

Michigan Law Review

Volume 51 | Issue 5

1953

WHOM WE SHALL WELCOME: REPORT OF THE PRESIDENT'S COMMISSION ON IMMIGRATION AND NATURALIZATION.

Richard D. Rohr S.Ed.
University of Michigan Law School

Follow this and additional works at: <https://repository.law.umich.edu/mlr>



Part of the [Civil Rights and Discrimination Commons](#), [Immigration Law Commons](#), and the [Law and Race Commons](#)

Recommended Citation

Richard D. Rohr S.Ed., *WHOM WE SHALL WELCOME: REPORT OF THE PRESIDENT'S COMMISSION ON IMMIGRATION AND NATURALIZATION*, 51 MICH. L. REV. 766 (1953).

Available at: <https://repository.law.umich.edu/mlr/vol51/iss5/21>

This Regular Feature is brought to you for free and open access by the Michigan Law Review at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Law Review by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact mlaw.repository@umich.edu.

RECENT BOOKS

This department undertakes to note or review briefly current books on law and materials closely related thereto. Periodicals, court reports, and other publications that appear at frequent intervals are not included. The information given in the notes is derived from inspection of the books, publishers' literature, and the ordinary library sources.

BRIEF REVIEWS

WHOM WE SHALL WELCOME: REPORT OF THE PRESIDENT'S COMMISSION ON IMMIGRATION AND NATURALIZATION. Washington, D.C.: Superintendent of Documents, U.S. Government Printing Office. 1953. Pp. xv, 319. \$.75

Inscribed beneath the Statue of Liberty is the generous invitation to all nations: "Give me your tired, your poor, your huddled masses yearning to breath free." Beginning with the Chinese Exclusion Act in 1882 and continuing to the present day, somewhat different sentiments have informed national legislation on immigration. Whether our national policy on immigration reflects sound moral principles and enlightened self-interest has long been a subject of debate, and it is doubtful that the recent passage of the McCarran-Walter Act over presidential veto will effect a cloture. Serious opposition to various features of the act remains; among its many distinguished critics is President Eisenhower. The report of President Truman's Commission represents an outstanding contribution to this debate, commanding respect because of the reputation of the Commission's membership (which included Earl G. Harrison, formerly Dean of the University of Pennsylvania School of Law, and a former commissioner of immigration and naturalization; and Philip B. Perlman, former Solicitor General of the United States) and the thorough nature of their critique. Efforts were made to hear all sides of the controversy and the Commission supplements its criticism of the McCarran Act with a body of positive suggestions that challenge consideration. Moreover, in addition to its interest to the lawyer as citizen, the report should be of considerable value to the lawyer as counselor for it contains a detailed consideration of the many legal problems implicit in the long (119 pages) and complex codification of our immigration and naturalization law embodied in the McCarran Act.

Among the basic features of the present legislation with which the Commission takes issue is the preservation, with some modification, of the "national origins system" set up in the acts of 1921 and 1924. This system, discriminating markedly in favor of the nations of northern and western Europe in the assignment of quotas, was in part the product of pseudo-scientific theories of Nordic supremacy circulated in the early years of the 20th century by such writers as Madison Grant and later used to evil advantage by Hitler. While the McCarran Act does mark a forward step in removing the total ban on Asiatic immigration,

its assignment of quotas of 100 each to Japan and India and 105 to China adds up to a fairly niggardly gesture and suggests that anti-orientalism and the influence of the "yellow peril" school of Lothrop Stoddard and Homer Lea is still with us. Apart from the defect that these racist and ethnic theories have no foundation in fact, they embarrass our foreign policy in its drive to rally the free world by constituting a continuing affront to other nations, including many of our NATO allies. A more serious problem, in the Commission's regard, is that the very inflexibility of the annual quotas assigned to each nation prevents the United States from cooperating in the solution of overpopulation problems in certain areas. This is not to suggest that the Commission approves wholesale and random immigration. The problems in Asia, in their opinion, are too immense for migration to solve and must find eventual resolution in the internal development of the Asiatic nations. They point out, however, that such countries as the Netherlands, Italy, Germany and Greece have short-term overpopulation problems, in part because of the dislocations of World War II, that could be substantially relieved by moderate immigration now. Italy, for example, has at present a lower birthrate than France and its overpopulation problem will solve itself in time, but the Italians' economic situation today is such that they cannot enjoy the luxury of historical perspective.

In considering the desired quantum of annual immigration, the Commission feels that the present formula, carried over from the 1924 act, which provides for computing the total quota by one-sixth of one per cent of the *white* population of the United States at the time of the 1920 census is based on nothing more substantial than legislative inertia. They recommend that the one-sixth of one per cent formula be keyed to present census figures for the entire population, producing an annual quota of 251,000, rather than the 154,000 quota which now obtains, and eliminating the need for special legislation such as the proposed Hendrickson-Celler Bill to solve the overpopulation problems referred to above. This recommendation is not based on altruism alone, for statistics presented indicate a continuing manpower shortage during the decade of the fifties due to the low birthrate of the depression years. And further, in terms of long-run advantage, there is respectable opinion in the area of economics that an expanding population maintains an expanding economy. Indeed, some economists feel that the cutting off of immigration in the twenties was a contributing factor to the long depression. It may be observed that the phenomenal internal expansion of the country's population due to the present high birthrate somewhat undercuts the argument for the necessity of immigration, but it must be admitted that the effects of this birthrate upon our industrial and military manpower potential will not be felt for some time.

Turning to the administrative procedure governing immigration, exclusion and deportation, the Commission finds that it is both unwieldy and unfair. There is unnecessary duplication of function, they argue, in visa issuance by the consular service overseas and then an independent examination by immigration officials at the port of entry. Another example of duplication is the retention of the provision that aliens entering the United States from a territory such as Hawaii must be screened even though they have already been subjected to the same examination upon entering the territory. Such duplication might be defended as "making assurance doubly sure" in the enforcement of our security regulations, but there is less argument for the fairness of the review procedures as now constituted. Consular denial of visa application is unreviewable, except for an informal advisory opinion in special cases, which is not binding on the consul. Since the denial may be based on complicated legal questions, such as whether a crime was committed under foreign law, and since only 3% of the consular officials are lawyers, it would seem there is some case for a review of their determinations. The Commission also feels that exclusion and deportation hearings fail to measure up to fair standards because of the lack of complete separation of the judicial and enforcement functions and the relatively low caliber of the hearing personnel, only 18% of whom have legal training. The Commission recommends that visa denials and exclusion hearings be subjected to administrative review by a proposed Board of Immigration and Visa Appeals, and endorses the American Bar Association proposal that all deportation hearings be governed by the standards of the Administrative Procedure Act. As for judicial review, the Commission feels that it should continue to be restricted to exclusion and deportation orders, but that a statutory review procedure be substituted for the present practice of review via habeas corpus, thus removing the necessity that the appellant undergo detention before obtaining a court hearing. The Commission's reforms include a major reshaping of the administrative structure with all functions consolidated under an independent Commission on Immigration and Naturalization, and considerable opposition to such change might be expected from both the State Department and the Department of Justice, but it does not seem difficult to incorporate a new review procedure into the present administrative structure.

Apart from the major defects indicated, the Commission finds the act bristling with anomalies, some of which may be attributed to careless drafting, such as the re-enactment of a criminal provision without clarification despite the fact that a United States district court had struck down the provision as void for vagueness. Another example is the seeming failure to coordinate different provisions of the act, which produces the strange result that an alien who was formerly a Communist may be admitted to the country upon his showing of

five years of anti-Communist activity, and yet a resident alien may be deported for membership in the Communist Party twenty years ago even though he has been an active anti-Communist ever since. The "re-entry doctrine" which has come to public attention in connection with the comedian Charles Chaplin is another snare for the unwary. Thus an alien, resident in the United States for twenty years, who contracted tuberculosis during his residence here, is not deportable, but if he vacations in Canada or Mexico, he will, under the statute, be prohibited from returning to his home in this country. The retroactive provisions of the deportation law are also deplorable. Under the act, an alien who engages in activity lawful today, may be deported many years later because an intervening statute makes the activity illegal. Although the Supreme Court has ruled that deportation proceedings are not criminal proceedings and therefore not subject to the constitutional prohibition against *ex post facto* laws, such a provision still does violence to the ordinary notions of fairness. Many definitional problems will arise under the act, as, for example, in connection with the provision denying entry to a person convicted of a "crime involving moral turpitude." This provision is not a new one, and the McCarran Act adds a specific exclusion of "political crimes," but the Commission caveats that many totalitarian measures masquerade as ordinary crimes, creating a real possibility that our immigration laws may be employed to enforce totalitarian justice unless wider discretion is granted the authorities to consider the real nature and gravity of the offense. These few examples may serve to indicate the value of the Commission's report as a check-list of potential legal problems. That many rigidities and anomalies have existed in past immigration legislation is a fact borne out by the increasing number of private bills introduced in Congress (3,669 in the 82nd Congress) to alleviate harsh results. The Commission feels, however, that the McCarran Act is a conspicuous failure in clearing away past errors and has added many new problems. If their analysis is correct, it may be surmised that the day-to-day operation of the act will prove that the converse of an old axiom is also true: "Bad law makes hard cases."

Richard D. Rohr, S.Ed.