

PARLEMENTSTRAAT 47.

KAAPSTAD.

Wed. 27<sup>th</sup> May, 1959.

Dear Mr. Moore,

Herewith the Heads of Argument prepared by Moltens myself on the preliminary objection.

I may merely add that the Select Committee stage was the first stage at which the College could make any form of objection. While it is true that Examiners have examined the Bill, no provision is made for representations to those Examiners under the Standing Order (as is the case with "Memorials" in England).

Respectfully,

Brian Sanford.

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HEADS OF ARGUMENT IN OPPOSITION.

1. The grounds advanced for the expediency of assigning the control of the University College of Fort Hare to the Government of the Union, which may be summarised as the need to use Fort Hare specifically in the development of the Xosa people, are insubstantial. (Annexure "A").
  2. There are substantial grounds exposing the inexpediency of compulsorily limiting Fort Hare to Xosas at the present time. (Annexure "B").
  3. Even if it has been proved expedient to use Fort Hare specifically in the development of the Xosa people, it has not been proved expedient to effect this by assigning its control to the Government, inasmuch as such an assignment is:
    - (i) inexpedient (Annexure "C"); and
    - (ii) unnecessary (Annexure "D").
  4. The promoters have failed to prove the expediency of assuming control of the Church hostels. (Annexure "E").
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A

The seven grounds advanced for the expediency of assigning the control are insubstantial, inasmuch as:

Ad (1): "that Fort Hare may be a powerful instrument in the development of all aspects of the life and culture of the Bantu."

(a) The authority for this proposition is an extract from the de Wet Nel Commission Report dealing with the establishment of new colleges, the need for which is common cause.

(b) No ground has been advanced for the proposition that Government control would make Fort Hare a more powerful instrument than it is now. Per contra:

1. The object of the college is set out in Clause 3 of the Scheme of Government approved by the Government in 1953:

"The college shall be established primarily for the benefit of the Bantu races of the Union."

(The Government therefore approved the attendance of non-Bantu. The Council, by admitting non-Bantu, followed the main recommendation of the Holloway Commission (1953):

...the/.....

... the following Scheme is the most feasible ... the concentration in the main of non-European students in Durban and at Fort Hare).

2. Fort Hare was the first institution to fight vigorously for the introduction and retention of Bantu languages and studies. They have been taught since 1916 (Chairs formally instituted in 1942 and 1946 respectively). There is an eminent Committee of African Studies (page 24 of the Calendar). The Council promoted the F.S. Malan Anthropological Bantu Museum. The Fort Hare Papers reveal original research into Bantu Studies. As regards students, of 47 B.A. Graduates in 1958:

7 chose Bantu subjects as their two majors.  
19 others chose a Bantu subject as one of the two majors.

The following Bantu languages were taken as major subjects:

Xosa	:	10
S. Sotho	:	3
Zulu	:	2

Most students doing Science include a Bantu language. Student interest in language is encouraged. An Afrikaans book is being translated.

3. The bona fides of the Government are suspect owing to their refusal over many years to recognise the

Departments/.....

Departments of Bantu Languages and African Studies for subsidy purposes.

4. Reliance upon an increase in the number of Coloureds and Indians fails to take into account:

- (i) No Bantu with adequate qualifications has ever been refused by the Council.
- (ii) Bantu still constitute 65% of the students.
- (iii) There has been an actual increase of 40 Xosa since 1955.
- (iv) Since 1955 Bantu have been entering the Durban non-White Medical School, and have been attracted to the open universities.
- (v) Coloureds and Indians are not permitted to follow the preliminary science course at Durban. They must complete a first-year science course in order to do Medicine. Indians were not permitted to enter Cape Town and Witwatersrand. The Government need science teachers urgently. Indians have been housed in special emergency quarters. Indians have, in fact, replaced the non-Union Bantu now excluded by Government policy.

- (vi) Was the Council, when in a position to accept Coloureds and Indians, to refuse them when:
- (a) they had no residential university of their own; and
  - (b) when the facilities at the "open" universities were, in the social and sporting spheres, as the Government had said, inadequate and humiliating?
- (vii) The Council in fact pursued a policy dictated by circumstances - and which the Government will have to pursue until the establishment of the Coloured and Indian colleges.
- (viii) There has been no abnormal increase in the number of Coloureds and Indians. The following are percentage figures of the total student body:

	<u>Indian &amp; Coloured.</u>	<u>Indian.</u>
1959	34	20
1956	21.7	11
1948	23	9
1943	23	13
1923	26	6
1918	18	3

- (ix) The present Transfer Bill was first mooted in 1956 - that is, before the increase in the numbers of Coloureds and Indians.
- (x) Of the 48 staff, 12 are Bantu.

5. In regard to the Service of Fort Hare graduates to the community:

- (a) The following are the percentage occupations of Fort Hare graduates up to 1958:

Teaching	66%
Medical	17%
Ministry	5%
Others	12%

- (b) The precise details for the period 1916 - 1934 are given in the list of prominent graduates.
- (c) The prominence of Fort Hare graduates is shown by the list handed in.
- (d) See also list at page 145 of Calendar.
- (c) If the Government wishes to accelerate development in specific fields, it can:
  - (i) express its views through its 5 members on the Council;
  - (ii) create new Departments;
  - (iii) institute bursaries and scholarships.

Ad (2): "that it is the declared intention of the Government to provide a college whose principal task will be the education of Xosas for the development of the potentially rich Xosa area and its people."

and Ad (3): "that a college should have a mission and a character closely related to the growing needs of the racial group."

and Ad (4): "that the State envisages the conversion of the College into a national institution for the development of the Xosa people."

(a) There is no evidence that the College will perform this task more effectively if under Government control.

(b) No Xosa student has been refused admission and there is no evidence that this is ever likely to occur. There have always been many more Xosas than Coloureds and Indians combined and more than all other Bantu combined, and never less than 40% of the total.

(c) With the establishment of other university institutions Fort Hare will gradually and naturally become more Xosa-orientated.

(d)/.....

(d) The objections to ethnic university isolation are set out below - B. 2.

Ad (5): "that since the control and financing of the College will be vested in the Xosa people it cannot continue as a subsidised private institution but must become a State institution."

(a) The assumption of control and financing by the Xosa people will be as smooth and timely from an independent as from a State institution.

(b) State control will in fact impede the assumption - see C. 1 below.

(c) There was no interposition of State control in the case of the Afrikaans universities (Stellenbosch had initially an entirely English-speaking Council).

Ad (6): "that at present Fort Hare caters for non-Europeans of all types, it is not Xosa-orientated and it creates a mixed student social life which is artificial and not rooted in the morals or aspiration of any homogeneous group."

See above.

Ad (7)/.....

Ad (7): "that the proposal of establishing one large non-European university is rejected."

(a) Fort Hare has never arrogated to itself the sole right to provide non-White university education. It has worked closely with Natal, and favours the establishment of other colleges.

(b) It is in any event difficult to understand why in logic the fact that State policy is against one large non-White university should be advanced as a reason for State control of Fort Hare.

(c) Fort Hare is capable of remaining an independent institution until and after the non-Xosas have been drawn away.

B

The following are substantial grounds exposing the inexpediency of compulsorily limiting Fort Hare to Xosas at the present time:

1. The grant and exercise of powers to prescribe and restrict the admission of certain students to the college will bear the objections set out in paragraphs (ii), (v), and (viii) of Clause 5 of the Council's Petition.

The grant and exercise of such powers will:

- (i) transgress the Western ideal of academic autonomy. This concept requires that a university should have the power itself to admit, restrict and expel students. The Minister may now:
  - (a) limit the number of students who may be permitted to register for any course (Section 15 (4));
  - (b) limit the admission of Bantu persons to persons of one or more groups as he may determine (Section 15 (5));
  - (c) refuse admittance to any person if he considers it to be in the interests of the college (Section 16);

(d)/.....

- (d) make regulations as to the admission of students to, the control of students at, and the discharge of students from the college (Section 35 (1) (i));
- (ii) ignore the express wishes of the Council, Senate, Lecturers' Association, and students of Rhodes University and the College;
- (iii) forfeit the goodwill of world opinion. South Africa will be the only country in the Western world which compulsorily and by state dictation restricts or may restrict higher education to persons of a particular race or language group. A grant of permissive power to the Minister to allow students to attend another college does not compensate. The world cannot but be offended by this deviation. Fort Hare will lose the universality essential to a university.

2. The grant and exercise of such powers will impose an ethnic division inapplicable at the university level.

- (i) The Government's expressed policy is the separation of each ethnically separable group and the promotion of the culture of each.
- (ii) The only determinant factor in this ethnic grouping is language. There is no difference between Xosa, Zulu and Sotho "culture" except language. Native law, for example, is uniformly administered throughout South Africa.
- (iii) The promotion of an ethnic culture cannot effectively be applied at the university level, inasmuch as:
  - (a) The promoters have stated that present courses and faculties at Fort Hare will be retained.
  - (b) There can be cultural differentiation in the content of hardly any modern university department. Of the 19 full departments at Fort Hare, there

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are, other than those of African studies and Bantu languages, none which is in any way capable of cultural differentiation.

- (c) The possibility that ethnic culture may be achieved by students of the same language group residing together and being taught in that language ignores the fact that teaching in a Bantu language at a university level is impossible for the foreseeable future. There is, for example, no Zoology text book in Xosa. What science faculty will be able to award a B.Sc. in a Bantu language and when? Until this comes, English and Afrikaans will be used; and ethnic grouping is pro tanto unnecessary. Any argument based on the triumph of Afrikaans as a university language - for example, at Stellenbosch - fails to take into account the fact that the Bantu languages have no closely related developed

language/.....

language from which to draw strength. Afrikaans was supported by a strongly sympathetic public opinion.

This point was made by Dr. Xuma before the de Wet Nel Commission (Hansard 1959, 4628):

Question: Do you know of any nation in the world which would prefer to have its education in a language other than its own?

: I know that at the moment for obvious reasons I belong to that group. Because our language is not equipped to convey abstract ideas, particularly in respect of mathematics and such subjects as science.

Question: You know that there was a time when that was also said about Afrikaans?

: Yes, I know that. If the time ever comes it can only come when the Africans themselves find that they can themselves evolve the language to express abstract ideas, but not for the thing to be imposed. You see, if you bring about a revolution instead of evolution in the use of the language, then you would absolutely destroy the whole thing and you would exclude the Africans from getting to the source of knowledge.

(iv) Compulsory university ethnic grouping has not been attempted anywhere before. In the

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Union there is no compulsion as between English and Afrikaans speaking University candidates. The Government itself offers bursaries to students from the United Kingdom, France, Germany, the Netherlands, Belgium and Italy, and allows South African students to take up bursaries offered by these countries. If the determinant of culture is language, this is inconsistent with the Government's policy in regard to Bantu ethnic grouping.

There is no other past, present or contemplated university type institution in Africa with a syllabus specially designed to meet the cultural needs of a tribe or group. The courses of study at Makerere (East Africa), Ibadan (Nigeria), Achimota (Ghana), Khartoum (Sudan), and Louvain (Belgian Congo) are identical with Western institutions and are in the English or French language. The Commissions which have sat on Higher Education for the Africans in Central Africa never suggested any ethnic academic

differentiation/.....

differentiation - e.g., between Mashona and Matabele. A Swahili college in East Africa was rejected.

- (v) Ethnic grouping in three university colleges will irregularise the position of the Tswanas, the Vendas, the Tsongas, the Swazis and the South-Sotho for each of whom a separate ethnic or territorial authority is envisaged, or who speak a different language. They will be compelled to attend universities designed to promote the culture of other ethnic groups.
- (vi) The envisaged compulsory imposition of ethnic divisions ignores the fact that the Bantu peoples are being rapidly detribalised. Thus in 1959 there are at Fort Hare 68 urban Xosa and 123 rural Xosa (i.e., 36% to 64%). There has been increasing inter-marriage, industrialisation, social mobility, and education. Social and economic problems are similar in the separate ethnic areas.
- (vii) Ethnic grouping ignores the fact that Xosas will only gradually become capable of

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maintaining a university. The only Xosa member of staff is leaving. There has been no Xosa post-graduate in Zoology. The initial development must come in secondary schools.

(viii) Any argument based on any linguistic handicap ignores the facts that:

(a) Students have never complained of any handicap;

(b) Students have been taught at school from Standard VII to X in both official languages, one of which is written in the higher grade;

(c) Any difficulty is only initial, and in the first year;

(d) Classes conducted in a Bantu language will impose an additional burden upon students.

(e) Comparative percentage figures do not indicate any handicap (see below).

(ix) Ethnic homogeneity is in any event impossible since:

(a) If it is the promoter's intention to  
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extend post-graduate facilities at Fort Hare, these will cater also for non-Xosas.

- (b) The Minister may give permission for non-Xosas to attend Fort Hare.
- (c) Students will have to change colleges to complete courses.
- (d) The promoters are apparently prepared to discuss the continuance of centralised theological training at Fort Hare.
- (e) Non-Xosas must be admitted until the other colleges are ready. The Minister of Bantu Education has stated (Hansard 1959, 4635):

In the initial stages it is impossible to duplicate at all the proposed institutions, at the Sotho institution and the Zulu institution, the two new institutions, all the facilities which presently exist at Fort Hare. For some time it will still be necessary therefore for students from the Zulu and the Sotho groups to go to Fort Hare for courses of study for which it will not be possible to make provision at this stage at those institutions.

3. The grant and exercise of such powers will compel an arbitrary categorisation of individual Bantu.

- (i) The Minister (or body with delegated powers) will have to decide whether any particular applicant for admission to Fort Hare is a Xosa. This is administratively impracticable, since there are no marks distinguishing a Xosa from any other Bantu. It has proved impossible, after eight years, satisfactorily to define the terms European, Coloured and Bantu. The only possible basis of distinction is language, but what happens if a Bantu is bilingual, or, in the case of a woman, is married to a non-Xosa or wishes to be otherwise categorised. Many Africans regard themselves as belonging to one group but speak another's language. Will the Government prevent inter-ethnic marriage?
- (ii) There is no appeal from such an arbitrary categorisation, no Ethnic Appeal Board.

4. The grant and exercise of such powers will lack the consent of the Bantu and particularly Xosa communities.

There is no evidence that the Bantu generally, or any of the so-called ethnic sub-groups, want Fort Hare to be restricted to Xosas. Not a single School Board, Advisory Board, Tribal Authority or Regional Authority has indicated approval. Indeed, the evidence is contrary. Dr. Xuma stated before the de Wet Nel Commission (Hansard 1959, 4608):

We feel that ethnic grouping is a sort of antagonizing, disintegrating force between the groups, and for that reason we would not like it to be extended to the universities.

The Xosas have no reason to support the Bill, inasmuch as (i) no Xosa has ever been refused admission, (ii) there has been no attempt to suppress the Xosa language, (iii) there is no evidence that the Xosas are losing interest in their language, (iv) Xosa is spoken freely amongst students. The development of the Xosa language is occurring naturally without Government control - e.g., the forthcoming privately-sponsored language Congress. Although the Transkei contributed most to Fort Hare, this was because of the centralisation of Bantu education around Alice.

Ethnic/.....

Ethnic grouping will cause great hardship. The Bantu groups are widely dispersed. Thus in 1956 there were 150,000 Ndebele settled in the Northern Transvaal around Petersburg. A Zulu living in the Transkei will be forced to attend the Zulu College. Since pressure causes counter pressure, the compulsorily separated ethnic groups will make common cause wherever possible. Lasting traditions evolve voluntarily and naturally. The State has never considered it necessary to take over the Afrikaans and English <sup>newspapers</sup> ~~newspapers~~. A Bantu has now a free choice between Fort Hare, Natal and the University of South Africa.

5. The grant and exercise of such powers will frustrate a traditional and harmonious co-operation among racial groups.

- (i) Fort Hare has existed for 46 years. There has not been a single instance of racial, let alone ethnic, friction. On the contrary, for example, Coloureds and Indians are regularly elected to the Students' Representative Council by an overwhelmingly Bantu electorate, and are captains of teams.

A recent example of unity was afforded when a sports tour was planned by Fort Hare of the Orange Free State Gold Mines and it was learnt that Indians would not be allowed to enter that province; the tour committee resolved to cancel the tour.

- (ii) This has created not just a tolerance born of necessity but lasting friendships.
- (iii) The Coloured and Indian and non-Xosa communities have faithfully supported Fort Hare throughout its existence.

6. The grant and exercise of such powers will isolate the Xosa community from the main stream of Western thought.

- (i) The Westernising tendency among the Bantu is inevitable owing to South Africa's committed position in the struggle between East and West.
- (ii) The Government's policy is to retard this. It was stated in the Honourable House (Hansard 1959, 4549):

...the/.....

... the United Party wants to leave Fort Hare as it is because there the Bantu acquire a Western and a Christian civilization, and the Bantu are Westernized - that is what we do not want, and that is what we are opposing with all the power and all the wisdom at our command.

- (iii) Ethnic grouping by retarding the Xosa's desired and inevitable attainment of Western standards will cause frustration. There will be a drop in proficiency in the two official languages, and consequent isolation from the outside world.

The following are grounds exposing the inexpediency of transfer:

1. The transfer will bar the hitherto uninterrupted advance of the College to full university status.

(i) The following has been the constitutional history of Fort Hare:

1916: Founded as "The South African Native College".

1923: Declared an "institution of higher education" under Higher Education Act, No. 30 of 1923.

1923 - 1951: Although Fort Hare was not a constituent college of the University of South Africa and its students were external students, Fort Hare in time obtained the most important of the privileges granted to constituent colleges:

(i) Five staff members were appointed annually as additional members of the Boards of Faculties of the Senate of the University of South Africa,

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thus giving Fort Hare a share in the framing of regulations, syllabuses and course of study for Univ. of S.A. students.

(ii) Staff members, in the appointment of examiners for Fort Hare students, were accorded the status of internal examiners in the same way as staff of constituent colleges.

(iii) Fort Hare students (a) paid same examination fees as constituent colleges' internal students, (b) could use College Record for determining his examination results, (c) were admitted to supplementary examinations, (d) could train for the University Education Diploma. Fort Hare was on the point of acceptance as a full constituent college.

1947: The Brookes Commission recommended:

(a) That Fort Hare be affiliated to Rhodes;

(b)/.....

(b) That since:

"the ultimate future of Fort Hare is independence .. policy should be shaped towards the attainment of this end as soon as the College attains to the status which would be expected of a European college aspiring to independence."

- 1951: Fort Hare became affiliated to Rhodes (Section 33 of the Rhodes University (Private) Act) No. 15 of 1949.
- 1952: Name changed to "University College of Fort Hare."
- 1953: The Holloway Commission reported (para. 43):

There remains for consideration the South African Native College, now the University College of Fort Hare. This institution provides education at University level for non-European students in certain faculties and departments, and its academic work is to a certain extent associated with the standards laid down by Rhodes University. Your commission has decided to consider this institution on the same basis as the eight teaching universities.

1954: Fort Hare prepared a Draft Private Bill to provide for its incorporation as a University College. This sought to remove anomalies attaching to its association with the other institutions of higher education. The four Government appointees to the Council apparently approved this draft Private Bill, and the Department of Education approved its promotion.

1955: Fort Hare was defined as a "University" in terms of Section 1 (xii) of the University's Act, No. 61 of 1955.

(ii) The above history reflects a slow but steady progress from a High School to a Declared Institution to a University College.

(iii) This development is exactly in line with that of each of the white universities. Each started as a voluntary association - as a

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high school (the Orange Free State), a school of Mines and Technology (Witwatersrand), or a Theological Seminary or Department (Potchefstroom) - each then became a constituent College of the University of South Africa (all, save for Potchefstroom, in 1916) and each subsequently introduced legislation providing for incorporation as a university college and later for university status.

- (iv) The Founding Acts of Witwatersrand, Pretoria, Natal, Rhodes, Orange Free State and Potchefstroom - as also the Holloway Commission Report (paragraphs 13 and 120) - mention as the criteria of a University the number of its students, the range of its work, the competence of its staff, financial resources, and the size of the community which it serves. In regard to these factors, Fort Hare now has 500 students; Potchefstroom and Rhodes had little more when they became full universities. Fort Hare now has 19 full departments, staffed

by/.....

by 48 persons drawn from the other universities and most of them with overseas post-graduate degrees. Financially, Fort Hare functions identically to the white universities. With the establishment of Bantu schools, Fort Hare's community will increase rapidly. Fort Hare, therefore, almost satisfies the above criteria. It requires only full departments of Agriculture and Commerce. It could be ready for independence next year. Fort Hare is already a university in the minds of the South African public - see, for example, the S.A.B.C. and Wakefield Calendars for 1959. It is a member of the Association of Commonwealth universities.

(v) The further step to full university status and independence is barred, since:

(a) The College will be governed by a State Department. As was stated by Professor Coetzee in evidence before the de Wet Nel Commission (paragraph 28 of the Minority Report):

Question/.....

Question: Do you not foresee difficulties in securing the transition from State Universities to Universities of the existing type? Do you not think that there will be a tendency for those in control wanting to maintain the same system all the time?

Professor Coetzee: That is precisely one of the strong points I have made; if you begin the wrong way, it is impossible to remedy the situation later ... what I say is, begin the right way. The state institutions remain state institutions, and the free institutions as they term them, remain free institutions, and these are institutions quite distinct from state-controlled institutions. The point is, begin the right way, but begin wisely. You cannot establish them like a machine, because the circumstances are also entirely different.

(b) There is no such clause as is provided by Section 3 (4) of the University of South Africa Act, No. 12 of 1916:

The Council of any constituent college shall have power to promote legislation providing for the incorporation of such college as a university.

The University of Potchefstroom submitted to the de Wet Nel Commission (paragraph 21 of the Minority Report):

Dit/.....

Dit is van die uiterste belang dat selfs in die Wet, die vooruitsig geopen word dat die inrigtings outonoom sal word omdat die raad en senaat normale funksies sal aanvaar.

2. The transfer will transgress the western ideal of academic autonomy.

- (i) The college is presently autonomous. Section 5 of the existing Scheme of Government reads:

Subject to the provisions of the Act and the regulations, the government and executive control of the College shall be vested in a Council.

The Minister of Education has the power or right merely:

- (a) To appoint four persons to the Council (Clause 5 (1)(b));
- (b) To withhold approval of conditions prescribed by the Council in regard to representation on the Council of the bodies maintaining hostels (Clause 5 (1)(j));
- (c) To withhold approval of the Council's appointment of the principal (Clause 16);
- (d) To be informed of any exercise of its power to expel, or refuse admission to, a student (Clause 26);

- (e) To withhold approval of any alteration or rescission of the scheme of government (Section 9 of Act No. 30 of 1923);
- (f) To revoke his declaration of the College as a place of higher education (Section 10);
- (g) To determine whether any Government loan should be granted to the Council (Section 12);
- (h) To have transmitted to him an annual report of the proceedings of the Council and of the management of the College (Section 16 (1));
- (i) To withhold approval of the appointment of auditors (Section 10 (2));
- (j) To make regulations (Section 19).

The Minister therefore at present holds a close watching brief.

It has been stated that Part 9, G.N. 671 of 27.3.1953 renders Fort Hare non-autonomous (4456). The notice reads:

The Minister may from time to time cause an inspection to be made of the premises, administration and instruction of an institution and may require defects in these respects to be remedied as a condition of the grant-in-aid, of which the whole or part may be withheld until he is satisfied that steps have been taken to meet his requirements.

But:

(i)/.....

- (i) This power of the Minister has been abolished by the Universities Act, No. 61 of 1955, which, following the recommendations of the Holloway Commission, applies to Fort Hare. (See Sections 14, 17, 25, and letters from Department of Education).
- (ii) This power is in any event in conflict with Clauses 5, 16, 19, 20, 26 of the Scheme of Government.
- (iii) This power is in any event only to exert financial pressure to have defects in premises, administration and instruction remedied. A "defect" in law is a falling-off or diminution or rendering inefficient. It implies a non-maintenance of the status quo. (See the law relating to the liability to repair leased premises).  
  
It has also been suggested that Section 10 of the Higher Education Act derogated from Fort Hare's autonomy,

inasmuch/.....

inasmuch as the Minister could revoke his declaration that it was a place of higher education. But this would not entail abolition. Fort Hare would continue as a lawful voluntary association. It would merely not be subject to the provisions of the Act. It would continue to be subject to the Universities Act of 1955.

(ii) The Bill now provides (Section 2):

As from the specified date all powers, duties and functions conferred or imposed upon or entrusted to the College Council by or under any law, shall be vested in the Minister, and for that purpose any reference in any such law to the College Council shall be construed as a reference to the Minister.

The Bill grants the following specific powers and rights to the Minister of Bantu Education:

- (i) To change the name of the College (Section 2 (3));
- (ii) To pay annual sums to the Council for the carrying out of its functions (Section 4(b));
- (iii) To determine existing teaching posts

as/.....

- as state posts or council posts  
(Section 3 (1));
- (iv) To discharge any present staff member (Section 4 (4));
  - (v) To establish bodies of the College (Section 6 (e));
  - (vi) To appoint members of the Senate (Section 10 (1) and the Advisory Senate (Section 11 (1));
  - (vii) To appoint the Rector (Section 12);
  - (viii) To determine the acquisition and control of stores and equipment (Section 13);
  - (ix) To limit the number of students who may be permitted to register for any course (Section 15 (4));
  - (x) To limit the admission of Bantu students to persons of one or more groups as he may determine (Section 15 (5));
  - (xi) To refuse admittance to any person (Section 16);
  - (xii) To withhold approval of the award of diplomas and certificates (Section 23);
  - (xiii) To classify posts as council or state posts (Section 25);
  - (xiv) To appoint, promote or discharge any person in a state post (Section 26);
  - (xv) To withhold approval of appointments, promotions and discharges of persons in council posts (Section 27);
  - (xvi)/.....

- (xvi) To direct and to take steps against persons whom he considers guilty of mis-conduct or inefficiency (Section 31 (4));
  - (xvii) To make regulations as to all matters which he considers is necessary or expedient to prescribe in order that the purposes of the Act may be achieved (Section 35 (1)(c);
  - (xviii) To expropriate any land required for or in connection with the University College (Section 37).
- (iii) The Bill therefore destroys the autonomy of Fort Hare, and is objectionable for the following reasons:
- (a) The principle of autonomy is recognised in all Western democracies. This is shown by:
    - (i) The protests from 296 overseas universities against the Extension of University Education Bill.
    - (ii) Researches reported in the year books of the RESEARCH AND INFORMATION COMMISSION OF THE INTERNATIONAL STUDENT CONFERENCE reveal that the only countries with university administration in the hands of a

politician are Hungary and East Germany.

(b) The principle of university autonomy has been carefully applied throughout Africa:

(i) The Commission on Higher Education in East Africa (1937) stated in regard to Makerere College, Uganda:

The first essential for the development we envisage is unified autonomous control of all the elements of the Higher College. This control can only be exercised by an independent body.

Makerere is now a fully autonomous university.

(ii) The Asquith Commission on university education in the Colonies (1945) stated:

In our view it is essential that colonial universities should be autonomous in the sense in which the universities of Great Britain are autonomous ... The colonial universities should, in effect, have full freedom to manage their own affairs.

(iii) The Commission on Higher Education for Africans in Central Africa

(1953)/.....

(1953) stated:

By a university we mean an autonomous corporation; that is a body which has the right to manage its own affairs. We do not mean that it is not under obligations to the public. Quite the contrary; it should publish its accounts, give a periodical report of its stewardship and welcome visitations by properly qualified authorities. It follows that the governing body of the university, commonly called the Council, should not be dominated by any one outside organisation or interest; the members of the Council should be persons devoted to forwarding the true interests of the university rather than "representatives" of outside bodies, governmental or otherwise. Further the academic staff should have a proper measure of autonomy over academic matters.

- (iv) Achimota University in Ghana is autonomous. The President, Dr. Busia, is Leader of the Opposition to Dr. Nkrumah.
- (c) The principle of autonomy is recognized in South Africa - for example:
  - (i) Not one of the present eight white residential universities, except  
the/.....

the Orange Free State, has ever had governmental control.

- (ii) The Holloway Commission (1951) thus referred to University autonomy in South Africa:

The Terms of Reference in the Government Notice read as follows:- "To enquire into and to make recommendations on . . . (2) a basis on which the State should subsidise the universities, having regard, inter alia, to - (a) the freedom and autonomy of the universities. (2)

Certain regulations could be imposed on the universities and enforced by coupling the grant of the State subsidy to adherence to them. Such a course would, however, create many difficulties. It would lead to invidious comparisons between the various institutions. It would cause much dissatisfaction. It could never be applied on a strictly logical basis and it would in any case interfere with the freedom and autonomy of the universities to a certain extent (35). Your Commission attaches much weight to this last factor, because, as the report will reveal, we are of the opinion that many of the problems now confronting the country in respect of its universities can best be solved by granting them greater freedom (36).

We/.....

We do not therefore propose to safeguard the State by a system of departmental control of universities. The solution must be sought elsewhere. (37). The State, if it be desirous that the universities shall fulfil adequately such functions as are assigned to them, obviously has to choose between assuring that they are properly equipped or curtailing their proper functions by direction from above through the Minister of Education, Arts and Science. To adopt the latter course would in nearly all circumstances be difficult, invidious, the cause of intense dissatisfaction, and never completely logical. (46).

At the same time, bearing in mind the need for each university council to be able to run its affairs as an autonomous body freed as far as is possible from external restrictions, your Commission has endeavoured to produce a plan which will harmonise the autonomy of the university with the necessity to safeguard the State against unlimited financial obligations (47).

The very nature of a university demands a large measure of freedom. Thought cannot be compelled, and the adventures into the unknown realms where eternal truth abides cannot have their wings clipped. The history of Galileo stands as an abiding witness to the folly of placing limitations on the search for knowledge. (49).

The method adopted in the past of making a large number of decisions dependent on the approval of the Minister suffers from many drawbacks. It is quite impossible for any Minister to be so conversant

with/.....

with all the intimate details of the life of every university as to carry out this function satisfactorily. The fact that any decision of his in any one case can be quoted as precedent to force his hand in any other more or less comparable case tends to reduce many matters, where there should be local variations, to a dull and stereotyped uniformity. The loss of time in seeking decisions is harmful to an organic entity such as a university should be. There are other and even more serious drawbacks. The system reduces university councils to the status of advisory bodies instead of bodies free to give a definite content and character to a university (52).

This theme recurs also in the Holloway Commission Report (1954):

Any limitation of a university's autonomy is ... always a serious matter because it may open the door to interference in the purely internal policy of universities.

- (d) There are no valid reasons for destroying Fort Hare's autonomy. The following are not valid:
- (i) "There is no reason why a University Council should have complete authority over all the aspects of a university" (de Wet Nel Commission Report, para. 51). But if there is  
no/.....

no reason for autonomy, it is difficult to understand why the Commission (in paragraphs 25, 29, 31, 72, 97(4)(iv), 105, and 113) expressed the ultimate and ideal object of the university colleges to be complete independence.

(ii) "In Germany, Holland and the United States experience has proved that Government control and full academic freedom are completely compatible" (de Wet Nel Commission Report, para. 47). But:

(a) In regard to Germany, University autonomy has always been jealously guarded in German academic circles

(b) In regard to Holland, the following was stated recently by Professor J.H. Bavinck:

"I particularly stressed our concern over any interference with the autonomy of universities. During the last war the Germans

tried/.....

tried to interfere with the internal administration of Netherlands universities, but after 4 years they had not made much headway when we were liberated."

Professor Bavinck, Professor of Theology at the Free Calvinist University of Amsterdam, lived in multi-racial Indonesia for many years, worked at Potchefstroom for a year in 1953, has written works on world racial problems, has visited South Africa as the representative of the World Council of Churches, and was sponsored recently by the Committee on Science and Freedom of Manchester University.

(c) In regard to the United States, the position is that in some states (for example, Virginia) the Governor may appoint the entire Board. But:

(i) In many states either the Governor appoints a minority of the members (for example, in Washington) or the members are elected by the people in a general election (for example, in Michigan).

(ii)/.....

- (ii) Where the Governor does appoint the entire Board:
- (a) The Governor has no administrative power whatsoever - this is all entrusted to the Board;
  - (b) The Board have full independence - for example, to appoint the President and staff;
  - (c) The Governor has no power to dismiss a member of a Board;
  - (d) There is public criticism of even this small measure of state control;
  - (e) In most of these states appointments to a Board are confirmed by the State Legislature;
  - (f) There is a growing tendency to appoint former graduates to boards.
  - (g) The appointments are "phased".
- (iii)/.....

(iii) "The State subsidises the College".

But:

(a) The State subsidises all eight White residential universities with from 59% to 77% of their income, but no suggestion has ever been made that they should on this ground be subject to State control.

(b) Subsidisation need not necessarily attract State control. Sir Walter Moberley stated in an address in 1948 to the Congress of Universities of the British Commonwealth:

(State supervision should only be such as) gives the State the assurance to which it is entitled, that the funds it provides are being wisely and effectively used by the universities, and does that without sacrificing the responsible independence of the universities.

The following figures are given for 1956 in the Department of Education's Report:

	<u>Govmt. Grant.</u>	<u>Total Expen.</u>	<u>%</u>
O.F.S.	£187,000	£256,000	72.8
Potchef- stroom	193,000	249,000	77.4
Fort Hare	87,000	109,000	79.6

(iv) "There is one example of a University College in South Africa which at one stage was under direct government control - namely, the University College of the Orange Free State." But this is unique in South Africa. Section 7 (7) of all the Founding Acts of the South African Universities reads:

The Council shall administer all the property of the university and shall have the general control of the university and all its affairs.

The emphasis on independence in all the other universities is shown, for example, by the preamble of the Potchefstroom Act No. 19 of 1950, which reads: "Whereas ... the institution ... became a separate institution ... controlled by its own Council."

On/.....

On this historical aspect, Professor Coetzee stated before the de Wet Nel Commission (paragraph 22 of the Minority Report):

"I am speaking as the representative of a University and as such I must emphasise academic independence. In my opinion, when the Government proceeds to establish these Colleges, they should not be institutions fully controlled from above. They should clearly be independent; that is, the essence of a University, which secondary schools do not possess; surely they must have a measure of freedom. The autonomy or the independence of an academy lies in the fact that it has its own Council. Let me begin there. Going back to the establishment of the University of the Cape of Good Hope, you will also see that it had a Council from the beginning. But since there were no universities or persons to elect the Council, they were originally appointed. A few were elected. In my opinion we should adopt the same procedure here: At the outset, for the first term, many of the Council members should be appointed members. But from the beginning there should also be elected members, otherwise these bodies would not bear the character of independence."

(v) "Special circumstances exist in regard to the non-White university

colleges/.....

colleges". But, asked whether the circumstances did not involve special dangers in extending to non-White institutions the freedom of the existing pattern, Professor Coetzee replied (para. 27 of the Minority Report):

"My reply is that all the universities in the country are state-aided. The result is that the state has a certain number of members on the University Council and, should that University become a danger, those representatives on the Council would sound a warning. Academically there is no danger."

There are four Government appointed members on the Council of Fort Hare, and no warning has yet been sounded.

- (vi) "(It is) unrealistic to expect that non-European university institutions will be established and controlled on exactly the same lines as the European institutions ... because ... we are dealing here with under-developed racial groups which require

a/.....

a completely different approach from the approach to high developed peoples." (de Wet Nel Commission Report, paragraph 25).

But Fort Hare is composed of university students, many of whom have had to work in order to save money, almost all of whom are matriculants, 24 in the first-class.

(vii) "There are people, European as well as non-European, who, for a variety of reasons, will attempt to cause the failure of the university colleges." (de Wet Nel Commission Report, paragraph 25). But there is no evidence that Fort Hare has been undermined. Per contra, it has gone from strength to strength. See the list of donors at page 133 of the Calendar.

(viii) "Some South African authorities concede that there is nothing inherently wrong with "State" universities - for

example/.....

example, Dr. S.F.N. Gie in the Report of Union Department of Education (1931), and Dr. E.G. Malherbe "Die Outonomie van ons Universiteite en Apartheid" (Hansard 1959, 4457, 4632). But these authorities refer merely to universities founded and/or fully subsidised by the State. They nowhere consider a university with a Council which (i) is not elected and (ii) does not have freedom of control. This point was made by Prof. J.C. Coetzee in "Separate Universities for non-Europeans":

In principle, I do not consider universities are the responsibility of a government, but I must agree that a government must act in establishing schools and universities when a group is not able to do so itself.

3. The transfer will displace governing bodies which have administered the college wisely and progressively for over 40 years.

(i) Academically.

(a) Departments. The college started in 1916 with two high school teachers. There are now 19 full university departments, with a staff of 48.

(b) Degrees. The following degrees have been obtained by students at Fort Hare to 1957 (page 136 of the Calendar):

M.A.	5
M.Sc.	5
B.A.(Hons.)	7
B.Sc.(Hons.)	6
B.A.	605
B.Sc.	364
B.Ed.	2
Dip.Ed.	649
Dip.Theo.	55
Dip.Agric.	58

In addition, in the period 1916 to 1937 when matriculation classes ceased, 252 matriculants passed at Fort Hare. 85 graduates of Fort Hare have qualified in medicine elsewhere. 72 others have obtained other senior degrees. Of the 50 Bantu Fort Hare

Medical/.....

Medical Scholarship holders who were sent to Witwatersrand between 1941 and 1951:

35 could have graduated by 1952.  
30 have graduated.  
2 forfeited scholarships by failure.  
3 had still to take the final year.

(c) Entrance standard. Of 454 matriculated students, 24 have first-class matriculation passes.

(d) Comparative percentage passes. The following is the proportion of students who fail in their first year in one or more subjects:

Fort Hare	-	41.18%
Natal (European)	-	42.86%
Cape Town	-	39.24%
Rhodes	-	36.37%
Wits.	-	37.06%

(1950 N.U.S.A.S. Survey).

(e) Departmental Percentage passes. In Zoology from 1938 to 1958 71% success.

(f) 1958 Percentage passes.

	<u>B.Sc.</u>	<u>B.A.</u>
Pretoria.	73%	70%
Wits.	68%	81%
Potchefstroom.	83%	90%
Cape Town.	63%	75%
Stellenbosch.	64%	76%
Fort Hare.	82%	80%
Natal.	74%	78%

These/.....

These figures do not depend upon small classes. The following are the number of students per staff member:

Great Britain	:	8.5
Russia	:	10.1
Fort Hare	:	11.5
Cape Town	:	14.8

Nor do these figures depend upon selectiveness. No Bantu applicants have been refused, and 76% obtain grants (compared with 75.5% in Great Britain).

(ii) Membership of Council. Fort Hare has always had a Council as strong and distinguished as any other University Council in South Africa. It has been stated that the Council cannot play a leading role in Bantu development, inasmuch as:

- (a) No provision is made for representation by the Bantu bodies controlling the Transkei and Ciskei;
- (b) Three particular churches are represented, and others not;
- (c) Witwatersrand and Natal universities are represented.

This fails to take into account:

(i)/.....

- (i) The constitution of the Council was approved by the Minister of Education in 1953.
- (ii) In regard to representation of Bantu bodies, clause 5 (1)(f) of the Scheme of Government provides for representation by
- "not more than 5 persons each appointed by a territory, province, state, colony, protectorate or Bantu Council, or other body which contributes at least £250 per annum to the funds of the College."

Cr. L. Maxinjwa and Cr. S.P. Ngculu represent Transkeian Territories. There are three Bantu members on the Council. Bantu are also indirectly represented by the Secretary for Bantu Administration and Development, the Secretary for Bantu Education, two other Government nominees, and a representative of Bantu Secondary education.

- (iii) In regard to the Churches, a College regulation provides:

Any Church, Missionary Society or other Body or Union of Churches, or Missionary Society or other Bodies desiring to co-operate with

the/.....