PRE-UNION NATIVE POLICY

C3.57

Natal Native Policy

Read: Brookes: History of Native Policy

Chapter II pp. 22-31.
Chapter III pp. 41-86.

The Evolution of Native Policy in Natal

The development of Native Policy can be divided into three stages

(1) The Republican period which lasted from 1838 to 1843

(2) The Shepstone - - 1843 to 1875

(3) The post Shepstone - - 1876 to 1900

The Republic Period

The Republic of Natal established by the Voortrekkers in 1838.

The Native policy of the Republic was laid down by the Volksraad as follows:—

(1) The Territory of the Republic was to be regarded as a purely white area

(2) Any Natives in that area were to be regarded as servants of the white citizens with no political or other rights

(3) Any Natives in excess of the labour requirements of the area were to be removed from the area & be settled in a purely Native area.

(4) The Natives within the white area as labourers were to be fairly distributed between the white farmers in terms of a law to be drawn up. This Squatter's Law was passed in 1839

The effect of the law was (a) to limit the number of Natives in the white area & those necessary to the labour requirements of the white farmers (b) to distribute native labourers equitably among the farmers, each farmer being allowed not more than five Native families on his farm (c) to prevent the practice of Kaffir farming i.e. the hiring of farms to Natives for rent by absentee farmers.

(5) In 1841 the Volksraad decided upon the location of the Native area in which the surplus population would be settled & fixed on the area between the Umtamvuna & the Umzimvubu rivers & the South of the Republic, which appeared to be vacant land. This land was however claimed by the Pondo tribe as their own & they protested to the British Government about the encroachment of the Boers on their land. ~~Thus~~ In order to prevent friction between British subjects & friendly Native

tribes the British decided to annex Natal & set up there a British form of government. Natal was accordingly annexed in 1843 & the Republican regime came to an end.

The Shepstone Period

After the British had annexed Natal & established the Volksraad they appointed (1) Shepstone the Diplomatic Agent to the Native tribes (2) A Commission to address on the native policy to be followed. The main Recommendations of this Commission were as follows:-

(1) That the Natives within the territory of Natal should be kept within that area

(2) That locations should be set aside in which the Native tribes might be settled.

(3) Each location was to be administered by a European Superintendent assisted by European & Native police.

(4) In each location was to be established a school in which Native children might be taught useful practical arts.

(5) In each location improved methods of agriculture were to be encouraged among the ~~Europ~~ African farmers.

The recommendations of this Commission were not fully implemented by the Colonial Office on the ground of the expense involved.

(1) The demarcation of native locations was accepted & carried out & Shepstone was entrusted with the task of removing the Native tribes removed to the various ~~the~~ locations which had been set aside for them. This he did successfully without the aid of the police recommended by the 1846 Commission

(2) Superintendents were appointed for the various locations

(3) The recommendation about industrial schools was not adopted

Having settled the people successfully in the locations set aside for them the Natal Government had then to decide upon a form of administration for these native areas. The person primarily responsible for developing this system

system of native administration was Shepstone. The main principles of his policy were as follows:—

(1) In the native areas the tribal system should be maintained & made use of in the government of the native tribes. This implied laying special emphasis upon the institution of chieftainship & upon the recognition of native law & custom.

(a) Thus in 1849 the Natal Government passed an ordinance under which native customary law was recognised in so far as it was not repugnant to the principles of civilisation. Chiefs were appointed as officers of the Government to apply the native customary law

(b) In 1850 the Governor of Natal was appointed Supreme Chief of all Natives in Natal, with the Magistrates as representatives of the Supreme Chief in their areas of jurisdiction.

Shepstone defended this system on the ground that

(1) while the native was capable of being educated to the level of equality with the European when he could then be brought under the European civil & political system

(2) he was not yet in a position of appreciating the European system of government — hence the necessity of setting up a special system of administration for him, which could gradually be modified as the native progressed to a better & fuller civilisation.

(c) In 1858 Shepstone established the Trust System for Native Land administration. The object of the Trust system was to protect lands set aside for Africans from (a) alienation by the Crown (b) alienation by the people themselves. The original idea was that each location should have a separate Board of Trustees consisting of (a) the chief of the tribe (b) an official of the Government as a private individual. Later it was decided to have a single Board of Trustees for all Native lands — the Natal Native Land Trust — with the members of the Executive, in their private capacity, as Trustees. This step was taken in 1864. The Natal Native Land Trust which had under its control over 2,000,000 acres of land continued until 1936 when it was merged in the S.A. Native Trust.

With regard to the system of land tenure within the Native areas Shepstone favoured the maintenance of the communal or tribal system of land in tribal locations, but was not opposed to the individual system of land tenure for civilised Natives such as those living on the Mission Reserves. As Natives exempted from Native law were free to acquire land rights outside the Native areas. Natives not exempted from Native law were to have their land rights within the Reserves where the system of land tenure was communal tenure. In the Mission Reserves individual tenure on a perpetual basis, the rent being £1 per annum was allowed. Of the proceeds of this rent half went to the Natal Native Land Trust and half to the Mission Reserve where the rent was collected to be used for educational purposes. This is the position to the present day.

Shepstone introduced the Trust system into Natal because of the criticism by the Natal Commission of 1852 of the land policy recommended by the Natal Commission of 1846. The latter Commission had recommended the demarcation of locations for different native tribes & this recommendation had been accepted and put into effect & Shepstone had settled the native tribes in the different locations set aside for them. The Commission of 1852 complained (a) that too much land had been set aside for Natives, about 2000000 morgen which represented about ⅓ of the total area of the Colony of Natal.

(b) the setting aside of so much land for Natives would interfere with the flow of labour from the native areas to the European areas, "the continuous & abundant supply of Kaffir labour for wages".

(c) that the segregation of the tribal system by Shepstone was a danger to the European as it would tend to unify the Natives. They favoured a policy of divide & rule.

The 1852 Commission suggested as an alternative policy

(1) the encouragement of European immigration so as to counterbalance or correct the proportion between Black & White as far as numbers were concerned

(2) the keeping of the native tribes within bounds as regards number i.e. the restriction of the influx of natives into the European areas.
(3) the keeping of the native population in strict subordination
These two points were in keeping with the old Volksraad policy.
(4) the agricultural education of the natives on simple lines so as to make them more useful labourers to the European farmers.
(5) the exerting of economic pressure on the Native by means of hut tax or other forms of taxation & by the introduction of individual land tenure in the native areas. This would force the Native to come out of the native areas to work as a labourer for the European. This was in keeping with Grey's policy in the Cape.
(6) The compulsory education of native children between the age of 6 & 12 with English & Dutch to be included in the curriculum.
The British Government did not put into effect the recommendations of this Commission but Shepstone saw at once that these ideas represented a threat to the security of the Native Reserves.

Natal

In Natal the victory of December 1838 of the Voortrekkers over the forces of Dingaan definitely established in the Republic of Natal the government of Europeans over Natives. What was the Native policy of this new Republic at the time when it was free independent of British rule i.e. before Natal was annexed by the British. Thousands of Natives from Zululand flocked into Natal seeking refuge from the Zulu chiefs. In dealing with the problem of the influx of Natives the Volksraad of the Natal Republic laid down the following policy:—

(a) To mark off an area for predominantly white occupation—

(b) to retain sufficient Natives in the white area for agricultural labour purposes

(c) to secure an equitable distribution of this labour supply

(d) to segregate the remaining part of the Native population

(e) to rule such Natives as remained in the white area paternally, justly & kindly but retaining them in a position of future subordination — social, religious political & economic.

(f) to retain the tribal system except in regard to Natives in the white area.

To give effect to this policy, in 1839 a "Plakker's Wet" (Squatter's Law) was passed which (a) limited the number of Natives in the white area (b) secured an equitable distribution of the labour supply, only five families being allowed on each farm & (c) to prevent the practice of "Kaffir farming" i.e. the hiring of farms to Natives for rent by an absentee landlord.

In 1841 a resolution was passed by the Volksraad which proposed to settle the surplus Native population of the White area on a tract of land between the Umtamvuna & Umzimkulu Rivers to the South of the Republic. It was this step which led the British Govt. to intervene in the affairs of Natal in the interests of the Natives concerned & of Faku a Native Chief ~~with~~ with whom the British had a treaty.
In 1843 Natal was annexed to the British Empire & the rule of the Republic came to an end. In 1845, two years later the future government of Natal was settled & the Volksraad abolished. When the New Govt. took up the government, the Native population had increased from 20000 to 100000 — Natal had become largely a Native Territory & the problem was how to rule & control the vast Native population without police, without money & with but a small military garrison. Natal was fortunate in having as its first "Diplomatic Agent to the Native Tribes" Theophilus Shepstone. In 1846 A Commission was appointed to report on the question of Native Affairs. This Commission reversed the Native Policy of the Natal Republic referred to before — i.e. absolute segregation. The Commission reported the Location System on the following lines

① Each location was to be governed by a Superintendent or Resident Agent of the Government who was to be provided with one or more assistants according to the size of the location

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

③ In each location a normal mechanical school was to be established where "the useful arts should be taught & practically illustrated"

④ In each location systematic agricultural instruction was to be given by the Superintendent.

All the constructive suggestions of the Commission were turned down by the Colonial Office on the grounds of lack of funds. All that was the delimitation of the locations & the moving of the Natives within them, the latter task being accomplished only because of the tactfulness of Shepstone & the confidence of the Natives in him. As the British Govt. was unable to supply funds for the appointment of the necessary administrative officers to rule the Native tribes

the only alternative for method of controlling the vast native population settled in the locations was to resuscitate the tribal system and to attempt to rule the tribes through their chiefs. The "experimental" part of the recommendations of the 1846 Commission had to be abandoned for lack of funds. A later commission that of 1852-3 condemned the 1846 Commission for having set aside such large tracts of land for native occupation — the locations constituted about ⅙ of the area of the Province — suggesting that the Commission had been unduly influenced by missionary opinion. There were two American missionaries on the 1846 Commission — Dr Grout & Rev. Lindley — whose memory is still highly revered in Natal.

When the the policy which Shepstone was called upon to put into effect involved the settlement of Natives in their own locations (as this control through the tribal system, with as little cost to the Administration as possible.

The Shepstone Policy

The Natal Native Policy from 1845 to 1875 can be summed in the word — Shepstone. Shepstone ruled between 100000 & 300000 Natives peacefully for 30 years. The secret of his success lay in the fact that

Merits (i) he was thoroughly conversant with the laws, customs & prejudices of the Natives

(ii) his thirty years toil among them & the love they had won them entire affection & sympathy

(iii) he was an excellent administrator with all the necessary qualities for good Native Administrator — patience, thoroughness, tact, sympathy, self-reliance a commanding presence, a thorough knowledge of their language customs & genuine respect of their traditions

Demerits (a) And yet in spite of his excellent qualities and his success as a controller of Natives, he failed to civilise them, & adapt his policy to changing conditions & give it a direction which would allow of future development.

(b) He regarded Native Policy as his monopoly — he made no attempt to carry public opinion with him, shrouding himself & his schemes in impenetrable unnecessary secrecy.

(c) he was very conservative – the policy of laissez faire was the one which attracted him "It never seems to occur to him that he has any duty but to sit still & let things slide". Mr Herman M.L. said of the policy "You have not elevated the Natives in Natal; you have not raised them; you have not educated them; they are barbarians & you have designedly left them in a state of barbarism" (See 1903 Commission Report. Evidence Vol II p. 378.

(d) he was personally ambitious & took special pride in being the arbiter of the destinies of South Africa

His Administration Difficulties

1. One of his first difficulties involved Dr Henry Bleek, Recorder of Natal when the British took over the country. Bleek wanted the Native population to be subject to Roman-Dutch Law; Shepstone took the view that Native customary law must be recognised & administered by the Courts and that he as representing the Governor should be given the powers formerly exercised by the Zulu chiefs. Shepstone won the battle & by an ordinance of 1849 Native customary law was recognised in so far as it was not repugnant to the general principles of humanity observed throughout the civilised world. Chiefs were appointed as officers of the Government and in 1850 the Lieutenant Governor of Natal was made Supreme Chief. Thus was laid the foundations of the Natal System of Native Administration. A carefully worded Memorandum was sent out to all Magistrates in which Shepstone explained the principles which had to be borne in mind in Native Administration. The Chief points of the Memo were as follows:

(1) The Native is capable of being elevated & equally with the white man

(2) But as yet the Native is incapable of appreciating or even understanding the civil & political rights of the white man

(3) Hence the necessity for a special system of government for Natives – "a form adapted to their habits and position, but capable of being modified so as to advance their progress towards a higher & better civilisation". Thus the recognition of Native customary law was not to be an end in itself but a stepping stone to something higher & better.

Native law as a whole was recognised but

(a) certain of its undesirable features eg. punishment for witchcraft were abolished

Interpretation

(b) Certain European ideas were introduced into the system eg. "the death penalty for murder."
This policy was approved of by the Colonial Office in 1857.

The 1852 Native Affairs Commission

In 1852 a Commission was appointed to inquire into and report upon Native Administration in Natal & to deal with the Location problem.
This 1852 Commission criticised severely the work of the 1846 Commission because (a) the large size of the locations it recommended
(b) the consequent interference with an abundant & continuous supply of Kaffir labour for wages."
The Commission also criticised Shepstone for his resuscitation of the tribal system & the recognition of Chiefs & Native Customary Laws.
They suggested (1) the encouragement of white immigration & (2) the keeping of the Native population within due bound as regard numbers & strict subordination — the Red Coller road Policy. (3) the agricultural education of the Native on simple lines (4) the exertion of economic pressure on the Native by means of hut or other taxation by introducing undermined land tenure in the location with consequent necessity of earning money, & force the native to come out & work as labourer for the European.
(5) Compulsory attendance at school for native children between ages of 7 & 14, English & Dutch to be taught in each school.
The recommendations of this Commission were never put into effect.

The Trust System

For ten years after the publication 1852 Commission had reported Native Administration proceeded uneventfully. In the meantime Shepstone was devising a scheme whereby the lands of the locations could be secured for the tribes inhabiting them. His first suggestion on the granting of separate titledeeds for each tribal location, the land to be chosen by the Commissioners Board of Trustees one of whom in each case was to be the Chief of the tribe. And a trust was created in 1858 — the so-called Umvoti Trust, the Trustees being the Secretary for Native Affairs (Shepstone), the Chief of the Amatuli Tribe & one non-official member. This trust was in existence until 1936 when it was merged

in the South African Native Trust created under Act 18 of 1936.
Later on a different Trust system was adopted under which the Natal Native Trust was created. To this trust the Crown alienated all unalienated Location Land in Natal in trust for the Native population as a whole & not for separate tribes as was done in the case of the Dominion Trust. This trust, which control 2000000 acres of land, has also now been absorbed by the ~~Natal~~ S.A. Native Trust.

The Exemption System

In 1864 was ~~passed~~ introduced into Natal the famous Exemption System provided for in Law 11 of 1864 as amended by Law 28 of 1865. This system recognised that as a result of missionary activity & general contact with Western civilisation many Natives were becoming detribalised and that it was unjust to make such Natives subject to Native customary law and to the rule of uneducated Chiefs. Although the principle of exemption is sound, it was in practice found difficult to draw up satisfactory regulations for exemption. The scheme finally adopted in Natal

Qualifications (1) applied to both male & female applicants (2) Applicants had to petition the Governor stating particulars of family, property, Chief (3) Applicant had to furnish proof of ability to write (4) take the oath of Allegiance (5) produce consent of guardian in the case of an unmarried female. (5) Exemption could be granted or refused at Governor's discretion.

Consequences (i) Once granted Exemption extended to wife & children under 16 (ii) could not be granted to polygynists. (iii) as regards civil right the exempted Native comes under Roman-Dutch Law. (iv) An exempted Native could not become a polygynist.

Very few Natives applied for exemption in Shepstone's time.

The Franchise

In 1865 the Franchise was granted to Natives under Law 11 of 1865. The underlying principle of this law was that after a Native had been exempted from Native law & tribal restraint for a certain period, he should become eligible for the Franchise. The conditions for obtaining the Franchise were (1) twelve years residence in Natal (2) Exemption for 7 years (3) recommendation by three duly qualified European residents endorsed by a Magistrate or Justice of the peace. (4) The grant was in the discretion of the Governor.

(6) The franchise was not hereditary: the son of voter must qualify under the same conditions. These regulations were so stringent that few Natives ever succeeded in becoming enrolled as voters. Criticisms of this system are (a) the regulations were too stringent (b) it aimed at ultimate political identity of black & white (c) it appeared to give the Natives something when it really gave them nothing. — it maintained a political status quo without saying so. (d) Shepstone was against the franchise for Natives.
In 1856 Natal received ~~responsible~~ Representative government & the Legislative Council constantly criticised Shepstone's Native Policy. Shepstone's regime of "benevolent despotism" over the Natives of Natal came to an end with his resignation in 1875 as a protest against the passing of Law 26 of 1875.

The Native High Court

Law 26 of 1875 had as its object the bringing into being of a Separate Court system for Natives, instead of an act in keeping with the policy of separate administration for Natives but the scheme adopted contained a number of features which implied a departure from the Shepstone Policy.

(1) Under this Law a Native High Court was established, a Supreme Court for all civil & criminal cases in which Natives were concerned. Prior to this the Secretary for Native Affairs, as representing the Supreme Chief had acted as a Court of Appeal on cases in Native Courts from Magistrates. This fusion of administrative & judicial functions is foreign to European constitutional practice but Shepstone had retained it as being more in keeping with Native procedure under tribal conditions where there is no separation of administrative & judicial functions. Administrative & judicial functions are combined in the Office of the Magistrate & it seemed illogical that they should be separated at the top.

(2) A Commission was appointed to draw up a uniform Code of Native Law to be administered by the various courts including the Native High Court. The Code was promulgated in 1878. It differed from the 1891 Code in that it was not statutory but was merely intended to serve as a guide to Magistrates. A Board of Native

Administration was set up to revise the Code from time to time & so prevent it from becoming rigid & stereotyped, but very few of its recommendations ever became law. All Magistrates were styled Administrators of Native Law as well as Magistrates & in densely populated Native Districts in addition to the Magistrate separate Administrators of Native Law were to be appointed. — cf. our modern Assistant Native Commissioner.

Shepstone resigned in 1875. What were the results of his 30 years Administration of Native Affairs

① He established the principle of differentiation between black & white in administration, maintaining that such differentiation need not imply subordination. This policy was a sort of via media between Cape policy of identity & the Republic policy of subordination. This Shepstone policy implies that the Bantu should not be Europeanised except in so far as their progress demands changes in their civilisation but should develop their own distinctive civilisation out of a fusion of what is best in their own & our culture. Detribalisation should not be opposed but, nor the tribal system maintained artificially but neither should Bantu culture be deliberately stamped out unnecessarily.

This is the policy which most Europeans who regard themselves as liberal in Native Policy subscribe to day, but which the Native people themselves oppose as being too often ~~associated with~~ held by the repressionist elements in the E.A. population.

Native Policy in Natal between 1875 & 1893. — Extension of Natal Policy to Zululand

The year 1875 saw the end of the Shepstone period & in 1893 Natal was granted Responsible Government. The intervening period was one of transition from the Shepstone Native Policy to that of Natal under Responsible Govt. As we have already noted a new Native Court system was introduced by Act 26 of 1875.

In 1879 broke out the Zulu War of 1879. The result of this was the definite & final overthrow of the Zulu military system and the extinction of Zulu independence. Zululand was annexed to Natal and the Natal Native Policy was extended to Zululand.

The system of Native Administration introduced after the war of 1879

was follows. Zululand was divided into thirteen districts each under a Native Chief, none further was Paramount, the Governor being the Supreme Chief of Cetshwayo, the Paramount Chief of the Zulus being knocked. A British Resident was appointed to reside in Zululand to be the "eyes & ears" of the Government. This scheme did not work owing to constant intertribal disputes between the thirteen chiefs. In 1882 a new scheme was tried. Cetshwayo was restored to the part of Zululand under stringent conditions. A Zulu Native Reserve was created where any body should not wish to live under Cetshwayo might reside. This Reserve was under a British Resident. This scheme did not prove satisfactory either. In 1887 Zululand was annexed to the British Crown, the Governor of Natal made Governor of Zululand & a representative of the Crown was sent to reside in Zululand with full powers of control. In 1897 Zululand became part of Natal & the system of Native Administration became practically identical with that of Natal, except that the Code of 1878 & not that of 1891 was applied to Zululand.

The Natal Commission of 1881-2.

In 1881 was appointed to report upon the internal administration of Natal This Commission recommended, inter alia, that "Natives not exempted from Native Law should be allowed to purchase land on individual freehold tenure (iii) that Natives should be represented by their own special representative in the Legislative Council — cf. Representation of Natives in Parliament Act 12 of 1936

The Code of 1891

In 1887 Law 44 of 1887 delegated to the Executive the power of codifying Native Law & keeping it up to date. Such a code was drawn up & passed as Law 19 of 1891. The periodical revision of this Code was not entrusted to the Executive but to Parliament. This marked the end of the period 1875 to 1893.

Features of this Period were (1) the perpetuation of the policy of laissez faire in Native matters (2) the loss of touch with the Native people & the replacement of paternal government by officialdom.

Send to hostels by 22nd March.

1. Proposed changes in Internal Syllabuses.
2. External Examiners: 01 1941, 1942
3. Prescribed Works, Prints, Bibliography for 1943

Social Anthropology I — Mrs J. D. Krige
Native Administration I + II — Dr Simons
Native Law