

may not flow from any theory of checks and balances but rather from the restraints inherent in the scientific method itself [p. 396, n. 57].

The concern with these particular suggestions increases when one considers the state of knowledge in the social sciences at the present time and in the foreseeable future upon which so much of the author's program in the field of law depends.

This observation brings us to the last point which we are able to consider in this review, that after reading this book a distinct impression is left that the author is far more optimistic than many others concerning the present state of scientific knowledge and of reliable techniques for obtaining such knowledge. For example, in many places throughout the book there are claims that scientific evidence such as blood-tests, lie-detectors, tests for intoxication, truth serums and, of course, "experts," justify the abolition of the jury system. Likewise, the author asserts that scientific evidence justifies sterilization and artificial insemination, and revisions in the sex, marriage and divorce laws. It is not suggested that these contentions are all incorrect, and, of course, considering the vagueness which characterizes the statements, it is difficult to know precisely what is being claimed. It is, however, safe to say that with respect to most of the above issues, one would find considerable disagreement even among the "experts" as to what changes in the present laws are justified by the available scientific knowledge. Beutel's optimism in these matters may be the result of more narrowly defining the choice situation than others do, or it may be due to his having somewhat different standards of scientific rigour than others, which would permit him to draw conclusions from research data which others would not consider warranted.

Although the bulk of the above comments on Professor Beutel's book have been of a critical nature, it should perhaps be emphasized that this reviewer has purposely selected what he considers the more extreme positions taken by the author. While the author does frequently tend to overstate his case, perhaps this is a fate that usually befalls those who are primarily concerned with convincing others of the virtues of a program to which they are themselves committed. And, in any case, there is much in Beutel's book that is stimulating and suggestive of potentially fruitful research in the area of law and the social sciences.

REGINALD A. H. ROBSON*

* Associate Professor, Department of Anthropology and Sociology, University of British Columbia.

The Alien and the Immigration Law: A Study under the Direction of Edith Lowenstein. New York: Oceana Publications, 1958. Pp. xii, 388, \$7.50.

The Common Council for American Unity, a non-profit non-sectarian organization active in the field of immigration and naturalization, is the outgrowth

of work started by the federal government during World War I. It became an independent agency in 1921, and from that time until the present it has been supported by private contributions. Miss Edith Lowenstein, a gifted lawyer, has for some years been the editor of the Council's Interpreter Releases, which is an information service on problems in the immigration and naturalization field. The material for *The Alien and the Immigration Law*, which is a study of 1446 cases involving immigration and naturalization problems, comes from the files of the Council.

The alien as a subject for legislative consideration is almost as old as the Republic itself. The Alien Laws, passed in 1798, were the first acts which put the alien American resident at a considerable disadvantage. One of these laws, which was to be repealed four years later, increased the residence qualifications for naturalization from five to fourteen years. Another permitted removal of subjects of any foreign power with which the United States was at war. The most significant law put dissenting aliens at the mercy of the government. Among other provisions, this law gave the President the right to order out of the country any alien whom he considered dangerous. At that time many local leaders and Republican editors were aliens, although their cultural background was identical with that of members of the government. The Sedition Law, also passed in 1798, attempted to complete the stifling of dissension by extending government control over dissenting citizens. The analogous purposes of these laws doubtless made for common defense between citizens and aliens. But the Sedition as well as the Alien Act is always a backdrop for legislation affecting only aliens.

The projection upon the alien of economic difficulties of the country in the 1840's and 1850's—the memorializations to Congress against “Popish idolatries” in an effort to stem the tide of German and Irish immigration in mid-nineteenth century—is elementary history. In the 1880's, however, legislation began to crystallize. The year 1882 saw the first general Immigration Act, which excluded paupers, criminals and other designated undesirables; the same year brought the first Chinese exclusion law,¹ and in 1885 the law forbidding the importation of labor under contract was passed. The far more extensive Immigration Act of 1917 is basic to all the legislation that has followed; the first restrictive national quota provisions were enacted in 1921, modified in 1924, and both the 1917 and 1924 laws remained the controlling immigration and naturalization laws until the present Immigration and Naturalization Act was passed in December, 1952.²

In the years between 1924 and 1952 the most significant legislation on aliens was the Alien Registration Act, passed over considerable outspoken opposition which characterized it as violative of basic American traditions. Although origi-

¹ This law was repealed in 1943, when the Chinese were our allies. The quota for admission of Chinese aliens, however, remains at 100.

² The President's veto message, sent to the Congress which passed the new Act over that veto, is compelling reading.

nally passed as a war measure, registration is now apparently an accepted practice, for it is incorporated in the 1952 Act. In 1940, again over opposition, the Immigration Service was transferred from the Department of Labor to the Department of Justice.

Following World War II, several Acts were passed whereby the United States took its place with other nations in recognizing the tremendous displacement occasioned by the war. These were the Displaced Persons Act of 1948, extended in 1950, the Refugee Relief Act of 1953, and legislation prompted by the Hungarian uprisings in 1956 which increased the quota, under certain conditions, for Hungarian immigrants. The Displaced Persons Act mortgaged quotas, but also provided some relief for persons already in the country who did not have permanent residence.³ The legislation affecting the Hungarian immigrant introduced an extended system of "parole" of aliens into the country, which later caused considerable confusion in individual cases. The generous intentions of our country, manifested by these enabling measures, were, however, somewhat contradicted by the inclusion in the basic Immigration Act of 1952 of provisions in the 1950 Internal Security Act which subjected aliens to greater control in the interest of national security.

The cases in the Council study involve the entire range of legislation since 1917, although every case studied applied for Council help since January, 1953. The persons involved represent largely a lower income group in New York, referred by voluntary social agencies, social workers attached to private and public organizations, the Legal Aid Society of New York, and even by the Immigration and Naturalization Service. The cases were divided into five categories: immigration; status (involving circumstances under which status may be changed from temporary admission to permanent residence); deportation (involving deportation law and procedures, and also ways in which an alien subject to deportation may adjust his status); naturalization; and nationality (involving problems of persons who want to establish citizenship or prevent its loss).

The quota aspect of the immigration law presents important considerations for the legislator. For example, some problems may be assessed quantitatively, such as those reflected when there are either oversubscribed quotas or exceedingly small quotas bearing no relation to the size of the countries involved. These problems, for the most part, are illustrated by cases in the section on immigration. A single case may, however, illustrate the confusing maze of law and administrative ruling which baffles government officials, the practitioner, and of course his client. For example, a promising young Czechoslovakian, X, fleeing the Nazi terror with his mother, went to Bolivia in 1939. He entered the United States in 1947 as a medical student, intending to return to his liberalized country after completing his studies. In 1948, the Communists overran Czechoslovakia, and, not wishing to live under that rule, X began the long process to

³ The problems presented by both these aspects of the Displaced Persons Act are well illustrated in the material provided by Miss Lowenstein.

change of status. The problem presented was whether or not his last residence had been Bolivia. If this question were decided affirmatively, he would be ineligible for relief under the Displaced Persons Act of 1948. The fact that he had no travel documents for Bolivia had no bearing under the Act. He was refused an extension of his student visa, but remained to complete his studies. Dr. X was arrested on a deportation warrant in 1953, and was ordered deported because the Special Inquiry Officer decided he would not leave voluntarily. In the meantime, a private bill was introduced and passed in the Senate, but failed in the House because of undisclosed "derogatory information" with which Dr. X was never confronted. An appeal was taken under the Refugee Relief Act of 1953 in which an elaborate brief was filed indicating that at the time respondent became "a refugee from Communist persecution, he resided in the United States or constructively in Czechoslovakia rather than in Bolivia" and was eligible for adjustment of status. The appeal was denied on the grounds that pre-examination, an old procedure that had been suspended, was now reinstated, and Dr. X, having completed his education with high honors, should use this procedure. During all of this time, Dr. X had not been advised of the contents of the "derogatory information," although he had lost the appeal under pre-examination because of this information.

The Council, convinced of the merit of the young man's case, decided, along with a private social action agency and private law firm, to bring an action for declaratory judgment raising the question of the constitutionality of denying an application because of "confidential information." After the action was instituted, but before an answer was filed, the Attorney General received from several trustees of the hospital where the young man was employed, assurances of their high opinion of him. Administrative proceedings were encouraged and reopened with the permission of the federal District Court. At a hearing in July, 1956 in which the Council was joined by the attorney representing the social action agency, the alleged "confidential information" was revealed. The alien for the first time was able to reply, and gave convincing explanation. Voluntary departure and pre-examination were then granted, and in July, 1957, all required action was completed and a legal entry was certified.

Not many cases can survive the procedural morass that was necessary to defeat deportation. When we see the problems of legal procedure presented to a young man, whose integrity and social value so impressed several agencies, private attorneys, and hospital trustees that they substantially aided him for years, we can estimate the hardship to humbler persons, to whom freedom is just as dear and who are just as meaningful to friends and relatives.

Deportation arrests arising out of conviction for crime would not, at first, seem appealing. The following case, however, again reflects the rigidity of the law, and the desperate plight in which an alien can find himself unless skilled and interested resources come to his aid. An alien who arrived in the United States in 1917 as a permanent resident quarreled with his wife and sister-in-law.

A separation followed when the wife removed their child and all her husband's personal belongings. Several months later, he moved in with his brother, taking the remaining household goods. He was arrested on complaint of his sister-in-law, who claimed he took some of her belongings. She went with police to his home, discovered additional articles she had failed to mention, and another complaint was lodged against him for the additional items. He was found guilty on both charges and paid a total of \$75 in fines.

Thirty years later, he was arrested on a deportation action on the basis of having committed two crimes involving moral turpitude. The Board of Immigration Appeals upheld the findings of deportation stating that "the record clearly shows that the respondent was convicted on [two offenses including] the crime of larceny . . . we cannot go behind the judgment of conviction to determine the precise circumstances." The Council assisted the man in an appeal for gubernatorial pardons which successfully cleared the record for discontinuance of deportation proceedings. The two cases are described at length⁴ because they reflect at once both the rigidities of the law and procedure, and the inclusion in those same laws and procedures of remedial possibilities.

In attempting to present findings in a study of 1446 cases, Miss Lowenstein has had the heroic task of illustrating, through some detailing of cases, not only the problems arising out of differences between the point of view of the alien and that of the administrators of the law, but differences between the administrators themselves. For example, in two cases of failure on the part of aliens to notify the Department of change of address, one Special Inquiry Officer, upheld by the Board of Immigration Appeals, held that the alien was deportable, and the other Special Inquiry Officer dropped the charge of "willful failure." The explanations offered for the failure were virtually identical in both cases. Again, the time taken by administrators to process applications has decisive consequences for the prospective immigrants. Before the new quota revision, applicants from the British West Indies were part of the large British quota which has always been open. Applicants on the waiting lists in the Caribbean area, however, frequently had to wait about two years for processing, while English-born applicants were processed in England within three months. Miss Lowenstein wondered if the extra care taken in processing was a means of restricting immigration from the Caribbean area.⁵

Miss Lowenstein states that this is not a text book on immigration law since it deals only with those parts of the law involved in the cases studied. She explains that: "As a result, certain areas of the law are discussed more intensively than others and certain areas, particularly those requiring court litigation, have been omitted altogether" (p. X). For obvious reasons, it has always been

⁴ The reviewer has briefed these cases, with some loss of the clearer picture presented by Miss Lowenstein.

⁵ Since January 1, 1953, the quota of each colony has been reduced to 100, irrespective of the quota of the governing country.

traditional for voluntary agencies to take few cases into the courts. This study, as well as any review of activities of such voluntary agencies, frequently notes "informal" discussions with appropriate Department officials in order to clarify specific situations. It is, however, the courts which have traditionally been more zealous than the Department in equating the rights of aliens with those of citizens, as indicated in three studies mentioned later and referred to by Miss Lowenstein. The difference may be in sophistication rather than in attitude toward the alien, but the difference does exist.

Miss Lowenstein, as well as Read Lewis, Executive Director of the Council, describe the study as "objective," and indeed it is. Any case study in this field, however, tells an eloquent if not an always pleasant story. In his forward Mr. Lewis, while explicitly leaving it to the reader to judge the law, points up the following differences between persons of different national origins:

An alien from Sweden may experience no difficulty or delay in arranging to have his wife and children join him in the United States. An alien from Greece, in identical circumstances, may have to wait several years, because of Greece's small and over-subscribed quota, to unite his family . . . [p. v].

Considerable material has appeared over the years about immigrants and aliens, and their problems. Perhaps the latest is by Senator John F. Kennedy, entitled, *A Nation of Immigrants*, which pleads for greater flexibility in law and administration. There have, however, been few case studies. Three such studies, mentioned by footnotes in Miss Lowenstein's volume, were published at the depth of the economic depression. The President had enunciated what later became an administrative interpretation of the "LPC"—likely to become a public charge—clause of the Immigration Act, and immigration had shrunk to the lowest figure in almost a century. The Commissioner of Immigration in his annual report dated June 30, 1930, said: "The task of housecleaning has practically just begun. To continue the work and do it thoroughly is the big job ahead." *Administrative Control of Aliens* (1932), by Dean William C. Van Vleck of the George Washington School of Law, dealt with the general problems involved. *Deportation of Aliens From the United States to Europe* (1931), by Dr. Jane Perry Clark, Instructor in Government, Barnard College, and *Report on the Enforcement of the Deportation Laws of the United States* (1931), part of the *Report of the National Commission on Law Observation and Enforcement* (Wickersham Commission), both dealt with deportation. They were independently conceived and executed studies, and comment from the Wickersham Commission is pertinent. The researcher, Reuben Oppenheimer, a distinguished member of the Baltimore bar, had access to the two other studies after his own was completed. His findings were highly critical of the immigration administration, and he made sweeping recommendations for broad "discretion to prevent unnecessary hardship and suffering." In relation to the other studies made at the same time, he stated in his report: "In so far as the three reports deal with the same

aspects of the deportation proceedings, their findings of fact are substantially the same.”

These three studies have been considered significant documents—carefully and responsibly planned chronicles of a difficult problem. To them has now been added the valuable study under the direction of Edith Lowenstein which reflects developments in a period covering a great depression, a World War and a continuing “cold” war. Her carefully documented work will point the way to further study of law and administration in this little known field. The reviewer urges a wide reading of the book—it will be good for lawyers not only as professionals but also as citizens.

SARAH B. SCHAAR*

* Former Administrator, Legal Aid Department, Jewish Family and Community Service of Chicago.