

## Aliens and Immigration; Kerala Education Bill; Sunday Laws; The Bishop of Prato

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## POSTSCRIPTS

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### Aliens and Immigration

An article<sup>1</sup> recently appeared in *America* discussing aspects of the McCarran-Walter Immigration Act.<sup>2</sup> Read in the light of THE CATHOLIC LAWYER's symposium on immigration,<sup>3</sup> presented in the Spring, 1958 issue, it provides a searching critique of the law. The author indicates that despite the late Senator McCarran's insistence that "the law does not contain one iota of religious or racial discrimination," it has been strongly criticised by business leaders, labor unions and prominent churchmen of all faiths.

Specified are several important defects in the Act. Most disadvantageous appears to be the "national origins" formula, which assigns to each country of the Eastern Hemisphere an annual immigration quota calculated at one-sixth of one percent of the number of persons of that particular origin living in the United States at the time of the 1920 census. This naturally weights the annual quotas in favor of certain nations. That of England is more than 200 times greater than that of Greece. An added factor is the provision that any person whose ancestry is even one-half Asiatic must be included in the Asia-Pacific quota, rather than that of his country of birth. Thus, a person of half-Asian ancestry, a life-long citizen and resident of a country with a large annual quota, must await

<sup>1</sup> Davis, *Feelings run Strong on Immigration*, 100 AMERICA 39 (October 11, 1958).

<sup>2</sup> Immigration and Nationality Act (McCarran - Walter Act) 66 Stat. 163 (1952), 8 U.S.C. § 1101 (Supp. V, 1958).

<sup>3</sup> *Immigration - A Symposium*, 4 CATHOLIC LAWYER 103 (Spring 1958).

admission as part of the small Asia-Pacific quota. The injustice of such a provision is apparent. But the injustice inherent in the McCarran Act is even more basic than this. Secretary of State Dulles, quoted by the author, put it succinctly:

In my opinion, the national origins quota system, which draws a distinction between the blood of one person and the blood of another, cannot be reconciled with the fundamental concepts of our Declaration of Independence.

Also criticised are the provisions for denaturalization of naturalized citizens, giving them a "second-class" status; the harrying but largely ineffective screening processes for preventing the entry of subversives; the lack of provisions for emergency entry; and the virtually unfettered authority given the Immigration and Naturalization Service.

In short, the author concisely presents the brief for a greatly revised Immigration and Naturalization Act, utilizing arguments recommended by equity and practicality. These sentiments are similar to those voiced by the authors of THE CATHOLIC LAWYER's symposium. It is hoped that the 86th Congress will take heed.

### Kerala Education Bill

In the last issue of THE CATHOLIC LAWYER there appeared an article<sup>1</sup> on the Kerala Education Bill, passed in September, 1957 by the legislature of Kerala, India. The bill purported to improve and safeguard the service conditions of teachers

<sup>1</sup> Minattur, *The Kerala Education Bill*, 4 CATHOLIC LAWYER 233 (Summer 1958).

in private schools, but was actually intended to curtail maintenance of schools by the Catholic Church. To this end it subjected private institutions to a supposed power of the state to take over their management, to acquire them or to direct them not to charge fees for primary classes.

When the bill came before the President of India for approval he referred it to the Supreme Court of India for its opinion (an action unprecedented in the ten-year history of the Republic of India). On May 22, 1958, the court advised that the above-mentioned provisions of the bill were unconstitutional, as violating the right of religious or linguistic minorities "to establish and administer educational institutions of their choice."<sup>2</sup> Apparently accepting this opinion, the President disapproved the bill.

### Sunday Laws

For the past few years, Sunday laws have been the topic of much controversy. Persons indicted for violations of the Sunday laws have usually defended upon the grounds that this type of legislation violates due process, equal protection, and religious freedom as guaranteed by the Constitution. For the most part, these claims have been unsuccessful.<sup>1</sup>

In New York State, Article 192 of the Penal Law deals with the regulation of the Sabbath. In a recent case,<sup>2</sup> some of the sections of this article came under further discussion and construction. The defendants were charged with violating Penal Law sections 2143, 2146, and 2147. In brief, Section 2143 prohibits all labor on Sun-

day except works of necessity and charity. Section 2146 provides: "All trades, manufactures, agricultural or mechanical employments upon the first day of the week are prohibited." Section 2147 makes unlawful "all manner of public selling of any property upon Sunday."

The defendants in this case were two business organizations engaged in selling custom-made products for the home. Both kept their showrooms open on Sunday, but the goods displayed were not sold or moved. The employees took no orders or money, and no prices were quoted. The employees' only task was to make appointments with showroom visitors. These appointments would be scheduled for some later date at the visitors' homes.

After analyzing the three sections involved, the court concluded that the defendants could not be held to answer for a violation of Section 2147 because there was no evidence that they attempted to make any sales on Sundays. But the court found the defendants guilty of violating other sections. It reasoned that "labor" as used in the statute is not restricted to servile labor but includes both physical and mental work. Using this definition, the court held that the task of the employees in making appointments with showroom visitors constituted labor within the meaning of Section 2143.

The defendants were also convicted of engaging in a trade on the Sabbath in violation of Section 2146. The court considered "trade" in a broad sense, taking it to mean any occupation, and said the defendants' activities met this criterion.

In reaching these conclusions, the court overruled the defendants' contention that the conviction for laboring on the Sabbath

<sup>2</sup> INDIAN CONST. art. 30(1) (1950).

<sup>1</sup> See 4 CATHOLIC LAWYER 91 (Winter 1958); 2 CATHOLIC LAWYER 260 (July 1956).

<sup>2</sup> *People v. Polar Vent of America, Inc.*, 174 N.Y.S.2d 789 (County Ct. 1957).

could not be sustained since their activities did not interfere with the repose and religious liberty of the day. It held that evidence showing that a substantial number of persons visited the showrooms on Sunday was enough to show a "serious interruption" of the Sabbath's repose.

### The Bishop of Prato

The widely-publicized conviction of Pietro Fiordelli, Bishop of Prato, has been reversed by the Court of Appeals of Florence.<sup>1</sup> The Tribunal of Florence had found the Bishop guilty of defamation. In a pastoral letter, Bishop Fiordelli had called "public sinners" and "public concubinaires" a Catholic woman and the atheist with whom she celebrated a civil marriage after refusing to have their marriage solemnized canonically.<sup>2</sup> In reversing the trial court, the Court of Appeals held that the Bishop

<sup>1</sup> N. Y. Times, Oct. 26, 1958, p. 37, col. 1.

<sup>2</sup> Ciprotti, *The Case of the Bishop of Prato*, 4 CATHOLIC LAWYER 244 (Summer 1958).

had acted in the exercise of his canonical office and consequently committed no crime. This was the position of the defense attorneys as well as the Public Prosecutor on the trial of the case. However, the lower court decided to the contrary.

The five-member appellate court denied a request by the plaintiff, a former communist, that the court raise damages to \$4,800. It ruled instead that he must pay all the costs of both the original trial and the appeal. From this determination, plaintiff's attorneys have indicated that appeal will be taken to the highest appellate court.

It appears that this latest opinion holds that the Bishop acted within the rights of his ecclesiastical office, guaranteed by the Italian Constitution. Article VII of the Constitution incorporates by reference the undertaking of the Italian government in the Lateran Concordat, Article I, that bishops should be immune from state interference in the exercise of their ecclesiastical jurisdiction.

## RESPONSIBILITY OF THE MENTALLY ILL

(Continued)

The acceptance of these proposals might represent the beginnings of rationality in the jurisprudence of mental illness.<sup>40</sup>

<sup>40</sup> These criteria are most nearly met by the American Law Institute's proposed Criminal Code. "(1) A person is not responsible for criminal

conduct if at the time of such conduct as a result of a mental disease or defect he lacks substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of law. (2) The terms 'mental disease or defect' do not include an abnormality manifested only by repeated criminal or otherwise anti-social conduct." ALI MODEL PENAL CODE Appendix A §4.01 (tent. Draft No. 4, 1955). Substantially the same formula has been adopted by the Governor's Conference on the Defense of Insanity of the State of New York and by H.R. 13492 introduced in Congress by Representative Davis of Georgia.