

MEMORANDUM ON SEPARATE UNIVERSITY EDUCATION.

[1957]

1. The primary aim of the Separate University Education Bill is to give effect to the Government's policy of apartheid or separate development in the field of higher education for the different racial groups represented in the Union.
2. In order to achieve this objective the Government proposes to do two things which are complementary to one another, namely,
 - (a) to remove non-white students from the white universities which have hitherto admitted such students for registration as full-time students, subject to certain conditions laid down by the authorities of the universities concerned.
 - (b) As a quid pro quo to set up alternative facilities for the non-white students thus removed as well as for the growing number of non-white students for whom the country would in any case have to provide facilities for higher education.
3. In order to give this scheme a reasonable chance of being carried out smoothly and successfully, it is obviously desirable that the Government should secure the maximum degree of co-operation from those directly affected by the Government's proposals. In view of the fact that a considerable section of South African opinion, both white and non-white, is not in favour of the policy of apartheid or separate development, it would be idle to expect that there would be no opposition to the Government's proposals, but the nature and the degree of the opposition will depend in a large measure upon the form and the content of the proposals. Thus it would be possible for the proposals to take a form in which they ^{would} be vigorously opposed by the white universities affected without arousing similar opposition on the part of the non-white groups affected. On the other hand they might assume a form in which they were opposed by the non-white groups without evoking such

strenuous opposition from the white universities affected. The worst form possible form which the proposals can assume in that in which they arouse the fierce opposition and suspicion of both white and non-white groups at the same time. The opposition by the different groups may be for different reasons, but if such groups make common cause against the proposals, their placing on the Statute Book may quite unnecessarily take on the character of an unjust imposition, instead of them being looked upon, as the Government would obviously prefer them to be, as a statesmanlike and practical solution of an intractable national problem.

4. It is my submission that in their present form the Government's proposals appear to have been deliberately designed to arouse the maximum degree of opposition from both the white and non-white opponents of the policy of apartheid. It is suggested that it would have been possible, and still is, to frame these proposals in such a way as to give effect to the Government's real intention without arousing as much opposition and suspicion as has already been generated by the publication of both the original and the substituted bills.

The Title of the Bill. In the first place the title of the Bill could quite well be altered from 'The Separate University Education Bill' to 'Separate Universities Bill'. The first title suggests that it is the intention of the Government to provide the non-whites with a separate kind of university education, whereas what is proposed is that the same kind of university education should be provided in different places. Naturally each university institution will develop a character of its own and courses of study even for the same subjects

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will not be identical as they are not in the existing universities at the present time, but all these universities if they are to be worthy of the name will be striving to achieve the same standard as all the other universities. Why damn them beforehand by giving the Bill a title which gives the impression that they may have a different objective? If it is objected that these institutions will not be 'universities' but 'university colleges', the Bill could more appropriately be called 'The Separate University Colleges Bill'. In any event the title should convey to Government's real intention rather than give ground for a misunderstanding or misrepresentation of that intention.

University Autonomy. It is further submitted that it is very regrettable that in order to give effect to its policy in regard to higher education, the Government should have found it necessary to interfere with right of the white universities to decide on whom they shall admit as students. It is doubtful whether the number of non-white ~~elements~~ students at these universities justifies the drastic step of abrogating a much prized right by means of this kind of legislation. An analysis of the non-white students at these universities would, I believe, show that they fall into certain clearly definable categories, Viz.,

- (a) Students taking courses which are not available to non-white students elsewhere, e.g. students taking the Medical Course which until the Non-European Medical School in Durban was opened was not available for non-white students except at the Universities of Cape Town and the Witwatersrand; or students doing professional or post-graduate courses in various fields of learning not available for internal students elsewhere.
- (b) Students who live within the vicinity of the white university concerned who find that while living at home they can pursue their studies for various degrees at a cost ^{which} somewhat they would be called to pay if they were to proceed to Fort Hare, e.g. Coloured students

living in or near Cape Town or Johannesburg or Durban who only have to pay tuition fees and so avoid boarding fees and travelling expenses to, say, Fort Hare.

(c) Students who while continuing in gainful employment carry on their studies on a part-time basis, e.g. a considerable number of Indian and African students at the University of Natal and some at the Witwatersrand.

My submission is that if these students had separate university facilities of equivalent standard within easy reach of them, they would gradually transfer to such institutions without being compelled to do so by legislation. In time there would only be an occasional non-white student at any of the white universities. Indeed the Bill itself as at present framed does not contemplate the ~~total~~ total prohibition of the admission of non-white students to white universities but merely makes it an offence for such a student to register with or attend any such university as a student without the written consent of the Minister concerned. (see Sec. 28 of substituted Bill). Presumably in certain exceptional circumstances, e.g. the non-availability of such facilities at any of the non-white university colleges, the Minister would grant permission for such registration to take place. The suggestion I am putting forward is that in this matter of the removal of non-white students from the white universities the establishment of separate university facilities within easy reach of the non-white students should take precedence over interference with the autonomy of the white universities concerned. As regards legislation to deal with this matter it would appear as if it would have acted as a sufficient deterrent against the undue increase of non-white students at white universities if the Government had in the meantime merely laid down the principle that such students would not be taken into account for subsidy purposes as is done with non-Union

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students at Fort Hare. The Universities might of course, on principle,
be willing to use a portion of their 'free income' in order to
continue admitting a few non-white students. It is difficult to understand
why it should be necessary to prevent them doing so by
the use of a method which can be construed as undue interference with
the domestic affairs of autonomous institutions, especially at a time
when the alternative facilities for non-white students have not yet
gone beyond the stage of blueprints for the future.

The Alternative Facilities.

If the exclusion of non-white students from the white universities
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is to be justifiable before the bar of responsible public opinion, the
alternative facilities for them must not only exist but must corres-
pond as nearly as possible and as soon as possible in pattern and in
standard to the universities from which they are being excluded.

Admittedly university standards are not achieved overnight but
as the Van Der Walt Committee on Separate University Education has put
the matter, "if the non-European university institutions are to develop
on a healthy foundation and to serve the non-European community
efficiently, the quality of the training will have to be maintained
on the same level as that of the European universities." If this
objective is to be achieved it is submitted that the non-white
university institutions should, as far as possible, be organised,
controlled and supervised in the same manner as the European universities.
What does this involve in practical terms?

Departmental Control.

Ever since Union higher education has been a function of the Union
Government discharged through the Union Department of Education. This
Department has had the oversight of university institutions for over

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40 years, and it is difficult to convince people that that experience ought to be dispensed with just in order to satisfy considerations of theoretical consistency as far as native policy is concerned. It is submitted that in this matter considerations of national policy should supersede the purely sectional claims of native policy.

Moreover the Union Department of Education has already had 40 years' experience in supervising the affairs of a separate university institution, the University College of Fort Hare. Under its guidance that institution has gradually developed from a high school into a university college of recognised standing among the university institutions of the country. To make a break in the continuity of a connection which has been productive of such good results and which cannot be said to be inconsistent with the policy of separate development has given rise to serious misgivings among non-whites with regard to the Government's protestations of just intentions towards them. The retention of the control of all the non-white colleges by the Department of Education, Arts and Science would immediately reduce such misgivings by a perceptible amount. The argument that the Department of Native Affairs already has control of African primary and secondary education or that the African university colleges are to be financed out of special account, the Bantu Education Account, does not in the opinion of leaders of African thought outweigh the important consideration that higher education for Africans as well as for other non-whites should be maintained on the same level as that of the European universities and that this can best be done by entrusting African higher education to the same Department that is responsible for European higher education. It is

Submitted that the genuine interest of the Native Affairs Department³ in African higher education or that of the Coloured Affairs Department in Coloured higher education can adequately be provided for in other ways.

Thus section 33 of the substituted Bill provides that the Governor-General may by proclamation entrust the administration of the provisions of the Bill to any Minister or partly to one Minister and partly to another and may prescribe that any power conferred upon one Minister shall be exercised or performed by one Minister acting in consultation with another Minister. ~~Therefore~~

There seems to be ^{no} reason why, in accordance with standard practice, the new university colleges should not be entrusted to the Minister of Education, Arts and Science, acting in consultation with the Minister of Native Affairs in connection with the African university colleges and in connection with the other non-white colleges in consultation with the appropriate Minister.

University Advisory Committee. Moreover in the law relating to university institutions in this country provision is made for the establishment a statutory body, the University Advisory Committee, to advise the Minister of Education, Arts and Science on matters relating to the development and the administration of the universities. The members of the body consist of men of wide experience in university administration who are able to assess at their proper value proposals and schemes for development put forward by the different universities. Now that it is proposed to increase the number of university institutions by the creating of non-white university colleges the membership of the University Advisory Committee might be increased by the inclusion in it of a representative of the Native Affairs Department, e.g. the Head of the Bantu Education Division of the Native Affairs Department, and a representative of the Coloured Affairs Department, e.g. the Commissioner of Coloured Affairs.

In this way the special interests of these ^{Departments} would be safeguarded and at the same time the Departments concerned would keep ~~xxxx~~ in touch with developments in university education ^{generally}.

Committee of Principals. Another statutory body for which provision is made in the law relating to universities in South Africa is the Committee of University Principals which brings together university administrators from the different universities for the discussion of matters of common concern without any of the institutions concerned losing its individuality or independence of action. In this way the universities are kept in touch with one another and with the University Advisory Committee and through it with the Department of Education, Arts and Science. It is submitted that provision ought to be made for a similar body in connection with the non-white university colleges. This body might meet separately from the Committee of Principals of the European universities, but with the right to make representations to the Department through the University Advisory Committee referred to above.

University Councils. One of most serious criticisms levelled against the Government's scheme for non-white university colleges is the apparent intention to deprive these institutions of the autonomy usually associated with universities and to reduce them to the status of bodies with hardly any ~~minimal~~ vestige of self-direction. Instead of these colleges being placed under the direction of autonomous university councils, acting of course in all matters of importance subject to the approval of the Minister as is the case with European universities, it would appear as if the university councils provided for here will be Government-appointed and Government-directed institutions pure and simple. There is no indication in the Bill

as to the public bodies likely to be accorded representation on these councils. It is possible that public suspicion in regard to this aspect of the scheme might be allayed to some extent if the probable composition of these councils were to be included in the Bill. Thus a university council might be constituted as follows:-

- (a) Two members appointed by the Minister of Education, Arts & Science
- (b) Two members appointed by the Minister of Native Affairs, or by the Minister responsible for Coloured Affairs, as the case may be.
- (c) Two members appointed by the Committee of Principals of the European universities.
- (d) The Principal of the university college concerned, ex officio.
- (e) Two members elected by the Senate of the university college concerned
- (f) Two non-Europeans nominated by the Governor-General, African, Coloured or Indian as the case may be.
- (g) One or more members appointed by the Governor-General from among outstanding educationists, white or non-white, who on grounds of their official experience or otherwise might contribute to the development of non-white higher education.

A Council constituted in this way, with the Government, the universities, the Staff, the non-white community concerned and the general public represented would ensure that all the interests primarily affected had a say in the affairs of the university college concerned.

A possible objection to a Council constituted in this way is that it would be a mixed body in that non-Europeans would be included in its membership. If the non-European groups are to develop a sense of pride in and loyalty to institutions intended for their benefit it is essential that as early as possible they should be associated with the administration of these institutions at the highest level, and Europeans who are interested in non-European development should not be prevented from placing their services at the disposal of non-Europeans because of considerations such as that mentioned here. In an apartheid institution, if it is to command the confidence of the

the non-white community concerned, there should be no organ from which qualified representatives of that community are artificially excluded.

A council constituted in this way should have vested in it, subject to the approval of the Minister concerned, the direction of the policy of the particular institution ~~every~~ which it is established, ~~as well as~~ ^{for} the administration and conduct of its internal affairs, including the appointment of Staff from the Principal downwards and the admission of students. Admittedly the institutions concerned will be largely financed by the Government, but there seems to be no valid reason why the Government should not entrust the functions and powers it wishes to exercise in relation to such institutions to a relatively self-governing body of responsible men (and women) subject to the overriding authority of the appropriate government Department. It is submitted that the public interest would be no less safe in the hands of such men than it would be in the hands of civil servants pure and simple.

The Principal. As already indicated it is suggested that the Principal should be appointed by the Council with his functions and powers ~~subject~~ ^{subject} to the approval of the Minister. If the Principal is going to have a Council to work with, it would seem to be better that he should be answerable primarily to the Council and through the Council to the Minister.

The Senate. If the non-white university colleges are to develop on a sound basis, it is essential that it should be possible for them to attract men and women of high academic merit and outstanding personal qualities. It is submitted that this will only happen to the extent to which the terms and conditions of service in these institutions approximate as nearly as possible to those which obtain in the ordinary universities.

In the latter members of the teaching Staff and the administrative Staff are appointed by the Council subject to the approval of the Minister of Education, Arts and Science. This means that they are servants of the Council and not strictly speaking civil servants. They are of course subject to rules and regulations which have been approved by the Department. But as servants of the Council they have a fair measure of freedom to pursue their academic interests without the constant fear of disciplinary action being taken against them on non-academic grounds. The pursuit of truth and the dissemination of knowledge at the university level require a measure of freedom not usually accorded to civil servants from whom in the nature of things unquestioning loyalty to the policy of the government of the day must be demanded. The primary discipline to which university staffs are subjected is that of the public discussion of their views and the critical examination of the premises on which their views are based and the factual background of the conclusions at which they arrive by colleagues who are competent to evaluate them. In this sphere of intellectual conduct or misconduct the sanctions applied to them by their peers are more effective than the semi-criminal measures contemplated by the discipline code of the Separate University Education Bill. In the ordinary university the Senate is not appointed by the Minister. All Heads of Departments, normally Professors, but Senior Lecturers in some cases automatically become members of Senate. But in the new universities it would appear as if the situation might arise where some Professors are honoured by the Minister with membership of the Senate while others are not. It is suggested that the possibility of such an invidious position arising should be obviated by a suitable amendment of the relevant section.

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Salary Scales. The van der Walt Committee on Separate University Facilities in working out the current expenditure of the new university colleges used as a basis for salary scales the "standard salary scales" laid down by the Holloway Commission and applied to all South African universities, including the University College of Fort Hare. Universities are of course premitted, where their 'free income' makes this possible, to exceed the Holloway scales, and the Universities of the Witwatersrand and Cape Town do in fact do so, but the Holloway scales are otherwise uniformly applied. This is a sound practice which was adopted after prolonged and careful investigation. It would be a great mistake to depart from this by introducing, as has been suggested in some quarters, differentiation in salary scales based on colour. In no institutions is it more essential that a good team spirit among the Staff should be developed than in these new university colleges. The Staffs there will be engaged on a great experiment on which will depend in no small degree the future of race relations in the country. For many years to come, in view of the absence of qualified personnel in the non-white communities, it will be necessary for the Staff to be mixed, i.e. white and non-white. While this lasts it will be absolutely necessary for members of the Staff on the same grade doing the same kind of work to be treated on a basis of equality as far as both rights and duties are concerned. In this way the goodwill and the good faith of the Government in the application of the policy of separate development will be demonstrated to the non-whites in a tangible manner. Otherwise unnecessary stresses and strains will be set up among people between whom the highest degree of mutual confidence and co-operation ought to prevail. This matter is not referred to directly in the Bill, but it is submitted that these considerations ought to be borne in mind when the Minister prescribes the scales. (see s.21)

The Discipline Code. Much of the criticism levelled against the Bill has been directed against the discipline code which is regarded as unnecessarily involved, rigid and harsh. In actual fact of course this code is not much more drastic than that which is applied to the Technical Colleges as framed by the Minister of Education, Arts and Science in terms of section 19(nineteen) of the Higher Education Act. (see Government Gazette dated March 27, 1953). Incidentally when these regulations were promulgated in 1953, the University College of Fort Hare which is technically a declared institution under the Higher Education Act and to which these regulations were therefore applicable immediately drew the attention of the Department to the fact that the regulations were in some respects not suitable for a university institution. The Department indicated that it would be prepared to approve different regulations for Fort Hare provided the Governing Council submitted them for approval. The Council decided to defer the matter until after it had promoted a Private Act for Fort Hare, but neither the Council nor the Senate were satisfied with these regulations.

In any event it is doubtful whether it is appropriate for the discipline code to be included in the Act itself. This will make it difficult and cumbersome for the regulations to be amended or repealed should it become necessary to do so, as it well might. It is submitted that the sections of the Bill dealing with discipline, in particular sections 25, 26 and 27 ought to be deleted from the Bill and embodied in comprehensive regulations to be framed in terms of section 31(j). The regulations might broadly speaking follow the lines of those framed by the Minister in terms of section 19 of the Higher Education Act and deal in one place with all matters

referred to in s.31(j). The particular section of the discipline code which has given rise to most misgivings is that dealing with misconduct and particularly paras.~~xxx~~ 25(n) and 25(q) which are held to be calculated to stifle legitimate comment by matters of public importance by university staffs. It is submitted that these particular paragraphs might well be deleted without in any way weakening proper control over the staff by the university council or by the Minister as the case may be. In any event any person who ~~commits~~ contravenes 25(q) could be dealt with under the ordinary law relating to the promotion of hostility between different sections of the population. The regulations must be framed with due regard to the fact that they are intended to apply to responsible men and women who would not ordinarily commit any of the offences referred to section 25. The suggestion that such a code is needed in order to keep 'agitators' out of the new universities does not hold much water, because it simply means that the 'agitators', if any, will operate underground where they are much more dangerous than they are in the open where their specious arguments and false doctrines can be dealt with more effectively by their opponents.

Fort Hare and the Medical School

What has been said hitherto concerned mainly the new university colleges to be established by the Government. When we come to the University College of Fort Hare and the Durban Medical School for non-Europeans, we are dealing with institutions which have been in existence for a number of years and which broadly speaking already conform in principle to the policy of separate development, although they do so in varying ways. It is submitted that these institutions should be interfered with as little as possible.

Fort Hare was started as a separate institution over 40 years ago. It has been under the jurisdiction of a Governing Council on which both the Union Department of Education and the Department of Native Affairs have always been represented. In addition the Transkeian Territories General Council has always been represented on the Council by the Chief Magistrate, an official of the Native Affairs Department as well as by African Councillors. Other interested bodies like the Missions which have played a prominent part in the development of education ~~and~~ facilities for Africans have also been represented. This body has guided the destinies of the College, subject to the supervision of the Minister of Education. The relations between the Governing Council and successive South African Governments, whatever their political complexion, have always been the most cordial. Throughout the history of the College it has been treated by the Government on a basis of strict equality with the other university institutions of the country. No one could at any time have accused the Government of discrimination against Fort Hare. This attitude has been deeply appreciated by both the Council and Senate of the College. In its gradual development towards university college status the College has been indebted for much assistance to members of the Staffs of other universities, especially to men such as Professor Postma of Potchefstroom University. The Scheme of Government was recently revised and approved by the Minister of Education, Arts and Science. Since 1951 Fort Hare has been affiliated to Rhodes University, not because of any inordinate desire to violate the policy of apartheid, but because at the time when the other university colleges were hiving off from the University of South Africa, this seemed to be the only way of dealing with a college which was not yet ready.

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for independent university status. Now that it is suggested that the College should return to its former association with the University of South Africa, there does not appear to be any need for the drastic alteration in the structure of the College contemplated by the original Bill. If Fort Hare is to be brought into line with the new university colleges, this need not be done by throwing overboard developments which have already taken place. Indeed it would probably have been better and cheaper for Fort Hare to be developed more rapidly as the oldest and therefore the premier university college for non-whites. It seems unnecessary and uneconomic for the development which has already taken place there to be interfered with especially at this stage when the new regional colleges, as they might preferably be called have not yet been established. In fact consideration might have been given to the idea of developing Fort Hare as soon as possible into the first independent non-white university in South Africa. That is obviously a development which will have to be kept in mind.

The original Bill makes provision, *inter alia*, for the taking over of the Men's Residences or Hostels at Fort Hare from the Churches which have built these residences. Under the leases in terms of which the Churches erected these Hostels, provision is made for them to be taken over by the College Council at a fair valuation. The Duminy Commission which in 1955 investigated and reported on life and work at the University College of Fort Hare recommended that the time had come for these Hostels to be taken over by the Council, and to this end negotiations between the Council and the Churches had already been set in motion. The chief obstacle was going to be for the Council to find the necessary funds to acquire the Hostels. If the Government could provide the necessary funds, even by way of a loan to the Council, there is no doubt that the Council would welcome the taking over of the Hostels so that, like the Women's Residence they should come under the full control of the Council. But it is difficult to see ~~why~~ what advantage would accrue from the other radical changes proposed.

What has been said about the University College of Fort Hare applies mutatis mutandis to the Non-European Medical School. It is already a separate institution. It would obviously be impossible for Medical Schools to be established in different places for the different non-white groups, and so the Government has rightly decided, apartheid notwithstanding, that all non-white students should be admitted to the same Medical School. Here again we have an institution which was established after a great deal of reflection and delicate negotiations between the different groups affected. It is submitted that a continuation of the present scheme under the University of Natal is not such a ~~flagrant~~ flagrant violation of public policy or of separate development that its existence should be jeopardised by the adoption of a plan which rightly or wrongly will cause the Medical School to lose the good name which it has already earned or to lose the devoted staff it has already assembled. It is to be hoped that the position of this institution will be carefully reconsidered. The existence of this Medical School ~~will~~ under its present auspices will not undermine the policy of apartheid which is surely made of sterner stuff than to be endangered by the existence of a single institution.

The University of South Africa is to be the examining body of the new universities, including Fort Hare. There can be no objection to this on principle. It must be borne in mind, however, that the University of South Africa is the statutory university for external students. The students of the new universities will be internal students whose professors and lecturers will no doubt wish to have a say in the framing of syllabuses ^{and} for the examination of their own students. The Universities Bill does not say whether the new universities will be accorded any representation in the Senate of the University Of South Africa, as used to be the case before the formerly existing constituent colleges hived off from the University of South Africa. This will immediately raise the question as to whether non-white members of university staffs will be permitted to participate in the work of the Senate, a difficulty which should not prove insuperable.

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Students. In terms of the Bill the admission of a student to any particular university college will be subject to the approval of the Minister. The object of this provision is presumably to enable the Minister to direct students to the university colleges considered appropriate for them, subject to such exemption as he may permit. In the light of what has been said above in regard to university councils, it is suggested that this power of admission of students should be vested in the university councils. The object which the Department could, it is submitted, be achieved just as well by administrative ~~maximum~~ direction to the Councils of the university colleges concerned. This would enable the sorting out of students on the basis of any principle decided upon by the Government to be achieved gradually rather than brought about suddenly. It is submitted that if a university college were to be established in the Northern Transvaal the majority of the students attending that college would be Sotho; similarly for a College in Natal or Zululand would be Zulu, just as at Fort Hare Xhosa students have always constituted the biggest section of the student body. It would appear therefore as if this matter could be more appropriately dealt with by means of Departmental directive than by direct legislation.

It might be mentioned in passing that if the university colleges for Africans are to be sited one in the Northern Transvaal, one in Natal or Zululand and the remaining one at Fort Hare, it looks as if the Sotho-Tswana people in the Free State will be rather distant from the university college intended for them. The temptation will be for them to go to the Roman Catholic University College at Roma in Basutoland. Is it the intention of the Government that this should be so? If not, consideration will have to be given at an early date to the establishment of a university college in the Free State, say at Thaba Nchu to cater for the Southern Sotho and the Tswana in the Union.

Conclusion. The object of the memorandum has been to suggest that the Government's policy of separate university institutions for the different groups represented in the Union could be achieved without interfering with the autonomy of ~~the~~ of the universities. It is submitted that even if the universities of Cape Town and the Witwatersrand were to continue to be permitted to register non-white students, if university colleges of commonly accepted pattern and standard were to be established for non-whites in different parts of the country, non-white students would in the vast majority of cases seek admission in the latter rather than in the former. In this connection it is a pity that the Government did not consider it necessary to have consultation with institutions and groups affected by this legislation before it was tabled in the House. Perhaps even at this stage serious consideration might be given to the idea of initiating wider consultations on this vital national question instead of rushing through Parliament a measure which will obviously take many years to implement.