a contract not involving purchase or sale. The change obviously must have taken place under European influence, that that influence must have been partly, as suggested by Mr. Fynn, personal. It is impossible to acquit the Missionaries of grave error in this matter. They seem to have made up their mind to condemn *lobola* anyhow. Notice the way in which Messrs. Dyke, Mabile and Marzloff, put the change among the Bantu similar to that above described by Mr. Fynn among the Natal Natives.

“A cattle marriage is a genuine sale. This is a position which was indignantly denied by the old Basutos. White men, they said, knew nothing about it. “The girl was not sold,” they said, “she did not cease to be her father’s child, and the money or cattle was given as a thank-offering and a compensation to her parents for the trouble and expense of bringing her up, and for the loss of her services.” The fact was, they were shocked to hear a spade called a spade. That position was untenable, and the more candid heathen will now admit (especially among themselves) that the transaction is a sale.”¹⁷

It may well be to-day that the degeneration of *lobola*, in urban areas particularly has gone so far as to justify the Missions in not recognising the custom or in recognising it only under stringent safeguards. It has been suggested that the Churches should encourage the settlement of the *lobola* cattle upon the woman herself, not upon her male guardian, and there is much to be said for such an experiment. No church could, of course, recognise any element of forced marriage in a *lobola* contract.

The history of the influence of codification upon *lobola* is a series of lessons how not to codify. Instead of reproducing the existing law, the Codes put down what the estimable gentlemen responsible for them considered the law ought to have been. The Natal Code of 1878, for instance, withdrew from the husband the right to recover the *lobola* cattle in case of the wife’s misconduct. “The

¹⁷ S. A. Native Affairs Commission 1903—5. Evidence Vol. V, p. 388.

Natal Code was in this way created, according to the Report of the Natal Commission of 1887, an evil which the Native law avoided and this shows that their customs are all parts of a well-considered system."¹⁸ This error has since been rectified. Not so the error of stipulating maximum amounts of cattle and insisting on the payment in full of *lobola* prior to marriage. This is an exceedingly serious departure from Native Law, perpetuated in the Code of 1891. The only reason for it was the desire save the (European) Courts the trouble of *lobola* litigation. Comment on that is needless.

Mr. C. A. Wheelright, one of the best authorities on modern Native Administration in Natal, said in his evidence before the 1903—5 Commission¹⁹ :—

"The system worked admirably until it became codified and a limit was placed on the amount of the *lobola* :

"*The idea of barter is to be traced to this period, as it did not exist before. Unscrupulous natives at once made use of our Law Courts to claim the highest rates authorised by the Code and the whole principle of lobola lost its virtue.*"

The draft "Bill to amend the Code of Native Law, and to extend the same to the Province of Zululand," contained a very questionable proviso²⁰ that *lobola* must be paid in cattle unless it is not practicable to procure cattle for such a purpose." But very fortunately this last error never became law.

An attempt has now been made to demonstrate the true principles of *lobola* in Native Law, and the reasons for any changes that may have occurred in Native feeling regarding the institution. But it is advisable, before proceeding to examine the attitude of the various South African administrations towards *lobola*, to point out what to sociologists would be a platitude—that *lobola* is not a mere local idiosyncrasy of the Bantu, but as widely spread as polygamy itself, and discoverable in the cause of natural

¹⁸ Native Laws and Customs Commission (Cape) Report, para. 69.

¹⁹ Vol. V, p. 296. The italics are mine.

²⁰ Section 35.

evolution among nearly all peoples whose laws and policy were similar to the natural laws and policy of the Bantu.

An exceedingly able paper on this aspect of the subject was prepared by the Reverend A. Kropf of the Dohne Mission Station,²¹ Cape Colony, and published in the "Kaffir Express" of August 4th, 1873. Thence it was taken over by the Native Laws and Customs Commission of 1883 and printed among the Appendices to its Report.²²

It has profoundly influenced Native Administrators since that date; and bearing this in mind it has been thought advisable in view of the historical importance of the document to quote extracts from the original Report, in spite of its occasional stressing of the obvious.

"From the earliest age of history "*ukulobola*" was practiced among all oriental nations, and in their migrations towards the West they brought it even to Europe, where it died away after the new wine of the Spirit of God had thoroughly fermented in the disciples of Christ.

* * * * *

"Those that contend that *ukulobola* is a mere buying and selling, I wish to refer to the Bible, where the Hebrew verb *Mohar* never means buying or selling in the ordinary sense now commonly accepted among us. Its primary sense is that sense of exchanging which also proved (sic) by the softened form *Mar* and the hardened *Maḳar*. The nearest signification of this word is given by Gesenius: *uxorem pretio parentibus soluto. It is the equivalent which the bridegroom gives to the bride's father for the services which she can no more render to him, but must render to her husband.*

"That *ukulobola* is not buying and selling can also be proved by the husband having no liberty to sell his wife again, which he can do with bought chattels.

"The use of this word in the Old Testament is restricted to this transaction only, and cannot be used in any other connection, just as it is in Kaffir, when it is alone used for marriageable women.

²¹This must serve as a palinode to my previous remarks on Missionaries and their distortion of the institution of *lobola*.

²²Appendix C, page 259.

"We find the word for the first time in Genesis XXXIV, 12, where the English Bible reads: "Ask me never so much *dowry* and gift." It is here connected with the word *Mathan*. The first, *Mohar* is given to the father and the second *Mathan* to the bride. Also Genesis XXIV. 53, where the servant of Abraham gives to Rebecca jewels of silver and jewels of gold and raiment; but to the brother (mark the brother stands first) and the mother precious things.

"That the custom of *Uk̄ulobola* became at that time consolidated, we infer also from Genesis XXIV, 27.

"The daughter was of valuable service to the father in the house or in the field by minding sheep, etc. *By giving her to be married he lost those services and therefore a part of his property or wealth*, which had to be redeemed by the bridegroom, either by money, precious things or cattle, or by serving the father-in-law in the fields like Jacob, or as a warrior like David, 1 Samuel XVIII, 25. In this sense the customs prevail to this day among the Arabs, the Mohammedans in India, the Kurds, Turko-mans, Circassians and Kabyls, the latter giving eight pots of fat and thirty hamels for a girl. The Wiguls in the district of Perm in the Ural Mountains gave five roubles for a lean, and to twenty-five for a fat, girl. The Tahiers in Western Africa ask *Uk̄olobola*, but the parents often refuse it for the purpose for claiming the children. But if the girl has the courage to ask for and to accept the *uk̄ulobola*, then the issue does not belong to the parents.

"If any doubt should still exist about the meaning of the word *Mohar*, this doubt will be removed by a careful study of Exodus XXII, 16 and 17. The whole paragraph from XXI, 18 to XXII, 17 speaks of the indemnification to be given for the loss, damage or violation committed to any one's property, and, most remarkably, the last subject coming under this head is the daughter, whose violation is to be redeemed according to the signification of *uk̄ulobola*, which we have given above. In this passage occurred both the noun and the verb. The violator had to pay the *uk̄ulobola*, even if the father refused to give the daughter to him. Here we see that the *uk̄ulobola* was al-

ready fixed, and Deuteronomy XXII, 29, mentions only the highest *uḱulobola* in such a case, when this human property had been injured.

“From the foregoing we infer:—

1. That in ancient times the brother, just as it is among the Kaffirs, had a nearer right of control and protection over his sister than the father. Genesis XXIV, 53 and XXXIV, 15.

2. The *Mohar* or *uḱulobola* is never mentioned as given to the bride, which the English word “dowry” will infer, but to the father. In Deuteronomy it is said: “He shall give to the damsel’s *father* fifty shekels of silver.”

“For our purpose it shall be of minor importance to mention that Homer in his *Iliad*, Hymn XI, 241, says of Iphiclamus: “The unfortunate, far away from his wife, never having enjoyed her charms, for whom he had given first a hundred bullocks, and further promised for her a thousand goats and the same number of sheep.” Or in the *Odyssey* where Hephaistos says: “Till the *father* shall give me back all the presents which I have given *him* for the girl, the dog-eyed.”

* * * * *

“Though the German woman, as Tacitus says, was held in the highest respect by the man, she was nevertheless not independent, like him who, weapons in hand, fought for his right and liberty. The unmarried women were in the power of their male relatives, called *Schwertnagen*, who had to defend them, and who enjoyed and received as an equivalent for their defence and protection the indemnification which those had to pay who offended the woman. This right, analagous to the Roman *Manus* was exercised by the father or brother as guardian, and was called *Mandwald*, i.e., advocacy, attorney or guardianship. As the girl, by being married, was transferred from the guardianship of the father, brother or other male relative to the guardianship of the husband, the marriage could only be concluded by the formal public transfer of the bride from her guardian to her future husband: and as at the same time the guardianship was looked upon as a complex of property rights on account

of those moneys that fell to the guardian for defending and protecting the woman, the transfer therefore was done as a purchase—mark, not of the woman but of the *guardianship* which was considered to be a property right. This transfer of the wife to the future husband was executed in the open market-place, and marriage was legalised by paying down a fixed sum.

* * * * *

“The *ukulobola* obtained also among the Pruczi and the Slavonian who inhabited the eastern parts of Europe.”

To these erudite instances may perhaps be added the better known one of the old method of marriage by *coemptio* in Roman law. “Coemptio vero in manum convenient per mancipationem, id est per quamdam imaginariam venditionem; nam adhibitis non minus quam quinque testibus civibus Romanis puberibus, item libripende, emittis mulierem cuius in manum convenit.”²³

What has been the attitude of our lawmakers and administrators relative to *lobola*? We have already discussed what the attitude of the church ought to be? What, we ask now, should be the attitude of the state?

Lobola is not illegal, in the sense of being punishable by law anywhere in the Union.

Lobola is not essential to the validity of a marriage under recognised Native Law anywhere in the Union. The Natal Code treats it as usual, not indispensable.

Lobola is fully recognised (i.e. cognisable in the Courts of Law only in Natal and the Transkeian Territories.

Great dissatisfaction has been expressed from time to time at the absence of any judicial recognition of *lobola* in the Transvaal and the Cape. In some areas in the Ciskei the Courts deal with *lobola* cases though not authorised to do so: in other areas the Magistrates do not hear such cases even as arbitrators.²⁴ The non-recognition of *lobola* has caused a loss of confidence in the Courts, but not a diminution of the practice. “In the

²³ Gaius: Inst. I, 113.

²⁴ Cape Native Blue Book, 1893, page 37.

Cape, even within the Colonial Boundary under Colonial Law, dowry usually passes in Christian marriage.”²⁵

▼ The two defects—one rectified and one continuing—of the Natal Code regarding *lobola* have already been adverted to. Otherwise the Code reproduces the genuine Native Law fairly well. In the Transkei, where Magistrates are expected to work on the actual tribal custom, obviously *lobola* is closer to primitive Native Law, though even the Transkeian practice is not unexceptionable.

Even in the two areas where *lobola* is recognised, suggestions have been made that that recognition should be withdrawn—in the case of the Transkei by the Commission of 1883, in the case of Natal by the Commission of 1881—2. “We do propose,” say the Natal Commissioners²⁶ “that, after a certain time, our Courts shall take no cognisance of suits originating directly or indirectly in a claim for *lobola*, either as a cause of action or as a ground for execution in carrying out a Chief’s judgment in a matter connected with *lobola*, nor should the Chief have any coercive jurisdiction. We propose that a Law or Rule to the above effect be promulgated . . . It would have to be fully explained to the people that the only alteration made, was that they must settle *lobola* claims among themselves, and it should also be made known that any breach of the peace resulting from their being so left to settle the matter among themselves would be liable to severe punishment.”

This is a most fatuous proposal when one realises that on the same page of the Report the Commissioners say: “It is generally admitted that almost all litigation among Natives is connected directly or indirectly with *lobola*”!

The chief arguments for the recognition of *lobola* by all our Courts in the Union are four in number.

In the first place, it enhances the value of a woman, both to her father and to her husband, and thus protects her against ill-usage. This argument holds good in the

²⁵ Evidence of J. G. Verity, A. R. M., Middledrift, Cape, before 1903—5 Commission. Questions 8232—3. Vol. II, page 598.

²⁶ Natal Native Commission 1881—2 Report, page 18. ‘

overwhelming majority of cases, even where there is a tendency on the part of the Natives concerned to regard *lobola* as a commercial transaction, for there is probably not one case in ten thousand where the woman is transferred by her husband to another man.

One aspect of this protection is well put forward by Mr. H. C. Campbell, Magistrate, Inanda, and later Judge of the Native High Court, Natal²⁷ :—

“It may startle many to be told that this custom of *ukulobola* is practically the only power which operates as a restraint upon the Native woman. Whether married or single, she is the representative of a certain value, and because of having a value easy of depreciation, she is carefully and jealously guarded. Objectionable as is the practice of giving woman a legal value in many of its phases, it cannot be denied that without the compensating checks of religion and education, difficult to be applied implanted and retained, its abolition would be productive of wide-spread disorder.”

In the second place *lobola* is a valuable safeguard to the woman's self-respect. She feels that her husband has had to work and give valuable recompense for her. It is a remarkable and very well-known fact that the Native women are, if possible, even more attached to the *lobola* custom than the men. “A respectable Caffre or Fingo woman considers herself, and is considered, as forming an improper connection if married without the giving of cattle by the husband, as much as a respectable white woman would do to live with a man to whom she is not married. Such matters require to be carefully dealt with.”²⁸

This leads one to the third argument for the recognition of *lobola*, which is perhaps itself sufficient to prove the point—the strong support accorded to it by Native public opinion. It is estimated that even in the Transkeian Territories and even among Christian Natives, ninety-five

²⁷ Natal Native Blue Book, 1879, page 19.

²⁸ Report of Rev. H. Calderwood, Special Commissioner to Report on Fingo Locations.

per cent. of the marriages that take place are accompanied by a *lobola* contract.²⁹

Lastly, the *lobola* cattle supply the wherewithal to provide for a woman who has left her husband owing to ill-usage—a very important practical point.

Against *lobola* it has been argued not merely that it involves a species of slavery, but also—and this is a very important argument—that it has the economic effect of concentrating the productive energy of Natives on cattle, instead of agricultural pursuits proper. In turn, this necessitates more land than a real agricultural community would need, and the land problem is a source of grave disquiet and unrest.

In reply to this really serious objection it may perhaps be argued that "man does not live by bread alone," and that a custom of social and ethical value must not be discarded on mere economic grounds. It could be further argued that the actual form the *lobola* must take is not material. Our Courts should never insist on cattle being the medium of the contract. If Missionaries would only exert themselves to persuade their converts to utilise pigs, sheep or agricultural produce instead of cattle for *lobola*, they would be doing much more good than they could effect by attacking the whole *lobola* system.

The conclusion of the 1903—5 Commission on the subject of *lobola* is as follows³⁰ :—

"The Commission is of opinion that the Native system of passing cattle, known variously as *lobola*, *ikazi* and *bohadi*, in connection with marriage by Native custom and usage, should not be interfered with by prohibitory legislation, but be left to die out gradually as the outcome of an advance in civilisation. Evidence taken points to a tendency in that direction.

"That provision be made for the hearing and determining of claims arising under Native custom for restitution of *lobola* or such portion thereof as may be deemed equitable where a husband is deserted, without sufficient cause by his wife."

²⁹ Cape Native Affairs Commission 1910, page 41.

³⁰ Report, para 308.

As far as the Government is officially concerned, the above recommendation may appear to meet the case. The general recognition of *lobola* in all Courts throughout the Union is rightly contemplated. It must be said, however, that what our Courts should administer is the existing customary law *so far as not contrary to the Jus Naturale*, which, as we know, forbids slavery,³¹ or any similar transference of persons. The application of this principle would come to the same thing as recognising the primitive Native Law of *lobola*, as uninfluenced by Europeans' misconceptions. The recognition thus accorded should apply even in the case of Christian marriages and of all marriages of exempted Natives, where there is definite evidence of the contract having been entered into.

³¹ Tryphoninus D. 126, De Condict: Indeb. 64.

CHAPTER XII.

THE POLITICAL PROBLEM.

Whenever an argument takes place in South Africa on the Native problem, it tends to veer round, sooner or later, to the question of the vote,—or, in other words, of the place which the Natives should occupy in the body politic of South Africa. This is not, of course, the most important matter which concerns the South African Natives; and we have done well to defer its consideration until the questions of Administration and of Native Law have been fully examined. At the same time, while it is not one of the most pressing practical difficulties, it is a difficulty which will definitely require investigation, and a solution. To “drift” is dangerously easy where the choice of a course is so fraught with perplexity; but the temptation must be avoided. We have ample historical material on which to form conclusions, and, whether or not the time be ripe for the application of those conclusions, it is certainly ripe for their formation.

The Native Franchise question is notoriously provocative of generalities and platitudes. The writer must crave indulgence if he succumbs for a moment to the contagion and begins by saying that no man should pronounce a dogmatic conclusion on the Native Franchise question without a very careful examination of the arguments on the side contrary to his prepossessions. Platitudinous as this may sound, it is, unfortunately, a necessary caution. There is a liberal prejudice and a conservative prejudice on the Native Vote problem, and each deserves attack.

Liberal-minded people, who after all make the world go round, are apt to reason as if there were no antithesis between “justice” (which in their interpretation means giving a vote to every Native or to every Native who possesses certain qualifications) and “injustice” the withholding of such a vote. Then they turn round, in a fine glow of self-righteousness and declaim to us poor, puzzle-

headed fellows, who hesitate to make a phenomenal leap into the dark

—“Because right is right, to follow right
Were wisdom in the scorn of consequence.”

They forget the pertinent question of J. K. Bluntschli¹:—\

“Is representative democracy, which hitherto has only succeeded among politically developed peoples, the natural form of government for masses of negroes?” They ignore the wise warning of Mr. L. T. Hobhouse: “A specious extension of the white man’s rights may be the best way of ruining the black.”² There is a subtle temptation to such an attitude in South Africa. It demands courage. It puts one in a minority. It is unpopular. What more can adventurous youth ask for? The only flaw is that minorities are not always right.

It may be that to give Natives the Parliamentary franchise side by side with Europeans will turn out to be the wisest policy for the Union. But we must not anticipate our historical inquiry. All that we can say here is this: do not assume that all opponents of the Cape Franchise system are unjust, oppressive or reactionary. The Franchise is a right only relative to the recipient’s ability to use it. Further, South Africa has for nearly three centuries been the home of Europeans, some of whom have indisputably better right to the ground they occupy than many mistakenly termed “aborigines.” A settlement of the political problem, which would ultimately place the destinies of the whites in the hands of a Legislature composed of a majority of blacks, would be intolerably unfair to white South Africans and to European civilisation in general, unless and until we have far more convincing evidence than is available at present of the capacity of the Bantu, as a whole, to equal the white races in civilisation and ability. We do not want to see—ultimately—either race ruling the other; but, if such a spectacle exists, we

¹ “Theory of the State” (Clarendon Press Translation), page 179.

² “Liberalism,” page 43.

rightly want to see the more civilised race in the governing position.

The writer may be forgiven for saying this, if he frankly owns that it was with all the prepossessions of liberalism that he approached the question and that his head fights with his heart even now on this matter. A genuinely impartial investigation has convinced him that the solution which commends itself to ultra-Liberals is open to grave objections from many points of view.

But the prejudices of conservatism are equally fatal to a correct solution of the problem, and far less generous, being based mainly on a sub-conscious fear—the fear that the granting of any political rights to Natives will be dangerous to the continued existence of a white South Africa. So deeply ingrained is prejudice on the point that an ample demonstration, backed by unchallengeable facts, that the Native Council system, for instance, has proved not dangerous to Europeans, would not remove it. The conservative critic usually takes the view—at any rate in the writer's experience—that the future of South Africa is to be a black man's country, that we can only attempt to put off the evil day, and that the withholding of political powers from the Natives assists this delaying policy. What a sound of despair from the *soi-disant* South African patriot!

What the conservative critic ignores is the dogma, perhaps the least doubtful conclusion of the whole science of history, of the certainty of revolutions. The statesman can only direct their course: he cannot prevent them from happening. Now revolutions can be of two kinds—peaceful or violent. Peaceful revolutions only occur where regular, constitutional provision (such as, among ourselves, a quinquennial Parliamentary election) is made for carrying them out. Applying this to the Native problem, the Native will be heard, he will make his opinions felt. The wise statesman, however conservative his predilections may be, will see to it that some constitutional channel is prepared through which the floods of revolution may flow without danger to the land.

Laying aside, then, all prejudices one way or the other, let us examine the whole question with open minds, form our convictions on as scientific lines as possible, and thereafter have the courage of those convictions.

Primitive Native polity was not, as is commonly supposed, a despotism.³ Under their ancient tribal system, the Native people was not without representation and the wishes of the tribe at all times played an important part in guiding the policy of the Chief's government.

With the exception of the military autocracies established over the Zulus by Tshaka, over the Matabele by Umzilikazi and by Umswazi in Swaziland, the rule of Native Chiefs in South Africa, prior to European influence, was far from irresponsible. Their will was tempered, and to a very large extent controlled, by a Council so weighty and influential that no step of serious tribal importance was taken until the whole matter had been discussed by it at length.⁴ The Council consisted of advisers of the Chief generally spoken of as Councillors (*Amapakati*). Certainly they were such; but they were much more—they were the direct representatives of the people's wish, and in the very considerable freedom of speech allowed them at their gatherings, the voice of the people found means of expression. A Councillor was never formally appointed as such, rising to his position gradually and informally as his opinion in the public gatherings increased in weight. As he grew to acquire popular influence, his words grew to be accepted more and more as embodying the opinions of a section of the tribe. It might be age, courage and warlike achievements, wealth, skill in public debate, penetration in unravelling the intricate subtleties of Native law-suits, or other attributes which made the Councillor a representative and a public man. No sooner did any matter of concern to the tribe arise than the Councillors

³ The succeeding paragraphs are based on—and in some cases quoted word for word from—the Report of the S. A. Native Affairs Commission (1903–5), paras. 420–422, which in turn are based mainly on draft Memoranda prepared by Mr. S. O. Samuelson.

⁴ There are a few exceptions to this generalisation, the most important being the Bawenda of the Transvaal, whose chiefs are arbitrary despots.

were summoned, no important action being taken until it had been fully discussed in all its bearings. In other words, the Bantu polity was similar to that depicted in the Homeric poems. Agamemnon himself was the typical Bantu Chief, Nestor and Odysseus typical *απαρακῆτι*. The one is as little a despotism as the other.

ἄλλ' ἡμεῖς μὲν ἰόντες ἀριστήεσσιν Ἀχαιῶν
ἀγγελίην ἀπόφασθε, τὸ γὰρ γέρας ἐστὶ γερόντων,
ὄφρ' ἄλλην φράζωνται ἐνὶ φρεσὶ μῆτιν ἀμείνω.

When Europeans took over the government of the Bantu, these principles were, to a very large extent, lost sight of. Councillors were for a time used as assessors in the Transkeian Courts, but no political body equivalent to the Chief-in-Council was recognised. In Basutoland, however, the tribal *Pitso* (Landesgemeinde) continued to be held, after its annexation to the Colony, until the Disarmament Act, with excellent effect. The Governor's Agent, Col. Griffith, reporting on the 1874 *Pitso*, writes (10th April, 1875⁵):—

“According to the Basuto idea, also, the assembling of such a meeting shows a consideration on the part of the Government for the views and feelings of the people; it popularises the Government by making it evident to all that they are governed, not as slaves, but, to use their own expression, as “*batho*” (men). A good feeling towards the Government is also created, which no after machinations of disaffected persons can easily eradicate; whilst, at the same time, the authority and prestige of the Government are maintained and asserted as having the right to summon the only real national meeting in Basutoland.

“The Annual Meeting (*Pitso*) is also a safety-valve, the value of which cannot be too highly appreciated; every man can there say what he has to say, and for the great majority this is the only opportunity, as well as the

⁵ Cape Native Blue Book, 1875, pp. 2—3.

only manner, in which the people can directly communicate with the Government and convey to it the expression of their feelings and wishes. Even should the natural timidity of the Basutos (sic) prevent many from stating their grievances (when such may exist) still the opportunity of doing so is afforded them, whilst, on the other hand, the public expression of loyal feeling is contagious, and contributes towards the fostering and maintaining of loyalty.

"According to Basuto ideas, 'a silent man is an angry man.' That the Government should therefore communicate directly, and by word of mouth, with the people, is to them a proof of the kind feelings it entertains towards them, and this assurance is therefore as necessary as it is beneficial.

"The annual meeting, besides thus creating a good feeling, furnishes the Government with an opportunity more favourable than any other, and more influential, of communicating its views to the people, and of giving them good advice: many occasions may arise when the Government does not wish to exercise its authority, but when its moral influence is most desirable, and for such no better opportunity could be devised than that of a meeting which takes place undesignedly as it were, and in regular routine."

While the maintenance of the Pitso—transformed after the retrocession into a National Council—was characteristic of Basutoland only, bodies modelled to some extent on the old informal Council have been created and developed with a great amount of success in the Cape.

The first participation of Natives in local self-government was in the sphere of Village Management Boards set up under the Village Management Act (Cape) of 1881 which applied to Europeans and Natives alike. Over the Native Boards the Act provided for no European supervision. As might have been expected, at this stage of Native development, the Boards have proved a failure. The Cape Native Affairs Commission of 1910 reported adversely on them and recommended the substitution of Boards under the Mission Stations and Communal Reserves

Act of 1909 where Government control would be possible.⁶ No action was immediately possible, but in 1921 the Cape Provincial Administration abolished all existing Native Village Management Boards.⁷

It was not long before a feeling began to grow among Transkeian Native Administrators that something might be done in the way of granting the Natives local self-government. In 1882 Captain Matthew Blyth recommended that "A sort of Municipal Council be formed in each District."⁸ The Native Laws and Customs Commission of 1884 recommended a General Council for the Territories—a suggestion of Sir Theophilus Shepstone.⁹ Some years elapsed before action was taken on these recommendations; but ultimately it was decided to make a beginning with the District of Glen Grey in the Ciskeian Territories as an experiment, and Act 25 of 1894 was passed to this end. This Act provided for the election of Location Boards by registered plot-holders;¹⁰ and for the creation of a District Council of twelve Natives, six elected by the Location Boards and six appointed by the Governor-General, presided over by the Local Magistrate. The Council had the power to levy a rate not less than five shillings on every Native owner of an allotment and every adult male Native resident in the District, and to expend the funds so raised on education, dipping, roads, etc.

The Location Boards proved a failure. Less than nine years after the Act came into operation, the Magistrate of Glen Grey found it necessary to report unfavourably on them.¹¹ The Cape Native Affairs Commission of 1910 recommended their abolition.¹² Their defects are generally admitted to-day.

On the other hand the District Council has proved

⁶ Cape Native Affairs Commission 1910, pages 28—9.

⁷ Annual Report of Native Affairs Commission 1921, page 29.

⁸ Cape Native Blue Book 1882, page 6.

⁹ Report, para. 121.

¹⁰ It is needless to remind the reader that the Glen Grey Act introduced a species of individual tenure (see Chapter XVI).

¹¹ Memorandum, dated 6th May, 1903.

¹² Report, pages 23—9.

from the beginning markedly successful. After its first year of work, Mr. C. J. Sweeney, Magistrate of Glen Grey, reported as follows¹³ :—

"The Council, formed as it has been of the leading advanced Natives in the District, has secured the confidence of the people, its members have taken a keen interest in the welfare of the district, and have evinced a considerable grasp of work which at the beginning of the year was new to all of them.

"The Council rates have been well paid up, the Natives realising that, under the changed condition of affairs, this tax is expended for their benefit by their own representatives.

"The Council meetings have been well attended, and the business brought forward intelligently discussed."

In 1897 he reports¹⁴ :—

"The District Council continues, I am pleased to say, to work well, and I think that body has reason to feel satisfied with the work performed during the past year."

In 1903 a Select Committee of the Cape House of Assembly appointed to enquire into the working and administration of the Glen Grey Act reported, *inter alia*, as follows :—

"Speaking generally..... your Committee are convinced that the operations of the Act have been, as they were intended to be, most beneficial to the Natives concerned. Individual tenure and local self-government have done much, and will in the future do more to lead the aboriginal Natives in the path of improvement."¹⁵

The Cape Native Affairs Commission of 1910, hostile to some forms of Native local government, commends the working of the Glen Grey District Council highly.¹⁶

The Union Secretary for Native Affairs reports in 1919 :—

¹³ Memorandum, dated Lady Frere, 20th January, 1896.

¹⁴ Cape Native Blue Book 1897, page 23.

¹⁵ Article "Native Councils as an aid to Administration." by Sir Godfrey Lagden in the compilation "The S.A. Natives," page 111.

¹⁶ Report, page 29.

"A keen and intelligent interest is taken by the Councillors, not only in affairs of the district, but in matters of wider concern.

"As providing means for the expression of public opinion amongst the Natives the institution is of great service in the administration of Native Affairs in the district."¹⁷

The evidence seems to be genuinely conclusive in favour of the District Council and against the Location Boards. It is difficult to avoid the deduction—contrasting the purely Native Location Boards with the Council which possesses the Magistrate as Chairman—that, for the present at any rate, qualified and sympathetic Europeans should as a rule assist in the deliberations of any body of Natives charged with local self-government.

In 1895 the operation of the Glen Grey Act was extended to the Transkeian Territories, when District Councils and a General Council were established. The weight of evidence available tends to shew that these bodies have proved very successful indeed. At present in each of the eighteen Districts in the Transkei there is a District Council, consisting of six Native Councillors, holding office for three years with the Magistrate as Chairman *ex officio*. The Governor-General nominates two Councillors, while the remaining members are elected by the land-owners in "surveyed" areas by a process of indirect election, and by the headmen of "unsurveyed" areas, subject in all cases to the Governor-General's approval. The "unsurveyed" areas may follow the system prescribed for "surveyed" areas if so desired.

"District Councils¹⁸ meet quarterly or when specially summoned by the Magistrate. Minutes of meetings are kept and forwarded to the Chief Magistrate, who brings before the Transkeian Territories General Council matters required to be dealt with.

"District Councils practically act as advisers or agents of the Transkeian Territories General Council.

¹⁷ Report of the Dept. of Native Affairs, 1913—18, page 21.

¹⁸ This and the following paragraphs from Report of Native Affairs Commission 1921, page 30.

which consists of the Chief Magistrate as Chairman, the Magistrates of the Districts, and three Native Councillors from each District, two of whom are nominated by the District for the Governor-General's approval and one by the Governor-General.

"The General Council meets once a year for business.

"The funds of the General Council are obtained by a rate levied by the Governor-General on every Native occupier of a hut or piece of land, and on every Native male domiciled within the jurisdiction of the Council. Its estimates of expenditure must be approved by the Governor-General.

"Besides dealing with matters of local government, such as roads, dams, fences, dipping, health, education (scholastic or industrial), etc., the Council is the forum for the discussion of every conceivable aspect of Native interest.

"The resolutions adopted by the Council which require Government action or legislation are discussed at a meeting of Magistrates, carefully and sympathetically considered by the Government, and form a most valuable means of ascertaining representative Native opinion in the Territories."

How has the system worked in the Transkei?

The year after its proclamation there is very little on evidence as to the actual working of the Councils, but what little there is, is good. Mr. W. C. Scully, the well-known poet and novelist, then Magistrate at Nqamakwe, wrote ¹⁹:—

"I have been particularly struck with the resourcefulness, the carefulness, the sense of responsibility and the generally excellent tone displayed by the local members. Important road works have been authorised, and will soon be commenced. Dipping tanks, to be paid for out of the Council funds, are to be constructed under the supervision of the local Scab Inspector. Liberal grants have been made in aid of different schools."

¹⁹ Cape Native Blue Book 1896, pages 93—4.

Mr. V. M. Watermeyer, Magistrate of Tsomo, reported ²⁰ :—

“The Councillors..... evince great pride in knowing that they have the principal voice in the management of local affairs. One or two of them are rather too conservative, but some show a remarkable cuteness in carrying on the business of the Council on liberal European ideas. Almost all the Natives who were loudest in their protestations against the introduction of the new laws have now completely changed front, and acknowledge the wisdom and expediency of the measure.”

In 1897 satisfactory reports were received from Idutywa, Butterworth, Nqamakwe and Tsomo: there were no unsatisfactory reports. The remarks of Mr. W. T. Brownlee, Resident Magistrate, Butterworth, deserve quotation in full ²¹ :—

“Election to membership in the Council is regarded as a great honour. The various members are as a rule most exemplary in their attendances at Council meetings, where all matters brought forward are carefully and intelligently discussed, and the proceedings are carefully watched by the Natives generally. Much good work is being done. Wattle plantations have been started in each of the four districts, and wattle planting is progressing apace. Extensive road works have been undertaken, and the control of all schemes has been taken over by the Council. A bridge is to be built over the Butterworth River. The extermination of burr-weed has been taken in hand.”

Before the Commission of 1903-5 voluminous evidence, the overwhelming majority of which was favourable, was given on the Conciliar System. No witness of standing was against the District Councils. Two gentlemen, ex-Magistrates, whose names carry weight, Messrs. W. Power Leary ²² and J. H. Scott ²³, were against the General Council—not because it had not worked well, but because,

²⁰ Ibid, page 95.

²¹ Cape Native Blue Book, 1897, page 85.

²² Evidence, 1903—5, Commission (Questions 16442—16449, Vol. II, pages 1195—6).

²³ Ibid. Question 14500, Vol. I, pp. 1080—1.

by combining the Natives, it was politically a mistake. But "Divide et impera" is surely at rock-bottom, the method of a coward. The Council System was not among the Commission's terms of reference, but there is little doubt that the majority of members of the Commission were sympathetic towards it.

In 1908, a Deputation was sent²⁴ by the Natal Government to inquire into the working of the Council System and the system of individual Land Tenure in the Transkeian Territories. The Deputation, consisting of the Rev. F. B. Bridgman and Messrs. Martin L. Lutuli and P. J. Gumede, timed its visit to coincide with the meeting of the General Council, attended all its sessions, and was thoroughly convinced of its success. Although this Chapter is over-burdened with quotations already, it would seem absolutely necessary to give here an extract from the Report of the Deputation :—

"The Transkeian Territories General Council convened at 10 o'clock on the morning of April 27th, and adjourned on May 9th. The Council was usually in session each day from 9.30 a.m. to 1 p.m., and from 2.15 p.m. until 4.15 p.m. The General Council met this year for the first time in its own building, having a fine spacious hall, besides Committee Rooms and Offices, recently bought and fitted up at a cost of £2,500. The Council Hall is arranged in assembly style, with platform for the President, and with two rows of elevated desks and seats placed horse-shoe shape for the Councillors, and in the centre of the house a long table at which sit the Magistrates. There were also seats provided at either end of the hall for visitors, European and Native. At the session of the Council there were present the Magistrates and forty-four Native Councillors, representing fifteen Magisterial Districts and a total population of 476,000.

"In opening, the Council was led in prayer by the Chief Magistrate, who followed with an address reviewing the year's work, and touching upon important matters to come before the present session. The Agenda comprised

²⁴ See Report published under Government Notice No. 420 of 17th July, 1908.

about sixty topics and notices of motion. To illustrate the variety and scope of the matters discussed, the following subjects may be mentioned :—

“Dipping of sheep and scab regulations; improvement of breed of horses; cotton growing; unlawful killing of animals and burning of huts; attendances of children at beer drinks; Inter-State Native College; Native Hospitals; increase of grants to School Teachers; Agricultural and Industrial Schools, etc., etc.

“Nothing will give so clear a comprehension of the work carried on under the auspices of the General Council as a review of its finances. The annual report for 1907 shows an income of £49,962. Of this amount more than £46,000 represents revenue from the general rate. The principal items of expenditure were as follows :—

- (1) General Education, £14,000.
- (2) Agricultural and Industrial Institutions and tree plantations, £8,000.
- (3) Public Works, salaries of surveyors and engineers, roads, of which there are 3,000 miles under Council management, dipping tanks, and dams for irrigation schemes, £17,000.

“More particularly as regards education the following points may be noted :—

“(1) The General Council gives grants to Government-aided Schools on the following basis :—Towards the salaries of head teachers, the Council gives 15s., and for assistant teachers 10s., for every £1 Government aid. Grants are also given to *unaided* schools for a period not exceeding two years. The Council also aids in the purchase of school furniture on the £1 for £1 basis. The number of pupils in Council aided schools is over 37,000.

“(2) These schools while receiving Government and Council grants are primarily mission schools and are under missionary management. The large number of schools and churches was very noticeable during our travels in the Transkeian Territories.

“(3) Toward the Inter-State Native College the General Council has granted £10,000.

“(4) Agricultural Institutions. The Deputation paid

a visit to the Agricultural Institution, located at Tsolo. Our impression of this effort to instruct Natives in cultivation and stock-raising was most favourable. The School, not quite four years old, has a splendidly situated farm of more than 3,000 acres, and a good equipment of stables, sheds for cattle and sheep, a dairy, farming machinery, besides quarters for the superintendent and apprentices. At present there are twenty apprentices engaged in a three years' course of instruction, which includes cultivation of various crops (there being 150 acres under irrigation), dairying and stock-raising. Limited attention is also given to carpentry and blacksmithing.

"The Institution has a fine lot of live stock and is doing much to improve the breeds of Native horses, cattle and sheep. The stallions, 19 in number, include both Colonial and imported thoroughbred stock. One of these stallions is valued at £500, while several cost from £150 to £300 each. In the breeding season the stallions are distributed, to the several Council Districts, no charge being made to the ratepayers. The past season 629 mares were covered, a proof that the Natives are taking interest in the improvement of their horses. In cattle the Institution has some prize stock. Two-year old shorthorn bulls are sold to ratepayers for £6 each, while in the open market they would bring £20. Rams worth £6 are supplied to ratepayers at £1. The Superintendent told us that results showed that sheep bred from these rams were shearing wool to the value of 5s. or 6s., instead of 1s. 6d. to 2s. to the fleece.

"The General Council this year voted an appropriation of £3,500, for the establishment of another agricultural institution, to be located in the Butterworth District, this to be on similar lines to that just described at Tsolo. No one feature of the varied operations under the General Council so impressed the Deputation as this very serious and practical effort to teach the Natives improved methods of agriculture and stock-raising.

"(5) Industrial Trade Schools. There are two situated in the Umzimkulu District and at Butterworth, the latter having been established eight years. These

Institutions, it is generally conceded, have not been thus far a great success, the primary cause for this partial failure as pointed out by a Special Council Committee are two:—(a) The attempt to run the Institutions upon a paying basis financially, and (b) the lack of discipline over the apprentices together with the want of attention to character-building. After thorough investigation, measures are now being adopted for reorganisation and a better report of these Institutions may be expected in the near future. At the Butterworth Institution, there are at present fifteen apprentices who are being taught carpentry, wagon-making, stone-cutting and masonry.

"The General Council is responsible for many activities besides those mentioned above. These that have been touched upon are merely illustrative.

"As to the conduct and personnel of the General Council, we received several impressions which should also be noticed.

"1. *The Management of Council Finances.*

"During the session a letter was read from the Auditor-General speaking in highest terms of the sound and business-like administration of the Council funds. The accurate, painstaking accounting of the Council's Treasurer ²⁵ was also warmly commended.

"In conversation with us the Chief Magistrate emphatically declared that the administration of finances must remain in charge of Europeans; experience having shown that in dealing with considerable sums, and particularly as regards trust funds, Natives have not yet obtained either sufficient breadth of view or adequate sense of accountability to qualify them for this work. This was partially illustrated during the Council's session. Despite warning that the Treasury could not meet the demand, the Councillors passed several votes requiring a large increase of expenditure. Later, when it came to the consideration of the budget, the Chairman appointed a committee of Natives to draft the estimates. After two

²⁵ A Scotsman.

days' struggle, this Committee reported that it was unequal to the task, and requested that the work be undertaken by the Magistrates.

"2. The Spirit pervading Officials and People.

"On the part of officials from highest to lowest there was evident an attitude of friendliness towards the Natives. The Chief Magistrate and Resident Magistrates, not only at the Councils, but also those whom we saw in the discharge of duty in the home districts, showed a genuine interest in the welfare and advancement of these people, and seemed ever-ready to render practical help in securing the material and moral betterment of those under them.

"On the part of the people there was manifest a feeling of confidence and trust in both their own Magistrates and the Government generally. Neither was the element of gratitude lacking as indicated by two incidents in the Council, when, first, Magistrate W. T. Brownlee was presented with a seal ring by the people of his late charge at Butterworth, and second, when the Council very heartily voted the retiring head clerk a gift of £250. It may also be observed as an evidence of the contentment of the Native population that the average police force in a Magisterial Division of from 25,000 to 40,000 population is one European and from six to eight Native constables; but it should be stated that in addition to this small force the headmen, twenty-five to thirty-five in a district, are subject to police duty if occasion requires.

"3. The personnel of the Native Councillors.

"Viewed as a body, there was nothing remarkable about the education or ability of the Councillors. There were a few well-educated and able men, but, as far as could be ascertained, fully half the representatives could not read or write. Judging from their confusion, some seemed to be having their first experience in the procedure of voting.

"4. The Relation of the 'red Kaffir' to the General Council.

"As may be inferred from the last paragraph, the majority of the Councillors being 'red Kaffir' represen-

tatives, so, of course, the vast majority of the ratepayers belong to this raw type. In most of the Council districts, there is but a sprinkling of adult Natives who may be classed as civilised. It was most difficult to realise that it was the *raw* Native who was supplying the bulk of the £50,000 with which the Council finances its operations, and that, therefore, it was the "blanket kaffir" who holds the larger share in the proprietorship of the "Bhunga"²⁶ roads, wattle plantations, dipping tanks, agricultural institution, with its prize livestock, etc. These considerations are all the more surprising when we recall the fact that the Proclamation providing for the Council system is, as with the land tenure, only *permissive*: and that the Council system, with the 10s. rate, only becomes operative in a given district when the Natives of that district express a desire for the extension of the Proclamation to that area.

"The Deputation was forced to seek an explanation of this strange phenomenon of self-imposed taxation by a people for the most part still in barbarism. But the only answer was the patent fact that the Government was determined to do all in its power for the material, intellectual, and moral betterment of the Natives in the Transkeian Territories, and the people, being persuaded that this was the purpose of the Government, have given their co-operation. From observation and inquiry we were convinced that the extent and success of both the land tenure and Council System were directly due to the persuasive measures and tactful pressure exercised by officials from the Chief Magistrate down. While the provisions of the proclamations have been proved excellent, they would have been a dead letter, but for the philanthropic spirit which has animated this administration.

"In conclusion, while the opinion of the Deputation as to the operation of the Glen Grey idea has been already foreshadowed, yet the Delegates feel it incumbent to record their unanimous and enthusiastic endorse-

²⁶ The Native term for the General Council.

ment of both the land tenure and Council Systems, as administered in the Transkeian Territories. Doubtless there are defects of detail, but the Deputation has but one opinion as to the broader principles involved."

In 1919 the Union Secretary for Native Affairs reported ²⁷ :—

"Council operations embrace the maintenance of about 3,210 miles of roads, and the construction of new ones at a charge of about £25,000 a year; the construction and repair of dipping tanks, of which it has 295 for large stock and approaching 650 for small stock; the provision and upkeep of wattle plantations, the dipping of large stock, grants in aid of scholastic education, hospitals, lastly its own institutions for the teaching of trades and agriculture, and for the improvement of stock-breeding among the Natives and experimenting in and encouraging the cotton-growing industry. On these institutions, of which there are four—one industrial and three agricultural—it has spent some £96,595 to 20th June, 1918, which includes purchase of farms, fencing, buildings, irrigation, stud stock and general maintenance. The present value of the stock is estimated at £7,500, including about 20 stallions of good breeding, which are distributed among Council districts during the season on free service to ratepayers."

The Native Affairs Commission, in its first Annual Report (1921), refers to "the undoubted success of the Transkeian system."²⁸

There seems to be very little room for doubt, then, that the District Councils and the General Councils have been remarkably successful so far as their powers and activities go. Whether these should be extended is a matter for further consideration; but quite clearly they should not be withdrawn or reduced. At the same time, the remarks of the Natal Deputation, enthusiastic as they are, impress clearly upon us that the time has not yet arrived for the withdrawing of the guiding hand and

²⁷ Report of the Department of Native Affairs, 1913—18, page 20.

²⁸ Report, page 30.

initiating mind of the European Magistrate. Possibly that day will come earlier than we expect, but it has certainly not arrived yet.

It is a matter for surprise that no attempt has been made, until very recently, to extend the Council system in the Ciskeian Territories, where, in the District of Glen Grey, it began. Such an extension was recommended by the Cape Native Affairs Commission of 1910,²⁹ and after the passing of Act 23 of 1920, it was the first area of the Union in which the Native Affairs Commission attempted to introduce the new Councils.

In 1911 the Council system was extended to the districts of Libode, Ngqeleni and Port St. John's, collectively known as Western Pondoland. There are three District Councils and a General Council known as the Pondoland General Council, constituted on lines analagous to those of the Transkeian Territories General Council, the principal difference being that the members who in the Transkei are elected, are in Western Pondoland nominated by the Chief. The Pondoland Council System is therefore, as the Native Affairs Commission has pointed out³⁰, a useful variant of the Transkeian system specially adapted to more tribal Natives. The activities of the Pondoland Council are on a more restricted scale than those of the Transkeian Territories General Council. Still, in the seven years 1911-18, it collected £70,110 and disbursed £70,026, of which £8,314 was devoted to Scholastic Education, £34,034 to Agriculture and Industries, and £21,777 to Public Works;³¹ and has also constructed 42 dipping-tanks for large and 80 for small stock.³²

Passing over the Natal Mission Reserve Boards, we may perhaps just mention the Orange Free State Location Boards, constituted under Ordinance 6 of 1907 of the Orange River Colony. These Boards consist each

²⁹ Report, pages 30—32.

³⁰ Report of Native Affairs Commission, 1921, page 32.

³¹ Report of Department of Native Affairs, 1913—18, page 90.

³² Ibid, page 21.

of seven nominated members, with power to levy taxes for local purposes. As an instance of their activities, it may be remarked that, among a relatively small population, they erected seven schools and spent £1,089 on education.³³

Satisfactory and successful as the Council system has been, the more advanced Natives, especially in the Transkei, have begun to be dissatisfied with it as not going far enough. Their spokesman, Prof. D. D. Tengo Jabavu, has given five reasons for this attitude³⁴:—

(1) That the Natives have not the privilege of selecting Native men of their own choice, especially in the unsurveyed districts.

(2) That the Magistrates unduly revise the decisions of the Bhunga, this being regarded as the greatest weakness of the Council system.

(3) That there is a tacit if not statutory colour-bar to the advance of Natives to the higher positions of clerkships, etc., the remunerative positions being reserved for whites only. This creates a bad impression on Native taxpayers.

(4) That the Natives have no control over the expenditure of their revenue, but after the estimates are passed the Magistrates in a special conclave of their own change and subtract anything they like.

(5) That proclamations are issued *ad infinitum*.

These reasons are not all sound, and beside overstating the case, they display a spirit of ingratitude for good done which is not calculated to assist those who are trying to help the Natives further.³⁵ Nevertheless there is some truth in some of them.

The first complaint is childish: any unsurveyed District may adopt the form of election prescribed for

³⁴ See D.D.T. Jabavu, "The Black Problem," page 23.

³⁵ It must be remembered that these are not Prof. Jabavu's own opinions, but the grievances of others which he is voicing. It would not be fair to saddle one of the ablest of the Native leaders with such inaccuracies. In regard to the second grievance, it has been largely removed by the recent provision that a small Deputation elected by the Councillors shall remain over after the Bhunga to attend the Magistrates' Meeting. This also meets the fourth complaint.

³³ Union Native Affairs Blue Book, 1910, page 54.

surveyed Districts, if it so wishes. The fifth complaint is merely a mis-statement of fact and thus grossly misleading. The third complaint is true up to a point, and there is no doubt that it is most desirable to fill all posts in the Council's service with Natives as soon as possible. But unfortunately Natives are not yet competent to deal with the technical work of finance, surveying, etc. The best thing a Native can do who resents European intrusion on what should be a Native preserve, is to work for the education of his people until they are able to do the technical work of administration themselves.

"The undoubted success of the Transkeian system," says the Native Affairs Commission in its 1921 Report,³⁶ "has led many people to exaggerate its merits and misunderstand its functions. The European people of South Africa and even the Government itself have spoken loosely of the system as self-government, but when the enquiring Native investigates this, he finds that *the General Council, by its constitution, is an advisory body only*, and that the administrative functions rest entirely with the Chief Magistrate."

These objections have largely been met—on paper—by Act 23 of 1920; but it is necessary to remark that, at the time of writing, the Council provisions of that Act have nowhere been put into force, and it remains a paper reform only.

The relative Sections of the Act are here quoted *in extenso*, so that readers may have the Act itself before them prior to any criticism which may be offered. (The omitted Sections are either purely formal or irrelevant to our present purpose.)

"Local and General Councils.

"5. The Governor-General may on the recommendation of the Commission establish a local council for the whole or any portion of any of the native areas which have been set aside, or may hereafter be set aside, as such by Parliament. The area over which any such council is to exercise control shall be defined by pro-

³⁶ Page 30.

clamation in the *Gazette*. All the members of each such council shall be natives and shall not exceed nine in number, and an officer in the public service may be designated by the Minister of Native Affairs to preside at the meetings of any such Council, and generally to act in an advisory capacity in regard to it.

"6. (1) Any local council may, within the area for which it is established provide

- (a) For the construction and maintenance of roads, drains, dams and furrows and for the prevention of erosion;
- (b) For an improved water supply;
- (c) For the suppression of diseases of stock by the construction and maintenance of dipping tanks and in any other manner whatsoever;
- (d) For the destruction of noxious weeds;
- (e) For a suitable system of sanitation;
- (f) For the establishment of hospitals;
- (g) For improvement in methods of agriculture;
- (h) For afforestation;
- (i) For educational facilities,

and generally for any such purpose, which can be regarded as proper to local Administration, as may be committed to it by direction of the Governor-General.

(2) A local Council may acquire and hold land or interest in land for carrying out any of the purposes mentioned in the preceding sub-section or for any purpose committed to it in terms of that sub-section.

"7. It shall be the duty of each local council to advise the Commission²⁷) in regard to any matters in so far as they may affect the general interests of the natives represented by such council, and to furnish its views upon any matter upon which the Minister or the Commission may request its advice.

"8. (1) Each local Council may make bye-laws in regard to any matter referred to in, or committed to it under, section six and may prescribe the fees which shall be payable for any service rendered.

²⁷ i.e. the Native Affairs Commission set up under the Act.

(2) Any fine imposed and recovered for a contravention of a bye-law shall be paid over to the local Council concerned.

(3) No such bye-law shall be of force and effect until it has been approved by the Governor-General and published in the *Gazette*, and the Governor-General may before approving a bye-law, amend it or add to it other bye-laws, or rescind existing bye-laws.

(4) All prosecutions for contravention of such bye-laws shall be at the instance of the Crown.

"9. Each local Council may levy a rate not exceeding one pound in any one year upon each adult male Native ordinarily resident within the area for which it is constituted :

Provided that if any native upon whom such a rate is leviable is liable to any direct tax payable to the Government and specially imposed upon Natives, such tax shall be abated by the amount of the rate levied hereunder.

"10 The revenue of each local council shall be—

- (a) Any amounts collected under the last preceding section;
- (b) All fees collected under any bye-law;
- (c) All fines recovered for a contravention of any bye-law;
- (d) Any donations or grants of public moneys.

"11. The Governor-General may make regulations applying either generally or in particular areas—

- (a) Providing for the consultation of the inhabitants of areas for which a council is to be established, and for the selection or election of members of such councils;
- (b) Providing for the periods of office and remuneration of such members;
- (c) Prescribing the procedure of councils and the conduct of their business;
- (d) Providing for the appointment and duties of officers and councils;
- (e) Prescribing the method according to which rates and fees shall be collected and brought to account,

the exemptions which may be allowed and, the penalties to be imposed on persons failing to pay such rates and fees, and generally for the better carrying out of any provisions of this Act relating to local councils.

"14. Whenever it appears that any of the powers conferred by this Act upon local councils can, in any two or more areas for which local councils have been established, be more advantageously exercised by a body with jurisdiction over all these areas, the Governor-General may, upon the recommendation of the Commission, establish such a body to be called the general council of such areas. Such general council shall consist of such number of representatives from each of the said local councils as the Governor-General, upon the advice of the commission, may determine, but an officer in the public service may be designated by the Minister of Native Affairs to act as chairman of the general council. The chairman of each of the said local councils shall, if required by the Minister of Native Affairs, attend the meetings of the general council in an advisory capacity. The general council so established shall have in respect of the areas for which it is established such of the powers conferred by this Act upon local councils as the Governor-General, upon the advice of the commission, may allocate to it, and, subject to such allocation, the provisions of sections *six to thirteen* inclusive shall apply *mutatis mutandis* in respect of such a general council. The local councils within the area of a general council to which any of the powers conferred by this Act are allocated shall, as from the date of such allocation, cease to exercise such powers as have been allocated in the manner aforesaid."

A careful comparison of these provisions with the existing Transkeian Council System will show three important changes. Notwithstanding the flexibility of the Act in many other respects, it is quite clear on these points, on which no discretion is left to the Administration.

In the first place, the new Councils will be definite law-making bodies and no longer merely advisory and

executive. The power of making bye-laws is explicitly conferred in Section 8 (1). True, the Governor-General's consent is required [Section 8 (3)], but this is no more than applies in the case of Provincial Councils (S.A. Act, Section 90). In the Transkeian system the Councils only advise the Chief Magistrate or local Magistrate as the case may be.³⁸

In the second place, European officials cease to be members of Councils (Sections 5 and 14) except in an advisory capacity.

In the third place, the local Councils, which under the Transkeian system are mere organs of the General Council, become within their own sphere independent bodies (see Section 14).

The two first changes should almost, if not wholly, meet the objections voiced by Prof. Tengo Jabavu on the part of the more advanced Natives of the Territories. It is a change which was bound to come sooner or later; and if all members of Native Councils were men of Jabavu's stamp it would not have come a moment too soon. As it is, however, there is room for some little doubt as to whether the transformation of the Councils into legislative bodies may not have been a little premature outside the Territories. It is most unfortunate that the Act did not, while prescribing the new system for the Territories, leave the Administration discretion as to whether the old or the new should be applied elsewhere. Now that the Act is passed, however, it would create such a bad impression to withdraw it that it will have to stand. The tact of the Magistrates and an occasional judicious use of the Governor-General's veto, may remedy the defects of the legislation.

On other points, the Act allows of great flexibility. Whether the members should be elected or nominated, and by whom in each case, is a matter of Regulation. This allows for the creation of divergent types of Council to meet different stages of development. Thus the Native Affairs Commission is considering³⁹ the introduction of

³⁸ The approval of the Governor-General-in-Council has subsequently been made necessary for the Council Estimates. It is probable that the absence of this provision up to 1926 partially explains the delay in introducing the Councils in the Ciskei.

³⁹ Vide its Report (page 32).

the Pondoland system in Natal and Zululand, and Councils on the Transkeian lines in the Orange Free State and the Transvaal. It is much to be desired that in the Northern and Eastern Transvaal, where tribalism is still strong, the Pondoland transition stage should be used to begin with preferably with the amendment—both there and in Pondoland—that the Chief himself should be a member of the Council.

Any commendation of the provisions of Act 23 of 1920 must rest on the hypothesis that Government intends to carry them out. All that has been done so far, beside meetings of discussion, is that the Native Affairs Commission issued a definite recommendation for the establishment of Councils in the Ciskeian Territories,⁴⁰ although the Commission state that "it considered at the commencement of its duties that local councils should be established wherever possible."⁴¹

Surely the Commission knows, surely the Government knows, that any changes with regard to the Natives, whether for their good or not, are usually greeted with a sullen hostility, based on a not entirely unjustifiable suspicion, which those who work for their interests are apt to feel a blank ingratitude. It is one unamiable feature in an ethos of a peculiarly amiable character. Of the very Transkeian system which has proved so great a success we are told by the Magistrate of Idutywa that "the proclamation of the Glen Grey Act was regarded with the greatest apprehension by all the Natives of this district. They looked upon it as a most harsh and oppressive measure and it was productive of the greatest agitation."⁴² The Magistrate of Tsomo stated that the proclamation was received with anything but acclamation. In many instances, passive resistance was shown and even more than that threatened."⁴³ Similar reports came in from other Districts. It is true that this opposition was based largely on the Labour Tax (which never became opera-

⁴⁰ 1921 Report, page 32.

⁴¹ *Ibid*, page 31.

⁴² Cape Native Blue Book, 1896, page 88.

⁴³ *Ibid*, page 95.

tive). But, even so, the advantages conferred by the Act far outweighed any disadvantages. In less than twelve months' time, all this talk had died down, the system was in full working order, the post of Councillor was eagerly coveted, and the Councils had become popular institutions. " If history is anything more than a collection of unrelated facts, the experience of 1896 ought to be of some value for 1927.

The Council system fully worked out and applied, with consideration of local circumstances, in all parts of the Union, should prove an admirable, efficient and adequate form of local government, and a great school of responsibility for the unfortunate folk whom we have hitherto been politically pauperising.

But it is necessary to put it to ourselves very strongly that the Council system is not the panacea for all Native ills, nor is it the last word in the political solution of the Native problem. Could we believe that it was such, South Africa would already have solved, potentially at least, the political aspect of the Native question. But, should we offer the nation so false a comfort, we should be calling down on ourselves the denunciation of the Hebrew prophet of old on those who cried Peace, when there was no peace.

For it must be remembered that Councils can only function in areas preponderatingly Native, and not in mixed areas. Thus a very large proportion, perhaps the majority, of the South African Natives will be cut off from all political activity if we stop at the Council system.

Secondly, even if it were—as it is not—possible to have a network of Councils all over South Africa, still there are a number of questions vitally affecting Natives on which it is desirable, even from the European point of view, to arrive at a knowledge of the general Native opinion of the country—matters which could not properly be entrusted to Native local government bodies—such as the Pass Laws, the Liquor Laws, the Recruit-

⁴⁴ Cape Native Blue Book, 1897, *passim*.

ment of Labour and other even more controversial questions. In these matters, too, it must be recollected that the masses of Natives in non-Native areas, unrepresented in the Council system, are even more vitally interested than their brethren.

Thirdly, there is distinct evidence of a growing national spirit, a sense of race unity among the South African Natives. A cowardly and ignoble temperament would argue that this must be checked by all means, and the tribes kept hostile to one another in order that Europeans may rule them all. It is the morality of Metternich. As scions of a higher civilisation, Europeans in South Africa have a tremendous responsibility not merely to do well, but to do their best, for the Native peoples at present under their control; and to develop them towards as full self-government as is possible and towards unity and co-operation among themselves is a plain duty.

Even, however, if we were disposed to ignore these arguments based on analysis alone, we cannot ignore certain plain facts in our past history. Natives in the Cape Province have had the Parliamentary franchise in ever-increasing numbers since 1854. Natives in the remaining Provinces are clamouring for it. Are we justified, from all points of view in granting it to them, and under what restrictions? And if we are not so justified, what solution can we offer with regard to the participation of the Natives in national, as against purely local, government?

These questions must be answered, and answered with an eye not merely to the present, but to the remote future also. The policy which we want to work out must be a policy which can meet the very highest stage of political development to which the Native can attain, on the most favourable suppositions, and which can yet advance to that end by a series of cautious steps at any one of which we may stop, without danger to white or black, should experience show that our estimate of potential Native ability is too sanguine.

These questions must be answered, moreover, with the postulate accepted that it is desirable that the white

and black races of South Africa should continue to exist side by side as friendly but separate entities. If race fusion is desirable, the best way to promote it in the political field is undoubtedly to grant the franchise to all who possess the requisite qualifications, irrespective of race or colour—in other words to adopt the principle of the Cape Franchise. That principle may not lead to race fusion, but the probabilities are otherwise. We shall in this book undertake the harder task of evolving a system which tends in no way to race fusion. The desirability of race fusion will not be discussed here.

CHAPTER XIII.

THE POLITICAL PROBLEM.—(Continued.)

The Cape Native Franchise is one of the most disturbing elements in the whole Native problem. Its introduction, whether right or wrong, was not based on expert knowledge of the Native problem, nor did it form part of a consistent policy. It is fraught with grave danger to the future peace and welfare of South Africa; yet it is difficult to attack, because in practice it has undoubtedly led to the amelioration of Native conditions. Though it is a source of irritation to most white people, the Natives are passionately attached to it. The South Africa Act specially protects it.¹ Such an institution is not lightly to be tampered with; and if it is to be abolished in its present form it is certain that some political equivalent must be and ought to be offered.

The Native Franchise was instituted by the Cape of Good Hope Constitution Ordinance of 1852—not explicitly, but by implication, since among the disqualifications for the franchise, race and colour are not mentioned.

The Constitution Ordinance laid down² certain necessary qualifications for voters—viz., occupation for twelve months of property valued at not less than £25, or receipt of salary and wages of not less than £50 per annum or £25 per annum with board and lodging.

There can be little doubt that the majority of members of the Cape Parliament would not have favoured the exclusion of a political colour bar, except for the necessity of satisfying the susceptibilities of people in England, quite ignorant of the real difficulties of the question. That is shown by the fact that when the Cape Parliament had begun to "feel its feet," the franchise system was not ex-

¹ Sections 35 and 152.

² Section 8.

tended to Basutoland³ nor to the Transkeian Territories.⁴ At the time of the first introduction of the franchise, indeed, the Cape had no large Native territories at all. Some few years after Responsible Government was introduced, the political parties suddenly grasped—in an evil hour for South Africa—the potentiality of the Native vote in a hotly contested election. One result of this was the shameful trickery which surrounded the episodes of the repeal of the Disarmament Act and the disannexation of Basutoland. A second result was the extension of the franchise to the Transkeian Territories (1887).

Since that date, there have been two important restrictions placed on the Native vote. By the Franchise and Ballot Act (No. 9 of 1892) the qualifications for voters became the occupation of property to the minimum value of £75, or the receipt of salary and wages of not less than £50 per annum. Further, every person applying for registration had to be able to sign his name and write his address and occupation. By the Glen Grey Act (No. 25 of 1894) possession of land held under quitrent tenure in terms of the Act was not allowed to count as a qualification for the franchise.

Little advantage was taken of the provisions of the Cape of Good Hope Constitution Ordinance during the first twenty years after its enactment. But from about 1872, registration proceeded rapidly. In 1878 two hundred and eighty Natives sent in registration claims in the division of Victoria East; and though these were rejected on a technicality, they were renewed and approved in the following year.⁵ In 1884, in the same Division, the Magistrate reported that "the candidates for representation of this Division in the House of Assembly—whose number is little short of legion—have each in turn gone among the Fingoes in order to secure their suffrages at the ensuing election."⁶

³ It was asked for in a Petition dated Thaba Boseyo, 25th February 1872; and refused by the Colonial Secretary (Cape) in a letter dated 25th March, 1872.

⁴ Minister's Minute No. 63 of 24th January 1880 (Despatches and Minutes on the subject of Confederation and Annexation, 1880, page 8).

⁵ Cape Native Blue Book, 1874, page 5.

⁶ Cape Native Blue Book, 1884, page 74.

As early as 1877 Mr. (later Sir) Gordon Sprigg stated in a public speech at East London: "In the Division of King William's Town a considerable number of Natives are registered, and many of them at an election record their votes. I may be told of instances when the successful candidate has been put in by the help of the Native vote, and that the defeated candidate had a larger number of Europeans. But the practical question is: was the successful candidate the inferior man?"⁷

From 1884 registration proceeded apace.⁸ Many unqualified Natives registered,⁹ who later had to be struck off.¹⁰

The "Hofmeyr Act" (No. 39) of 1887, which granted exemption from certain discriminating laws to Native Voters, proved a spur to registration,¹¹ and the generally sordid political atmosphere of the 1880's in the Cape was illustrated by frantic attempts to enrol Native Voters in the Herschel and Glen Grey Districts. At the Revising Court in the Herschel District in 1888 from 700 to 800 Natives were induced to present themselves for registration, of whom only 311 were found to be qualified.¹² In the Glen Grey District, the registration of 1887-8 was found to be of a scandalous nature. The case of T. J. Botha versus E. Garcia, W. J. Hughes and W. E. Wakeford¹³ shows an indiscriminate registration of Native voters, qualified or otherwise, with a certain amount of official connivance, and with a great willingness on the part of the Natives to be registered—the bait being doubtless the "Hofmeyr Act," with its removal of liquor and other restrictions. This willingness to register was at first not noticeable in the Transkeian Territories. After Act 30 of 1887 was passed, granting representation to those areas, Captain Matthew Blyth, Chief Magistrate of the Transkei,

⁷ D. D. T. Jabavu: "The Life of John Tengo Jabavu," page 32.

⁸ Cape Native Blue Book, 1885, pages 19 and 26.

⁹ *Ibid.*, page 19.

¹⁰ Cape Native Blue Book, 1889, page 3.

¹¹ Cape Native Blue Book, 1889, pages 12 and 16.

¹² *Ibid.*, page 6.

¹³ Concerning which several White Books and papers were printed in 1887—8.

reported that, as far as he could see, not the slightest interest was being taken by the Natives in the matter.¹⁴ Sir Henry Elliott, Chief Magistrate of Tembuland, said that no political impression whatever had been produced, that not five per cent. of his people knew, and not one per cent. cared anything about the change¹⁵; while Mr. W. E. Stanford, Chief Magistrate of Griqualand East, declared that not much impression beyond the hope of relief from taxation was made by the election of a member to represent the Territories.¹⁶ The Ministry of 1887 must therefore bear their share of condemnation, as having aggravated the whole problem at a time when there was no demand for franchise extension, and they must incur the deep suspicion, amounting practically to a certainty, of having acted as they did merely for miserable party reasons.

By 1903, however, the experience of European canvassers, of exemption from the liquor laws due to registration, and of other amenities of Parliamentary activity together with a genuine growth in political education and self-respect had made the Natives in most parts of the Colony interested in, and fairly keen to obtain, registration.¹⁷

By 1903 out of 135,168 registered voters in the Cape Colony, there were 8,117 Native and 10,162 "other" voters, the latter term including mixed races, of whom many were, to all intents and purposes, Natives.¹⁸ But the influence of these Natives was out of all proportion to their numbers, in view of the very narrow margins at individual elections and in Parliament as a whole between the two rival parties. In 1903 in Victoria East, Fort Beaufort, Somerset East, Queenstown, Wodehouse, Aliwal North and (of course) Tembuland, the Native Voters were already able, by throwing their weight in favour of one or

¹⁴ Cape Native Blue Book, 1889, page 29.

¹⁵ *Ibid.*, page 38.

¹⁶ *Ibid.*, page 47.

¹⁷ S. A. Native Affairs Commission, 1903—5, Evidence, Questions 1117—1119, Vol. II, pp. 13—14.

¹⁸ Report of S.A. Native Affairs Commission, 1903—5, para. 430.

other of the two European parties, to determine the issue of any election; and the fate of seven constituencies out of forty-six could decide nearly any election in the Colony. Only in five constituencies were there no Native voters in 1903.¹⁹ The Commission of 1903-5 arrived at the conclusion that "the possession of the franchise by the Native under the system existing in the Cape Colony, which permits it being used in a spirit of rivalry with and antagonism to the European electorate, which makes the organised Native vote the arbiter in any acute electoral struggle between political parties, and which as the Native voters increase numerically will enable them to out-vote the Europeans in certain parts of the country, is sure to create an intolerable situation, and is an unwise and dangerous thing."²⁰

Has the possession of the franchise ameliorated the condition of the Native? The answer is undoubtedly in the affirmative. The Cape Native is better off than most other South African Natives. While in the Transkei this is due to wise administration and a skilful employment of quasi-selfgovernment, the Vote having made but little difference, in the Colony proper it appears to be due almost entirely to the Vote and the efforts of political parties to obtain it. Furthermore, the Native Voters have exercised shrewdness and intelligence in casting their votes.

Against this may be set off, first of all, the damage done to European dignity and prestige and to European political morality, by the necessity of obtaining the Native vote at all costs; and, secondly, that the situation of political parties since Union has been such as not to render necessary the carrying of the constituencies where Natives hold the balance. The direct result has been a conspicuous falling off in Union ameliorative legislation, as compared with pre-Union legislation of such a type in the Cape.

Nothing can exceed the folly of those Europeans who,

¹⁹ Report of S.A. Native Affairs Commission, 1903-5, paras. 435 and 436.

²⁰ *Ibid.*, para. 441.

while declaiming against a Native franchise, have, by carrying through reactionary legislation in Territories where Natives have no vote, and pandering to all and every Native wish where the Natives possess a vote, convinced Natives that the vote is a panacea.

It may be pointed out, however, that had Native voters been in the majority, neither the Glen Grey Act of 1894 nor the Native Affairs Act of 1920 would have been carried.

One thing stands out clearly in the confusion to which these varying considerations lead us—namely, the possibility inherent in the Cape system of Native voters being sooner or later in a majority in the country as a whole. As the 1903-5 Commission—genuinely friendly to Natives—put it ²¹ :—

“It is not so material to compare the two systems—the one giving freely and the other restricting—as to weigh the prospects of the Natives, within whose comfortable reach the qualification is now deemed to be, who are to have the franchise accessible in equal degree with a European community over whom they preponderate so largely in numbers.

“The Native population of the Cape Colony is about a million and a half, out of which a quarter of a million are adult male Natives and potential voters. The present number of Native voters is, therefore, the merest fringe of the impending mass, and in view of this fact the full magnitude and gravity of the question may be apprehended. A few of the witnesses claimed that full and equal political rights should be granted to all classes of men fulfilling the necessary franchise qualifications, and they urged that anxiety on the score of disproportions might be relegated to the distant future.

“These views are not shared by the Commission, which recognises that a situation has arisen requiring fair but resolute treatment, a situation not only immediately unsatisfactory, but pregnant with future danger.”

These conclusions were arrived at unanimously by a Commission consisting of people such as Sir Walter Stan-

²¹ Report, paras. 432—434.

ford, Sir Godfrey Lagden, Sir Herbert Sloley, the late Mr. S. O. Samuelson and the late Mr. Marshall Campbell—all of them noted for their regard for Native susceptibilities, and their zeal for the welfare and progress of the Native people.

With the views of the Commission, backed by a personnel of some weight, it seems right, in spite of some slight hesitation, to express a definite agreement. Summing up the history of the franchise to date, there seems certainly a balance in its favour *purely from the Native point of view*. But to ignore the European is as bad as to ignore the Native: a solution of the political problem must be such, if possible, as will commend itself to both races. And surely it is not illiberal for a European, however sympathetically disposed towards the Native races, to object to place the destinies of his grandchildren in their hands. The liberal hope that it may be possible, as the years advance, to provide institutions which will enable the Natives to govern themselves need not lead us to the conclusion that we intend to help the Natives to rise to a position where they will govern us. While we should wish to do our utmost to save them from oppressive or restrictive legislation, while we should strain every nerve to assist them in progress social, political and economic, it is not to be expected that we should abdicate in their favour the position in South Africa that is ours by a right every whit as sacred as any which they possess. The measure of our opposition to Europeans politically pauperising Natives must be the measure of our opposition to Natives at a future date dominating Europeans.

If in the course of this study we arrive at the conclusion that no other solution but that of the Cape franchise will do justice to Native aspirations, then we shall have arrived at an *impasse* when it will be necessary for us once again to examine the Cape system even more searchingly. But if we can discover a scheme which will do justice to the Native, no less than the Cape system, and at the same time not imperil the political future of the European, we are quite obviously and undoubtedly justified in preferring

such a scheme to the existing method of the Cape. The writer would here definitely say that, unless a full and workable scheme of parallel institutions is provided for the Native population, he would much prefer the Cape Franchise to any reliance on the European electorate's fulfilling its duty as "guardian" of the Native population. Such a reliance would indeed be leaning on a broken reed.

But before proceeding to discuss the practicability of such a scheme, it seems desirable to examine other systems of franchise enacted or suggested for South Africa.

The only other franchise existing within the Union to-day is that of Natal, which is governed by the provisions of Law 11 of 1865. The effect of this Law is to debar all Natives from the franchise except such as are exempted from Native Law. If a male Native, over twenty-one years of age, having for twelve years resided in Natal, and having been for seven years exempted from Native Law, possesses the general Natal qualification (property valued at £50, rental of yearly value of £10 or income of £96 per annum), he may petition the Governor-General for admission to the franchise. With his petition must be presented, with other documents of less importance, a certificate of good character signed by three European electors and endorsed by a Resident Magistrate or Justice of the Peace. The Governor-General need not grant his application; and, as a matter of fact, such applications have in the past been systematically discouraged. In 1904, out of a Native population of 904,041²² only two Natives possessed the vote.²³ Since then a third has been added.

To speak perfectly frankly first of all, the Natal scheme is undoubtedly a mere disingenuous device for maintaining a political colour-bar without saying so; and it deserves to be treated in the way in which an honourable gentleman would treat such a device in private life.

²² S. A. Native Affairs Commission, 1903—5. Annexures to Report page 27.

²³ Ibid Report, para. 430.

Nevertheless, it may be advisable, for the sake of our subject, to dismiss the Natal scheme less cavalierly than it deserves, and to argue it out as if it were a perfectly honest attempt at a solution.

The gravest error in the Natal scheme, viewed from such a standpoint, is the erroneous, individualistic view which it takes of the franchise. The franchise is, so to speak, an individual perquisite—a "present for a good boy," instead of being regarded as an instrument which the State employs for its own advantage and puts into the hands of those—good or bad—whose views it advantages the State to know. The whole *raison d'être* of a Native franchise is the fact that it may serve as a means of giving constitutional opportunity for the expression of Native public opinion. The granting of a vote to three highly intelligent and educated Natives does not necessarily ensure that the opinion of nine hundred thousand tribal, half civilised or uncivilised, Natives will be expressed in the Legislature. The highest encomium which can be passed on the Natal scheme is that it never did anybody any harm. That it has ever done anybody any good is a point which admits of some considerable doubt. Certainly it is not the solution which we are looking for. For, while at present it mocks Native aspirations, and does not ensure the true representation of Native opinion—especially tribal opinion—it carries in itself that fatal germ of political identity and assimilation which we have associated with the Cape franchise. It puts off the evil day longer—that is all. Sooner or later, the Native electorate would preponderate over the European, unless the Governor-General were always to refuse petitions, in which case the other side of the scheme, the satisfying of Native aspirations, would fall away.

A better scheme than that of Natal was recommended for all four Colonies, which later formed the Union, by the Inter-Colonial Commission of 1903—5. Although the scheme was never enacted in any Colony, it deserves mention and discussion.

In the Commission's own words, the scheme is as follows ²⁴ :—

“(1) That in the interests of both races, for the contentment of the Native population and better consideration of their interests, it is desirable to allow them some measure of representation in the Legislatures of the country; that such representation should be granted on the following lines and recognise the following main principles :

(a) That no Native shall vote in the election of any member or candidate for whom a European has the right to vote.

(b) That the extent of such representation, that is, the number of members to be granted to Native Constituencies shall be settled by each Legislature, and that at least one such seat should be created in each of the self-governing Colonies in South Africa now, and in each Colony or Possession as it becomes self-governing.

(c) That in each Colony now self-governing, or when it becomes self-governing, there should be created an electoral district or districts in which Native electors only shall vote for the election of a member or members to represent them in the Legislature, and that there should be separate voters' lists and separate candidates, for Natives only, but that this should in no way affect the franchise, the voters' lists or the representation of the European community within such districts.

(d) That the qualification for the Native voter be the same as for the European.

“(2) That the qualification of the member or members to represent the Natives should be determined by each legislature.”

²⁴ Report, para. 446. These recommendations were carried unanimously, but Mr. Samuelson concurred subject to the following reservations :—

- (a) That the qualification of the voter should include an educational test.
- (b) That no Native who is uncivilised, and who is a polygamist, shall be eligible as a voter.

This is a scheme worthy of great respect and of considerable interest in that it forms the partial basis of General Hertzog's proposals for Native representation put forward in 1926. It bases itself largely on the system existing for Maori representation in New Zealand. But it ignores the critical point that the Maori are a minority, and a diminishing minority, whilst the South African Bantu are a majority, and an increasing majority. Apply it to the Union to-day and assume that, following the arbitrary method suggested in Par. 1 (b) of the Recommendation, ten members out of a total of 134 in the House of Assembly are allocated to Native Constituencies, what would the result be? As a rule, judging from past experience, the Native members, even if an independent and unanimous *bloc*, would be unable to turn a Government out of office; and certainly unable to govern the Native people, their constituents. It does seem that sooner or later, a light would break on the Native mind that their representation was a sham, that the white man was governing them just as had been the case before. Then he would proceed to agitate for an increase of representation: sooner or later he would get it, sooner or later Natives would hold the trump card in European politics and indirectly govern Europeans. Or otherwise, further representation denied him, he would attempt to get his "rights" by force—and be shot down by aviators and machine-gunners—not a happy consummation for those who have the interest of Natives at heart. There seems to be no real escape from this fatal dilemma, which threatens all schemes basing themselves on the possibility of Native and European representatives sitting side by side in the same Legislature. Add to this that, once again, the Native voter would, following Paragraph 1 (d) of the Recommendation, have to be detribalised; and thus the inarticulate majority of Natives would still be voiceless, and the security for the non-enactment of laws unpopular with the tribal Natives would be no greater than it is to-day. For the detribalised Native, who has bought his freedom at a great price, is even less likely to be tolerant to his "uncivilised" brother than the free-born.

The Franchise proposals made by General Hertzog in

1926, while undoubtedly open to considerable criticism on other grounds, avoid two of the pitfalls that beset the recommendations of the 1903-5 Commission. For the tribal Native is to be represented as well as the detribalised, and, further, the communal representation in Parliament is linked up with a complete scheme of parallel institutions culminating in a Union Native Council. The limitation of the number of representatives of the Natives in Parliament will be practicable and justifiable if, as time goes on, the system of parallel institutions works.

A further suggestion, better worked out in detail but open to the same cardinal objections, was made by the Natal Native Affairs Commission of 1906-7.²⁵ The Minority of the Commission were in favour of confining political privileges to the election by exempted Natives of one member annually to the Advisory Board which the Commission proposed to set up. While this gives us a valuable hint with regard to the existing Union Native Affairs Commission, which will be discussed at a later stage, it obviously offers no general or permanent solution of the difficulty.

The Majority of the Commission argued that "the exempted Native should be permitted individually to qualify for the Parliamentary franchise by means of education and the possession of landed property or income, and by a system of registration, based upon compliance with certain tests, have their names entered upon a special electoral roll, applicable to the whole Colony; also that the Colony should constitute one electoral division, to return one up to three members (the maximum), upon a defined numerical basis to be fixed by Parliament. Such member, or members, to be elected by ballot from European candidates nominated by the Governor-in-Council. They would be members for the Colony, and, although specially representing the exempted class, would be competent to express the views of the whole body of educated Natives. The opinions of the Kraal Natives would find satisfactory expression through the Commissioners and

²⁵ Report, paras. 65—66.

Council for Native Affairs, by whom they would be adequately protected and represented. It was deemed sufficient to submit these views for consideration without argument Not one of the many educated and exempted Natives who expressed themselves very strongly upon the question of direct Parliamentary representation, suggested that one of their own race should be their member. Their readiness to be represented by election from nominations made on their behalf was an exhibition of moderation, political wisdom and confidence in the European highly commendable."

Every one of the arguments brought against the 1903-5 scheme applies to this scheme also. The additional restrictions—confining membership to Europeans and forbidding free nomination by the Native electors—would, in spite of the concluding remarks of the Commission, be certain to cause trouble sooner or later; and, if they were worth imposing at all, this would be a grave additional objection. We know that the Cape Natives were sufficiently opposed to the exclusion of Natives from membership of the Union Parliament to send a Deputation to London in 1909 to protest against the restraining clauses of the South Africa Act.²⁶

The last of the more famous franchise schemes is that commonly called the Selborne Scheme, as having been presented to the National Convention in 1909 by Lord Selborne, though it is not known whether the scheme originated with him²⁷ :—

"SUGGESTION FOR NATIVE FRANCHISE IN SOUTH AFRICA.

"Have a civilisation qualification in all the Provinces, roughly as follows :—

- (1) Monogamy.
- (2) Speaking a European language.
- (3) Either owning property of a certain value or as an alternative having worked for a certain number of years all the year round.

²⁶ Sections 26 (d) and 44 (c).

²⁷ Walton: "Inner History of the National Convention," pages 147—8.

(4) Habitually wearing clothes and living in a house as distinct from a hut.

"No European or non-European to have a vote without this qualification.

"Every non-European who has reached the age of 31 and ²⁸ who proves the possession of the civilisation qualification before an impartial tribunal to be given a vote equal in value to one-tenth the vote of a European. The son of every non-European who has been given a vote, provided he himself has reached the age of 30 and possesses the civilisation qualification to receive a vote equal in value to one-ninth the vote of a European. The grandson of every non-European, who has been given a vote, provided he himself has reached the age of 29 and possesses the civilisation qualification to receive a vote equal in value to one-eighth the vote of a European. And so on until in the tenth generation the non-Europeans is entitled at the age of 21 to a vote of full value.

"A non-European voter judged by an impartial tribunal to have reverted to Native habits to lose his vote, and his son to start afresh in the progress towards a full vote.

"The son of a European father and non-European mother possessing the civilisation qualification to receive at the age of 26 a vote equal in value to one-fifth the vote of the European. His son to receive at the age of 25 a vote equal to one-fourth the vote of a European—and so on."

The Selborne Scheme certainly satisfies present exigencies and postpones the difficulty. What has the "tenth generation" done for us that we should put ourselves out for them? Posterity would be left to face the burden which we could not honestly agree to shoulder ourselves. Is this wise statesmanship? Sooner or later—unless the Bantu become, against all probability, a diminishing race, or South Africa, against all probability, increases her white population six- and seven-fold—the Native voter will be in the majority. 1927 or 2327—the problem will be the same.

²⁸ The original has "or"; presumably a misprint.

Moreover, even if there would be no danger in the realised scheme, what about the difficulties of the process? Putting aside the frivolous objection that all Returning Officers would require an intimate knowledge of the Higher Mathematics, can we expect the non-European races to exhibit the miraculous restraint that such a scheme would involve—say, in the fifth or sixth generations? Can it be argued that, from their point of view, one-tenth of a vote for a composite Parliament would be more valuable than a whole vote for a Native representative body, possessing legislative powers?

The fact of the matter is that there is the same inherent difficulty in all these schemes of franchise which involve the election of Native representatives and European representatives to the same legislative body. In a comparatively short time either the Natives will have to be denied proportionate representation, or they will be in the majority. There is no escape from this dilemma, and it is as well that we should get to bed-rock on the matter.

One or two other points occur as a result of the preceding discussion.

In the first place, if we take the Natives as such as a separate people, they are not yet able to govern themselves. Even the detribalised or exempted Native is far from being able to rule his people yet. This is partly due to our mistaken policy of either denying him all rights, or giving him rights identical with the white man's, and thus drawing him away from the masses of which he is the natural leader. Even though a system similar to that of the Cape to-day should ultimately prevail in South Africa, there is much argument for an intermediate stage of parallel development, in order effectively to educate the future voters.

Secondly, the Natives capable of exercising the vote form a very small minority of the whole Native population. The tribal Native is not capable of voting independently, if the slightest influence of Chief or Magistrate is present; nor is he able to decide on questions of policy, his sole policy being usually a placid content if he is left alone,

and a sullen resentment if he is disturbed—for bad or good. Any Native 'representative' body recruited purely by election would at present be an unrepresentative body. Minorities must rule at the moment if a representative system is allowed to prevail; and it does not follow that the minority of the exempted Native would be a kinder, wiser or juster government for the tribal Native than the minority of the European.

Thirdly, a fictitious equality which does not correspond with facts will tend to produce either dishonest evasion of the law or bitter race hatred. The Southern States of America, since the carrying of the Civil War Constitutional amendments, have experienced both, on a scale, and to an extent, unknown in South Africa.

These arguments must be borne in mind when we proceed to the discussion of a constructive policy. But it seems advisable, before so proceeding, to examine certain further solutions from which the element of franchise is excluded.

These solutions or attempted solutions are the results of a despairing conviction that no scheme of franchise capable of evolution will meet the claims of the black races without imperilling the status of the white. They take two forms, viz., (1) representation by nominated members in one Legislative Chamber (in the case of the Union in the Senate); (2) legislation by Proclamation.

Let us first of all examine the solution of special representation in the Senate.

The first reference traceable to this system in the Archives is in connection with the famous Carnarvon Federation Scheme. Dealing with the position of Native Territories within the proposed Union, Sir Michael Hicks-Beach writes in 1879²⁹ that they "must either be brought within one of the provinces of the Union, or as may probably be necessary, in some cases at least, continue to be superintended by Special Commissioners under the instructions either of the High Commissioner of the Central Government or of the Lieutenant-Governor of an adjacent

²⁹ Sir Michael Hicks-Beach to Sir Bartle Frere, 11th December, 1879.

province. As long as any of them be not imposed within a province of the Union, it would seem desirable that *its interests should be represented in the Union Parliament by one or more nominated representatives.*"

A similar suggestion commended itself strongly to the Natal Commission of 1881-2 where it was advocated by Mr. (later Sir William) Beaumont,³⁰ by Chiefs Faku³¹ and Teteluku³² and by Nambula and Makululu, Christian Natives.³³

In all four States the matter slept until the eve of Union. Then in the National Convention, Lord de Villiers, Chief Justice of the Cape and later Chief Justice of the Union, brought forward a proposal to safeguard Native interests by a nominated representation in the Senate. As far as can be ascertained the credit of the proposal is entirely his.³⁴

"The President, Lord de Villiers, moved the resolution which in an amended form was eventually adopted, and said that, the Convention having decided to include a Senate in the Parliament, he was strongly in favour of a partial nomination of Senators.

The Senate would have two special duties. In the first place it would act as a House of Review, and in the second it had a particular responsibility for the protection of Native interests and should include men specially selected for that purpose, since in three of the Provinces the Natives would be unrepresented."

Accordingly the South Africa Act, in its final form, contained the following provision³⁵ :—

"Eight Senators shall be nominated by the Governor-General-in-Council, and for each original province eight Senators shall be elected in the manner hereinafter provided :—

³⁰ Evidence, Vol. II, page 308.

³¹ Ibid, page 338.

³² Ibid, page 181.

³³ Ibid, page 171.

³⁴ Vide Minutes of the Proceedings of the S. A. National Convention, pages 29—33; and Walton: "Inner History of the National Convention," page 162, from which the succeeding quotation is taken.

³⁵ Section 24 (1) and (ii).

"The Senators to be nominated by the Governor-General-in-Council shall hold their seats for ten years. *One-half of their number shall be selected on the ground mainly of their thorough acquaintance, by reason of their official experience or otherwise, with the reasonable wants and wishes of the coloured races in South Africa.*"³⁶

If the seat of a Senator so nominated shall become vacant, the Governor-General-in-Council shall nominate another person to be a Senator, who shall hold his seat for ten years."³⁷

One must not go too deeply into the question of the *personnel* of some of the nominated representatives, a matter the discussion of which might be too personal for comfort. Let it be said that one of the first four, though not without considerable knowledge of Native Affairs, had declared in the National Convention that "the history of the world proved that the black man was incapable of civilization."³⁸ This gentleman—a Minister—was only nominated as a Senator to represent Native interests after losing his seat in the Assembly elections. It is not uncharitable to draw a certain conclusion from that. A second representative in the first Senate had the distinction of never once opening his mouth during the Natives' Land Act Debates, simply recording a series of silent votes in favour of the Government and the Bill. As Natives were and are bitterly opposed to the Land Act, he could hardly with propriety be termed a representative.

The remaining Senators—two—were excellent representatives, standing for policies somewhat differing, but both informed and sympathetic.

Nevertheless the Senate has never touched the Native imagination, never inspired Native confidence. In all the discussions regarding Native representation brought forward by the Natives themselves, an almost complete silence is observed regarding the Senate representation.

³⁶ This is as good an example of "pious hope legislation" (without remedies) as a political scientist can hope to find!

³⁷ In 1926, the Government carried an absurd amendment to the Constitution, limiting the tenure of office of these Senators to the "life of the Government."

³⁸ "Inner History of the National Convention," pp. 123—4.

No leading Native would receive the remark seriously if we were told that that representation was a protection to his interests. Even the double rejection by the Senate of the "Colour Bar Bill" was placed by the Natives not to the credit of the Senate *as such*, but to that of the South African Party, which happened to be in a majority in the Senate.

The explanation of this phenomenon lies not only in the *personnel* of some of the Senators, but also because of the Senate's bad record in the handling of Native questions.

On that most contentious of legislative projects—the Natives' Land Bill—the Senate, which only received it after four months of continual adjournments and complaints, spent four days, and passed it cheerfully by three to one majorities. The Minister for Native Affairs had the hardihood to tell the Senate that "the matter had been discussed at such length in another place that he did not propose at that stage to go very much into details."³⁸

Another enlightening incident occurred on the—doubtless hot and sleepy—afternoon of the 16th June, 1913³⁹ :—

"A message was received from the House of Assembly transmitting the second and fifth report of the Select Committee on Native Affairs.

"The Minister for Native Affairs moved that the reports be considered.

"Senator Hitchins seconded.

"Senator Churchill asked how it was possible for the House to consider reports of which they had no copies.

"Senator de Villiers: 'Oh! we are nobody.'

"The Minister for Native Affairs said the reports dealt chiefly with the grants of land for church and school purposes.

"The motion was agreed to.

"The Minister for Native Affairs moved that the House concur.

"Senator Hitchins seconded.

³⁸ Senate Debates, 1913. Col. 530.

³⁹ Senate Debates, 1913, Col. 611.

“Senator Churchill expressed dissatisfaction that the matter was being rushed through without a Committee of that House being given time to consider the reports.

“The motion was agreed to.”

Comment would but mar the simple and classic dignity of the original.

Again, as we have seen, the Senate passed the Natives' Land Act—an Act on which, even as an ordinary House of Review it might well have exercised its delaying powers of veto or revision, an Act of which the Secretary for Native Affairs, an impartial permanent official says ⁴⁰:

“The Act immediately led to an outburst of protest from Native Associations and leaders of Native thought and activity throughout the Country, and a deputation of Natives was sent to England to submit a formal protest to the King.”

Instead of a representative Native Affairs body expressing its views in advance and before the Bill was passed, thus obviating much discontent and dangerous talk, it was necessary *after* that, and its successor the Native Affairs Administration Bill, had been dealt with by Parliament, for the permanent heads of the Native Affairs Department to go all over the country, trying to gauge Native opinion.

“In order ⁴¹ that the Native section of the community should have full opportunity to express their views on the subject of the Bill and its provisions generally, between the beginning of October, 1917, and the end of January, 1918, large meetings of Natives throughout the Union were met by the Secretary for Native Affairs in the Transvaal and Cape Provinces, the Under-Secretary in the South Western Transvaal, Bechuanaland, Griqualand West and the Free State, and by the Chief Native Commissioner in Natal. At all these meetings the Natives were given a full explanation of the contents and purpose of the Bill, and invited to open their hearts to the Government and the

⁴⁰ Report of the Department of Native Affairs, 1913—8, page 11.

⁴¹ Report of the Department of Native Affairs, 1913—18, page 11.

representations made were placed on record with a view to their submission to Parliament in due course."

Would it be too cynical to suppose that in the Senate's "sausage-mill" ⁴² days in some future session they will be asked to consider this hitherto unpublished evidence also without seeing the relative documents, and will agree to do so?

During the session of 1917, the Native Affairs Administration Bill was referred to a Select Committee of the Assembly on Native Affairs. This Committee, though sitting daily, could not give the necessary time within the Session to the consideration of the Bill. ⁴³ In the meantime the Senate was adjourning from day to day owing to lack of business!

In the Session of 1913, a Committee of the Assembly spent a great deal of time in investigating the terms of a contract made between the Portuguese Government and the Witwatersrand Native Labour Association regarding the supply of Native Labour from Portuguese Territory for the Gold Mines. The Committee held twenty-eight sittings, examined many witnesses and framed some important conclusions. These conclusions were not submitted to the Senate which during the period in question was complaining that "it was irksome for hon. Senators to have to sit in the House with nothing to do."⁴⁴ On the 8th May indeed—near four months on in the session—the Minister for Justice, on behalf of the Minister for Native Affairs, read the Senate a statement about Native mortality on the Mines, which contained serious references to the Native Affairs Department and also to the Witwatersrand Native Labour Association. That statement was received without comment, and the Senate hurried on to the possibly more congenial task of discussing the conditions under

⁴² "He (Senator Wolmarans) feared that the same thing would happen again this year as happened last year and that the Bills and Estimates would come from the other House and the Senate would have to pass them out as a mill turned out sausages." (Senate Debates 1918, Col. 247).

⁴³ Majority Report of the Eastern Transvaal Natives Land Committee, Appendix 1, page 22.

⁴⁴ Senator Sir Frederick Moor in the Session of 1913 (Debates Col. 70).

which sugar should be used in the manufacture of beer, which occupied it for a considerable time.⁴⁵

In 1918 the Senate appointed a Select Committee to report on its future constitution. Its report, issued on the 15th April of that year, showed a distinct lack of imagination in dealing with the question. Although the Committee only sat fifteen hours altogether⁴⁶ on the subject, that might have been excused, had it produced any scheme likely to put an end to the state of affairs, of which honourable Senators so complained. The chief differences from the scheme outlined in the South Africa Act were that direct election on the system of proportional representation was to be substituted for selective election by Electoral Colleges; that half the Senators were to retire every five years, thus making the Senate a necessarily perpetual body; and that only four Senators—all to represent Native interests—should be nominated, instead of eight. No suggestions were offered whereby that scandalous state of affairs might be remedied, complained of by the poetical Senator who compared the Senate to an animated sausage-machine;⁴⁷ and the question of Native quasi-representation was allowed to remain where it stood. The "Proceedings"⁴⁸ reveal the fact that the late Senator Schreiner—a representative of Native interests who was earnest for his "constituents" in season and out of season—requested permission to give evidence on the question of the nomination of Senators to represent the Native element, but his request was turned down in a somewhat cavalier fashion, and further debate was apparently very limited. None of the recommendations of the Select Committee of 1918 were given effect to, and the question of the representation of Native interests in the Senate remains where it stood at that date.

It has obviously proved a failure. It can never be more than a limited success; but its value would be

⁴⁵ Debates, 1913, Col. 211—214.

⁴⁶ Vide Proceedings of the Select Committee on the Future Constitution of the Senate, 1918, published with the Report, pages ix—xxiv.

⁴⁷ Vide supra.

⁴⁸ Page xv.

greatly enhanced by a more careful selection of Senators, and the initiation of constitutional conventions that all Native Affairs Bills should originate in the Senate, and the reservation of Committee work on Native Affairs for that House. This would raise the status of the Senate generally; and attract to it statesmen whose predilections were in the direction of Native Affairs.

A further excellent suggestion occurred to the writer, which he has since discovered was mooted by Sir—then Mr.—Frederick Moor as early as 1903. "It is a thankless task," he said in the Natal Legislative Assembly, ⁴⁹ "to be head of the Native Affairs Department, particularly for an elected member who is a representative of the white population of this Colony. As I have said, I repeat this evening that the head of the Native Affairs Department should be a permanent head with a seat in the Upper House and a voice in the Lower. Then, I think, the interests of the Native population, would be fearlessly declared, and continuity of Native policy would be possible."

This is an admirable suggestion. The portfolio of Native Affairs should be, except in the case of the initiation of an entirely new policy, when the Prime Minister's personal attention is necessary, reserved for one man's whole time. From 1919 to the fall of the Smuts Ministry it was held by the Prime Minister, who, oppressed by the cares and duties of his office, was apparently unable to give Native Affairs the attention which they undoubtedly merit. General Hertzog, endeavouring to rectify this, has been accused of neglecting and failing to lead the House of Assembly. It is most difficult to combine the two Offices adequately for any length of time. A separate Minister—that is the first point: a permanent Minister is the second, and that should mean a non-party Minister. Thus we might ensure permanence and continuity of Native policy, irrespective of changes of Government, and Native Affairs Bills would no longer be made questions of confidence. Lastly such a Minister should be a member of the Senate, as enhancing that body's status and conform-

⁴⁹ Debates, Vol. XXXV, page 182.

ing to the general system of originating Native Affairs Bills in the less violently partisan House, as above suggested.

These proposals are of permanent value, whatever additional representation in a different body may be given to Native interests. That some such representation will require to be given, goes without saying. However wise the nominations made, sooner or later detribalised Natives will clamour for the elective principle, especially if the Cape Native Franchise is to go. However large the number of Senators representing Native interests, they cannot be made a majority of the Senate without entirely altering the character of that body as a general House of Review, and if they are in a perpetual minority sooner or later Native opinion will be dissatisfied with such a position. Quasi-representation in the Senate is not a solution of the Native political problem, but it is a minor contributory element to a solution, which must not be lost to sight when we proceed to sum up the results of our investigation.

Legislation by proclamation is an attempt to take Native Affairs out of the hands of partisan European elected Legislatures and place it in the hands of men who, theoretically speaking, are independent Ministers of the Crown. It has had about half a century's history in South Africa.

Like many other features of Transkeian Policy, legislation by Proclamation originated in Basutoland during the brief period of its rule by the Cape Colony. Subsequently, by the various annexing Acts, the principle was made to apply to the various areas now commonly known as the Transkeian Territories.

In strict legal theory the position was that Parliament while retaining its ultimate sovereignty, delegated to the Administration a concurrent right of legislation for the Territories. No Act of Parliament was to extend to the Territories (unless expressly so worded) *proprio vigore*. But any Act, or any part of any Act, might be extended by Proclamation; and the Administration might legislate directly by Proclamation. All such Proclamations were

required to be laid before the Legislature, which had the right to repeal them.

In practice, the Administration actually superseded Parliament as law making authority for the Territories; and Proclamations were numerous, frequent, and important.

The South Africa Act, however, served to introduce a great change. Immediately after Union, the Law Advisers to the Crown advised the Native Affairs Department that, on their construction of the Act, legislation of the Union Parliament applied to the Territories although there might not be any special extending Clauses, and that it was therefore unnecessary to extend such Acts by Proclamation. No Act of the Union Parliament has therefore been specifically extended by Proclamation. This position was laid down judicially in the case of *Rex v. Roodt* (1912).⁵⁰ The learned Judge-President relied chiefly on Section 59 of the South Africa Act, read with the Preamble and Sections 2, 6 and 19. The judgment in this case has been decisive on practice, but, if a layman may venture to criticise, it is open to grave doubt (i) whether it was the intention of the powers of the South Africa Act to alter the system of legislating for the Territories—a point more fully discussed later—(ii) whether Section 135 of the South Africa Act, read with the existing Cape legislation, does not more than counterbalance the arguments drawn from Section 59 of the Act.

In the case of *Rex v. Mdandalaza* in the same year⁵¹ it was ruled that the Governor-General had power under the South Africa Act (Section 135) to extend to the Native Territories Acts of the old Cape Parliament, which had not at the time of Union been so extended.

So far as legislation by Proclamation still exists in the Territories (it exists of course nowhere else in the Union) the legislative powers of the Administration fall under four heads:

(1) The application of unrepealed laws of the old Cape Parliament and applied at the time of Union. These

⁵⁰ *Rex v. Roodt*, C.P.D., 1912 page 606, per Searle, J.

⁵¹ C.P.D., 1912, page 234.

laws are few in number, and the number of Proclamations issued under this head is negligible.

(2) The withdrawal or modification as regards the Territories of legislation of the Union Parliament. This power has also been very sparingly exercised. A good example is Proclamation 154 of 1921 which withdraws the Crown Liabilities Act (No. 1 of 1910) from operation in the Territories, in so far as that Act imposed liabilities in the Cape Provincial Administration for damages arising from bad roads in the territories.

(3) Original legislation by Proclamation, subject to the veto of the Union Parliament.

(4) The repeal or modification of existing Proclamations.

Proclamations under heads (3) and (4) have been comparatively few in number.

Whilst the legal position does not differ profoundly to-day from what it was in 1909, yet there has been a great change in practice. Before Union, the Governor-in-Council was the normal legislative authority: legislation by Parliament was abnormal. To-day Parliament is the normal legislative authority; legislation by the Governor-General-in Council is abnormal. In the circumstances it is misleading, from a political point of view, to speak of the *system* of Government by proclamation as existing in the Territories or to allege that Proclamations are issued *ad infinitum*.

The Native Affairs Administration Bill of 1917 proposed⁵² to introduce the principle of "legislation by proclamation" as a general principle for all Native Areas in the Union. After the passing of the Act, while the existing legislative powers of the Union Parliament—not however of the Provincial Councils—were preserved, no future Act of Parliament was to apply to Native Areas unless specially declared so to apply by the provisions of the Act itself. The Governor-General was empowered

(i) to extend by Proclamation the whole or any portion of such Act to all or any Native Areas.

⁵² Section 10.

(ii) to repeal, amend to modify any existing legislation (or any legislation thereafter applied to Native Territories) with the exception of certain enactments specified in Schedule II to the Bill. (These include certain general Acts of the Union such as the Crown Liabilities Act, the Public Service and Pensions Act, the Defence Act, the Customs Management Act, the Railways and Harbours Regulation Control and Management Act, the Exchequer and Audit Acts, etc., also the Native Affairs Administration Act itself and "any Act of the Union Parliament or any law enacted by the legislation of a Colony now included in the Union, prescribing the qualifications necessary to entitle persons to vote at the election of members of the House of Assembly.")

(iii) to enact fresh laws for all or any Native Areas.

All Proclamations were to be laid on the Tables of both Houses of Parliament and (a) if supported by the Commission appointed under the Act to become law unless and until disapproved by both Houses, (b) if not supported by the Commission, not to become law unless and until approved by both Houses.

The Native Affairs Administration Bill never advanced beyond the Committee Stage, and thus these provisions have never become law.

It has been suggested above that the effect of the Act of Union in very largely abrogating the system of legislation by Proclamation for the Territories was not intended by the framers of the Act. The arguments in support of this view are both negative and positive.

The negative argument is the silence in all the fragmentary records of the Convention which have been allowed to see the light of day—and particularly in Walton's "Inner History"—on the momentous change involved. Arguments from silence are certainly of dubious value; but one cannot think that a delegation which included Colonel Stanford and Mr. J. W. Sauer, would have let such a change take place without a first class discussion.

Fortunately there is a positive argument existent in the Schedule to the South Africa Act, which prescribes the method under which the Territories of Basutoland, Bechuanaland and Swaziland are to be administered, if and when handed over to the Union. The Schedule not only approves of the principle of legislation by proclamation, but even suggests by the wording⁵³ that Parliament is to be restricted to the veto of Proclamations and is not to have a concurrent right of legislation. It can hardly be argued that the Convention which deliberately laid down a system for Basutoland, Bechuanaland and Swaziland, deliberately withdrew it from the Transkeian Territories.

In view of the decision in *Rex vs. Roodt*, there is room for grave doubt whether our Courts would not in future hold Section 59 of the South Africa Act to prevail over the Schedule, as they have already held it to prevail over Section 135. In this case, the Proclamation clause of the Schedule would be modified to accord with the present practice of the Transkeian Territories—a result possibly not contemplated by those responsible for the Schedule.

Whilst legislation by Proclamation is confined, in the Union, to the Transkeian Territories, it was strongly recommended for Natal by the 1906-7 Commission, which proposed that "Parliament should..... grant a Charter to the Administrative side of the Government."⁵⁴ The Native Administration would thus have a self contained Constitution,⁵⁵ which would accord with the rest of Natal Native Policy.⁵⁶ Such an arrangement had existed, not with marked success, from 1887 to 1891. The Commission's recommendations in this connection bore no fruit.

The underlying ideas in favour of legislation by proclamation are three.

⁵³ Schedule Par. 1. ". . . The Governor-General-in-Council shall be the legislative authority, and may by proclamation make laws for the peace, order and good government of such territory. Provided that all such laws shall be laid before both Houses of Parliament within seven days," etc.

⁵⁴ Report, para. 40.

⁵⁵ *Ibid*, para. 35.

⁵⁶ *Ibid*, para. 34.

It is supposed, firstly, that the withdrawal of power from the Legislature and its assumption by the Executive would eliminate all danger of partisan motives influencing Native Affairs legislation. Under our existing Cabinet System, there is but little warrant for this view. If, as suggested earlier in this Chapter, the Minister for Native Affairs were appointed for a fixed term of years, and were uninfluenced by party changes in the Legislature, this argument would hold good.

In the second place, it is argued that the Executive would be more active in carrying through necessary legislation than Parliament has been. Certainly nobody on earth could be less active. With almost equal certainty, we can add that, given a free hand, the Executive, *if not limited by exigencies of party*, could carry through more ameliorative legislation in two years than Parliament has done since Union. The Permanent Department and the Native Affairs Commission have drawn up Bill after Bill—not all contentious—which have been sacrificed to party interests or the cynical haste of Parliamentary representatives to leave their legislative duties for their domestic pleasures.

Lastly, it is alleged that the Executive would command more confidence among Natives than Parliament would. At present, Natives have about as much confidence in one as in the other, and very little in either.

If the Ministry of Native Affairs could become a permanent, non-political office, the full system of legislation by Proclamation, even as far as outlined in the Schedule to the South Africa Act, could be introduced with advantage. If, however, it remains a Cabinet office, it would seem better to leave Parliament the normal right of legislation, merely supplemented by the Executive, as in the Territories to-day.

Past schemes of legislation by proclamation have based themselves on territorial lines. It would be quite necessary, to-day, to give the Administration power to legislate not only for all matters regarding Native Areas, but also for all matters relating to Native Affairs even

outside Native Areas. Everyone knows that the Executive would not abuse this power; but, even if it did, there is the plain and easy remedy of the veto of Parliament.

Legislation by proclamation, even under the most favourable conditions, will not, of course, solve the whole of the political problem. The increasing desire of the Native for representation, our increasingly plain duty to lead him on the path of self-government, and the necessity of giving a *quid pro quo* if the present Cape franchise is abolished, will not be met by choosing the best of Dictators. Yet, like a proper representation in the Senate, a well worked out method of legislation by proclamation would be a valuable contributory element, in the final solution of this most complicated question. Once the National Council described in the succeeding Chapter were fully constituted, and granted legislative powers, the necessity for legislating by proclamation would, however, fall away.

CHAPTER XIV.

THE POLITICAL PROBLEM.—(Concluded.)

Among the more recent phenomena connected with the Native political problem in South African is the Native Affairs Commission. It is a body which is hardly likely to be permanent in its present form: the very need for it may pass away with improved political institutions which may meet the need for which it exists at the present time. On the other hand, the Native Affairs Commission may be the nucleus of that body for which we are searching—a body able to represent fully the opinion of the Native peoples.

It owes its rise, largely, to one of the later developments of Natal policy—the Council for Native Affairs, created as a result of the labours of the Commission of 1906-7. The Council, which consisted of the Secretary for Native Affairs as Chairman, the four District Commissioners *ex officio* and four non-official members, commenced its duties in July, 1909¹ It held two sessions of ten and five meetings respectively during the year, dealing, *inter alia*, with such subjects as advances to labourers, apprenticeship, amendment of the Code, Beer Drink Regulations, status of "half-castes," *lobola*, Mission work and policy, Passes, the training of Native teachers, the treatment of Natal Natives working on the Transvaal Mines, etc. Mr. A. J. Shepstone, C.M.G., the last Natal Secretary for Native Affairs, reported that the work of the Council had been of great value to the Native Affairs Department, and that the high expectations formed when the Council had been first established had been fully realised.² The Union Government did not share this optimistic view and the Council for Native Affairs was unceremoniously abolished by Act 1 of 1912.

¹ Natal Native Blue Book, 1909, page XI.

² *Ibid.*

But the idea of a permanent Commission or Board of Advice had been slowly gaining ground; and in the Native Affairs Administration Bill of 1917, provision was made for the creation of a body to be termed the "Native Affairs Commission." This body was to advise the Government on all matters relating to legislation for, and administration of, Native Areas.³ It was obligatory upon the Government to consult the Commission on all such matters, and if there was a difference of opinion between the Minister for Native Affairs and the Commission, the relative papers, including a written explanation by the Minister of his dissent from the recommendation of the Commission, had ultimately to be laid before Parliament. The composition of the Commission was as follows:—

- (a) The Prime Minister ⁴ *ex officio* as Chairman.
- (b) Not less than three, nor more than five, "appointed members," who were to be nominated by the Governor-General, and one of whom was to be designated by him as Vice-Chairman.

This Commission was to be extra-Parliamentary, and hence its members were to be placed on a basis of secure tenure, similar to that of the Controller and Auditor-General.

The Bill never became law, and the Commission which we have to-day was created by the Native Affairs Act (No. 23) of 1920. It differs profoundly in character from the body originally contemplated. Briefly, we may say that the Commission of 1917 was independent, non-Parliamentary and necessarily powerful. The Commission of 1920 is subordinate, Parliamentary, and powerful only so far as the personality and resolution of its members can make it so. The Commission of 1920, whose scope was defined as advising upon legislation and administration affecting the Native population,⁵ was merely a body

³ Section 5.

⁴ The Minister for Native Affairs is curiously ignored, though there is no provision in the S. A. Act that the Prime Minister should hold this Portfolio. The Schedule to the S.A. Act in dealing with the similar Commission to advise on the administration of Bechuanaland, Basutoland and Swaziland likewise, mentions the Prime Minister only—a point which requires amendment.

⁵ Section 2, Act 23 of 1920.

which the Government might consult should it wish to do so: there is no obligation upon the Government to consult it. This is a vital distinction. Papers relative to a difference of opinion may still be referred to Parliament in the last resort; but there is no obligation upon the Minister to furnish a written explanation as in the Bill. The prescribed composition of the Commission is:—

- (a) The Minister for Native Affairs *ex-officio* as Chairman, or alternatively to him, some fit and proper person designated by the Minister to be deputy-chairman, in his absence from any meeting of the Commission.
- (b) Not less than three, nor more than five other members, regarding the method of whose appointment no rule is laid down.

The Commission may include members of Parliament but the tenure of its members is not secured by law, and they could be dismissed at will by the Government, though it is to be hoped that no Government would use such a power to diminish the independence of the Commissioners.

The Commission was appointed by Government Notice No. 2002 of 1920, and held its first meeting on the 17th March, 1921. As originally appointed it consisted of the Minister for Native Affairs as Chairman (alternatively, and usually, the Minister for Mines and Industries as Vice-Chairman under section 1 of the Act), Senator the Hon. A. W. Roberts, D.Sc., General L. A. S. Lemmer, M.L.A.,⁶ and Dr. C. T. Loram, the celebrated Native educationalist.

Two vacancies remain on the Commission. There is nothing in the Act to prevent Natives of standing being appointed to fill such vacancies; and requests to this effect have already made from many directions.

The work of the Commission has been of great value, but it has undoubtedly been greatly hindered by the Commission's dependent status, by its undue caution

⁶ Since replaced by Mr. P. W. le Roux van Niekerk, M.L.A.

in challenging the Government on points where the two were at variance, and by the tendency of the Government to use the Commission as a screen for itself. With all these limitations, the Commission has done most excellent work of permanent utility on the problems of Natives in Urban Areas, Passes, Native Taxation, Native Education, Native Separatist Churches, Survey of Allotments under the Glen Grey Act and other matters. Less happily it has tried to institute Councils under Act 23 of 1920. It has reported on, or dealt with, certain unfortunate incidents such as the Bullhoek affair and the Bondelswarts Rising. It is early to prophesy what judgment history will pass on the Commission. Its reputation is in the balance. Let us hope that "a craven fear of being great" will not mar its immense possibilities. Of all bodies to deal with present Native Affairs, a body of "safe" and unassuming gentlemen would be the worst.

Will the Native Affairs Commission satisfy Native opinion?⁷ As constituted, no. It is not independent enough, nor is it representative enough; and these two points go far to militate against the confidence which expert knowledge and good intention should give.

An ideal Native Affairs Commission at the present time would consist of the Minister for Native Affairs—such a Minister as is suggested in the last Chapter—*ex officio*, and the three other Senators, for Native Affairs ⁸ *ex-officio*, all holding office for ten years, irrespective of changes of Government. In the first instance, it would be advisable to provide that two of the four should retire after five years, in order to prevent a wholesale and sudden change of policy in the future. With a wise choice of personnel, this would be a strong Commission. Naturally the suggestion is made with the assumption that the changes previously urged in the direction of making the Senate the specialist House in Native Affairs are adopted.

⁷ For an illuminating discussion on this point, see D.D. Tengo Jabavu: "The Black Problem," pages 23—4.

⁸ The Minister making the fourth. It is not implied that the four Senators at present representing Native Affairs, would make an ideal Commission, though some of them might make ideal Commissioners.

These Senators should all four have the right to speak in the Assembly—a right which, as a matter of convention, would be restricted to Native Affairs Bills—and the provisions of the Bill of 1917 binding the Minister to consult the Commission and to state his reasons for dissent from its conclusions should be revived. This would leave two vacancies on the Commission, and these should ultimately be filled by direct representatives of the Natives. Though the Natives should not be precluded from choosing European representatives, it should be made perfectly clear to them that Natives would be eligible for membership. The proposed Union Native Council could well be the electing body. The first step would then have been taken in a long process, which, if tested by gradual steps such as a cautious liberalism would dictate, may ultimately enable South Africa to replace the Cape Native Franchise with a political system calculated to meet the reasonable wants and needs of Natives in all the Provinces of the Union.⁹

Reference has been made to Native Conferences. What is the present position of these bodies?

The authority for their convocation is to be found in Section 16 of Act 23 of 1920, which it would seem advisable to quote in full:—

“16 (1) The Governor-General may, upon the recommendation of the Commission, convene conferences of chiefs, members of Native councils or local councils and prominent natives, and of native delegates invited from any association or union purporting to represent any native political or economic interest, with a view to the ascertainment of the sentiments of the native population of the Union or of any part thereof, in regard to any measure in so far as it may affect such population.

“(2) Such conferences shall be assisted in their deliberations by the Minister of Native Affairs, who is

⁹ These remarks are based on the Senate as it existed before the emasculating Act of 1926. For a view of the effect of the legislation, actual and projected, of the past two years on the proposals made in this chapter see the Preface to this Second Edition.

hereby empowered to authorise any expenditure which he may consider desirable in this connection from moneys appropriated by Parliament for the purpose."

Great possibilities—many, if not all of them, doubtless foreseen by the framers of the Act—are latent in this Clause. Hitherto there have been five Conferences, the later ones having assumed very largely the character of Native Parliaments.

The almost inevitable suggestion to which we are driven is that these Conferences should, gradually if not immediately, become part of our regular constitutional machinery, instead of being summoned spasmodically to meet particular difficulties; and that they should, sooner or later be made representative of the whole Native population of South Africa, not of any particular section thereof. They would thus be the main part of the solution here offered of the political difficulty.¹⁰

It is always pleasant to acknowledge obligations to the past generation; and reference might therefore be made here to an interesting suggestion, anticipating the view expressed above. This was the subject of a resolution introduced by Mr. Pinson in the Legislative Council in Natal in 1889¹¹ but not carried:

"That, in the opinion of this House, a small number of the most intelligent Chiefs should be assembled when the Council meets, with whom the House might consult on any question affecting Native interests."

The suggestion here made is that, under the provisions of Section 16 of Act 23 of 1920, a Native National Council should be evolved, meeting annually, if possible in the Parliamentary recess. If it met in September, sitting in that month and October of each year, its members could take the views of their General Council before attending the National Council; and matters to be submitted to the Union Parliament in the following session

¹⁰ The suggestions here made coincide very largely with the proposals contained in the Union Native Council Bill put forward by General Hertzog in 1926.

¹¹ Debates, Vol. VIII, page 60.

could be fully discussed and desired recommendation made, whilst the members of the Native Affairs Commission could give their full attention to the business of the National Council, without derogating from their Parliamentary duties.

Should such a National Council be at once summoned it is suggested that it should be constituted as follows:—

- (1) The Minister for Native Affairs as Chairman, exercising a casting vote in case of equality of votes.
- (2) The Members of the Native Affairs Commission, and
- (3) The Chief Magistrates of Native Territories as Assessor Members, having the right to speak but not to vote.
- (4) Elected Native members.
- (5) Nominated Native members.

The elected Native members would be drawn from all areas where Native Councils at present exist—thus utilising admittedly successful machinery—while from every other part of the Union, whether a "Native Area" or not members should be nominated by the Government.

This nomination should take place after consultation with the Natives by the local representative of the Government, and should be really an informal election. Chiefs should be eligible and in strongly tribal areas might probably be chosen.

The aim of the Government should be gradually to replace nominated by elected members. In Native Areas, Councils will gradually be formed, and as soon as they are formed their representatives on the National Council should be chosen by the General Council, where such exists, or in the case of isolated Local Councils, by the Local Council.

The beauty of this scheme is that it meets the case, not met by any other scheme, of Natives permanently resident in non-Native areas. As soon as a general exemption law of a simple character¹² is carried—

¹² e.g., on the lines suggested in Chapter IX.

which should, in any case be one of the early cares of the Government—a definite election of Native members by ballot should take place in non-Native areas. The mass of Natives permanently resident in such areas are *de facto* detribalised, monogamous and literate; and the confining of the electorate in non-Native Areas to exempted Natives would not be an undemocratic or unwise measure.

When the National Council has become fully elective—in all probability, a matter of quite twenty or thirty years, since Councils will have to be established in all Native Areas before this consummation is reached—and assuming that it has performed its functions satisfactorily and in such a way as to command both European and Native confidence—a genuine probability, judging by the Transkeian General Council—the time will have arrived to make a very vital change.

It will not be necessary, *if the National Council has proved a success, and the treatment of its advice by the Government has been such as to make quite clear that the Council is a real power in the land and not a sham*, to abolish the Cape Native Franchise directly. All that is necessary is to pass a law providing that, after a fixed date, no Native may take part, as elector or candidate, in any election for Local, General or National Councils, while his name remains on the European Voters' Roll. Registration on the Native Voters' Roll or acceptance of a requisition as a Candidate for a Native election, should automatically and finally remove the Native concerned from the European Voters' Roll.

After the lapse of one or two generations, this will probably have reduced the Native electorate for the (European) Parliament to a very small number. The definite abolition of the Cape Franchise could not justly take place, unless and until the National Council received legislative, as against advisory, powers.¹³

¹³ The preceeding paragraphs are printed exactly as they appeared in the First Edition of 1924. The writer would like to protest against the unfair criticism which has found in this book the basis of the proposals for an immediate abolition of the Cape Native Franchise.

The steps hitherto recommended, while not all capable of immediate realisation, are justifiable by our experience of the past work of Natives in advisory self-government and by our knowledge of their present capacity. So far we tread on sure ground; but when we advance any further we must feel our way very cautiously. If the theory of the permanent mental inferiority of Native races is true, it may be that we could never wisely go beyond the steps already suggested. But if the Native races, as they advance in civilisation, gradually advance in knowledge, mental grasp and political ability—as it is the writer's opinion they will—we shall have to go further. Only let it be made quite clear that the subsequent recommendations are tentative only, that they should be attained by very gradual experiment, no one step being taken until the last has proved definitely successful, and that, while they should under those circumstances be readily and promptly granted when asked for, the grant should not precede the request.

The National Council will probably sooner or later claim the powers now about to be granted to General and Local Councils—of being a legislative and not merely an advisory body. The reception of this demand must be favourable in exact proportion as the National Council has fulfilled its advisory functions with ability, honesty and assiduity. If, after the National Council has become fully elective, it does display these qualities over a reasonable period of years, the grant of legislative functions could begin to be made by gradual steps.

Certain matters purely affecting Natives—such as Native Law, Native Education, Agriculture and Industry in Native Areas, etc., could be delegated to the National Council, which would have full legislative powers thereon, subject to the right to the Senate¹⁴ to veto any laws passed, within twelve months of their passing, by a two-thirds majority.

¹⁴ Not Parliament as a whole, the idea being to continue the policy of making the Senate (containing all the members of the Native Affairs Commission) the specialist House in Native Affairs.

If, after a testing period of, say, twenty years, this arrangement had worked satisfactorily, the further step might be taken of confining the right of Parliamentary legislation on these topics to the Senate alone, and of giving the National Council the right to veto Senate Laws on these topics within twelve months of their passing, by a two-thirds majority.

Should this power be exercised with due restraint and ability over a similar period of years, the National Council might next be allowed to frame its own Budget. All General Native Taxation would be under its legislative control and it should receive a subsidy being a percentage on Customs Duties from Parliament. It would be responsible for expenditure as follows:—

- (i) Expenditure of the Native Affairs Department.
- (ii) Expenditure on Native Education.
- (iii) Expenditure in Native Areas other than undertaken by General or Local Councils.
- (iv) A contribution of a fixed percentage on the general expenditure of the country.¹⁵

The manner in which the National Council carried out its financial administration would be the most crucial test of its ability to govern the Native people. The writer cannot but confess to misgivings on the point of whether, even in sixty years' time, a Native representative body will be able to manage its own finances. For a time, therefore, after the grant of this power the Native Affairs Commission should retain a control over the Budget, and should the National Council prove really incapable, after a good test, of financial control, this should revert to Parliament and no further advance be made in the Council's powers until this test can be surmounted.

Should the National Council, however, over a long period of years, display a real ability to handle the finances of the Native population, then the immense step might be taken of admitting it into the Sovereign Par-

¹⁵ Such a separate Native Budget, to be controlled in the meantime by the Minister acting on the advice of the Commission, has been one of the most urgent reforms needed in Native Administration. It has been largely attained by the legislation of 1925.

liament. On matters other than those already mentioned, it should have full right of legislation, subject to the right of veto by the Senate by an ordinary majority. Conventions should be consciously created that the Senate they vetoed any National Council Bill which, practically speaking, purely affected Europeans, and any Assembly Bill which, practically speaking, purely affected Natives, dealing with all other Bills on their merits:

It might even be that, at a later date, the Native Affairs Commission (which it will be remembered, on the scheme suggested, would include the four Native Affairs Senators) might be elected by the National Council, the membership remaining, however, predominantly, European, as all the Senators would until race prejudice among the governing whites has greatly lessened, have to be European.

Before proceeding to discuss the more general implications of these suggestions, it would seem advisable to recapitulate (I) the present position; (II) the cumulative effect of changes suggested for a comparatively early date; (III) the final scheme, attainable only, be it remembered, if each step towards it is justified by results.

(I) A Minister for Native Affairs, who must necessarily be a non-permanent political partisan, and who is actually Prime Minister and the busiest member of the Cabinet.

A Native Affairs Commission, consisting entirely of Europeans, dependent in status, not having the right to demand the reference of any given question to it, and containing one only of the four Native Affairs Senators.

A sovereign Parliament consisting of a Senate and a House of Assembly.

A few Natives have a vote for the House of Assembly, and, indirectly for the Senate; but no Native may be a member of either House.

In the Senate sit four nominated Senators to represent Native interests. Natives are not consulted in the nomination, the Senators concerned are not all genuinely representative of Native opinion: only one is a member of the Native Affairs Commission.

Notwithstanding the fact that the Senate is supposed to be the special guardian of Native interests, the Minis-

ter is habitually a member of the House of Assembly and all Government measures relating to Native Affairs are habitually introduced in that House.

A system of local government outlined for Native Areas throughout the Union, but at present existing only in the Transkei and Pondoland.

A system of Native Conferences meeting annually with purely advisory powers.

It will be noticed that, beyond the fact that the periodic Native Conference is re-named the National Council, (II) and (III) simply utilise and improve the machinery of (I).

(II) A Minister for Native Affairs, appointed for a fixed period of years, irrespective of party changes, sitting as a nominated Senator, and holding no other Portfolio.

A Native Affairs Commission, consisting of (i) the Minister, (ii) three other Native Affairs Senators, (iii) two Native members nominated by the Governor-General after consultation with the annual Native Conferences, all such Commissioners having a specially protected status and the right to demand consultation on all matters affecting Native Affairs.

Parliament, as at present, with a Native franchise as at present; but subsequently all Natives voting for Native self-governing bodies to be removed from the Parliamentary roll.

Four nominated Senators to represent Native Affairs (one of whom to be the Minister) all being members of the Native Affairs Commission. The National Council, when in being, to be consulted regarding their nomination.

All Native Affairs measures to originate in the Senate, which shall also supply all Select Committees on Native Affairs.

The extension throughout the Union of the system of local government authorised by Act 23 of 1920, preferably with the modification that new Councils at any rate of the Pondoland type, should at first be merely advisory, until the Natives concerned have had more experience of them.

An annual Native Conference, developing as the Council system is developed and exemption Law passed, into a National Council.

A system of legislation by proclamation without derogation from the rights of Parliament pending the full working out of the National Council system.

(III) This would represent the position, as it would be attained by gradual steps, in the course of time.

A Minister for Native Affairs, appointed for a fixed period of years by the Governor-General, on the recommendation of the National Council, sitting as a nominated Senator, and holding no other Portfolio.

A Native Affairs Commission consisting of (i) the Minister, (ii) three other Europeans elected by the National Council, and becoming on election, Native Affairs Senators, (iii) two or more Native members elected by the National Council, all such Commissioners having a specially protected status, and the right to demand consultation on all matters affecting Native Affairs.

A sovereign Parliament consisting of

(i) A Senate with indirect representatives of the European electorate and with indirect representatives of the Native electorate, chosen by the National Council.

(ii) An Assembly, exclusively representative of the European electorate.

(iii) A National Council, exclusively representative of the Native electorate,

On certain matters purely affecting Natives, the National Council to have the right to legislate, subject only to the veto of a two-thirds majority of Senate; and to have the right by a two-thirds majority to veto legislation on such topics duly passed by the Senate.

All other legislation originating either in the Assembly or the National Council to be subject to the veto of the Senate, but not of the other "lower" House. The Senate will conventionally use its veto to prevent as far as possible, the National Council legislating for Europeans or the Assembly for Natives.

The National Council to control Native taxation and expenditure on Native Affairs.

Full local self-government in all Native areas.

Let us now examine the solution. It will be opposed on the one hand by the ultra-liberal, on the other hand by the ultra-conservative.

Liberal opposition may fix itself first on the point that the process by which self-government would be attained would be intolerably slow. But in answer to such an objection it must be argued that undue haste would defeat its own ends. To constitute a National Native Council with full and unrestricted legislative powers to-day would produce results which might lead to the loss of faith by the European population in all Native self-government. Moreover the European electorate, not only naturally but justly, would require some proof of the capacity of Natives to handle affairs of state. A series of progressive reforms, with time to test each, would convince where a sweeping and premature revolution would merely arouse hostility. It is in the best interests of the Native races that the writer urges the admixture of caution with liberalism.

In practice, liberal opposition has fastened itself, in the past, rather on the point that it is unjust and illiberal to exclude Natives from the ordinary Parliamentary franchise. But it need scarcely be said that, while a European majority exists in the Legislature, the share of Natives in their own government would be very much less than under the scheme propounded in this Chapter; that the passing of a European majority in the Legislature would be resisted by ninety-five per cent, of the European population, even by force; and that the status of South Africa and the welfare of its population, white and black, would not be benefited by a scheme which excluded that section of its people which has had the longer experience of civilisation and government from power.

The conservative critic would argue that we are unduly forcing the pace. But not one of the immediate changes suggested has not been asked for by Natives, except the creation of a National Council; and Natives have asked, and are asking, for some form of representation, though they have hitherto concentrated—to their own grave dis-

advantage—on the Cape franchise. And it has been definitely laid down in this Chapter that further changes must not, any more than these, precede the request for them.

What the conservative critic wants is, of course, to keep the black races permanently inferior to the white,—in so far as political organisation is concerned. He argues that if he only sits on the safety-valve tight enough, the boiler will not burst. Perhaps not; but sooner or later the unfortunate sitter will disappear, to sit no more. He has the opportunity, to change the metaphor, to direct the course of the river; but it is huge enough to burst any dam he may erect.

"It is dangerous to create a National Council for Natives," he will argue. Is there no danger in doing nothing, and leaving Natives to clamour for the Cape Franchise or direct action? Let us answer him in the words of a critic exempt from all suspicion of *doctrinaire* liberalism. "No doubt danger might arise, but there must be some machinery or system by which their views can be ascertained and their consent obtained to any changes which affect them,"¹⁶ or in those of a critic who may in some respects be considered a conservative champion: "Sir, it is, I regret to say, very often the case that Native matters do not, I think, receive their due consideration which they would receive if the Natives were directly represented."¹⁷

The liberal policy of identity means sooner or later that Natives will govern Europeans or that all distinction will be lost in a fusion, complete politically and considerable even physically. The conservative policy of subordination means that Europeans will for ever govern Natives. In the one case the intellectual, in the other case the numerical, majority is sacrificed to a minority. Between these two policies stands the policy of differentiation. Once again we have been driven as in Administration, as in legal systems, to recognise it as the most practicable and the

¹⁶ Sir Theophilus Shepstone, in evidence before the Natal Commission of 1881—2. Evidence, Vol. II, p. 289.

¹⁷ Sir Frederick (then the Hon. F. R.) Moor in the Natal Legislative Assembly, 1896, Debates Vol. XXIV. p. 338.

most just solution. Applied politically as in this Chapter it means that Europeans will govern Europeans, and Natives will govern Natives, and that questions affecting both must be decided upon by mutual consent. To the liberal we urge that the policy of differentiation means the leading of the Native people, preserving their identity, up to the fullest self-government. To the conservative we urge that the policy of differentiation alone will preserve European civilisation in South Africa pure and undefiled, in perpetuity. And we can add, for the benefit of the conservative who takes his political faith philosophically, that the change is effected by a remodelling in gradual steps of existing institutions.

Whatever amendments of details may suggest themselves, the only alternatives to the main principles of the scheme here propounded are the extension of the Cape franchise throughout the Union, with its inevitable results already referred to, or a continued repression, which, if history has any meaning in it, will eventually produce an upheaval fatal to the peace, civilisation, and perhaps even to the existence of white South Africa. If indeed we must choose between the Cape franchise or repression, there is for the writer only one solution—the Cape franchise. Perhaps with infinite skill and good will South Africa could overcome the dangers inherent in that system. Anyhow, if the alternative is race tyranny, justice must be done even if the heavens do fall. But surely we should endeavour to avoid the necessity for making so dread a choice, and this Chapter is an attempt to indicate a third way.

For the honour and good repute of South Africa, a constructive solution of the Native political problem is essential. Criticism of proposed solutions should also be constructive.

CHAPTER XV.

SEGREGATION, AND THE LAND QUESTION.

It is doubtful whether there is any single political term so much misused and misunderstood in South Africa as the term "segregation." It has been used to describe every possible state of affairs from our present system to one which would be the complete antithesis of it. In the mouths of many active politicians, it is a panacea for the difficulties of the Native problem; and as such it is advocated with a hearty eloquence which makes it seem almost ill-natured to enquire exactly what it is which the speaker wishes to introduce. As a result of many years' constant conversational discussion on the subject, the writer has arrived at the melancholy conclusion that the worst of all would-be exponents of Native Policy—worse than the "equal rights" man or the "damned nigger" man—is the man who says glibly that "segregation will solve the whole problem."

Segregation has been used hitherto by such critics, almost as exclusively as a geographical term, and it is understood and criticised as such in this chapter. It is possible to understand the term "segregation" to imply general differential development of the Bantu. This is, it is submitted, the policy to which history directs us, and which is consequently advocated in this study; but to term it a policy of "segregation" would be most misleading in view of the sense in which that term has hitherto been used; and hence the term "policy of differentiation" has been uniformly reserved for it.

Using "segregation" then as a term relating to the land question only, it is possible to trace two distinct attempts at segregation in past history. We may term these Complete, or Residential, Segregation, and Partial, or Possessory, Segregation.

• Within the Union, residential segregation is dead, though we have an excellent one-sided example of it in

Basutoland. By residential segregation is meant the division of South Africa into two sets of areas—white and black—in which, respectively, Europeans only and Natives only would be permitted to live. All but the most thorough-going exponents of this view would set European Magistrates over the Native areas and would permit missionaries to reside and work in them.

From the very earliest days when Europeans in South Africa come into contact with the Bantu, up to the days of Sir Benjamin D'Urban, residential segregation was the definite and unquestioned policy of the East India Company, the British Military Government, the Batavian Republic and the British Civil Administration in turn.

The fatuity and failure of this policy have been so eloquently described by Sir George Cory¹ as to render any further discussion not merely unnecessary but presumptuous. War after war demonstrated its inherent impracticability. One artificial frontier-line after another had to give way. Finally Sir Benjamin D'Urban made his famous attempt to revolutionise the Government's policy, and failed.

—Failed, by the irony of fate, through the machinations of a South African, who found a Baronetcy of the United Kingdom and a Lieutenant-Governorship better than the confidence and respect of his fellow-country-men. Before the Commons Commission of 1836, Sir Andries Stockenström, having received his reward, was asked to outline his views on Native Policy prior to assuming his Lieutenant-Governorship.

"In a new Colony," he said, "I would try to buy certain tracts, and reserve certain tracts, and all the money which I received from the Settlers for the tracts that I bought I would appropriate to the improvement and protection of the Natives on the other lands: these I would appropriate to themselves."²

¹ "The Rise of South Africa," *passim*. Vol. I gives probably the best treatment.

² Commons Select Committee on Aborigines (British Settlements). Evidence page 185; 12th February, 1836.

This evidence is entitled to very little respect, as Sir Andries Stockenström elsewhere remarked, with characteristic want of logical consistency, that he would mix the European Colonists with the aborigines if it were practicable.³

But the Commons Committee heard what it wanted to hear. It accepted the evidence of the newly-fledged Baronet, and rejected the evidence of the experienced frontiersman, who joined to form one of the most extraordinary characters of our history. The earlier system was reverted to for twelve years longer, when it was swept away, after yet another war, by the masterful hand of Sir Harry Smith. Never since his days has any South African Administration tried to enforce a policy of thoroughgoing residential segregation. In the circumstances, it was quite impracticable. The Natives wanted stock. The Europeans wanted labour. In the face of rules designed to prevent the utilisation of Native labour the Native gratified his wants by theft. The theft provoked reprisals; and the reprisals resulted in war. Thus the whole miserable cycle continued in a way as reminiscent of the wars of Dane and Saxon as is Sir George Cory's First Volume of the darker pages of the Anglo-Saxon Chronicle. It remains as true to-day as in the 1830's that white and black in South Africa are economically necessary to each other. European agriculture in South Africa would without Native labour, be impracticable save on the most restricted scale.

This argument must not be pushed further, as it sometimes is, to imply that the whole structure of European economic society in South Africa is dependent on Native labour. The wise policy for the Union is undoubtedly to build up its industries and, so far as possible, its agriculture more and more on a white labour basis. But the total of unemployed whites and potential suitable immigrants is not large enough to meet the demands of both industrial and farm labour. The policy consistently advocated in this book is the desirability of employing the Native,

³ Ibid, page 248.

generally speaking, on the farms rather than in industries, and replacing him gradually even on the farms, though this can never be a complete process. Employment on the farms is more suited to his natural economic condition and less likely to break up families and disintegrate Bantu social life.

When the Voortrekkers left the Cape, a body unexampled in modern times, like Aeneas

"multa quoque et bello passus, dum conderet urbem,"

they naturally carried with them the habits of agriculture which they had already acquired by the use of Hottentot and slave labour and which climatic conditions tended strongly to support. While otherwise the prospect of ruling Natives might not have appealed to them, the urgent necessity for labour made them ready, and perhaps even eager, to secure a subject Native population. Circumstances favoured this desire. The subjugated Native tribes, anxious to escape from Zulu tyranny, were very ready to accept the protection and employment of the new lords of Natal, just as had been found on a smaller scale by the first British settlers at Port Natal (1824-25). Thus, without the faintest coercion, the Voortrekkers were enabled to supply their own wants and at the same time to ameliorate the condition of the Natives.

Not many years elapsed before the immigration of Natives from the Zulu monarchy to the mild and just rule of the Republic began to prove embarrassing to the white population. It was no part of the Voortrekkers' policy to become rulers of a large Native population. So soon as that population exceeded the demand for agricultural labour, it would be necessary to grant to the surplus rights, or allow them to acquire prescriptive rights, to the ownership, or quasi-ownership of land. The Republic was not willing to face this position; and accordingly from 1839 onwards the problem of the surplus Native population began to loom large in its Councils. From 1840 hardly a session of the Volksraad passed without a debate on this subject, in which members were repeatedly urged to the

effectual suppression of the increase in the Native population.⁴

Volksraad resolutions of the 5th August, 1840, and of the 3rd January, 1842,⁵ had been enacted with a view to prevent what has subsequently been termed "squatting" on farms from which we gather the existence of a rule that no head of family should have more than five families of "Zolas" on his farm.

In August, 1841, was passed the very important Resolution that all surplus Natives should be removed either north of the Tugela or south of the Umzimvubu. It was most unfortunate that lack of experience and unwise statesmanship combined to induce the Volksraad to locate Natives *outside* the *de facto* frontiers of the Republic. Had the resolution been to place Natives south of the Umkommas River, it would have been perfectly practicable. The result of an illadvised expedition sent as a result of this Resolution was as all the world knows, to furnish the Governor of the Cape with a reason or pretext to send a military expedition to Natal, the result of which was the annexation of Natal to the British Empire. Less than a month after that annexation, the Volksraad, which still continued to function for two years, passed a resolution summing up its whole Native policy and requesting H. M. Special Commissioner to take such measures as would achieve the ends which it had in view.

Its chief object was clearly what we should term to-day Possessory Segregation. Natives were not to own land in the white area, either directly or by the quasi-possessory rights of squatters; nor were Europeans to own land in the black area, for the Volksraad actually forbade traders to use the Pondoland route in trading with the Cape.⁶ But where either race might not own land it might live. Fortunately for the Volksraad, the Natives preferred to live in Natal as employees rather than be moved elsewhere; had their desire been general to leave the territories of the Republic rather than work, it is not an unfair specu-

⁴ Natal Native Affairs Commission, 1852—3, Report, page 8.

⁵ Original in Union Archives, Volume A 1/2.

⁶ Union Archives, Volume A 1/2.

lation to say that the Volksraad would have used at any rate a certain amount of pressure to ensure its labour supply.

It is necessary to recollect, however, that the Volksraad was practical to a fault, and in everything worked rather for the present than for the future: It does not follow that because in 1840-3 its members considered Possessory Segregation necessary, that a similar solution would have been advocated by them as a general rule for a very different South Africa a century ahead.

When the British Government annexed Natal, it allowed two and a half years to elapse without making proper arrangements for its government. During that period the Native population of the District was trebled or quadrupled by immigration from Zululand. The land question therefore became even more urgent than it had been before. Theophilus Shepstone, who had been appointed to the charge of Native Affairs, was in favour of the Volksraad's scheme at this time and even much later under the Governorship of Sir George Grey. Dr. Cloete, the ex-Special Commissioner and now Recorder, was rather in favour of separate locations dotted all over the country in the best disposable situations, and with this view Lieutenant-Governor West concurred.⁷

The result was the initiation of the present Location system of Natal, carried out with marked success by Shepstone, in spite of his opposition to the Lieutenant-Governor's scheme,⁸ just about the same time as the Smith-Calderwood Location Scheme began to operate in the Cape.⁹

The Location Scheme was really only a variant of possessory segregation. For though, in the Cape and Natal, free purchase of land by Natives outside the Location Areas was not forbidden, yet the Natives had not, at that time, any idea of such purchase.

Since then the conception of possessory segregation

⁷ Instructions to Commissioners for Location of Natives on Crown Lands, Pietermaritzburg, 31st March 1846, para. 23.

⁸ See Despatch of Secretary to Government, Natal, to Secretary to Government, Cape, 7th May, 1847.

⁹ See Chapter III.

applied in each case, it seems clear, remarkable as it is to find Dr. Cloete right and Shepstone wrong on a question of Native policy, that the Location Scheme was more calculated to meet the economic requirements of a constantly increasing European population than the Volksraad's original project. Earl Grey put the matter succinctly as follows ¹⁰ :—“Permanent locations should be established within the Colony; and in selecting the sites of these locations, sufficient intervals should be left between each of them for the spread of white settlements; *each European immigrant would thus have it in his power to draw supplies of labour from the location in his more immediate proximity.*”

The history of South Africa thenceforward shows a wider and wider spread of the Location scheme of possessory segregation, sometimes accompanied by a formal prohibition of the acquisition of land outside the Locations by Natives, sometimes not; but always with the general effect of black and white areas of possession, by no means coinciding with areas of residence. Historical causes produced black areas in some cases of considerable extent, interspersed with a few small white areas, as Zululand and the Transkei, and in some cases the reverse. This was the position in every part of the Union including the Orange Free State, at the beginning of the present century. But by that time Native advancement had been such as to bring about the increasing purchase of land by or for Natives in every part of the present Union, except the Orange Free State where it was forbidden by law; and also a widespread evil in “kaffir-farming,” the illegitimate securing of a living on the part of European farmers by letting their lands out to Natives instead of farming them themselves. These evils were productive of certain very important recommendations by the 1903-5 Commission.

Before proceeding to the discussion of these recommendations it is important to realise how closely related are the land and labour questions in South African Native Policy.

¹⁰ Earl Grey to Sir Harry Smith, 30th November, 1849.

Unless Location areas are severely limited, it is impossible for the South African farmer to obtain the unskilled labour without which it would be difficult for him to make a living all but the most fertile areas. Thus, it has been urged with some force the (then) unnecessarily large areas allocated to Natives in Natal by the 1846-7 Commission deprived the Natal farmers of labour—for who would work if he could avoid it in a country of fertility and perennial sunshine?—the natural labour at their doors, and resulted in the introduction of Indian indentured labour and the addition of another race and colour problem to South Africa's difficulties. Similarly in the Cape, in 1879, labour was declared to be practically unobtainable from the Colony and its surrounding territories, and the only course left to the Colony was considered to be the importation of Natives from Mozambique and South-West Africa.¹¹ A number of Berg Damaras and Portuguese Territory Natives were therefore actually imported for agricultural labour in a Colony with a teeming Native population.¹²

As the Native population in the Locations increased far-seeing statesmen began to realise that a very different state of affairs might be brought about—such a state of affairs as we are beginning to experience to-day. As early as 1891 Mr. (now Sir) Walter Stanford was writing¹³ :—“There is no more vacant land for the young swarms to hive off into now. Thus the labour question is bound up with the land question. The man who has no land and no trade must work for some one else who has.”

And undoubtedly the Glen Grey system involved recognition of the fact that only a certain number of the Natives, just as only a certain number of the Europeans, could own land; the rest must go out and work.¹⁴ a pro-

¹¹ Report of Select Committee of Cape House of Assembly, appointed to consider and report on the supply of the Labour Market, 1879, page 1.

¹² Report on Native Immigration to the Colony from extra Colonial Territories for the year 1879” *Passim*

¹³ Cape Native Blue Book, 1892, page 43; see also remarks of Mr. W. T. Brownlee in Cape Native Blue Book, 1894, page 52.

¹⁴ Copies of Petitions, Reports, etc., having reference to Proclamation No. 352 of 4th October, 1894, Cape Town, 1895, pages 5, 7, etc.

cess which the Native Law of succession by primogeniture seems specially designed to assist.

There does not seem, to the writer, to be any inherent injustice in this. There is a large school of philanthropic thought in South Africa which appears to hold that sufficient land ought to be allocated to Natives to accommodate every Native in the country at the present day, leaving the agricultural labour supply to shift for itself. This, as we have seen, was the position fifty years ago and the Locations have filled up. Where is the process going to stop? If we extend Locations to-day, the problem of to-day will recur in another fifty years time—and so *ad infinitum*. Quite clearly, it is unjust to do as, very broadly speaking, the Natives' Land Act has done and prevent the fresh acquisition of land by Natives otherwise able to acquire it outside Location areas. But, equally clearly, to extend those areas indefinitely would be equivalent to an abandonment of the whole country to the Natives.¹⁵

A great deal of sentimentalism, which is however ill-informed and unwise, has been written about the Native being made a predial serf on European farms. Granted that the Natives' Land Act as such was unjust and harsh, yet it does not follow that any and every scheme is unjust and harsh which proposes to deal with the land question in such a way as to leave a surplus of agricultural labourers. The Native agricultural labourer need not work for his employer more than ninety days a year¹⁶: he is commonly well-treated, has as much to eat and as many of the material comforts of life—except additional wives—as he would have in a Location. Granted the possibility of a bad master, there is also the possibility of a bad Headman or Chief. Neither can be punished if the letter of the law is not broken; and both can be punished if it is. It is, of course, unfair to deny the farm Native the right of acquiring land except in overcrowded Location areas, and this is where the Natives Land Act undoubtedly fails. But

¹⁵ Secretary to Govt. Natal, to Secretary to Govt. Cape, 7th May, 1847.

¹⁶ Act 27 of 1913, Section 10.

suppose the present inadequate Native areas to be extended, a third set of areas of unrestricted competition to be added to the white and black areas of that Act, what harm would there then be in not providing specially protected areas adequate for every Native in South Africa? Argument in favour of such a provision is philanthropy run mad. It can only be justified on one of two suppositions. One is that the arguer believes in Marxian Socialism, in which case he should apply his argument not merely to the Natives, but to the tens of thousands of landless poor whites and artisans in South Africa. With deep respect for his theories, the size of farms produced by equal division on his scheme would be such as to render their working unprofitable under South African conditions of agriculture. Moreover he has just as much hope of commending them to a South African Legislature as he has of persuading such a body to proclaim Buddhism the State religion of the country. The second supposition is that the arguer considers the Natives as "aborigines" to have a better claim to the soil than European "conquerors." It is hardly worth while to flog a dead horse like this. Nearly every Native tribe in South Africa owed its position on the land when Europeans came into contact with it to conquest. The right which the Hottentots had to supplant the Bushmen, the right which the Bantu had to supplant the Hottentots is the same right which Europeans had to supplant the Bantu. There is no escape from the logic of this argument. The Bantu have as much right to South Africa as the European population, *but no more*. Any argument on the land question must recognise this principle. It follows from these arguments that, as there will always be some Natives residing as farm labourers outside Native areas, some steps should be taken to provide adequate protection and security of tenure, perhaps on the lines of the Scottish crofter's tenancy, for such Natives.

Throughout the last quarter of the nineteenth century, the labour question, the difficulty of "squatting" and the general land problem continued to harass and perplex Native administrators. The time was therefore fully ripe for a reconsideration of the whole situation when the In-

ter-Colonial Commission of 1903-5 began its work. The recommendations of this body are full of interest.

With regard to Squatting the Commission expressed the view ¹⁷ that the unrestrained squatting of Natives on private farms was an evil and against the best interests of the country. With a view to prevent the continuance and spread of the evil, the recommendation was made that with the exception of *bona fide* farm servants and their families, Natives should not be permitted to live on private farms, except with Government sanction, which should only be given in special cases, and under Government control, and should, if permission were given so to reside, pay an annual license. Here is the germ of the Natives Land Act provision regarding squatting.

Similar recommendations were made with regard to Crown, Municipal and other public lands.

Certain other suggestions regarding land were made which are even more clearly contributory to the Natives Land Act.

The majority of the Commission ¹⁸ resolved that "Certain restrictions upon the purchase of land by Natives are necessary.

"(1) Purchase by Natives should in future be limited to certain areas to be defined by legislative enactment.

(2) Purchase of land which may lead to tribal, communal or collective possession and occupation by Natives, should not be permitted."

From these resolutions Col. Stanford (Cape) and Messrs. Samuelson and Marshall Campbell (Natal) dissented. Against the underlying theory of the resolution, they had not much of weight to say; but the reasons for their dissent do hit on rather a tender spot when one considers not theory but practice. With a shrewd foresight they remark: "Natives . . . will be excluded from this privilege *except in limited areas selected partly for their unhealthiness and unsuitability for irrigation and cultivation and other kindred reasons.*"

¹⁷ Report, para. 181.

¹⁸ Ibid, para. 193.

The most crucial recommendation was contained in Paragraph 207 of the Report. It was also a majority, not an unanimous, recommendation. Sub-section (1) and (2) were carried by 7 votes to 3, Sub-section (4) by 8 votes to 2 and only sub-section (3) unanimously, the dissentients being to sub-sections (1) (2) and (4) Messrs. Samuelson and Marshall Campbell (Natal) and in addition to Sub-sections (1) and (2) Col. Stanford (Cape.)¹⁹

The resolutions, as finally approved, read as follows :

"This Commission is of opinion and recommends:—

"(1) That the time has arrived when the lands dedicated and set apart, or to be dedicated and set apart, as locations, reserves or otherwise, should be defined, delimited and reserved for the Natives by legislative enactment.

"(2) That this should be done with a view to finality in the provision of land for the Native population and that thereafter no more land should be reserved for Native occupation.

"(3) The creation, subject to adequate control, of Native locations for residential purposes near labour centres or elsewhere on proof that they are needed.

"(4) That the right of occupation of the lands so defined and set apart shall be subject to a condition of forfeiture in case of rebellion."

It becomes quite clear to any one reading the Natives' Land Act of 1913 in conjunction with these proposals that the Land Act was not a sudden tyrannical proposal of the Union Government of that date, but based itself largely on the considered Report of a very representative Commission. Unfortunately, the recommendations of the Commission were altered in some points for the worse; the Act was (though by no means sudden, having appeared eight years after the Inter-Colonial Commission's Report) at the last minute rushed through; the "squatting" provisions were tightened up in a way both harsh and impolitic; and altogether the Act which, wisely planned, might have been a blessing, has been rather a curse.

¹⁹ S.A. Native Affairs Commission, 1903—5, Vol. I, pp. B. vii—viii.

It must not be assumed, from what has been said here, that the writer is in agreement with the 1903-5 Commission's recommendations as they stand. Even reading Sub-section (1) to mean that lands not at present occupied by Natives might be ear-marked as future Native areas, there appears to be grave doubt in theory as to whether such a demarcation, involving if it is to be just to Natives, an expropriation of European farms in fertile areas, is practicable. Since our experience of the working of the Natives' Land Act we can see that it is difficult to ear-mark large areas outside the present Locations by legislative enactment. Under these circumstances, the solution offered in this Chapter contemplates (1) defined Native areas as at present, with the addition of a few new areas to be occupied largely though not wholly by those detribalised urban Natives who find life in towns economically impossible, owing to the new "white labour" policy, (2) defined white areas, (3) defined neutral areas. The main change is in the introduction of the third head, and it is suggested, that, roughly speaking, land not at present Location or Municipal land in parts of the Northern and Eastern Transvaal, Central and Southern Natal, and the Eastern Province of the Cape, should become neutral areas, where Natives who so desire may purchase freely from such European landowners as are willing to sell.¹⁹

But this is an anticipation of conclusions, the basis for which is not yet complete. In order to supply this basis, it is necessary to take the Natives' Land Act (No. 27 of 1913) analyse it thoroughly, examine its practical working, and sum up the conclusions to which such an investigation will lead.

The objects of the Act were four in number.

In the first place, it was intended to lay down definitely for South Africa as a whole, the principle of possessory,

¹⁹ This recommendation is the basis of the Hertzog "released areas" (see Preface to Second Edition). It was also influenced the Rhodesian Land Commission. The writer would wish to emphasise that it is principally the hard and rather sad facts of the situation which have led him to recommend "neutral" rather than "potentially black" areas. The more generous the land provision for Natives, the more chance there will be of the success of parallel political and administrative institutions.

segregation. Although the Schedule of Native areas was not final and the Act provided for the appointment of a Commission to delimit further areas (Section 2) yet the principle of a clear-cut possessory segregation was obviously intended to apply.

The purpose of the farmers of the Act was that this principle should be employed throughout the Union. But a saving clause has prevented its application in the Cape Province. Section 8 (2) of the Act provides that "nothing in this Act contained which imposes restrictions upon the acquisition of land or rights thereto, interests therein, or servitudes thereover, shall be in force in the Province of the Cape of Good Hope, if and for so long as such person would, by such restrictions, be prevented from acquiring or holding a qualification whereunder he is or may become entitled to be registered as a voter at parliamentary elections in any electoral division in the said Province." The Chief Justice and a full Bench of the Appellate Division of the Supreme Court have decided (*Thompson and Stilwell v. Kama*) that the effect of this Clause 8 (2) is to make Clauses 1 and 5 (those dealing with the purchase and lease of land) entirely inoperative in the Cape Province.

Whilst there is room for regret in theory at a decision which makes an unnecessary differentiation between Provinces and accentuates the contrast between the Cape and other parts of the Union in Native Affairs, yet, in practice, it is impossible not to be thankful that such a safety-valve was provided, in view of the explosive character of Native opinion on the Act. Native opinion will doubtless meet any Act desired to introduce changes with hostility, but the hostility to the Natives' Land Act—which, be it noted, is not necessarily hostility to the principle of possessory segregation, but only to the Act's interpretation of that principle—has been deep-seated, bitter and enduring.

In the second place, it was intended to put pressure on Europeans and Natives alike with a view to checking "squattling" on private farms; and to increase the labour supply by virtually forcing the "squatter" to work for ninety days *per annum*."

The second object was not intended to apply to the Cape Province. As the third and fourth objects were in any case not general it may be said that the whole Act made no difference in the land question in the Cape—the largest Province of the Union—and that the pre-1913 system of so-called "Private Locations" in the Cape involves the licensing of all squatters, and a certain amount of Government control over them.

In the third place it was desired to put a stop at once to any existing agreements in the Orange Free State where by a Native might lease land on the "ploughing on halves" or similar principle.²¹ In the Cape Province such an agreement remains a legal one to-day. In the Transvaal and Natal the owner of the farm may eject the Native, but unless and until such action is taken, he may remain, if registered for taxation in the Native Affairs Department on such farm.²² Note that, if a Native once leaves the farm on which he was registered when the Act came into force, this protection is gone. It is difficult to doubt that the object of these provisions is to force the Native into the position of a farm-labourer, in which, indeed, though he will be no worse materially, yet the element of force is disquieting. The Orange Free State provisions, which do not allow the renewal of agreements in existence at the coming into force of the Act, are more drastic, but not more certain, than the Transvaal and Natal provisions.

There was no element of doubt in the Act. It certainly reads as if existing contracts in the Orange Free State terminated automatically on the passing of the Act. But the Native Affairs Department, with as much wisdom as kindness, gave the Natives the benefit of a non-existent doubt, and protected all existing contracts until the due date of their termination, when, of course, they could not be permitted to be renewed.

Fourthly, in the Transvaal it was desired to remove existing statutory restrictions on the number of families who might be permitted to reside on a farm as labourers. This was secured by Section 6 (a) of the Act.

²¹ Section 7, Sub-sections 1 and 3.

²² Section 6 (c).

Coming next to the application of the Act, we shall consider this under four heads, viz., (I) Restrictions on the purchase of land by Natives; (II) Restrictions on the purchase of land by persons other than Natives; (III) Restrictions on the hiring of land by Natives; (IV) Restrictions on the hiring of land by persons other than Natives. At risk of a certain amount of duplication, it seems best to explain these points fully, for there has been a surprising amount of misunderstanding and misrepresentation of the Land Act. It is an unsatisfactory measure in all conscience; but there is no need to paint it blacker than it actually is.

(I) Except with the approval of the Governor-General no Native may purchase land outside a "scheduled Area" ²³ from a person other than a Native. ²⁴

This applies in the Orange Free State, the Transvaal and Natal. In the Orange Free State, the Governor-General may grant no dispensation.

(II) Except with the approval of the Governor-General, no person other than a Native may purchase any land in a "scheduled area"; nor may he purchase any land from a Native outside a "scheduled area." ²⁵

This applies in the Orange Free State, the Transvaal and Natal. In the Orange Free State, the Governor-General may grant no dispensation.

(III) Except with the approval of the Governor-General, no native may hire land outside a "scheduled area" from any person other than a Native. ²⁶

The terms "hiring" and "lease" are defined to include the class of contract commonly known as "squating." ²⁷

This provision does not apply at all in the Cape Province.

In the Transvaal and Natal it is modified by the pro-

²³ The "scheduled Areas" include all Government Locations in the Union, as also certain farms held in trust for Natives by the Government in the Transvaal.

²⁴ Section 1 (1) (a).

²⁵ Sections 1 (1) (b) and (2).

²⁶ Section 1 (1) (a).

²⁷ Section 10.

vision that a Native registered at the commencement of the Act as resident on a certain farm may remain on that farm, but that farm only, during the owner's good pleasure.²⁸

But in the Orange Free State, except that existing contracts were allowed to run out, the Act came into force at once without exceptions and the Governor-General could grant no dispensations.²⁹

(IV) Except with the approval of the Governor-General, no person other than a Native may hire any land in a "scheduled area," nor may he hire any land from a Native outside a "scheduled area."³⁰

This applies in the Orange Free State, the Transvaal and Natal. In the Orange Free State the Governor-General can grant no dispensation.

The penalty for the contravention of any of these provisions is, in all cases, a fine of £100 or six months' imprisonment, and if the offence be continuous, an additional fine of £5 per diem.³¹

Several modifications to these provisions must be noted which made the Act much less harsh in practice.

Dispensations by the Governor-General have already been given in about 3,000 cases.

Urban areas fall outside the scope of the Bill, and recent urban areas legislation permits the grant of long lease to Natives in an urban area in the discretion of the Municipality.

Lands held by missionary bodies outside the "scheduled areas" form another important exemption.

Native townships, existing prior to the commencement of the Act, form a further exception, the original reference in the Act³² being to "land in any township, lawfully established prior to the commencement of this Act, provided it is a condition of the acquisition that no land or interest in land in such township has at any time been,

²⁸ Section 6 (c).

²⁹ Section 7.

³⁰ Sections 1 (1) (b) and 1 (2).

³¹ Section 5.

³² Section 8 (1) (a).

or will in future be, transferred except to a Native or coloured person."

What has been the practical legal effect of the Act in each Province? Notice that we have to put the question in this way, although the Act was advocated by the then Government as being "consolidating legislation."

In the Cape Province, the Act produced no legal effect whatever.

In Natal,³³ the Transvaal³³ and the Orange Free State it withdrew from Europeans and Natives alike the right to conclude any arrangement for hiring land on the "ploughing on halves" system; retaining only, at the owner's good pleasure, the right to continue such arrangements as existed at the commencement of the Act, and to renew them without material alteration of terms.³⁴

In the Transvaal it abolished the statutory limitation on the number of Native labourers permitted to reside on a farm.

In the Orange Free State (as interpreted and administered by the Native Affairs Department) it withdrew from Europeans and Natives alike the right to make or renew any arrangement for hiring lands on the "ploughing on halves" system, allowing, however, existing agreements to run for the unexpired balance of time for which they were concluded.

The Natives' Land Act is, as we shall try to shew, open to grave criticisms. But let us be quite sure of what we are criticising. It has become the fashion among circles sympathetic with Natives in South Africa to denounce the Land Act as a monstrous piece of oppressive legislation from beginning to end. As a matter of fact while it exhibits a little "sharp practice," much carelessness and more impolicy, it is far from being all bad.

When for instance one reads in a well-known London publication: "In 1913 the odious, infamous and notorious

³³ In Natal and the Transvaal all restrictions are subject to the Governor-General's power of dispensation ...

³⁴ They were precluded from purchasing land *within* the "scheduled areas" before the Act came into force; except in certain areas in the Cape Province.

Native Lands Act was passed under which no African or man of colour can rent land on the system of half-yearly produce or in any other shape or form whatever, or buy land, from any Europeans. All the lessees had to be ejected under a penalty of £100 on the lessor and imprisonment and the only condition under which they could remain on the land was in performing menial services"—when, we say, stuff of this nature is published in London as an indication of South African Native policy, it is time to utter a protest. It is a tissue of falsehoods and inaccuracies.

"No man of colour . . . can rent . . . or buy land from any Europeans." To this there is first the vast exception of the Cape Province; secondly, there is the Governor-General's dispensation, and when we consider the number of Natives advanced enough to wish to conclude such a contract 3,000 dispensations in thirteen years is by no means a small percentage; thirdly, there is the fact that in the Transvaal and Natal existing contracts may be renewed indefinitely on the same farm.

"All the lessees had to be ejected" is not true even of the Orange Free State, where the existing leases were allowed to run out by the Government, except in a few admittedly hard cases where landlords used the Act to get rid of undesirable tenants. It was not true in practice of ninety *per cent.* of cases in the Transvaal and Natal, after the leases had run out; and it was not true in the Cape at all.

"Under a penalty of £100, on the lessor and imprisonment"—the penalty mentioned is the maximum one, and the imprisonment is only in default of, and not in addition to, or alternative to, payment of the fine.

"The only condition under which they can remain on the land was in performing menial services." If ploughing and doing general farm work for the master three months in the year, in return for living on his land with one's family and growing one's own produce on land which he frequently ploughs for one, be correctly described as "menial services," then this is the one correct description in the paragraph.

Clearing these misconceptions away, however, let us ask ourselves if, in spite of the fact that it is not so black as it has been painted, the Act has really given us a genuine solution of the land question.

Remember first of all that the Act purports to be a temporary measure. The very cardinal restrictions of Section 1 only hold good "until Parliament, acting upon the report of the Commission appointed under this Act, shall have made other provision"; and Section 2 provides for the establishment of such a Commission to report within two years.

The Commission, under the chairmanship of Sir William Beaumont, after various interruptions—due chiefly to the European War—which necessitated a formal extension by Parliament of the period appointed for its investigations, submitted its report in 1916.

In the following year the further legislation contemplated in the Act was introduced in the shape of the Native Affairs Administration Bill, in which the Native Areas recommended by the Beaumont Commission were embodied in a Schedule.

The Bill got as far as the second reading in the House of Assembly, when it was referred to the Select Committee on Native Affairs. A large body of evidence was taken by that Committee, which, however, in the time at its disposal was able to consider and submit recommendations only for the amendment of Chapter II of the Bill; and to suggest that the Beaumont areas should be reconsidered by separate Provincial or local Committees. Five such Committees were appointed; and their Reports were received and published from time to time during the first six months of 1918.

A comparison of the Beaumont Report with the Reports of the Local Committees shews the tremendous practical difficulties which attend the carrying into force of anything like a final scheme of possessory segregation. Everywhere vested interests are roused: European farmers whose farms became "islands" in the projected Beaumont Native areas and could only have been sold to Natives

had the Bill of 1917 gone through complained of depreciation in the value of their land without any compensation.

A large body of entertaining fools all over the Union suggested that the driest, or alternatively the most fever-stricken, areas in their Province were the most suitable to be set apart for Natives. The Commissioners virtually cut the Beaumont areas to pieces, and generally, so far as Native opinion went, for the worse.

Even so, European agriculturists are not satisfied; and it is impossible not to sympathise with them individually, although land for Native occupation must be found.

Such has been the general dissatisfaction with all the Reports that no further steps have been taken to introduce the permanent legislation contemplated in the Natives' Land Act. Nothing could more forcibly illustrate the folly and hypocrisy of the cry for complete and immediate segregation, than the countless difficulties and complexities which have risen from a partial scheme of possessory segregation and the unwillingness of almost every "segregationist" to supply the land for "segregation" in his own area.

In the meantime, the Act of 1913 remains in force; and it must be said that a temporary Act of fourteen or more years' duration tends to become, and to invite criticism as, a permanent one.

If the arrangements of 1913 are to represent the last word on the land question, it is necessary to protest. Many of those who supported the Act both in and out of Parliament did so on the understanding that it was to be a temporary measure, and on that understanding only. At the present time cases are constantly occurring, some within the writer's own knowledge, when, as the Native Affairs Commission puts it,³⁵ "land upon which Natives have resided for years, sometimes generations, is opened up by its owner and they are told to leave or accept labour conditions." Granted that labour conditions are not onerous, granted that in four cases out of five masters are not harsh or unjust, yet there remains the fifth case. To

³⁵ Report, 1921, page 16.

force acceptance of labour conditions is certainly open to abuse; and the point is that, if the Natives concerned, for the good and sufficient reasons which are sometimes present, decide to leave rather than become labourers, where are they to go?

The locations are to-day notoriously crowded. The Native in the Transvaal and Natal can only buy from other Natives, who, as landowners, are few in number and naturally unwilling to sell. It really is sometimes a choice between farm labour or nothing; and great as is the need for the development of agriculture and for an adequate labour supply, and few as are the cases where really cruel or harsh treatment is to be expected, yet even the least negrophilist critic will admit that the operation of the Act is sometimes unjust, and that a way of escape ought to be provided for exceptional cases—cases which will increase as the Natives advance in wealth, civilisation and independence. This has been actually admitted by the Beaumont and Local Reports, not one suggesting that no further land is necessary for Natives.

We come then to the definite conclusion that, if the policy of possessory segregation laid down in the Land Act is to continue, some further provision of land—potential as well as immediate—is required for the Natives.

We are now in a position to ask ourselves finally whether a policy of complete residential segregation is practicable or desirable.

To this the first answer is that segregation can never be *complete*; and therefore, since a segregation which is only partial leaves many aspects of the Native problem still unsolved, the mere shouting of the catchword "segregation" is not going to be a final solution of our difficulties.

Segregation can never be complete, because a certain amount of Native labour will always be necessary in South African economic life. Particularly is this true of farm labour. This is the natural work of the Native, and the work for which it is most difficult to secure suitable Europeans.

Even in the towns, however, while a wise policy will aim at replacing black labour by white as widely as possible, there will in all probability be a certain number of Native employees for generations ahead, if not for ever. For administrative reasons, it is desirable to have the great bulk of Natives residing in approved Native areas; but in dealing with growing, living, selfdetermining human being we can never have that completeness and uniformity so dear to the hearts of abstract theorists. Would that they had all read Pascal on "La différence entre l'esprit de géométrie et l'esprit de finesse" and had all assimilated his paradox "Se moquer de la philisophie, c'est vraiment philosopher"!

In the second place segregation cannot be *immediate*. It must be a gradual process, spread over a number of years—a process all but imperceptible. It will be useless—more than that, it will be dangerous—to attempt sudden changes. To replace black by white labour on the mines at one stroke of the pen would ruin the mining industry, deplete the country of money, and set back material progress fifty years. This is not to argue in favour of the old "laat-maar-loop" policy. The replacement must take place, but it must be a gradual process, so that it will be impossible for the historian of the future to fix on a given date and say: "In such and such a year, such and such an industry changed from a black to a white labour basis." We must move definitely and purposefully, but gradually.

Thirdly, segregation must not be *compulsory*. It must be brought about by consciously directed or consciously created silent pressure. Not by legislative restrictions, but by the utilisation and creation of natural tendencies will segregation be effected. It must, so far as that is possible, take place naturally.

The difficulties of compulsory segregation are enormous. Ethically it would be monstrous; practically it would be absurd. Imagine the outcry which would arise from the white farming community at a compulsory expropriation of land! To make that expropriation a gradual process will, judging by the agricultural community's recep-

tion of the Beaumont Report, not ease matters, if the element of compulsion remains.

Next, something of the difficulty of moving tribes should be realised. Everybody knows the objection which a tribal Native has to being shifted from his ancestral home. Unless there is some very special circumstance to favour the transfer, tribes are apt to resist passively or even actively. It must be left to the reader's imagination—aided by his recollections of Bulhoek—what would be the effect of wholesale compulsory moving of Natives in the manner suggested all over South Africa, whether in one sweeping change, or spread over a series of unsettled and angry years. It would be like playing bowls with live bombs. It follows from this that the writer is strongly opposed to the Colour Bar Act and the measure of compulsion contained in it. That Act can only be acquitted of the charge of immorality by arguments which make it out to be useless.

Fourthly, segregation must not be *unpractical*, by which is meant that it must not ignore existing areas of occupation, existing vested interests, and the public opinion of the Parliamentary electorate. We must group our new Native areas round the existing ones. There is no question of dividing South Africa in half from north to south, or from east to west. Further, it is mere waste of time and energy to evolve an ideally just segregation scheme which could have no hope of acceptance by the dominant European electorate. It is easy to do this and to call everybody who differs from one's self unjust and prejudiced—but that helps nobody, white or black. It is Don Quixote charging his windmill again—splendid but useless, that type of the sublime which is separated by a hair's breadth from the ridiculous.

It is most important to contrast these two conceptions of segregation—partial, gradual, natural practical segregation; and complete, immediate, compulsory, unpractical segregation.

A certain type of politician is very fond of going before the country and declaring himself in favour of

"segregation" in the second sense. Such a man must be either a fool or a knave. For if he honestly thinks that complete, immediate, compulsory segregation is practicable, we can only be sorry for his mental deficiencies. But if, knowing it to be impracticable, he presents it to the people whom it is his business to lead and to educate as his contribution and his only contribution to the solution of our gravest national problem, then we have a right to demand his withdrawal from public life; for he must be a thoroughgoing hypocrite.

The trouble is that it is this type of person who has brought the term "segregation" into disrepute among many thinking men. And yet unjustly. For the policy of segregation as expounded by those who have really studied it is the policy of partial, gradual, natural and practical segregation, and it is segregation of this type which General Hertzog, for example, has been preaching for so many years—for long "a voice crying in the wilderness," but able at last to initiate the long process of which if the exigencies of party politics permits its introduction, is the next generation will reap the benefit, to inaugurate the policy which it is to be hoped will be associated by future historians with his name.

What, then, is wanted in the way of legislation and of direct administrative action in the sphere of segregation?

First of all, a law to withdraw the operation of the Natives' Land Act, as regards purchase, from certain areas to be styled "neutral areas."

Secondly, the purchase by Government out of loan or funds, gradually but commencing at a fairly early date, of land on which surplus Natives squeezed out from the towns by increasing Europeanisation of the labour market may be settled. (Suitable Crown Lands could be utilised in some cases for this purpose.)

Thirdly, the direct encouragement by Government of the employment of an increasing proportion of Europeans in all our industries, including the mining industry. The form which this encouragement should take—protection,

bounties, preference for Government contracts, etc.—is a matter for further consideration.

Fourthly, the setting aside of funds for the agricultural development of Native areas. This can best be done by creating a special Native Revenue Fund, to be budgetted for by the Minister acting on the advice of the Native Affairs Commission.

Fifthly, the withdrawing of the Native Policy of the country from the sphere of party politics, necessitating legislation for the appointment of a non-party Minister for Native Affairs, as suggested in Chapter XIV.³⁶

If these measures can be carried through, it will then be possible to leave the evolution of segregation to time and natural forces. Probably, a sympathetic administration on these lines extending over thirty years would reduce the number of Natives in non-Native areas by one-half; and a century of evolution would leave them a negligible minority, to whom if necessary and if the political proposals of the previous Chapter proved inadequate, a franchise of the Cape type could be extended without danger to Europeans.

How the whole scheme would simplify the political, administrative and economic difficulties of the Native problem must be patent to the most superficial thinker on the subject.

From what has been written, it must be clear that the view taken in this book is one favourable to segregation in the limited sense, and it cannot be too strongly urged that some measure of segregation is an essential to the satisfactory solution of the Native problem.

Once that has been made perfectly clear, however, it is equally necessary to emphasise the point that complete segregation, as it has been expounded by many rash theorists, is totally impracticable, and that—confining ourselves for the moment to the land question—all that can be hoped for is an approximation to separation, building on existing areas of occupation.

³⁶ Many of these suggestions have, since the First Edition of this book was published, either been carried out or embodied in legislative proposals.

Before proceeding to the discussion of details regarding this separation, it is wise to reiterate that the preaching of complete territorial separation as a panacea is a great hindrance to progress in the solution of the Native problem.

The advocacy of segregation, complete, immediate and absolute, has this unfortunate effect—that it draws opinion away from the consideration of the different detailed aspects of Native policy towards one enormous revolution which is, by its mere happening, to amend everything. Why worry about Native agriculture and industry, and the problem arising from its competition with similar European activity, when complete segregation will prevent such competition by simple geographical means? In this Fool's Paradise we are apt to allow Native policy to drift into uncharted channels and dangerous situations, waiting for the miraculous solution which never will come and indeed never can come. The magic sword to cut the Gordian knot is not forthcoming: awaiting it, we forget to begin unravelling the tangled confusion.

A scheme of partial, or possessory segregation, is however, another thing. As it does not mean the complete destruction of the unskilled labour force of the country, it is economically possible; and we have already seen that in the Natives' Land Act, Parliament has approved of the principle of such possessory segregation.

Let it be said first that we are dealing with an intensely practical problem: hence there is no object in a *doctrinaire* fidelity to an abstract principle such as that of possessory segregation where its application would fail to meet the practical needs of the country.

What we have gathered hitherto from our discussion of possessory segregation, is that the working out of this principle in the Natives' Land Act—so far as that Act is not to be dismissed as a mere temporary measure—is defective in that no loophole is left for the Native usually detribalised whose industry has been such as to put him in a position to buy land, and who is forced to choose between migrating to an overcrowded tribal location or becoming a farm labourer. In other words, if the Land

Act's distribution of land is to be criticised as a final one, insufficient land has been allocated to the Natives to meet the probability of legitimate expansion.

But we have also had illustrated to us, by the fate of the Beaumont Report and the Local Committees' Reports, the tremendous difficulties which attend any endeavour to demarcate large additional Native Areas to-day. Is there any way out?

The narrowing issues on each side seem to force us to a definite conclusion as the only channel of escape. That is after the granting of such "potentially black" areas as are possible, the addition of larger neutral possessory areas, to white and black possessory areas.

All reasonable critics agree that, whatever changes ought to be made in the mode of tenure in Locations, the Locations themselves must remain untouched, as reserves for the Native people. Sometimes the honour, and almost always the interest, of the white population is engaged in this matter. It is proposed that these areas as enumerated in the Natives' Land Act Schedule, should be maintained as black possessory areas, in perpetuity. It is also proposed to add a few areas where only Natives may acquire rights to land.

Now it is suggested that the balance of the country should be subdivided into white and neutral possessory areas, instead of, as in the Land Act, being white areas alone. As for the black, as for the white race, a minimum property in land must be specially guaranteed. These exclusively white areas would be, firstly, all urban areas (which are purely white creations), and, secondly, those rural areas which are to-day predominantly white. Roughly speaking these would comprise, excluding any Native Locations at present existing therein, the whole Orange Free State, the West and North-West of the Cape Province, the Northern part of Natal and the Southern and South-Western Transvaal. Roughly speaking, this would give a broad belt of purely white area stretching from the south-west towards the north-east of the Union and more or less cutting its area into two.

The rest of the Union also excluding any Native Locations therein, would become neutral areas. These would be situated mainly in the Eastern part of the Cape Province, Southern and Central Natal and Northern and Eastern Transvaal. In these areas, no land should be immediately set aside for Natives. But the operation of the Land Act, should be withdrawn from these areas, and natural economic forces allowed free play within them. As Natives will naturally prefer to keep together if they can, what we might call "natural Beaumont areas" will gradually form themselves in these portions of the Union, which seem specially fitted by their combination of intense fertility and intense heat (with the exception of parts of the Eastern Transvaal being also perfectly healthy) for Native agriculture.

It is impossible to urge this solution too strongly, for it is an inevitable one; and whilst it might be attained by administrative action under the Land Act, the Governor-General's permission being given automatically for all transactions of purchase within the neutral areas, yet the spectacular effect on the Native of the formal modification of an Act, to which he has objected justly, firmly, and yet by perfectly constitutional means, should not be lost sight of.

There is one other respect in which an increase of purely Native areas might be considered, and that is the creation of Native Villages in the neighbourhood of towns. At present much of our domestic and industrial service comes from a distance, and this produces certain unfortunate effects. In the first place, labour is uncertain; for the Native will not remain away indefinitely from his home and his own domestic surroundings, the love of which is one of the most amiable traits in his character. Secondly, the unnatural life in towns, freed not only from tribal but also from family restraint for long periods together, leads to unfortunate and very pitiable immorality, bad for Natives and indirectly bad for Europeans.

The creation of Native Villages in the neighbourhood

of towns, where Natives could have secure tenure,³⁷ would have the effect of checking immorality among Natives, procuring a regular labour supply for industries and households, stimulating habits of sustained labour among the Natives, and removing the danger of having in urban areas large masses of Natives with no tie of attachment or interest to their places of residence. If sufficiently large plots of land were given, the family of the wage-earner could augment their income, and at the same time add to the amenities of European life in the town, by the production of garden produce, poultry and eggs for sale.

Provided that the Municipality had the right to control admission into the Native Village—preventing it from outgrowing its peculiar limits as an auxiliary to the town—the writer has no hesitation in recommending a Native Village scheme for every urban area in the Union, excepting only one group.

That group consists of the Witwatersrand Municipalities. While Native Villages even there could be heartily recommended as far as domestic and other ordinary industrial labour is concerned, it is exceedingly doubtful whether they could be rightly created to accommodate Mine Labourers. It would mean the settling of about half-a-million Natives in close proximity to the Witwatersrand area, and that would be a problem of tremendous magnitude. The writer would therefore exclude the Mines, as such, from this suggestion, particularly bearing in mind that the whole policy of basing the Mines increasingly on black labour is of dubious wisdom, and perhaps definitely erroneous.³⁸

Segregation, as has already been pointed out, is not merely a geographical question. The principle of differential development, as a general one, has been shown in previous Chapters to be the best solution of the

³⁷ The best form of lease would be one conditional on the Native being in white employment in the town. If we can succeed in replacing black by white labour in the towns, these villages will gradually diminish in size and perhaps ultimately disappear. But this will take time.

³⁸ See discussion in Chapter XVIII.

administrative, legal and political aspects of the Native question, as in subsequent Chapters, it will be shown to be the best solution of the economic and educational aspects. But a formula of use to meet the elastic demands of groups of human beings, still in a state of change and progression, must never be made a rigid shibboleth.

We have already seen that, while it is possible to attain separate political development, for example, in practice, yet the separation can never have that completeness sighed for by the *doctrinaire*. Even more so is this true of economic separation. There must be many points of overlapping, and what is needed is rather the creation and utilisation of tendencies, than lists of legal prohibitions. Most of all is this true of the land question. In this matter, where separatist critics have most of all concentrated their attention, a rigid and complete separation is more difficult than in any other. Geographical segregation is much more difficult than legal, administrative, political, economic or educational differentiation. While we shall be well-advised to carry it out consistently when and so far as we can, we need not be surprised to find it fraught with more far-reaching limitations than any other portion of the policy of differentiation. For this reason it is here most of all that friends of the Native must be on the watch to see that legislation is not one-sided, and that the term "segregation" is not interpreted in such a way as to check legitimate Native advance, economic, social or political.

CHAPTER XVI.

LAND TENURE.

It seems wisest to commence the study of Land Tenure within Locations by first examining the system of tenure under Native Law proper—*i.e.* Native Law uninfluenced by European ideas or legislation. As usual in a primitive legal system, the conceptions of jurisdiction and ownership (*dominium*) were confused. The tribe—or the Chief: a Native would not draw the distinction between the two that we would—was sovereign over the land which it occupied: therefore it owned the land. The individual in Native Law never held on any other tenure than occupation at the tribe's (Chief's) pleasure: Native Law would never have recognised any sale of land by an individual, for an individual had nothing to sell but his right of occupation, the change of which involved the Chief's consent.

Undoubtedly the Chief's ownership, if we may apply our advanced legal terms to a primitive society, was in essence a trust. He could not give away his people's land except as a tribal act, after taking counsel with his *amapaḳati*.¹ He would not, for example, settle at his own will members of other tribes on the tribal land. The land was owned by a Trust of which the Chief-in-Council was sole member. If you like, it was "mandated territory." All the legal incidents of a Trust, as we understand them, were implicitly present.

The individual tribesman had only the right to occupy a piece of land: and this right was neither transferable nor heritable, save at the Chief's good pleasure.

This is virtually the present form of tenure substituting "Government" more or less for "Chief" in all Locations in the Orange Free State,² Transvaal and Natal; and in the "unsurveyed" Locations of the Transkeian Territories. As an illustration of the detailed

¹ Counsellors.

working of it, we may quote from Natal Government Notice No. 49 of 18th January, 1902.

"It shall be the duty of the Chief of each Location, subject to the approval of the Magistrate, where a doubt or dispute exists, to allot within his recognised district to each inhabitant of such district under him whose name appears on the Hut-Tax Register, arable land sufficient for the requirements of the household of such inhabitant, if available, and any person who shall cultivate land not so allotted to him, or who shall enlarge the area or limits of his allotment, or who shall occupy, trespass upon or use land beyond the appointed boundary of his allotment without the approval of the Magistrate first had and obtained, shall be deemed to have committed a breach of these regulations. Provided that it shall be lawful for any person, with the consent of his Chief, to allow any relative or friend to cultivate his allotment. If any land shall be the subject of tribal dispute, the allotment shall be made by the Magistrate or be by him referred to the Secretary of the Natal Native Trust, with his recommendations, for decision, and the decision of the Secretary to the Natal Native Trust shall be final.

"All lands which, at the time of the passing of these regulations, shall have been brought under cultivation shall be deemed to have been allotted to the person cultivating the same, unless proof to the contrary be adduced, and any person enlarging the limits of such allotment without the permission of the Chief first had and obtained shall be deemed to have committed a breach of these regulations. The permission of the Chief may be reviewed and set aside or varied by the Magistrate of the Division.

"In the event of any person removing from a Location the land allotted to him for cultivation shall be at the disposal of the Chief of the Location

² See Evidence of Sir John Fraser before S. A. Native Affairs Commission, 1903—5. Vol. IV, page 271.

who may allot the same, with the approval of the Magistrate of the Division first had and obtained, to some other person of his tribe. Provided that any person who shall remove from the Division for the purpose of seeking service shall have the option of leaving his allotment in charge of some relative or friend."

The growth of the Location system has already been traced in this work.³ It is sufficient to say here that that system was forced upon the various Governments of South Africa by the exigencies of the case. It was not so much the best system as the only possible system. Moreover we have it with us to-day as the hugest vested interest in South Africa, possessing strong prescriptive rights. It would be madness to attempt to abolish it, however much reform may be desirable in details. This is not to suggest that the Location System is not a good one. In the opinion of most of those really qualified to speak, it is; but even if it were not we cannot now abolish it.

The Location System in practical working is simply the tenure familiar to Native Law. The tribe actually owns the land, and individuals occupy, as before. But in legal theory, grave difficulties present themselves. By a fiction of English Law, very improperly grafted on to our Romanised system, all land in a newly-occupied Territory is held to vest in the Crown, not only from the point of sovereignty, which remains perpetually, but also from the point of view of unfettered and complete *dominium* (ownership) of which however the Crown may divest itself by sale, grant, or otherwise. Now this ownership of the Crown is not on all fours with the ownership of the Chief in primitive Native Law. It is not, legally speaking, an ownership in trust; but an ownership entirely free of conditions, entirely unfettered by the conception of Trusteeship or Mandate.

How then, apart from public opinion—which means European public opinion—is the tribal Native to be pro-

³ See especially Chapter II.

tected as regards his rights to occupy tribal land? The Crown may be restrained by Statute from alienating land.⁴ This means that a discretionary power, not on all fours with Parliament's theoretical right to confiscate private immovable property, vests in Parliament. What seems, legally, the more satisfactory method is that the Crown should alienate the lands to itself, an official or a board of officials *in trust*. This is the "Trust System" as understood in Natal and Zululand.

The Natal Native Commission of 1846-7 recommended that, as the only means of giving the Natives legal right to any Locations appropriated for their use, such Locations should be vested in the hands of trustees, the Government reserving to itself the right to convert these lands, or portions of them, into freehold grants for Natives whose improved condition of the life rendered such action desirable.

The original intention of the Native Affairs Department⁵ was that legal titles should be issued to each tribe, and where a tribe was divided to each section of a tribe, that the titles should be vested in trustees, one of whom should be the Chief of the tribe, and that the trustees should have power to divide the lands into similar smaller tracts and apportion them among different sections of the tribe, and where practicable or expedient, into family holdings and unfettered titles. When any part of these Location lands was alienated to families, a purchase price was to be paid at the rate of 2/- per acre, by yearly instalments extending over six years.

When the Natal Native Trust was actually constituted (under Letters Patent of 27th April, 1864) most of these principles disappeared. Nothing was said, and nothing was subsequently done, with regard to alienation of the Location lands to families or individuals; a general title was issued to all the Location and Mission Lands (respectively 2,262,066 and 144,192 acres) to the Execu-

⁴ vide Section 147, S.A. Act.

⁵ Information in this paragraph from Memorandum of Mr. (later Sir) Michael H. Gallway, Attorney-General of Natal, dated 12th April, 1882 (Papers N.N.T., 32/1896.)

tive Council of the Colony of Natal in trust. But such trust embraced *all* the Natives concerned; that is, there was no separate trust for each tribe. Under the earlier system, the Trust could not have moved tribes: under the existing system it can. Admitting the conception of the Governor-in-Council as Supreme Chief, this does not seem to be an unreasonable application of primitive Native Law.—(Of course, the Trust system purports to be merely a legalising of Native agrarian Law.) Naturally with the generalising of the Trust, the inclusion of Chiefs as Trustees had to be dropped.

It must be stated that, to the legal members of the Executive Council, at any rate, the functions of the Natal Native Trust were fully recognised as separable from those of the Executive Council notwithstanding the fusion of personnel. Sir Harry Escombe, Attorney-General of Natal, writes in a Memorandum dated 5th April, 1895⁶:—

“The duties of the Natal Native Trust are separate and distinct from the duties of the Executive.

“The members of the Natal Native Trust (although they are also members of the Executive) are, as regards the Location lands, nothing more or less than Trustees with powers and under obligations wholly distinct from the powers and obligations of an Executive Council.”

The Natal Native Commission of 1906-7 reported adversely⁷ on the work of the Trust during the forty-three years of its existence, pointing out that beyond some tree-planting, fencing, and the construction of a few water-courses and roads, no attempt had been made to improve the vast estate controlled by the Trust in order to make it more habitable or carry a larger population, and recommended a change of Trustees, which was not effected. In the face of this recommendation, indeed, the whole vast Location area of Zululand was vested on the 6th April, 1909, in the Zululand Trust—also the Executive Council of Natal.

⁶ From a copy in the Samuelson papers.

⁷ Report, para. 94, page 39.

A small "Putili" Trust was constituted by Indenture dated 18th September, 1878, but transferred, as a separate Trust, to the Trustees of the Natal Native Trust on 28th February, 1908.

One exceptional Trust still exists, which was created by Indenture, dated 27th May, 1858—some six years before the Natal Native Trust came into existence. It exhibits the type of Trust which was originally favoured by the Natal Government. The Umnini Trust consists of three Trustees—the Chief Native Commissioner, the Chief of the Amatuli Tribe (the Tribe occupying the Umnini Location) and a non-official member.⁸

By Act 1 of 1912, the Governor-General was authorised to delegate to the Minister of Native Affairs the administration of all such matters as were administered by any legally constituted Native Trust. The delegation was made by Government Notice No. 1601 of 25th November, 1912. As far as administration is concerned, therefore, there is no difference to-day between the Locations owned by the Crown-in-Council in trust and those owned by the Crown directly.

In view of the difficulties presented by the lacunae in the Roman-Dutch, as compared with the English, Law of Trusts, it would be presumptuous for anyone not being a skilled lawyer to endeavour to summarise the full legal powers and duties of the Government as Trustees. So far as a layman may express an opinion, the Natives living in Trust Locations are, in law, no better and no worse off as regards security of tenure than Natives living in Crown Locations.

More than one attempt has been made to introduce the Trust system in the Cape Province. It was definitely intended that the ownership of the Locations laid out in the Victoria East, Fort Beaufort and Queenstown Districts should be vested in Boards of Trustees containing "the missionary" and the Civil Commissioner of each District,⁹ but nothing ultimately came of this. The

⁸ Report of Department of Native Affairs, 1913—18, page 25.

⁹ Despatch of Sir Geo. Cathcart to the Duke of Newcastle, dated 14th March, 1854.

principle of Trusts was also recommended by the Cape Native Laws and Customs Commission of 1883;¹⁰ again, however, without effect.

In the South African Republic it was at first held that Natives could not acquire the ownership of land. The legal position about the Locations was not quite clear. They would not vest in the State President and they could hardly be said to be *res nullius*, though constantly treated as if they were such. One of the conditions of the retrocession of the Transvaal in 1881 was the appointment of a Location Commission, consisting of the State President (or deputy), the British Resident (or deputy) and a third person nominated by mutual consent.¹¹ This Commission was responsible for laying out Locations, the boundaries of which could not be altered without its consent; but ownership of the Locations did not vest in the Commission, in trust or otherwise. The Location Commission, however, laid down one important principle before it became defunct, viz., that only if all the people of a tribe or community agreed to sale could communal land be sold¹²—in other words, the Commissioners virtually took up the position, in this respect, of Trustees. However, the legal position as regards ownership remained in a certain ambiguity, until the annexation of 1900, since when the unfettered ownership of Locations has been deemed to be vested in the Crown.

In view of the law prevailing in the Republic that Natives could not acquire landed property, the Pretoria Convention of 1881 contained another provision¹³ to the effect that Natives who wished to buy land could do so, on condition that transfer was passed to the Location Commission in trust. When this body became defunct the *nuda proprietas* of such land vested in the Superintendent of Natives, whose legal successor to-day is the

¹⁰ Report, para. Nos. 110, page 40; and 112, page 42.

¹¹ Pretoria Convention, Article XXI.

¹² Minutes of Meeting of Commission, 22nd August 1883 (Archives, G. 1234).

¹³ Article XIII.

Minister of Native Affairs. Although by a Supreme Court decision of 1905¹⁴ Natives were allowed to receive transfer direct and own their land personally, this applied in practice only to new transfers, and the Natives' Land Act of 1913 restricting these, the ownership of the bulk of Native-occupied land in Transvaal to-day, outside Government Locations, vests in the Minister of Native Affairs in trust. It should be noticed that this is quite different from the Natal system. The normal case of trust in Transvaal is that of a more or less detribalised Native or group of Natives, who, in Natal, have always been able (subject now to the provisions of the Natives' Land Act, 1913) to get full ownership. The Trust system in Natal applies only to tribal Natives, who in the Transvaal generally live in Locations which are direct Crown property. Nevertheless there are cases¹⁵ of private land bought by tribes and vested in the Minister of Native Affairs in trust.¹⁶

It will be interesting to follow, in course of time, the exact working out of the legal aspect of Native Land Tenure in South-West Africa. Under the Mandate, it is submitted that unalienated lands at any rate unalienated lands occupied by Natives when the Mandate was issued, cannot be said to be the absolute property of the Crown-in-Council but only to vest in the Crown-in-Council in trust. There appears to be a tendency in the territory to disregard this point.

In the Cape Province, the history of land tenure in Locations is the history of the gradual introduction of quit-rent holdings. The first experiment in this direction dates from the famous Smith-Calderwood Location Scheme of 1849¹⁷ when the Fingoes in the Victoria East District

¹⁴ Tsewu v. Registrar of Deeds.

¹⁵ Especially in Central and Western Transvaal there are tracts of such land.

¹⁶ The principle of ownership in trust has been extended in the Transvaal from land to money. Tribal Trust Funds have for many years been established (see Report of Native Affairs Department, 1913-18, page 23) under control of Departmental Officers. This principle has now (1924) been adopted in South-West Africa.

¹⁷ See Government Notice of 9th February 1849.

were all granted individual title to their plots on the payment of £1 per annum quit-rent. From the very beginning, the scheme worked satisfactorily. The quit-rents were paid promptly and so successful was the whole arrangement that Sir Harry Smith proposed¹⁸ to introduce it in Natal—a proposal which fell through. Similar tenure was gradually introduced among mission communities in neighbouring Districts.¹⁹ The report of Mr. Calderwood on the Fingo Locations, dated 22nd January, 1855, shows that, though his system had not been worked out as fully as he would have wished, it had proved up to that date a distinct success. By 1865 over 5,000 titles had been issued.

The Native Locations Act (No. 40 of 1879) introduced this as a permissive tenure generally (*i.e.*, not limited to any particular Native tribe or District). This Act is of great interest in comparison with the Glen Grey Act, and a summary of the differences is contained in an Appendix to this Chapter. Wherever possible, new title deeds for many years have been issued with the Glen Grey conditions or slight variants thereof; but there are still many instances in the Cape Province of land held under the original conditions of Act 40 of 1879.

The Native Laws and Customs Commission of 1883 recommended that where the majority of occupiers under tribal tenure in any area, or any section of any area, requested the issue of individual title, their request should be acceded to.²⁰ In the same year, the Port Elizabeth Native Strangers Location Bill gave the first instance of the adoption of quit-rent for a large Municipal Location.

Everything was tending towards the adoption of that far-reaching measure, the Glen Grey Act of 1894. The name of Mr. Cecil Rhodes is familiarly associated with this Act, but we must also recognise the great part played

¹⁸ Despatch of Sir Harry Smith to Earl Grey, dated 15th March 1849 (in Blue Book: Correspondence relative to State of Kaffir Tribes, 1850, page 2).

¹⁹ Despatch of Sir Geo. Cathcart to the Duke of Newcastle, dated 14th March, 1854.

²⁰ Report, para. 110 (9), page 41.

by the permanent Public Service in the evolution of the policy. All the more important provisions of the Glen Grey Act were foreshadowed in a Memorandum of that distinguished Administrator, Captain Matthew Blyth, Chief Magistrate of the Transkei, dated 13th January 1882:—²¹

"I have strongly urged the Government to grant individual titles to those Fingoes who may desire to have them, fixing a certain standard, such as building a proper house, planting trees, enclosing, say from ten to twenty acres of land, and when these are fulfilled, then the title to be issued. Were this plan adopted an immense stimulus would be given to the people, and in a short time the whole face of the country would be covered with wheat, homesteads with trees, etc.

"I trust and hope that shortly the Fingoes will agree to pay a voluntary contribution of, say, 5/- per man as a local tax for local wants, etc., and to be expended by themselves under the guidance and direction of the Magistrate. In fact *that a sort of Municipal Council be formed in each district.*"²² This would be a step in the right direction, and be the beginning of local self-government in its simplest and safest form, which might be afterwards extended as education and civilisation advances.

"Every effort should also be made to induce the headman and people to take an intelligent part in their own Government, acting as jurors or assessors, a public discussion of all laws affecting their districts, etc., so that they can feel that they have some voice in public matters. Then, and then only, are Native Affairs on a safe footing."

Ten years later it was decided by Government to consider the feasibility of introducing such a scheme in the Glen Grey District, as an experiment, with a view to its

²¹ Cape Native Blue Book, 1882, page 6.

²² The italics are mine.

further extension if successful. A Commission was appointed to consider the question consisting of Mr. B. H. Holland, Civil Commissioner of King William's Town, Mr. John Frost, C.M.G., M.L.A., and Mr. W. H. Janse van Rensburg, M.L.A. As a result of its Report, dated 27th May, 1892, Act 25 of 1894, commonly known as the Glen Grey Act, was passed by the Cape Parliament. In addition to the improved quit-rent tenure (details of which will be analysed later)—which, be it noted, became compulsory within the District—was introduced, first, a Council system of local self-government; and, second, a Labour Tax on all Natives who did not go out to work for Europeans. The Bill, so drafted, proved a masterpiece of political strategy. Nine-tenths of the House were in favour of either the Labour Tax or the Quit-rent Tenure, though probably those wholeheartedly in favour of both could have been counted on the fingers of one hand, and so the Bill had a comparatively easy passage. In the Glen Grey District, itself, the measure was anything but enthusiastically received: notwithstanding this it was in 1895 extended to many Districts of the Transkeian Territories and the process of extension still continues.²³

The Labour Tax nearly killed the whole system in the Transkei. In Idutwya District, the proclamation of the Act was regarded with the greatest apprehension by all the Natives of the District. It was felt by the Natives to be a most harsh oppressive measure; and it was productive of the greatest agitation. The Magistrate attributed this opposition chiefly to the Labour Tax.²⁴ The same phenomenon, not quite so intensely exhibited, was noticed in the Butterworth District.²⁵ In the Tsomo District the Magistrate was, for a time, apprehensive of open rebellion.²⁶ Only in Nqamakwe was the change received with tranquillity.²⁷

²³ As regard tenure: The political part of the system now prevails throughout the Territories.

²⁴ Report of W. Brownlee, R. M. Idutwya. Cape Native Blue Book, 1896, pp. 88—89.

²⁵ Report of R. W. Stanford, R. M. Butterworth, *Ibid*, p. 91.

²⁶ Report of V. M. Watermeyer, R.M., Tsomo, *Ibid*, p. 95.

²⁷ Report of W. C. Scully, R. M. Nqamakwe, *Ibid*, pp. 93—4.

Much of this opposition was doubtless due to that innate Bantu conservatism which is so disheartening to liberal-minded Europeans who interest themselves in the Native question, and much of it disappeared as the system became better known. In Tsomo, the very District where disaffection had been deepest, a very few months sufficed to bring about a complete change of front on the part of the more influential Natives.²⁸ The Council System from the first worked admirably.²⁹ The obnoxious Labour Clause, the withdrawal of which was recommended by a Select Committee of the House of Assembly in 1898³⁰ soon became a dead letter and was formally repealed for the Territories by Proclamation 6 of 1905. Mr. E. E. Dower, Chief Clerk, Cape Native Affairs Department, and subsequently Union Secretary for Native Affairs, repeatedly gave his opinion before the Inter-Colonial Commission of 1903-5, that the Act had proved most beneficial in practice,³¹ and the Commission itself was warm, if discriminating, in its praises of the system.³² The Native criticism which is directed at the Glen Gley system—largely unjustifiable criticism—strikes only at its political arrangements,³³ and not at its settlement of the land problem.

Let us now proceed to examine the details of the Glen Grey tenure.³⁴ The first condition of the holding is the payment of perpetual quit-rent; but the transaction is not one of ordinary *emphyteusis*, for in addition to the payment of quit-rent there are certain statutory obligations resting on the occupier. One thing is certain: the occupier does not possess full ownership (*dominium*) in the ordinary acceptation of the term. We are really

²⁸ Cape Native Blue Book, 1896, page 95.

²⁹ See Chapter XII.

³⁰ Report, page 2.

³¹ Vide Questions 178, 637 and 642 (pp. 19 and 64).

³² Report, paras. 159-167, pp. 27-30.

³³ Report of Native Affairs Commission, 1920-21, page 31 (and see Chapter XII).

³⁴ In this analysis, all legislation up-to-date (1923), including Regulations, has been taken into account. Help has been derived inter alia from Mr. E. E. Dower's summary in Annexure 1 to the Report of the S.A. Native Affairs Commission, 1903-5 printed in Vol. V of Report and Evidence.

faced here with a nice legal problem. If the older form of *emphyteusis* were to apply, the ownership would be the Crown's and the usufruct the Native's. In the later form of *emphyteusis*—the *erfpacht* of Roman-Dutch Law—the ownership would be the Native's, subject to certain perpetual servitudes of which the payment of quit-rent would be the chief. On the whole it seems probable that the Glen Grey tenure is rather the later type of *emphyteusis* than the earlier, but there is nothing quite like it elsewhere, and probably it is safe to say that it adds another complex of rights and obligations to legal science.

The amount of quit-rent payable is 15/- per garden allotment (about four, not more than five morgen) plus 3/- for every additional morgen above five; and 5/- per building allotment($\frac{1}{2}$ morgen on the commonage).

In practice, we can ignore the building allotment which has not been widely taken up by the Natives, they preferring to retain their existing homes round which the garden allotments are grouped. What is done in the survey of a District is this. The District is divided up into Locations, and each of these Locations is surveyed into garden allotments, the survey following the existing lines of occupation, subject to the limits of area prescribed. All the spare land in each Location is treated as Commonage, on which building allotments may be granted, on the applicants satisfying the Government that they intend to erect substantial buildings thereon. The course of procedure is clearly laid down and provision for most contingencies made in the Acts and Regulations. The cost of survey in the first instance is payable by the applicant, but may be advanced by the Government. If so advanced, half of the advance is to be paid by the applicant within three months of receiving notice to do so; the title deeds are not issued until this half is paid. The balance is payable by four equal instalments, the ultimate remedy for non-payment being cancellation of Title. The survey of allotments has been unduly expensive in the past, and the Survey Commission of 1920 (on which a

member of the Native Affairs Commission sat) recommended a simpler and more common-sense mode of survey of Native allotments than had previously existed. The Commission considered that only the simplest calculations were necessary for these small allotments and that the Native's title deeds should contain a picture of the ground allotted to him.³⁵ Provision for the recovery of arrear quit-rent is given by the issue of a summary warrant on the occupier's movable property, and, in the last resource, by cancellation of title.

The Glen Grey system is one of *perpetual* quit-rent. The rent may not be compounded in a single sum, though quit-rent of lands held under Act 40 of 1879 may be compounded by the payment of 16 $\frac{3}{4}$ years' rent down.

We come now to the statutory conditions. In the first place the land may not be alienated without the Governor's consent. This is frequently granted as between Native and Native, but has never yet been granted as between Native and European, the policy of the Administration being to keep these "surveyed" Districts purely Native Territories. Transfer, when consent has been given, does not involve expensive formalities. It is effected by a simple endorsement made on the title deeds by the Magistrate of the District, at a fee of 2/6, the Magistrate subsequently notifying the Registrar of Deeds.

The land may not be mortgaged. This is undoubtedly one of the finest features of the whole system. So far as legislation can do it, the Native allotment holder is absolutely protected against the money lender.³⁶

³⁵ Report of Native Affairs Commission, 1921, page 16—17.

³⁶ Cf. the following extract from a pamphlet: "Some Notes on Java and its Administration by the Dutch," by Henry Scott Boys "late Bengal Civil Service." Allahabad.—Pioneer Press, 1892:—

"It was the intention (of Great Britain) to confer on the cultivators the full proprietary right in their holdings, involving the terribly doubtful privilege of alienating their fields, and the disastrous liability to be sold up, either by their civil creditors or by the Revenue authorities for default. By the return of the Island to Dutch rule, the Javans (sic) have escaped this fatal gift of absolute proprietary right, which has been the ruin of so

The allotments may not be sub-divided except with the Governor-General's approval; nor sub-let. Originally subdivision was impossible in any case, but Proclamation 300 of 1913, originally caused by errors in the allocation of plots in the Butterworth District in 1900, permits it with the Governor-General's approval, provided that no garden allotment is reduced to less than three morgan and no building allotment to less than a half-morgen.³⁷

The land may not be devised by will, but passes by intestate succession in a prescribed order contained in the Schedule to Act 25 of 1894, which is designed to reproduce the system of intestate succession in Native Law. By subsequent legislation³⁸ one important departure from Native Law—the grant of usufructuary rights to the widow—has been authorised.

The principle of "one man, one lot" is laid down explicitly, and must be observed even in cases of succession. This preserves the rough equality of status which was so marked a feature of primitive Native custom regarding property.

Precious stones and minerals are reserved to the Crown. The Crown may also make roads, railways, dams, etc., across or on allotments and take materials for the same from allotments without compensation, and may establish outspans on allotments.

The title may be forfeited for the following reasons in addition to non-payment of survey expenses or quit-rent, viz., (i) rebellion; (ii) stock-theft punished by imprisonment for a term of not less than one year; (iii) failure to occupy the land beneficially.

many tens of thousands of the peasantry of India, and with which, while striving to bless, we have so effectually cursed the soil of India.

"The loss of all the many benefits which would incidentally have been conferred on Java by the substitution of English for Dutch rule, was not too high a price to have paid for escape from the many evils of unrestrained power to alienate landed property. The Javans are the most prosperous of Oriental peasantry, due mainly to one cause, their inability to raise one florin on the security of their fields, and the protection thus enjoyed against the money-lender and against himself" (sic.)

³⁷ Vide Report of Department of Native Affairs, 1913—18, page 12.

³⁸ Section 1, Act 14 of 1905.

Beneficial occupation means the cultivation of, or growing of crops on an allotment or portion thereof by the registered holder personally, or under his personal supervision or under supervision of a representative appointed by the Magistrate for a period of two years with subsequent extensions in the Magistrate's discretion. The Magistrate is authorised to grant such permission, at his discretion, when the applicant leaves (i) to seek work or (ii) to carry on any trade or occupation necessitating absence from the Location or (iii) to attend any educational or industrial Institution, or (iv) for any reasonable purpose which in the Magistrate's opinion, justifies temporary absence from the Location. Three months' notice of the intention to cancel title must be given.

The control of the commonage is vested in a Location Board, though the *dominium* must be held to vest absolutely in the Crown.

The possession of land under the Glen Grey system is specially ruled out as a qualification for the Parliamentary franchise, which must be qualified for in some other way. In the circumstances this is virtually a permanent disqualification of the majority of tribal Natives in the Territories.

To sum up, then, the kinds of tenure on which Natives hold in Locations.—Freehold tenure is unknown. Ordinary lease is permissible in some Urban Locations, but is not widespread.³⁹ The vast bulk of Location Natives—including those living on Crown Lands other than Locations—hold their land either (i) on a semi-individualistic quit-rent tenure or (ii) on the basis of occupation at pleasure, in a communal system.

It should be noticed that the Natal Commission of 1906-7 suggested an interesting modification of the existing communal system, viz., the establishment of *communal* settlements in Locations, exempt from the Chief's

³⁹ It is permitted freely in the Cape, and with certain restrictions in Transvaal and Natal outside Locations. There is an exception in some issues in British Kaffraria (Govt. Notice, No. 3 of 1858) which were made in freehold.

jurisdiction and to be controlled by Village Councils.⁴⁰ Nothing came of this recommendation.

A further train of thought is this—that the Communal Location must not *necessarily* be condemned as against the quit-rent Location because the population of the latter is often the more happy, contented and prosperous of the two. It has been exceedingly difficult, somehow, to get South African Administrations outside the Cape Province to add to the amenities of life in Locations. The Natal Commission of 1846-7, to which the Natal Location System is due, recommended all kinds of measures for the improvement of the Location Natives,⁴¹ but the then Colonial Secretary, Earl Grey, replied, in phrases that have haunted Natal Native Administrators ever since:—"It is my duty at once and distinctly to discountenance the expectation that any plans for the improvement of the Natal District which would involve large expense to be provided for by Parliament can be adopted."

With the quit-rent system, on the other hand went from the very beginning⁴² the splendidly worked out details of the Smith-Calderwood scheme. White Superintendents were appointed for each Location. Schoolmasters were employed. Prizes were awarded for cleanliness of person and clothing, for neatness of residence, and for agricultural progress. In sixteen years the inhabitants of these first quit-rent Locations had become the most progressive group of Bantu in South Africa; but we should make an unwarrantable presumption if we stated, without further evidence, that this was due solely, or even mainly, to the particular form of tenure.

Passing now from the historical and analytical aspects of the subject, it becomes our duty to weigh and consider the advantages and disadvantages of the various forms of tenure, and to formulate, if we can the best practical policy for the future.

⁴⁰ Report of the Native Affairs Commission (Natal), 1906-7, para. 51, page 17.

⁴¹ See Chapter II.

⁴² Despatch to Sir Harry Smith, dated 10th December, 1847.

No one would for a moment argue that the quit-rent Locations should to-day revert to the communal system. For good or bad the change is made, and to reverse it now would be madness. But there is a good deal of difference of opinion as to whether existing communal Locations should be "surveyed," and if so whether in the near, or only in the distant, future; and this seems the first problem that we have to face.

It is quite true that sixty years ago "the idea of property in land was not yet established in the minds of the Natives";⁴³ but this is not nearly so true to-day. Natives go out into service, learn European conceptions, become acquainted with European institutions; and undoubtedly are, in many parts of the country, capable of understanding the nature of individual property. In any case the argument that Natives "do not understand" an institution is to-day a very dubious one. When Mr. Calderwood made the daring experiment of quit-rent tenure, as early as 1849, it was certainly understood and it was immediately successful. Admitted that it was introduced among Natives who had lost their tribal organisation to some extent, yet tribalism all over South Africa is weaker than it was. There does not seem to be any *prima facie* argument against the general introduction of quit-rent tenure.

Undoubtedly the ingrained conservatism of the average tribal Native would prompt a burst of opposition to this as to any other change; but that opposition would cease as promptly as that of the Transkeian Natives did to the Glen Grey Act.

And, on the other hand, great practical good would result from the change. "In the first place⁴⁴ it would be the best means of breaking up warrens of barbarism and replacing them by enlightenment and contentment . . . So long as the Locations . . . are held as they are, there

⁴³ Report of Natal Native Commission, 1846—7.

⁴⁴ Vide R. C. A. Samuelson: "Native Question—Rules of Policy—Past Shortcomings—The White Man's Burden," a pamphlet published by P. Davis and Sons, Pietermaritzburg, 1909, pp. 5—6.

will be no improvement in the people who occupy them, and in the land itself. The present tenure is insecure and the Natives have often told me they do not plant trees and improve their land because they may be removed therefrom at any time and lose all improvements. Holding land in their names would also be a powerful incentive to Natives to work for money to improve their land, and buildings which would not then be subject to arbitrary removal, would go up on a large and improved scale, and would create a demand for building material, etc.”

In the Native Affairs Commission of 1903-5, on which all the South African Territories were represented by Administrators of skill and experience, the tenure question proved one of those in which it was all but impossible to agree. Ultimately, five votes were cast in favour of the Majority Report and four in favour of the Minority Report. One member was absent.

The details of the voting were as follows:—

Majority Report: Col. (later Sir Walter) Stanford (Cape), Mr. S. O. Samuelson (Natal), Mr. Marshall Campbell (Natal), Mr. (later Sir Herbert) Sloley (Basutoland), Capt. Dickson (Orange River Colony).

Minority Report: Mr. J. C. Krogh (Transvaal), Mr. J. A. Hamilton (Transvaal), Mr. Johan de la Harpe (Orange River Colony), Mr. F. R. Thompson (Cape).

Absent: Sir Thomas Scanlen (Rhodesia).

Mr. Thompson protested against the decision of the Commission.⁴⁵

The Majority Report reads:—⁴⁶

“Recognising the attachment of the Natives to, and the present advantage of, their own communal or tribal system of land tenure, the Commission does not advise any general compulsory measure of subdivision and individual holding of the lands now set apart for their occupation; but recommends that (*sic*) movement in that direction be encouraged, and that, where the Natives exhibit in sufficient numbers a

⁴⁵ Report of S.A. Native Affairs Commission, Vol. I, pp. B. xxxiv—xxxv.

⁴⁶ *Ibid*, Vol. 1, page 26.

desire to secure and a capacity to hold and enjoy individual rights to arable plots and residential sites on such lands, provision should be made accordingly under well-defined conditions."

The Minority Report reads :—⁴⁷

"The minority of the Commission believes that to do away with free land to Natives would be to strike at the root of much that is most unsatisfactory in Native life—tribalism, communal occupation of land, polygamy, inertness, the comparative unprogressiveness of the mass, the absence of the desire for, or incentive to, agricultural or industrial paid labour—and that, coupled with the right of purchase and sale of lands among themselves, leading in time to larger individual holdings, the change would in a relatively short time reduce the number of Natives tied to the Locations and Reserves, release a large number for work more valuable to themselves and to the country, and would immensely raise the manner of living and the habits of the Natives remaining in the Locations and Reserves.

"The Minority recommends that, hand in hand with the levying of rent on land, and out of the greatly increased revenue which would thereby accrue, a liberal encouragement and endowment of schools, industrial training institutions, irrigation works, roads, railways, hospitals, and other schemes and works likely to raise the standard of Native life and to increase their efficiency as economic units in the State, should be given.

"The Commissioners forming the minority claim that the suggested change would bring the Native under the pressure of the law 'If a man does not work, neither shall he eat,' and by doing so would set in motion certain potent forces which would start the Native races of this country on the upward road more than any legislation which could be devised."

⁴⁷ Ibid, pages 88—89.

A careful consideration of the whole question of tenure, in the light of its past history, makes it impossible for us to accept whole-heartedly either of these two Reports. The *laissez-faire* policy of the Majority Report is difficult to understand in the face of the remarkable success of the Glen Grey scheme, which, be it noted, was carried through in the teeth of strong Native opposition. It is impossible to apply the dogmas and catchwords of European politics to Natives without any alteration or criticism. In dealing with Europeans and with advanced, detribalised Natives it may well be argued that a considered public opinion must precede any Governmental action. But in dealing with the vast masses of tribal Natives whom the Commission had in mind in framing its recommendations, it is for the Government to give a lead, even to command in the way that a kindly father might feel himself impelled to order his child's life without waiting for the child to evolve a system for itself. "What remedy do you propose?" asked the Chairman of the Natal Commission of 1881-2 of Stephanus Mini, who had given vent to a long list of grievances. "I have no plan to offer," was the reply, "I look to the White Chiefs. I only say the black house will go down if this goes on."⁴⁸

If the quit-rent tenure is really an improvement—and even the Majority Report does not deny it—on the old communal tenure, then Government ought not merely to introduce it on request, but actively to encourage its introduction.

On the other hand an immediate sweeping change all over the country, such as the Minority Report appears to recommend, would undoubtedly be a great mistake. While Government should make the extension of the Glen Grey tenure a cardinal point of its policy, yet it should carry through this policy gradually. A beginning should be made among Natives more advanced in civilisation. Thus Government is rightly considering to-day the feasibility of introducing the Glen Grey tenure on the

⁴⁸ Natal Native Commission, 1881-2. Report and Evidence, Vol. II, pp. 134-5.

Natal Mission Reserves. By working gradually and working to a plan, the Administration could effect a tremendous change in the condition of the Natives without arousing any dangerous opposition.

The greatest argument for the introduction of the Glen Grey system is, as the Minority Report indicates, the great and permanent revenue which would at once become available for Location improvements. Want of money has always been the obstacle to Location reform in the past: a quit-rent tenure would mean the carrying into effect of many schemes which, without it, would have to be shelved. Rent collected in a given Location should undoubtedly be expended on that Location.

On two other implications of the Minority Report, however, one feels less comfortable. In the first place, it is doubtful whether the quit-rent tenure could with propriety be used as a lever to make Natives work for Europeans. Unless a Labour Tax were added to the quit-rent experience shows that little increase would be made to the Labour supply; and the Labour Tax is the only part of the Glen Grey system which has proved an utter failure. The forcing of Natives into our industrial machinery is a very doubtful policy indeed;⁴⁹ and, as for agricultural labour, natural causes will increase the supply of Natives available without the imposition of the particularly stiff quit-rent which would be necessary if Natives really are to be forced to work. Secondly, the suggestion that free transfer of property should be permitted between Native and Native "leading in time to larger individual holdings" is open to criticism. Should not the Glen Grey principle of "one man, one lot" apply as far as quit-rent holdings are concerned, maintaining the primitive principles of equality among residents of a Location, though, as suggested below, free purchase might be allowed outside Locations? Why impose our individualistic system of "grab" on a people who are less grasping and more contended than we are?

⁴⁹ See full discussion in Chapters XVII—XVIII.

Should quit-rent tenure be regarded as a final settlement, or as an intermediate stage leading up to full freehold ownership?

If we accept, as we have done in the past, the system of freehold ownership among Europeans, there does not seem any *prima facie* objection to a similar tenure by Natives in locations. But undoubtedly the time is not yet ripe for it, even in the Transkeian Territories; and, as far as Locations are concerned, it would seem inadvisable to introduce it generally until two or three generations have elapsed.

But if we agree with the view—for which there is a tremendous lot to be said—that Crown Lands should never be alienated in freehold, even to Europeans, but that the State should reap a perpetual quit-rent for them, then there is no inconsistency in arguing that Natives, too, should continue to occupy on the quit-rent tenure. This is the writer's personal view. It is a view which has the support of many students of land taxation and agrarian legislation.

Undoubtedly Natives who buy land outside Locations should not be bound by the "one man, one lot" principle, nor should they be forbidden to acquire land from owners other than the Crown in freehold. With the modification of the Natives' Land Act suggested in the previous Chapter, these facilities should be valuable and conducive to Native development.

The immediate practical recommendation thus is the extension of the Glen Grey system of tenure to the more advanced communities of Natives in the other Provinces, (e.g., the Natives residing on Mission Reserves in Natal).

A word might be added as to Natives in Urban Locations. The insecurity of their tenure is great both in theory and practice. Whilst Municipalities might have reasonable objections to issuing grants in freehold, there ought to be no difficulty in a revival of *erfpacht*, whereby a system of quit-rent in all but name⁵⁰ could be in-

⁵⁰ A title in quit-rent can, of course, be issued by the Crown only.

roduced, or at any rate in the giving of long leases. The insecurity of tenure in Urban Locations is one of the greatest practical grievances of present day Natives. The emasculated Urban Areas Act of 1923 has not removed that grievance.

APPENDIX TO CHAPTER XVI.

Memorandum prepared by Mr. E. E. Dower, Chief Clerk, Native Affairs Department, Cape Colony, dated 20th October, 1902, illustrating the difference between Quit-Rent tenure under Act 40 of 1879 and under the Glen Grey Act.

(Annexure I. to the Report of the S.A. Native Affairs Commission, 1903-5.)

(1) *Allocation of lands.*

Under Act 40 of 1879.

A building as well as a garden lot is surveyed, the remaining extent of land being reserved as commonage. (N.B.—The building lots have generally speaking not been taken up.) There are no exact directions laid down in the law as to how the allocation of lands is to be carried out.

Under Glen Grey Act.

A garden allotment only is surveyed in the first instance, the law laying down that the area of such shall be according to the then existing lines of occupation. Survey of a district as a whole is contemplated, the district is divided into locations and after survey of garden allotments in each the remaining extent is set apart as Commonage. The removal of homesteads which are on the Commonage is not contemplated; any registered holder of an allotment may obtain the grant of a build-

ing lot upon securing the concurrence of the Location Board and satisfying the Governor that he has erected or intends erecting a substantial building. The course of procedure is clearly laid down and provision made for regulations or directions.

(2) *Cost of Survey.*

Under Act 40 of 1879.

No directions.

In practice all approved applicants are required to deposit the full amount of survey expenses and therein lies one of the great difficulties. In every location some residents object to the survey and refuse to pay, causing long delay in the actual commencement of the survey. Then if their names are struck off the list no means are provided for dealing with them. Legal advice is to the effect that their original occupation being lawful such squatters cannot be removed unless registered owners in whom commonage becomes vested approach Supreme Court in order to obtain an Order. Apart from the cost of such proceedings no local body such as is con-

Under Glen Grey Act.

Costs are in first instance advanced by Government out of funds voted by Parliament, half to be paid by each applicant, within 3 months of notice so to do, this to be deposited before issue of title-deeds, balance to be paid in four equal instalments. Means for dealing with defaulters (1) by legal process of summary warrant or (2) cancellation of approved claim.

templated for controlling commonage in the conditions of title is as a rule established in such communities.

(3) *Quit-rent.*

2/6 for building lot. 10/- for garden allotment.	Not exceeding 5/- for building lot. 15/- four morgen garden allotment and 3/- every additional morgen above five.
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(4) *Recovery of Quit-rent.*

Under Act 40 of 1879.

No special means provided. Arrears can only be recovered according to ordinary process of law.

Under Glen Grey Act.

1st by summary warrant authorising seizure of movable property.

2nd by forfeiture upon continued default subject to necessary safeguards.

(5) *Transfer of Property.*

Not allowed without approval of Government, but no special means afforded for facilitating transfer.

All deeds of transfer have to be passed through the Deeds Office. (Cost of conveyancing, etc., generally amounts to £5 or £6 at least.)

Transfer effected by simple endorsement before R.M. (who notifies Registrar, upon payment of a fee of 2/6. Regulations may be framed by the Governor providing for cases in which formal transfer is not applied for.

N.B.—In later cases, viz., surveys in Guma, Zibi Zali and Mhlambisa's Locations, King William's Town, the conditions of the Glen Grey Act have in this and other respects been incorporated.

(6) *Administration of Estate (Land).*

Subject to ordinary law. In practice it generally happens that property passes in accordance with principles of Native Law from father to son and so on, without formal transfer being effected. Hence the difficulty in respect of overlapping transfers and in addition Registrar of Deeds in most cases requires Order of Court to be obtained, cost prohibitive and often greater than value of land.

Landed property cannot be devised by will. Law of primogeniture applies under table of succession based on Native (unwritten) law and custom.

(7) *Control of Commonage.*

This is vested in a Committee or Municipality elected in such manner as the Governor may determine. No regulations have been provided, and there is no case of any such body being appointed. Power is vested in the Governor to make regulations but no provision is made for imposing any penalty for contravention thereof. In some instances communities have established Village Management Boards but the law relating to such Boards is largely inapplicable to the conditions obtaining in Native Locations.

(*Vide N.B. to (5).*)

This is vested in a Location Board and Governor has power to make regulations.

(8) *Forfeiture of land.*

Under Act 40 of 1879. Under Glen Grey Act.

The measure of forfeiture is provided under certain conditions for:—

No measure of forfeiture is provided.

1. Rebellion.
2. Stock theft.
3. Non-payment of survey expenses. (*Vide* (2).)
4. Non-payment of quit-rent. (*Vide* (4).)
5. Non-beneficial occupation.

(9) *One man, one lot.*

The principle is not laid down in the law but the restriction in respect of transfer admits of its being carried out as a matter of policy. There are however a number of cases in which the rule has not been observed. Owing also to the general slackness in obtaining transfer there is no saying to what extent deviation from the principle actually takes place.

The principle is definitely laid down in the law and has to be observed even in cases of succession.

(10) *Conditions of Title Deeds generally.*

These have been approved from time to time by Parliament as each survey has taken place. The conditions have gradually been added to so that in the latest surveys they almost coincide with those laid down in the Glen Grey Act. Generally speaking, there is however little uniformity in the conditions applying to various Locations.

A form of title-deed is provided.

CHAPTER XVII.

AGRICULTURE.

The relation of the subject of Native Agriculture to that of Land Tenure, whilst a close one, is not so intimate as to preclude a separate treatment of the two subjects. Summed up briefly, the bearing of tenure on agriculture is simply this—insecure tenure, bad agriculture; secure tenure, a possibility, sometimes realised, of good agriculture.

It is not suggested that secure tenure necessarily implies individual tenure in the full sense, although it does, of course, imply freedom from the capricious interference of the Chief—an interference which is apt to fall heavily on the progressive Native, whose activities are regarded by the Chief as indications of undue individual claims to the land.¹ As early as 1879 an experienced observer in Natal had noticed that the only comfortable and substantial houses in his area had been built by Natives who owned the land on which they were building.²

Insecurity of tenure is not merely a frequent danger in the Communal system. It arises also from the practice of permitting Natives to "squat" on European farms, where they are virtually at the mercy of the landlord. The position is exceedingly well put by Mr. G. E. Nightingale, Superintendent of Locations in the Albany Division of the Cape Province, when, writing of the Natives of his area, he says:—³

"Their condition of life practically remains unchanged, and cannot well be otherwise so long as they are dependent upon the goodwill of the land-

¹ See Report of Mr. (afterwards Sir) Henry Elliott, Chief Magistrate, Transkei and Tembuland, in Cape Native Blue Book, 1893, page 44.

² Report of Mr. H. C. Campbell, Magistrate, Umgeni, in Natal Native Blue Book, 1879, page 3.

³ Cape Native Blue Book, 1897, page 5.

owner for a home. It very frequently happens that no sooner have they built their huts and cleared a piece of land for cultivation than the farmer, on some pretext or another, gives them notice to quit, and away they go in search of another place. Thus it is that they are here to-day and there to-morrow and never sufficiently long in any one place to improve themselves or their surroundings."

This 'unsatisfactory state of affairs has been aggravated, in Transvaal and Natal, by the nefarious provision of the Natives' Land Act, that the European landlord in those Provinces may, at any time, without provision being made for the Natives' future (for no further "squatting" contracts may be entered into) eject such Natives as were "squatting" on his land when the Act came into effect in 1913.⁴

Yet security of tenure is not a panacea for all the ills of Native Agriculture. Even, when so wise a measure as the Glen Grey Act was introduced, and even in the most progressive Districts of the Transkeian Territories, competent observers felt that parallel with the improved form of tenure should run a system of agricultural teaching⁵—a system which, in a small way, has since been introduced by the General Council of the Territories under Magisterial influence. It becomes necessary, therefore, to examine the question of Native Agriculture on its own merits, and irrespective of the system of land tenure which may prevail.

What was the economic conditions of the Bantu tribes when they first began to come under the direct rule of the white man? The Natal Native Commission of 1906-7 allows eloquence to prevail over truth when it tells us⁶—"The hunter and warrior of yesterday is too often expected to become the industrial unit of to-day." This is to generalise from the very exceptional organisation of the Zulu Military Empire under Tshaka and Dingaan—a

⁴ Act 27 of 1913, Sec. 6 (c).

⁵ *Vide* e.g., Report of Mr. C. J. Levey, Resident Magistrate, Xalanga, Cape Native Blue Book, 1899, page 91.

⁶ *Report*, para. 27, page 7.

mistake never made by the greatest Natal authorities, such as Sir Theophilus Shepstone. The Native was not, normally at any rate, in the hunting-pastoral, but in the pastoral-agricultural, stage of sociological development when he came under White rule. His normal condition of life was that of a small cultivator and herdsman.⁷ His chief wealth consisted of his horned cattle, and goats, though poultry were not unknown.⁸ As regards crops, various varieties of millet ("Kaffir-corn") with a few vegetables such as those now known as "kaffir pumpkins" and "kaffir beans" formed the whole range of his agricultural activity.⁹

At a very early stage, and before the Bantu came directly under European rule, maize was introduced from European sources; and similarly mention of the horse begins to be made in Native tradition under circumstances which lead us to believe that its introduction cannot be much earlier than the beginning of the Nineteenth Century. Zulu folklore shows it to have been unknown north of the Umzimvubu River a few years before the emergence of Tshaka from obscurity.¹⁰ It will be realised, however, that neither of these changes wrought any very violent revolution in Bantu life. Maize and millet are in the same economic category; and the introduction of the horse at first tended to retard development instead of encouraging it, making the Native more mobile and less inclined to settle down to agriculture proper than before. The tendency of European administrators has been to encourage the acquisition of less mobile stock, such as sheep, and the growth of crops affording a wider dietetic range than maize or millet and involving production for exchange, as well as for subsistence. Undoubtedly this policy has been sociologically sound, as merely accelerating natural development from pastoral-agricultural to more purely agricultural conditions.

⁷ *Vide*, inter alia Theal: *History and Ethnography of South Africa before 1505*, page 267; Report of S. A. Native Affairs Commission, 1903—5, Vol. I, page 80.

⁸ Theal *Op. cit.*, page 276.

⁹ Theal, *Op. cit.*, page 267.

¹⁰ *Vide*, e.g., Russell: "Natal," pp. 180-1.

Direct encouragement of Native Agriculture by Government has not attained the dimensions which one has a right to expect. Indeed, as far as legislators are concerned, the neglect has been little short of scandalous. Fortunately in this as in other departments of the Native problem the indefatigable activities of our permanent civil service have made up for the failure of politicians. As early as 1825, under the paternal guidance of a Government official the Natives of Western Kaffraria were beginning to grow potatoes and green vegetables.¹¹ Under Sir Harry Smith and his successors this civilising process was accelerated. Sir George Cathcart appears to have been responsible for a successful endeavour to acquaint the Gaika tribes with the use of the spade and other implements.¹² Native Agricultural shows were instituted under the directions of the Magistrates among the Fingoes and other tribes, the Government at Cape Town, apparently intoxicated by the loyal associations of the date, actually donating £25 for a show held in the Territories on the Queen's Birthday (May 24th), 1873.¹³ Tree-planting was also encouraged and the Government offered prizes therefor in the Territories and also in Basutoland¹⁴—a practice which has unfortunately fallen into desuetude.

If the Government of the Cape Colony was somewhat niggardly in the matter of Native Agriculture, it was at least better than the remaining South African Administrations which did nothing at all. This is particularly disappointing in Natal, where early Native Administration was, in so many other respects admirable. It is significant that at the very time when the Cape Government was encouraging afforestation in Basutoland, the Natal

¹¹ Letter from Mr. W. R. Thompson, Government Agent in "Caffraria," to the Secretary to the "Commissioners of Colonial Inquiry upon the State of the Caffres, Ghonaquas, etc.," and upon the progress of missionary exertions among them, dated "Chumie," 22nd January, 1825.

¹² Despatch to the Duke of Newcastle, No. 47, dated Grahamstown, 15th October, 1853.

¹³ Report of Capt. Matthew Blyth, "Fingo Agent," dated Ngamakwe, Transkei, 4th March, 1874 (Cape Native Blue Book, 1874, page 41).

¹⁴ Basutoland: Minutes of the Annual Pitso held at Maseru, 1st March, 1877.

Government was being appealed to in vain to encourage afforestation in Natal—in spite of the denudation of parts of the country by Natives who, as always, stripped the land and never re-planted. After forty years of European rule in Natal it was possible to say, "No attempt has been made to introduce any better mode of cultivating the soil, and if any among them have been led out of the beaten track, it has been owing to the encouraging and directing efforts of private example."¹⁵ This appeal fell on deaf ears. In 1907, the Commission appointed after the Natal Native Rebellion again emphasised the advisability of Governmental training of the Native population in agriculture, by means of demonstrations and the offering of prizes.¹⁶ This was characterised as one of the definite objectives which should stamp the future policy of the Government.¹⁷ Nothing was done. The Union Government succeeded the Natal Government, and still nothing was done. Nothing has been done outside the Cape Province to the date of publication of this book. If Legislatures fail to act, why is it that, outside the Cape Province, Administrators have been unable to supply the deficiency? Is it, perhaps, because it is in the Cape Province only that Magistrates of predominantly Native areas are officers of the Department of Native Affairs?

In the last generation a most encouraging departure has been made. Since the grant of local autonomy which began with the Glen Grey Act of 1894 the Natives in the Transkeian Territories have—undoubtedly at Magisterial instigation—done for themselves what no European administration has ever done for them. In each of the eighteen Districts of the Territories is stationed a Native Demonstrator who is supplied with a plough, a harrow, a one-row planter and a cultivator, and who demonstrates to the Natives on their own plots how to grow maize according to up-to-date methods. These demonstrators are trained at the two Agricultural Schools at Tsolo and

¹⁵ Natal Native Blue Book, 1879, page 6.

¹⁶ Natal Native Commission, 1906—7; Report, para. 36, page 34.

¹⁷ *Ibid*, para. 53, pages 19—20.

Teko (near Butterworth) both of which have had their accommodation taxed to the uttermost. These Demonstrators are undoubtedly exercising a great influence for good. Natives are becoming convinced that their old methods are unprofitable, and are now beginning to plant, harrow and cultivate their crops in the manner demonstrated to them. Farm demonstration work on a large scale has been urged by one of our sanest Native leaders.¹⁸ It has been undertaken successfully among the negroes of the United States of America; and the Government of the Netherlands has already trained over fifty Native Demonstrators in Java and Madura alone.

Where Governments have failed, the great Missionary bodies have stepped in. The Natives of the Cape Province owe the introduction of the plough to the Rev. William Shaw, the *doyen* of Wesleyan Methodist Missionary work in South Africa.¹⁹ The Natives of the Transvaal are indebted for a similar blessing to the Reverend Ernest Creux and other missionaries of the Mission Suisse Romande.²⁰

Nor must one forget the fact that private individuals among the European population have busied themselves, not always from interested motives, in the training of their Native servants or tenants. When, for example, we blame the Government of the Orange Free State for its long record of inactivity in this matter, we must remember that a writer far from partial to Europeans²¹ has borne eloquent testimony to the kindness and forethought towards their Native tenants of the private farmers of that Territory.

The award of prizes by Government, and the holding of agricultural shows for Natives, are features of policy which have had a long and successful history, and which ought to form part of the general policy of Government

¹⁸ D. D. Tengo Jabavu in "The Black Problem," (Lovedale, 1920), page 54.

¹⁹ Commons Committee on Aborigines (British Settlements), 1836, page 58.

²⁰ S.A. Native Affairs' Commission, 1903—5, Evidence Vol. IV, p. 64.

²¹ Mr. Sol. T. Plaatje in "South African Native Life."

to-day. The first instance of the award of prizes is to be found in the Smith-Calderwood Location scheme of 1849. Prizes of £1, 10/-, and 5/- were awarded for the best and largest quantity of cultivated ground, of 15/-, 10/- and 5/- for the best fencing, of £1, 10/- and 5/- for the best and largest quantity of wheat, barley and other "European" produce, of £1 and 5/- for the best stock of poultry, ²² Presents of spades and hoes were first suggested by Colonel Hare, Acting Lieutenant-Governor, Eastern Districts, in a despatch dated Grahamstown, 10th October, 1838, recommended (with the addition of ploughs) by Sir George Napier in a Despatch, dated Cape Town, 18th October, 1838, and authorised by Lord Glenelg on the 24th January, 1839. Little was done however until, as already mentioned, Sir George Cathcart introduced the spade amongst the Gaiikas in 1853. ²³

The educative process was continued by Sir George Grey who presented a plough to Sandile, at the Chief's own request, early in 1855. ²⁴ The Show movement which originated under Captain Blyth in 1873 was a success from the beginning. At the Fingo Show of 1875, Kreli himself was present and acted as a Judge in the Horse Section. Over £66 was distributed in prizes. ²⁵ In the following year a new departure was made by the creation of an Agricultural Society in Emigrant Tembuland (23rd December, 1876). At its first meeting, "certificates of improvements made," handed in to the Government Agent, Mr. C. J. Levey, showed that *inter alia* thirty-three Native members had during the previous year planted 6,495 trees. The encouragement of afforestation was extended to Basutoland, where prizes of £3 in each District and £6 for the Lesuto as a whole were offered for the greatest number of trees planted during the year (1878) Mr. Levey's work continued so prosperously that in 1884

²² Government Notice of 9th February, 1849: Mr Calderwood's instructions and Regulations for Superintendents, dated Alice, 29th January, 1849. The Natives concerned were Fingos.

²³ See his Despatch, No. 47 of 15th October of that year.

²⁴ Report of Mr. Charles Brownlee, Gaika Commissioner, dated 30th May, 1855.

²⁵ Cape Native Blue Book, 1876, page 51.

the natives of the Cala District erected, at their own expense and without financial aid from Government, a substantial hall costing about £400, to be used for Agricultural Society and other meetings! ²⁶ Gradually the Agricultural Society movement has spread all over the Transkei. Its most striking feature has been its spontaneity. To take one example only, the Butterworth Native Agricultural Society formed in 1906, was, by the Magistrate's own admission, the conception of the Natives, and solely of the Natives.

The most encouraging developments in recent years have been the appointment of Native Demonstrators, already referred to, and the inauguration of the Experimental farm of the Glen Grey (Native) District Council, founded in 1904 and finally approved in 1909. ²⁷

Unfortunately this remarkable progress in the Transkeian Territories stands alone. Nothing like it is known in the Orange Free State, Transvaal or Natal. To the most impartial mind there seems scope here for criticism of the Department of Native Affairs since Union. What possible excuse can be alleged for a policy of inactivity? The Natives in Zululand, for example, hold some of the finest farming land in the Union; yet, economically it is valueless to the nation.

The new crops which have been introduced to the Natives with some measure of success are wheat, barley, oats, fruit and vegetables. Beginning with the Fingos of the Victoria East and Peddie Districts about 1865, ²⁸ the cultivation of wheat soon spread throughout the Transkeian Territories, ²⁹ a notable feature being the good example set by Chief Matuzana in St. Mark's District, who planted in 1885, as pattern to his tribe, a fine field of twenty acres of wheat. ³⁰ Ten years later in the Xalanga District—admittedly a progressive one—

²⁶ Cape Native Blue Book, 1884, page 120.

²⁷ Report of Cape Native Affairs Commission, 1910, pages 8—11.

²⁸ Correspondence on Encouragement of Natives to engage in Agricultural and other Labour, 1881, page 21.

²⁹ *Vide, inter alia*, Cape Native Blue Book, 1886, pages 33, 35, 53, 80.

³⁰ *Ibid*, page 81.

4,000 bags of wheat were threshed by machinery.³¹ The Magistrate, Mr. C. J. Levey, says³²:—“The prize wheat at last show was pronounced by competent judges to have been equal to the best grown in the Colony.” In Namaqualand, the Rhenish missionaries at Steinkopf, Richtersfeld and Kalkfontein had about the same time introduced the culture of wheat, oats and rye.³³ The oat crop first became large enough to be noticeable in 1875.³⁴ By 1903 it had become one of the most important exchange products of the Territories.³⁵ Orchards now common in the Transkeian Territories, were first noticed in the year 1896³⁶ by that indefatigable observer Mr. C. J. Levey, though he adds—what he could not say to-day—“At the present time I don't know a Native in the district that can prune or graft a tree.”³⁷

Many attempts have been made to introduce other crops, suitable rather for exchange than for subsistence; but hitherto without any but the most limited success. The Cape Government in 1886 made a definite attempt to introduce the culture of tobacco, cotton and silk in the Territories. Every Transkeian Magistrate was asked for his opinion as to the prospects of these crops. The replies were unanimously in favour of tobacco, and unanimously against silk: as to cotton, opinion was divided.³⁸ By the generosity of Mr. Samuel Cawood,³⁹ experiments were carried out with some success in cotton-planting in the Albany Division and in the Districts of Mqanduli and Willowvale in the Transkeian Territories.⁴⁰ Unfortunately the first season was a bad one, and with the failure of the Government to respond

³¹ Cape Native Blue Book, 1895, page 81.

³² *Ibid.*

³³ Correspondence and Report relative to the Lands in Namaqualand, set apart for the occupation of Natives and others, 1889.

³⁴ Cape Native Blue Book, 1876, page 88.

³⁵ S. A. Native Affairs Commission, 1903—5. Evidence of Mr. E. E. Dower, Chief Clerk, Cape Native Affairs Dept., Vol. II, page 2.

³⁶ Cape Native Blue Book, 1896, page III.

³⁷ Cape Native Blue Book, 1886, page 5.

³⁸ Cape Native Blue Book, 1887, *passim*.

³⁹ Cape Native Blue Book, 1886, page 5.

⁴⁰ *Ibid.*, pages 5, 55, 67, 78.

to the Transkeian Chief Magistrate's suggestion of accepting the Hut Tax in cotton⁴¹ the experiment ignominiously fizzled out. A private trader by the name of Beattie introduced, about the same time, the silkworm in the Elliotdale District, where both kinds of mulberry grow luxuriantly, but with no permanent success.⁴² Tobacco met with better luck. In 1886 and 1887 it was introduced widely; and fortunately many of the Natives were persuaded to grow it on enclosed ground,⁴³ thus avoiding the usual experience of progressive Natives—the destruction of any crops which come above ground before the maize and millet crops by their neighbours' unherded stock.⁴⁴ Unfortunately, the Government had no Marketing or Rural Economy Service at that date and even now does little or nothing to assist Natives (who need it most) in the sphere of marketing. The crops were raised, but there was no remunerative market provided. The tobacco was bought by neighbouring traders at a low price, and even that low price had to be taken out in goods.⁴⁵ In these circumstances it is not surprising that, though tobacco-planting still continues in the Territories, it has at no time reached the dimensions of an industry.

Among the less successful agricultural experiments were indigo cultivation,⁴⁶ the collection of gum⁴⁷ and coffee-planting.⁴⁸

On the eastern coast, sugar-planting carries on a precarious existence. The Natal Natives have done their part correctly,⁴⁹ and at first experienced the co-operation of the European millers. Unfortunately this has been

⁴¹ Cape Native Blue Book, 1888, page 33.

⁴² *Ibid.*, page 58.

⁴³ Cape Native Blue Book, 1887, page 63.

⁴⁴ Cape Native Blue Book, 1886, page 103.

⁴⁵ Cape Native Blue Book, 1888, page 33.

⁴⁶ Correspondence respecting the affairs of Bechuanaland, 1887, C. 5363, page 29.

⁴⁷ Cape Native Blue Book, 1889, page 34.

⁴⁸ Cape Native Blue Book, 1893, page 61.

⁴⁹ Report of Mr. A. J. Shepstone, C.M.G., Secretary for Native Affairs, Natal, vide Native Affairs Blue Book (Natal), 1909, page 5.

withdrawn, and a Native now gets his cane crushed with difficulty or not at all.⁵⁰ Such an attitude on the part of decent white South Africans is incomprehensible: presumably they wish the Natives always to remain a dead weight as far as the economic life of South Africa is concerned. There is great hope for the Native in sugar-farming if this can be remedied. In the last few years it has begun to increase sensibly in importance. Further north, in Portuguese East Africa, the cane is cultivated by Natives on a large scale. A few years ago one Native, Ben Vum-sen, had over two hundred Natives working for him in the season.⁵¹ Where the mills are distant, or closed to the Natives, there is, however, a grave practical danger that their industry will be led into wrong channels. Instead of sugar, a delightful and insidious drink—*ishimiyane*—a kind of rum—is prepared and drunk with avidity.

It will be realised that, disappointments notwithstanding, real progress has been made in Native agriculture proper under European Government. As regards stock, this has become much more noticeable. Unfortunately the attention of the Government has been directed mainly to sheep, instead of to the probably more generally suitable lines—poultry and pigs. Nevertheless the introduction of the sheep has resulted in a very marked difference in Native life both in the Transkeian Territories and in Basutoland—a difference which is almost entirely to the good.

As a result of inquiries made into missionary institutions in the Cape Colony in 1849, it was found that thirty two Mission Stations, inhabited by 12,983 Natives, possessed 2,874 sheep. This probably represents more or less the total of Native-owned sheep in the Cape Colony at that date; for Government had done nothing, and the Missions were obviously the centre of change from the old methods.

⁵⁰ This is one of the many very reasonable complaints made in D. D. Tengo Jabavu's 'The Black Problem.'

⁵¹ Information supplied by the Rev. R. W. Loffhagen, A.K.C.L.

In 1879 the sheep possessed by the Fingos alone were revealed by the census of that year as 211,174.⁵² In 1888 the wool production of the Territories was estimated at 2,300,000 lbs.⁵³ In the Lesuto the number of sheep has risen to such an extent that complaints are made of the destruction of pasture by them, and large barren tracts of land are being created to-day owing to the excessive size of the flocks which have to be fed.⁵⁴

Our Administrators were not slow to see the advantages of sheep-farming as against the exclusive production of horned cattle and goats. In a Memorandum prepared for the High Commissioner, dated 3rd December, 1864, Mr. Charles Brownlee, points out that the sheep enables the Native, by its wool, to pay his taxes without selling any of his livestock—a proceeding to which he is very averse. Moreover, by reason of the difficulty of conveying sheep rapidly from one part of the country to another, the possession of them by the Native formed one of the best guarantees of peace. As Government did not move in the matter, most of the progressive Natives among the Gaikas became flock-masters at Mr. Brownlee's personal risk.

A distinct impetus to sheep-farming in the Transkei was given by the movement of the Fingos from Victoria East and Peddie into the Territories. The Fingos though perhaps not the most amiable, are certainly the most progressive element among the Bantu. They have a shrewd eye for a bargain; and it is significant, therefore, to find them, in 1870, selling their cattle to buy sheep. Several Fingos had at that date flocks of one to two thousand; and the value of their annual wool production was estimated by Captain Matthew Blyth, the Government Agent among them, at £60,000.⁵⁵

⁵² Correspondence on the Encouragement of Natives to engage in Agricultural and other pursuits, 1881, page 21.

⁵³ Cape Native Blue Book, 1889, pages 29, 37 and 47.

⁵⁴ Information from Rev. Chas. Bourquin of the Mission Suisse Romande.

⁵⁵ Papers on the Social and Political Conditions of the Fingo tribes located in the Transkeian Territory, 1870. M. Blythe, "Fingo Agent."

From them the practice spread rapidly to the Tambookies⁵⁶ and even to the Pondos.⁵⁷ Imported Pedigree rams were purchased, privately, and the breeding of the Native sheep much improved.⁵⁸ In Bomvana-land, at that date alleged to be the most backward part of the Territories, sheep were introduced in 1888.⁵⁹ The practice of dipping was initiated in the same year.⁶⁰ Nor was this progress limited to the Cape, for gradually the practice spread northwards until to-day there is no Province where progressive Natives do not own sheep; though, unfortunately, their possession on a large scale by tribal Natives is still a feature of the Territories only.

Pig-farming has not been systematically encouraged. It can be traced to the Cape as early as 1849: it has spread to Natal and might have proved a success, but for the fact that the Bacon Factories have refused to accept the Natives' pigs. One supposes that they have their reward. Poultry-farming can also be traced at an early date,⁶¹ though it is only recently that many Natives—the Zulus, for example—have succeeded in overcoming their aversion to poultry as food. Eggs are still not eaten in many parts of the country. The Natal Government made an effort (1909) to introduce donkeys for ploughing purposes, owing to the ravages played by East Coast Fever among the oxen; and upwards of five hundred of these animals were issued to approved applicants,⁶² but the Union Government has done nothing to push the scheme and, like so many other experiments, it has failed from want of perseverance.

It should be mentioned, before leaving this part of the subject that the beginnings of a dairy industry have been

⁵⁶ Report of the Resident with Gangelezwe, Clarkebury, 28th May, 1872.

⁵⁷ Report of the Special Magistrate, St. John's Territory, 4th January, 1877.

⁵⁸ Cape Native Blue Book, 1886, page 63.

⁵⁹ Cape Native Blue Book, 1889, page 37.

⁶⁰ Cape Native Blue Book, 1889, page 33.

⁶¹ *Vide, inter alia*, Despatch of Sir Geo. Grey to Right Hon. H. Labouchere, No. 102, dated Cape Town, 18th October, 1856.

⁶² Report of Mr. A. J. Shepstone, C.M.G., Secretary for Native Affairs, Natal, in Native Affairs Blue Book (Natal), 1909, page 5.

noticed in the Territories, the first mention of Native-made Butter occurring in 1885.⁶³

Not only the matter but also the manner, of Native Agriculture has been revolutionised under European influence. And particularly is this the case with regard to the introduction of the plough. The professional historian, with his pen dipped deep in the crimson ink of wars and battles, with his "purple patches" and his eloquent perorations, may perhaps scorn this little epic of progress among a humble people in a land distant from the greater centres of civilisation. It would be easy to write an eloquent history of the Bantu. Dingiswayo and Tshaka, Moselekatse and Moshesh, Ketshwayo and Lobengula are not unworthy figures round which to build a history which would read like a romance. But the future historian of South Africa will realise that the record of social, economic and political progress is equally as inspiring as, and far more helpful than, the biographical, romantic and warlike elements which have so long usurped for us the whole field of history. The laurels of fame certainly await the South African writer who can succeed in doing for the white population what the writer of this book has attempted to do for the black. Indeed, if past historians had only preserved for us the history of the introduction of the plough, it would have proved fascinating reading to-day. Doubtless, in the far-off Germanic lands where our Dutch and English ancestors lived, it wrought as great a social and economic revolution as it has done among the Bantu of South Africa in the last century. It has not merely improved agriculture. It has set on foot the reconstruction of a society.

Introduced by the Wesleyan Methodist Missionaries among the Fingos, "the plough at first made slow progress in winning the confidence of the Natives. After twenty years, the progressive Fingos had only sixty-six

⁶³ Cape Native Blue Book, 1886, page 56.

⁶⁴ Evidence of Rev. Wm. Shaw before the Commons Committee on Aborigines (British Settlements), 1836, page 58.

ploughs.⁶⁵ But with the burst of activity in Native Administration which marked the third quarter of the nineteenth century, matters moved apace. In 1874, Mr. J. Rose-Innes, Civil Commissioner of King William's Town, reported that in his District the number of ploughs represented one plough to every seventh man.⁶⁶ In the Idutywa District of the Territories "every man that could afford it had a plough."⁶⁷ The Chief Kreli set the fine example of purchasing three.⁶⁸ At the same time Magistrates in Natal were commenting on the great increase of ploughs in their Districts.⁶⁹ In the Ixopo and Ipolela Districts—not extraordinarily progressive areas—there were as many as 1,500 ploughs in the hands of Natives as early as 1878 and the hoe was beginning to be looked on by the Natives themselves as old-fashioned and out of date.⁷⁰ About the same time ploughs were introduced among the Shangaans of the Transvaal. £15 was paid for the first plough.⁷¹

At first the Natives simply scratched the land. Even to-day deeper ploughing and harrowing is recognised as a desirability in the Territories.⁷² But as early as 1893 Sir Henry Elliott considered that he could see an improvement, "As good ploughing is now to be seen in many Native gardens as will be met with on a Colonial farm."⁷³

What was much more important than even the agricultural development was the change which the plough wrought in the status and general position of the Native women. Formerly all cultivation was done by the hoe. It was "woman's work." The more wives a Native

⁶⁵ Special Report by Mr. H. Calderwood on the Fingo Locations, dated 22nd January, 1855.

⁶⁶ Cape Native Blue Book, 1874, page 12.

⁶⁷ *Ibid.*, page 44.

⁶⁸ Report of Mr. J. Ayliff, Agent with Kreli, Cape Native Blue Book, 1874.

⁶⁹ See, e.g., Natal Native Blue Book, 1878, pages 5 and 26.

⁷⁰ *Ibid.*, page 39.

⁷¹ S. A. Native Affairs Commission, 1903—5, Evidence Question 41762.

⁷² Report of a tour of the Territories, by Mr. G. J. Bosman, School of Agriculture, Potchefstroom, published in the "Pretoria News," 5th April, 1922.

⁷³ Cape Native Blue Book, 1893, page 44.

possessed the more land he could cultivate. His labour and implement expenses were practically *nil*. With the introduction of the plough, the man had to set to work himself.⁷⁴ Compared with her former position, the woman was virtually emancipated.⁷⁵ Fewer girls were willing to consent to marry a man who did not possess a plough.⁷⁶ As is always the case, when we are honest enough to admit it, the wishes of the women were able to make themselves felt and to carry the day. There are resemblances, as well as differences, between the inner life of the white and the black man.

Undoubtedly the plough has meant a blow to polygamy. It is unfortunate that our statistics are not complete or reliable enough to prove anything, but one thing is certain: the increased use of the plough and the decrease of polygamy have proceeded simultaneously. It is difficult not to believe that they are cause and effect. Additional wives were no longer needed for labour purposes: ploughs cost money, and wives, cattle. If the latter were non-productive from the labour aspect and the former expensive, it is easy to see that monogamy would tend to win the day, even apart from the fact that the use of the plough began among Christian Natives.

The failure to manure is a great defect of Native agriculture. It was probably due in the first instance to the unlimited extent of acreage at the Natives' disposal which enabled them to select the most fertile spots and move about from place to place without the slightest regard to economy, dispensing with all necessity of manure. Almost all the Native witnesses before the Natal Commission of 1881-2 admitted that neither they nor their neighbours ever manured land.⁷⁸ Even to-day, when the Native uses ordinary kraal manure, as he now

⁷⁴ "The South African Natives: Their Progress and Present Condition."—Edited by the S. A. Native Races Committee, London, pages 10—11.

⁷⁵ S. A. Native Affairs Commission, 1903—5; *Report*, Vol. I, page 52.

⁷⁶ Sir Henry Elliott in the Cape Native Blue Book, 1893, page 44.

⁷⁷ See Natal Native Blue Book 1878, page 39.

⁷⁸ See Evidence *passim*.

does fairly frequently, it is very hard to induce him to adopt the application of artificial fertilisers; and a case was brought to the writer's notice where on one occasion after the application of such a fertiliser, a Native applied for some of the *muti* (medicine) to keep the weeds away!

Irrigation was never used by the Natives in their natural state. The demand for it seems to have arisen spontaneously by requests for watercourses addressed to Mr. Charles Brownlee in 1855 by Jobi, the father-in-law, and Tyali, the second Councillor, of the Chief Sandile.⁷⁹ In twenty years' time irrigation had become quite common.⁸⁰ In Natal, the Natives constructed watercourses on their own initiative, without Magisterial advice.⁸¹ There is still, however, enormous room for improvement in this respect, especially when one remembers that Zululand and the Transkeian Territories abound in perennial streams.

It has often been suggested that improvements in Native agriculture within Native Areas will mean a diminution of the labour supply for European farmers. This is not the case. The complaints of the Cape farmers, embodied in the famous resolution of the Cape Legislative Council of the 6th August, 1879,⁸² and repeated by Select Committees innumerable thereafter, were paralleled in territories and at times in which the Natives in Locations were receiving no training or help in Agriculture whatever.⁸³ Every sensible man knows that the Locations cannot be abolished: and the best practical policy from the Europeans' point of view fortunately coincides with that dictated by a sense of duty to the Natives. By improving Native agricultural methods, the Natives' wants are increased, and he is led to come out from his home to work for a European master for a time. When

⁷⁹ Mr. Charles Brownlee to Sir George Grey, 30th May, 1855.

⁸⁰ Cape Native Blue Book, 1876, page 88.

⁸¹ Natal Native Blue Book, 1878, page 19.

⁸² Correspondence re Encouragement to Natives to engage in Agricultural and other Labour, 1881, page 1.

⁸³ e.g. Evidence of Mr. J. N. Boshoff—before Natal Native Commission, 1846—7; Rapport van de heer Jan Steenkamp in New Republic Archives, 517/10 (March, 1886).

he comes, he is a more useful labourer for his increased knowledge. In the course of a panegyric on the agricultural advance of the Fingos, Captain Blyth, their Magistrate, is constrained to admit that they furnish a very large proportion of the Natives employed in the Colony.⁸⁴ Is this mere coincidence?

In endeavouring to demonstrate the general progress which has taken place in Native Agriculture since Natives first came under European Government, it seems advisable to quote two documents *in extenso*. The first, written on the 22nd January, 1825, describes what was then the most advanced Native settlement in the Cape Colony:—

“The village contains . . . thirty houses or huts of two apartments each, constructed in the European fashion, with what is commonly called wattle and daub materials. These houses were erected entirely by the men (the rest of the people live in their usual round huts). One brick house has lately been commenced which will probably be followed by many more. To each house a small garden is attached, cultivated also by the men, in which, in addition to their usual crops, they rear a few potatoes and culinary vegetables. A few individuals have trained to the yoke and work their own oxen when necessary.”⁸⁵

The second document, fifty-five years later, drawn up by one man—Captain Matthew Blyth—to whom the Natives of the Transkei owe a deep debt of gratitude, and dealing with the work of another—Mr. C. J. Levey—to whom equal recognition is due, describes the progress of the Fingos in the interval in words which make one forget for a moment that they form part of a Blue Book for they are in miniature an epic of all human progress,—Hesiod, if not Homer. This document may

⁸⁴ Correspondence on Encouragement of Natives to engage in Agricultural and other Labour, 1881, page 21.

⁸⁵ Blue Book: Cape Native Tribes, 18th March, 1836, page 186.

well serve as a type of the many similar records extracted by the writer from original Archives :—

“In 1835, the Fingos were brought down from the Ccalekas by the Government, and they were located in the Colony at Peddie, Victoria East, and Zitzikamma: many of the Fingoes took service among the farmers, more particularly in the Somerset East District, where they obtained a knowledge of farming and the use of agricultural implements, and also the mode of irrigating crops, sowing wheat, etc. On their return to their homes they purchased ploughs; this was the first great advance made by them, thus enabling them to cultivate mealies and kafir-corn to a far greater extent than they had hitherto been able to do. They sold their surplus corn and purchased sheep with the proceeds; thus another great stride was taken.

“In 1865 the Government located a large number of Fingoes in the Transkei; these brought with them the improved agricultural knowledge they had obtained in the Colony, also ploughs, wagons, etc. At this time there were but few ploughs amongst the Kafirs on this side ⁸⁶ of the Kei. They, however, soon saw the utility of them, and began to purchase ploughs and their use is now universal. At the present time there are 1,733 ploughs and 440 wagons in Fingoland alone. Many of the Fingoes grow wheat, oathay, peas, beans, and owing to the late unfavourable season for growing mealies and kafir-corn the cultivation of wheat will be largely increased. This will lead to a certain change of living on the part of the Natives. They must make bread, and so another step in the stage of civilisation is taken. In growing wheat they must enclose their lands ⁸⁷ and irrigate; and would not be inclined to leave their lands upon which they had bestowed

⁸⁶ i.e., the Transkeian side.

⁸⁷ Enclosed orchards and tobacco-fields are mentioned five years after this was written.

so much labour, and this, in process of time, will lead to better buildings being erected, gardens planted, etc.

"Sheep-farming is an important industry in Fingoland. When the census was taken at the end of last year, ⁸⁸ there were 211,174 sheep in that district alone. The sale of wool twice a year brings in a large sum of ready money annually into the pockets of the people, and leads to the increased trade and general prosperity of the people. A very large number of the Fingoes are always employed on the public works or otherwise in the Colony, their savings are brought back into the district, and thus add to the general wealth.

"This state of things is not equalled among the neighbouring Kafirs, with the exception that perhaps amongst (*sic*) the Emigrant Tembookies, who grow a considerable quantity of wheat, and who, like the Fingoes, gained their knowledge of agriculture in the Colony; they have also been encouraged (*sic*) by their Magistrate, Mr. Levey. ⁸⁹

From 1880, the date of the above Report, to the present day, progress, while not so rapid as in the earlier period, has definitely continued. The use of the plough has become widely diffused. Sheep-farming is now usual in all parts of the Cape Province and Basutoland. Unfortunately the vast masses of tribal Natives in Northern Transvaal, and Natal, still cling to maize, millet, horned cattle and goats. Pig and poultry farming is making slow progress in Natal, however. Still what is wanted is for the Department of Native Affairs to do in the other three Provinces what has already been done in the Cape. Is it indolence, indifference or inefficiency which has prevented such action being taken hitherto?

In the latter part of 1903, Mr. E. E. Dower, Chief Clerk of the Cape Native Affairs Department, and sub-

⁸⁸ 1879.

⁸⁹ Report of Capt. Matthew Blyth, Chief Magistrate, Transkei, dated 4th March, 1880 (in correspondence re "Encouragement of Natives to engage in Agricultural and other Pursuits," 1881, page 21).

sequently Union Secretary for Native Affairs, gave the following description of the average Cape Native :—

“The average possessions of the ordinary Native consists of, say, from fifteen to twenty head of cattle, a flock of sheep and goats, a couple of horses and a plough. That is the usual possession of an ordinary Native peasant living in a communal Native Location either in the Transkei or in the Cape Colony.”⁹⁰

This would be an incorrect description of the average Native in the other Provinces, inasmuch as he would have perhaps a few more cattle, some of which he would use for ploughing, no horses and no sheep. But at any rate it may serve to dispel the myth that we South Africans are a nation of brutal oppressors who deny the Native the right to live in his own country. The Bantu peasantry of South Africa are certainly much better off than the peasantry of Great Britain, probably better off than the peasantry of France, and almost as well off as the peasantry of Denmark. Still to have done well is not enough : we must do our best, and certainly we have failed tremendously to do that.

To sum up, the benefits conferred on the Bantu agriculturist, owing directly to European influence, are as follows :—

- (1) The granting of securer tenure than was possible under old conditions. Legally speaking, this applies to the Cape Province only; but practically speaking it holds good of the whole of South Africa, for the Native agriculturist no longer lives in constant fear of the depredations and inroads of other tribes. The European Government keeps the peace for him.
- (2) The extension of the range of crops grown to include wheat, oats, fruit and vegetables. On a large scale this is found in the Cape Province only.

⁹⁰ S.A. Native Affairs Commission, 1903—5; *Evidence*, Vol. II, page 3.

- (3) The introduction of less mobile forms of stock than cattle and goats—in particular, of sheep, pigs and poultry. To some extent this change has affected all parts of South Africa; but only sheep-farming has reached really large dimensions, and that only in the Transkeian Territories of the Cape Province and in Basutoland.
- (4) The introduction of better and less wasteful methods of agriculture, especially ploughing (all over South Africa) and latterly harrowing, manuring and irrigation, the last two chiefly in the Cape Province.
- (5) The encouragement of afforestation (chiefly in the Cape Province) and the statutory restriction of the denudation of forests (chiefly Natal).

Has our policy hitherto proceeded on the right lines? It becomes important to answer this question, and to answer it with an eye to South Africa as a whole—Europeans as well as Natives—avoiding the generous pitfall of many Native Administrators, the consultation of Native interests alone.

Is there scope in South Africa for the Native as an independent agriculturist? The answer is undoubtedly in the affirmative. In the first place, the settling of the Natives in agricultural locations was undoubtedly the only action which Government could have taken in the past: so in practice the retention of great numbers therein is the only course open to Government to-day. Even if it were desirable to make a change, it would not be practicable. Even if we did not believe in the future of the Native as an independent agriculturist, we should have to face the fact that he is one and will be one for long generations, it not for ever; and that we had better see how that fact can be turned to the best economic advantage of South Africa.

But, in point of fact, very convincing arguments can be brought forward to support the view that the destiny of the mass of the Natives of South Africa is to form an agricultural peasantry, owning the land on which they

farm. If every European farmer in South Africa to-day had all the Native labour he wanted there would still be a large surplus population to deal with. If they are not to be agricultural peasantry, what are they to be?

Industrialists? It is neither for their good or ours that they should become industrialists permanently or on a large scale. They are far happier, far more moral and in a far more natural state on the land than in the big towns—that no one denies. The massing of Natives in centres like the Witwatersrand, in spite of the Compound System, in spite of the fact that the Natives usually return to their homes in the Locations after their period of service, leads gradually to the growth of an Urban population, poor, squalid, propertyless, easily inflammable, whom the Bolshevik Third International has already designated the best material through which to spread communistic doctrine through Africa.⁹¹ They are a prey for the agitator, interested or disinterested, white or black, a potential menace to the community. Why make them unhappy in order to make ourselves unsafe? The only section profiting from the transaction is obviously big finance, usually absentee big finance and therefore unafraid of the deluge.

The Native problem cannot be entirely isolated from the Poor White problem. It is highly undesirable that the Native and the Poor White should be brought together in the crowded and immoral slums which disgrace Johannesburg and Cape Town—slums the thought of which, as the Native Affairs Commission tells us, in its first Annual Report, "murders sleep."⁹²

If there is one thing at all certain and definite about the Poor White problem, it is that the Poor Whites have made an utter failure on the land; and, so long as they drag out a squalid *bywoner* existence thereon, they will never improve. There is, as a matter of fact, a definite Poor White "drift to the towns"—a movement

⁹¹ Report of the Martial Law Judicial Commission, 1922, *passim*.

⁹² Report of the Native Affairs Commission, 1921, pages 8 and 28.

which Government has hitherto deplored, instead of utilising. In the towns, the Poor White has to work or starve. If he gets employment on a mine or in a factory, it is undoubtedly unreliable and inefficient; but he is acquiring a rudimentary discipline of labour and there is hope that his children, receiving as they do a decent education, may be able to escape the opprobrious epithet we apply to their parents. But, at present, the Poor White cannot expect to get employment on a large scale against cheaper and more efficient Native competition. We want to eliminate that competition, so far as we fairly can—how, it will be the task of the next Chapter to discuss.

The Native, on the other hand, is not naturally either a town-dweller or an industrialist. Any drift to the town noticeable in recent years is purely the artificial result of an ill-considered piece of legislation—the Natives' Land Act. So far is the Native from being a natural industrialist that, even with the assistance of elaborate recruiting machinery, the Mining Companies have never been able to acquire the whole of their labour from within the Union. Suggestions have been made from time to time that indirect pressure might be put on the Native to make him work. Why?

It will not benefit him; and it will not benefit us. Why not endeavour to replace Native labour in industrial centres more and more with Poor White labour, and conjointly with this modify the Natives' Land Act and encourage the agricultural activities of the Native? There is only one answer to this question and it is this—Mining Companies are like the Dutch East India Company of old: "All they want is dividends—prompt, heavy and continuous." Commercial Companies of a proprietary type are regarded, by all Colonial theorists, as the very worst developers of a new country possible.

Under these circumstances, when all the mists and prejudices surrounding the "Revolution" of 1922 have passed away, it is difficult to understand how the Government of the Union could calmly look on while the Mining Companies proceeded to replace Poor White

labour with Native labour and let the former drift back to the slums and crime. ⁹³

It seems clear, then, that there is permanent scope in South Africa for the independent Native Agriculturist, and that we have been following a wise and right policy in generally encouraging and supervising Native Agriculture. Has our detailed policy been correct?

It is possible to overrate the danger of European and Native competition in agriculture; but it would generally be agreed that, while no obstacles should be placed in the way of Native Agriculture, the direct encouragement of the Government should first be given to those phases of farming least likely to come into acute competition with Europeans. This is simply applying economically our general formula—that the key-note of a wise Native Policy in South Africa is to make European and Native activity complementary, not competitive, and to render Europeans and Natives necessary to each other.

Now, fortunately, it is just these phases of farming which are least competitive with European enterprise that are the very next things the Native ought to undertake, purely from the Native point of view—pig and poultry farming, and agriculture of the market garden type. The probability that Government would be doing right to encourage these activities becomes a certainty when we realise that such is the obvious next practical step, apart from all theorising, when we survey the summary already given of the progress of Native

⁹³ The writer has preferred not to fetter himself in the free expression of his views in the text; but the reader must, of course, understand that they are personal opinions which may or may not be correct. The writer feels strongly that they are correct; but it is only fair to warn the reader of the duty of forming a considered opinion for himself. See, further, Chapter XVIII (1923).

After careful consideration, while anxious to remove all passages likely to give offence from this book, and while admitting the excellence of the conditions under which many mine natives work. I have felt unable to alter the original text on this subject. I still feel that white and black South Africa are being made to suffer permanently for the sake of temporary profits in an industry the relative importance of which declines annually. The divided, unsatisfactory and too exclusively economic report of the Economic and Wages Commission has not altered this opinion (1927).

Agriculture to date. Poultry and pigs are typical peasant stock. Negroes have made a striking success of the former in the Southern States of America. Ignoring Ireland and Serbia, the best peasantry of Europe—that of Denmark—has risen to an unexampled prosperity very largely by the humble agency of the pig. Every one keeps pigs and usually as many of them as possible. To-day there are 503 per 1,000 inhabitants. Bacon and ham forms about one-fourth of the export trade of the country.⁹⁴ As a matter of practice there would be no very enormous competition with Europeans in South Africa in either direction. The production which would in the first place be for subsistence would afterwards be mainly for exchange; and the Government would be well advised to set up bacon-curing establishments in the various Native Territories, as the production increased, recouping themselves by a charge for each animal dealt with. One can easily see that the long view of this change is that it would be a good thing for the Native, a good thing for the European who would be able to dispose of his manufactured production as the wants of the wealthier Native increased, and a good thing for South Africa as a whole, seeing that the total wealth of the country would be much augmented. A great deal of attention would have to be devoted to breeding, for the present Native pig is frequently of a poor quality.

It is obvious that "market gardening," the growth of vegetables, would not compete with European enterprise, though in the vicinity of the towns, outside Natal where Indians fill the gap, it would add to the amenities of life. On the whole, however, this type of production would be mainly for subsistence, and the advantage of encouraging it would be the improvement of Native diet, which, being at present too exclusively cereal, reacts unfavourably on the intelligence. Together with market gardening the cultivation of cotton might perhaps be undertaken, where there is no direct European compe-

⁹⁴ Prof. I. J. Marais: "Bishop Gruntvig and the People's High Schools in Denmark," page 7.

tion as in Transvaal. The chief drawback to cotton-planting is the inadequacy, uncertainty and expense of the labour supply—features which certainly would not be found in a Transkeian rural area.

As to the method of training the Natives, undoubtedly the best plan is the utilising of Demonstrators, and also the insistence on practical supervision of the people by the local representatives of the Native Affairs Department. Native Agricultural Colleges should be constituted at any rate in Natal, Zululand and the Northern Transvaal; and Native Demonstrators trained to instruct their kinsfolk under proper supervision. Here is a branch of activity that we could well open up to Natives of intelligence and industry.

The growth of Native Agricultural Societies and the holding of Shows should be encouraged by Government, and prizes should be offered in each area for the best stock of poultry, the best stock of pigs, the finest vegetable garden and the largest number of trees planted during the year. The expenditure in this connection all over the Union need not cost more than the salaries of a few clerks, and yet be enough to stimulate Natives even in the least progressive parts of the country, to interest and activity. At the same time the limitation of the prizes in the manner suggested would be a strong indirect inducement to take up the forms of activity already indicated as most suitable for Native Agriculture.

It is not suggested that Natives should be forbidden to keep cattle or grow wheat, any more than that Europeans should be forbidden to keep pigs or grow potatoes. If a spontaneous Native movement for the cultivation of wheat, for example, should arise, it must certainly not be discouraged; any spontaneity in development needs encouragement. But we need not add directly to our difficulties by encouraging such a competitive crop before we have encouraged others.

In regard to details of method, the Native should certainly be taught to plough deeper, to plant instead of broadcasting, to harrow, to select his seed, to manure better and to irrigate.

Where tribalism is strong, it should be the aim of Government to secure the co-operation of the Chief where possible. This has been found easy and very useful in the past.

The day may yet come when the more advanced Native, developing upwards from the purely agricultural phase, will naturally become an industrialist. In these circumstances what could be better than to find himself surrounded by an agricultural population of his own colour, willing and anxious customers for the manufactured goods he can produce? This is, perhaps looking very far ahead; but Native Policy must think in centuries.

CHAPTER XVIII.

LABOUR AND INDUSTRY.

Before the coming of Europeans to South Africa, the Bantu were in no real sense of the term, an industrial people. It is needless to say (*pace* Karl Marx) that, although powerful government and an elaborate system of law existed, capitalism or any primitive equivalent for it was unknown. Occasionally there was what we should call "forced labour" for the Chief (*isibalo*) but this was usually given readily and with cheerfulness.¹ The Bantu were passing from the hunting-pastoral to the pastoral-agricultural stage, and such industries as they had were domestic.

First of these comes the basket-work group, with which must be associated the construction of the basket-like framework of their huts. Naturally also the thatching of the huts was a common art. In their actual construction not so much skill as might have been expected was shown. Though they purported to be circular, the attaining of a perfect circle by attaching a movable peg by string or its equivalent to a fixed peg was not known to them before they were shown it by Europeans and in some more primitive parts is not known to-day.² Yet much skill and artistic taste were employed in building huts, especially for the Chief. The description of Dingaan's hut at Umgungundhlovu, in Russell's "Natal: the Land and its Story" (a book the MS. of which was revised by Sir Theophilus Shepstone)³ is of interest in this connection: "It was twenty feet across and eight feet in height, and was supported by twenty-two pillars covered with

¹ Evidence of Rev. Wm. Shaw before Commons Select Committee on Aborigines (British Settlements), 1836; page 62; Evidence of Mr. C. A. Wheelwright before S. A. Native Affairs Commission, 1903—5, Vol. V, page 47.

² Several ludicrous instances are given in R. W. Plant's "The Zulu in Three Tenses."

³ Pages v and 164.

beads of various colours. The floor shone like a mirror.⁴ The palace was surmounted by a crown, ingeniously contrived out of twisted mats."

It will be noticed that bead-work is mentioned here. This is a species of occupation which, though the materials were derived from European sources, is otherwise genuinely indigenous and is a valuable index to Bantu ideas of art.

With basket-work must be associated mat-making in which the Natives were, and are, tolerably proficient.

The domestic utensils were made out of wood or clay. Spoons and even pots were carved out of wood, sometimes with great skill. The equivalent of a pillow—a carved piece of wood on which the *neck* rests, to the great discomfort of the unwary European who accepts Bantu hospitality—is one of the commonest of manufactures, even to-day. Sticks are carved with great ingenuity.

Other instruments were modelled in clay. Most large pots were of this material. There is excellent evidence available to show the artistic skill of the Bantu in clay-modelling. Mr. Peter Paterson, Resident Magistrate of Estcourt in 1878 tells us, for example⁵: "I have seen a wagon with wheels complete, and a span of oxen, very fairly modelled in clay by quite a young Native lad, and, amongst other things, a capital figure of his master on horseback modelled by a Native youth."

The smelting of iron, and even of copper, and the forging of assegai blades was well-established at the beginning of our period;⁶ and, if derived from external sources, must have been derived at a date prior to the settlement of the present white inhabitants of South Africa. In some areas smithing became a hereditary art in one tribe. For example in Natal, at the time of the Zulu War, nearly all assegais were manufactured by one

⁴ This is the case with most Bantu huts: a mixture of cow-dung and blood produces the smooth floor-surface.

⁵ Natal Native Blue Book, 1878, page 20.

⁶ Evidence of Rev. Wm. Shaw before Commons Select Committee on Aborigines (British Settlement), 1835, page 62.

tribe near Table Mountain (Pietermaritzburg County) in which all the men, young and old, were trained to the work.⁷ This is the nearest thing to a specialised, non-domestic industry of the European type that the writer has been able to trace among natives apart from European influence. Of course, iron-work was not confined to the assegai, but extended also to hoes, knives and even rough picks and hatches.

It is with this stock in hand—baskets and mat-work, wood-work, pottery and smithing—that the Bantu came under European influence. That influence has, in industry, been to them by no means an unmixed blessing. They have been instructed on wrong lines: the flooding of the country with cheap imported manufacturers, especially in metal, has entirely ruined the most promising indigenous industries. Those who estimate the Native as so much raw material for European industries have cared nothing for his own tastes and abilities; while even his friends, the Missionaries, have gone sadly astray in their training.

Nowadays we should take it for granted that the training of a primitive people in industry should proceed from the known to the unknown, and we should feel it more or less obligatory upon us, as educationalists, to develop lines of activity in which so much ability had been shown. But the early Missionaries, in this as in religion, came with a ready-made suit which fitted where it touched. As a result of inquiries made into Missionary Institutions in the Cape Colony in 1849,⁸ we find that out of 2,713 male adults on the thirty-two Mission Stations then in the Colony, there were only twenty-seven thatchers and twenty-one carpenters, five basket-makers, one mat-maker and twenty blacksmiths who can be said to represent primitive Native industry, duly developed. Perhaps to these we would be justified in adding the six hut-makers, and the one brick-maker; and, with less certainty,

⁷ Report of Mr. H. C. Campbell (late Judge of the Native High Court) in Natal Native Blue Book, 1879, page 7.

⁸ White Book: Particulars of Missionary Institutions in this Colony, 1849.

the fifteen wagon-makers. Of the remainder 1,742 were described as "labourers," 371 had no occupation, did not state their occupation or were "general workers," 171 were "farmers," "graziers" or "shepherds," 113 were carriers; 91 wood-cutters, 40 masons and builders, 31 shoe-makers; and there were ten tailors, three fishermen, three gardeners, three saddlers, three sawyers, three tanners, two shopkeepers, two coopers, one blanket-maker, one "Captain," one catechist, one cabinet-maker, one cook, one interpreter, one joiner, one "Military Pensioneer," one miller, one postrider, one rope-maker, one "superintendent," one tin-worker and one wool-washer.

In 1886 a Return was made⁹ in reply to a resolution adopted by the Cape Legislative Council, showing the extent to which Native pupils after leaving Industrial Institutions were engaged in industrial pursuits either among their own people or among Europeans. The results showed out of a total of 2,075 investigated cases 580 teachers, 326 farmers, 211 carpenters, 134 shopmen and storemen, 114 evangelists and catchists, 103 transport riders and wagon-drivers, 95 clerks and interpreters, 63 policemen, 59 ministers of religion, 59 sewing-mistresses, 39 shoemakers, 36 blacksmiths, 36 tailors, 36 wagon-makers, 30 masons, 30 painters, 28 tinsmiths, 23 telegraph messengers and letter carriers, 22 bookbinders, 15 furniture-makers, ten law agents, eight shopkeepers, six millers, five journalists, four thatchers and three sawyers.

Let us proceed to analyse these figures a little. It will be noticed that of the four original branches of Native industry, the basket-work-thatching side is represented by four thatchers only—less than 2 per cent, of the total; the pottery side has entirely disappeared; the woodwork side is represented well by 211 carpenters and 15 furniture-makers; and the smithing side, somewhat inadequately by 36 blacksmiths. Native industry has become an acquired, laborious imitation of European industry.

But more. Notice that out of 2,075 Natives trained in *Industrial* institutions 945, or approximately 45 per

⁹ Published in a White Book, dated 17th June, 1887.

cent. are engaged on professional, semi-professional or clerical pursuits (viz., 580 teachers, 114 evangelists and catechists, 95 clerks and interpreters, 59 ministers of religion, 59 sewing-mistresses, 23 telegraph messengers, 10 law agents and 5 journalists); 626, or approximately 30 per cent. are engaged on pursuits which, although not professional, cannot be called industrial in the specialised sense of that term (viz., 326 farmers, 134 shopmen and storemen, 103 transport riders and wagon drivers, 63 policemen): and only 504, or approximately 25 per cent., on industries proper (viz., 211 carpenters, 39 shoemakers, 36 blacksmiths, 36 tailors, 36 wagon-makers, 30 masons, 30 painters, 28 tinsmiths, 32 book-binders, 15 furniture-makers, 8 shopkeepers, 6 millers, 4 thatchers and 3 sawyers). These figures point us to the unfortunate change which has gradually affected Native education in South Africa. If any Native in South Africa is to be an industrialist, it is the detribalised, educated type. But the strong tendency is to-day for these detribalised Natives to become ministers, catechists, teachers, interpreters—anything but skilled manual workers among their own people.

To return, in the meantime, to our main argument, it must be clear that the general effect of industrial education in the nineteenth century was to allow the old pursuits to die away and to replace them by an exotic set of industries foreign to Bantu habits and wants.

Somewhat similar social and economic difficulties to those resulting from this industrial training have been caused by the movement that sprung up after the Great Trek—namely, the employment of free Bantu labour for agricultural and domestic purposes. It began simultaneously in the Eastern Province of the Cape and among the Voortrekkers and spread rapidly. Soon the demand began to exceed the available supply. In 1848-9, Messrs. Gideon Joubert and A. A. Ortlepp presented a very interesting Memorandum¹⁰ to Sir Harry Smith, proposing to create local government bodies in every area of the

¹⁰ Published as a White Book in 1849.

Cape Colony to control the "labouring classes"—a paid "cashier" to keep a list of such persons as require servants and one of persons who seek employ, so that he may be able to provide for both.

The Native as a domestic servant was needed the moment slavery disappeared. Fortunately he was fairly willing to work. No pressure, even indirect, had to be employed. As a domestic servant he has now become an intimate part of South African society, known to the novel-reading world in the thrilling pages of the late Miss Gertrude Page and to the more intimate South African public through the exquisite absurdities of Leonard Flemming.

The plan of Messrs. Joubert and Ortlepp was not accepted. It is almost incredible that to-day, while South Africa depends almost exclusively (except in coastal Natal where Indians are used) on Native domestic labour, there is no proper Registry Office on the lines advocated by Joubert and Ortlepp in our largest urban centres, and no method of training domestic servants in their work prior to engagement.

The result is that every household not exceptionally rich is apt to experience long periods of acute discomfort from bad service or lack of service. While it may be said that such facts are beneath the dignity of political-historical research, the fact remains that the average town-dweller's knowledge of, and views on, Natives is confined to his (or her) kitchen.

In 1855 a new sphere of activity was opened up for Natives in the Cape, viz., as labourers on Public Works.¹¹ This was part of the general policy of Sir George Grey. The labourers were, of course, engaged under ordinary conditions and paid.

A variant of this practice had occurred earlier in Natal. The first authentic proof of *Isibalo* (forced labour for the Government) dates from 16th November, 1850; on which date a Magistrate was called upon to furnish a certain number of Natives to be employed on the main

¹¹ Speech of Sir George Grey in opening second session of first Cape Parliament, 15th March, 1855.

road between Durban and Pietermaritzburg. Some difficulties were experienced at first, but we find the system fully established by 1858, *vide* Despatch No. 37 of Sir J. Scott, dated 2nd June, 1858, Para. 7, which reads: "The making and repair of the Public Roads and other works of the Government are done by the natives. Whatever number may be required for these purposes is obtained by an Order from myself as Paramount Chief. This order is obeyed cheerfully, and is a matter of duty."¹²

It is needless, perhaps, to say that this system was merely a continuation of the practice before European Government was introduced, and further that that Government acted through the Chiefs invariably in securing the labour supply.

Mr. John Ayliff, Acting Secretary for Native Affairs, defends the system in a Memorandum, dated 15th September, 1876, in which he says: "Experience having shown us that they will not labour from free choice, and that there is no necessity sufficiently pressing to induce them to labour continuously, it is surely no injustice to expect that, in return for the many benefits we confer, they should supply that moderate amount of labour which will prevent positive perpetual idleness, and afford an auxiliary to the introduction of fresh news, new habits, and the creation of artificial wants."

The Natal Native Commission of 1881-2, recommended the continuance of the system.¹³ But already ominous difficulties were being encountered with regard to it. While private Natives complained that the Chiefs only called out for *isibalo* individuals against whom they had a grudge and exempted their personal friends, the Chiefs themselves alleged that the duty of providing labourers brought them only unpopularity among their people, while the wages which the Government now

¹² Papers relating to the Supply of Native Chiefs of Native Labour in connection with the Public Works of the Colony, 1880, page 10.

¹³ Report, page 11. The only dissentient was Sir Henry Connor. *Vide* Report, page 17.

paid were lower than the standard rate and hence the fact of payment was not the mitigating circumstance it might have been.¹⁴ It was even suggested that a gradual movement of Natives from location to private lands was due to a desire to escape the *isibalo* system.¹⁵ Its abolition was one of the first acts of the Union. Natives still carry out almost all public works on roads in Natal, but are recruited and paid as ordinary voluntary labourers.

In a very small way, and in isolated instances, Native Industry proper (*i.e.*, for themselves or among their own people, not as unskilled labourers for Europeans) continued to advance during the latter half of the nineteenth century. A Native printing-press was set up at Lovedale early in the nineteenth century.¹⁶ Skilled printers were found among Christian Natives in Natal as early as 1878, and in the same year it was noticed that the more advanced Natives were beginning to understand the uses of capital and the advantages of associated labour.¹⁷ In 1883, the Natives in the Cala District of the Transkei erected their own Agricultural Hall at a cost of £400.¹⁸ A year earlier the private enterprise of a progressive farmer, Mr. J. E. Methley, of "Newstead," Natal, had resulted in three Natives of his District building themselves five-roomed houses of dressed stone and brick, and also in the construction of a small Native Church entirely by Native labour.¹⁹ In 1896, that indefatigable Native administrator, Mr. C. J. Levey, introduced the osier willow in the Xalanga District, with a view to a through working out of the basket-making industry, recommending Government at the same time to introduce a few expert

¹⁴ See Remarks of Mr. A. E. Titren, R. M. Umlazi in Natal Native Blue Book, 1882, page 255.

¹⁵ This allegation was made by the Hon. J. Kirkman in a Debate in the Natal Legislative Assembly, 18th January, 1908. (Debates, Vol. XLIV, page 32).

¹⁶ White Book: Report of the Lovedale Institution for 1860. page 4.

¹⁷ Report of Mr. H. C. (later Judge) Campbell in Natal Native Blue Book, 1878, page 27.

¹⁸ Cape Native Blue Book, 1884, page 120.

¹⁹ Letter from Mr. J. E. Methley to Mr. J. P. Symons, Colonial Auditor, Natal, dated 12th January, 1882.

teachers of basket-making from Europe.²⁰ But by the time his willows were grown the white races of South Africa were too busy cutting one another's throats for Government to attend to basket-making.

These are but a few facts called from a very large treasure-house. In parts of South Africa, and especially in the Transkei, there are many Natives making an honest living in some form of industry, though few perhaps approach the good fortune of the Native saddler who in 1903 was stated before the Inter-Colonial Commission²¹ to be making £250 *per annum*. Yet, if Europeans withdrew *en bloc* to-morrow, the number of Natives employed in industry would be a negligible percentage. The bulk of Natives employed in industry are artificially—we do not say wrongly—brought into a system external to them: they are exploited—using that term in a perfectly neutral and innocent sense—by European capitalists. As a people, as a separate entity, they have not yet reached, even with the tremendous impact of European example and missionary teaching on their ancestral habits, the industrial stage.

The absorption of Native labour into large industrial concerns began with the Mines. The Diamond Mines proved a fruitful source of unrest and trouble in Native Affairs as in other things, prophetic as always of the Gold Mines. "At the diamond fields guns and ammunition were sold as openly as any other merchandise, and the tribes far and near were enabled to arm themselves."²² The results of this nefarious practice, which Sir Henry Barkly refused to prohibit, were, *inter alia*, the Disarmament struggle (or Gun War) in Basutoland and the Sekukuni rising, resulting in the first annexation of the Transvaal.

More important in the long run (as far as Native Affairs are concerned) than any spasmodic war was the initiation of the employment of Natives, as unskilled

²⁰ Cape Native Blue Book, 1896, page 112.

²¹ Evidence, Q. 39, 550.

²² Theal: "History of South Africa 1873—1884." vol. II, page 55.

labourers in industry away, for long stretches at a time, from their homes, and their housing in compounds. It is a most artificial system, and, as far as Natives at least are involved, provocative of great harm.

While these events were taking place on the Diamond mines of Griqualand West, the faint beginning of a similar change were also to be noticed in the South African Republic. The goldfields of the Eastern Transvaal never became so rich a source of income as the diamond mines, and they were mostly worked in the early days by individuals or small partnerships,²³ so that, while Native labour was recruited for them the new development was on a small scale and very localised. But when, after the retrocession, the Witwatersrand goldfields were discovered, a similar process took place to that which we have noticed in Griqualand West.

It is not, of course, argued that the use of Native labour as the basis of the mining industry was necessarily wrong, though, quite undoubtedly, it can only be justified from the economic, never from the political and social point of view. But what does seem to call for severe censure in the policy of Griqualand West and of the South African Republic, is the complete failure to look forward and reflect on the advisability of the use of black labour as the basis of these very profitable industries. The whole economic situation of South Africa underwent a revolution during the quarter of a century 1870-1895, which has enormously aggravated the whole Native question. Is it not permissible for an historian, however impartial, to let escape him the passionate conviction that the Jameson Raid, the three years' tragedy of the South African War, the industrial upheavals of 1913 and 1914, the "Rebellion" of 1914, and the "Revolution" of 1922, the division of the white races, the demoralising of the black and the birth of a bitter colour hatred based on deep-seated economic causes, are a bitterly heavy price to have paid for the material wealth of the goldfields? Was it worth it? Perhaps it is late to ask the

²³ A most graphic description of them is given in G. R. von Wielligh's "Langs die Lebombo."

question; yet it will assuredly be a good day for South Africa when the gold mines of the Witwatersrand make way for more solid and less hectic forms of industry.

Of the demoralisation of the Bantu, resulting from their employment on the goldfields, there can be no doubt. Publication after publication of the Cape and Natal Governments—too many for quotation—refer from the 1890's onwards to the increase of immorality and drunkenness, the loss of respect for elders, the adoption of European clothing and European diseases,²⁴ resulting from the recruitment of Natives to work in the Johannesburg mines. Sir Henry Elliott as Chief Magistrate of the Territories, comments on the alarming increase of syphilis among the Natives of his administration, due to the labourers returning from the Mines, as early as 1892.²⁵ In Johannesburg itself, the result of one generation's "progress" has been the creation of slums where white and black live in a porcine juxtaposition—slums "so disgraceful and immoral that the thought of them murders sleep."²⁶ In a case brought before the Roodepoort Magistrate in December, 1920, it was proved that Native girls of from nine to fourteen years were becoming prostitutes—the result of the peculiar conditions under which they were brought up. As is well-known, prostitution is a "civilised" and European, not a Bantu, custom. It is almost unknown in the kraals. Poor whites exist in Johannesburg, by illicit liquor-selling and less reputable means, unable to get work for so long that they are now unwilling to get it. They exist—we cannot say live—on the spot; while Native labourers are recruited with every device that the law allows to be employed to attract labour, and brought from Territories hundreds of miles away, in many cases to be ruined in health and morals. What a pitiful spectacle—and all justified by the shibboleth of industrial progress.

Doubtless this is very melodramatic and rhetorical. Yet a historian, however, poor his personal work may

²⁴ See e.g., Natal Native Blue Book, 1897 *passim*

²⁵ Cape Native Blue Book, 1893, page 46.

²⁶ Report of Native Affairs Commission, 1921, page 8.

be, belongs to a goodly fellowship, and derives the right, as the result of years of patient research, to challenge facts, customs and institutions which are commonly taken for granted. When conviction deepens to absolute certainty that right becomes a "burden" such as that borne by the prophets of old; and there is such a compulsion on any researcher on Native policy to cite before the bar of divine justice those who by acts of commission or omission have produced the industrial and social problem of the Rand within forty years—for *nothing (and this is absolutely unquestionable) but the thirst for wealth*. This is, of course, impracticable idealism, and hence out of place in a Chapter on Labour and Industry. Must we not believe that idealism is a fault? "Captains of Industry" have told us so, and Karl Marx has confirmed them.

We have now considered the employment of the Native as a workman for himself, among his own people, as an unskilled or semi-skilled labourer for European artisans or small industrial companies, as a domestic and agricultural servant, and lastly as part of the machinery of huge industries such as the mining industry. Before proceeding to analyse the present position, a few words may be added regarding the Native in commerce.

He has shown a marked inaptitude for it. In 1886, the statistics already quoted in this Chapter show that only 5 *per cent.* of the Natives trained in industrial institutions became shopkeepers among their own people. Slowly the number of Native shopkeepers in the Transkei has increased, but the bulk of commerce is in the hands of Europeans and Indians, sometimes, but not often, a power for good.

In Natal the process has been even slower, due to excessive Indian competition. The phenomenon of Native shops appears to have been first noticed in 1897.²⁷ But as late as 1909 there was not a single retail store in Zululand in Native hands²⁸ and even to-day such could probably be counted on the fingers of one hand.

²⁷ Natal Native Blue Book, 1898, page B. 12

²⁸ Natal Native Blue Book, 1909, page lxxii.

In the South African Republic the process began a little earlier. Stores had been opened and licensed in the Pretoria location before 1896.²⁹ But any hope there might have been of the spread of Native commerce disappeared before the Indian immigration which succeeded the extinction of the Republic's independence. In South Africa as a whole it is safe to say that there is virtually no Native commerce, and that commerce in Native areas is in the hands of Europeans and Indians.

Coming back to the main field of industry and labour, it is advisable to realise the peculiar difficulties which are attached to a discussion of this topic. It is well to remember how modern the white-black labour question really is. In some ways its growth has been imperceptible. Not until the last quarter of the nineteenth century, with the opening up of the Mines and the increased number of skilled Native workmen trained in industrial schools, did the problem become noticeable. A further quarter of a century has served to make it acute.

But being so very modern a problem, it is one difficult to discuss fully without an appearance of partiality. It is also the most perplexing aspect of the Native problem, and there is no shame in feeling less assurance in the remedies suggested in this Chapter than in some other cases where there is a long record of experiments on which to build constructive suggestions. While it is perfectly easy to see the errors of the past, it is by no means easy to know what to do when saddled with the burden of those errors and a generation of the complications arising from them.

One thing must be remembered and that is that, as in the case of agriculture, it is worse than futile to discuss the economic aspect of the Native problem without reference to the poor white problem. We have already seen, in the previous Chapter, that the national economic future of the Native is in peasant-proprietorship of the land and in agriculture and small stock. We implied there that the natural economic future of the poor white

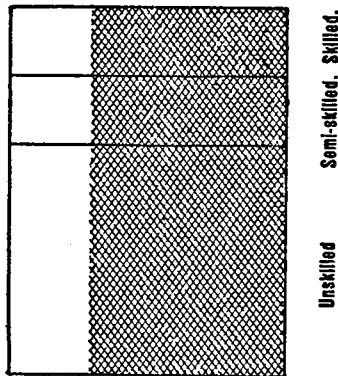
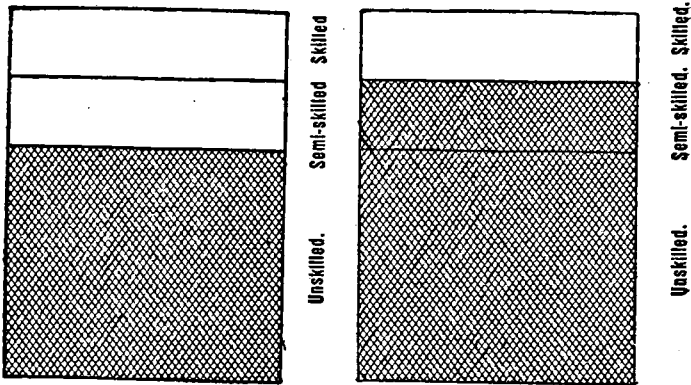
²⁹ Staats-Prokureur's Minute S. P. No. 396/96.

is as an unskilled or semi-skilled industrial worker. There can be little doubt as to these conclusions. We may outrage nature, of course—at our peril.

Our condemnation of the motives and methods associated with the past introduction of Native labour into large industries must not however be read as condemning the employment of Natives in industries under all conditions and in all circumstances. Where it is possible to provide in the vicinity of the industry—as it is difficult or impossible on the Rand—a Native village where the permanent labourer can live naturally and happily with his family, there is every argument for the employment of Natives under *such* conditions in industries to which they are attracted, provided that the provision of industrial employment for the poor white population receives first attention, and provided that a satisfactory solution can be offered to the problem of black-white competition, which would arise.

Probably the best thing that could happen as regards the mining industry would be a genuine scheme of the gradual replacement of black by white labour. The Witwatersrand area cannot carry the Native population which the proper provision of Native Villages for its employees and their families would involve—apart from all other considerations. Things being as they are, what is wanted is a series of gradual experiments in white labour, utilising the unemployed already in the Union, and particularly in the Witwatersrand area, with a view to at least the diminution, and if possible the ultimate replacement of black labour on the Mines. This has been held to be economically impossible; for whites have hitherto been put on to at least semi-skilled work, demanding comparatively high wages; and the replacement of ten blacks by ten whites involves necessarily an increase of expenditure, without—in the *present* state of the poor whites—an increase of production. At present we have on the gold mines what may be termed a horizontal colour bar. Skilled labour must be exclusively European, unskilled labour must be exclusively Native. Where the

line exactly fell with regard to semi-skilled labour was the problem which led to the crisis of 1922. But is there not a way out in what one would term a vertical colour bar—that the industry should be so divided that the whole of the work in certain Departments should be European, skilled, semi-skilled or unskilled, and in certain other Departments, Native. Of course skilled posts could not be filled by Natives at once, but they would have first claim to such posts in certain Departments. The change is illustrated in the Diagrams below :—



It would in the long run mean the employment of more white men at a lower white salary-bill, and a lower total expenditure. To white and black it would be fairer and wiser than the present policy of reserving a small percentage of skilled posts for the whites and barring all progress upwards for the blacks; and also than the suggested policy of removing all restrictions and allowing "free" competition. Once again the policy of differentiation proves itself superior to the policy of identity and the policy of subordination.

Yet this policy of differentiation itself commands—agriculture for the Native: industry for the poor white. And, as modified by the fact that the poor white population could not supply the whole of our semi-skilled or unskilled labour, it means—admission of Natives to industry, where they can live in natural conditions in Native Villages and where their families can pursue market-garden agriculture. That is to say, of all areas to-day the Witwatersrand area is the one least suited to Native industry, and our goal should be its disappearance therefrom as far as the Mines are concerned. If, however, the compelling economic forces which our errors have created should prove too strong for us, and an admixture of black and white, should be a permanent feature of the gold-mining industry, then it is but just to the black labourer that if he can do skilled work he should not be forever debarred from doing it, and to the white labourer that unrestrained competition between the black and white for all posts should not be permitted. The position outlined in Diagram III above is thus a good second-best. Of all possible solutions that of the Colour Bar Act is undoubtedly the worst.

Elsewhere, in factories and large industries, black labour would sometimes, though not always be essential. In such cases it is suggested that the method of division outlined in Diagram III gives the principle to be followed, adapted to the technical circumstances of each case. But always there should be the proviso that new industries employing Natives should be prepared to co-operate with urban authorities in creating Native villages. Perhaps

industrialists are not concerned with the morality of their labour supply, but they are much concerned with its permanency; and only the Native Village can give that.

It is only possible here to suggest general solutions. The details require to be filled in for every industry separately by those skilled in the technicalities of that industry. It would be not merely pedantic, but presumptuous, to suggest such details here. The principle, however, is perfectly clear, perfectly fair and perfectly practicable—provided that the support of Trades Unions concerned be sought, and the co-operation invited in every case. Such co-operation would be given were the scheme perfectly understood; and indeed it seems the very industrial policy which any Labour political organisation in South Africa would be best-advised to adopt.

Summing up what has been said so far—The natural line of development for the bulk of the Bantu is peasant agriculture, as for the bulk of poor whites industrial activity. The first efforts of Government should, therefore, be for the improvement of Native agriculture, and the throwing open of more ground to Natives by the modification of the Natives' Land Act suggested in Chapter XV.

Poor white labour is not sufficient to meet all our industrial needs, and a certain amount of Native labour can well be used, under satisfactory conditions.

These conditions would involve the creation of Native Villages in the industrial areas concerned where Natives could live a natural family life, and where their families could carry on market-gardening and perhaps poultry-keeping thus facilitating the transition from agricultural or industrial life.

Obviously areas where the creation of Native Villages is difficult or impossible are those where Native labour should be least encouraged.

Elsewhere there should certainly be differentiation between white and black where both are employed on one industry—not in the permanent subordination of the black, but in the division of work into two schedules

vertically instead of horizontally, so that *all* labour and control in one section would ultimately be black and in the other white.

If it is impossible entirely to do away with black labour on the gold mines, a similar scheduling should take place there. In any case it could be advocated as forming a useful transition stage towards undiluted white labour.

To these points it only remains to add that where influence, public opinion and similar factors can produce any of these suggested changes, legislative prohibitions should not be introduced.

To many these suggestions will appear fantastically chimerical. One can only point out as an antidote to such an attitude that without their acceptance, one must expect, sooner or later, one of two alternatives.

The one will be the disappearance of all colour-bars, the gradual elimination of white labour and its replacement by black; the almost infinite extension of the poor white problem with its concomitants of ignorance, poverty and disease; the attraction of increasing numbers of Natives into industrial life under conditions which have hitherto produced demoralisation and vice; and finally extensive miscegenation among poor whites and urban Natives, such as is becoming a scandal in the Johannesburg slum areas of to-day.

The second will be the retention of a colour-bar which will prevent the Native from ever rising to the status of a skilled labourer; the increasing massing of Natives, gradually advancing in skill, in urban centres, where landless, hindered from rising, living under conditions where any excitement is a relief, they would furnish excellent material for revolutionary communistic propaganda. Communism they understand perfectly and practice admirably on the land, under natural conditions. Communistic propaganda they understand as incitement to attack the white man. They would be beaten, of course, after fearful bloodshed; but is it to the interest of either race to provide so horrid a disaster?

Let us beware then of a dogmatic haste in rejecting the conclusions of the policy of differentiation. There are

only two other ways. Are we prepared to support either of them?

We come next to the problem of Natives working for themselves, *i.e.*, not in the regular employ of Europeans, though frequently most of the work is done for Europeans—such people as Native bricklayers, painters, paper-hangers, blacksmiths, shoemakers, etc., now slowly but definitely increasing.

It is easy to see that the early missionaries made a great error in teaching their people all and every trade known to Europeans, instead of concentrating—to begin with at any rate—on the improvement of existing Native handicrafts. In a new country, it would be advisable to concentrate on such handicrafts, and, by excluding similar training from European trades schools, make a tacit vertical bar between Native and European industry. This is virtually what is being done at the present day by Mr. H. S. Keigwin, Director of Native Training in Southern Rhodesia. "As far as possible,"³⁰ he says, "only those industries which do not offer direct competition with Europeans have been considered. The aim has been rather to seek means whereby the Native arts may be encouraged and the latent wealth of raw materials which the country undoubtedly possesses may be brought into use." The industries which he has selected for development are :—

- (1) The collecting and marketing of hides and skins.
- (2) Food production.
- (3) Rope and mat-making.
- (4) Basket and chair-making.
- (5) Pottery and tiles.
- (6) Carpentry and wagon-work.
- (7) Smithing.

Developing the Keigwin experiment, we should get a scheme whereby Natives might be specially trained in these and similar industries, and European trades schools and technical institutions might specialise on a different set. No legislative action would be necessary. At first

³⁰ Interview published in "Pretoria News" of 17th June, 1920.

glance it seems a practicable and attractive solution of a great problem.

But we have to face in the Union the difficult situation that, partly as a result of the parrot cry of "industrial education," ill-conceived and vague as it has been, Natives varying in number have been trained in practically every trade and handicraft known to Europeans. It is but just to say that in many cases they are a credit to such training.

The Keigwin scheme might therefore, with advantage, be combined with a further line of division—that is, that in certain "scheduled" trades, where competition is to-day keen and productive of great bitterness (e.g., bricklaying, painting, masonry, etc.—the actual Schedule would require to be drawn up with great care and in the closest co-operation with the Trades Unions), the black artisan should work only for a black employer, and the white artisan only for a white employer, *i.e.*, a white man must get another white man to paint his house; conversely, cottages in a Native location must be constructed by Natives. In many urban areas houses have been built for Natives by European labour at Trades Union rates, with the result that the rent which the Municipality has had to charge is beyond the capacity of the Natives to pay, with anything like comfort.

The outlet for Native industrialists will ultimately and naturally be the great Native areas. If the Natives inhabiting those areas are not naturally ready for the mason, the bricklayer, the glazier or the plumber, it only shows the artificiality of training skilled Native artisans in these crafts. The duty incumbent on those who have the interests of Natives at heart is to develop them along sound lines of civilisation, adapted to their own temperament and past training, where the art of the craftsman will naturally be called forth by the demands, and for the happiness, of his own people.

Education should, in new and primitive areas where such a course is still possible, begin on the lines of the Keigwin scheme intending to work up to a fuller training as the surrounding population becomes ready for its products. European Trades Schools should be persuaded

gradually, and tacitly, to drop all or some of the industries of the Keigwin scheme from their curricula. The items of the Keigwin Scheme—or such as the co-operation of the Trades Schools might be found possible on—should not be among the “scheduled” trades.

Then, again, if we do not accept some form of the policy of differentiation, we have to choose between ultimately rendering it difficult or impossible for a white artisan to make a living in South Africa, or perpetuating the most striking syncretism between the industrial training of our schools and missions and the actual economic conditions under which the Native artisan is to pursue his trade.

Against these probabilities, fraught with the most frightful danger of colour hatred and colour warfare, we set the policy whereby the Natives, while trained in a few simple non-competitive trades, mostly of exchange value, for the benefit of the country at large, will in most industries work exclusively for their own people, as Europeans for theirs. Points of dangerous contact would be restored, the possibility of friction reduced to a minimum, and the spheres of the two races in labour and industry made, as far as is humanly possible, complementary and not competitive.

CHAPTER XIX.

RELIGION.¹

The natural religion of the Bantu, prior to the advent of European missionaries among them, was of a surprisingly negative and inadequate character. It has been so often and so excellently described by experts that it is perhaps, unnecessary to go into details here.²

There are strong *prima facie* grounds for Christian missionary activity among the Bantu. Their lack of any real form of religion when they possess a temperament peculiarly susceptible to emotional and mystical appeal is really surprising. In their development towards a higher stage of evolution, the compelling forces of religion, are needed. Not only the enthusiastic pietist, but the scientific student, must agree that Christian missionary work on the right lines is not unnecessary and is not premature.

Practically every Commission in the country which has reported on the Native question has recommended the encouragement of Christian missionary activity as not only the right, but the wise, policy for Government.

The Natal Native Commission of 1852-3 reports:—³

“The religious training of the Kafirs should be left to the zeal of the Christian Churches, and to the Missionaries. Religious training must especially be attended to, as mere secular teaching without regular moral and religious instruction, will never alter the character of a barbarian, it will only render him more acute and consequently more dangerous.

“Every countenance, pecuniary and otherwise should be afforded to the Missionaries, so long as they devote themselves earnestly and exclusively to their

¹ Missionary education is dealt with in the succeeding Chapter.

² Fortunately a new edition of Dr. H. A. Junod's "Life of a South African Tribe," the classic on this subject, is now in the press.

³ Report, page 54.

duties, and conduct themselves in a manner befitting their high calling.”

The Natal Native Commission of 1881-2 reports as follows:—⁴

“We have to some extent perhaps to apologise for there being so little direct reference to Christianity in this Report. Most of us are, doubtless, satisfied that the one great element for the civilisation and happiness of our Natives would be found in that very institution about which we are thus silent—a real Christianity. But we believe that the instrumentality for Christianising the Natives must be left to the exertions of religious bodies and private individuals. At the same time we should recommend that in every Government School for Natives the work of the day should be begun with some simple form of worship.”

The Cape Native Laws and Customs Commission of 1883 says:—⁵

“It is a sincere gratification to the Commission to be able to bear its unanimous testimony to the high opinion formed, both from hearsay and from personal observation and experience, of the good which is being effected, morally, educationally and industrially, by Christian missionaries among the Native population; and we recommend that all the countenance, protection and support which may be possible should be extended to them by the Government.”

The South African Native Affairs Commission of 1903-5 reports:—⁶

“The Commission considers that the restraints of the law furnish an inadequate check upon this tendency towards demoralisation, and that no merely secular system of morality that might be applied would serve to raise the Natives’ ideals of conduct or to counteract the evil influences which have been alluded to, and is of opinion that hope for the elevation

⁴ Report, page 16.

⁵ Report, page 52, para. 140.

⁶ Report, pages 55—56, paras. 286 and 295.

of the Native races must depend mainly on their acceptance of Christian faith and morals.

.....
 "It does not seem practicable to propose any measure of material support or aid to the purely spiritual side of missionary enterprise, but the Commission recommends full recognition of the utility of the work of the Churches which have undertaken the duty of evangelising the heathen, and has adopted the following resolution:—

- (b) The Commission is satisfied that one great element for the civilisation of the Natives is to be found in Christianity.
- (c) The Commission is of opinion that regular moral and religious instruction should be given in all Native schools."

These resolutions were carried unanimously.

The Commissions quoted, comprised in their ranks some of the leading citizens and most able Native Administrators of South Africa, including Sir Theophilus Shepstone, Mr. John Bird, C.M.G., Mr. J. N. Boshoff (at one time President of the Orange Free State), Sir Walter Stanford, Mr. Charles Brownlee, Sir Thomas Upington, Sir Herbert Sloley, Mr. J. C. Krogh (at one time Superintendent of Natives of the South African Republic), Mr. F. R. ("Matabele") Thompson and Mr. S. O. Samuelson. Could a more brilliant panel of South Africans skilled in Native Affairs be named?

That there is a strong current of opposition among South Africans to Missionary work is undeniable. In many cases it is quite certainly the product of ignorance and prejudice among the less educated sections of both white races. But the overwhelming mass of those South Africans qualified to speak are certainly in favour of Missionary activity rightly and wisely directed. It is perhaps often rather a passive friendliness than an active assistance that is given; for the old, unhappy history of Missionary errors—and worse—that preceded the Great Trek has sunk deep into the hearts of the older population

of South Africa. As the Missionaries swallowed up discrimination in zeal, so the Voortrekkers and their children, perhaps the most truly religious race in the world to-day, have tended to swallow up zeal in discrimination. ⁷ Signs are not wanting, however, of an awakening of Missionary zeal in the Dutch Churches of South Africa—it is significant that only recently Dr. du Plessis has given us the best missionary history of South Africa—and there is no doubt that, when they bring their unrivalled knowledge of local conditions and of Bantu psychology into the Mission field, the battle of Christianity in South Africa will have been won. It is not generally known that these Churches have at present over two hundred missionaries at work in Africa. As the nineteenth century has run its course, those Missionary bodies which draw the bulk of their

⁷ The attitude of the older population in the latter half of the Nineteenth Century is epitomised in the Sixth Article of the Grondwet of the New Republic (1884); “Het volk laat de uitbreiding van het Evangelie toe onder de heidenen onder bepaalde voorzorgen tegen gebrek of misleiding.”

(“The people permit the extension of the Gospel among the heathen under fixed precautions against fault or deception”).

The Government of the New Republic was very kind to the (Anglican) Bishop of Zululand. They granted him land in Vryheid, their capital, and restored his Mission Stations, which had been destroyed in the various Native forays of 1884—after many inconvenient delays, it is true. In return, they received the following letter which cannot have predisposed them in favour of English missionaries:—

“Hatfield Road, St. Alban’s,
November, 1886.

“To the State Secretary,
Vryheid.

“Sir,—From what we have read lately in the daily papers here in England, I gather that your Government may be congratulated upon having at last concluded a Convention whereby recognition has been obtained from His Majesty’s Government and a definite boundary agreed upon.

Please, therefore, make my compliments to Mr. Lucas Meyer and to the members of the Executive, and express my hope that, what has been arranged may conduce, to the peace and prosperity and progress of our part of South Africa.

You are well aware that the present solution of the difficulty is not quite that which I have thought would be the best for all parties. *I have always hoped that England would annex the whole territory*, give British titles to farms within a boundary to be agreed upon, and place Magistrates at once among the Zulus in the remaining portion.

I remain, Sir,
Yours faithfully,
(Sgd. Douglas,
Bishop for Zululand.”

evangelists from overseas have gradually learned more of local conditions and are gradually overcoming the errors which disfigured early missionary work, and which will be adverted to later.

From what has been said, it must be clear that, if the Bantu are to be assisted at all in evolving towards a higher and better life, missionary work among them is essential, and this has been admitted, with varying degrees of enthusiasm, by those best qualified to form an opinion among both of the races which are now gradually amalgamating into the South African nation.

To these arguments must be added two others.

Firstly, we have broken down to a very large extent the old tribal ties and the old tribal discipline. The old, Bantu sanctions of morality are gone, and unless they can be replaced by the sanctions of a true Christianity moral disaster faces the Bantu which cannot fail to work grave harm to, as it would reflect deep disgrace upon, the European of South Africa. ⁸

Secondly, the choice is no longer what it was fifty years ago—Christianity or *laissez-faire*. There are two grave possibilities gradually developing into probabilities, against which the only remedy is a true Christianity. The spread of Islam among the African races has been phenomenal. It is well-known that the creed of Mohammed has conquered North and West Africa. It is not so well-known that it is penetrating through Central Africa. Its increase in Nyassaland has been startling of recent years and it has made itself there a force to be reckoned with by the Government. Through Northern Rhodesia and Southern Rhodesia it may filter through to the Union which, indeed, has already its own Bantu Mohammedans in small numbers, due to Indian influence.

There is no bigotry in repeating the generally accepted verdict of history that, while Christianity carries in itself the seed of growth and life and has proved most success-

⁸ This is the main argument of two excellent books, Maurice Evans' "Black and White in South-East Africa"; and R. W. Plant's "The Zulu in Three Tenses."

ful in adapting itself to changing conditions and advancing civilisations, Islam is a dead, rigid, stereotyped religion which cannot make for the advancement or happiness of a race such as the Bantu. By sanctioning their lower impulses and associating them with the bliss of Paradise, and by fostering their military instincts, Islam will make itself a blighting curse. Its one good point—the prohibition of intoxicating liquors—is a definite rule of many parts of the Christian Church in South Africa, and a practically universal custom in others. To the Bantu the substitution of Islam for Christianity would be a disaster of the first magnitude.

It is singularly distasteful to employ arguments based on self-interest, but this must sometimes be done for the benefit of that curious type of person who likes to huckster in immortalities, yet must be reckoned with as possessing influence and a vote. For the benefit of such let us consider then the effect which a widespread extension of Islam among the Bantu would have upon the European population of South Africa. To race and colour antipathy would be added the fuel of a fervent religious hatred, for Islam is always militant. War against the white man would become war against the infidel—the “Kafir” as the white man would, paradoxically enough, become to the Native. Religion which ought to provide the great reconciling element between white and black, diverse in so many ways, would be an additional and most unnecessary, factor of diversity.

There is however not merely the danger of Islam. There is the danger that the Bantu will, among themselves and of themselves, found a new religion by a process—the misunderstanding of Christianity and of its sacred books—similar to that which produced Islam in the first place. Already for many years South Africa has experienced a premature movement among Native Christians for complete independence in ecclesiastical matters. The autonomy of Bantu Christianity is indeed a desirable, ultimate end, but to-day they are quite certainly unable to take such a tremendous step with success.

This "Ethiopian" movement is attributed by the Inter-Colonial Commission of 1903-5⁹ to a desire for independence from European control; but the Commission goes on to say that "almost without exception secessions have been led by Church officers who have been unable to co-operate smoothly with their European Superintendents." There is little doubt that unworthy ambition has played the greatest part in the formation of many "Ethiopian" sects. Many of the leaders of the Ethiopian movement are men who have not yet reached the European standard of intelligence and responsibility.¹⁰ Lamentable want of discrimination has been displayed in ordinations. The moral standard has been greatly reduced. The recent inquiry by the Government into the Separatist Church movement has, it is understood, largely confirmed this view.

To some extent "Ethiopianism" is due to the shibboleth of the "open Bible." A doctrine suited to the advanced and liberal Protestantism of races with centuries of religious discussion behind them is not necessarily good for a people for whom some of the institutions and restrictions of Catholicism seem especially fitted. And indeed to throw open to a nation of polygamists, with tendencies to tribal warfare or at least tribal jealousy, the Books of Genesis and Kings, of Judges and Chronicles; seems likely, to the lay mind at least, to do as much harm as good.

From another standpoint "Ethiopianism" is due to the faults and prejudices of Europeans who have attempted to keep the Native members of their particular Church in a state of subordination unjustifiable either by the New Testament or by sound rules of worldly wisdom. There is a fatal tendency on the part of Europeans to believe that subordination is the only way to avoid identity, as among Natives to hold that only by identity can subordination be overcome. Neither will readily see, in religious as in other matters, that a wide autonomy to

⁹ Report, paras. 319—321.

¹⁰ There are exceptions to these remarks—as the writer knows from personal experience—but not many.

the Native Christians within a Church, a differentiation calculated ultimately to divide the Church practically into autonomous European and Native sections, would meet all the difficulties of the situation without necessarily infringing the principle of the potential equality of all believers, or the equally sacred principle of Christian Unity which could be, and should be, laid down by occasional Joint Services.

However this may be, "Ethiopianism" has spread and with its spread the spirit of ambition, personal rivalry and egotism, so bound up in it has split it up into innumerable sects. To-day on the Witwatersrand alone there are one hundred and thirty of these separate and independent "Ethiopian" Churches. ¹¹

Doctrinally "Ethiopianism" was, and still mainly is, truly Christian. But the multiplication of sects, to whom the open Bible is available, but with no qualified person to expound it, is gradually leading to a tremendous danger, exemplified startlingly enough by the "Israelite" rising of 1921, that by gradual steps a militant religion may be produced strikingly like Islam and not Christianity in any real sense of the word. Yet, unless European Christians are prepared to throw themselves heartily and generously into the work of evangelising the Bantu, there is little doubt that this tendency will provide us with disquieting episodes in the future, and will result in grave harm to the Bantu.

These arguments ought collectively to be overwhelming to the Christian South African, especially when he realises the great successes that have attended genuine Christian missionary work among the Natives. As Dr. G. M. Theal put it, ¹² some forty-five years ago: "The

¹¹ Information from Transvaal Missionary Association through the Rev. Charles Bourquin.

¹² Correspondence between the Government Agent with Oba and the Civil Commissioner of Alice (White Book), 1878, page 17. It is instructive and not unentertaining to compare. Dr. Theal's views in this *brochure* with those of his mature life, when he no longer regarded Tiyo Soga as typical but as exceptional. He still however retained his high opinion of Tiyo Soga personally, and in his *History of South Africa since 1795*, Vol. III, page 8,

people of Oba present to the philanthropist and the Missionary the same material to work upon that has already been fashioned into a Ntsikane and a Tiyo Soga."

It is commonly alleged that Christian Natives are more prone to criminal acts than "raw" or "unspoilt" Natives. This ludicrous statement is so frequently repeated that it may be advisable to make some reference to it.

In all the Magisterial Reports (approximately 2,000 or more, most of them referring to Districts where missionary work was widespread) which the author has read, he has been unable to find one instance where Christian Natives are alleged to have given more trouble to the police than heathen Natives, despite the fact that some of the Magistrates in reporting made no secret of their hostility to Missions. On the other hand there are recurring references to the superiority of Christian Natives, of which a few have been selected for quotation here.

Mr. Peter Paterson, Magistrate of Estcourt, Natal reported in 1877 as follows:—¹³

"The Christian Natives residing on the Mission Stations are quiet and peaceable, and they scarcely ever figure in the Magistrate's Court, either as criminals or litigants."

In 1886, Captain Matthew Blyth, Chief Magistrate of the Transkei, reporting on the whole of his area after about twenty years of experience in Native Administration, said:—¹⁴

"Crime is almost entirely confined to the heathen part of the community, the Christians but rarely committing themselves."

In 1897, Mr. R. H. Addison, J.P., Magistrate of Nqutu, Zululand, stated:—¹⁵

he refers to "the reverend Tiyo Soga, an earnest, enlightened, zealous and self-denying Christian missionary, such a man as any nation of the world might be proud of." (It may not be generally known that Dr. Theal came to this country originally as a member of the staff of Lovedale.)

¹³ Natal Native Blue Book, 1878, page 18.

¹⁴ Cape Native Blue Book, 1887, page 55.

¹⁵ Natal Native Blue Book, 1898, page C. 28.

"An inspection of my Criminal Note Books for the last ten years would show that few Christian Natives have been convicted."

In the same year Mr. J. J. Field, Magistrate of Mapumulo, an almost purely Native District of Natal, thought it useful to carry out an investigation of the criminal convictions of Christian and heathen Natives spread over a number of years.¹⁶ The result of this may be tabulated as follows:—

	Population.	Criminal convictions.	Percentage of criminal convictions to population.
Total	34,514	707	2.05
Christian	1,902	14	.74
Heathen	32,612	693	2.12

These figures speak for themselves. It would be interesting to have similar ones from all Magisterial Districts; there is little doubt that the results would be similar.

Mr. Field adds a few words of explanation which help to some extent to explain how the opinion came to spread among the more ignorant public that Christian natives are more criminal than heathen natives. "The notion," he says,¹⁶ "that the Christian Native is worse in every respect than his heathen brother is chiefly the result of ignorance, arising from the common, but of course fallacious, idea that all dressed Natives are Christians, or have been educated or brought up on a Mission Station. All dressed Natives are commonly called *Ama-kolwa* (i.e., believers) and hence the confusion between the Christian and the dressed Natives."

This view is confirmed by two Native administrators whose opinions are entitled to the highest respect.

Mr. W. H. Beaumont (later Sir William Beaumont, Administrator of Natal and subsequently Chairman of the

¹⁶ Natal Native Blue Book, 1898, pages B7—B9.

Commission set up under the Natives' Land Act) writes,¹⁷ as Magistrate of Inanda in 1893 :—

“While I speak of missionary agencies, let me say in their behalf that too generally a great wrong is done them by people assuming that every Native who dons European clothing is a ‘Kolwa’ and a product of missionary agency. This is very far from the truth. The Natives generally in that imitative faculty common to us all, delight to ape the European, to wear his clothes and to affect his ways; and they do this as often as not when they are heathen without any connection whatever with any Mission Station.”

Mr. Maynard Matthews (now Mr. Justice Matthews) writes as Magistrate of Dundee, in 1902 :—¹⁸

“The disposition to wear European clothing is more manifest, and most of those so attired speak of themselves as “*Amaḱolwas*” (*sic*) but, on enquiry, it is generally found that they are not under the control of any Missionary, nor do they live on Mission Stations. I have noticed that Natives who are arrested for stock thefts and serious crimes are frequently of this class.”

It is to be hoped that in face of this array of evidence—very modest compared with what could be produced—the cruel and unjust slander that missionary work makes criminals of the Natives will not be repeated.

One thing is very certain—that we must not scorn or make light of the work of missionaries who have patiently devoted their careers, and sacrificed in many cases distinguished and brilliant futures, to do for our faith and our country what we have signally failed to do ourselves. Nearly all our missionaries have come from overseas. Many of them have been neither of Dutch nor of English birth. The evangelisation of Basutoland and much of the Transvaal has been the work of French and French-Swiss Protestants, whose self-sacrificing labours stand in strong contrast to the apathy displayed by so many

¹⁷ Natal Native Blue Book, 1894, page 18.

¹⁸ Natal Native Blue Book, 1902, page 33.

of the descendants of the Huguenots. The moral and material progress of Namaqualand has been due mainly to German missionaries,¹⁹ whose indefatigable activities have wrought wonders also in Southern Natal. The Church of Norway has sent out large numbers of missionaries to Natal and Zululand. Within the fold of the great Roman Catholic Church France and Germany, Italy, Ireland and the Netherlands have contributed to the welfare of the South African Natives. Nor has the New World been lacking. Among the very earliest missionaries to South Africa were the Americans who made their home in the coastal regions of Natal.²⁰ If we are tempted to censure these "foreigners" for their errors, let us recollect that they did and are doing work which is, by every obliga-

¹⁹ *Vide, inter alia*, White Book: Correspondence and Report relative to the lands in Namaqualand set apart for the occupation of Natives and others, 1839.

²⁰ It is pleasing to note the favour shown to the American missionaries in Natal by the Volksraad of the Republic which is consistently represented by the ignorant as being against all Missions. As is well known the Rev. Daniel Lindley gave up his missionary work for a time in order to minister to the spiritual needs of the Voortrekkers, at a salary of £100 per annum;— which, nevertheless was more than one-fifth of the Republic's annual revenue. The Rev. Aldin Grout, another American missionary, presented to the Volksraad on the 5th August, 1840, "het Wet-boek (apparently the Constitution) van de Verenigde Staten van Amerika," which proved of some service in the evolution of the various Republican Constitutions. While on the subject of the early history of Natal, it may be desirable to quote the following extracts from the original letter preserved in the Pretoria Archives, written in English but signed by Piet Retief. It is dated 8th November, 1837:—

"If you wish to hear more fully how God treats wicked kings, you can enquire of all the Missionaries in your country. You can believe what these teachers tell you concerning God and His Government over the world. In regard to these things, I must advise the King frequently to speak with these gentlemen who wish to teach him God's Word; for they will inform him with what great power God has governed, and still governs all earthly kings. I assure the king it is a good thing for him that you have allowed Teachers to settle in your country. Also, I assure you that these Teachers have come to you because God has put into their hearts so to do: and they can show you out of the Bible that what I now say is true.

"These gentlemen have not (obliteration in the original letter) ask you for your country or for your cattle, or to give you trouble in any way, but merely to teach you and your people God's good Word."

The Missionary with Dingaan, the Rev. F. Owen, was sent out by the Church Missionary Society.

tion of Christian and patriotic duty, ours. We have the knowledge which would enable us to avoid the errors which we criticise in them. Prejudice and long habit ought to restrain South Africans from a task to which they are so manifestly called.

If, therefore, we proceed to point out some of the errors made by the early missionaries, and some which are still prevalent to-day, it is in no spirit of censure or unkindness, but simply in order to explain the slowness of the evangelisation of South Africa, the reason for the antipathy towards Missions felt by so many South Africans, and the measures which might be taken to produce better results.

There can be little doubt that Christianity has been presented in too individualistic a form. This is largely due to the time when missionary work began. It was in all the fervour of the Evangelical Revival, and mainly by Churches influenced thereby, that the Gospel was first preached to the Bantu. It is not too much to say that the conceptions thus presented differed profoundly from those of the Divine Founder of Christianity. In His Name Who told his earliest followers that whosoever would save his life should lose it, the Bantu were exhorted to come out of their tribal life and leave their fellows in darkness while they saved their own souls. The early Portuguese and other Catholic missionaries tried rather to induce a tribe *as such* to take up Christianity—a process for which they have been blamed instead of praised by historians. Even if this system breaks down as against an obdurate Chief yet the essence of it may be retained by dwelling on the corporate aspect of the Church and the duty of the converted to influence their brethren at whatever cost. Too often this has not been so. Christians who as a result of centuries of corporate and external religion have arrived at a stage where they feel individuality and the absence of externals to be desirable are not necessarily justified in imposing that advanced state of affairs on the Bantu just emerging from heathenism.

The truth is that missionary effort of the nineteenth century did not, broadly speaking, endeavour to fit itself to the needs, the history and the state of development of the Native peoples. It was a ready-made system which fitted where it touched. All the *paraphernalia* of each Christian domination had to be introduced as they stood in the country of the missionary's origin at the time he began his labours. The English Church, for example, inflicted on the Native all the delicate niceties and intricate subtleties which the fertile brain of Archbishop Cramner wove into the Book of Common Prayer, whilst the Native to whom the Dutch Reformed Church ministered was gravely initiated into the theological mysteries of the Synod of Dort. And say what you will, there was something exquisitely humorous in a full-blooded Xosa or Fingo solemnly describing himself as a member of the United Free Church of Scotland.

Indeed, as one considers these things, the multiplicity of European denominations ministering to Natives, the absence of co-operation and sometimes the presence of active hostility between them, presents itself to one as an additional bad feature of missionary enterprise. It is well-known that a Native under Church censure or discipline at the Church of missionary A. frequently goes across the hill and is admitted to full membership by missionary B. who represents another facet of Christian truth, but need not represent a hostile division of Christian organisation. Union of Christian Churches is in itself a desirable ideal, unlikely as it is to be realised while the clergy of each Church remain the repository of *odium theologicum* and endless quibbling hair-splittings about apostolic succession, transubstantiation, predestination, the singing of hymns and what not. While awaiting the lay revolution, the second Reformation, which will one day overthrow these things if the clergy never gain more vision than they have to-day, what can we do in the meantime to avoid entangling the Bantu in our quarrels? Surely it would not be impossible for the heads of Christian missions in South Africa to conclude an agreement by

which every Church engaged not to admit to membership Natives whom they have been informed by the authorities of another Church are under ecclesiastical censure, nor to erect a Church within three miles of an existing Mission. Such an appeal to Christians for the sake of the "little ones" regarding whose consciences the Founder of Christianity warned His followers to be scrupulously tender will probably be made in vain against the forces of ecclesiastical bigotry which envelop, not so much the self-sacrificing missionary, as the imposing ecclesiastical head of his Church.

Is it not open for an unbiased critic to argue that Christianity has been presented too often to the Bantu (as of course to Europeans) as getting, rather than giving? The impulse of generosity, so strong in the Native if properly appealed to, has not been developed, and the impulse of selfish greed, unfortunately equally strong, has been strengthened. Too often again, so much stress has been laid on the world to come and the future life of the individual that not much has been left for the future life of the tribe or the people in this world—a conception much better suited to Bantu ideas. A great deal of Christian teaching among the Bantu has followed the lines of a dreadful hymn (for children, of all people), which used to masquerade, and perhaps still does, Christian—

"Oh how I love the Bible,
For it I know full well
Alone can save my ruined soul.
From going down to hell!"

It says much for the innate grandeur and nobility of the Christian faith that even under such a disguise it has been able to effect some good.

Many—fortunately not all—Christian Missions have laid on their converts the burden of giving up the immemorial custom of *lobola*. *Lobola* has its abuses, but it is a perfectly legitimate, sound, and in some ways, beneficial institution. But missionaries who have come with their ideas on all and every subject ready-formed

in a West-European mould have decided that *lobola* means the sale of women, and hence it must be discouraged. Notwithstanding that many Churches forbid it, 95 per cent of Christian marriages are accompanied by the passage of *lobola* in the Transkeian Territories themselves.²¹

The question of polygamy is a more difficult one. Few people will be found to argue in favour of the permission of the Church being given to its members to contract polygamic marriage after baptism or other similar form of reception into Church membership. But there is room for grave doubt as to the Churches' rule (a unanimous one, for once) that a polygamist who desires to proceed beyond the stage of a catechumen should discard all his wives, already married *bona fide* under Native Law, but one. Where he obeys this harsh rule, and his discarded wives have grown-up sons, tremendous family troubles result. More often, however, it is a fatal bar to his acquirement of Christianity. If he were to be fully accepted, polygamy would die out in his children: as it is they become neither monogamists nor Christians. Insistence on this rule has undoubtedly lost the Churches thousands and thousands of Bantu converts. There can be no question on that point. The only question is whether it is worth while. The Churches would apparently answer "Yes." But is it not again because they have brought to the Bantu a set of rigid pre-conceived ideas to which they have to fit themselves as best they may, instead of altering the garment to suit the requirements of the wearer?

The remarks of Mr. T. R. Merriman, Resident Magistrate of Umtata, appearing in the Cape Native Blue Book of 1887,²² are in point here:—

"I wish that missionaries of all denominations would earnestly consider the possibility of admitting polygamists to Christianity and thus carry the war of light against darkness into every Native kraal.

²¹ Cape Native Affairs Commission, 1910; Report, page 41.

²² Page 25.

At present Christianity, which means civilisation, is repugnant to the masses, as they find that it strikes at the very root of their social system, and they cannot accept any teaching so alien in its first aspect. There seems to me nothing revolting in the idea of admitting to Christianity those born in a state of society far more crude than that in which the Patriarchs who received the earliest revelation lived, and were permitted a plurality of wives. Until a step of this sort is boldly taken, there will be no material advance made by the Natives as a race, and much, though I will not say all, of the Christianity outwardly professed by the minority will be regarded by the mass as the badge of a time-serving renegade." ²³

Such are some of the errors which have up-to-date hampered the usefulness of missionary work and helped to make white South Africans suspicious of its merits. ²⁴ It is not suggested that all of them are widespread to-day. The individualistic presentation of religion has been discarded by some denominations and drastically modified by others. The shibboleth of the "open Bible" is not so fully insisted on as it used to be, as far as some Churches are concerned. Some Churches now permit the passing of *lobola* on Christian marriages. But no one of these defects has been wholly eradicated from all Christian Churches, and some have been eradicated from none. Nevertheless, when all criticisms are made, the balance remains heavily on the side of missionary work. Its merits, the benefits it has conferred, far outweigh its defects. To the self-sacrificing men and women who have literally spent themselves for the evangelising the Bantu, South Africa, white and black, owes a tremendous debt. It would be as unjust as it would be ungracious

²³ It may be that now that the rule about polygamy has been established for over a century it would be unwise to recede from it. But ought it ever to have been established?

²⁴ The type of education given by missionaries is frequently objected to (see next Chapter), but this is not really an objection against Missions as such. (It will be understood that the objections discussed in this chapter are those raised by thinking men, not the wild anti-Native prejudice of the ignorant.)

not to acknowledge that debt freely and frankly, and to attempt to repay it by some recognition, however inadequate, of what has been done. The missionary must share with the magistrate the honour of having affected nearly every change of benefit consciously carried through in Bantu life—an honour unshared by the politician or the "man in the street." To apportion praise between the magistrate and the missionary would be a delicate and ungrateful task. Yet whichever were placed first, the second would not be far behind.

A fixed devotion to Christianity as being the world's finest system of faith and morals may be a little out of fashion for an historian. But we in South Africa, with our many national idiosyncracies, have not yet acquired the advanced European custom of being ashamed of our religion. It is therefore in no spirit of condescending patronage, but rather with a feeling of reverent homage and humble fellowship, that South Africans should acknowledge the labours of the Apostles of the Bantu, the missionaries who have shed an ever-brightening light into the darkest recesses of Bantu life. They have been the co-operators with God himself in the work of evolution which Cardinal Newman describes so well in his sublime poem :

"Glory to Him Who from the mire,
In patient length of days;
Elaborated into life
A people to His praise!"

CHAPTER XX:

EDUCATION.

The subject of Native education in South Africa already has its text book, based upon a deep and wide historical, psychological and pedagogical research. Dr. C. T. Loram's "Education of the South African Native" is a model for all subsequent researches on the Native problem. It is not too much to say that the modern presentation of the Policy of Differentiation dates from the publication of his book. No one who professes an interest in the Native question should remain ignorant of its contents.

To include a Chapter on education in this work seemed at first thought—especially as the writer is in full accord with most of Dr. Loram's conclusions—painting the lily. But it has seemed advisable, on maturer consideration, to include a discussion on Native education, because without it no analysis of the Native problem could be complete. While Dr. Loram's work is referred to more than once—that is inevitable, as he has utilised so many of the primary sources—an endeavour has been made as far as possible to rely on hitherto unpublished matter. But it must be emphasised that this Chapter is supplementary to his work, and not a substitute therefor for the benefit of the lazy reader.

There are few points of the Native problem where the three great lines of policy—identity, subordination, differentiation—are brought out in as strong relief as in the sphere of education.

Those who hold on other points the policy of identity have not been hesitant in pursuing it to its most logical and ludicrous conclusions in the educational field. Their view dominates Native education in South Africa to-day, though signs are not wanting of the beginning of a great reaction. In a memorandum emanating from

Lovedale itself, the very heart of the policy of identity, Mr. D. A. Hunter says (1922):—

“Within the Union of South Africa there are now enrolled in state-aided schools about 220,000 Natives and coloured boys and girls. To these is being given, with comparatively few exceptions, what is mainly a book education. What is the effect going to be? Is it fitting them to make an honest living for themselves and for those dependent upon them? Is it a practical education for life, or is it calculated to create a disappointed, and so discontented, population?

“Observation and experience,” says Mr. Hunter elsewhere, “have deepened the early impression, received while travelling widely and visiting many mission stations in Southern Africa that the education given to the Natives under the South African codes has been far too exclusively a book education which does not fit them for the life the great majority of them have to live. My recent visit to the Southern States of America, and especially to Tuskegee and Hampton, has confirmed this impression. It has also convinced me that it is possible to give a more practical education for life, both in our Native institutions and Council schools than that now being given, and that a thoroughgoing change ought to be made without delay.”

This in 1922. In 1917, Dr. Loram, with the courage of a pioneer, was writing:¹ “In South Africa we find that the courses of study in Native schools are either identical with those prescribed for the European schools or are abbreviated modifications of them; that no account has been taken of the peculiar characteristics of the Native people; that no adequate provision for the probably life-work of the pupils has been made; that they include a good deal of matter which is useless as far as the Native is concerned, while they omit certain very necessary

¹ “Education of the S.A. Native,” page 93.

subjects." Elsewhere he says:—² "The ordinary work of the Native school is dull and formal to a degree. Indeed, as the writer has listened to the teaching in Native Schools, he has realised that it is only the Native's ignorance and his blind and almost pathetic belief in the white man's education which induces him to send his children to the average Native school. Parents less ignorant, pupils less docile, and a public less lukewarm on the subject would have remonstrated long ago against the travesty of teaching which it taking place every hour of the day in the Native day schools of South Africa."

In 1864, to select what must surely become a classic instance of the policy of identity in education, Dr. Langham Dale, Superintendent of Education in the Cape Colony, paid a visit to Lovedale. "I examined," he says, ³ "the most advanced native scholar in a portion of a chapter of the Greek Testament, an ode of Anacreon, and a portion of the first book of the *Æneid*; and put general questions on the parsing and derivation of words. He also demonstrated the 47th proposition of Euclid, Book I, which I casually selected, and a geometrical exercise connected with it."

A little later ⁴ he remarks: "The institutions at Lovedale are in every respect satisfactory."

This is not mere ancient history, nor a mere peculiarity of Lovedale. ⁵ Let us select a few of the many examination questions quoted in Dr. Loram's book—all set within the last twenty years, and applying to children in Standards IV, V and VI of Native Primary Schools. ⁶

"Write a short essay on Vasco da Gama."

"Of what countries are the following towns the capitals:—Berne, Christiania, Vienna, Rome?"

² "Education of the S. A. Native," page 106.

³ Report of Supt.-General of Education on Industrial Institutions and Schools, Cape Town, 1864, page 10.

⁴ Report of Supt.-General of Education on Industrial Institutions and Schools, Cape Town, 1864, page 14.

⁵ I trust that these remarks will not be read as a reflection on Lovedale which has done, and is doing, splendid work, in spite of the defective methods criticised in this Chapter—methods less open to attack now than formerly.

⁶ Loram *op. cit.* pp. 318 sqq.

"Where is Tasmania: Name two of its chief towns."

"Name three ways of forming the plural of nouns and give an example of each. What is the meaning of gender? Classify the following words in their correct genders—'Princess,' 'syllabus,' 'chicken,' 'soldiers'."

"What will it cost to cover the floor of a room 18 feet long and 16 feet broad with carpet 2 feet 6 inches wide, and worth 5s. a yard?"

Partly out of disgust with such methods as these, partly out of prejudice, and partly out of fear for White supremacy, a large school of thought consistently opposes all education for the Natives, or at any rate all education which does not directly fit them for service to the white population. They argue "that the natives must advance slowly through long generations as the Whites have done, that they should be given no book education, but be taught to work." Those who advocate this view, "lose sight of the fact that, by their presence in the land, the white people make it impossible for the natives to advance slowly and naturally. The impact which is being made on the Bantu is terrific both in its suddenness and its immensity. To many of them it is like crowding the centuries between the Roman invasion and the Washington Conference into a single generation. The only way in which the whites can make possible for the blacks a slow and natural advance, is for all white people to withdraw from the land, and leave the natives to their own devices."

We shall not here go into all the laughable absurdities exhibited by writers who advocate the policy of subordination in education. The chief of them is the combination of the two arguments that the Native is mentally inferior to the white man and hence it is waste of time to educate him; and that educating the Native puts him in a position to compete with the white man. Both of these cannot possibly be true. The first is not proven.

⁷ Hunter *op cit.*

The second need not result from a wise programme of education. Another favourite argument is that educated Natives are more criminal than uneducated ones. Obviously so, in some forms of crime. An individual who cannot write obviously cannot forge a cheque. But, taking the question all round, statistics both in South Africa and in the Southern States of America have long disproved this unjust slander which remains the stock-in-trade of many a platform orator.

The truth is that we cannot avoid educating the Natives up to a point. They are constantly receiving new impressions from European influence which constitute "education" in a very real sense of that term. Has not the greatest South African proconsul described the largest South African town in reference to its influence on Natives as a "University of Crime?"⁸ Is this to be the only gift offered by European culture to Bantu barbarism? The very introduction of new vices, new temptations, new forms of livelihood demands new moral sanctions, new counteracting interests and new forms of training. We must educate the Natives. The only question is how?

Most repressionists admit this. But they argue that the education which we give must be strictly such as will assist the Natives to become suitable servants to the white man.

To this we must reply, in the first place, by taking the high ground of idealism, which is at the same time the plain teaching of the Christianity that the white races profess. The study of Christian ethics does not teach us that all races are of equal capacity, or that even the Gospel story itself is to be presented in exactly the same way to the fanatical Jew and the cultured, sceptical Athenian—rather the contrary—but it does teach us very clearly that no individual and *a fortiori* no race, is to be treated simply as a means to others' perfection. Such

⁸ Lord Selborne in his address on the Native Question before the Congregation of the University of the Cape of Good Hope (1909).

treatment is the essence of slavery, which the whole civilised world has joined in condemning, however humane its conditions. There can be no compromise whatever on this point. Those who wish to use the Native as a mere means to white comfort and white monetary gain must come out into the open and frankly admit the doctrine which damns them as men, and thinkers and as Christians. We must get to bed-rock on this matter; and no shuffling evasions must smooth over the choice between light and darkness.

Admitting then our moral obligation to treat the Native as an end in himself, and thus putting first things first, we can go on to use certain arguments of a more utilitarian type.

White labour requirements are not sufficient, and probably never will be sufficient, to absorb the whole Native population of South Africa. What of the enormous populations of the Native Areas? Is their education to be entirely on white labour conditions which the majority will never experience?

The presence of a backward, ignorant population always has a deleterious effect on a more civilised race coming into close contact with it. Slavery, it is well-known, has always in the long run harmed the slave-owner more than the slave: that is one of the most generally admitted conclusions of history. And to train all Natives merely to take a subordinate part in European industrial life, is, in very truth, and not as an hysterical phrase, a form of slavery. The Native, unless he is given that real interest in life which only a proper education suited to his past history and present condition can give, must necessarily be the prey of political agitation or immorality or both—not a very rosy outlook for the Europeans amongst whom he lives.

Moreover Natives *will* obtain education, do what we may. They will form their own schools if Government assistance to schools is withdrawn. They will send their most brilliant young men—as they have done—to train in the Negro Colleges of America, often in a fervid

anti-white atmosphere, if we provide no higher education for them in South Africa. We cannot prevent Natives acquiring a non-servile education: we can only direct such a movement. One would imagine that the European population of South Africa would prefer to direct Native education rather than let it direct itself—even those clever and Christian people who want to “keep the Kaffir down.”

There is really no argument in favour of the policy of subordination in education but that of a naked, immoral self-interest. With those whose ethical views take such a form, argument is impossible; their only desert from their fellows is an utter scorn. Scorn because, while sacrificing righteousness for profit, they are not even clever rogues. The alleged self-interest defeats itself. Let education come as a gift from the white man, directed wisely by him, and it both buys gratitude and avoids danger: let it come in the teeth of white opposition, as a variant of Ethiopianism, taking its own dubious course, and it will bring forth danger and bitterness, race-hatred and ultimately race-warfare. The third suggestion—that it will not come at all—is ludicrously impossible at the present day; and that all the leading repressionists acknowledge.

One is rather prepared to say, with the Hon. A. G. Robertson, ex-Administrator of the Transvaal:—⁹ “I am certainly of opinion that nothing should be put in the way of the advancement of the Native, industrially or educationally;” or with the late Mr. J. W. Sauer, the Minister who introduced the Natives’ Land Act: ¹⁰ “If there is to be compulsory education I am in favour of its being general, as applied to both whites and blacks. At the same time I am in favour of giving people the sort of education that is most suitable for their condition and future..... If there was a sufficient number (of Natives demanding higher education) and they could not

⁹ S. A. Native Affairs Commission, 1903—5. Vol. V, page 278.

¹⁰ Ibid, Vol. IV, pages 916—7.

be educated otherwise, it would be the duty of the State to see that they could obtain such education;" or with Sir John Fraser, the veteran Free State authority ¹¹ that it would be better to give Natives educational facilities here under Government supervision than drive them over to seek education in America; or with Sir Walter Stanford, Mr. J. C. Krogh and other members of the Inter-Colonial Commission of 1903-5: ¹² "The Native, in common with the rest of mankind, does not live by bread alone, and possesses certain mental impulses and aspirations which demand satisfaction. Before the advent of European civilisation, the struggle for existence, the chase, war, tribal politics, all furnished a field for the exercise of faculties which the new conditions have condemned to inactivity. No policy can be complete or sound which is limited to political or economic considerations only, and which takes no account of the irrepressible forces within each individual. And it is evident that there is among the people themselves a growing desire for education which cannot and need not be suppressed." We can, perhaps, be allowed to share in the implied approval of Native education, contained in the Right Hon. F. S. Malan's remarks on its greatest protagonist, the late Tenga Jabavu: "May his example *and the spirit of his work* long endure to the benefit of those for whom he so unceasingly laboured." ¹³ And the similar remarks of Dr. W. J. Viljoen, Superintendent-General of Education in the Cape Province and Pro-Vice-Chancellor of the University of South Africa: "His services rendered to education for many years in various capacities are deeply appreciated." ¹⁴ And Jabavu was the heart and soul of the S.A. Native College movement.

There is a third way between the ridiculous travesty of education which has disfigured so many of our Native Schools and Colleges in the past and the utilitarian,

¹¹ Ibid, Vol. IV, page 280.

¹² Report, para. 329.

¹³ D. D. T. Jabavu: "Life of John Tenga Jabavu," page 244. (The italics are mine).

¹⁴ Ibid, page 106.

servile "education" which is designed merely to fit Natives for a subordinate place in the white economic system. Between the policy of identity and the policy of subordination lies as ever, but more clearly in education than elsewhere, the policy of differentiation. Our scheme of Native education must involve, not merely separate schools as at present, but also separate curricula for Natives.

This is a matter of grave and serious difficulty. For educated Natives in general look with deep, and perhaps not always unmerited, suspicion on attempts to alter the curriculum of Native schools. They are afraid that any suggested alteration is sure to embody, disguised in some way too skilful to be penetrated with ease, the views which repressionists have put forward with such engaging frankness. The absurd lengths to which opposition to a differential syllabus may be carried was "well illustrated," says Dr. Loram,¹⁵ "at the Native Convention held at Lovedale in 1908 to decide on the educational policy of the proposed Inter-State Native College." The sound proposition "that the College should from the commencement adapt itself to the existing educational needs of the country, and, proceeding where necessary upon tentative lines, be developed into a College of recognised University standing," was strongly opposed by certain educated Natives who felt that this was an insidious attempt to repress their people. One of these Natives said that this proposition meant that they were to get a stone instead of bread. They were anxious to get higher education. Where did they see it? Among the white people. They wanted that same education, not a bastard education, not to begin with new experiments. *Even if this curriculum was bad, it was not their place to patch it up and correct it. They wanted the same higher education as the white people.*

Such an attitude must arouse intense impatience which, however, has to be curbed when one realises the number of white authorities who have openly advocated

¹⁵ Op cit., page 22, n.

using Native education as a mere economic agency for the benefit of the whites. But the putting of the whole matter forward to the more thoughtful "advanced" Native by Europeans in whom he really has full confidence should result in a modification of these mistaken views. Differentiation does not imply inferiority on the one side.

The use of the vernacular in Native schools, for instance—a peculiarly happy feature of the Natal system—ought to be extended, until all "cultural" subjects, except English or Dutch themselves, are taught through it. History, geography, religious and moral instruction, nature study, hygiene and singing are examples. The French Protestant missionaries do this with marked success in Basutoland, having in some subjects prepared excellent vernacular text-books. A people's language should never be destroyed; such loss is an unutterable degradation. Admittedly the Bantu languages are unfitted for Mathematics, and, where they are taught, the physical and natural sciences. Here English or Dutch (according to the locality) must be used.¹⁶

It seems so tremendously pathetic, often, to hear really excellent talents devoted to reproduction of English or Dutch recitations or songs, with associations which can only be meaningless to the performers. (There is no suggestion that *all* recitations and songs should necessarily be in the vernacular.) The Bantu languages are—and the writer speaks especially of the Zulu-Xosa group—most musical and poetical; and the indigenous Bantu music, which we have been trying to kill by fitting it into a ready-made tonic system, is not to be despised.

By steady purposeful work on the part of trained teachers, who are also linguists, text-books might be prepared for all—as they have been for some—cultural parts of the Bantu educational curriculum, in the ver-

¹⁶ It is admitted that in a few areas of the Transvaal the confusion of tongues is such as to make it necessary to choose between English (or Dutch) and a Bantu *lingua franca*. But this is exceptional. It should also be added that Native leaders as a whole are (as I think wrongly) against the use of the vernacular.

nacular languages. Why we should retard Native progress by an unfamiliar medium, which at the same time gives the general public the impression that Native education is trying to turn the Bantu into imitation white men, is a question which will take some answering. A proper use of the Bantu languages, their transformation into literary channels, and the preservation of all that is good and beautiful in Bantu tradition, custom, history, folklore, music and art, will tend to a proper race-pride among the Bantu. No longer aspiring to be an imitation European, the educated Native will take his rightful place as the natural leader of his own people—the advance guard of the black, not the rear-guard of the white.

It is not merely the transformation of Bantu education into a really national thing, instead of an exotic and costly imitation, that is needed. We also want to bridge the channel between the average Native's education, and his life after school. They might be in two separate planets. Senator P. J. Wannenburg—a critic whom it is hard to place definitely under the subordinating or the differential school—has done South Africa a service¹⁷ in emphasising that to continue both our present system of education and our present method of treating the educated Native is to foster in our midst an immense peril. If our educational system tends to treat the Native as an imitation white man, and our social, economic and political institutions keep on reminding him that he is not a white man, trouble is sure to result.

Now let us put Europeans altogether on one side. Let us suppose that in South Africa there are, beside the Bantu themselves, in their present state of civilisation only a few benevolent and philanthropic missionaries and administrators. What lines would Bantu education naturally run on?

Quite clearly, religious training, cultural subjects through the vernacular as medium and—? Of course, training in agriculture and in simple handicrafts, leading, with the advance of civilisation, to more technical

¹⁷ In his pamphlet "t Zwarte Gevaar."

and specialised preparation for trades. No philanthropic missionary, with a knowledge of the Bantu and their condition, would oppose the inclusion of these subjects in the postulated circumstances. The training of Tuskegee or Hampton would be the natural training to be adopted *but for the presence of the white man*.

If now, the substitution of wise training in agriculture, arts, crafts and trades for the less useful subjects of the classical languages, higher mathematics, foreign history and geography, advanced Dutch or English literature, etc., is really the best thing for the Bantu themselves, surely it is no argument *against* that substitution—rather is it an argument *for* it—that the Native would thereby be preparing himself to earn a living which need not be, but in many cases would be, in European service. The natural change which sound rules of pedagogy prescribe in the Bantu's own interest is a change which would tend to conciliate hostile European opinion all over the country, and persuade Europeans that Native education is, far from being a danger, a blessing towards the country as a whole.

Why there should be such opposition to such a change among advanced Natives is a matter for wonder, for it is the very change an impartial educator would advocate in Native education if there was not a white man in the country. Surely it is not necessary to flog a dead horse and remind the reader that nearly every South African secondary school has during the last fifty years swung away from a severe classical education to one which includes three modern languages, without any serious detriment to young South Africans—in fact rather to their benefit. Do they feel that they are receiving a stone for bread because they are less familiar with Demosthenes and Plato, Cicero and Virgil and more familiar with Goethe and Schiller, Molière and Victor Hugo, Vondel and the Afrikaans poets than their fathers were?

Thus there would seem great scope for improving Native education and putting it on a sounder basis by

giving it a more "national" spirit, by greater use of the vernacular and by the replacement of less useful subjects by agricultural and simple handicraft training. It is not argued that Natives must not be educated to be professional men—ministers, doctors, lawyers and (one hopes) administrators among their own people. The South-African Native College, the future Bantu University, will have, as the demand and the financial support Natives are prepared to give increases, to provide for all these things. But in primary schools, which are all that the overwhelming mass of Natives who go to school at all attend, the agricultural and handicraft side must be stressed, and this will not be a disadvantage to the future Native professional man, whose degree courses, so far as not technical, will adapt themselves to his past training and the present needs of his people.

Let us examine this agricultural and handicraft education in greater detail.

The view has been expressed again and again in this book¹⁸ that the future of the Bantu is *mainly* agricultural. Whatever scope there may be for professional men, artisans, and unskilled labourers for European industries, yet the bulk of the Native population will remain agriculturists. It is to the interest of South Africa to make their agriculture good and intensive. By a proper system of education, Native agriculture can be made complementary to, and non-competitive with, European agriculture without injustice to Natives, and can be made to provide for all native wants and produce in addition a good income for the keen Native worker. Mr. Hunter points out¹⁹ that at least 2,000,000 potential Native workers, men, women, lads and girls are idle or semi-idle within the Union. If working on organised production the labour of these should be worth at least £20 per head per year, as against the white man's £200, in result to the country. This would mean an additional yearly spending power of £40,000,000 which would go

¹⁸ See especially Chapter XVII.

¹⁹ *Op. Cit.*

into circulation—mainly through white traders, for the Native does not hoard his money and has shown very little commercial aptitude.²⁰

Yet agriculture is one of the most neglected parts of Native education—much more so than “industries” of which more anon. Taught by the earliest missionaries it gradually fell away from school syllabuses, and while special Institutions for its teaching dealing with the select few have been in existence for over half-a-century, its inclusion in the elementary school syllabus is comparatively recent. And how it is taught there! A teacher with but little aptitud and no training—for it is not a Normal College subject—has to combine agriculture with numerous other subjects, and generally a little purposeless “gardening” is all that is done. There is no attempt at *making a profit and hence securing the pupil's interest*, unlike Tuskegee where the system of individual vegetable plots of twelve by six yards, in which students share profits with the College, is popular.²¹ Agricultural education in the wider sense, by Demonstrators and Experimental Farms in the Locations, is a crying and urgent need, and should be dealt with.²²

In his book “'t Zwarte Gevaar,”²³ Senator Wannenburg quotes very appositely the methods pursued by the Germans in East Africa, where, as he says, “In al deze scholen is Landbouwkunde 'n verplichtleervak.” (“In all these schools, Agriculture is a compulsory subject.”) Much has been heard, preparatory to the barefaced annexation of all the German Colonies, of German methods: it is but just to paint the other side of the

²⁰ This point is mentioned to show that Europeans would gain by treating Natives well in the matter of agricultural education. As an argument it is a sop to the “honesty-is-the-best policy” people.

²¹ D. D. Tengo Jabavu: “The Black Problem,” page 88.

²² See Natal Native Commission, 1906—7 Report, para. 86; also Chapter XVII *supra*

²³ Page 18.

²⁴ An interesting account of gymnastic training and its good effect on Native youngsters is given in the Monthly Bulletin de la Mission Suisse Romande (Livre XXXIII, No. 430) for February, 1922.

picture. In the higher classes of the Schools in East Africa, Senator Wannenburg tells us wood and metal-work is taught, and to the girls spinning and sewing. Musical and gymnastic training²⁴ are found everywhere. Every higher school has its own little band.²⁵

In returning from this digression to the main subject of agricultural education, it is fitting before leaving it for the last time in this book, to quote the wise words of one of our leading Native educationalists who knows his people:—²⁶

“Agriculture, where at all attempted in our schools, has suffered, too, for being made a motiveless task. *It is the most important thing in Native life*, and therefore deserves a place in the school careers of our boys as it is practised in the Mariannahill Native school in Natal.²⁷ How to make agriculture efficient is the most practically important problem for us. Native ministers and teachers could substantially supplement their stipends and salaries if taught gardening and intensive agriculture. This is proved in the Quanda American Baptist School, Middledrift, C.P. We need a Native Booker Washington to galvanise Natives to action in this matter.”

The history of Native industrial or handicraft education is longer, as our support of it must be more discriminating. The “man in the street” has two fixed opinions on Native education—the one is that what he calls “industrial education” is a panacea for the Native question, the other that the missionaries do not teach it. They constitute his whole pathetic stock-in-trade of thought; and both of them are wrong.

For, from the very beginning, the missionaries set about teaching trades, even where they ignored agricul-

²⁵ “t Zwarte Gevaar,” page 18. Senator Wannenburg is strongly in favour of the vernacular as medium (Op. cit. page 17).

²⁶ Prof. D. D. T. Jabavu in “The Black Problem,” page 89.

²⁷ Also, by the way conducted by German missionaries (the Trappist Fathers) among whom ought to be mentioned one of the most able, and certainly the most modest, of workers for the natives, the Rev. Father Bernard Huss.

ture. The early missionaries to the Bantu continued the tradition set by the Moravian Brethren in their work among the Hottentots. Before 1823, the famous mission at Genadendal had trained Hottentots as cutlers, smiths, joiners, wheelwrights and shoemakers; while the converts at Genadendal themselves built a bridge over the Zonderend River.²⁸ Two years later, Mr. Thompson, the Government Agent in Kaffraria, reported that some mission-trained Natives (*i.e.*, Bantu, not Hottentots) were able to make and lay bricks, to saw with hand or pit saws, to plane and to thatch.²⁹

The foundation of industrial institutions was pushed forward by Sir George Grey. Under his influence, the Rev. William Shaw, Superintendent of Wesleyan Missions, opened the great industrial institution at Heald Town, of which the Rev. John Ayliff was first Principal, early in 1855.³⁰ Later in the same year Salem was opened, and the pioneer School, Lovedale, opened an industrial department.³¹ At Lovedale, the "Carpenter Department" paid for itself in 1858 by the sale of its manufactured articles. In 1860, an improved Native printing press was set up there.³² In 1862, three carpenters, five blacksmiths, three wagon-makers and four printers and bookbinders were under training.³³ In 1873 a telegraph office, erected the year before, was in full working order, during which year Native telegraphist dealt with 1,058 messages.³⁴ All this was years before the general public took up the parrot cry of "industrial

²⁸ Report of the Missions of the United Brethren in the Colony of the Cape of Good Hope, presented by Mr. H. P. Hallbern to H. M. Commissioners of Inquiry, dated Genadendal, 14th November, 1843.

²⁹ Report to the Secretary to the Commissioners of Colonial Inquiry upon "the state of the Caffres, Ghonaquas, etc., and upon the progress of Missionary Exertions among them," dated "Chumie" (Tyumie), 22nd January, 1825. (Blue Book: Information re Cape Native Tribes, 1836.)

³⁰ Sir George Grey to Lord John Russell, 17th July, 1855.

³¹ White-book: Report on Progress of Native Industrial Institutions, 1855, pages 2-3.

³² White-book: Report of Lovedale Institution, 1860, page 4.

³³ Report of Lovedale Institution, 1862.

³⁴ Report of Lovedale Institution, 1873.

education" and began to denounce the missionaries for not giving it. Of subsequent developments—the work of the French Protestant ministers in Basutoland, of the Trappist Fathers in Natal, of the Dutch Reformed Church in the Cape, and so on—it would take too long to go into details. From South Africa industrial training has spread north and east. A little-known body, the seventh Day Adventist Mission, is teaching harness-making, saddlery, asket-making, tanning and tailoring in Rhodesia, Nyassaland and the Congo.³⁵ In Portuguese East Africa, every "Circumscripsao" has for some years been expected to maintain an industrial school teaching tailoring, shoemaking, building, carpentry, etc.³⁶

From the very beginning, this missionary activity has, however, obeyed only to well the Gospel injunction to take no thought for the morrow. The result of the training has been in many cases to throw the Native artisan out into an economic world which has no place for him, his own people being not yet ready for his activities, and European Trades Unions not unnaturally objecting to his pursuing his trade, at rates which would not permit a white man to live, among Europeans. The only way out of this *impasse* seems to be the scheduling of certain trades where competition is keenest as occupations where Europeans must work for Europeans only and Natives for Natives only. Unfortunately these competitive crafts are among those most commonly taught at mission centres,

Seeing that the bulk of the Native people are not yet a remunerative field for the artisan's labours, it would seem advisable not to increase the number or scope of industrial institutions as at present existing, at any rate for some time. What money can be spent should be devoted rather to agriculture, and to the development of domestic peasant industries, based on the old Bantu handicrafts (e.g., basket-work, wood-carving, pottery,

³⁵ Interview with Mr. W. E. Straw, Supt. of Seventh Day Adventist Mission, published in "Rand Daily Mail" of 14th January, 1921.

³⁶ Information from Rev. R. W. Loffhagen.

etc.).³⁷ If the Government could provide facilities for the collection and sale of these goods it would be of immense advantage, as would also a simple scheme of prizes in selected Native areas for the best manufactured articles of various types each year.

It is here that the Memorandum of Mr. D. A. Hunter, so often quoted in this Chapter, is especially valuable :

"Handicrafts suited to native life and to the raw materials of the country," he says, "must first be discovered and then taught on a wide scale.

"In India, Ceylon, Burmah, the Straits Settlements, the Philippines, China and Japan village industries have been developed through long generations with a minimum of expenditure in plant and equipment. By taking advantage of this ripened experience, South Africa may save much time and money in experimenting. Let the right man be sent to the East to see these village industries in operation, and, knowing the Bantu and our raw products, decide which could be successfully grafted on to kraal life. He might at the same time select instructors and arrange for them to come to South Africa for a limited period. These Instructors might be so distributed in the Native training institutions that every Native normal student would receive, as a part of his professional training, instruction in a craft or industry. After a reasonable time no Native school should be subsidised which does not give adequate instruction in practical productive handicrafts suited to the raw products of the district in which it is situated. So soon as production began, it would be necessary to organise the marketing³⁸ of the articles produced in order that the Natives might be encouraged by receiving some return for the work of their hands.

"Some such scheme is fraught with immense potentialities for the Union and for the Natives, for

³⁷ See Chapter XVIII.

³⁸ Pages 6—7.

it would draw in a new generation at the psychological period; it could be set in motion with little delay and at comparatively small cost.

"It is hardly necessary to add that success would depend in large measure on finding the right man to investigate in the East and then organise in South Africa. A man of wide practical experience and training, endowed with good judgment, with sympathy and enthusiasm, and with grit that is not easily discouraged, would be essential. Such men are rare, but they are to be found."

As far as education in the restricted sense—school education—is concerned, it would seem advisable gradually to replace "industrial" and "manual" training in Native primary schools with agricultural and village handicraft training, the latter on the basis suggested by Mr. Hunter, but as far as possible building on existing Bantu handicrafts where (e.g., in Zululand) such have not yet been entirely destroyed by the competition of cheap imported articles.

It is desirable that the new handicraft training should not be on the lines of the old "manual" training as interpreted by some schools. Here again the wise words of Prof. Tengo Jabavu come to our aid. "In our schools," he says, ⁴⁰ "'manual labour' consists of sweeping yards, repairing roads, cracking stones and so on, and is done by boys only as so much task work, enforced by a time-keeper, and under threats of punishment. It is defended because 'it makes for character training.' The invariable result is that the boys grow up to hate all manual work as humiliating, 'skulk' from it whenever they can and ever avoid it at home and in after life. In Tuskegee, all pupils are given money for all labour of value—it may be 1d. or 2d. an hour—this being given not incash, but credited in their bank books. This is

³⁹ This is a most important point. The absence of proper marketing arrangements nearly ruined the incipient tobacco industry in the Transkei *vide* Chapter XVII *supra*.

⁴⁰ "The Black Problem," page 88.

excellent in its results, and no labour is despised in Tuskegee, nor elsewhere by its students."

The main points of the Native primary school curriculum would thus be:—

- (1) An elementary "cultural" education (including religious teaching, Bantu history, etc.) through the vernacular.
- (2) An elementary "utilitarian" study of English or Dutch, according to locality, and of practical arithmetic, through English or Dutch medium.
- (3) Agriculture.
- (4) Handicrafts.

Both (3) and (4) to be subjects remunerative to the pupil if possible.

To these might be added one or more of the following, recommended by Prof. Tengo Jabavu, hygiene, bookkeeping, cookery.

Other suggestions, would be music, gymnastics, and, as an optional "utilitarian" subject, especially in the neighbourhood of towns, some practical training in domestic service. But to avoid even a suspicion on the part of advanced Natives that the new scheme was intended for the ultimate benefit of the European population, this last subject should not be a compulsory one.

Now it must be remembered that at the present most Native schools, though they invariably follow the Government syllabus under penalty of losing their grants, are Missionary institutions. "Native Education in South Africa," says the Report of the 1903-5 Commission ⁴¹ "has almost completely resolved itself into what may be briefly described as a system of State-aided Mission schools." Is the continuance of this system desirable?

The Inter-Colonial Commission of 1903-5 ⁴² was not in favour of any immediate substitution of general public undenominational schools for Mission schools, expressing the view that there would be a distinct loss in the separation of secular instruction from moral and religious in-

⁴¹ Vol. 1, page 68.

⁴² Report, Vol. I, page 71.

fluences. With this we may agree up to the point that, where Government is in duty bound to provide schools and the missionary bodies are unwilling or unable to staff them, Government might open such a school arranging for missionary supervision of religious teaching. When the Inter-Colonial Commission recommends the recognition of undenominational Native schools, one can only assent with the proviso that such should be subject to missionary supervision regarding religious training. To educate the Native to-day is to break up very largely his old system of life and the old restraints. Unless these are replaced with the new sanctions of Christianity, the result can only be bad. Native education without religion would be a dangerous gift. As to detailed arrangements, all the missionaries in the immediate neighbourhood should have the right of entry for religious instruction; or, preferably, the school should be handed over to that missionary body, being in the neighbourhood, coming next on a rota prepared by the Government and reflecting the proportion of Native church members of the various bodies as shown in the last census.

It may be urged that the problem is not an acute one. There are few non-Missionary Schools. Cases of such date back scarcely a generation.⁴³ Nevertheless the desire for an education kept apart from missionary control is spreading among Natives, and it is most important that such a desire should *not* be satisfied. Education will be a definite curse to the Native without moral training, presented in that religious form which alone can grip the heart and imagination. Even if—as will probably be the case, Native schools become “secular” in the remote future as regards administration and control, it is difficult to contemplate a date when definite religious teaching could wisely be dispensed with. Even among white children the want of any really good religious teaching, especially in towns, is beginning to produce deplorable

⁴³ One of the earliest the writer has been able to discover was in Basutoland in 1887 (Imperial Blue Book C5249 (1887), page 6).

results. To the sceptical religious liberal it may be argued that such children are too often reclaimed from Christianity not for some more liberal and eclectic cult, but for a genuine paganism unburdened with a sense of moral responsibility. To the Christian, no further arguments will be necessary in favour of Christian teaching.

Should Native education be made self-supporting? Undoubtedly. Natives themselves are willing to pay. Three years before the Glen Grey Act was passed, a gathering of Transkeian Natives requested the Cape Secretary for Native Affairs to institute a compulsory education tax in all Locations where schools were situated.⁴⁴ The Glen Grey Act and the Council System introduced the principle of self-supporting Native schools. For non-Native areas it is desirable that a Trust Fund should be created, to be administered by the Department of Native Affairs, comprising all revenue raised from Natives, a percentage of which should be definitely set apart for education. It is quite a wrong principle, and one of pauperisation, that white people should be expected to pay for Native education, and although they only *seem* to do so to-day yet this is probably a case where the very appearance of evil is to be avoided.

Should Native education be made compulsory? Certainly not at the moment, and probably not for a very long time to come. Natives, as a rule, are anxious for their children to obtain education: the demand for schools and teachers still exceeds the supply. There is no need to bring force to bear; it would be exceedingly bad policy to coerce an unwilling minority until the wants of the willing majority have been met. At the same time a Local Council which is willing and able to meet the resultant expense should be permitted to make education compulsory for its own area by a two-thirds majority.

We come now to the question of secondary education. It would seem that here there are two needs to be met—vocational and academic. Native High Schools would need to have both sides. Every vocational student should

⁴⁴ Cape Native Blue Book, 1891, page 29.

include some literary items in his course, every academic student should pursue some more advanced study in agriculture and/or handicrafts. For some time to come, it would be advisable to give even the academic side a fairly practical turn—*i.e.*, a boy will leave school qualified to be a clerk, an interpreter, a catechist and so on, as the case may be. At the same time an attempt should be made to give a real cultural education, and with the higher academic classes, a more intensive study of Dutch or English language and literature, and of historical and geographical systems outside Africa should be begun, while the Mother-tongue and its world of associations still remains a dominant factor. Above all, no attempt should be made to study for the Cape Matriculation Examination, and the South African Native College might well be advised to counteract this tendency by drawing up its own Entrance Examination and perhaps, persuading the Universities' Joint Matriculation Board to accept it as exempting from the ordinary "Matric." Dr. Loram makes some wise remarks⁴⁵ in his "Education of the South African Native" on the dominance of so much of South African secondary education by the Matriculation Examination of the South African Universities—a dominance which is being at last shaken, but which may still be strong enough to divert Native Higher Education into wrong channels.

In his own inimitable way, that great Afrikaans essayist who elected to be known as "Dr. Okulis"⁴⁶ has told us:—⁴⁷

"Van die naam weet ek vandag nog nie die betekenis nie. Matriek was en is vir my Matriek. Die idee wat ek van Matriek had was dat, as 'n man hom het, jy kapabel was vir enige amp in die land. Matriek was en is vandag nog eintlik die eindpaal van die Standerds. Die Standerds kan net op Matriek uitloop en nie op die praktiese lewe nie

⁴⁵ Pages 128—130.

⁴⁶ The late Rev. W. Postma.

⁴⁷ In his inimitable satire "Die Eselskakebeen."

“Van nou af het dit net aangekom op die man wat die hardste of iets die gouste kon leer. Pure kopwerk. En glo my ons het ‘gekrem.’ Krem het by Matriek behoer in die dae. Die wat nie gekrem het nie het maar min Matriek deurgekom. Krem is vir die wetenskap dieselfde wat ‘wors-top’ in die slag-huis lyn is. Die hele Matriek was net èn kremmery. Jyself krem, die meester krem jou en die boeke word in jou ingekrem. Al onderskeid tussen ’n wors en ’n Matriek-student is, dat ’n wors dikker word met stop maar die student krimp met die gekrem . . .

“Matriek! Matriek! Wat het jy my trane, sugte, benoudhede gekos. So naby en tog so ver van die lewensdoel.”

(“The meaning of the name is a mystery to me to this day. ‘Matric’ was and is, so far as I am concerned, simply ‘Matric.’ The conception which I had of ‘Matric’ was that, if one had it, he was fit for any position in the land. ‘Matric’ was and still is to-day the final goal of the Standards. The Standards can merely lead up to ‘Matric’ and not to practical life.

“From now on everything was acquired by the man who could learn hardest or quickest. Pure memory-work. And believe me, we ‘crammed.’ ‘Cram’ was a prerogative of ‘Matric’ in those days. The men who didn’t cram stood but little chance of getting through ‘Matric.’ Cramming is in learning what sausage-filling is in the butchery trade. The whole ‘Matric’ was one huge cram. You crammed, the master crammed you and the books were crammed into you. The only difference between a sausage and a ‘Matric’ student is that the sausage gets thicker with filling and the student thinner with cramming.

“Matric! Matric! What have you not cost me in tears, sighs, anxieties! So near and yet so far from the purpose of life!”)

If we have felt this—that an alien system, ready-made overseas, was utterly unsuited to us, our needs, our ethos and our tradition (and we have felt it)—how infinitely

more unsuitable must it be to the Bantu. Yet Native higher academic education has consistently year by year aimed at this impossible and useless goal—and failed, with disheartening effects on teachers and students alike. It is necessary to press this point, for those who believe in the policy of identity will quite probably resist fervently any attempt to make Native higher education national, inspiring to the student, and adaptable to the needs of life.

Of Normal Colleges there is less to say. The teaching given in them must obviously adapt itself to the altered syllabuses for Native Schools. It is much to be desired that a proper scientific research into Bantu psychology might be begun, and its results gradually made available for the European staffs of Native Normal Colleges.

Training Colleges for the Native ministry are also in need of much overhauling. This is a delicate question, and the writer will leave it to the judgment of his readers, merely quoting certain typical questions quoted by Dr. Lorain⁴⁸ as having been set at the examination of Natives for Deacon's Orders (to work entirely among their own people) in Natal in 1916. Comment does not seem to be called for:—

“Explain the heresies of (a) Montanism, (b) Gnosticism.”

“Distinguish the XXXIX Articles from the ‘Articles of the Christian Faith’ mentioned in the Catechism.”

“When and by whom were the Articles drawn up? What were (*sic*) their number at first? Give an account of the changes made until they became 39.”

“Give the rule for finding Easter in any particular year.”

“Explain:—

(a) Commonly called the creed of Athanasius.

(d) “They that have done good shall go into everlasting life and they that have done evil into everlasting fire.”

⁴⁸ *Op cit.* pages 320—5.

"What part did each of these men take in building up the Church of England:—St. Augustine of Rome, St. Aidan of Scotland, Theodore the Greek?"

"What were the Constitutions of Clarendon? Why was it necessary to draw them up?"

"Show how at the first the Puritans were different from modern dissenters. What did they especially object to in the Church's system of worship?"

At the apex of Native education in South Africa stands the South African Native College—an institution of enormous potentialities. Its creation was the direct result of a recommendation of the 1903-5 Commission.⁴⁹ After many year's preparation and delay, classes were first opened in July, 1915. In February, 1916, it was formally opened by the late General Botha, Prime Minister and Minister for Native Affairs; and classes (Matriculation, Theological and Agricultural) were inaugurated on the 22nd of the same month with a roll of twenty students (eighteen men and two women) drawn from all parts of South Africa.

It is intended to provide ultimately at the College a liberal education of University standard, and also training for those who wish to qualify themselves to enter upon one of the learned professions or to follow the higher branches of agriculture, commerce, industries or domestic arts.⁵⁰

In the meantime the College is preparing for the Universities' Joint Board Matriculation Examination and for a special College variant of the same; and conducts agricultural, commercial, and theological classes.

The work at Fort Hare⁵¹ is in the hands of sound men, good educationalists, good Christians, good friends of the Natives. The only danger is that, both now and later as the College acquires a true University status, the pressure of "advanced" Native opinion will be

⁴⁹ Report, para. 347.

⁵⁰ For this and the following Paragraph see Report of Native Affairs Department 1913—18 pages 32—33.

⁵¹ The site of the College, one mile from Lovedale.

such as to force them to adopt syllabuses which are mere imitations of European Degree Courses. For this reason it is desirable that the College should be incorporated, given the right to confer Degrees (at present it has only the right to prepare students for the Degree Examinations of the University of South Africa) and to examine external (Native) students. It is undesirable for the institution to give "cheap" degrees; they should be of equal standard to those of other degree-conferring institutions in South Africa, but the courses should be specially adapted to Native needs. European education in South Africa is only just shaking off the last traces of the tendency to make young Afrianders good imitation Scotsmen: it is to be hoped that Native education will not have to go through the phase of turning young Bantu into good imitation Afrianders.

At a later date, if Natives still desire it, subjects such as Latin and French, Applied Mathematics, Statistics, Ancient History and Public International Law, and other studies of equal present uselessness to the Native, even the Native leader, may be included in the College Syllabus. With Bishop Callaway⁵² the writer would hold that "there should be no limit put to the subject of education for those few who manifest any special taste for book-learning: they should go on as high as their abilities will admit." But there is nothing illiberal in urging that present activity and present financial resources should be applied to the urgent problem of a higher cultural and professional education specially suited to the Bantu ethos and to Bantu needs. It is probable that the demand for really useless European subjects will pass away after one or two generations of true education, but if it persists, it ought to be met if the Natives are prepared to finance it. At present it would mean that the purely academic side of the College (post-entrance or Matriculation) education should devote its main attention to Bantu languages, philology, literature, folklore, history, ethnology and music; experimental

⁵² Bishop Callaway to Sir Bartle Frere, 14th January, 1879.

psychology; general history and the social sciences; Geography and Geology; English and Dutch languages and literature; the physical and natural sciences, with special reference to agriculture; Mathematics, particularly with a view to practical applications such as elementary surveying and accountancy; and above all Christian ethics and the rediments of logic and metaphysics, related to the Christian philosophy of life.

Tentative steps have been taken towards the special training of the sons of Chiefs: for the benefit of these, classes in elementary political science and jurisprudence, in Native Law and in Statute Law affecting Natives might with advantage be given, and if Government can only be persuaded as suggested earlier⁵³ to set aside more posts in Native Administration other than mere interpreterships and minor clerkships to competent and trained Natives, this would throw open a new and attractive profession for detribalised Natives to pursue in detribalised areas.

Except for the South African Native College the administration of Native Education is in the hands of the Provincial Councils. This has proved most unsatisfactory, hence it is hoped that the recommendations of the Native Affairs Commission regarding Union Control printed as an appendix to this Chapter will receive due consideration. The Acts of 1925 relative to Provincial finance and Native taxation have put the control of total expenditure on Native education in each Province in Union hands, and thus gone some way to meet the difficulties of the situation.

⁵³ *Vide* Chapter VII *supra*.

APPENDIX.

Extract from the Report of the Native Affairs Commission (1921) relative to Union Control of, or alternatively Provincial uniformity in, Native Education. ⁵⁴

Arguments for Union Control and Administration.—

The Commission is unanimously and emphatically of opinion that Native education should be controlled and administered by the Union Government. The following considerations have induced their belief:—

- (1) Native education is the chief factor in moulding a Native policy for South Africa and therefore should be administered by the body responsible for that policy, viz., the Union Government.
- (2) While the several Native peoples will require different adaptations of education to suit their special requirements, there is need of a unifying policy for the country as a whole, and that policy should be prescribed by the Union. In particular, it needs to determine whether the education should be based on European practice or whether a practice based on the particular needs and capabilities of the Natives should be set up.
- (3) The funds of the Native education should come from Native sources and should be therefore derived from the body empowered to levy Native taxation.
- (4) If Native education is to serve the Native people to the fullest extent there is need for the closest co-operation among the several Government Departments, particularly the Departments of Agriculture, Public Works, Health and Native Affairs, while locally, it is from every point of view desirable that the pivot on which all local

⁵⁴ This excellent summary is reprinted here as probably few of the general public have consulted the original Blue Book. If the curious will compare it with Loram: "Education of the South African Native," Chapter XIII, they will have no difficulty in deciding which member of the Native Affairs Commission was responsible for the above scheme.

- Native matters should swing, including education, should be the Magistrate of the district.
- (5) Union control will remove disabilities and anomalies which are causing a good deal of discontent among Natives. The Transvaal Native, who pays £2 in Union Poll Tax is asking why his brother in the Cape who only pays 10s. hut tax, should receive so much better treatment in the matter of education.
 - (6) A Union system of control is necessary in order to give a fair treatment to Natives living in those Provinces where Native education is not popular, and has not received and cannot hope to receive adequate encouragement. It is not in the interest of the country that the Natives in one section should advance while those in other sections are retarded in their development.

Administration of Native Education by the Union Government.—If the administration of Native education came under the Union Government, the following system is advocated :—

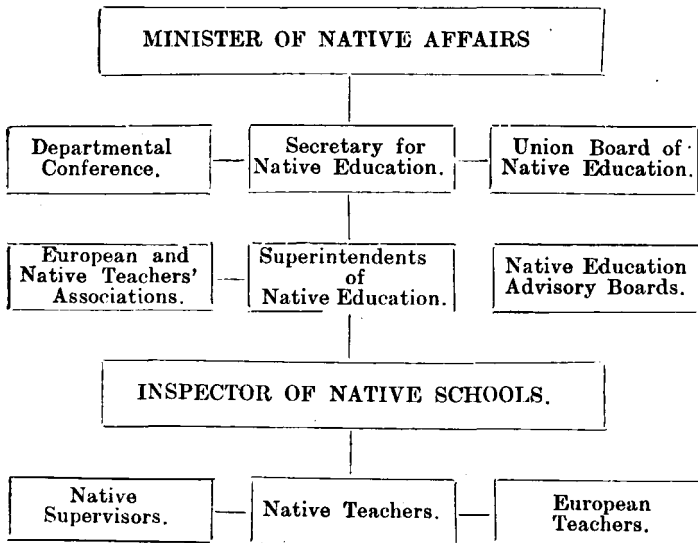
- (1) Native education should be a Department of State under the Minister of Native Affairs. To obtain the necessary co-ordination of educational with other Native Policy, there should be instituted a Board of Native Education, consisting of the Secretary for Native Education, the Secretary for Native Affairs and a member of the Native Affairs Commission.

The functions of this Board should be advisory.

- (2) Under the Secretary for Native Education, there should be three Superintendents of Native Education, one resident at King William's Town for the Cape and Transkei; one resident in Maritzburg for Natal and Zululand; and one resident in Johannesburg for the Transvaal and Orange Free State. Under these Superintendents there should be the separate corps of European Inspectors of Native Schools, the Native Supervisors of Schools and the European and Native teachers. To

expedite business, the preparation of vouchers for the payment of grants and salaries should be undertaken in the office of the Superintendent of Native Education.

- (3) To retain the co-operation of the Missionaries and Magistrates, there should be established in the several Superintendencies of Native Education, Advisory Boards somewhat on the lines of the Advisory Board in Natal, on which Natives should be represented.
- (4) It is recognised that the educational requirements of natives will not be the same all over South Africa, so that, in order to make necessary provision for the special needs of districts, the Secretary for Native Education will hold conferences at least once a year with the Superintendents in order to make the necessary adaptations. In this way a uniform Native Education policy with the necessary adjustments would be obtained.
- (5) The following diagram will represent the proposed administration :—



School System under Union Control and Administration.—The general policy proposed would be to regard Native Education at present as a missionary system with Government supervision and Government financial assistance while allowing for the general development of Government Native Schools as required. The following types of schools would be recognised:—

- (1) Sub-Primary Schools taking pupils up to Standard II.
- (2) Primary Schools taking pupils up to Standard IV.
- (3) Intermediate Schools taking pupils in Standards V. and VI.
- (4) High Schools taking pupils over Standard VI.
- (5) Training Colleges taking pupils over Standard VI.
- (6) Trade and Industrial Schools.
- (7) Native Night Schools.
- (8) The South African Native College.

Basis of Financial Support to Native Schools under Government Control.—Under a Union system of Native education, it is suggested that financial grants-in-aid be given on the following basis:—

- (1) *A grant-in-aid of buildings*, so that Natives may receive financial assistance in their efforts to put up school buildings.
- (2) *A grant-in-aid of teachers' salaries*: It is felt that uniform scales of salaries should prevail throughout the Union, and that the Government should pay the whole or a substantial portion of those salaries.
- (3) *A Capitation grant* based on the average daily attendance to encourage regularity of attendance and with the fees to pay the balance of the teachers' salaries. (This method is recommended instead of the method of paying the whole of teachers' salaries).
- (4) *A Maintenance grant* towards approved boarders in Training Institutions and Trade and Industrial Schools.

Provincial Uniformity.—In the event of a Union system of Native Education not coming into being, the Commission is of opinion that efforts should be made to improve and unify Native education to the end that:

- (a) A minimum of education at least should be provided by all Provincial Administrations for Natives deserving it. This minimum should be prescribed by the Union Government.
- (b) Uniformity with regard to classification of schools, teachers' certificates, teachers' salaries, grants-in-aid, syllabuses of instruction, should be obtained in order to remove the existing and vexatious anomalies.

Native Education Act.—To achieve this, an Act of Parliament should be passed somewhat on the lines of the Natives (Urban Areas) Bill, which would:

- (i) Confirm the Provincial Administrations in the control of Native education.
- (ii) Determine the basis of the Government's financial contribution for Native education.
- (iii) Define the minimum of education required and make provision for the increased financial aid in the case of the Provinces desiring to give more than the minimum.
- (iv) Institute a board of Native education consisting of a representative from each Province, with a Chairman appointed by the Minister, to bring about the uniformity referred to in (b) above.
- (v) Arrange for the creation of Native Education Advisory Boards in the several Provinces.

Financial Provision.—Under this system all forms of direct Provincial taxation of Natives should be transferred to the Union Government, and the Provincial Administrations shall not have the power to impose direct taxes upon Natives. It will be for the Union Government alone to impose taxation upon the Natives and to pay to the Provincial Administrations a subsidy for Native Education, based on the number of pupils to each type of school, and also an additional grant of £2 for every £1 raised by school fees or rates levied by Native Councils.

CHAPTER XXI.

SOME PRACTICAL GRIEVANCES.

It has often been remarked that little things seem to count for more with Natives than big ones. It is not so much unjust or unwise systems as tactless administration which causes trouble. This argument must not be pressed, as it often is, to the conclusion that sympathetic and kindly administration will in itself solve the whole Native question. Reconstruction of our system is a vital necessity. But with that reconstruction must be coupled the minor reforms of manner and method which can be seen and appreciated by the humblest Native, as earnest of the Government's good will.

Boorishness, incivility, tactlessness carelessness for Native susceptibilities, unnecessary complications of officialdom—these have done more to rouse ill-feeling between black and white than Land Acts, exclusion from political rights or any other legislation.

Take for example this little extract from Tengo Jabavu's "Black Problem":—¹

"In Pretoria I had three simple Post Office transactions to negotiate. I entered the main post office to buy stamps, for I saw several Natives entering and being served. Peremptorily I was told, in a discourteous and gruff manner, that Natives could not buy stamps there but had to go some two hundred yards round the block of buildings to the next street,² where, after much search, I eventually discovered a back-kitchen sort of arrangement with Indian salesmen behind the counter, and got my stamps. To despatch my parcel to East London, I was told to go back to the General P.O. On getting there it was duly registered; and I desired to purchase

¹ Pages 8—10.

² This arrangement has been simplified since, but I fear the discourtesy in the main office has not disappeared though the Indo-Native Post Office has been moved.

a postal order, but was then told to travel back to the Native P.O. for that! My feelings are best left under-scribed . . .

"Socially speaking, the black man in all public places is either 'Jim-Crowed' or altogether ostracized. In some stores he has to wait until all whites are served; in public offices, he is bullied by officials; in markets his stock and produce are by tacit arrangement earmarked for low prices.....

"In railways he is at the very start of his journey buffeted by booking-clerks; in the goods sheds he is unnecessarily anathematised in language that cannot bear repeating. His waiting-rooms are made to accommodate the rawest blanketed heathen; and the more decent Native has either to use them and annex vermin, or to do without shelter in biting wintry weather."

Doubtless this picture is overdrawn for rhetorical purposes. What happens often is depicted as happening always; but that it happens often is bad enough. Government officials do frequently treat Natives with marked and unnecessary incivility. A point the writer has noticed is that this rudeness is generally³ in inverse proportion to the position occupied by the official concerned. Cases of high officials being uncivil to Natives are rare indeed. Cases of third grade clerks, messengers and policemen displaying boorishness are quite common. The explanation is simple, of course. Partly it is the old "drest in a little brief authority" tag: partly it is that these minor officials, feeling that their superiority to the Native is not exactly self-evident, wish to emphasise it. That is why, among third-grade clerks for example, it is those who come from good homes and good schools and who naturally expect Natives to respect them who treat Natives best. Browbeating them is, of course, a confession of weakness.

What remedy is there? One is that where a Native Affairs Official is stationed, he should make it his busi-

³ Although some Sub "Native" Commissioners are not above criticism.

ness to see that arrangements for dealing with Natives are such as to cause as little inconvenience as possible, and also to bring to the notice of departmental heads any act of particularly flagrant or aggravated discourtesy in his area. But this will only touch the fringe of the problem. What is wanted is better education and the building up of a better tradition among the whites. High schools, in particular, might make a point of inculcating that ill-treatment of those moving in a different circle of society, especially if they cannot retaliate, is a sign of moral, mental and cultural inferiority. The Churches should exert themselves to ensure a truly Christian attitude to others on the part of their members.

Kindliness, courtesy and dignity are not necessarily bound up with the policy of identity, nor even with the policy of differentiation. As a matter of fact, past history has shown that these virtues are pre-eminently those of masters who look on the Natives as servants and inferiors. In the Southern States of America among the larger land-owners, and in our own Republics among the better type of farmer, these feudal qualities were particularly noticeable. To maintain them to-day is to maintain a fine national tradition, even where a strong opposition exists and is expressed to any reform in the policy of strict subordination.

Those who hold the policy of identity will require no arguments, unless they propose to treat all white men rudely as a matter of principle. Those who hold the policy of differentiation will readily agree that courtesy is not a quality which calls for differential application; and that its uniform exercise will make easier such discrimination as is really necessary. After all the whole trouble is at bottom unreasoning prejudice.

One word might be added. While courtesy on the part of the Native does not always reap courtesy, discourtesy is invariably met by discourtesy. Natives, particularly if they have a little education and a little only, are often prone to assume an offensive and

ludicrously important manner, foreign alike to the "raw" and to the thoroughly educated Native. Those of us who know Natives can afford to look with tolerant amusement on these little displays of "swelled head," but it is hardly to be expected that officials who know little or nothing of the Bantu or of the general phenomena of civilisation among semi-barbarous peoples should take any but a resentful attitude. There is a good deal of scope for Native leaders to educate their own people towards an attitude of "respect without servility" towards those who are normally their superiors in knowledge, ability and social station.

The question of colour discrimination on trams, trains, cabs, in entertainments and so on is a difficult one. A complete social identity would make it difficult to maintain that administrative, legal, political and economic differentiation which we have already indicated as the one way out of the involved tangle of the Native problem. Yet there is no need for a feeling of inferiority of the Native to be exercised: he is different—that is all. Most thoughtful South Africans would condemn alike a system such as that of Cape Town where white and black jostle one another inside the tramcars and a system such as that of Pretoria where the black man cannot use a tram at all, even to go from the location to his place of employment. Some form of differentiation must be used. The Durban system of reserving the top decks of cars for non-Europeans sounds well in theory, but in practice has led to many painful and unfortunate incidents. Probably the best plan is to run special trams or buses for non-Europeans, contingent on the Native community giving sufficient support to make them pay. On the Railways, the reservation of a few third-class compartments for Europeans and a few second and first-class compartments for non-Europeans seems to have worked well and to have given general satisfaction. A similar principle would hold good for entertainments. There must be separation of the races, but every encouragement should be afforded by Municipalities and other Local Government bodies

to Natives who propose to provide the amenities of life for their own people. ⁴

Another point to bear in mind is the arrangements which should be made in the case of distinguished visitors to a given centre. To throw open a reception or garden party to Natives would be unthinkable except to a very select few; and the proper place of those few is as the leaders of their own less advanced kinsfolk. What should be done, and too frequently is not done is to provide a duplicate function, specially adapted to Native needs and customs, for Natives. Such an act of courtesy would be very greatly appreciated, and bringing in the whole mass of Natives would do much more positive good, and much less positive harm, than admitting a few educated Natives to the European function where they would appear as inferiors, instead of leaders.

Of course there are certain types of gathering where the admission of a few Natives into a European assembly or *vice versa* would not only not arouse hostility but would be definitely welcome. In such cases no *doctrinaire* adherence to a rigid principle should exclude them. Every rule has its exception.

Europeans should strain every nerve to emphasise that any differentiation made does not necessarily imply the inferiority of the Native. If this were constantly borne in mind, and the most scrupulous tact and courtesy employed, the objection of the educated Native to the so-called "social colour-bar" might disappear.

Above all we ought to make a definite attempt to fight prejudice and conquer it, hard as the task may be on both sides. A differentiation based on sound and kindly reasoning, may be the height of wisdom and virtue. A differentiation based on uneducated and unreasoning prejudice can hardly be anything but foolish and vicious. The attitude of the European should always be one of real friendliness towards the individual Native, and the

⁴ It would be easier to remove some of these barriers in the towns, if only the number of Natives residing therein could be substantially reduced. Even so prejudice is unfortunately very strong.

policy of differentiation should be made to appear—as indeed it genuinely is—the natural product of a discriminating sympathy.

One point in which that policy would operate especially beneficially among the Native people is in the gradual working out of the principle of reserving official posts in Native areas or exclusively among Natives, for Natives. It would be the height of folly to make any sweeping changes at once: European officials, like the Transkeian Magistrates, are the best friends the Natives have, and no Native could do their work adequately today. But gradually—following the practice of the British Government in India—beginning from the lower posts an attempt should be made, so far as tribal conditions permit, to have a Native personnel for Native administration. The process would not be complete for many years: that time and experiment will show. But it could be begun now. It would afford an honourable and remunerative career to Natives able to qualify themselves for public work, and divert ambition which might be dangerous and ineffective of good, into safe and useful channels. In strongly tribal areas the adequate training of sons of Chiefs, and the devolution of more power on such as proved themselves worthy of it would be very wise, with a view of transforming the Chieftainship at some future date into a Native Magistracy, no longer necessarily hereditary. These suggestions may be commended to the thoughtful consideration of institutions for Native higher education, and particularly to the South African Native College, and to the Government, without whose co-operation any scheme which was merely educational would be a failure.

One grievance very commonly urged is the Pass System. The principle of the legislation drafted by the Native Affairs Commission and unfortunately shelved by the Government is to ameliorate the system as much as possible, to abolish the term "Pass," and to replace it with a "registration certificate" which applies to males only.

Two questions remain. Admitted that the Commission's scheme is the only practicable one at present. Is

the Pass System permanently necessary? Is it a genuine grievance?

Is the Pass System permanently necessary? The answer is surely in the negative. As the Native people grow more civilised, as a proper registration of births, marriages and deaths is brought about among them, and as they thus and in other ways become more easily identifiable should they desert from employment or commit crime, doubtless the Pass System can go without danger. As a protection against stock-theft, it is no longer necessary. As a check upon vagrancy, the needs for its existence is not very obvious. The Cape Province which has had, in practice, no Pass Law for the past half-century, does not appear to have a dangerous proportion of vagrants. The real necessity for a registration system would seem, even to-day, to be confined to Natives who voluntarily take service with Europeans, and here it should undoubtedly apply to females as well as males. But European public opinion, which on the subject of the pass laws is strong, would probably not tolerate more at the present time than the abolition of special travelling passes and of passes for women. With reasonable provisions for exemption, this should meet the present wishes of moderate Natives.

And yet any form of Pass System is likely to be felt as a genuine grievance—not only by educated Native leaders but by the illiterate masses; and it is because of the bad administration of the law. The manners of the police towards Natives require but little comment. Nothing could be more offensive than the way in which a Native, walking out on Sunday afternoon with his friends, is suddenly and peremptorily held up to produce his pass. This production is quite uncalled for and unnecessary: it serves no purpose but the temporary magnifying of the policeman's self-importance. But the manner in which the document is called for instils into the mind, even of the apathetic "kitchen-boy," a burning hatred of the Pass and everything connected with it. It would seem as if peremptory instructions might be issued to policemen not to call for passes, except in the investigation of

a crime or under the direct orders of a commissioned officer. Such a reform would be deeply appreciated, where a much more important one would arouse no response. The raids on Urban Locations to discover Natives without passes might also be discontinued; or, if carried out, carried out much more considerately and tactfully than at present.

Another great cause of colour hostility is the unscrupulous business methods of a certain type of trader, both European and Asiatic. There are doubtless good traders among the Natives, as there are good policemen, but they seem singularly unable to obtrude themselves on the public notice. We all know and laugh over the legend of the Scotchman who paid his Zulu "boys" eight florins instead of eight half-crowns for their month's labour in the far-off days when a month's labour could be obtained for £1. It is doubtless a cruel slander, and some other explanation must be found of the fact that the Zulus' only term for a two-shilling-piece is a "scotchman"; but it is typical of the kind of thing which happens, perhaps less crudely, in many Natives areas to-day. The remedy is hard to discover. Natives themselves have shown no aptitude for competitive commerce, and a way out can, thus, not be found by gradually excluding European and Indian traders from Native areas. What could be done is to institute a system of State trading, whereby existing traders might be taken over as Managers at a fixed salary and under inspection; but, in addition to the difficulty of obtaining Parliamentary sanction for such a scheme, there is the important point that the leopard will not change his spots. Cheating will take place the minute the Inspector's back is turned. It is a matter where one gropes for a remedy. Prosecution of traders found out in unfair dealing might be of some use; at least it might take place more frequently than is the case. Otherwise one can only hope against hope for the growth of a higher standard of business morality among traders. Possibly if a Magisterial Conference could take place with the European traders of the District, notes compared and an appeal for more honest dealing made from time to time, it might help.

Sharp practice on the part of European traders and of a certain type—fortunately not common—of European attorney has probably done more to stir up ill-feeling against Europeans than any legislation has done. It has shaken white prestige, which depends upon an earned reputation for fair dealing, to its foundation. In fact, as a matter of collective or race repute, it is probably safe to say that white prestige no longer exists, whatever respect may be felt for individual white men.

For the Natives in urban areas, there are many more grievances not all of which will be removed by the Government's urban area legislation. Concerning these it must be remembered that they form a large proportion of the whole Native population of the Union, and, by reason of their great accessibility and greater experience of European methods of strike and protest, are the best possible material for the professional agitator. They also constitute—though one would deprecate the argument of fear—a great potential menace to Europeans if badly governed. In every way it is to the interest of Europeans to remedy the legitimate grievances of urban Natives. That such is a matter of duty may appeal less to some critics: to the writer it is in itself conclusive.

Naturally, the carrying out of the principles advocated in this book would urge us to a reduction in the number of urban Natives and a "back-to-the-land" policy, land being made available as it is not to-day. But while this will reduce the magnitude of the urban areas problem other difficulties will remain.

The first is that of tenure. In most urban Locations, the tenure is very insecure, and it is difficult to persuade Municipalities to remedy this state of affairs. Yet improvements can hardly be expected when a Native holds ground virtually at the pleasure of the Location Superintendent. "To allow Natives to build on a certain spot and remain there a certain number of years is no encouragement. They want a home different to what they have

in the present Locations from which they are continually threatened to be removed." ⁵

As suggested earlier in the course of this study, ⁶ the objection of Municipalities to the grant of freehold tenure in Locations or Native Villages might be met by some form of perpetual leasehold (*erfpacht*) conditions of which might include beneficial occupation and (but for a few exceptional cases) the employment of one member of the family at least inside the urban area. It is idle to expect Natives in an urban location to cultivate their little patches of ground (where indeed they have them) and to beautify their homes if they have no real security of tenure. In some cases the action of Municipalities has been such as to shake that confidence in the benevolence of the authorities which, while far from perfect security, was better than nothing. Houses, the erection of which was connived at, have later been pulled down for health reasons and no compensation given to the owners, the sum total of whose property they represented.

There is a great tendency to build barracks instead of homes. Straight lines of uniformly-designed houses are most unsuited to Natives. It is but rarely that trees are planted on an extensive scale, though one would imagine that to conceal some of the existing locations would be among the first objects of those who have built them.

Houses are built of unsuitable material. Concrete is used because it is cheap and enduring. Stone or pisé-de-terre, according to locality, would be cheaper, more sightly and warmer. The houses are commonly built by white labour at Trade Union rates: hence, in order to be able to let them at a rent which Natives can pay, the urban authority has to make them exceedingly small. It must be remembered that while a family of kraal Natives can live in a hut, they also have a hillside. The urban house has to fulfil both functions.

⁵ Memorandum of J. W. Wauchope (Native) Court Interpreter in Kaffir, dated Port Elizabeth, 22nd December, 1882.

⁶ *Vide* Chapter XVI *supra*

In most urban locations, taps are in the streets, one to two, three or more houses, not in each house. There are no bath-rooms, one or two bath houses being deemed sufficient. Lights and proper roads are often missing. The writer has been in the middle of urban Locations where a murder could be committed and the murderer get away with great ease at nine o'clock at night.

The ground allotted to each house is dangerously small. Often a stand of 50 feet by 50 or 50 by 75 has to contain the house and provide a garden too. Where, as is frequently the case, the ground is hard and rocky, nothing can be done with it.

The truth is that Natives, of the better class at any rate, would prefer building their own houses on a site granted them on perpetual, or long, lease to the present method of going into ready-made houses as tenants. No people can live happily in an atmosphere of concrete and soap. Homes are wanted.

What is wanted by the urban Native is a decent-sized piece of land where he can grow vegetables, raise poultry and build his cottage himself, subject to the approval of the health authorities, which should not be lightly withheld, and security of tenure so long as he occupies his plot beneficially.

To encourage the Natives to improve their homes, little rewards or prizes could be offered to the owners of best built houses, the tidiest house, the best vegetable gardens, the best stock of poultry, etc., in the Village. Were this made an annual event, and were the Mayor to attend and distribute prizes, not only would living conditions be improved, but a bond of very real kindness would be forged between the Municipal heads and the Native inhabitants. These things would cost so very little, and would mean so very much. Perhaps it is because they are so trivial and so obvious that they have been neglected.

The provisions of some form of innocent recreation for Natives in urban areas is another point of importance. We cannot wonder at the gangs of young ruffians found in towns such as Pietermaritzburg and Durban at night

time, when there is so little for Natives in the town to do. It is not suggested that the Municipality should provide entertainment, but it should certainly do three things—

- (1) leave open spaces suitable for sports grounds, etc., in constructing a Location;
- (2) build a Village Hall in the Location, suitable for public meetings and concerts;
- (3) throw as little difficulty as possible in the way of legitimate entertainment by private persons or companies, and encourage, even to the extent of subsidising, charitable or religious associations which seek to provide clean entertainment.

A dull day's work, followed by an evening in the unattractive little barack-room which the urban Native has to call home, is not conducive to content or morality. As Sir Walter Stanford put it when Magistrate at Engcobo over forty years ago—⁷ "We semi-civilise a man, and take him away from his fellows The beer-parties and dances, not having been conducted on strict moral principles are put down; but no effort is made on our part to fill up the want that under these conditions is naturally felt. We must endeavour to look more into the home-life of the Natives, and, while we attempt to eradicate the evils that taint their pleasures, we should not forget that all work and no play makes civilisation unattractive to the masses we wish to move."

In Municipalities where the Locations are too small to house the Native population, the conditions are worse. Cape Town and Johannesburg are here the worst offenders. The Editor of the "Rand Daily Mail"—a journal which, while very fair and even liberal on Native Affairs, is by no means of the sentimental-negrophile type—wrote in a leading article of 24th October, 1921, with absolute truth "In the very heart of Johannesburg to-day Natives are living under appalling conditions. They are being shamelessly exploited by a certain class of European. They are herded in hovels for which they have to pay extortionate rents. From the point of view

⁷ Cape Native Blue Book, 1880, page 129.

of sanitation, their surroundings are unspeakably bad. They occupy slum yards which are spread over most of the eastern, southern and western districts and live in circumstances which act as a direct incentive to crime. Nearly all of these places provide excellent breeding grounds for the germs of disease. They are therefore a constant menace to the whole of the population, white and black alike. 'Indeed,' says the Committee,⁸ 'the natives who handle and distribute so much of the food of the City, and who work daily in the homes of the European section of the community, in very many cases come straight to their duties from these houses of pestilence.'

"To put the matter bluntly, a very considerable number of the Natives employed in Johannesburg live under most demoralising and debasing conditions. And every day that these are allowed to exist, the public health is seriously jeopardised. Nor can people plead ignorance of the broad facts stated by the Committee. Only three years ago⁹ Johannesburg was visited by an epidemic which exacted a very heavy toll of its population. Things then came to light that were rightly regarded as a scandal, and it was urged on all sides that they must be ended. Since that time various articles and reports have been published, all emphasising the character of the evil and the urgent need for drastic remedies. Yet with all this one reads of Native families, many belonging to the educated class, living to-day in dilapidated brick buildings, shanties of wood and tin, and places made of kerosene tins, old wood and scrap iron. Vermin abounds, ventilation is deplorable, and it seems nobody's business to prevent the accumulation of rubbish. In a loft above some business premises twenty-eight Native families live in cubicles and the owner gets over £500

⁸ A Committee of the Joint Council of Europeans and Natives of the Johannesburg Native Welfare Association, in which that splendid social reformer, Mr. J. D. Rheinallt Jones, was a prime mover. It would be difficult to exaggerate the value of the social work done by the "Johannesburg Group" of philanthropic workers, of whom such men as Mr. Rheinallt Jones and that unwavering friend of the Natives, Mr. Howard Pim, are examples.

⁹ In October, 1918.

per annum for them, in addition apparently to the rents obtained from Natives dwelling in the yards of the same property. Could exploitation of the Natives go further?

“Much more might be said in the same strain. For instance there is the Malay location which is inhabited by about 8,000 persons, half of them Natives, and which, in his latest report, the Medical Officer of Health designated a ‘festering menace to the community.’ But it is unnecessary to labour the question. The point is that the manner in which thousands of Natives live in Johannesburg to-day is an absolute disgrace. The position is one which, in its own vital interests, the white community ought not to tolerate. And it certainly has no right, on humanitarian grounds, to permit such conditions to prevail. The fault cannot be laid at the door of the Natives. The majority of them would gladly embrace the opportunity of living in healthy surroundings. But they have nowhere to go. To a very large extent they are part of the permanent population. Their work lies here, and the yards and hovels are the only places where they can reside. The onus therefore rests upon the authorities to arrange for their accommodation.”

The recent Urban Areas legislation aims at removing these slum areas and housing all Natives in Locations and Villages. But it will be an uphill task. Vested interests are to be fought. Hidden corruptors are to be overcome. Unless we determine to go right ahead with fearlessness and determination, the task may never be fully accomplished.

To the European reader these things may seem more or less a matter of course in a large City. But slums must never be taken for granted, least of all in a country like South Africa. Recollect that Johannesburg is only forty years old, that the Natives concerned have only been there for one generation. Think of the hundreds of miles of open country where they would be living but for European industrial activity—still empty to-day. Is it right, and is it inevitable, that these people should be slum-dwellers?

The subjects discussed in this Chapter are not such as call for the research of the historian, the wisdom of the political theorist or the subtlety of the lawyer. They need for their elucidation only sympathy and commonsense. Compared with other aspects of the Native problem, they are simple and straightforward. No great difficulties attend their solution. And yet they matter so much to the average Native—more than the big things. Can there be any possible excuse for leaving unattended to these comparatively easy matters, reform in which will conciliate Native feeling and evoke that confidence in European good-will and ability without which it is hardly possible to solve the graver difficulties of Native policy?

CHAPTER XXII.

GENERAL CONCLUSIONS.

Our historical analysis is now complete, and it only remains for us to gather the threads together, and see whether there is any unifying principle present in the detailed recommendations which history has suggested to us in each several aspect of our problem. Is the Native question really a series of unconnected difficulties, to be met by unconnected remedies; or is it possible to make a synthesis of these various conclusions to which we have come?

With perhaps wearisome iteration, one phrase has recurred throughout these different treatments—differentiation. The policy of differentiation, of which Sir Theophilus Shepstone was the earliest exponent, though it leads us to-day to very different conclusions from those of the early Shepstone system, has over and over again revealed itself as the way out between the Scylla of identity and the Charybdis of subordination. We have seen it in the administrative, in the legal, in the political, in the economic, in the religious and in the social sphere as not merely a plausible or advisable, but as the all but inevitable, solution. In trying to arrive at a general formula, we are in no doubt that differentiation is the formula to be accepted—differentiation, without any implication of inferiority.

Humanity is always glad to have a catch-word. Yet it has its dangers. If the catch-word is remembered along with the painful analytical process which produced it, well and good. But if, as so often happens, it is detached from the detailed conclusions of which it is the synthesis, it is apt to be misunderstood. It may be, as since the first publication of this book it has been, "twisted by knaves to make a trap for fools." A formula which is once coined lends itself to ready misinterpretation. It is bearing all this in mind that, whilst accepting the formula of differen-

tiation (we cannot, indeed, do otherwise as a result of our investigation) we must now proceed to make its meaning and implication as clear as possible.

That we should accept it there seems no doubt. For one thing must have occurred to the reader more than once in the past investigation—that the "Native question" is only one aspect of a double problem: there is also a "European question."

The future destiny of Europeans in South Africa is something which must be discussed, if the Native problem is to be solved. Are Europeans going to be a mere sprinkling of aristocrats—rich farmers and professional men? Are they going to diminish gradually in numbers? Are they, perhaps, going to die out ultimately? Have they any inherent right to be in Africa, a black man's country, at all?

Let us answer the last of these questions first. They have every right. In many parts of South Africa they preceded the Bantu even in time of arrival. Taking South Africa as a whole, what right have the Bantu to it which the Europeans have not? They are *not* aborigines, as so often termed: they are conquerors, as foreign to South Africa in 1500 as Europeans were. If force confers rights on them as against Bushmen and Hottentots, it confers rights on Europeans as against them. The same argument applies to occupation. As far as beneficial occupation goes Europeans have the stronger claim: their superior ability and civilisation would have warranted the subjugation even of aborigines. The Bantu have the right, which every national entity has, to the preservation of their identity and to civil liberty—a right commensurate with the ability of the nation concerned to respond to the obligations which the right confers—but that is all. South Africans have grown, in the centuries since Van Riebeeck first set foot on the shores of Table Bay, to love their country with a passionate and single-hearted love. The majority of South Africans do not regard themselves in any real sense of the word as a European Colony. Except for the immigrants of the last generation, they have no other home but South Africa—nowhere else to go to.

The submersion of white civilisation and government would leave them "wanderers on the face of the earth." Thus any idea of treating the Native question in South Africa purely from the Native point of view must be put rigorously on one side. Europeans will always be a permanent population in South Africa—and the point of view of the visitor from overseas who is quite willing to precipitate a deluge from which he himself would escape scatheless cannot seriously demand our attention or respect.

Europeans will always be resident in South Africa, and, as far as we can see, Europeans of every social station. Their numbers, while naturally increasing slower than those of the Bantu, will receive constant reinforcement from immigration. There is no reason to suppose that Europeans in South Africa will ever come to be a mere sprinkling of aristocrats.

If, in deed, we are not exceedingly watchful of economic movements and tendencies, we may find Europeans in South Africa gradually resolving themselves into a scattered aristocracy and a mass of "poor whites." Such a process would be fatal to South African nationality and progress. We have already seen that Europeans have every right in South Africa, and we are thus perfectly justified in resisting a process which would eliminate that backbone of a nation—a prosperous middle-class. At present such a class exists, but what we have called the policy of identity would probably result in its gradual disappearance.

The result of the thoroughgoing application of the policy of identity would be, in a few generations' time, that South Africa's population would consist of a small class of white aristocrats, a large and increasing mixed population, a diminishing number of "poor whites" rapidly intermarrying with Natives and Coloured people, and—far the largest class of all—large masses of semi-Europeanised Natives. The ethnic and economic state of South Africa would be very much like that of Brazil or Chile to-day. There is no doubt that the majority of white South Africans look upon such a prospect with undisguised

horror. There is no doubt that thoughtful and dignified "heathen" Bantu share that horror.¹ Why persist in a policy which is bound to produce such results? For that such results would be produced by a thoroughgoing policy of indentity—economic as well as political—admits of no doubt.

We must make it our aim, then, to preserve the independent existence of a pure white race, embracing all social classes, in South Africa. But every one of the arguments for preserving the individuality of the white race is an argument also for preserving the individuality of the black. We may mould and direct their energies as we will, but we may not place bars across their upward path. It is a positive duty to civilise as well as control, to develop as well as protect. When we think of Mazzini's grand conception of every nation having its "mission" to humanity, which no one else can fulfil, we cannot but think that the vast group of negro and Bantu races also have their contribution to make to the unseen universe of thought in which we live. They have never yet had a fair chance. They have been left without guidance, prematurely removed from white influence, as in Liberia and Hayti; or they have been used as purely subservient to the comfort and convenience of whites, as in the Southern States of America; or their race purity and individuality has been destroyed by a white admixture, as in Brazil and Portuguese Africa. To white South Africa falls the task of demonstrating to the world how a black race can be raised to heights hitherto undreamed of, by reason of the presence of potent civilising influences; can preserve its individuality unchanged by European admixture; can advance to its own highest possible status; and yet can, with all this, remain on amicable terms with the white race among whom it lives, not as merely geographically

¹ Vide Report of the Natal Native Commission, 1906—7, para. 70. "One old Native, in vehement and passionate language, suiting gesture to and with dramatic effect, asked: 'What were these white things which their girls were bringing home on their backs in such numbers? What did the Government mean by allowing their girls to bear so many white children? Did they want to breed mule drivers?'—In allusion to the fact that men of mixed race invariably drive Government conveyances."

contiguous, but as complementary and co-operating. Such is South Africa's "mission." Will she rise to it?

Only the deeply ingrained conviction that the Native must be kept for ever in a position of subordination can hinder her. It is a conception natural and even justifiable at the time when it was born; but we must move with the times. It is no longer a safe, a wise, or a just guiding principle. To divert Native aspirations into the path of differential development is possible: thereby white and black individuality will both benefit. But to hold all Natives down in a position of permanent inferiority will ultimately beget a deep and bitter race hatred which will aim, not at the autonomy of the black but at the extermination of the white. And, if once a huge war of extermination between white and black broke out in South Africa, it is idle to argue that the white would win. He would, of course, with his machine guns and aeroplanes and other "civilised" devices, but it would be a Pyrrhic victory. It is not merely of the tens of thousands of white men, women and children who would be massacred that one thinks. It is rather of the brutalised and demoralised condition that the cruelties and barbarities of a long war of extermination would produce in the scanty remnants of the white race which survived it—"survivors," as Tacitus puts it, "not only of the others but of themselves."

The policy of identity would produce deep-seated hatred of the black man by the white. The policy of subordination would produce deep-seated hatred of the white man by the black. There is only one way out—a way narrow indeed, unexplored, dangerous and difficult, but safer than the raging torrents and tremendous precipices to right and left—the path of differential development, the course dictated by that true liberalism which has ever stood for the preservation of small nationalities, the course dictated by that wise conservatism which is not prepared to sacrifice national institutions and natural divisions for an unknown and fear-inspiring future. For the preservation and happiness of white and black alike, we stand for the policy of differentiation.

But let us be careful how we understand this term "differentiation." By it we do not mean complete segregation: for complete segregation is impracticable.

Is it the mere sport of chance that white and black have come together here in Southern Africa? Is it a blind freak of a careless Nature? Or is it, in the old-fashioned language of our fathers, a "dispensation of Providence?" Is there not a purpose in it?

We know that under the general climatic conditions of the southern parts of Africa, Europeans cannot do all the work they would do in more temperate zones, and at the same time preserve energy, virility and time for thought and the "good life." Our pioneer forefathers have preserved these qualities and handed them down to us to defend and cherish. But had we, as a race, to do all that was necessary for life ourselves in the torrid climate of a South African summer, all our energies would be lost in the mere task of earning our daily bread. Our intellectual life is built up on a foundation of Native labour. Nor is this a mere exploitation; for the Bantu, used to tropical conditions far back into the mists of history, find South Africa as much better than their previous homes as Europeans find it worse. They are willing to labour moderately for kind masters; as a people they have the gifts of gaiety and the quiet mind. They are necessary to us.

We also are necessary to them. They would probably never have advanced alone as far in the scale of civilisation as they have progressed and will progress under European influence. At any rate, it would have been the work of countless centuries of ignorant and bewildered and unguided groping after light. This work we have been able to save them. Without European aid, the Bantu would be more or less in a state of stagnation. Without the application of European ability and experience, there could be little hope of their progression to a higher life. Europeans are necessary to the Bantu. Thoughtful, advanced Natives realise that the withdrawal of Europeans and their institutions and civilisation would be a disaster of the first magnitude to the present-day

Bantu, that South Africa would in all probability "reel back into the beast" were the guiding hand withdrawn. Europeans are necessary to the Bantu. Europeans and Natives are not two unrelated entities. They are, and must be kept, separate; but they are mutually necessary. A wise statesman will try even to assist Nature in preserving this interdependence which makes not only tolerate but happy the inevitable position of two very different peoples, between whom no geographical boundaries can be drawn, occupying the same portion of the earth's surface. Our policy must not be one of differentiation only, but of differentiation with co-operation. It is submitted that the conclusions to which we have been separately led in every position of this study embody the principle of co-operation as fully as that of differentiation itself.

We must not make a god of this little phrase of ours. The bane of generalisations is that Nature is full of exceptions. We must guard against a rigid or *doctrinaire* application of the phrases which result from our synthesis. We must never differentiate simply for the sake of differentiation. We must never differentiate in order to suggest that Natives are inferior to Europeans. We must remember that the term "Native" includes men of every degree of civilisation, some of the highest. We must never differentiate as a result of unworthy and unreasoning prejudice. If we differentiate, it must be as the result of a definite principle—the value of the individual national ethos. We must preserve European, and Native, national individuality; and we must differentiate as far as is necessary and advisable for that end, in charity, courtesy and sympathy, and no further.

To the European South African we can thus say that the Native is needed for the very life and existence of European South Africa; that on white South Africa's handling of the Native problem, judgment will be passed by the outside world on South African nationality; that the raising of the Bantu is necessary to prevent the sinking of the European; that a people which has suffered much from oppression should never be satisfied to

assume the rôle of an oppressor; that it is shameful for a young and vigorous community to acknowledge itself incapable of solving its greatest problem; that all ways of dealing with the existing situation are dangerous, but that the most dangerous of all is sitting still and letting things slide, and the least dangerous, the application of a policy of differential development.

To the Native we can say that when all is said and done, the benefits conferred on him by Europeans far outweigh any acts of injustice, harshness or cruelty which they may have committed individually and collectively; that the whole hope of the future of the Bantu rests on the co-operation and help of sympathetic Europeans; that an independent Bantu state, without Europeans, would mean a complete relapse into barbarism and inter-tribal warfare; that Bantu individuality can be preserved as well with European co-operation as without, and receives a strength and inspiration from European co-operation which it would otherwise lack; that any successful attempt to unite with Europeans, by the sacrifice of national individuality, would mean destroying two good races to form one, probably indifferent one; that the devotion to the policy of identity leads nowhere and will always be devoid of practical good for the Bantu; that any desire or hope to drive Europeans out (if such be cherished) is vanity of vanities, and doomed to failure.

To European and Native alike the policy of differentiation is the only wise policy, the only fair policy and the only practicable policy. Let them co-operate in it, as a pledge of the co-operation which the separate races will henceforth pursue with each other.

And, indeed, to all leaders of thought and activity, European and Native alike, there is something ineffably inspiring in the realisation that we can co-operate with the Divine forces which are slowly working to raise the backward races of the world. Too often we are told that our best plan is to leave the Native question to the "natural process of evolution," with the implication that we are to sit still and watch things evolve. Evolution among human beings can take place only through human

agency and when a nation (such as white South Africa) has reached the self-conscious stage, that agency is bound to be a conscious agency. The merest tyro in philosophy knows that among the greatest forces of evolution we reckon to-day that conscious human activity, which itself is the highest product of past evolution. We are called to this difficult, but glorious, task, a task

—“Full of joy in that with God we work,
Slow through the ages starwards leading those
Whose home can never be the dust and mire.”

CHAPTER XXIII.

SUMMARY OF DETAILED RECOMMENDATIONS.

It is customary for a work of history to end with a resonant and magniloquent peroration, the closing cadences of which end at last to precipitate the reader from a somnolent lethargy into a world of grateful wakefulness. But this is a practical study. We must deny ourselves the luxuries of rhetoric, and end on a practical note with a practical Chapter.

This Chapter is a summary for purposes of convenience, of the practical recommendations regarding the Native question made in the course of this book, and is confined to those recommendations which appear to be practicable at present or in the near future (that is, in the next ten or fifteen years) subject only to the consideration that the Bantu fear of change might mean the deferring of some of them to a later period, which, if they stood alone and not along with numerous others, might be introduced at once.

The recommendations are arranged under six heads, viz., (I) Administrative, (II) Legal, (III) Political, (IV) Economic, (V) Cultural, (VI) Social and General.

(I) *Administrative.*

(1) The creation of a separate system of local officers for Natives all over the Union, such officers to be both administrative and judicial and to take cognisance of all cases where Natives are concerned, except civil suits where the defendant is a European.

(2) These officers, and all officers dealing solely with Natives, to be members of the Native Affairs Department.

(3) The Union to be divided up into Chief Magistracies similar to the Chief Magistracy of the Transkei.

(4) The limitation of Native appeals to the Supreme Court, and the inclusion of one or more Chief Magistrates as Assessor members of the Appellate Division, when Native appeals are carried thereto.

(5) The better training of Native Affairs officials in Bantu law, languages and sociology.

(6) More transfers of Native Affairs officials from one territory to another.

(7) The provision at the South African Native College and elsewhere of better and fuller facilities for the training of sons of Chiefs and others (including training in the administration of Native Law) and direct Governmental encouragement of such training.

(8) The throwing open of certain posts, other than interpreterships and messengerships, in the Native Affairs Department to such Natives as may qualify for them.

As corollaries to points (1) to (4)—

(a) the abolition of the Native High Court, Natal;

(b) the transformation of the Chief Native Commissionerships for Natal and the Ciskei into Chief Magistracies;

(c) the creation of one Chief Magistracy for the Cape other than the Transkei or Ciskei; and of two, or possibly three, for the Transvaal and Orange Free State.

(II) *Legal.*

(1) The official recognition of Unwritten Native Law throughout the Union, by all Courts up to and including the Appellate Division.

(2) The enactment of a general and simple exemption law for the Union.

(3) The drawing up of a Compendium, to be revised periodically, describing Native Law as actually existing (showing all local divergencies) for the guidance of the Courts, and not as a binding Code.

(4) The repeal of the Natal Native Code.

(5) The inclusion of Native Law as a subject of study for the Civil Service Higher Law and LL.B. Examinations.

(6) The encouragement of the movement (not to be made law except by general consent) for giving a Chief's *first* wife the status of Great wife, *i.e.*, that her son shall be heir to the Chieftainship.

(7) The gradual removal, as far as possible, of such innovations in primitive Native Law as have tended to make *lobola* more of a purchase and less of a pledge.

(III) Political:

(1) Native Affairs to be separate portfolio, distinct from the Premiership or any other Cabinet office.

(2) The Minister for Native Affairs to hold office for a fixed period of years, irrespective of Cabinet changes.

(3) The Minister for Native Affairs, and other three European members of the Native Affairs Commission, to coincide with the four Senators representing Native interests (as a *principle*, not necessary as regards existing personnel on either side).

(4) All Native Affairs measures to originate in the Senate, which shall also supply all Select Committees on Native Affairs.

(5) The gradual extension throughout the Union of the system of local government authorised by Act 23 of 1920, preferably with the modification that new Councils, at any rate those following the Pondoland pattern, should at first be merely advisory, until the Natives concerned have had more experience of them.

(6) The summoning of an Annual Native Advisory Conference, under Section 16, Act 23 of 1920, for the whole Union, developing as the Council system grows and the Exemption Law begins to work into an advisory National Council.

(7) If the Native Conference asks for it, and shows anything like unanimity in its suggestion of names, the appointment of two Natives to the Natives Affairs Commission.

¹ These eight points have been left as they stood in the First Edition, although (3) and (4) are of dubious value after the 1926 changes in the constitution of the Senate and (6) has been taken up into General Hertzog's "Union Native Council Bill."

(8) A general system of legislation for Natives by proclamation (without derogation from the sovereign rights of Parliament) pending the fuller working out of the National Council system.

(IV) *Economic.*

(1) The modification of the Natives' Land Act by the provision of a small number of new "potentially black" areas and of larger "neutral" areas in addition to the present "white" and "black" areas.

(N.B.—Land acquired by Natives, on Governor-General's approval, outside scheduled areas, between 1913 and the passing of the enactment suggested above, to be considered permanently "black" area.)

(2) The extension of the Glen Grey system of tenure to more advanced communities of Natives in other Provinces (e.g., Natives residing on Mission Reserves in Natal).

(3) The introduction of an *erfpacht* or perpetual lease tenure in Urban Locations.

(4) The general encouragement by Government of Native Agriculture, especially market-gardening and the keeping of the less mobile stock, and of poultry.

(5) The training of Native Demonstrators in Agriculture, and domestic handicrafts, and their utilisation throughout the Union.

(6) The encouragement of Native Agricultural Societies by the Government by the offering of small prizes and otherwise.

(7) The discouragement of the employment of Natives in industries, except where they can live in comparatively natural conditions, with their families, in Native Villages, in the close proximity of their employment. (This involves the discouragement of their employment in the Witwatersrand Mines.)

(8) Where white and black labour are employed by the same industrial concern, a colour-bar, if possible not a legislatively enacted one—but "vertical" as against the present "horizontal" one.

(9) Encouragement, through educational institutions, of Native domestic handicrafts, based on primitive Bantu crafts; and discouragement of the teaching of these particular handicrafts (e.g., pottery, basket-making) to European children.

(10) The endeavouring to secure the constant and frank co-operation of the Trades Unions with the Native Affairs Commission and the Native Affairs Department.

(V) *Cultural.*

(1) Encouragement by the Churches of the employment of South African born and trained Missionaries.

(2) More care and discrimination by the Churches in the *presentation* of Christianity to the Bantu.

(3) The encouragement of the growth of autonomous Native and European administrations within the Unity of each Church.

(4) Co-operation between the Missionary bodies, with a view to avoiding the more flagrant forms of sectarian rivalry.

(5) Reformation of the present Native Primary School curriculum, to be specially adapted to Bantu traditions and needs and to be based on (a) a cultural training through the vernacular; (b) a utilitarian study of English or Dutch and simple practical arithmetic; (c) elementary agriculture; (d) domestic handicrafts. Similar changes in higher educational institutions.

(6) Insistence on the provision of religious education in all Native schools, even if non-Missionary.

(7) Native Education to be made self-supporting as far as possible.

(8) The active encouragement of the South African Native College, which should be encouraged to adapt its curricula more to Bantu traditions and needs, and less to the requirements of the University of South Africa. The recognition of this College as an independent degree-granting body, able to examine Native external students.

(9) The adoption for Native Education of the Loram Administrative Scheme. (See Appendix to Chapter XX.)

(VI) *Social and General.*

(1) The insistence by the Government on the display of ordinary civility to Natives by Railway and other Government Officials.

(2) The issue of peremptory orders to the police not to call for Native passes or registration certificates, except in the investigation of a crime or on direct orders from a Commissioned Officer.

(3) The imposition of heavy penalties on Europeans having immoral relations with Native women, including their immediate dismissal from the Public Service, if they are Public Servants.

(4) Special arrangements to be made for Natives to meet distinguished visitors to an area (where there is a mutual interest) apart from European functions in the same area.

(5) Better tenure and better housing and living conditions in Urban Locations.

(6) The provision of open spaces and a Village Hall in every Urban Location.

(7) The encouragement, or at least the absence of discouragement, of all legitimate forms of entertainment for Natives in Urban Areas.

INDEX OF NAMES

of Persons mentioned in the text or quoted in
in foot-notes.

Aberdeen, Lord (Secretary of State for the Colonies)	14
Ackerman, J. W. (Member, Natal Native Commission, 1881—2)	69
Adams, Dr. (American Missionary, Natal)	28
Addison, Dr. (Member, Natal Native Commission, 1852—3) ...	54
Addison, R. H. (Magistrate, Nqutu)	439
Ayliff, Hon. J.	110, 212, 218, 396,
Ayliff, Rev. J.	416 464
Bagshaw, W. (Member, Commons Select Committee, 1836—7)	18
Baines, T. (Member, Commons Select Committee, 1836—7) ...	1 ^a
Barkly, Sir Henry (Governor, Cape of Good Hope)	124, 418
Barnett, L. (Asst. Commissioner, Quthing, Basutoland) ...	173
Barry, Hon. Sir J. D.	110, 214
Barter, Chas. (Author of "Stray Memories of Natal and Zululand")	26, 43, 46, 53, 151,
Beattie, — (Native Trader)	201 391
Beaumont, Hon. Sir Wm. (Administrator of Natal, etc.) 78, 79, 80, 221, 293, 342, 343	440
Berry, Sir W. Bisset	110
Binns, Rt. Hon. Sir Henry (Prime Minister of Natal) ...	74
Bird, John, C.M.G.	53, 433
Birkenstock, Hon. C. J. (Member, Natal Native Commis- sion, 1906—7)	77
Bluntschli, J. K.	249
Blyth, E. (Asst. Commissioner, Berea, Basutoland)	174
Blyth, Capt. Matthew (Chief Magistrate, Transkei, etc.) 105, 108, 109, 112, 118, 216, 254, 279, 363, 385, 393, 399, 401,	388 439
Boshoff, Hon. H. G. (Judge President, Natal Native High Court)	221
Boshoff, Hon. J. N. (President, Orange Free State) 54, 398,	433
Bosman, G. J.	396
Botha, Gen. the Rt. Hon. Louis (Prime Minister of the Union)	10, 474
Botha, P. R. (Member Natal Native Commission, 1881—2)	70
Botha, T. J.	279
Bourquin, Rev. Chas. (Mission Suisse Romande)	393, 438
Bowker, J. H. (Governor's Agent, Basutoland)	102
Boys, Henry Scott	367
Bridgman, Rev. F. B., D.D.	259
Brownlee, Hon. Chas. (Secretary for Native Affairs, Cape of Good Hope, etc.) ... 23, 32, 42, 100, 103, 108, 110, 116, 212, 388, 393, 398,	109 433
Brownlee, W. T. (Magistrate, Butterworth) ... 258, 263, 364,	330 187
Bryant, Rev. Father	2
Bulwer, Sir Henry (Governor, Natal)	10
Burgers, Rev. Thos. François (President, S.A. Republic), 41,	121
Buxton, Fowell (Chairman, Commons Select Committee, 1836—7)	18

Calderwood, Rev. Henry	87—89, 116, 182, 233, 245, 328
	361, 362, 371, 388, 396
Callaway, Rt. Rev. H. (Bishop of St. John's, Kaffraria)	226, 475
Campbell, Hon. H. C., I.S.O. (Judge President, Natal Native High Court)	77, 245, 382, 412, 417
Campbell, Hon. Marshall (Member, S.A. Native Affairs Commission, 1903—5)	132, 134, 283, 333, 334, 372
Campbell, W. H. (Member, Natal Native Commission 1881—2)	70
Campbell, W. Y.	220
Canham, A.	77
Carnarvon, Lord (Secretary of State for the Colonies)	21, 42, 44
Cathcart, Sir George (Governor, Cape of Good Hope)	87, 90, 91, 92, 183, 359, 362, 385, 388
Cato, G. C. (Member, Natal Native Commissions, 1852—3 and 1881—2)	54, 70
Cawood, Samuel	390
Chadwick, Hon. J. (Judge, Natal Native High Court)	80
Chalmers, W. B. (Member, Cape Native Laws and Customs Commission, 1883)	110
Charles II	166
Churchill, Senator the Hon. F. O. F.	295, 296
Clarke, Col. Sir Marshall (Resident Commissioner, Basutoland)	106
Cloete, Dr. Henry (H.M. Special Commissioner in Natal)	24, 36—38, 49—50, 193, 328, 329
Cole, Sir Lowry (Governor, Cape of Good Hope)	12
Colenso, Rt. Rev. J. W. (Bishop of Natal)	69
Colley, Sir George Pomeroy (Governor, Natal)	203
Connor, the Hon. Sir Henry (Chief Justice, Natal)	69, 416
Cory, Prof. Sir Geo., Kt., D.Litt. (Author of "Rise of South Africa")	2, 324, 325
Creux, Rev. Ernest (Mission Suisse Romande)	387
Currie, Sir Walter	97, 183, 213
Dale, Sir Langham	451
Dalzell, Rev. Jas.	120
De la Harpe, J. B. (Member, S.A. Native Affairs Commission, 1903—5)	132, 372
De Villiers, Rt. Hon. Lord (Chief Justice of the Union)	293
De Villiers, Senator	295
Dickson, Capt. Quayle (Member, S.A. Native Affairs Commission, 1903—5)	132, 372
Dingaan (Zulu Chief)	150, 383, 410, 442
Dingiswayo (Abatwa Chief)	67, 68, 395
Dohne, Rev. C. L.	28
Donkin, Sir Rufane (Member, Commons Select Committee, 1836—7)	18
Dower, E. E. (Union Secretary for Native Affairs)	115, 365, 377, 401
Dugmore, Rev. H. H.	33, 212
Dunn, John (Zulu Chief)	43, 44, 68, 69
Du Plessis, Rev. Dr.	434
D'Urban, Sir Benjamin (Governor, Cape of Good Hope)	14—17, 26, 32, 87, 211, 212, 324
Dyke, Rev. R. M.	235, 238
Elliott, Major Sir Henry (Chief Magistrate, Transkei)	109, 217, 226, 280, 382, 396, 420

Escombe, Rt. Hon. Sir Harry (Prime Minister, Natal)	71, 220,	358
Esselen, D. J. (State Secretary, New Republic)		120
Evans, Maurice S., C.M.G.	77,	435
Faku, Chief (Witness before Natal 1881—2 Commission)	70,	293
Faku (Pondo Chief)	20, 21,	24
Fannin, J. E. (Member, Natal Native Commission, 1881—2)		70
Field, J. J. (Magistrate, Mapumulo)		440
Fitzgerald, Dr. J. P.		96
Flemming, Leonard		415
Foxon, C. C. (British Resident, Maputaland)		174
Fraser, Sir John George, Kt., LL.D.	163, 355,	456
Frere, Sir Bartle (Governor, Cape of Good Hope)	45, 46, 47, 48, 65, 226,	292
Frost, John, C.M.G., M.L.A.		364
Fynn, A. F.	54, 176, 237,	238
Gallwey, the Hon. Sir Michael H. (Chief Justice, Natal)	58, 66,	357
Garcia, E.		279
Gibbs, Lieut. C. J. (Member, Natal Native Commission, 1846—7)		28
Gibson, J. Y.		221
Girdwood, W. (Magistrate, Tsomo)		108
Gladstone, Rt. Hon. W. E.		19
Glenelg, Lord (Secretary of State for the Colonies)	15—20, 211,	388
Gödley, Lieut.-Col. G. A.		132
Gordon, General Charles George		105
Green, Dean (Member, Natal Native Commission, 1881—2)	70, 201,	231
Green, R. A. (Member, Natal Native Commission, 1881—2)		70
Grey, Earl (Secretary of State for the Colonies)	28, 29, 53, 89, 90, 181, 192, 329, 362,	370
Grey, Sir George, Bart. (Secretary of State for the Colonies)		91
Grey, Sir George (Governor Cape of Good Hope)	18, 91—93, 95—98, 109, 116, 212, 328, 388, 394, 398, 415,	464
Griffith, Col. C. D., C.M.G. (Governor's Agent, Basutoland)	53, 100, 104, 113,	252
Grout, Rev. Aldin		442
Grout, Rev. Lewis		28
Grundvig, Bishop		407
Gumede, P. J.		259
Hallbern, H. P.		464
Hamilton, J. A. (Member, S.A. Native Affairs Commission, 1903—5)	132,	372
Harding, Hon. W. (Member, Natal Native Commission, 1852—3)		53
Hardy, W. (Member, Commons Select Committee, 1836—7)		19
Hare, Col. (Lieut.-Governor, Eastern Districts, Cape of Good Hope)		388
Hawes, C. (Member, Commons Select Committee, 1836—7)		18
Henderson, J. (Member, Natal Native Commission, 1852—3)		54
Hertzog, Gen. the Hon. J. B. M. (Union Prime Minister)		347
Hicks-Beach, Sir Michael		292
Hindley, T. (Member, Commons Select Committee, 1836—7)		18
Hitchins, Senator the Hon. Chas		295
Hlubi (Batlokua Chief)		69

Hobhouse, L. T	63,	249
Holland, B. H. (Civil Commissioner, King William's Town)		364
Holland, W. (Member, Commons Select Committee, 1836—7)		18
Hook, D. B. (Magistrate, Herschel)	183,	184
Hrayi, Lot		96
Hudson, Geo. (British Resident, Transvaal)		128
Hughes, W. J.		279
Hulett, the Hon. Sir J. L. Kt.		77
Hunter, D. A.	450, 452, 461, 466,	467
Jabavu, Prof. D. D. T.	63, 166, 203, 267, 272, 279,	301
	387, 392, 463, 467, 468,	482
Jabavu, J. Tengo		456
Jameson, Sir Leander Starr (Prime Minister, Cape of Good Hope)	44,	45
Jervis, Captain		26
Jobi		398
Johnston, W. H. (Member, Commons Select Committee, 1836—7)		13
Jokweni		20
Jones, J. D. Rheinallt		494
Jorissen, Dr. E. J. P. (Attorney-General, S.A. Republic)	44,	48
Joubert, Gideon		414
Kama, Chief		94
Keigwin, H. S. (Director of Native Development, Southern Rhodesia)	428,	430
Ketshwayo (Zulu Chief)	63, 69, 81, 111,	395
Kimberley, Earl of (Secretary of State for the Colonies)	81,	203
Kirkman, Hon. J., M.L.C.		417
Kok, Adam (Griqua Captain)		20
Kona (Xosa Chief)		34
Kreli (Xosa Chief)	20, 388,	396
Krogh, Senator the Hon. J. C.	132, 372, 433,	456
Kropf, Rev. A.		240
Kruger, His Honour S. J. P. (President, S.A. Republic)	41	128
Labouchère, Rt. Hon. H. (Secretary of State for the Colonies)	96,	394
Labuschagne, C. (Member, Natal Native Commission, 1852—3)		54
Lagden, Sir Godfrey (Resident Commissioner, Basutoland)	132, 255,	283
Landman, C. (Member, Natal Native Commission, 1852—3)		54
Lanyon, Sir Owen (Administrator, Transvaal)		122,
	115, 230,	258
Leary, W. P.		309
Lemmer, General L. A. S., M.L.A. (Member, Union permanent Native Affairs Commission)		107
Letsie (Basuto Chief)		107
Levey, C. J. (Magistrate, Xalanga, etc.)	188, 383, 388, 390, 399, 401,	417
Leyds, Dr. W. J. (State Secretary, S.A. Republic)	121,	124
Lindley, Rev. D.	28,	442
Lobengula (Matabele Chief)		395
Loch, Sir H. B. (Governor, Cape of Good Hope)		107
Loffhagen, Rev. R. W.		394,
	451, 457, 471, 473, 477,	510
Loram, Dr. C. T. A., LL.B., Ph.D. (Member, Union permanent Native Affairs Commission)	307, 449,	450
Lushington, Dr. (Member, Commons Select Committee, 1836—7)		18
Lutuli, Martin L.		259

Mabille, Rev. L.	235,	238
Macfarlane, W. (Member, Natal Native Commission, 1852—3) ..		54
Mackinnon, Col		182
Maclelan, Col. (Commissioner for British Kaffraria)	32, 95, 111,	212
Magistrates (District Resident):—		
Butterworth	258,	364
Dundee		441
Elliotdale		217
Engcobo	190, 217,	493
Estcourt	411,	439
Fort Beaufort		226
Glen Grey	254,	255
Herschel		183
Idutywa	258, 273, 364,	396
Inanda	245,	441
Ipolela		396
Ixopo		396
King William's Town		396
Kornet Spruit		101
Mapumulo		440
Middledrift		245
Mount Ayliff		217
Mount Frere		230
Mqanduli		217
Nqamakwe	257,	364
Nqutu		439
Pietermaritzburg		237
Port St. John's		394
St. Mark's		217
Tsolo	217,	225
Tsomo	108, 258, 273,	364
Umgeni		382
Umlazi		417
Umtata	217,	446
Umzimkulu		217
Xalanga	217, 383,	389
Mahlali Zikali		96
Maitland, Sir Peregrine (Governor, Cape of Good Hope) ..		90
Makulula	70,	293
Malan, Rt. Hon. F. S.		456
Mamaree		124
Mapasa (Emigrant Tembu Chief)		20
Marais, Prof. J. I.		407
Maritz, S. (Member, Natal Native Commission, 1852—3) ..		54
Martineau, J.	47,	65
Marzolf, Rev. H.		238
Masupha (Basuto Chief)	235,	105
Mathews, Hon. Justice Maynard		441
Matuzana, Chief		389
Merriman, Rt. Hon. John X. (Prime Minister, Cape of Good Hope)	41, 47, 99, 100, 105,	157
Merriman, T. R. (Magistrate, Umtata)		446
Methley, J. E.		417
Meyer, Lukas (President, New Republic)		434
Mgojana (Ndwandwe Chief)		68
Milner, Rt. Hon. Viscount (High Commissioner in South Africa)	89, 132,	138
Milner, H. (Member, Natal Native Commission, 1852—3) ..		54
Mini, Stephanus		374
Mlandela (Abatetwa Chief)		67

Molesworth, Sir Wm. (Secretary of State for the Colonies)	92
Moor, Rt. Hon. Sir F. R. (Prime Minister, Natal, etc.)	297, 299, 321
Moreland, J. (Member, Natal Native Commission, 1852—3)	54
Morewood, E. (Member, Natal Native Commission, 1852—3)	54
Moselekatse (Matabele Chief)	20, 35—6, 251, 395
Moshesh (Basuto Chief)	20, 21, 39, 40, 91, 119, 395
Mpande (Zulu Chief)	20, 21, 22, 25, 35—9, 150
Mti, Peter	235
Murray, Sir George (Secretary of State for the Colonies) ...	12
Murray, Hon. Sir T. K.	77
Nambula	70, 293
Napier, Sir George (Governor, Cape of Good Hope) ...	90, 388
Nel, T. (Member, Natal Native Commission, 1852—3) ...	54
Newcastle, Duke of (Secretary of State for the Colonies)	56, 359, 362, 385
Ngqobela v. Sihele	185
Nightingale, G. E.	382
Noble, John	110
Nongquasi	95
Ntsikane	439
Oba	439
“O’Kulis, Dr.” (Rev. W. Postma)	471
Orpen, J. M.	104, 105, 108, 111
Ortlepp, A. A.	414
Osborne, Melmoth (British Resident, Zululand)	120
Otto, P. A. R. (Member, Natal Native Commissions, 1852—3, and 1881—2)	54, 70
Owen, Rev. F.	442
Page, Miss Gertrude	415
Pakington, Sir G. A., Bart. (Secretary of State for the Colonies)	87, 90, 183
Panda, vide Mpande.	
Paterson, Peter (Magistrate, Estcourt)	411, 439
Pease, C. (Member, Commons Select Committee, 1836—7)	18
Philip, Rev. John, D.D.	14, 16, 18
Phillips, Thos.	26
Pim, Howard, C.B.E.	494
Pinson, F. C., M.L.C.	312
Plaatje, Sol T.	387
Plant, R. W.	410, 435
Plumptre, E. H. (Member, Commons Select Committee, 1836—7)	18
Postma, Rev. W. (“Dr. O’Kulis”)	471
Potgieter, E. (Member, Natal Native Commission, 1852—3)	54
Pottinger, Sir Henry (Governor, Cape of Good Hope) ...	29
Rawson, Col. H. E. (Member, Natal Native Commission, 1906—7)	77
Reeve, Capt. J.	93
Retief, Piet	442
Rex v. Mdandala za	301
Rex v. Roodt	301, 304
Reynolds, T. (Member, Natal Native Commission, 1881—2)	70
Rhodes, Rt. Hon. Cecil John (Prime Minister, Cape of Good Hope)	41, 109, 362
Roberts, Senator the Hon. A. W., D.Sc. (Member, Union permanent Native Affairs Commission)	309

Robertson, Hon. A. G.	455
Robinson, Rt. Hon. Sir John (Prime Minister, Natal)	73
Rolland, Emile S. (Member, Cape Native Laws and Customs' Commission, 1882)	110
Rose-Innes, J. (Civil Commissioner, King William's Town)	396
Rudolph, G. M. (Member, Natal Native Commission, 1881—2)	70
Russell, Lord John (Secretary of State for the Colonies)	464
Russell, R.	31, 43, 38, 410
Ryley, R. R. (Member, Natal Native Commission, 1852—3)	54
Samuelson, R. C. A.	371
Samuelson, S. O. (Under-Secretary for Native Affairs, Natal)	198
10, 76, 79, 85, 132, 134, 152, 168, 175, 192, 197, 227, 251, 283, 286, 333, 334, 372	433
Sandile (Xosa Chief)	34, 388
Sauer, Hon. J. W. (Union Minister for Native Affairs)	103, 104, 108, 303, 455
Saunders, Sir Charles (Chief Magistrate, Zululand)	220
Scanlen, Hon. Sir T. C. (Prime Minister, Cape of Good Hope)	104, 108, 132 372
Scheepers, F. (Member, Natal Native Commission, 1852—3)	54
Schoeman, H. J. (Native Commissioner, Pretoria and Heidelberg)	123
Schreiner, Senator the Hon. T. L.	293
Scott, Rev. James (Member, Natal Native Commission, 1906—7)	77
Scott, Sir John (Lieut.-Governor, Natal)	56, 416
Scott, J. H.	115, 258
Scully, W. C.	257, 364
Sekelini v. Sekelini	187
Sekukuni, Chief	123, 124
Selborne, Rt. Hon. the Earl of (High Commissioner in South Africa)	289, 453
Shaw, M. B.	225
Shaw, Rev. Wm.	387, 395, 410, 411, 464
Shepstone, A. J., C.M.G. (Secretary for Native Affairs, Natal)	80, 307, 391, 394
Shepstone, Henrique C., C.M.G. (Secretary for Native Affairs, Transvaal and Natal) 9, 61, 74, 81, 124, 159, 160, 219, 221	127 221
Shepstone, John W., C.M.G. (Secretary for Native Affairs, Natal)	59, 61, 203
Shepstone, Sir Theophilus ("Somtseu")	9, 23, 26—31, 34, 41—54, 56, 57, 59—62, 65, 70, 92, 98, 111, 124, 125, 126, 149, 150, 151, 154, 157, 174, 192, 193, 197, 214, 219, 227, 254, 321, 328, 384, 410, 433, 497
Shepstone, Theophilus, Jr., C.M.G.	175, 234
Shepstone, Rev. Wm.	26
Sigcoto v. Mokuu	194
Sloley, Sir Herbert (Resident Commissioner, Basutoland)	132, 283, 372 433
Smith, Sir Harry (Governor, Cape of Good Hope)	13, 18, 32, 33, 34, 87—9, 91, 113, 181, 182, 211, 212, 327, 362, 370, 385, 388, 414
Smith, Major T.	25
Smuts, Gen. the Rt. Hon. J. C. (Union Prime Minister)	299
Soga, Rev. Tiyo	439
Solomon, Sir Richard	110
Spies, A. (Member, Natal Native Commission, 1852—3)	54
Sprigg, Hon. Sir J. Gordon (Prime Minister, Cape of Good	

Hope)	103, 104,	279
Stainbank, D. L. W. (Member, Natal Native Commission, 1881—2)	70,	72
Stanford, Senator the Hon. Sir Walter ("Ndabeni")	109, 110, 132, 134, 190, 217, 280, 282, 303, 330, 333, 334, 433, 456,	493
Stanford, R. W. (Magistrate, Butterworth)		364
Stanger, Dr. (Member, Natal Native Commission, 1846—7)		28
Steenkamp, Jan		398
Stewart, Dr. James		110
Stockenström, Sir Andries, Bart.	16, 18, 91, 324,	325
Strachey, Lytton		105
Straw, W. E.		465
Struben, Capt.		54
Stuart, J.		77
Surmon, W. A. (Magistrate, Kornet Spruit)		101
Sweeney, C. J. (Magistrate, Glen Grey)		255
Symons, J. P.		417
Taberer, H. M.		132
Tatham, E.		294
Teteluku, Chief	70, 229,	53
Thēal, Dr. Geo. McCall	2, 11, 16, 19, 33, 66, 95, 103	
	104, 112, 384, 418,	438
Thompson and Stilwell v. Kama		336
Thompson, Col. (Member, Commons Select Committee, 1836—7)		18
Thompson, "Matabele" (Member, S.A. Native Affairs Commission, 1903—5)	132, 372,	433
Thompson, Newton O.		187
Thompson, W. R. (Government Agent, Kaffraria)	385,	464
Titren, A. E. (Magistrate, Umlazi)	4	417
Took, Hammond		111
Tsewu v. Registrar of Deeds	127,	361
Tshaka (Zulu Chief)	26, 68, 150, 251, 324,	395
Turner, G. (Member, Natal Native Commission, 1881—2)		70
Tyali		398
Uhama		68
Umgudhlwa	190,	191
Umlambiso		20
Umlakaza		95
Ummi		71
Umswazi		251
Umzilikazi, vide Moselekatse.		
Upington, Sir Thos.	110,	433
Usibepu		69
Uys, Dirk (Member, Natal Native Commission, 1882—3)		54
Van Rensburg, W. H. Janse, M.L.A.		364
Verity, J. G. (Asst. Magistrate, Middledrift)		244
Victoria, H.M. Queen	21, 37	96
Viljoen, Dr. W. J.		456
Von Wielligh, G. R.		419
Vumsen, Ben		392
Wakeford, W. E.		279
Walton, Sir Edgar H. (High Commissioner for the Union in London)	287, 293,	303
Walton, J. V. (Member, Natal Native Commission, 1881—2)		70
Wannenburg, Senator the Hon. P. J.	168, 170, 459,	463
Waterboer, Andries (Griqua Captain)	14,	21

Watermeyer, V. M. (Magistrate, Tsomo)	258,	361
Warner, J. C.		212
Wauchope, J. W.		491
Welsh, A. R. (Magistrate, Tsolo)		225
West, Martin (Lieut.-Governor, Natal) ...	28, 29, 30, 32,	328
Wheelwright, C. A. (Chief Native Commissioner, Natal)	239,	410
Wilhelm, G. (Agent of New Republic in Zululand)		120
Wilson, A. (Member, Commons Select Committee, 1836—7)	18,	19
Windham, W. (Secretary for Native Affairs, Transvaal) ...		128
Wodehouse, Sir Philip (Governor, Cape of Good Hope) ...		186
Wolmarans, Senator the Hon. A. D. W.		297
Wolseley, Field-Marshal Lord (High Commissioner in South Africa)		67
Yonge, C., M.L.A.		73
Zululand, Bishop of		434
Zwide (Ndwandwe Chief)		67

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Lobola.

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Missions.

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Codification of Native Law.

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Lobola.

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Native Labour.

Franchise.

Recognition of Native Law.

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Polygamy.

Lobola.

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Native Councils.

Missions and the Ethiopian Movement.

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