

BLACK SASH CAPE WESTERN REGION

NOTES ON THE HISTORY OF PARLIAMENTARY FRANCHISE  
IN SOUTH AFRICA

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CONSTITUTIONAL CONTROVERSY 1936 - 1956 (Molteno)

- a) 1. In terms of the S.A. Act - Cape African Voters placed on the "Native Voters' Roll" (Act 12 of 1936). Entitled to elect 3 members of the House of Assembly + 2 members of the Cape Provincial Council (European).
2. Africans throughout the country could elect 4 (European) Senators, by the same Act. Traditional groups, e.g. local chiefs, or specially set-up bodies cast block votes according to the number of tax-payers in the area.
3. The Act also provided for partly elected and partly nominated Native Representative Council with advisory functions only. Constituencies the same as (2) above.
4. Validity of this Act disputed but dismissed in Appellate Division as Parliament was seen to have Sovereign power. (Ndlwana vs. Hofmeyr)
- b) COLOURED VOTE CASE (Separate Representation of Voters Act)
1. Act 46 of 1951 removed Cape Coloured voters from the common roll, put them on a separate one entitling them to elect 4 members of the House of Assembly (European) and 2 to the Cape Provincial Council. This time the 2 Houses sat separately and received a simple majority.
- No new "Non-European" voters could be added to the Natal Roll, but those on, could remain.
2. In the test case, it was argued that the entrenched clauses of the S.A. Act had not been adhered to, which under the Statute of Westminster had been the proviso. The judgement pronounced this Act as well as Act 12 of 1936 invalid and stated that the decision in Ndlwana vs. Hofmeyr "was wrong". (Harris vs. the Minister of the Interior).
- c) THE HIGH COURT OF PARLIAMENT ACT (35 of 1952)
- This provided for Parliament to act as the highest court, elected M.Ps. as judges and no other judicial court was able to declare any action or legislation enacted by Parliament as invalid.
- Dissenting judgements. Courts declared the Act invalid. (Amended S.A. ACT)
- d) THE SENATE ACT (53 of 1955)
- This reconstituted the Senate (nominated members, S.W.A. etc) and gave the Government 2/3 majority which it had not had previously to pass the above-mentioned legislation constitutionally.
- e) THE S.A. AMENDMENT ACT (9 of 1956)
- This Act was passed in joint sitting and purported to validate retrospectively Act 46 of 1951 (section 1). It was amended to disallow courts declaring laws invalid and to disallow Cape non-racial franchise. Other amendments to rid themselves of provisos.

Dissenting judgements in challenge case Collins vs. Minister of the Interior 1957 - Schreiner, Centlivres. In themselves the two Acts were not unlawful, but together they had a particular purpose, which was contrary to the provisions for franchise for particular racial groups. (see quote of Judges: Molteno p.65)

f) FRANCHISE QUALIFICATIONS FOR BLACKS IN 1955 May p. 94-5

Since Union 5 important amendments to S.A. franchise laws were made:

1. Adult white women enfranchised (Act 18 of 1930)
2. European males over 21 who were Union nationals enfranchised (Act 41 of 1931)
3. Representation of Natives Act, 1936, removed electors who were "Natives" in the Cape Peninsula off "Common" to "Cape Native Voters' Roll". Africans in O.F.S. and Transvaal have never had a vote; no longer any left in Natal, only a dozen were left in 1936.

"Coloureds" never had a vote in the Transvaal or O.F.S. Retained their vote in Natal and Cape Province until 1955.

4. Asiatic Land Tenure and Representation of Indians Act, 1946 removed such Indians as were registered on the Common Roll, placed on Indian Voters' list to elect special representatives. This representation was repealed in 1948 and, until the Indian Representative Council system was set up, they had no vote.

VOTERS REGISTERED IN 1935 (The S.A. Constitution, H.J. May p.93)

	<u>White</u>	<u>Native</u>	<u>Coloured</u>	<u>Asiatic</u>
Cape	382 103	10 628	21 596	1 401
Natal	91 762	1	343	10
Transvaal	349 400	-	-	-
O.F.S.	101 089	-	-	-

5. European franchise in the Union extended to S.W.A. for election of 6 members from the territory to the Union Parliament.

Note This outline does not give the reasons for the various decisions of the Court Test Cases which were mostly concerned with the entrenched clauses of the Act of Union which required a 2/3rd majority of both Houses sitting together before constitutional changes could be made.