NATIVE RACES IN SOUTH AFRICA

THE most valuable record of Zulu, Bantu, and the other higher South African native customs is the Blue Book published by the Cape Government in 1883. It is to be regretted that hardly any copies of this Report exist in this country in our Public Libraries, and that those who discuss here the question of native conditions in South Africa have not access to the only real source of information. This Blue Book is the report of the proceedings of the Government Commission appointed by Sir Bartle Frere, and afterwards reappointed by Sir Hercules Robinson to enquire into the native laws and customs. The Commissioners visited a number of places throughout the Cape Colony right up to the borders of Natal, and examined magistrates who had been dealing with the natives, a large number of native chiefs, missionaries who had spent their whole time in the mission-field and had been all through the Transvaal, the Orange River Colony, and Bechuanaland. The evidence, therefore, is of peculiar value as giving the experience of persons who had spent the better part of their life among the natives. One of the principal witnesses was the late Sir Theophilus Shepstone, whose knowledge of the natives was perhaps unique. The Commission was directed to enquire first into the native laws and customs, and to suggest whether it was desirable to frame a code of civil and criminal law for the native territories then recently annexed; next to enquire into the native marriage customs and how far it was desirable to legalize them. This second head involved an enquiry into the question of polygamy and its recognition. The Commission were further directed to turn their attention to the native customs as to land tenure; and, lastly, to enquire what system of local self-government it was desirable to introduce among them.

To understand these customs properly it is necessary to examine the condition of a tribe which has not been broken up and interfered with by outside white influences. In such a tribe the chief is theoretically the absolute governor; but practically he is unable to make any laws at all. Himself the representative and embodiment of the tribe, he is subject to all the tribal laws in force when he assumed the chieftainship. Although chiefs have at times exercised despotic power, as a rule they have no power except that given them by the consent of their headmen, given at assemblies of the chief men of the tribe, who, though not always entitled Councillors, attend by virtue of personal influence, or the possession of riches, as the heads of large families, or by hereditary descent in the tribe. The Councillors are governed by the opinions of their constituents or the people under them. The headmen are to a large extent hereditary, though not always so. Sometimes the chief sends for one set of headmen one day, and for another on another day, as it is not necessary that any particular set of headmen should be present at an assembly; and he can thus fully satisfy himself that public opinion is represented. Before anything is decided upon, the headmen usually assemble at the chief's or king's residence, on such occasions as annual dances. The king or chief explains any new law which he may wish to promulgate; a discussion takes place, and if the opinion of those assembled is favourable, it is carried out. If the chief makes rules without calling an assembly, they would not be obeyed, unless they happened to coincide with public opinion.

Native laws and customs are preserved by the oral tradition of their old men. On the discussion of a new law, laws and customs which bear on the matter are referred to; but no general recapitulation of existing laws takes place. Questions are settled by a discussion among the old men, or if serious by the chief himself, assisted by his hereditary councillors. The natives are so conservative of their laws that Mr. Brownlee, the Chief Magistrate of Griqualand, who had had fifty years official and private experience among them, said he only knew of one case in which any attempt had been made to change a law, and that was by Kreli, who directed that in the case of a wife's death no cattle should be claimed or recoverable. The unchanging

character of the laws is evidenced by the fact that among the Kaffir and Basuto tribes the fundamental laws are almost identical, although there are slight differences on immaterial points.

As the chief is the absolute governor, so he is also considered as the person entitled to allot as he pleases the occupation of the land on which the tribe lives. The native does not conceive of land as a thing capable of ownership, but only as capable of being possessed and occupied. The bounds of the tribal territory used to be loosely marked, generally by certain natural boundaries such as rivers and mountains. Out of the land occupied by the tribe the chief selects a part for his personal occupation, and divides the rest into districts placed under the care of petty chiefs or headmen, who in their turn allot mealie and grazing grounds to the men under their jurisdiction. This distribution of land however is in no way connected with services due to the chief. If any refugee clan from another tribe should seek and obtain the protection of the chief, the head of the clan presents the chief with a beast in token of submission and becomes his man, and is directed to some locality where he may settle. A man allowed by the head of his clan to occupy land makes his kraal, builds his huts, ploughs the piece of land which suits him best, and allots tillage ground to his younger brothers or dependents, leaving one part of the settlement open for a cattle run. Should the chief or petty chief afterwards require the land for his own use he will quietly take possession, directing the man to go and build elsewhere. This is not such a hardship as it would seem to us, as the natives do not attach any value to land as such, but regard it merely as a thing which has conveniences or amenities. Land is never sold or exchanged by them. It is however rare that a chief dispossesses an individual of a site or garden ground, and disputes as to land are easily adjusted. Another reason why the native attaches little value even to his tillage plot, is that he does not understand manuring the soil: so that under any circumstances, after it has been used for three or four years for growing mealies, it is exhausted, and a new site for a garden plot has to be sought.

Each kraal tries to reserve its own grazing land, and objects to cattle from other kraals grazing on the same land. The ground for tillage is chosen with reference to the grazing

convenience, and the subdivision of cultivated land is marked by strips of grass left untouched by mutual consent. Any disturbance of these strips would be met by an appeal to the headman of the section. The right to cultivated land is obviously more prized and respected than the right to any particular spot to build upon, as native huts are easily removed and rebuilt; and families never dispose of their rights of occupation to these plots, nor exchange them. There are no disputes about right of way, and they never think of interfering with a person travelling, even though he should pass through their mealie garden.

Primogeniture is the law among Kaffirs, except in the case of the chief: and all the property descends to him which has not been apportioned to a special house by the father in his lifetime. The future chief is the son of the chief's great wife, who is not necessarily his first wife, but is the one he has nominated to be his chief wife. The chief frequently delays selecting the wife who is to bear his successor until late in life, and sometimes dies without having done so. The naming of the chief wife is in some cases done by the chief himself; in other tribes by the chief in co-operation with the headmen, in which case the tribe frequently contribute towards the marriage of the woman selected. The choice of the headmen is usually declared at the marriage, though it is quite possible that the chief and people may name one of the chief's actual wives.

A chief of any importance has generally three sections to his house; the great wife, the right-hand wife, and the left-hand wife. From time to time during his lifetime he apportions cattle to the different sections, which are regarded as the property of that section; and it is not uncommon for the father to lend cattle belonging to one section for the purposes of another, leaving the loans as charges upon the heir of the assisted house. The eldest son of the chief wife of each one of these sections is heir to the property. If the head wife of a section has no male issue, then the son of the wife next below her in rank becomes the heir. The eldest son of the great wife or chief wife is the universal heir—head of the family and all its members. The second and other sons of each section have no right of property under the law of inheritance, but look for help to the eldest

brother of their section, who is expected to provide sufficient cattle to secure each of them a wife. This he does by way of a present ; and chiefs have ordered elder brothers who refused this duty to supply their younger brothers with the necessary cattle for one wife. Until the younger brothers marry, the eldest son takes the father's control, and may call upon them to do any kind of work required of men, such as helping to make the kraal, or fighting to defend the family. During the lifetime of the head of the family he can divide to each section any private property which he has independently acquired. At the marriage of a daughter the cattle given for her go to the house to which she belongs, and out of which she is married.

There is no such thing as a will. The native customs provide, as Sir Theophilus Shepstone said, so amply and so justly for the disposition of property that such a thing is not necessary, and it would cause great disturbance if the head of a family were allowed on his death-bed to alter by a will the arrangements made during his lifetime, which recognized the just rights and claims of all concerned. In his opinion it would break down order and subvert justice, if a man of infirm body and unsound mind were at the last moment of his life allowed by any English legislation to disturb the settlements recognized for perhaps a lifetime, by which members of his family had become entitled to look upon particular property as their own.

The eldest son of the first or right-hand wife has special rights and a fixed rank, although he cannot succeed to the chieftainship unless his mother is the chief wife. His position is the great executive officer of the family. The descendants of the left-hand wife always succeed to the chieftainship before those of the right-hand come in. Women do not succeed to property at all, but are allowed to own whatever they may acquire by their own industry.

This brings us to consider the position of women among the Kaffirs. Their position may be looked at from three points of view : their power to possess property ; their position in relation to marriage ; and their position as married women.

The common notion as to Kaffir women is that they are bought for a certain number of cattle by their husbands ; that they then are practically slaves, and have to do all the work

for their lord and master. This is a misconception of the native custom of giving cattle to the father or guardian of the girl on marriage. Practically it is nothing of the kind. The theory of a Kaffir marriage is that the intending husband is obliged by payment or by services to prove to the woman's father or guardian that he is fit to undertake the duties of a guardian and husband towards her. Although the promise to deliver cattle or the delivery of them is generally held to be the chief essential of marriage, there are a number of other customs which accompany it, such as the marriage dance and feast. The giving of cattle for a wife has certain great advantages. It ensures that the father shall take an interest in his daughter's chastity ; for if she is not a virgin he gets a smaller dowry. The natives never consider it as a sale. They use the word "tenga" when speaking of a sale, and "ikasi" of a marriage-gift. It is not a sale, because the husband cannot sell his wife nor ill-treat her. If he treats her badly and she runs away, he is not entitled to receive the cattle back again, but may claim their return if she herself behaves badly ; so that her relatives have a distinct interest in her right conduct. The native women take pride in the fact that a large number of cattle have been made a present for them, and never respect themselves until this is done, much on the principle that what you have got for nothing is worth nothing. When a man has to give cattle for a wife, he is more careful to treat her properly, as he cannot get another without a similar gift. Where natives have become Christians and not acted on this principle, it has been a frequent cause of conjugal unhappiness and sometimes desertion. As Pombani, a native headman, explained to the commission, if cattle are not paid a man can turn round on his wife and say, "You are only a cat. I did not pay anything for you": at the same time Pombani pointed out that cats were the only living things "which we natives do not buy, but present as presents."

The husband seldom divorces his wife ; for he has great difficulty in getting the cattle back, and he cannot get another wife without providing a second dowry. It is more usual for the woman to go away. The husband can follow her, but cannot touch her among her friends. He can only bring their

influence to bear, either to have her returned or the cattle. Adultery is not a cause of divorce, but the husband can get the adulterer fined. A man loses caste if he turns away his wife because he dislikes her, and it is very seldom done.

When the husband dies, the widow is entitled to support from her house, or she may return to her own family. If she marries again, and her father or guardian gets a second dowry, he is expected to return the first. Only the actual number of cattle are returned, and not any increase.

As to a woman's property, though the father or husband is theoretically the owner of everything in his kraal, he is not so practically. The father indeed often gives as many cattle to his daughter when she leaves his house as he receives, and these remain her own property and the property of her house. She may also add to them by her labour. Thus the gifts of the husband do not constitute anything like the bulk of her property.

With regard to the woman's labour, there is a well-understood and a fine division of labour in a Kaffir family. It is the duty of the males to attend to the live stock, to build, cut the poles and laths and erect the huts and keep in repair the kraals, to herd the cattle, to milk the cows and see that their milk is properly cared for, to fence the gardens, and cook their own food. They also prepare skins of animals for their own and the children's use. The women do the grass and thatching part of the huts, cultivate the gardens, and attend to the other domestic duties. Mr. Brownlee, Chief Magistrate of Griqualand West, in speaking of the labour that women had to perform said, "The one strong point urged in support of the slavery theory is that the women have to perform all the labour, while the husbands have to go in idleness. The actual labour performed by the women bears no comparison to what is performed by the women of the lower class in England. The labour of the Kaffir woman is to cultivate her garden in which the mealies are grown. This takes three or four weeks in the spring. Two months afterwards she has to hoe the ground, which lasts three or four weeks more. She is not driven to work, and if so disposed may take it easily enough. As a rule women only work during these eight weeks in the year. Where the plough is

introduced, the man does the work, and in large districts in the Cape the natives are now employed at the ploughs." Sir Theophilus Shepstone said, "A woman need not work except of her own free will. I have often heard men talk of their wives and complain that one wife was idle and did not take care of the house; while another was extolled as being in everything industrious, diligent, and thrifty."

According to our ideas, the position of woman can never be elevated where polygamy is general; and this habit is all but universal among the natives. It might be thought that poor men would be in favour of monogamy; but Sir Theophilus Shepstone said there was not a single young man in Kaffirland who did not hope and believe that he would live to marry three or four wives, though the majority of men had only one wife because they had not the means to support more. The women are in favour of polygamy because it is a matter of pride to belong to a large establishment. They have rank among themselves, and prize their position highly. "Polygamy," says Sir Theophilus Shepstone, "lives in the minds and ideas of the people from the highest to the lowest. Our objection to it seems to be looked upon by them as arising from some radical difference of race which incapacitates us from judging of its fitness or otherwise." In his judicial capacity he frequently had cases before him in which a single wife has urged her husband to take another and has rendered him material assistance in carrying out her wish. Sir Theophilus Shepstone showed a table of native marriages registered in Natal between 1869 and 1880, which gave the number of first, second, third, and other wives up to the twenty-fifth; and the proportion of marriages seems to be pretty constant. In 1880 out of a total number of 4,277 marriages registered, 2,596 were first wives, 1,058 second wives, 348 third wives, and the remaining 277 represent marriages of a greater number of wives. The Government of Natal is the only Colony which keeps a register of native non-Christian marriages, and in the Blue Book of Native Affairs for 1902, it seems that in 1899, 1900 and 1901, the same number of polygamous marriages takes place. For instance, in 1899, out of 2,678 marriages registered, 1,716 only were first marriages; in 1900, out of 3,174 marriages, 2,030 only were first marriages; in 1901,

out of 4,128, only 2,699 were first marriages ; and, of course, there is no guarantee that those who were marrying a first wife did not thereafter add to the number.

The Bishop of St. John's gave two reasons amongst others to which he attributed the great prevalence of polygamy. The women after they are about 36 retire so to speak from married life. A woman will say to her husband, " the time is now coming when I shall go and live with the children," and goes on to say that he shall be her father and that he must get a second wife. They have a custom also that it is not decent or proper for a mother to be nursing a baby at the same time as her married daughter. The retiring wife helps her husband to get a second wife by giving cattle if she has any, and this second wife lives under her for a year in the house with her husband. At the end of that time the old wife goes to live with her eldest son, though she is still regarded as a great wife. Of the kraal to which she goes she is the head. There is nothing unpleasant between the parties, and wherever she goes she is kindly treated.

There is a curious custom which obtains in Natal, whereby a brother is entitled to take the widow of his deceased brother as a wife. This does not correspond to the Jewish custom of the Levirate, because it does not depend on her having had no children. In Natal in the last three years, 1899, 1900, and 1901, there were respectively 67, 97, and 120 of these marriages registered. The object of the custom is to prevent a large establishment being necessarily broken up, and the women dispersed and children left without anyone to care for their wants. Any children born under this arrangement are legally the children of the deceased. In Natal, by law the full consent of the widow is indispensable to such an arrangement being carried out.

It may be desirable to add a few words as to native law. Native law does not seem to recognize the technical distinction between crime and civil wrongs known to our law. Practically offences against the chief and tribe may be said to be treated as criminal, whilst those against individuals, as small thefts between tribesmen *inter se*, are treated as civil wrongs. Offences against the person are treated from the point of view of whether they weaken the chief or the tribe. If a person

is injured in limb, and a complaint is made to the chief, the offender is punished by fine; but this fine does not go to the person injured, but to the chief, because a member of his tribe has been thereby weakened. If a tribesman has been killed, no member of the injured man's family can claim compensation. The chief is alone wronged, and he alone receives the fine or blood-money. "No man," the natives say, "can eat his own blood." If all a man's property is taken away, he is described as being eaten up. Things which we treat as crimes are treated as offences amongst them; but almost every offence is punished by a fine. Life for life is not usually required. Thefts are not frequent among them; and, if anyone is accused of theft and found guilty, it usually results in his being fined an amount considerably exceeding the amount stolen. If a sheep were stolen, the fine would probably be five sheep; the chief would take the greater share; the sheriff who had brought the thief would get a sheep, and the complainant would get back something more than he lost.

Every man in the tribe is a policeman, and bound to report to his superior any act of wrong or anything out of the common which he may see done, or to become personally responsible for it. By reporting to his superior he rids himself of the responsibility. The superior can act upon his own discretion; he may either take steps himself to pursue or arrest or investigate or apply such remedies as he thinks necessary, or he may in turn report it to his superior until it has reached the highest authority. When a *prima facie* case is made against the accused, he is cross-examined and has to exculpate himself.

The procedure in a criminal trial would be somewhat as follows. The complainant would go to the headman or chief, and when he was about half a mile off would sing out "I have come to complain." Anyone at the kraal would turn out and say "What have you come to complain about?" The complainant then states the charge, which he repeats three or four times a day. He sits where he is for some time, perhaps for days, and relates his case frequently. After that a Councillor would come out, and ask him what he had come about. He would then again repeat his complaint to the Councillor. After this he would be asked "Have you got any witnesses?" and would answer "Yes"

or "No"; or say "One of the witnesses would not come, and I want you to send for him." The messenger, Umsila, is sent to fetch the defendant if not present, or to bring the witnesses that may be required, and in presence of the Councillors who are to hear the case the charge is again stated, and the complainant immediately cross-examined by the Councillors and by the accused. The accused makes his reply, and is also cross-examined. The accuser's witnesses are first called, and afterwards those for the accused, who are not allowed to be present at the same time. After the evidence is closed, if the chief is not present, it is laid before him; he may if he thinks necessary have the case talked over again. Retiring to a hut privately, he gives his decision through one of the Councillors at the door of the hut, the decision being merely passed on. No great chief ever passes sentence in public. The accused is then and there, whether satisfied or not, bound to thank the chief for his decision. In cases where the chief thinks that the accused has already made sufficient amends he words his judgement as beseeching the complainant to behave leniently and have compassion on the defendant. Sometimes the accused admits the charge and offers something in the shape of stock, and bargaining goes on until the complainant is satisfied or succumbs to the defendant's entreaties for mercy.

By this method of trial a defendant rarely escapes if there is a well-founded case against him. Magistrates used in trying cases between the natives to be guided by our methods of procedure, or at any rate the methods of procedure we pursued until the last Criminal Evidence Act, and did not cross-examine the accused, or ask him to give evidence, with the result that persons willing to admit their guilt often escaped paying the penalty, and the natives felt nothing but contempt for our legal system; judging that if a man is innocent he must be able to give the best evidence of his innocence; and if he is guilty there can be no reason to allow him to escape. We have the view of Sandali, chief of the Saikas, when a magistrate complained of constant robberies and threatened to have his tribe removed. He replied:

"Tell the Government they have taken away what authority I had. I am helpless. Had I my own way I could stop stealing

to a great extent. Thieves are encouraged ; they are not deterred by fear of punishment ; both the act of stealing and the crime are very easy. Stealing pays too well. The culprit is made to suffer very mildly ; he is seldom forced to disgorge. He is cautioned not to incriminate himself and often escapes punishment after having freely and candidly confessed his crime out of court. This teaches prudence and caution. For instance he steals twenty live sheep, distributes them among his friends and partners in the trade. Say the sheep are stolen before shearing. They are stolen all at one time. The ear marks are obliterated, rendering identification difficult if not impossible. Suppose he is caught however with three or four in his possession. He is cautioned not to say anything against himself. After a protracted trial (generally looked upon as a farce) he is possibly acquitted for want of sufficient evidence. If not he gets a few months imprisonment, perhaps a year with so-called hard labour. He is comfortably if not luxuriously fed on bread and meat, probably supplied with coffee, sugar, tobacco, housed, well bedded, well treated in every way and very humanely worked. At the expiration of his term he is fat and sleek, gets a suit of clothes and returns home to find that his sheep have been well looked after and possibly increased a hundredfold. I say, could he by any possible application of labour have done so well for himself by diligent and honest labour in a twelvemonth ? By no means. A farmer would perhaps have paid his boy eight ewes for herding and being responsible for 800 or 1,000 such ewes ! Having succeeded so well no wonder his sons are tempted to follow in their father's footsteps. Punish them severely I say. Burn their kraals out. Remunerate the loser handsomely, pay informer and detectives well. Work him hard and feed him sparingly, by these means you will stop stealing. I shall give you all assistance, but let the red men (*i.e.* the black men smeared with red clay) be paid out of the fines. They could ferret out cases with more chance of success than clothed and drilled policemen."

Since 1883 a new Native Territory Penal Code has been passed in the Cape, and has been altered in the direction of common-sense so as to allow the accused and the accused's wife or husband to be called as witnesses.

Torture as a means of obtaining evidence is unknown among the Kaffirs except in the case of alleged witchcraft. The giving of false testimony where it is to the prejudice of another is considered an offence, and the accused may recover damages. Perjury as a means of defence is not considered an offence. Hearsay evidence is allowed, but has no great weight. The evidence of informers and accomplices is regarded as good. Accused persons' children, wives, and women, may also give evidence.

The Spoor Law of the native must strike any candid reader as the acme of common-sense. Cattle are their only wealth, and if these are stolen the thief is traced in the following manner. The track of the animals is followed, and if it leads to a kraal, the inhabitants are made liable unless they can show that the cattle did not come there, or can trace it further on. If the trail is lost between two kraals, they are jointly held liable for the cattle unless they can trace the trail further on or can show what has happened to them, as by Kaffir law you are bound to account for all cattle or traces of cattle found on your land. The result of this, before the Europeans came to a district, was that cattle were invariably recovered when stolen, and thefts were rare. When the English came, they objected to be made liable for missing cattle unless they could actually be traced into their possession.

The most serious offence among the natives is witchcraft. Like all other undeveloped races they are very superstitious; and if an illness occurs to any of them that they cannot account for, they put it down to witchcraft. A Kaffir may forsake his kraal because it has been struck by lightning, or because illness has happened to him there; and this he accounts for by supernatural agency. They therefore employ witchdoctors to smell out the wizard or witch; the witchdoctors pretend to find him out by going through certain dances and the use of charms. They themselves know perfectly well that they are imposing on the credulity of the people. Witchdoctors practise their calling for the sake of gain, in all cases receiving a fee before they proceed to smell anyone out. They are responsible for most of the murders. When the people are satisfied that the person indicated by the doctor has caused the evil he is put to death, sometimes with the most extraordinary torture, carrying out to

the letter the enactment of the 18th verse of the 22nd chapter of Exodus, "Thou shalt not suffer a sorceress to live." This ignorant superstition is sometimes made use of by chiefs in order to get rid of an objectionable person, or a person who is unreasonably wealthy; and witchdoctors very seldom smell out anyone who is not either rich or unpopular; two or three of the magistrates in their evidence gave instances in which they were able to expose the chief's real object in having a person smelt out and exposed to ridicule before his tribe.

Any candid reader of the Blue Book, after considering the evidence of the magistrates and missionaries who lived for years in constant contact with Kaffirs, must rise from its perusal with a feeling that the native is neither vicious nor debased nor hopelessly lazy. His faults seem to be in great measure the faults of children or animals when acting under the influence of fright, hardly knowing what they are doing. The contact of Europeans with the native has, in the first instance at least, not tended to improve him.

A Halla Chief pathetically said to the Commissioners: "We hope the Government will from time to time send persons to explain things to us. We are trying to learn, but there is a good deal of darkness. We are Government children, and a child must be advised every day." That the native is capable of improvement is shown by the number of natives who in the Cape Colony have taken to farming, have used ploughs, and understand individual ownership. And the annual reports of the magistrates appointed over the natives show that the use of these is on the increase. It is however impossible to expect that a race which has been accustomed to tribal ownership will grasp the advantages of individual ownership directly, especially in a country like South Africa, where the land that can be used for arable purposes is comparatively limited, and where therefore the larger portion must be used for grazing purposes. Tribal ownership of land does not stand so much in the way of progress where grazing is the only purpose to which the land can be adapted. The Glen Grey Act of 1894 was an attempt by the Cape Government both to assist the native and protect him against the white man. It gave him in the districts scheduled a right to eight acres of arable land together with

grazing at fifteen shillings a year. To protect him against the white man it is provided that it cannot be mortgaged, sub-let, or divided. To induce him to labour, a poll tax of ten shillings has been imposed upon every black capable of labour, unless he can show he has been in employment for three months in each year outside his district. If however he has worked for a time equal to three years, he is exempt. Quite a number of chiefs and natives have taken advantage of the opportunities for learning afforded them in the Lovedale and other institutions in the Cape Colony. The evidence of the Blue Book shows that the native if treated intelligently, with due regard to his history and traditions, will undoubtedly prove a valuable asset in the labour-market in South Africa.

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