

18

75.2.3

R.R. 12/50.  
REB. 6.1.50.

THE SOUTH AFRICAN INSTITUTE OF RACE RELATIONS (INC.)  
DIE SUID-AFRIKAANSE INSTITUUT VIR RASSEVERHOUDINGS (INGELYF).

THE HISTORY OF THE CAPE COLOURED FRANCHISE

By

MRS. M.L. GRANT.

From the granting of Representative Government to the Cape Colony in 1853, to the present day, Cape Coloured men have had the franchise. For fifty seven years, to the time of the Union of South Africa in 1910, there was no discrimination in the Cape Colony against Coloured or Native, on the grounds of colour only. At Union the Coloured people and the Natives lost their right to sit in Parliament but retained the franchise in the Cape Province on the same terms as Europeans. The enfranchisement of women in 1930 and the introduction of adult white suffrage in the Cape Province in 1931 were the first acts to discriminate against Non-Europeans in this Province. General Hertzog's Native Bills of 1936 removed Africans from the common roll but left the Cape Coloured vote as it was. Such is the bare history of the Cape Coloured Franchise; a short one, and there it might end, if it were the whole story. But it is not, as the present threat to the Coloured franchise shows.

This threat springs from conditions and circumstances only indirectly concerned with the worthiness of the Cape Coloured people to exercise the franchise. Fear of being overwhelmed by a numerically superior non-white population is aggravated by the presence in the towns of the Cape Province of an increasing number of Africans. The attitude of many in the Cape towards Coloured people has been affected by their increasing awareness of the preponderance of Africans. Had there not been a large Native majority in Africa, the outlook for the Coloured people might have been a different one. Though separated from the Africans socially, industrially and, since 1936, politically, the Cape Coloured people make up part of the general race pattern of South Africa which alarms so many Europeans.

The dependence of the Coloured people on the Europeans for their political rights makes it necessary, in tracing the history of the franchise, to pay attention to the opinions, principles and ideals of past statesmen. Statements, therefore, made publicly by those in authority at the time of the granting of rights and the reasons for their action, are an important feature of a study of this nature.

As has already been indicated, the history of the Cape Coloured franchise falls into four periods :-

1. Before Representative Government i.e. up to 1853. During this period the Hottentots were given legal equality, the slaves were emancipated and parliamentary government had its beginning.
2. From Representative Government at the Cape to the Union of South Africa, 1910. Complete legal and political equality obtained during these years between Europeans and Non-Europeans in the Cape Colony.

3. From .....



3. From Union to Hertzog's Native Bills in 1936. In this period we see the beginnings of colour bar legislation.
4. From 1936 to the present day, when it may be said that the results of earlier legislation are becoming manifest.

1. PRIOR TO 1853.

When the Dutch East India Company formed the first settlement at Table Bay in 1652 the Hottentots were in possession of the land round the coast. Very soon slaves were imported, a few at first from the West Coast of Africa, but the majority from East Africa and the East, including a number of Malays. Hottentots, slaves, Europeans, a small number of Bushmen and Bantu, with Hottentots and slaves forming the largest part, make up the ancestry of the Cape Coloured people.

In an article appearing in the Cape Times on the 5th March, 1930, Miss M.L. Hodgson (Mrs. Ballinger) traces the origins of the Cape Franchise and shows how the principle of uniform citizenship came to be accepted. It will be remembered that the Dutch East India Company at first attempted to segregate the Hottentots and that this segregation broke down because of European land hunger and the need of the farmers to use Hottentots as herdsmen. The Dutch East India Company, however, continued to regard the Hottentots as a separate nation. During the time of a code for Hottentots was drawn up, pass laws were introduced and Hottentots found without passes could be compelled to work for farmers.

Freedom from these restrictions and complete legal equality were granted the Hottentots by the Fiftieth Ordinance of 1828. This was a most important event in the history of the Colony, but it met with very great opposition from the farmers and was one of the causes of the Great Trek. From this time what might be called the "northern attitude" towards colour relations and legislation takes shape. Those who trekked away to the north did so largely because they were not prepared to accept the British Government's enactments on the treatment of the Coloured people.

The freeing of the Hottentots in 1828, the emancipation of the slaves in 1834 and, paradoxically, the repeal of the Fiftieth Ordinance in 1841 because it was felt that there was no longer any necessity to protect by law people recognised as free, were events which made the way clear for the granting of representative government.

In his book, "The Old Cape House", Mr. Ralph Kilpin traces the growth of the Cape Parliament from its beginnings. Parliamentary government came gradually at the Cape, the first restriction of the autocratic powers of the governor being the establishment of a Council of Advice in 1825, consisting of six officials. In 1834 there followed a form of government under which there was a Legislative Council consisting of some officials and some colonists nominated by the governor and a nominated Executive Council. The colonists were by this time beginning to demand some measure of representation in the government. Elected municipalities in Beaufort West in 1837 and in Cape Town in 1840, were the first instances of representative institutions in the Cape. Qualifications for voting were on a property basis and there was no colour bar.

Representative Government in 1853 was the outcome of the demands of the Colonists. Parliament was to consist of the Governor, an elective Legislative Council of 15 members and an elective House of Assembly of 46 members. Qualifications for the franchise were fixed low, so as to include a certain number of Non-Europeans. The Colonial Secretary insisted on this, though the

/Legislative .....



Legislative Council favoured higher property qualifications. With some misgivings the Colonial Secretary allowed the Colonists to set up this government and his trust in their reasonableness and sense of responsibility was justified. It must be stressed, however, that there was no suggestion of a colour bar attaching to the qualifications of voters; it was a matter of how high the property qualifications should be fixed. Finally it was decided that qualifications for voting for members of the elective lower house should be (1) occupancy for twelve months before registration of property to the value of £25 or (2) £50 a year in wages or £25 plus board and lodging, for all races. This Constitution with its low property qualification was introduced when the coloured population of the Cape Colony was double that of the white. The passage to responsible government in 1872 made no difference to voting qualifications. There was no bar, either, to a Non-European sitting in the old Cape House, but in actual fact, no Non-European was ever elected. Miss Hodgson (Mrs. Ballinger) sums up the political equality between Europeans and Non-Europeans in Cape Colony in the middle of the Nineteenth Century thus :- "The principle of a uniform citizenship for all men irrespective of colour was accepted and enshrined in the country's first free constitution." (1).

## II. FROM REPRESENTATIVE GOVERNMENT TO UNION.

Professor MacMillan in his book, "The Cape Coloured Question", remarked that the Coloured people had no political grievance, that they were proud of their rights and that they were making upward progress. The descendants of the Hottentots, he said, had actually risen in the world as a result of being given freedom and political rights.

It must be noted that in these years there was no distinction between Coloured people and Africans in the Colony as regards legal and political rights. There were very few Africans until the annexation of British Kaffraria to the Cape Colony in 1866. When the Non-European vote is mentioned during these years, then, both the African and the Coloured vote are meant.

At first the annexation of Kaffraria made no difference to the Non-European vote, but it was soon feared that the low property qualification, and communal tenure, might lead to a disproportionate number of Natives becoming eligible for the franchise. The Parliamentary Voters Registrations Act 1887 was therefore passed, while Sir Gordon Sprigg was Prime Minister of Cape Colony. Under this Act, communal tenure was not be counted as constituting eligibility for the vote unless the claimant occupied a house worth £25, even if in tribal, communal land. In spite of this being called by Merriman, Sauer and Rose-Innes a disfranchising bill, it passed, and this limited franchise could now be extended to the Transkeian Territories.

In the meanwhile the northern republics, the Orange Free State and the Transvaal, had been formed and had been granted independence. Thither had trekked all those who did not believe in the legal and political equality given at the Cape to the Non-Europeans. In these two republics no Non-Europeans had the vote and in Natal the Natives were excluded except under special conditions which allowed of very few of them enjoying the privilege. The few Coloured men resident in Natal did however have the vote.

In the Cape Colony fears began to grow about the Native vote and its possible strength, but no suggestion was made that there was anything to fear from the Coloured vote. The beginnings of a recognition of the different political significance of African and Cape Coloured rights took shape. Jan Hendrik Hofmeyr (Onze Jan) and Cecil Rhodes, Prime Minister of the Cape Colony in 1890, both working for a federation of the Colonies of South Africa, thought that some compromise with the north would have to be made on the Native question. (2). Hofmeyr, though considering that the raw Native should

- 
- (1) Article in the Cape Times 5/3/1930 entitled "The Origins of the Cape Franchise How the Principle of Uniform Citizenship was Accepted" by M.L. Hodgson (Mrs. Ballinger.)
- (2) M.L. Hodgson.



not be regarded as politically adult, nevertheless was in favour of granting the rights he earned to the Native who raised himself. The result of these changes of opinion was the Franchise and Ballot Bill of 1892 which was passed while Rhodes was Prime Minister. The occupational qualification was raised from £25 to £75 and for the first time an education test was introduced, the voter being required to sign his name and write his address and occupation. Once again it must be noted that this was a series of tests applicable to the voters of all races.

The Union of South Africa, 1910, is the end of a very definite period in the history we are considering. Union of the four colonies meant a compromise between the views of the northern colonies and those of the Cape Colony. Up to Union it could be said that the Cape Colony had never considered a franchise based on a colour bar either against Natives or against Coloured people. The restrictions imposed were the result of an education or civilisation test. Even the alterations made at Union did not take from the Cape Non-European his franchise. Nevertheless there was a political loss and, more significant, the way was open for a later curtailment of Non-European political rights.

A study of the findings and recommendations of the National Convention which sat in Durban, Bloemfontein and Cape Town from 1908 to 1909 to decide on the form the constitution of South Africa should take, reveals that the Cape liberal view was held by men of both English and Afrikaans language and by the Afrikaner Bond as well. (1). The only difference among these liberals was in the strength of the opposition they felt should be put up against the northern view.

#### The National Convention 1908.

From the beginning of the deliberations it was evident that there would be disagreement about the qualifications for the franchise in the Union Parliament. Colonel Stanford, one of the Cape delegates, moved that "all subjects of his Majesty resident in South Africa shall be entitled to franchise rights irrespective of race or colour upon such qualifications as may be determined by this convention". (2). Colonel Greene, Natal, moved an amendment "that only persons of European descent shall be eligible for election as members of either House of Parliament". In the meanwhile a petition came in from the Cape Coloured people resident in the Witwatersrand asking that they be admitted to equal rights with the European. The matter of the franchise was sent to a Committee of representatives of the four colonies and Rhodesia. This Franchise Committee comprised, for the Cape, Mr. Sauer and Mr. Walton (Sir Edgar) Natal, Mr. Smythe and Colonel Greene, the Transvaal, Sir Percy Fitz-patrick and General Smuts, the Orange River Colony, General Hertzog and Mr. Fischer, and Rhodesia, Mr. Coghlan. Various petitions from the Cape Coloured people in the Cape and in the Witwatersrand were referred to this Committee.

Early in the Convention it was agreed that "no minutes should be kept of the proceedings, that they should be absolutely secret, that no records of any speeches be made, but that records of all resolutions, proposals and amendments and any decisions thereon, should be kept." (3)

The Franchise Committee reported first on the 22nd October, 1908, and presented a memorandum with four recommendations. After discussions of these the Franchise Committee met again and presented a second report with some of the clauses altered. All the time petitions were coming in from Coloured people on the Witwatersrand asking for the extension of the Cape powers to the Transvaal and from the Coloured people in the Cape praying that they retain their franchise rights intact. The influence of the north was seen in

/Clause II .....

- 
- (1) Minutes of proceedings with annexures (selected) of the South African National Convention held in Durban, Cape Town and Bloemfontein - 12th October, 1908 to 11th May, 1909.
  - (2) Ibid.
  - (3) Ibid.



Clause II of the report which was not altered in the second report and which read : "Only persons of European descent shall be eligible as members of either House of Parliament". This was embodied in Clause 44 of the Constitution of the Union of South Africa. Clause 35, one of the now entrenched clauses, was the outcome of the deliberations on voting qualifications and read as follows :-

(1) Parliament may by law prescribe the qualifications which shall be necessary to entitle persons to vote at the election of members of the House of Assembly, but no such law shall disqualify any person in the Province of the Cape of Good Hope who, under the laws existing in the Colony of the Cape of Good Hope at the establishment of the Union, is or may become capable of being registered as a voter from being so registered in the Province of the Cape of Good Hope by reason of his race or colour only, unless the Bill be passed by both Houses of Parliament sitting together, and at the third reading, be agreed to by not less than two thirds of the total number of members of both Houses. A bill so passed shall be taken to have been duly passed by both Houses of Parliament.

(2) No person who at the passing of any such law is registered as a voter in any province shall be removed from the register by reason only of any disqualification based on race or colour".

This clause (35) of the South Africa Act was further strengthened by being one of those under which, by the Royal Instruction, a Bill passed altering the position was reserved for the King's signature, a provision rendered null by the later statute of Westminster and Status Act.

In addition to petitions from Coloured people came petitions from Natives, one from 1,770 Native resident in the Transvaal praying for consideration of their claim for representation and one from the Resident Magistrate at Thaba 'Nchu to the same effect.

It is interesting to note that Jan Hendrik Hofmeyr carried the Afrikaner Bond with him in suggesting that the two thirds majority should include an absolute majority of the voting representatives of the Cape and that an amendment to this effect was defeated in the Cape House by only six votes. Hofmeyr's championing of the Coloured and Native franchise called forth an appreciative letter expressing "the undying gratitude of the whole of the whole of the Coloured people". (1).

The Cape delegates fought for Union wide recognition of Non-Europeans as potential citizens and, as Professor Eric Walker says in his Life of W.P. Schreiner, none of the politically active Cape colonists seriously considered departing from the principle of the non-racial franchise. After a struggle they reluctantly agreed to the provisions ultimately made, reassured that the Cape franchise might in time be extended to the other provinces and in the knowledge that without a compromise there would be no Union.

W.P. Schreiner, who had given up his seat at the National Convention to defend Dinizulu, refused to accept the compromise. He had been in favour of a federal form of government and he stood out for the entrenching of the rights of the Non-Europeans in a federal constitution, not alterable by members of parliament in session. This would have meant that no alteration could be made to the franchise without alteration in the Constitution and recourse to the law courts. In the debate in the Cape House on the draft bill, Schreiner said : "Remember that the great bulk of the population is and will be coloured and that in raising them and giving them opportunity to rise, we are most surely securing in the future our continued healthy dominance as a free country".

Schreiner and Hofmeyr, both in favour of federation, opposed the draft constitution to the end, Hofmeyr wanting the two thirds majority to include

/two .....

---

(1) "Life of Jan Hendrik Hofmeyr (Onze Jan)", by J.H. Hofmeyr, M.A., in collaboration with Senator the Hon. F.W. Reitz. (Page 629).



two thirds of the Cape representatives and Schreiner demanding the entire rejection of the clause making the removal of the Non-European voters possible, which he called "a blot on the constitution". "So serious is the vista of the future" said Schreiner, "that I would stand out of Union rather than give up my trust in this matter. If only a small number of Cape members betray their trust, Native and Coloured parliamentary rights will vanish .....I say that serious consequences will follow in the future, both to ourselves and the whole of South Africa as a result of this wrongdoing - union without honour is the greatest danger any nation can incur". (1). Sauer, opposing this speech, said that he hoped that the liberal Cape policy would be extended to the rest of the Union and continued: "I can conceive an agitation which will stir this country from one end to the other if it is attempted to do what I consider, and what most fairminded men consider, an injustice." (2).

The draft passed the South African parliaments and Schreiner went to England to petition the British Parliament (a) not to allow membership of the House of Assembly to be limited to Europeans and (b) to insist on the rights of the Coloured voters being safeguarded permanently in the constitution. Notwithstanding this petition, the British Parliament passed the South Africa Act in 1909 as presented in the draft constitution. The only measure of success he achieved was the promise that the Native protectorates would not be divided up and the provision in the constitution that any act to disfranchise Natives or Coloured persons should be reserved for the King's signature.

#### The African People's Organisation.

Organisation of the Coloured people came late in their history. It was only in 1902 that the African Political Organisation, now known as the African People's Organisation, was formed in Cape Town "to champion the rights of the Coloured people in all parts of British South Africa". (3). A strong branch of the A.P.O. came into being in Johannesburg; there were no political rights for Non-Europeans in the Transvaal and Coloured as well as Native had to carry passes. The A.P.O. championed the rights of the Coloured people in the Transvaal and the Orange River Colony. They wanted the rights exercised by the Coloured people in the Cape extended to the Transvaal and the Orange River Colony. A solution, however, was to be held over in terms of the Treaty of Vereeniging until after the granting of responsible government to these two colonies. The British Government distinguished between the rights of the Natives and those of the Coloured people and were inclined to insist on those of the latter. It was found, however, that when self government came to be discussed, the Transvaalers did not want to give rights to their Cape Coloured people any more than to their Natives. This was the situation the A.P.O. had come into being to meet. They collected enough money to send a deputation to London in 1906 and begged the Home Government to make the enfranchisement of the Coloured people in the northern colonies a condition of the granting of the constitution. The petition failed and the Home Government allowed the Non-Europeans in the northern colonies to remain without political rights.

Again, during the sittings of the National Convention, the A.P.O. vigorously protested against the exclusion of Non-Europeans from membership of the Union Parliament and the failure to extend the Cape Coloured franchise to the northern provinces. An A.P.O. congress met in Cape Town in 1909 and protested against the measures adversely affecting the Cape Coloured voter in the draft constitution. A deputation from the A.P.O. went again to the British Parliament, supported by Mr. Schreiner, and were again unsuccessful.

Other bodies which aim at furthering the rights of the Non-Europeans have been formed and are of political significance, but they fall more properly within the scope of the present and the future.

/III. From .....

- 
- (1) "Life of W.P. Schreiner", by Eric Walker.
  - (2) - do -
  - (3) "History of the Cape Coloured People", by J.S. Marais.



### III. FROM UNION TO THE SEGREGATION BILLS 1936.

It was not long after Union that attacks on the rights of Non-Europeans in the Cape began. Some of the champions of these rights at the National Convention were to go over very soon to the support of discriminatory legislation and regulations. An examination of regulations governing Non-European relations will show a steady increase in colour bar enactments. Act 18 of 1930, which enfranchised women over the age of 21, and laid it down that a woman, for the purposes of the Act, meant a white woman, and Act 41 of 1931 which gave manhood suffrage to European men in the Cape, loaded the franchise against the Non-European, who was still subjected to property and education qualifications.

Mr. L.M. Thompson in his pamphlet on the subject points out that whereas from Union to 1930 the Non-European vote, including the Native vote, varied between 14 and 21 per cent of the total voting strength, since 1930 it has been between 6 and 10 per cent.

It was during the years between 1908 and 1930 that a white labour policy grew up and coloured workers were ousted, not always as a result of legislation, from skills which they had traditionally practised. In spite of these restrictions, however, there was still no attack on the franchise.

The Hertzog segregation policy was to mark the departure, in the Cape, from the time honoured equality between Europeans and Non-Europeans. Up to this time qualifications for voting were the same for Natives as for Coloured people. It was Hertzog who first attacked the principle of equality in his determination to "segregate" the Natives. Hertzog drew a clear distinction between Natives and Coloured persons and he made no attempt to tamper with the political rights of the latter. In a speech at Smithfield he said of the Coloured man: "He had his origin and existence in our midst. He knows no other civilisation than that of the white man. However often he may fall short of it, his outlook is essentially that of the whites and not that of the Natives, and his mother tongue is that of the white man. In his case there can be no talk of segregation". (1).

In order to implement his Native policy Hertzog prepared four bills in 1926, three dealing with Natives and one with Coloured persons. This bill proposed to extend the vote to Coloured men in the northern provinces but to place them on a separate voters roll and to allow them to elect a European to represent them in the Union Parliament. In this policy Dr. Malan, then a member of General Hertzog's government, concurred and van den Heever, in his "Life of Hertzog" says further that "General Hertzog and Dr. Malan both gave the assurance that if the vote were given to white women it would also be given to Coloured women". (2). These bills were referred to select committees in 1927 and 1930, but it was not until 1936 that Hertzog was able to pass the Native bills with the necessary two thirds majority and from these bills the one dealing with the Cape Coloured franchise was omitted. In the meanwhile the Statute of Westminster and the Status Act had been passed.

As a result of the Representation of Natives Act 1936 the Native voter was removed from the common roll in the Cape Province. The Coloured vote remained untouched.

Hertzog's Segregation bills met with opposition from the Cape liberals. Rose-Innes, at the opening of the non-Racial Franchise Association in 1929 spoke as follows :

/"The .....

---

(1) "Life of General Hertzog", by C.M. van den Heever.

(2) - do -



"The hope was cherished by many that with the advent of Union the liberal policy of the South, entrenched as it was in the Constitution, would gradually leaven the mass. That hope has not been realised, the tendency has been the other way and this Bill marks the intention to extend the policy of repression over the whole Union". When the bills took final shape Rose-Innes and many others, notably F.S. Malan, fought to save the non-racial franchise in the Cape, but without success.

#### IV. FROM 1936 TO THE PRESENT DAY.

Since 1936 the Cape Coloured franchise has continued to remain unassailed, but certain acts and regulations have tended to decrease the numbers of Coloured men on the voters roll. It had been laid down in 1931 that a Coloured man could be challenged, if his name was on the provisional voters roll, to appear before a magistrate to prove his claim.

An exhaustive study, followed by a report, was made in 1937 by a "Commission of Enquiry regarding Cape Coloured Population of the Union", under the Chairmanship of Professor Wilcox. Among the many recommendations made was that contained in paragraph 1158 which "recommends that the franchise privileges held by the Coloured people in the Cape Province be extended to include the Coloured people resident in the other three provinces who hold the necessary qualifications".

So far from there being a Union wide improvement in the political status of the Coloured people after this report, there has been a decrease in the numbers of Coloured voters in the Cape. By the Electoral Laws Amendment Act of 1948, a Coloured applicant for registration must fill in his form before a magistrate, police officer or electoral officer. (1).

Though the Coloured man still has the franchise in the Cape, his firm foundation in the political fabric has been undermined. Professor Marais' striking comment in "The Cape Coloured People" published in 1937, recognised this and, in the light of present day trends, his words were prophetic. They form a fitting conclusion to this outline.

"To-day the question is not whether it will be possible to extend the Cape's institutions northward but how much support the Cape tradition still retains in the Cape itself. The fact is that European public opinion in the Cape Province during the twenty eight years since Union has grown used to the idea of colour bar legislation. That legislation, the propaganda which accompanied it, and the institutions established by it, have already had the effect of strengthening the spirit of racial exclusiveness even in spheres not yet affected by legislation ..... Thus emphasised and embodied in institutions the Colour distinction becomes a part of the "natural" social order : in other words colour prejudice has created a suitable institutional environment for its own strengthening and perpetuation."

—oOo—

29th December, 1949.

- 
- (1) Pamphlet on the Cape Coloured Franchise by L.M. Thompson.  
(2) "The Cape Coloured People 1652 - 1937", by J.S. Marais.



**Collection Number: AD1715**

**SOUTH AFRICAN INSTITUTE OF RACE RELATIONS (SAIRR), 1892-1974**

**PUBLISHER:**

*Collection Funder:- Atlantic Philanthropies Foundation*

*Publisher:- Historical Papers Research Archive*

*Location:- Johannesburg*

©2013

**LEGAL NOTICES:**

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

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

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

This document forms part of the archive of the South African Institute of Race Relations (SAIRR), held at the Historical Papers Research Archive at The University of the Witwatersrand, Johannesburg, South Africa.