

DRAFT EVIDENCE FOR THE
COMMISSION ON THE SEPARATE REPRESENTATION OF VOTERS ACT VALIDATION AND AMENDMENT BILL.

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THE S.A. INSTITUTE OF RACE RELATIONS

Draft of evidence to be presented to the Commission to enquire into the Subject Matter of the Separate Representation of Voters Act Validation Amendment Bill.

THE INSTITUTE

The South African Institute of Race Relations was established 25 years ago to work for peace, goodwill and practical co-operation between the various sections of the population. It has not been connected with any political party since its inception nor has it been tied to any party-political doctrine. Its work has been permeated by the fundamental principles of Christian living and by the values basic to Western Civilization. Its methods have been research and investigation, the objective analysis of facts so obtained, and recommendations based on such analysis. The Institute is dependent upon voluntary public subscriptions for its support. Its membership, of over ^{3,700} 1,000, is composed of all racial groups and it has affiliated to it municipalities, churches, missions, universities, welfare and a variety of other organisations. While paying special attention to under-privileged and culturally backward groups, it has sought the welfare of all groups, for it believes that the inter-dependence of groups in South Africa is such that the welfare and progress of the Non-European groups is essential to the progress and prosperity of all South Africans.

ASSUMPTIONS

In presenting this memorandum the Institute makes certain assumptions which it believes are common ground for all South Africans of whatever colour: these are, -

- (a) That all groups in the country are concerned to maintain and advance Western Christian Civilization in South Africa.
- (b) That all groups believe in the values of democracy.

The first assumption involves the acceptance that civilization means a moral and political order evolved for the common good and such that each member in society has the opportunity for the fullest development of his capacities and personality. It also involves the belief that such civilization will be informed and permeated by the principles of Christian living, namely, the brotherhood of man in its Christian interpretation, the value of the individual and his potentialities, and the equality of the value of each man's personality, however different his functions and capabilities in society may be.

The second assumption involves the acceptance of the recognition of personal responsibility, the indispensability of discussion as an alternative to the acceptance of the word of authority, the equality of educational, economic and moral opportunity to all, and the acceptance of the impartial application of law. (cf. Harris, White Civilization attached.)

The Institute believes that the maintenance and progress of "White" Civilization in South Africa requires the recognition of these and other implicit values.

THE UNIQUENESS OF SOUTH AFRICA

South Africa claims that it is unique in the Western World. This uniqueness consists of the existence of different ethnic and other groups; differing cultures; the undeveloped nature of the majority of its population; and the fact that political and economic power is in the hands of a white culturally superior minority group whose initiative has been largely responsible for the economic, political and moral advance of the country and the evolution of South Africa to sovereign nation status. There are other sovereign states in the world which have problems resulting from the existence of different ethnic, religious or other groups within them, but in these, the numerically superior race possesses the political power. In South Africa, it is the culturally superior group which holds political power, and the question arises as to the extent such cultural superiority can be regarded as a factor which must be taken into account in the application of democracy in a unitary state and in the wielding of political power. In homogeneous societies in the past, the full application of the democratic procedure has involved the principle of "one man one vote". To what extent is this a valid democratic principle in a multi-racial, self-governing society with undeveloped peoples where there is a numerical minority of a superior culture holding power?

Recently/.....

Recently, in other parts of the world there has been such constitutional experimentation - in India, Burma, Ceylon, in other African territories and elsewhere. Many of these experiments, whether in independent countries or in dependent territories such as those in Africa, have arisen from the desire to apply Western democratic principles to societies in which there are a variety of races or of religious interests without Western democratic traditions, or where there are culturally backward peoples. In independent countries such experiments or adaptations of traditional democracy have been made with a view to protecting the interests of numerical minorities and securing their adequate representation in the affairs of the country concerned. In dependent territories such as British possessions in Africa with a settled white minority, the attempt is being made to reconcile the civilized and economic interests of such a minority with the demands of a culturally backward but numerically stronger group and at the same time direct events towards the attainment of the ultimate objective of Western democratic self-government. Such experiments have taken the form of the reservation of seats, or of communal representation, or of adaptations of the common franchise in such ways as to secure the representation of culturally minor or sectional interests. South Africa itself has seen the application of the principle of the common roll in the Cape prior to 1909, the establishment of a differentiated but common franchise after 1909, the application of a communal franchise with the Representation of Natives Act of 1936 and the Asiatic Representation and Land Tenure Act of 1946, and the unequal loading of constituencies as between town and country.

People with power very seldom, if ever, wish to give it up or share it with others. This is true of the position of imperial powers in Africa and is particularly true where such ruling powers have a settled ruling minority in such territories. Reluctance to share such power finds many justifications :- the African people are illiterate; they know little or nothing of the workings and conventions/....

conventions of a democratic state; they would destroy christianity and civilization if they came to power; the country would retrogress economically, there would be miscegenation and so on. There is a certain validity in many of the arguments so put forward but the fact is that such power is shared. Peoples' motives are mixed and the appreciation that motives are complex is a better basis from which to work than a belief that the motives are simple and uncomplicated. Man is not merely an economic or political animal, he is a religious and ^{moral} ~~moral~~ being and he tries to find satisfaction for all such drives. The white people of South Africa, for example, have shown this throughout their history, English and Afrikaans alike: they have given with one hand, and shamefacedly taken away with the other. We have been reminded recently that the Dutch Reformed Churches, held to be the religious aspect of a very intense nationalism, raise £400,000 per annum for Non European mission work yet the political expression of that nationalism, while also giving, denies what is the logical consequences of that giving.

The existence of such mixed motives on the part of Europeans and such aspirations as the Non-Europeans show, are factors which must be taken into account in the application of the principles of democracy in a multi-racial society. The aim of government should be to dispel such fears, especially when they are irrational and unfounded, and give outlets for aspirations building up mutual trust and mutual responsibility for it is the function of government to ensure that no man need be afraid of another.

It is with such considerations in mind that the Institute approaches the question of the political representation of the Cape Coloured in South Africa.

HISTORY OF THE CAPE COLOURED FRANCHISE.

Before 1836, elected representatives of the people played no part in the government of the Cape, but in that year with Municipal Ordinance No. 9 of 1836 provision was made for the election of Municipal Boards on the basis of a franchise which did not make distinctions/...

distinctions on grounds of colour: all men could vote and stand for election provided they were in possession of the necessary property qualification. In 1846, consequent on Lord Durban's Report (1839) on Canada, the principle of representative institutions for the Cape was accepted, provided there was no political discrimination against the Cape Coloured. The 1835 Constitution for the Cape entitled a man to register as a voter and to stand for election to the House of Assembly if he earned £50 p.a. or if he earned £25 p.a. and was supplied with board and lodging, or if he occupied a house and land with a combined value of £25. If he wished to stand for the Upper House, he could do so if he owned immoveable property worth £2,000 clear of mortgage, or moveable and immoveable property together worth £4,000 clear of debts. These rights were given to European and Cape Coloured alike; it was a common roll franchise.

The incorporation of British Kaffraria in 1865 and of the Transkeian Territories between 1872 and 1894 induced a change in attitude, for the Africans so incorporated were relatively primitive. So the Parliamentary Regulations Act of 1887 stiffened registration regulations and declared that a share held in tribal lands did not entitle an African to a vote. In 1892, the Franchise and Ballot Act raised the economic qualifications for the vote and introduced an educational test; a man had to earn £50 a year or occupy a house and land together worth £75 and he had to be able to sign his name and write his address and occupation. This did not raise a racial or colour bar for it applied to all races. Both Africans and Cape Coloured could qualify for the vote on these terms. This position endured in the Cape till 1909.

In the northern territories of the Transvaal, the Orange Free State and Natal, the position was otherwise. In the Transvaal and the Orange Free State the franchise was open to all European men, irrespective of education or property qualifications and closed to all Non-Europeans including Coloured. This was in pursuance of the policy that there was to be no equality either in Church or in state between European and Non-European. This was the position at the time of Union.

In Natal, the Royal Charter of 1856 laid down only age (21 years) and economic qualifications for the franchise. In 1865, however, Law No. 11 of 1865 was specially introduced to disfranchise Africans who, though possessing the necessary property qualifications for the franchise, were subject to special and not to general laws. The Franchise Amendment Law of 1883 maintained this exclusion but nothing in the laws affected Coloured or ^{the} Africans who were not under special laws. In 1896, Indians were excluded but the position of the Coloured people was not impaired though the involved procedure for registration deterred applications. There were only 186 Non-European voters in Natal at the time of Union (1909).

Cape

Cape

THE UNION

The Native Affairs Commission of 1903 - 1905 first formally recommended the idea of a communal franchise but this suggestion was made only in connection with Africans, not the Cape Coloured. It was apparently considered that the adoption of such a communal system would make it possible for some form of communal representation to be given to Africans in the other Colonies as well as the Cape. The former Colonies were averse to a native franchise, even on those terms and the Cape representatives at the National Convention were so firmly in favour of their own common roll that they did not raise the matter of a communal franchise at all. Merriman in evidence before the Commission said that the Cape franchise worked well, and that a communal franchise was undesirable, that it would not "keep the natives out of politics", that it would make the party struggle for native votes more acute, that such votes might constitute the balance of power in the House, or might give rise to an "Irish party" in the House (i.e., an extreme group outside party alignments which could, in certain circumstances, hold the balance of power).

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It is only in recent years that the Cape Coloured vote has been challenged. It was taken so much for granted at the time of Union that only the native franchise was referred to when discussing safeguards. Similarly, in the debates of the Cape Parliament on the draft constitution during the special session of 1909, the emphasis was entirely on whether or not the native vote was adequately protected.

The position then was that at the time of Union

- (a) the Cape Coloured people in the Cape were fully enfranchised, and enjoyed full political rights with Europeans.
- (b) In Natal, there was no constitutional discrimination between Coloured and white persons.
- (c) In the Transvaal and O.P.S., the Coloured people enjoyed no franchise rights at all.

The effect of Union was that the customary Non-European franchise in the Cape was maintained but the right to elect Non-Europeans to Parliament was eliminated. In Natal the position of the Cape Coloured remained as before but no further applications for registration from Asiatics and Africans would be entertained. The political colour bar in the Transvaal and Free State was maintained. The existing franchise rights of Cape Non-Europeans were safeguarded by the entrenched clauses.

SINCE THE UNION

Since Union there has been a relative diminution of the Cape Coloured vote. The Women's Enfranchisement Act of 1930 halved the importance of the Cape Coloured vote for it enfranchised European women but not Cape Coloured women. The Franchise Laws Amendment Act No. 41 of 1931 abolished the existing property qualification for Europeans and extended the franchise to every white person over 21 years of age. The Representation of Natives Act (No. 12 of 1936) placed Africans on a separate register with a communal franchise. The Electoral Consolidation Act of 1946 made it possible to challenge Non-Europeans on the Provisional Voters List to appear in person or by proxy to establish their qualifications at a Magistrate's Court under pain of being struck off the List. The Electoral Laws Amendment Act No. 50 of 1948 made it obligatory on Cape Coloured men applying for registration to fill in their application forms before a magistrate, police officer or electoral officer. Act 40 of 1945 in addition made provision for the preparation/....

preparation of rolls for each electoral division for white men, white women, and Non-Europeans respectively, for compulsory registration of European voters and compulsory notification of changes of address: no such provisions applied to Cape Coloured voters. The ultimate absolute diminution of the Cape Coloured voters' power has come in the form of the Separate Representation of Voters Act.

THE INSTITUTE'S ATTITUDE TO THE ACT

In considering the Institute's attitude to the Separate Representation of Voters Act, the Institute respectfully asks the Commission to remember, -

that the Institute is non-party political and that it probably has members of all political parties;

that its composition and deliberations are inter-racial;

that it is disinterested in any party - political or sectional sense;

that it has no mandate from the Cape Coloured people;

that it endeavours to be objective and practical;

that its assumptions have been laid out in paragraphs .. to ..

The Institute's conviction is that in any democratic state the conferment of the franchise can be determined only by the capability of the person to exercise that right. Such capability is in no way affected by the colour of his skin, even if it be by his culture and his education. The denial of the right to properly qualified persons (or its curtailment) simply on the ground of their colour is therefore undemocratic and unjustifiable. The Institute believes that this follows logically from the acceptance of the values and principles of Western Christian democracy. It considers that this is more emphatically the case with the Cape Coloured people who do not differ in tradition, language, culture or interest from Europeans who have full franchise rights, and that to place the

Cape Coloured people on a separate voters' roll and give them communal representation in the form suggested in the Act would result in a serious deprivation of political rights based not on incapacity to exercise them but merely on the ground of colour. Of all Non-European groups the Cape Coloured are particularly assimilated to European ways of living, in history, culture, language, identity of interest, tradition, scale of civilization.

The Institute submits that the proper function of a member of Parliament is to represent, to the best of his ability, national rather than sectional interests and that the consideration of policy should have as its primary objective the interests of the population as a whole. Such interests consist in the moral, political, and economic development of the individual as a member of the state and these interests are not made less important by membership of any particular colour group.

The Institute considers that differences of approach and action on the part of members of Parliament should be concerned with matters of principle or opinion, cultural, moral, or economic and that the more such concern is compromised by the subordination or substitution of sectional interests, whether of class or religion, or language or race, the less useful and effective for the common good Parliament will become. The circumstances that in the public life of this, as of many other countries, sectional interests play an active and disruptive part, is no justification for extending the process of creating additional sectional representation. The source of wisdom and statesmanship would be to strive for the subordination of sectional claims to the collective interests of the whole body politic and to legislate for the good of the people as a whole rather than for the real or supposed interests of any particular group or groups. The Institute believes that the interests, present and future, of Europeans as well as Non-Europeans demand this conception of government and policy.

In a multi-racial country, demarcation by racial groups is of all forms of particularism the least desirable, and indeed, the

most dangerous, as likely to foster and intensify antagonisms of a kind which history has shown to be peculiarly harmful.

Unless in exceptional circumstances, the separation of voters into constituencies on the basis of any other than territorial division is, moreover, unsound and undemocratic political practice. Political opinion is organized in parties on a national basis and any grouping which is not national in its scope will either fail to fit into any party system and so become ineffectual, or it will be the source of new parties which are not national in their purview and will create fissures in the body politic. A legislature split up into sectional groups (more especially if they are based on racial differences) cannot represent a unified national interest, would have nothing to hold it together, and is therefore liable to be off-set by a dictatorial and irresponsible executive.

Representation by territorial constituencies, on the other hand, tends to counteract any such development because all or most interests are present in every locality, if widely enough demarcated. In the locality, there is, with varying exceptions, a cross-section of society. With mutually complementary variations, localities are interlocking microcosms of the nation. Representation should therefore always be on a territorial system, with local constituencies; and only in the most exceptional circumstances, and only as a supplementation of the territorial system, should there be any departure from this principle. The Institute maintains that no such exceptional circumstances exist in the case of the Cape Coloured people.

In view of their language, tradition and integration into a Western democratic and Christian way of life, the Institute is at a loss to conceive on what grounds, other than grounds of racial prejudice and pride (which are inconsistent with the acceptance by Europeans of Christian democratic principles) the political segregation of the Cape Coloured people can be based. The Cape Coloured people

have/---

have made undeniable progress educationally and economically and in the fields of religion, culture, and democratic responsibility and by so doing have established their right to the maintenance of the political position which they have enjoyed for a century. The Institute is not aware of any convincing evidence that their participation in the common roll has been abused by them or has had any detrimental effect on the well-being of the state. In the absence of adequate evidence to the contrary, the Institute is not prepared to consider allegations of political corruption and, even if such corruption should be established, the Institute does not consider it any justification for the deprivation of common rights for such corruption involves a similar degree of corruption in Europeans. And surely if corruption is held to make the Cape Coloured unfit to exercise the franchise on the common roll, it must equally unfit them to vote on a communal register. In the latter case, indeed, their unfitness in these terms would be a greater danger if they voted as a solid racial group than if their influence were dispersed over a number of predominantly European constituencies.

It should not be overlooked that a small compact body of even four representatives of the Cape Coloured people, elected by the Cape Coloured people to represent Cape Coloured interests, might well be in a position to play a decisive rôle in Parliament if the balance of power among European members depended upon a narrow majority. The very undesirable result would eventuate that a racially sectional group of a few members, representing a small minority of the whole people and a provoked sectional consciousness, could determine the course of policy in matters of the gravest import to the nation.

Alternatively, and no less undesirable, the Institute considers that if such a racially sectional group should find itself permanently in a small minority in Parliament, its power to further the interests

of/....

of the Cape Coloured people would prove futile. The existence of such a group in Parliament would mean that other members of Parliament would throw the entire burden of representing Coloured interests on it as has been the case with the Native Representatives, but being a small and ill-considered minority they would be unable to affect legislative or administrative action to any significant ^{degree.} extent.

It seems hardly necessary to add that, should the establishment of a communal register for the Coloured people be combined with a limitation of the right of their elected representatives to vote in Parliament upon all issues, that would be a form of disfranchisement which they have done nothing to deserve and which they could not but resent very bitterly.

The Institute ventures to express the earnest hope that the Commission, in its deliberations, will give due weight to the importance of considering not only the interests but also the feelings and susceptibilities of the people whom its recommendations will affect. The Institute is concerned to promote inter-racial harmony and good understanding, and is firmly persuaded that nothing but evil to the future of South Africa could result from the exacerbation of inter-racial tensions.

OTHER CONSTITUTIONAL EXPERIENCE

In holding to these views, the Institute has taken into consideration not only the conditions of the Cape Coloured people, the values which should inform a Christian democratic state, and the practical considerations involved in the change of political status of the Cape Coloured people, it has also considered the position in other countries consisting of various racial and religious groups. Such consideration has brought the Institute to the conclusion that,

where peoples of a simpler civilization wish to enter into and enjoy the benefits of a more complex and higher civilization such as that represented by Western civilization, they must qualify to do so, and that

the application of democracy in multi-racial or multi-religious/....

religious

religious countries may require such modification of the "one man one vote" principle as may enable cultural or numerically minority groups to be politically represented.

In considering these two factors, the Institute is of the opinion that the Cape Coloured people have absorbed Western ideas to the extent that they must be held to qualify for acceptance into the democratic state. If, after 100 years of the exercise of normal democratic rights during which they were considered to be so qualified both by Church and state, there should be any doubt as to the assimilation of the Cape Coloured people as a whole into Western culture and tradition, the Institute considers that the present qualifications as to property and education demanded of the Cape Coloured voter are adequate to safeguard Western civilization in South Africa. In fact, the Institute would go further and suggest that the maintenance of civilization in South Africa demands the extension of the Cape Coloured franchise to the Northern Provinces, on the same basis as in the Cape Province and the enfranchisement of Cape Coloured women.

In support of these views the Institute draws the attention of the Commission to the appendices attached to this memorandum:-

- enclosures
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- a. White Civilization
- b. Go Forward on Faith
- c. Democracy in multi-racial South Africa
- d. The Cape Coloured Franchise
- e. Memorandum RR
- f. Memorandum RR
- g. Memorandum RR
- h.
- i.

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From the examination of the material appended and from information gained from other countries and territories the Institute wishes to further emphasize its attitude and approach to this matter.

Since the last war there have been significant developments in most of the countries of the East. Hindustan and Pakistan have become self-governing dominions within the British Commonwealth of Nations, Burma an independent Republic; Britain has granted qualified self-government to Ceylon, Malaya and Singapore; Indonesia has become independent though as yet without any finally decided form of government. All these countries have adopted, or seem likely to follow, Western democratic forms of government. Despite the high rate of illiteracy in such countries, free elections have been held, apparently successfully. The common roll is, however, operated with reservations.

In Ceylon where full self-government is envisaged though not yet attained, despite contrasting religious and racial differences in the population, the aim has been the formulation of a unitary state. There, under the latest constitution 1950, the 95 members of the House of Representatives are elected on a universal adult suffrage. Electoral divisions are based on population and the area of the provinces. The latter factor is introduced on account of the need to give adequate representation to such minorities as the Tamils and Muslims without bringing in a system of separate electoral rolls. There is also a proviso that lays down that if in any province there is a substantial concentration of persons united by a community of interests, whether social, religious or otherwise, but differing in one or some of these respects from the inhabitants of the area, that Province may be so delimited into constituencies as to render possible the representation of that interest. Such provisions modify the strict application of the "one man one vote" principle.

Ceylon is of particular interest because initially the communal system was introduced to meet the expected sectional minority interests/....

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